



25 JUNE 2020

NOTICE OF MEETING

You are advised of the following meeting:

THURSDAY 2 JULY 2020.

City of Ryde Local Planning Panel Meeting No. 5/20

Conducted remotely via teleconference

English

If you do not understand this letter, please come to the 1 Pope Street, Ryde (within Top Ryde Shopping Centre), Ryde, to discuss it with Council Staff who will arrange an interpreter service. Or you may ring the Translating & Interpreting Service on 131 450 to ask an interpreter to contact you. Council's phone number is 9952 8222. Council office hours are 8:30am to 5:00pm, Monday to Friday.

Arabic

إذا لم تفهم محتوى هذه الرسالة، يرجى الحضور إلى 1 Pope Street، Ryde (في Top Ryde Shopping Centre)، Ryde، لمناقشتها مع موظفي المجلس الذين سوف يرتبون للاستعانة بمترجم شفهي. أو قد يمكنك الاتصال بخدمة الترجمة التحريرية والشفهية على الرقم 131 450 لتتطلب من المترجم الاتصال بك. رقم هاتف المجلس هو 9952 8222. ساعات عمل المجلس هي 8:30 صباحاً حتى 5:00 مساءً، من الاثنين إلى الجمعة.

Armenian

Եթե դուք չեք հասկանում սույն նամակի բովանդակությունը, խնդրում ենք այցելել 1 Pope Street, Ryde (որը գտնվում է Top Ryde Shopping Centre-ի մեջ), Ryde, քննարկելու այն Քաղաքային Խորհրդի անձնակազմի հետ, ովքեր ձեզ համար կապահովեն թարգմանչական ծառայություն: Կամ կարող եք զանգահարել Թարգմանչական Ծառայություն 131 450 հեռախոսահամարով և խնդրել, որ թարգմանիչը ձեզ զանգահարի: Խորհրդի հեռախոսահամարն է 9952 8222: Խորհրդի աշխատանքային ժամերն են առավոտյան ժամը 8:30-ից մինչև երեկոյան ժամը 5:00, երկուշաբթիից մինչև ուրբաթ:

Chinese

如果你不明白这封信的内容，敬请前往1 Pope Street, Ryde（位于Top Ryde Shopping Centre内），向市政府工作人员咨询，他们会为您安排口译服务。此外，您也可以拨打131 450联络翻译和口译服务，要求口译员与您联系。市政府电话号码为9952 8222。市政府办公时间为周一至周五上午8:30至下午5:00。

Farsi

لطفاً اگر نمی توانید مندرجات این نامه را درک کنید، به نشانی 1 Pope Street، Ryde (در Top Ryde Shopping Centre) مراجعه کنید تا با استفاده از یک مترجم در این باره با یکی از کارکنان شورای شهر گفتگو کنید. یا آنکه می توانید با خدمات ترجمه کتبی و شفاهی به شماره 131 450 تماس گرفته و بخواهید که به یک مترجم ارتباط داده شوید. شماره تماس شورای شهر 9952 8222 و ساعات کاری آن از 8:30 صبح تا 5:00 بعد از ظهر روزهای دوشنبه تا جمعه است.

Italian

Se avete difficoltà a comprendere questa lettera, venite in 1 Pope Street, Ryde (dentro al Top Ryde Shopping Centre), Ryde, per discutere con il personale del Comune che organizzerà un servizio di interpretariato. Potete anche contattare il Servizio di Traduzione e Interpretariato al 131 450 per chiedere a un interprete di contattarvi. Il numero di telefono del Comune è il 9952 8222. Gli orari di ufficio del Comune sono dalle 8.30 alle 17 dal lunedì al venerdì.

Korean

이 서신을 이해할 수 없을 경우, 1 Pope Street, Ryde (Top Ryde Shopping Centre 내)에 오셔서 통역사 서비스를 주선할 시의회 직원과 논의하십시오. 혹은 통번역서비스에 131 450으로 전화하셔서 통역사가 여러분에게 연락하도록 요청하십시오. 시의회의 전화번호는 9952 8222입니다. 시의회 사무실 업무시간은 월요일에서 금요일, 오전 8시 30분에서 오후 5시까지입니다.

Meeting Date: Thursday 2 July 2020
Location: Vitrual Meeting conducted via Teleconference
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.

NOTICE OF BUSINESS

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DECLARATIONS OF INTEREST

DEVELOPMENT APPLICATION

- | | | |
|---|---|---|
| 1 | 964-970 VICTORIA ROAD, WEST RYDE. CONSTRUCTION OF A 5 STOREY MIXED USE DEVELOPMENT CONTAINING A GROUND FLOOR RETAIL TENANCY AND BOARDING HOUSE USE COMPRISING 41 BOARDING ROOMS, 1 MANAGER'S UNIT AND 15 CAR SPACES IN 2 LEVELS OF CAR PARKING ACCESSED VIA MAXIM STREET. LDA2019/0325..... | 3 |
|---|---|---|

There are no LPP Planning Proposals

DEVELOPMENT APPLICATIONS

- 1 964-970 VICTORIA ROAD, WEST RYDE. CONSTRUCTION OF A 5 STOREY MIXED USE DEVELOPMENT CONTAINING A GROUND FLOOR RETAIL TENANCY AND BOARDING HOUSE USE COMPRISING 41 BOARDING ROOMS, 1 MANAGER'S UNIT AND 15 CAR SPACES IN 2 LEVELS OF CAR PARKING ACCESSED VIA MAXIM STREET. LDA2019/0325**

Report prepared by: Senior Town Planner

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

Report dated: 24/06/2020 **File Number:** GRP/09/6/12/1/2 - BP20/602

City of Ryde Local Planning Panel Report

DA Number	LDA2019/0325
Site Address & Ward	964-970 Victoria Road, West Ryde Central Ward
Zoning	B4 – Mixed Use and SP2 – Infrastructure (Classified Road) under RLEP 2014
Proposal	Construction of a 5 storey mixed use development containing a ground floor retail tenancy and boarding house use comprising 41 boarding rooms, 1 Manager's unit, and 15 car spaces in 2 levels of car parking accessed via Maxim Street.
Property Owner	Keechoon Lee and Aeryun Lee
Applicant	Lecedar Pty Ltd
Report Author	Peggy Wong – Senior Town Planner
Lodgement Date	23 September 2019
No. of Submission	3 submissions
Cost of Works	\$4,910,146
Reason for Referral to RLPP	<u>Departure from Development Standards</u> Development that contravenes a development standard imposed by an environmental planning

ITEM 1 (continued)

	instrument by more than 10% or non-numerical development standards.
Recommendation	Refusal
Attachments	Attachment 1 - Clause 4.6 Variation Request Attachment 2 – Architectural & Landscape Plans Attachment 3 – Stormwater Management Plans

1. Executive Summary

The following report is an assessment of a development application for the construction of a five (5) storey mixed use development comprising a ground floor retail tenancy (café) and boarding house consisting of forty-one (41) boarding rooms and two (2) levels of car parking at No. 964-970 Victoria Road, West Ryde.

The development application (as amended) proposes the construction of a 5 storey mixed use building containing:

- Ground floor 40m² retail tenancy (to be occupied as a café).
- Ground floor boarding house reception lobby/foyer fronting Victoria Road.
- A boarding house on levels 1 to 5 containing:
 - o 41 boarding rooms,
 - o 1 x Manager's unit on the first floor,
 - o a communal living area adjoining common open space on the fourth floor;
 - o additional communal open spaces on the first floor and roof level.
 - o communal facilities including a communal laundry and drying area on the second floor and a communal study area on the third floor.

The proposal also includes excavation of the site to provide car parking across two levels (lower ground floor and ground floor) for 15 car spaces comprising of 12 car spaces and 3 car share spaces, in addition to a loading dock. Two (2) separate bicycle parking areas are provided in the car park. As stated in the Statement of Environmental Effects (SEE) and the Traffic Impact Assessment Report, the proposal seeks to provide 10 motorcycle spaces and 10 bicycle spaces within the car park. These spaces have not been clearly shown on the architectural plans.

Proposed landscaping comprises of a 4m wide vertical garden on the eastern elevation (fronting Maxim Street) extending from the first floor to roof level; and planter boxes adjacent communal open spaces, and adjacent to private balconies of units facing Victoria Road and facing internally to the common deck.

The proposal was notified to owners of surrounding properties between 6 March and 25 March 2020, and resulted in 3 submissions raising objection to the proposal. The concerns raised relate to the development being out of character with surrounding

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low scale commercial and residential developments, the impact of the boarding house and retail uses on residential amenity, excessive building height and scale, contribution to traffic congestion and insufficient on site car parking impacting on limited street parking. Concern was also raised that bicycle parking spaces will attract bike share schemes which clutter surrounding street with abandoned bicycles causing safety hazards for pedestrians.

The site is located within the Victoria Road West Precinct within the West Ryde Town Centre. The amended proposal is considered to be out of character with the streetscape of Victoria Road and the desired future character for the West Ryde Town Centre. The proposal does not demonstrate compliance with several planning controls specified in the State Environmental Planning Policy (Affordable Rental Housing) 2009 and the Ryde Development Control Plan (RDGP) 2014 for a boarding house. In particular, the built form is inconsistent with the maximum height of buildings development standard in Clause 4.3 of the Ryde Local Environmental Plan (RLEP) 2014, is not appropriately serviced by car parking and will result in poor amenity for occupants.

The proposal was considered by the Urban Design Review Panel (UDRP) at its meeting on 7 November 2019. The Panel raised concerns relating to the architectural form, non-compliance with design principles under State Environmental Planning Policy No. 65 - Quality of Residential Flat Buildings and the proposal being out of character with the context of the local area.

The proposal fails to comply with the development standard imposed by Clause 4.3 of the RLEP 2014 in respect to the maximum permitted building height of 15.5m. The proposal has a maximum building height of 17.1m, representing a 10.32% departure from the development standard. The applicant has failed to provide an adequate written request under Clause 4.6 of the RLEP 2014 to justify the breach in the building height development standard and the request is not supported.

In summary, the proposal is considered unacceptable due to:

- Inadequate written Clause 4.6 variation request to justify departure from the RLEP 2014 building height development standard.
- The proposed built form is not an appropriate scale or design that complements the character of existing surrounding developments or the desired character of the local area.
- Insufficient information has been submitted to demonstrate that the proposed boarding house use, particularly the layout of boarding rooms, communal living areas and management of the premises, will provide good amenity for occupants and have no adverse impacts on the amenity of surrounding properties.
- Insufficient car parking spaces which does not satisfy the minimum requirement for car parking spaces in Clause 29(e) of the SEPP (Affordable Rental Housing) 2009.

ITEM 1 (continued)

- Insufficient car parking spaces, layout and vehicular access is likely to result in additional traffic and parking impacts in immediately surrounding streets. Given the potential queuing of vehicles entering or exiting the site, the development increases the risk of vehicular and pedestrian conflict within the public domain and has unacceptable risk to public safety.
- Insufficient details have been submitted to demonstrate that vehicles in car parking spaces on the ground floor level can enter and exit the site in a forward direction and sufficient aisle widths and sightlines are provided for safe manoeuvring of vehicles, bicycles and pedestrians.
- The architectural plans are inconsistent with the SEE and Traffic Impact Assessment Report as no motorcycle spaces are shown on the car park levels. In addition, insufficient information has been submitted demonstrating the proposed number of bicycle parking spaces can be provided within the nominated bicycle storage areas.
- Insufficient information has been submitted to demonstrate the appropriate separation or management of commercial and residential waste storage within the development.
- The proposed stormwater management plan is inconsistent with the amended architectural plans and the proposed location of the On Site Detention (OSD) tank beneath the garbage storage room will cause potential contamination of stormwater.
- The Plan of Management (POM) does not include adequate operational provisions to demonstrate that the boarding house use, specifically the use of communal open space, communal living areas and carpark, will not have any adverse impacts on the amenity of surrounding properties or the streetscape.

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

2. The Site and Locality

The site is irregular in shape with a primary frontage to Victoria Road measuring 18.37m, a secondary frontage of 33.69m to Maxim Street and a 3.47m splay at the intersection of Victoria Road and Maxim Street (see Figure 1).

ITEM 1 (continued)



Figure 1: Aerial view of the subject site (shaded) and surrounds.

The site comprises of Lot 2 and Lot 3 in DP 791020 and has a combined area of approximately 849m². An area (48.9m²) of the site adjacent to the northern boundary fronting Victoria Road and returning to Maxim Street is reserved for future road widening and does not form part of the developable area of the site.



Figure 2: RLEP 2014 Land Acquisition map showing area of the site reserved for future road widening.

ITEM 1 (continued)

Lot 2 in DP 791020 occupies the eastern portion of the site and has a primary frontage to Victoria Road and secondary frontage to Maxim Street. Lot 2 has a fall of 2.42m from the rear boundary (RL22.25) to the northern boundary on Victoria Road (RL19.83) and a fall of 680mm from east (RL20.23) to west (RL19.55) measured along the northern boundary.

Lot 3 has a fall of 1.34m from the southern boundary (RL20.59) to the north-western boundary (RL19.25) and a 280mm fall from east (RL19.55) to west (RL19.25) along the northern boundary.

The site is currently occupied by a 2 storey masonry commercial building fronting Victoria Road, a single storey structure containing an office tenancy, a carport, storage sheds and an at grade car parking area access from Maxim Street accommodating 17 cars. The site does not contain any deep soil, soft landscaping or trees.

The site is not a heritage item or in a conservation area. The site is not immediately adjacent to any heritage items but is in the vicinity of heritage items located at No. 948 Victoria Road (Heritage Item No. 155 - Ryde Pumping Station), No. 958 Victoria Road (Heritage Item No. 156 – former engineers cottage) and No. 7 Maxim Street (Heritage Item No. 69 - church).

Photographs of the site and surrounding developments are provided in Figures 3 to 9 below.

ITEM 1 (continued)



Figure 3: View of site and adjoining developments from northern side of Victoria Road



Figure 4: View of site from Maxim Street at the intersection of Victoria Road (looking west)



Figure 5: Development immediately south of site on Maxim Street

ITEM 1 (continued)



Figure 6: Two storey residential apartment buildings on the eastern side of Maxim Street (at the intersection of Victoria Road)



Figure 7: View east along Victoria Road



Figure 8: Existing commercial and retail developments on the northern side of Victoria Road viewed from intersection of Victoria Road and West Parade

ITEM 1 (continued)



Figure 9: View from Maxim Street towards development on the northern side of Victoria Road

3. The Proposal (as amended)

The proposal (as amended) seeks approval for the excavation and construction of 5 storey mixed use building comprising a ground floor café and lobby for 4 levels of boarding house above containing 41 boarding rooms, 1 Manager's unit, 15 car parking spaces and 1 loading dock contained in 2 levels of car park on the ground floor and lower ground floor.

Figure 10 shows a photomontage of the proposed development.



Figure 10: 3D image of the proposed development viewed from the intersection of Victoria Road and Maxim Street

ITEM 1 (continued)

The details of the proposal are as follows:

Lower Ground Floor (car park level)

The lower ground floor of the proposed development contains:

- 7 car parking spaces
- Bicycle storage area
- Lift access
- 2 fire stairs
- Store room

Ground Floor

The ground floor of the proposed development contains:

- 1 x 40m² commercial/retail tenancy (café) with outdoor seating fronting Victoria Road
- Boarding house reception area with lift lobby
- Car park (accessed via Maxim Street) comprising a loading dock and 8 car spaces including 2 accessible spaces and 3 car share spaces
- 1 garbage store room for 10 waste bins and 7 recycling bins
- Shared zone adjacent to accessible car spaces containing storage for 2 garbage bins and 2 recycling bins
- An electricity substation fronting Maxim Street
- 3 fire stair exits
- Setback of building to accommodate road widening along Victoria Road

First Floor

The first floor of the proposed development contains:

- 6 boarding rooms with ensuites and private open space
- 1 Manager's Unit measuring 43m² with 27m² of private open space
- Communal outdoor area

Second Floor

The second floor of the proposed development contains:

- 13 boarding rooms with ensuites and private open space
- Communal laundry with washing machine, dryer and sinks and adjoining outdoor drying area

Third Floor

The third floor of the proposed development contains:

- 14 boarding rooms with ensuites and private open space
- 1 communal study room measuring 11.5m²

Fourth Floor

The fourth floor of the proposed development contains:

- 8 boarding rooms with ensuites and private open space
- Communal living areas including kitchen and dining spaces

ITEM 1 (continued)

- 2 communal outdoor spaces measuring 59.1m² and 12.8m²
- Communal (accessible) WC

Roof Level

The roof level contains a communal outdoor space (58.8m²) with lift and stair access. A store room is also proposed adjacent to the lift and fire stairs.

Boarding House Capacity

The submitted SEE and POM states the proposal seeks to provide boarding house accommodation for up to 49 lodgers in 34 single rooms and 7 double rooms, and 1 on site manager. However, the calculations provided for the maximum number of lodgers per boarding room in Section 4 of the POM does not accurately reflect the number of lodgers per room and is inconsistent with the architectural plans. In addition, the architectural plans show single bed configurations for all boarding rooms and no room layouts demonstrating that 2 lodgers can be accommodated in the 7 double rooms.

The SEE also states that kitchenettes are provided within boarding rooms but no details of kitchenettes are provided on the architectural plans.

Landscaping

Proposed landscaping consists of landscaped areas along the western and south-western boundary on the lower ground level, planter boxes adjacent to private and communal open spaces fronting Victoria Road and the internal void, and a 4m wide vertical garden on the eastern elevation fronting Maxim Street.

Motorcycle and Bicycle Parking

The proposal seeks to provide 10 motorcycle spaces and 10 bicycle parking spaces as stated in the SEE and the Traffic Impact Assessment Report. However, these spaces have not been clearly identified on the architectural plans to demonstrate the proposed number of motorcycle and bicycle spaces can be accommodated within the car park.

Stormwater

The proposed stormwater management system includes an OSD tank beneath the garbage room and discharge to an existing kerb inlet pit in Victoria Road (see Figure 11).

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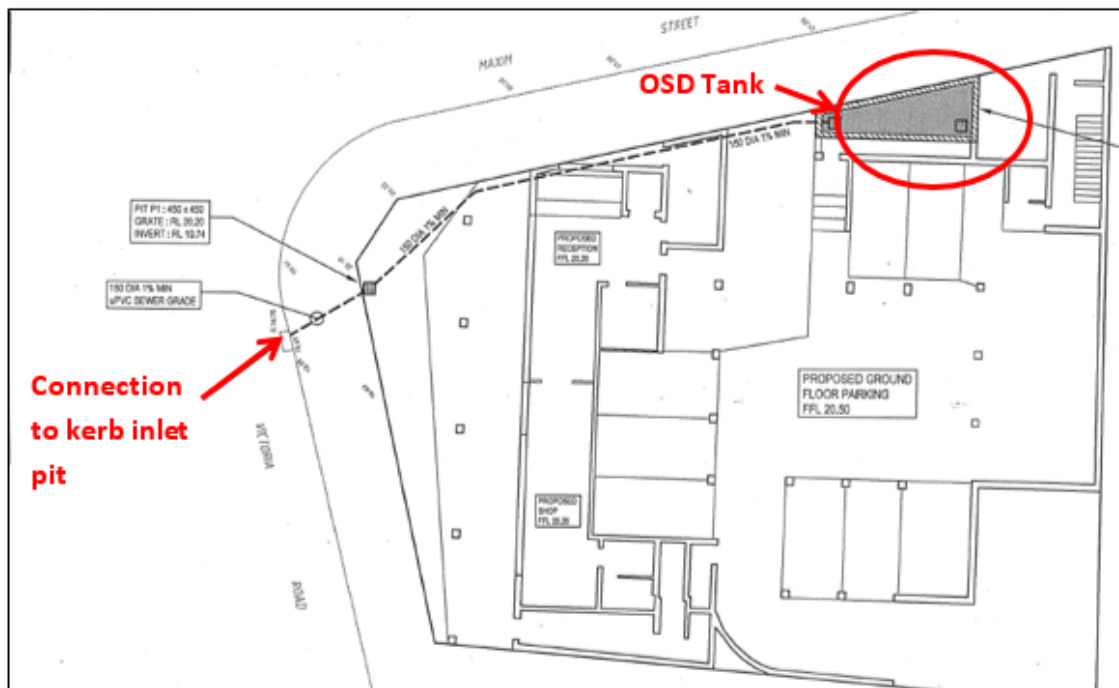


Figure 11: Proposed stormwater and On Site Detention plan

Building Siting and Design

The proposed building will be built to the boundaries of the site, with the exception of the area reserved for future road widening along the Victoria Road, the void above the communal outdoor area on the first floor and vehicular access ramp at the south-western corner of the site, and the landscaped setback at the south-western corner.

Due to the splay of the northern boundary fronting Victoria Road and the area of the site to be reserved for future road widening by Transport for NSW, the proposed building has a ground floor setback ranging between 2.4m at the north-western corner to 3.5m at the north-eastern splay. The proposed cafe and reception entries are setback between 3m and 3.5m from the northern boundary, respectively. Along the eastern boundary, the ground floor level is built to the boundary with the exception of a setback adjacent to the lift core, fire stairs and vehicular entry.

Levels one to four along the northern façade of the building is built to the boundary (Victoria Road) and setback 1.2m from the north-eastern splay boundary. The roof top communal open space is setback between 7.8m to 9.8m from the northern boundary, 5.9m from the eastern boundary behind the lift overrun and fire stairs, 15.3m from the southern boundary and 7.9m from the western boundary.

Along the southern and western boundaries the building steps back from the first floor to the fourth floor as shown at Figure 12. The communal open space on level one is setback between 5.2m and 8.9m from the western boundary and partially setback 7.6m to the southern boundary. The communal open space (labelled common deck at Figure 12) comprises a full height wall along the southern boundary.

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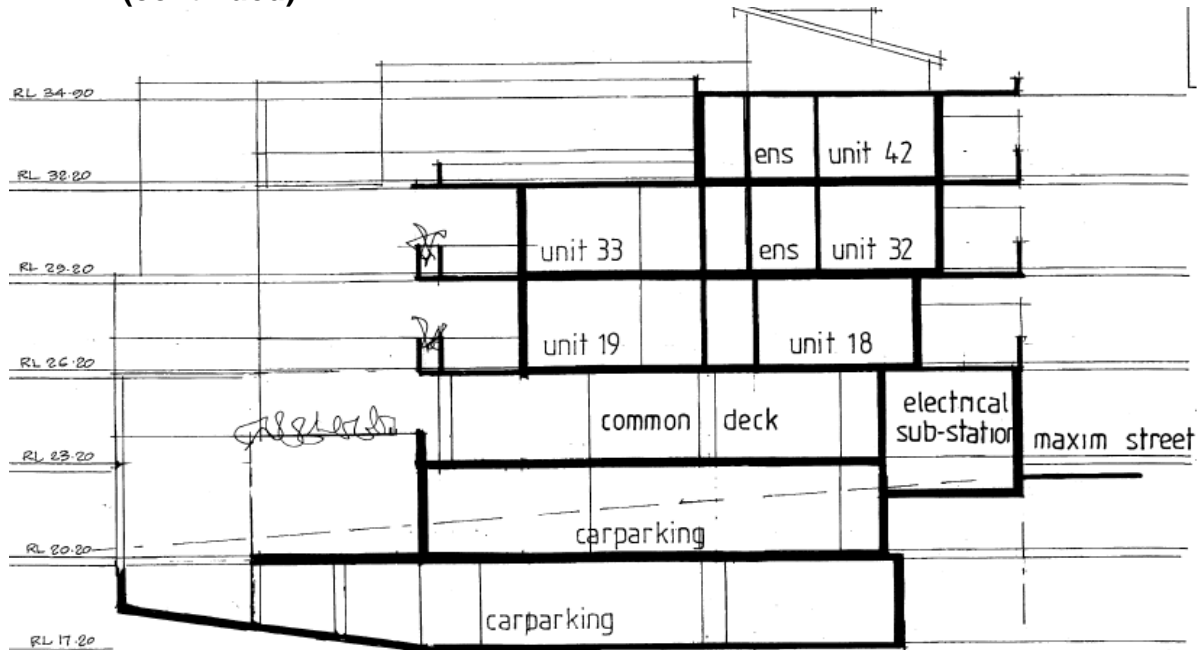


Figure 12: Section plan (Section D-D) along southern boundary (Drawing No. D07, Issue. D)

External Materials

The external materials and finishes of the proposed building comprise of face brick, FC cladding, metal roofing, colourbond tiles, and cement rendering and glazing. The external façade of balconies on the first floor to fourth floor, inclusive, have sliding louvred screens (refer Figure 10 earlier in this report)

Boarding House Plan of Management

An amended POM has not been submitted to reflect the amended architectural plans. The originally submitted POM does not sufficiently address use and management of the premises to minimise amenity impacts on surrounding properties. In particular, the POM does not specify maximum occupant capacity within each communal open space, provide definitions of loud noise or provisions to ensure use of the private open spaces does not result in amenity impacts on other occupants or surrounding properties.

The POM does not provide any details relating to the use of the car parking spaces for lodgers. Specially, no operational provisions have been provided for the allocation of car parking spaces, motorcycle spaces or bicycle storage, security measures within the car park relating to access or guidelines regarding the use of car share spaces.

The POM does not provide details relating to the maintenance of landscaping to ensure its long term viability. Particularly detail is not provided regarding the planter boxes adjacent to balconies of boarding rooms, planters adjacent to communal open spaces and the vertical garden.

ITEM 1 (continued)**4. Background**

The application was lodged with Council on 23 September 2019. The original development application as lodged was for the construction of a 5 storey mixed use development comprising 1 ground floor commercial/retail tenancy, and a boarding house use on the upper levels containing 41 x boarding rooms for a maximum of 49 lodgers, 1 x Manager's unit, communal indoor facilities and outdoor open space on the second, fourth and roof top floor levels.

The proposal also included 3 levels of car parking for 23 car spaces, 10 motorcycle spaces and 10 bicycle spaces. Two (2) vehicular access crossovers were proposed to provide access the car park from Maxim Street. The architectural plans did not indicate the location of motorcycle spaces and no details were provided to demonstrate the bicycle storage areas could satisfactorily accommodate the proposed number of bicycles.

On 25 September 2019, Council's letter identified the submission of insufficient information and requested additional information including:

- Amended architectural plan to include fit out details of boarding room, communal living and outdoor areas;
- RL levels for the lift overrun and driveway section;
- Schedule of external finishes;
- Schedule of window treatments;
- Schedule of Gross Floor Area calculations;
- Clause 4.6 variation written request for exceedance of the height of building development standard under Clause 4.3 of RLEP 2014;
- A geotechnical report to address proposed excavation for car parking;
- An acoustic report;
- An access report; and
- Written confirmation from Ausgrid regarding any requirements for an electrical substation.

On 14 October 2019, the applicant requested an extension of time to address the issues identified in Council's letter dated 25 September 2019. An extension of time was granted until 6 November 2019.

On 31 October 2019, amended plans and supporting documents were submitted to Council.

On 7 November 2019, the proposal was reviewed by the Urban Design Review Panel (UDRP). The Panel advised that it *"does not support the proposal and recommended a complete redesign from first principles, informed by careful analysis of the existing site and context in order to demonstrate a more considered architectural approach for the site, its context and constraints, and programmatic requirements"*. The Panel provided design comments having regard to the design principles under State

ITEM 1 (continued)

Environmental Planning Policy No. 65 - Design Quality of Residential Flat Buildings, which is outlined in Section 5.1 in this report.

On 27 November 2019, Council provided the applicant with the UDRP comments and recommendations from the 7 November 2019 meeting.

On 28 November 2019, Council emailed the applicant to advise that Police comments have been received and the Police have requested the preparation of a CPTED report to demonstrate the proposal has considered CPTED principles to address crime within the development.

Amended plans and supporting information, submitted on 28 December 2019, 8 January 2020 and 28 February 2020 respectively, did not significantly differ to those reviewed and the comments provided by the Panel are still relevant. Accordingly, the applicant was requested that further amended plans and additional information be submitted to address the issues raised.

On 16 January 2020, Council emailed the applicant requesting the submission of further information including an amended BASIX Certificate, Erosion Sediment Control Plan, a Dust Management Plan, an Acoustic Report and a Traffic Impact Assessment Report.

On 28 February 2020, the applicant submitted an amended Statement of Environmental Effects, an Erosion Sediment Control Plan, a Dust Management Plan, an Acoustic Report and a Traffic Impact Assessment Report. An amended BASIX Certificate was submitted however details were insufficient and the applicant was required to submit a further amended BASIX Certificate.

On 30 January 2020, an email was sent to the applicant advising that all relevant supporting documentation needs to be amended to reflect the amendments shown in the architectural plans.

On 2 April 2020 a further email was sent to the applicant requesting the submission of outstanding information, specifically an amended BASIX Certificate and a written confirmation from a car share company that car share vehicles will be provided for the exclusive use of boarding house occupants to ensure that demand for cars generated by the development is facilitated.

On 11 May 2020, the applicant submitted an amended BASIX Certificate and a letter from Go-Get Car Share in response to Council's request that car share spaces provided within the development are for the exclusive use of boarding house lodgers. To date, the additional information requested on 30 January 2020, 2 April 2020 or 11 May 2020 has either not been submitted, or has been inadequate, and these issues remain unresolved.

ITEM 1 (continued)**5. Planning Assessment**

An assessment of the development in respect to Section 4.15 of the *Environmental Planning and Assessment Act 1979* is detailed below.

5.1 State Environmental Planning Instruments**State Environmental Planning Policy (Affordable Rental Housing) 2009**

The development is subject to Division 3 (Boarding Houses) of State Environmental Planning Policy (Affordable Rental Housing) 2009.

The site is zoned B4 Mixed Use under the RLEP 2014 and the SEPP is applicable in accordance with Clauses 26 and 27(1) which read as follows:

Clause 26 – Land to which this Division applies

This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones -

- a) Zone R1 General Residential,*
- b) Zone R2 Low Density Residential,*
- c) Zone R3 Medium Density Residential,*
- d) Zone R4 High Density Residential,*
- e) Zone B1 Neighbourhood Centre,*
- f) Zone B2 Local Centre,*
- g) Zone B4 Mixed Use.*

Clause 27 – Development to which this Division applies

Clause 27(1) of the SEPP stipulates:

- 1) This Division applies to development, on land to which this Division applies, for the purposes of boarding houses.*

With respect to 27(1), “Boarding house” is defined under the SEPP (and the RLEP 2014) as follows:

“boarding house means a building:

- a) that is wholly or partly let in lodgings, and*
- b) that provides lodgers with a principal place of residence for 3 months or more, and*
- c) that may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and*
- d) that has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,*

but does not include backpackers’ accommodation, a group home, a serviced apartment, seniors housing or hotel or motel accommodation.”

The proposed development for a boarding house satisfies the above definition.

ITEM 1 (continued)
Clause 29 – Standards that cannot be used to refuse consent

Clause 29 stipulates that a consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2). Subclause (3) outlines the standards relating to the provision of private kitchen or bathroom facilities. The table below provides an assessment of the proposal against these standards.

Clause 29 Standards which cannot be used to refuse consent	Required	Proposed	Complies
(1)(a) and (c)(i) Floor Space Ratio	<p>Existing maximum FSR for any residential accommodation permitted on the land (1.25:1).</p> <p>Subclause (c)(i) permits an additional FSR of 0.5:1 if the existing FSR is 2.5:1 or less. Total permitted FSR for the site is 1.75:1</p> <p>Site area is 849 and includes 48.9m² reserved for road widening under the SP2 Infrastructure zone</p>	<p>Ground floor: 124.3m² First Floor: 186.2m² Second floor: 367.4m² Third Floor: 361.1m² Fourth Floor: 272m² Total GFA = 1,311m² FSR = 1.63: 1</p>	Yes
(2)(a) Building Height	Maximum building height under LEP – 15.5m	<p>The building has a maximum height of 17.1m at the ridge (RL38.40)</p> <p>The north-western corner of the building measures 15.8m (RL35.40)</p>	No Clause 4.6 variation request has been submitted
(2)(b) Landscaped area	Landscape treatment of front setback is compatible with streetscape	No soft landscaping is incorporated into the front setback at ground level. Planter boxes are	No

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Clause 29 Standards which cannot be used to refuse consent	Required	Proposed	Complies
		proposed on balconies on Levels 1 to 4. When compared to other R4 properties, the development will present as a visually dominant built form with no landscaping.	
(2)(c) Solar access	One or more communal living room receives at least 3 hours sunlight between 9am and 3pm at mid-winter	A minimum of 3 hours sunlight is provided to one or more communal living room windows at mid-winter.	Yes
(2)(d) Private Open Space	One area of at least 20m ² with minimum dimension of 3m is provided for use of lodgers.	Three (3) areas of communal open space with areas of greater than 20m ² and dimensions of 3m is provided on the first floor, fourth floor and roof top level.	Yes
(2)(e) Parking	<p>At least 0.5 parking spaces are provided for each boarding room – minimum 21 spaces.</p> <p>A maximum of 1 space is permitted for the on site manager/employees.</p>	<p>15 car spaces including 3 car share spaces and 2 accessible car spaces are proposed across 2 levels of car parking.</p> <p>10 motorcycle spaces are noted in the Traffic Impact Assessment Report but not shown on the architectural plans.</p> <p>2 bicycle storage</p>	No

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Clause 29 Standards which cannot be used to refuse consent	Required	Proposed	Complies
		rooms are shown on the architectural plans with no details relating to capacity.	
(2)(f) Accommodation size	Single rooms are at least 12m ² , and 16m ² in any other case, in area excluding private kitchen or bathroom facilities.	41 boarding rooms containing ensuites. Room sizes range between 12.2m ² to 17.6m ² .	Yes
(3) Facilities	A boarding house may have a private kitchen or bathroom in each boarding room but is not required	Boarding rooms contain private bathrooms. While the SEE states that kitchenettes are provided within boarding rooms, no details of kitchenettes are provided on the architectural plans.	Yes

Clause 29 (2)(e) Parking

The proposal provides 15 car parking spaces and unspecified bicycle parking spaces. The proposed 15 car spaces includes 3 car share spaces and 2 accessible car parking spaces.

Pursuant to Clause 29(2)(e), the proposal is required to provide a minimum of 21 car parking spaces for 41 boarding rooms (0.5 car spaces per boarding room) and a maximum of 1 space for the manager. Given the limited on street parking, Council officers are of the opinion that 1 space for the manager is appropriate.

The proposal is also required to provide 2 car parking spaces associated with the ground floor retail (café) tenancy in accordance with provisions under Part 9.3 of the RDCP 2014. The car parking requirements are assessed in Section 5.4 of the report below.

As such, the proposed development is required to provide 24 car parking spaces under Clause 29(2)(e) and Part 9.3 of the Ryde Development Control Plan 2014. The development has proposed 15 spaces and 1 loading zone. The applicant seeks to address the shortfall of 9 car parking spaces with the provision of 3 car share spaces on the ground floor car park level. The Traffic Impact Assessment Report prepared by Park Transit, dated 26 February 2020 is based upon the provision of 2

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car share spaces to address the shortfall of car parking space and submits that 1 car share space potentially replaces 10-12 privately owned vehicles. This is inconsistent with the amended architectural drawings and SEE which includes 3 car share spaces.

Notwithstanding this, the principle behind the justification that provision of car share spaces within the development will adequately address the shortfall is not supported by Council's Development Engineer and Traffic team. In particular, the nature of car share scheme where car share vehicles are available to any members of the community, does not adequately demonstrate how demand for vehicles by lodgers will be accommodated. If the car share vehicles were being utilised by members of the community other than lodgers, the shortfall of 9 car spaces within the development is considered significant and will likely generate additional traffic and demand for parking in immediately surrounding streets. Immediately surrounding streets are identified as having high parking demands and any additional demand resulting for a shortfall of parking within a development is not acceptable.

In addition, the applicant has not provided sufficient justification as to why the required number of car parking spaces cannot be provided within the development and reliance on car share spaces to meet the demand of lodgers is necessary.

In accordance with Clause 30(1)(h) motorcycle parking is required to be provided at a rate of 1 motorcycle space for every 5 boarding rooms and at least 1 bicycle parking space is provided. No motorcycle parking spaces have been indicated on the amended architectural plans however the Traffic Impact Assessment Report states that 10 motorcycle spaces are proposed. The proposed provision of motorcycle parking is considered unclear and insufficient information has been submitted to demonstrate the layout of the car park can accommodate the required motorcycle spaces under Clause 30(1)(h).

The development is required to provide 8 bicycle parking spaces. The architectural plans indicate 2 separate bicycle storage areas within the car park and is capable of satisfying Clause 30(1)(h), however, insufficient details have been provided to demonstrate that the design of the bicycle storage areas will accommodate the 10 bicycle spaces proposed by the Traffic Impact Assessment Report.

The proposal in its current form does not provide sufficient information to satisfy car, motorcycle or bicycle parking standards under Clauses 29 and 30 the SEPP and forms part of the reasons for refusal.

Insufficient provision of car parking and architectural plans to demonstrate the number of required motorcycle and bicycling parking can be adequately accommodated within the development forms part of the reasons for refusal.

Clause 30 – Standards for boarding houses

Clause 30(1) stipulates that a consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:

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Clause 30 (1) Standards for boarding houses	Required	Proposed	Complies
(a) Common room	Minimum one communal living room for 5 or more boarding rooms	1 communal living area comprising kitchen and dining is provided on the fourth floor 1 communal study area is provided on the third floor 1 communal laundry and drying area is provided on the second floor	Yes
(b) Gross Floor Area	No boarding room to have gross floor area exceeding 25m ² excluding private kitchen and bathroom	Boarding rooms have areas between 12.2m ² and 17.6m ² , excluding bathrooms and kitchenettes	Yes
(c) Occupancy	No boarding room to be used by more than 2 adult lodgers	Boarding rooms are proposed to contain 1 to 2 lodgers	Yes
(d) Kitchen/ Bathroom	Adequate kitchen and bathroom facilities are required for a boarding house for the use of each lodger	The proposal states that private kitchenettes and bathrooms are provided in each room. However this is not clearly shown on the architectural plans. Communal kitchen, dining and accessible WC facilities are provided on the fourth floor level. However, the combined kitchen	No

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Clause 30 (1) Standards for boarding houses	Required	Proposed	Complies
		and dining space is insufficient in area and does not provide adequate cooking facilities for 49 lodgers.	
(e) Manager	If a boarding house accommodates 20 or more lodgers a manager's dwelling shall be provided onsite.	1 x 43m ² Manager's Unit is provided	Yes
(g) Commercial zoning	If the site is primarily zoned for commercial purposes ground floor not to be used for residential purposes	The site is zoned B4 – Mixed Use	Yes
(h) Parking	At least 1 motorcycle and bicycle parking space shall be provided for every 5 boarding rooms – a minimum 8 motorcycle and 8 bicycle spaces required	The proposal states that 10 motorcycle and 10 bicycle spaces are provided in the car park. However, the architectural plans do not include details of any motorcycle parking spaces or design details of the bicycle areas to demonstrate compliance.	No

Clause 30A – Character of local area

Clause 30A stipulates that a consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.

West Ryde Town Centre – Local Area

The local area of the site is identified primarily as the southern side of Victoria Road between Maxim Street and Adelaide Street and is identified as the Victoria Road West Precinct within the West Ryde Town Centre under Part 4.3 of the Ryde

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Development Control Plan 2014. In the immediately vicinity of the site and also considered part of the local area, are properties located within the northern section of Maxim Street close to the intersection of Victoria Road and Maxim Street.

Figure 13 below identifies the boundaries of the Victoria Road West Precinct.



Figure 13: Boundary of the Victoria Road West Precinct

Pursuant to Clause 4.1.1 in Part 4.3 of the RDCP 2014, the character statement for Victoria Road West is described as follows:

The Victoria Road West Precinct will be a vibrant, lively area, providing the primary traffic and transit corridor to West Ryde, and serving as a prominent feature of the Town Centre. The precinct will continue to provide a diverse range of retail and business uses for the community. New development will draw on the existing pedestrian environment. Built form is to follow and reinforce the established street alignment of the Victoria Road West Precinct. Opportunities for larger format retail and commercial premises are located on the southern side of Victoria Road due to the availability of larger sites. The existing small retail shops on the northern side of Victoria Road provide opportunities for small start up businesses.

Active street frontages along Victoria Road West must be retained with any new development, promoting a safe and active environment. Retention of the existing character for the retail sector of Victoria Road West should be prioritised by allowing for small to medium retail units with narrow frontages presenting to the street at ground level. Revitalisation of the precinct is encouraged through the enhancement of the public domain.

Future development will assist in establishing Victoria Road West as a 'landscaped route', defined by new activity and built form.

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Existing surrounding developments in the vicinity of the site and within the Victoria West Precinct comprise predominantly two storey commercial buildings occupied by various retail, commercial and food and drink premises uses. Existing developments in Maxim Street, immediately adjacent to the boundaries of the Victoria Road West Precinct, comprise of 2 storey building containing residential apartment buildings and commercial uses. Further to the south of Maxim Street the scale and density of development increases and contains 3 storey residential apartment buildings.

Immediately opposite the site, on the northern side of Victoria Road between the railway line to the east and Chatham Road to the west, is the Retail Core Precinct within the West Ryde Town Centre. Existing developments in the Retail Core Precinct fronting Victoria Road comprise of two storey retail and commercial buildings and a 9 storey mixed use building at the intersection of Victoria Road and West Parade. Further to the north, the Retail Core Precinct contains the West Ryde Market Place, 4 storey West Ryde Community Centre and an 8 storey mixed use development bounded by Chatham Road, Betts Street and Anthony Road.

Consistency with local character – front setbacks

The proposed development is inconsistent with the character of the local area not only the existing character of surrounding development as described above, but also the desired future character established under the DCP.

The proposed 5 storey building is inconsistent with the guidelines for desirable building articulation and scale within the streetscape in Part 4.3 of the RDCP 2014 and contains a breach of building height controls under RLEP 2014. Whilst the proposed ground floor level contains a retail tenancy and reception area addressing Victoria Road, the ground floor elevation is setback from the boundary and does not contribute to defining the street or enhance the pedestrian environment along Victoria Road (refer Figure 14). Furthermore, the overhang of the balconies above will not be consistent with the alignment of adjoining awnings. The setback of the ground floor does not comply with the DCP controls (nil setback required), and is the proposal is inconsistent with the existing and desired future character of the area.



Figure 14: 3D image of the north elevation (Victoria Road)

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Consistency with local character – height of building

The proposed floor to ceiling height of 3m does not satisfy the minimum floor to ceiling height control of 3.6m for ground floor retail and commercial uses within the West Ryde Town Centre under the DCP. The proposal does not maximise opportunities to accommodate a wide range of retail or commercial uses over time and will detract from the pedestrian experience along Victoria Road. The non-compliant floor to ceiling height at ground floor level has enabled the proposal to present a 5 storey building within the 15.5m building height control. This is contrary to the floor to ceiling height and built form controls under Clause 3.1 in Part 4.3 of the RDCP 2014, which identifies that a maximum of 4 storeys would be capable of satisfying the built form provisions for the West Ryde Town Centre, and any higher would exceed the building height development standard under Clause 4.3 of the RLEP 2014 (see Figure 15). As such, the proposal presents a built form that is inconsistent with the proportions of a compliant development envisaged by the controls and will detract from the character of existing and desired future retail and commercial character in the Victoria Road West Precinct.

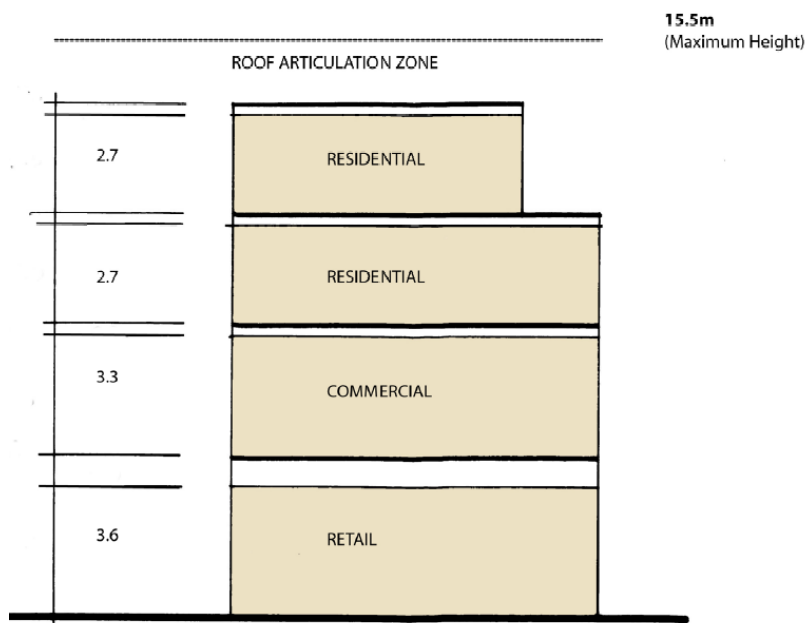


Figure 15: Floor to ceiling height control for development in Victoria Road West Precinct (Part 4.3 of RDCP 2014)

Consistency with local character – building articulation and design

The proposal has not configured the layout of the building to enable the relocation of the lift overrun and fire stairs from the visually prominent eastern elevation and has failed to integrate the structures into the overall design of the building to minimise visual impact (refer Figure 16). Articulation of the proposed building, particularly at the visually prominent north-eastern corner, has failed to demonstrate high design quality with aesthetics that cohesively address both street frontages and opportunities to define the corner of the site. Furthermore, the proposed vertical garden extending from the first floor to the roof level draws attention towards the top

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of the building without obstructing views to the lift overrun or fire stairs, thus exacerbating the visual impact of the non-compliant building bulk.

Whilst the existing site has development potential to comprise a multi storey mixed use building, the proposed built form and façade treatments lack appropriate architectural details that complement the character of the streetscape and do not appropriately address the visual prominence of the north-eastern splay corner and eastern elevation. The proposal in its current form does not provide an appropriate transition between the West Ryde Town Centre and surrounding residential areas, the proposal will set an undesirable precedent for built form in the Victoria Road West Precinct.

In the context of existing and desired future built form within the Victoria Road West Precinct and development in the West Ryde Town Centre, the proposal has failed to demonstrate compatibility with the character of surrounding development. The proposal will set a precedent that will diminish the purpose of the built form controls and adversely impact on the quality of the streetscape and is not supported.



Figure 16: 3D image of the proposed development east elevation (Maxim Street) identifying lift well and overrun and vertical garden

Planning Principle – Compatibility with the Urban Environment

To further assess the compatibility of the development with the local area, the Planning Principle relating to the assessment of a proposed development's compatibility with the surrounding area provides key elements to consider. This was created in the determination of the Land and Environment Court appeal *Project Venture developments v Pittwater Council* [2005] NSWLEC 191. The consideration under the planning principle as relevant to the subject proposal includes the following:

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- *Where compatibility between a building and its surroundings is desirable, its two major aspects are physical impact and visual impact. In order to test whether a proposal is compatible with its context, two questions should be asked.*
 - *Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*
 - *Is the proposal's appearance in harmony with the buildings around it and the character of the street?*
- *For a new development to be visually compatible with its context, it should contain, or at least respond to, the essential elements that make up the character of the surrounding urban environment. In some areas, planning instruments or urban design studies have already described the urban character. In others (the majority of cases), the character needs to be defined as part of a proposal's assessment. The most important contributor to urban character is the relationship of built form to surrounding space, a relationship that is created by **building height, setbacks and landscaping**. In special areas, such as conservation areas, **architectural style and materials** are also contributors to character.*
- *Front **setbacks** and the way they are treated are an important element of urban character. Where there is a uniform building line, even small differences can destroy the unity. **Setbacks** from side boundaries determine the rhythm of building and void. While it may not be possible to reproduce the rhythm exactly, new development should strive to reflect it in some way.*
- ***Landscaping** is also an important contributor to urban character. In some areas landscape dominates buildings, in others buildings dominate the landscape. Where canopy trees define the character, new developments must provide opportunities for planting canopy trees.*

With regard to the considerations in the planning principle above, assessment of relevant provisions in Part 3.5 and 4.3 of the RDCP 2014 relating to character of the local area (provided under Section 5.4 of this Report), built form controls have identified that the amended proposal is incompatible with the setting of existing retail, commercial and residential developments and desired future developments within the Victoria Road West Precinct.

The proposal does not satisfy the considerations in the planning principle for development that is compatible with its urban context. Having regard to the assessment in the report above, the proposal is not considered compatible with the character of the local area and cannot be supported under Clause 30A of the SEPP (Affordable Rental Housing) 2009.

ITEM 1 (continued)**Clause 52 – No subdivision of boarding houses**

In accordance with Clause 52, consent must not be granted for the strata subdivision or community title subdivision of a boarding house. The proposal does not seek approval for subdivision of the boarding house.

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development

Clause 4(1) of SEPP 65 states that unless specified by a LEP, this Policy does not apply to boarding house developments. However, Section 3.1.2 in Part 4.3 West Ryde Town Centre of the RDCP 2014 requires consideration of SEPP 65 for mixed use developments located in the West Ryde Town Centre. Additionally, Section 1.6 in Part 3.5 Boarding Houses of RDCP 2014 states that “*Where boarding house development is associated with residential flat building design, the provisions of State Environmental Planning Policy No. 65 Residential Flat Development (SEPP 65) are also relevant*”. This assessment is useful to assess the design quality of the proposal and achieve an overall better built form and aesthetics of the building within the streetscape.

On 7 November 2019 the Ryde Urban Design Review Panel (UDRP) reviewed the proposal and evaluated the design quality of the development against the design quality principles provided under Schedule 1 of the SEPP. The following is a summary of the comments provided by the Panel, a description of how the applicant has addressed these comments through the amended proposal.

SEPP 65 – Design Quality of Residential Flat Buildings**Design Quality Principles****Context and Neighbourhood Character**

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area’s existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.

Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

UDRP Comments:

The site is located at the corner of Victoria Road and Maxim Street in the West Ryde Town Centre. Victoria Road is both a busy road and the northern aspect for the site. The site marks a highly visible corner along Victoria Road from the east after the rail bridge. There are a number of heritage items within the vicinity, including two churches on Maxim Street. To the west of the site is a row of mainly 2 storey shop top buildings with party walls typical of town centres. To the south of the site is a two storey commercial buildings with zero side setback to the subject site and a landscape setback to the Maxim Street frontage. The site slopes down from RL 22.72 in the south at the Maxim Street frontage to RL 20.32 at the corner with Victoria Road.

The drawing package is incomplete. No site analysis was included in the drawing package and

ITEM 1 (continued)**SEPP 65 – Design Quality of Residential Flat Buildings****Design Quality Principles**

presumable has not informed the proposal. Overshadowing documentation does not include sufficient context information or analysis. No three dimensional drawings are included to demonstrate design intent and building form outcomes. Elevations do not sufficiently convey the three-dimensional qualities of the proposal. Windows and materials are not adequately described. Furniture layouts are missing (version tabled in the meeting was incomplete).

In summary the Panel does not support the proposal, its resultant form and character are not of an acceptable minimum quality for the site context and neighbourhood character.

Applicant's Amended Proposal:

The amended proposal provided 3D images of the development viewed from Victoria Road and the intersection of Victoria Road and Maxim Street.

The amended proposal includes a vertical garden on the eastern elevation from the first floor to the fourth floor.

Assessing Officer's Comments:

The amended plans do not provide sufficient architectural details to external elements and finishes as identified by the Panel. The 3D images do not accurately represent the architectural details of the proposed building and do not include the lift overrun and fire stairs on the roof level which are immediately adjacent to the vertical garden and visible from the public domain.

The 3D images also contain a low level wall at the north-eastern splay corner and landscaping fronting Victoria Road that is not shown on architectural plans. The proposed glazed openings to the ground floor reception and café are not accurately depicted on the 3D images.

The amended plans and 3D images fail to present the proposed building in context with existing developments on Victoria Road or Maxim Street.

The proportions of the building, particularly on the eastern elevation, is not visually cohesive given the contrast between horizontal and vertical elements, and openings with various dimensions.

Shadow diagrams have not been updated to show additional details including context of the site to surrounding developments.

Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.

Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

UDRP Comments:

The proposed "L" shaped building form is a direct expression of each floor plan and lacks a cohesive and intentional three dimension building form and façade design that respond to both the local context and internal building uses. Significant redesign is required that addresses the following:

- The corner definition is poor. The site marks a highly visible corner along Victoria Road from the east.

ITEM 1 (continued)**SEPP 65 – Design Quality of Residential Flat Buildings****Design Quality Principles**

- Victoria Road frontage includes a retail tenancy and residential lobby, but the siting of the ground floor below adjacent ground level results in intrusive ramps and stairs and limits easy access. The lobby and entry levels should match the adjacent footpath.
- Maxim Street frontage is dominated by blank walls, voids in the façade and two separate kerb crossings and car park entries.
- The car parking approach, which arranges car parking across three levels on the southern portion of the site, significantly impacts the ground and first floor layout and façade resolution to Maxim Street, and is extremely inefficient as a car park and basement layout. It is not evident how cars manoeuvre within the car park or how commercial and residential waste is managed. The Panel recommends consolidating the car park entry to a single entry/exit portal and extending the car parking under the Victoria Road portion of the building and consolidating parking to ground and below ground.
- Space in the south-west is dominated by an open car park ramp and is not supported. Typically these spaces are designed as courtyards used for communal open space and/or landscape area, which contribute to local outlook and amenity for residents on site and for future developments on adjacent sites.
- The lift overrun is prominent at the building perimeter, and top of the building, and the proposal lacks a considered approach for the top of the building and its form or silhouette.

Applicant's Amended Proposal:

The amended proposal provides additional window openings on the eastern elevation at ground floor level and a vertical garden. The window opens are to the reception area, garbage room and electrical substation.

The proposal has deleted one level of car parking and provides car parking at ground level and lower ground level.

The two separate car park entries have been consolidated to a single entry.

Assessing Officer's Comments:

The proposal maintains the L shaped building footprint.

The proportions of the façade are not consistent with the internal layout (fourth floor balconies on the northern elevation) and will detract from the appearance of the building.

The articulation of the north-eastern corner of the building has failed to maximise opportunities to define the corner with architectural elements that return from the northern elevation to the north-eastern splay.

The new window openings on the eastern elevation at ground level do not significantly enhance passive surveillance or articulation of the building.

No changes have been made to the design of the lift overrun or fire stair to minimise the visual impact of the projections above the parapet.

No amendments have been made to the car park ramp along the south-western boundary and minimal landscaping has been incorporated to enhance outlook for future occupants or surrounding properties.

The vertical garden and fire stairs are strong vertical elements that are visually prominent but does not define the corner of the site. Insufficient design details have been provided to demonstrate the construction and maintenance of the garden is viable.

The ground floor elevation to Maxim Street does not contribute to street activation predominantly

ITEM 1 (continued)**SEPP 65 – Design Quality of Residential Flat Buildings****Design Quality Principles**

blank walls and openings to servicing area.

The amended car park layout and access has failed to adequately address concerns raised by the Panel and will have safety impacts on vehicles and cyclists entering and exiting the site, pedestrians and traffic in surrounding streets.

The amended plan has failed to demonstrate appropriate separation and management of commercial and boarding house waste.

The lack of appropriate internal layout and articulation of building facades does not demonstrate good design outcomes.

Sustainability

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.

UDRP Comments:

None demonstrated

Applicant's Amended Proposal:

An amended Basix Certificate has been submitted.

Assessing Officer's Comments:

An amended Basix Certificate has been submitted. All boarding rooms are single aspect and do not have natural cross ventilation. The largest communal open space area provided on the first floor and communal laundry with outdoor drying area are south facing and do not receive adequate solar access that enhances the amenity of communal areas.

Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood. Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, coordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks. Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.

UDRP Comments:

The proposal includes minimal landscape elements as either balcony edge planting or planting in pots.

Balcony edge planting requires on-going maintenance with proposed access through private dwelling rooms.

Detailed design and a maintenance strategy are required to ensure the longevity of planting.

Communal space is split across a number of spaces at different levels. The use of these spaces is

ITEM 1 (continued)**SEPP 65 – Design Quality of Residential Flat Buildings****Design Quality Principles**

not clearly demonstrated, and a number of spaces are poorly located, for instance, the space on level 2 immediate adjacent room 15.

Better landscape and communal open space outcomes could be realised in a redesigned scheme in the central courtyard space and in outdoor space associated with communal space on Level 4.

Applicant's Amended Proposal:

The amended plans have relocated and reconfigured communal indoor and outdoor spaces.

Communal open spaces are provided on the first floor, fourth floor and roof level. A communal laundry is provided on the second floor, a study area on the third floor and kitchen/dining area on the fourth floor.

Landscaping is limited to garden beds along the south and western boundaries adjacent to the car park ramp an planter boxes adjacent to private balconies and communal open spaces.

Assessing Officer's Comments:

Insufficient landscape details and a management plan to ensure on going maintenance of planter boxes and the vertical garden is not supported. The structures are prominent features on the building exterior and failure to maintain the health of plants will have an adverse impact on the appearance of the development from the public domain.

Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well-being. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.

UDRP Comments:

Acoustic noise and pollution from Victoria Road have not been addressed.

Dwelling rooms lack necessary furnishings including kitchenettes, desks for studying, adequate wardrobes and seating. Plans should include scaled furniture layouts.

There is no accessible path to the lobby from the car park. The operability of windows and doors is not described.

Applicant's Amended Proposal:

Insufficient details have been provided for internal boarding room layouts that demonstrate compliance with boarding room requirements under the SEPP (Affordable Rental Housing) 2009).

Assessing Officer's Comments:

Insufficient details have been provided for internal boarding room layouts that demonstrate compliance with boarding room requirements under the SEPP (Affordable Rental Housing) 2009.

The amended architectural plans are inconsistent with the Statement of Environmental Effects and does not show furnishings in rooms identified as accommodating 2 lodgers, kitchenettes, study desk and chairs, wardrobes or the like.

Access from the car park to the boarding house reception is provided via a ramp adjacent to the vehicular access ramp and loading bay. Safety concerns for persons with disabilities as they must traverse across the vehicular ramp to reach the entrance to the boarding house reception area. In

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addition, disposal of waste to the waste storage room requires occupants to travel up the vehicular access ramp.

No details have been provided relating to window and door specifications.

Safety

Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety. A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

UDRP Comments:

The two separate car park entries offer poor sight lines for vehicles exiting the car park and are a hazard to pedestrian safety.

The proposed colonnade treatment to Victoria Road is poorly configured and presents opportunities for concealment, and is not supported. Refer to built form comments.

Applicant's Amended Proposal:

The amended proposal provides a single vehicular access point to the site and provides level access to Victoria Road.

Assessing Officer's Comments:

The amended car parking layout and access/egress remains unsatisfactory as the width and length of the entry/exit ramp is insufficient and will cause queuing within the car park and queuing on Maxim Street. As such, the proposal will impact on traffic flow and pedestrian safety

Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets. Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.

UDRP Comments:

While the stated intent for student housing is supported, the current proposal does not adequately address the needs of either student housing or affordable housing.

Applicant's Amended Proposal:

The amended proposal seeks to provide accommodation for up to 49 lodgers in single and double rooms.

One principle communal living area is provided on the fourth floor comprising of a kitchen and dining area adjacent to an outdoor area and accessible WC. Communal outdoor spaces are also provided on the southern side of the fourth floor, on the first floor and on the roof level. Additional indoor communal areas comprise of a study area on the third floor and a laundry and drying area on the second floor.

Assessing Officer's Comments:

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Insufficient architectural plans have been submitted showing the layout of boarding rooms, particularly the rooms to accommodate up to 2 lodgers. All boarding rooms, though varying in area, comprise of the same layout indicating 1 x single bed.

The calculation of lodgers provided in the SEE is inconsistent with the amended plans.

Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures. The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape

UDRP Comments:

The proposed architectural expression and character are a product of the internal building arrangement and space planning, and does not demonstrate a considered approach to building form and architectural character.

Applicant's Amended Proposal:

No changes have been proposed on the northern elevation except for deletion of pedestrian ramps and providing at grade access to the reception area.

The eastern elevation at ground level has been amended to delete a vehicular crossing/roller door and replace with a roller door and opening to an electrical substation, a new window to the garbage room and a new window to the reception.

A vertical garden is proposed on the eastern elevation from the first floor to fourth floor.

Assessing Officer's Comments:

The amended plans have not adequately addressed the relationship between internal building layout and external architectural elements on the building façade.

The internal configuration of floor levels impacts on the appearance of the building, particularly the articulation of the eastern façade and does not present a high quality built form that will enhance the appearance of the prominent corner site when viewed along Victoria Road.

Having regard to the above, using the provisions of SEPP65 which provide a benchmark for good design, aesthetics and amenity for residential development, the proposed design of the boarding house does not result in an acceptable built form that contributes the existing streetscape or the desired future character of the West Ryde Town Centre.

State Environmental Planning Policy (Building Sustainability Index BASIX) 2004

The proposed development is identified under the Environmental Planning and Assessment Regulation 2000 as a BASIX Affected Building. Clause 3 of the Environmental Planning and Assessment Regulation 2000 defines a 'BASIX Affected Building' as any building that contains one or more dwellings, but does not include a hotel or motel.

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In a NSW Land & Environment Court (LEC) case *SHMH Properties Australia Pty Ltd v City of Sydney Council [2018] NSWLEC 66* Commissioner Preston determined that, if rooms in a boarding house are capable of being used as a separate domicile (and therefore meeting the definition of a 'dwelling'), a BASIX certificate for the development will be required to accompany the development application.

The proposal seeks consent for 41 boarding rooms and 1 Manager's Unit and is supported by an amended BASIX Certificate (No. 874611M_06, dated 23 April 2020) which provides the development with a satisfactory target rating. However, it is noted that the architectural plans consist of boarding rooms containing ensuites with no details provided for private kitchenette or laundry facilities. Given the insufficient information provided on the architectural plans, it cannot be determined that the proposed boarding rooms satisfy the definition of a separate domicile or self-contained dwellings.

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP55)

The requirements of SEPP55 apply to the subject site. In accordance with Clause 7 of SEPP55, Council must consider if the land is contaminated, if it is contaminated whether it is suitable for the proposed use and if it is not suitable, can it be remediated to a standard such that it will be made suitable for the proposed development.

Currently the site contains a two storey commercial building, a single storey structure occupied as an office, two storage sheds and a carport. The remainder of the site is currently used for at grade car parking. Council records indicate that the site has historically been used for residential/commercial purposes. The applicant submitted a Stage 1 Preliminary Contamination Assessment prepared by Metech Consulting Pty Ltd. This report concluded that no potentially significant contamination issues or constraints were identified on the site and that the site is considered to be suitable for the proposed development and use.

Council's Environmental Health Officer has not raised issues with the proposal in regard to contamination as the site is not listed on the EPA contaminated land register.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The objective of this SEPP is to protect the biodiversity values of trees and other vegetation and to preserve the amenity of the area through the preservation of trees and other vegetation. The subject site is not identified as containing significant urban bushland on Council's Environmentally Sensitive Areas map.

State Environmental Planning Policy No. 19 – Bushland in Urban Areas

The SEPP is applicable to the whole of the City of Ryde area and aims to protect and preserve bushland within urban areas. The site is not identified as containing bushland that is to be conserved in accordance with the provisions of the SEPP.

ITEM 1 (continued)

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 is a deemed SEPP and applies to the subject site.

The site is located within the designated hydrological catchment of Sydney Harbour and therefore is subject to the provisions of the above planning instrument. However, the site is not located on the foreshore or adjacent to the waterway and therefore, with the exception of the objective of improved water quality, the objectives of the planning instrument are not applicable to the proposed development. The proposal does not satisfy the objective to improve water quality of urban run-off as the location of the On Site Detention tank, immediately beneath the garbage storage room, increases the risk of contamination of stormwater. In addition, the proposal does not satisfy relevant provisions of Part 8.2 of the RDCP 2014 as the proposed stormwater management plan has failed to demonstrate that it will not result in any adverse environmental impacts

5.2 Ryde Local Environmental Plan 2014 (RLEP 2014)

The following is an assessment of the proposed development against the applicable provisions from the RLEP 2014.

The site is zoned B4 – Mixed Use and SP2 – Infrastructure (Classified Road) under the provisions of the RLEP 2014. As shown in Figure 17 below, a portion of the site fronting Victoria Road is zoned SP2 – Infrastructure and is reserved for future road widening.

Retail premises and boarding houses are permissible within the B4 Mixed Use Zoning. Additionally, the increased setback to Victoria Road is to be reserved for road widening and is consistent with SP2 - Infrastructure (Classified Roads) zoning for this portion of the site.

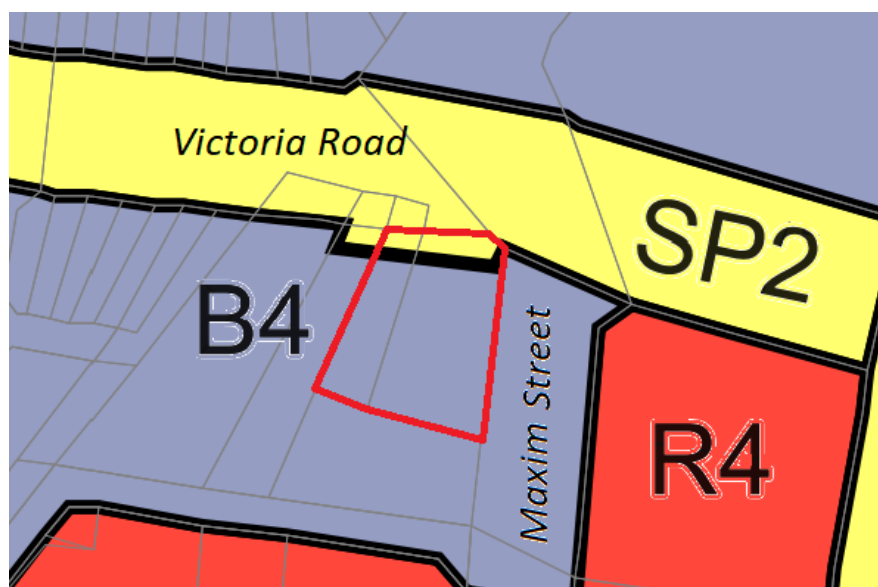


Figure 17: Extract of land use zoning map under RLEP 2014 indicating the site

ITEM 1 (continued)

The aims and objectives for the B4 – Mixed Use zone in Clause 2.3 – Zone Objectives are as follows:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To ensure employment and educational activities within the Macquarie University campus are integrated with other businesses and activities.*
- *To promote strong links between Macquarie University and research institutions and businesses within the Macquarie Park corridor.*

The development provides a mix of residential and commercial use will provide for the housing needs of the community and contribute to variety of housing types. Therefore, the proposed development satisfies the objectives of the B4 Mixed Use zone.

The objectives for the SP2 – Infrastructure zone in Clause 2.3 – Zone Objectives are as follows:

- *To provide for infrastructure and related uses.*
- *To prevent development that is not compatible with or that may detract from the provision of infrastructure.*
- *To ensure the orderly development of land so as to minimise any adverse effect of development on other land uses.*

The proposal is setback from the northern portion of the site identified as land zoned SP2 – Infrastructure. The proposed setback of the building is consistent with the objectives of the zone as the proposal will not obstruct any future infrastructure works to be carried out adjacent to the northern boundary of the site.

Clause 4.3 Height of Buildings

The maximum permitted building height for the site is 15.5 metres. The proposal has a maximum building height of 17.1 metres, measured to the top of the lift overrun (RL38.40). The proposal exceeds the maximum building height control for the site under RLEP 2014 by 1.6 metres (or 10.32%), with the non-compliant building element (lift overrun and fire stairs) located along the eastern boundary on Maxim Street (see Figures 18 and 19).

The parapet at the north-western corner of site also exceeds the maximum building height control by 0.3m (RL35.40) measured to the top of the parapet.

ITEM 1 (continued)

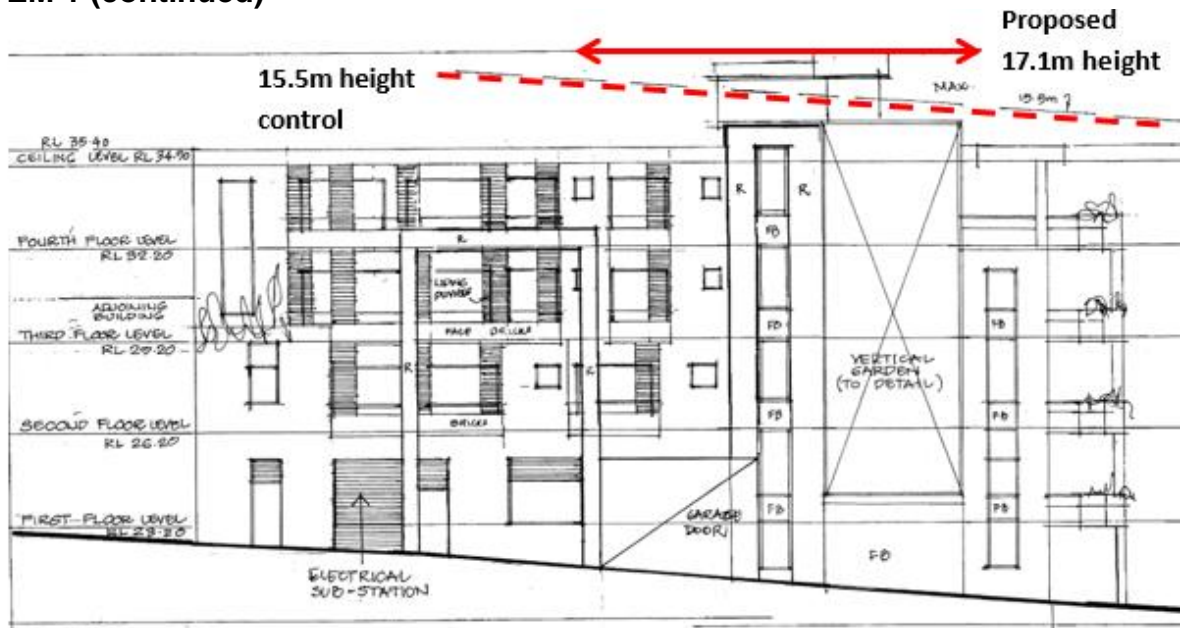


Figure 18: Proposed building height as shown on the East Elevation

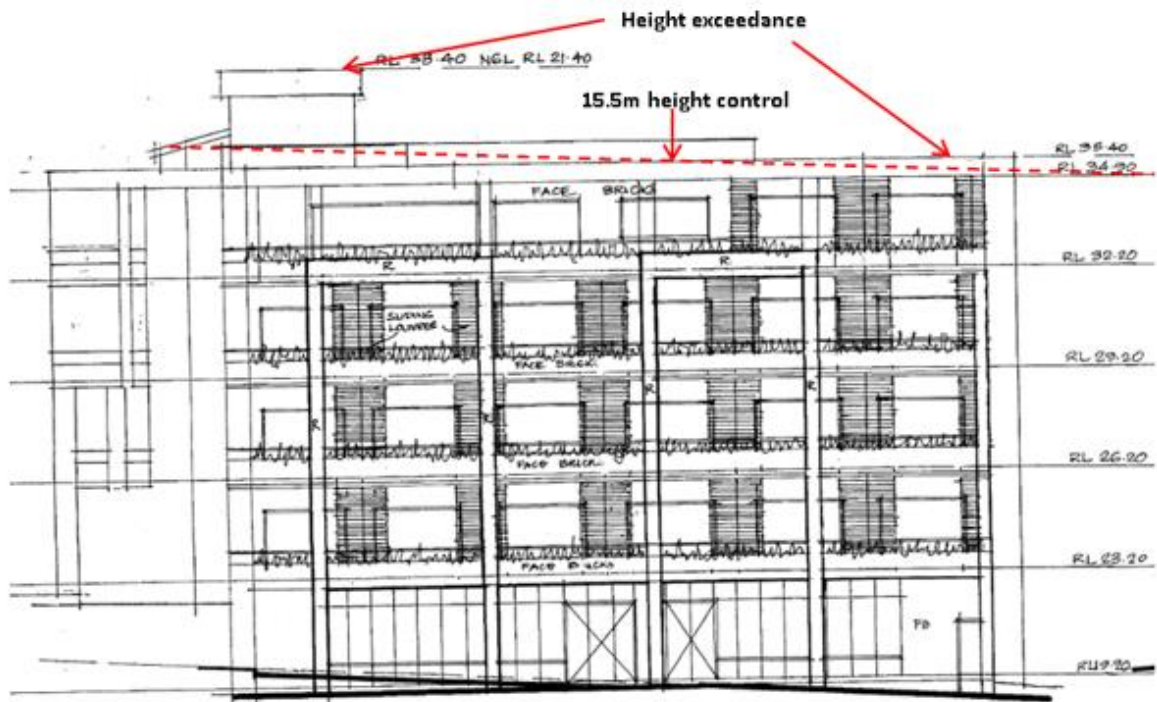


Figure 19: Proposed building height exceedance view from the North Elevation

ITEM 1 (continued)**Clause 4.6 – Exemptions to Development Standards.**

A written Clause 4.6 variation request prepared by Romic Planning and dated 25 February 2020 was submitted to accompany the amended proposal (Revision D), seeking exemption to the height of building development standard.

As stated in the written request, the variation sought includes a building height exceedance of 0.3m to the ceiling level/roof section at the north-western elevation and 1.6m to the top of the lift overrun and stair access.

An assessment of this written request is provided below.

1. Proposed Variation

The development contravenes Clause 4.3 by 0.3m at the north-western corner measured to the parapet, to 1.6m measured to the top of the lift overrun and equates to variations of between 1.9% and 10.32% respectively.

2. Principles of Exceptions to Development Standards**2.1. Clause 4.6 - Exceptions to Development Standards**

A consent authority may grant development consent for developments that do not comply with identified development standards, where it can be shown that flexibility in the application of the standard would achieve better outcomes for and from the development.

This assessment demonstrates the planning merits of the development which includes the variation of the development standard.

The objectives of Clause 4.6 of RLEP 2014 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.*

Clause 4.6(3)(a) and (b) of RLEP 2014 requires the variation request 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.*

The consent authority when considering a request to vary a development standard must be satisfied that the proposed development will be in the public interest and that the proposed development is consistent with the objectives of the particular standard and the objectives of the zone in which the development is proposed to be carried out.

2.2. NSW Land and Environmental Court: Case Law

Wehbe v Pittwater Council [2007] NSWLEC 827

ITEM 1 (continued)

The decision of Justice Preston in *Wehbe v Pittwater Council [2007]* expanded the findings of *Winten v North Sydney Council [2001]* and established a five (5) part test for consent authorities to consider when assessing an application to vary a development standard in order to determine whether non-compliance with the development standard is well founded.

The five (5) different ways in which an objection may be well founded are as follows:

- *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
- *The underlying objective or purpose of the standard not relevant to the development and therefore compliance is unnecessary;*
- *The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- *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 reasonable;*
- *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.*

Randwick City Council v Micaul Holdings Pty Ltd [2016] NSW LEC 7

In *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSW LEC 7* Preston CJ noted at paragraph 7 that development consent cannot be granted for development that contravenes a development standard unless the consent authority:

- *“Considers the cl 4.6 objections (the requirement in cl 4.6(3)); and*
- *Was satisfied that, first, the cl 4.6 objections adequately addressed the matters required to be demonstrated by cl 4.6(3) (the requirement in cl 4.6(4)(a)(i)) and, second, the development will be in the public interest because it is consistent with the objectives of the height standard and the FSR standard and the objectives for development within the R3 zone in which the development is proposed to be carried out (the requirement in cl 4.6(4)(a)(ii))”.*

Preston CJ noted at paragraph 39 that “the [consent authority] does not have to be directly satisfied that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant’s written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary”. In this respect, he also noted that in assessing whether compliance with the development standards was unreasonable or unnecessary an established test is consistency with the objectives of the standard and the absence of environmental harm.

ITEM 1 (continued)**Moskovich v Waverley Council [2016] NSWLEC 1015**

Commissioner Tour reflected on the recent decisions considering Four2Five and said:

- *“Clause 4.6(3)(a) is similar to clause 6 of SEPP 1 and the Wehbe ways of establishing compliance are equally appropriate [at 50]. One of the most common ways is because the objectives of the development standard are achieved – as per Preston CJ in Wehbe at 42-43.*
- *Whereas clause 4.6(4)(a)(ii) has different wording and is focused on consistency with objectives of a standard. One is achieving, the other is consistency. Consequently, a consideration of consistency with the objectives of the standard required under clause 4.6(4)(a)(ii) to determine whether non-compliance with the standard would be in the public interest is different to consideration of achievement of the objectives of the standard under clause 4.6(3). The latter being more onerous requires additional considerations such as the matters outlined in Wehbe at 70-76. Such as consideration of whether the proposed development would achieve the objectives of the standard to an equal or better degree than a development that complied with the standard.*
- *Establishing compliance with the standard is unnecessary or unreasonable in 4.6(3)(a) may also be based on “tests” 2-5 in Wehbe either instead of achieving the objectives of the standard (Wehbe test 1) or in addition to that test. The list in Wehbe is not exhaustive but is a summary of the case law as to how “unreasonable or unnecessary” has been addressed to the meet the requirements of SEPP 1.*
- *It is best if the written request also addresses the considerations in the granting of concurrence under clause 4.6(5)”.*

3. Consistency with the Objectives of the development standard.

Clause 4.6(4)(a)(ii) of RLEP 2014 requires a variation request demonstrate that the proposed development is in the public interest as it is consistent with the objectives of the particular standard.

The following assesses the consistency of the proposal against the Objectives of Clause 4.3 of the RLEP 2014 which reads as follows:

- to ensure that street frontages of development are in proportion with and in keeping with the character of nearby development,*
- to minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area,*
- to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure,*
- to minimise the impact of development on the amenity of surrounding properties,*
- to emphasise road frontages along road corridors.*

In addressing the Objectives of the development standard, the author of the request to vary the development standard for the subject development application states:

ITEM 1 (continued)

“a. to ensure that street frontages of development are in proportion with and in keeping with the character of nearby development,

The overall built form, geometry and architectural design is consistent with the current and future character of development occurring in the West Ryde Town Centre.

An active street frontage is stimulated by inclusion of a food and drink premises at the ground floor.

The lift overrun would not be noticeable and is a common feature for similar sized developments.

b. to minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area,

The proposal will not adversely impact on the amenity of adjoining properties by way of overshadowing.

The architectural presentation of the new building will improve the appearance of the area and is consistent with current trends and scale of re-development.

c. to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure,

The development of the site does not require consolidation with any adjoining properties and its location within the West Ryde commercial precinct (West Ryde Town Centre) and 180 metres walking distance to West Ryde Railway Station meets Council's forward planning guidelines.

d. to minimise the impact of development on the amenity of surrounding properties,

The non-compliance does not affect amenity of surrounding properties as the north/western elevation building envelope is a modern form of architecture with vertical and horizontal elements.

Strict compliance with the standard would mean that any design changes to make the roof and facade compliant with the projection of the height of building control versus the NGL at the intersection of the wall would create imbalance with the overall shape and geometry of the building. This would result in a poorer architectural outcome and an architect should be allowed some degree of flexibility to be applied to maintain architectural form.

The non-compliance does not affect the building bulk and scale as foreseen by the architect and the outlook is appropriate for the area.

ITEM 1 (continued)

The lift overrun/stairwell is marginal in the scheme of the overall external height of the building when viewed from the eastern elevation (Maxim Street).

From this end, the building would not result in any additional bulk connotations given the vertical definition and incorporation of the lift overrun/stairwell is at the point where the floor plate is staggered and integrated as an architectural feature.

Under the National Construction Code not all common areas are to be accessible and removal of the roof top common open space would be disadvantageous for those who have accessible needs.

Strict compliance with the standard would mean removing access to the rooftop common open space and this would significantly reduce the overall amenity of the building, particularly when the role of an architect is to improve it.

e. to emphasise road frontages along road corridors.

The building design offers a positive contribution to both street frontages and given the sites frontage to Victoria Road (a defined road corridor), the building is compliant with the Height of building control.

As discussed above, from the Maxim Street frontage, the additional bulk connotations would not be perceived given the vertical integration.”

Comment

The proposed mixed use nature of the development comprising non residential uses at ground level and boarding house use above is permissible and is generally compatible with the objectives of the B4 Mixed Use Zone.

The predominant scale of development in the vicinity of the site comprises single storey and two storey commercial buildings. It is noted that building height and floor space ratio development standards under Clauses 4.3 and 4.4 of the RLEP 2014 allow for future developments of larger scale than existing built form in the vicinity of the site. However, the proposed 5 storey building not only results in a breach of the building height control, the proportions are inconsistent with built form controls in Clauses 3.1 and 4.1 in Part 4.3 of the RDCP 2014 and as such does not achieve the desired future character along this portion of Victoria Road which seeks to enhance and revitalise the retail and commercial character within the West Ryde Town Centre. It is not agreed that the proposed height exceedance satisfies the objectives of the development standard for the following reasons:

- The lift overrun and stair access is in a visually prominent elevation and will not contribute positively to the architectural character or built form of the proposed development.
- Developments in the vicinity of the site are predominantly two storeys in height. The proposal does not consist of a built form or presentation to the street that is compatible with the existing streetscape or the desired future character for the

ITEM 1 (continued)

Victoria Road West Precinct, particularly as the ground floor is setback from the street alignment and the building does not contribute to defining the street at the pedestrian level.

- The proposed eastern elevation comprising of the lift overrun and fire stairs does not contribute to the appearance of the building when viewed from Victoria Road or Maxim Street as the building elements are visually prominent above the parapet and have not been integrated into the architectural design of the façade.
- The exceedance in height provides access to a roof top communal open space which is not commonly found in residential developments in the vicinity of the site. As such, the use of the roof top level and exceedance in building height is not consistent with the character or form of existing residential developments in the locality.
- Insufficient shadow diagrams have been submitted and a proper assessment of shadow impacts on adjoining properties or the proposed communal open space on the first and fourth floors of the development cannot be carried out. As such, the proposal has not demonstrated that the proposal minimises overshadowing.

As such, the proposal is not considered to be consistent with the objectives of Clause 4.3 – Height of Buildings of the RLEP 2014.

4. Consistency with the Objectives of the B4 – Mixed Use Zone

Clause 4.6(4)(a)(ii) establishes that it should be demonstrated that the proposed development is in the public interest as it is consistent with the objectives of the zone. The following assesses the consistency of the proposal against the Objectives of the zone which aim to:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To ensure employment and educational activities within the Macquarie University campus are integrated with other businesses and activities.*
- *To promote strong links between Macquarie University and research institutions and businesses within the Macquarie Park corridor.*

Comment

The Clause 4.6 variation written request submits that the proposal satisfies the objective of the B4 Mixed Use zone for the reasons as follows:

“.. the Boarding House is a permissible form of development.

ITEM 1 (continued)

Due to increasing cost of land in the Ryde area, this type of development is in strong demand and is needed to provide additional accommodation at a reasonable cost for patrons visiting Macquarie University / Macquarie Park.

The site is also in an accessible location and future lodgers can support local businesses at the same instance and the proposal will complement and support the existing established commercial centre.

No unreasonable impacts are associated with the proposed variation.

Therefore, the proposal does not result in any circumstances that would be contrary to those objectives.”

The proposed boarding house use with a retail tenancy at ground level is permissible and is generally compatible with uses in the B4 Mixed Use zone. Notwithstanding this, the proposal will detract from the character and amenity of the locality and does not satisfy the objectives of the height of buildings development standard. Therefore, the proposal is not in the public interest and does not satisfy Clause 4.6(4)(a)(ii) and is not supported.

5. Assessment

The following provides an assessment of the variation proposed.

5.1. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The author of the Clause 4.6 written variation request states that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case for the reasons as follows:

- *“The first exceedance is the north/western elevation building envelope and relates to the topmost ceiling level/roof section where there is an exceedance by 300mm due to the site’s topography and projection of the vertical and horizontal building elements to the commercial zero lot building line.*
- *The façade /ceiling line could technically be shaped or redefined to follow the height of the building line projection; however, this treatment would create imbalance with the overall shape and geometry of the building and impact on the future Victoria Street streetscape by introducing an unconventional architectural style.*
- *The slight exceedance of 300mm provides:*
 - *Better architectural geometry, and*
 - *Better architectural outcome.*
- *The second exceedance is the lift overrun and access stairwell for the roof top common deck and exceeds the height by 400mm to 1600mm for the east elevation only due to the topography of the site and the architect’s vision.*

ITEM 1 (continued)

- *The lift overrun and access stairwell is viewed as an integral architectural feature and provides:*
 - *Better amenity,*
 - *Better accessibility access for all lodgers,*
 - *An all inclusive/anti-discriminatory design (noting that access to the topmost floor is not needed under the National Construction Code as not all common areas requires access), and*
 - *Future WH&S considerations for roof maintenance.*
- *The land is suitable to accommodate the boarding house and no unreasonable environmental impacts are introduced as a result of the proposal.*
- *There is no public benefit in maintaining strict compliance with the standards.*
- *The proposed development is in the public interest.*
- *The objective of better amenity is achieved despite noncompliance with the standard itself.”*

Comment

The proposal comprising of a 5 storey building within a building height of 15.5m does not present the proportions envisaged by built form controls under Part 4.3 of the RDCP 2014. Specifically, the proposal provides insufficient floor to ceiling height on the ground floor level and does not satisfy provisions for the West Ryde Town Centre to promote flexibility for a range of retail and commercial uses, adaptability for future uses and pedestrian amenity along Victoria Road.

The exceedance in building height is a result of accommodating the proposed density on the site and provision of access to a roof top communal open space. Given that the proposal comprises a number of communal open spaces located on the first and fourth floors that satisfy the requirements under the SEPP (Affordable Rental Housing) 2009, the provision of a roof top communal open space and the lift overrun and stair access (in excess of the height of building control) to access the area is not necessary.

The proposed built form and exceedance in building height on the eastern elevation and at the north-western corner of the site is inconsistent with desired future character of developments in the Victoria Road West Precinct and West Ryde Town Centre, and will detract from the streetscape and amenity of the locality.

The applicant has not demonstrated that alternative internal building layouts including the relocation or redesign of the lift overrun and fire stairs and façade articulation and architectural treatments cannot be reasonably achieved to address the non-compliance. Therefore, it is considered that the development standard is not considered to be unreasonable or unnecessary in the circumstance of the case, as it contributes to achieving the desired future character of the Victoria Road West Precinct and West Ryde Town Centre.

5.2. Are there sufficient environmental planning grounds to justify contravening the development standard?

The author of the Clause 4.6 variation states:

ITEM 1 (continued)

“In light of the above it is considered that there are no environmental planning grounds that warrant maintaining and/or enforcing the Height of building standard.

If the control was to be enforced, the architectural design would be of an inferior quality and the roof top common open space could be removed under the National Construction Code and would discriminate persons with accessibility needs and offer poorer amenity.”

Comment

As discussed above, the height of building development standard provides the framework for detailed built form controls in Part 4.3 of the RDCP 2014 that guide appropriate built form and scale that complements existing and the future desired character of the Victoria Road West Precinct and the West Ryde Town Centre. The built form controls provide for development that will contribute to a consistent streetscape, facilitate a range of retail and commercial uses and enhance pedestrian amenity.

The Victoria Road West Precinct will be undergoing development in the future and the height of buildings development standard is an important planning control to ensure the scale of development is consistent with surrounding developments and contributes to streetscape character. Given that properties immediately surrounding the site and along Victoria Road have not been redeveloped, the site will set a precedent for built form along the southern side of Victoria Road.

As outlined in the report above, the submitted information including architectural plans, shadow diagrams and 3D images of the proposal contain insufficient information and does not demonstrate that the exceedance in building height will not result in any adverse environmental impacts on the streetscape or amenity of surrounding properties.

As such, it is not agreed that there are no environmental planning grounds in maintaining the height of building development standard in this instance.

5.3. Will 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?

As outlined above, the author of the Clause 4.6 written request states that the proposal is consistent with the objectives of the height of buildings development standard and B4 – Mixed Use zone.

Comment

As previously discussed in this report, the proposal does not satisfy the objectives for the height of buildings development standard and despite the use being consistent with the objectives of the B4 Mixed Use zone, the exceedance in height and overall built form and design will not contribute to the desired future character of the Victoria

ITEM 1 (continued)

Road West Precinct or enhance pedestrian amenity. As such, the proposed development is not considered to be in the public interest.

5.4. Whether or not non-compliance with the development standard raises any matter of significance for state or regional environmental planning?

The author of the Clause 4.6 variation states:

“The variation does not raise any matter of significance for State or regional planning.

The variation allows for the orderly and economic use of land as envisaged by the Environmental Planning and Assessment Act, 1979.

There are no detrimental impacts on amenity and environmental impacts to neighbours.

The architectural presentation is site responsive and meets the desired future local character.

The variation to the standard will not undermine the legitimacy or future standing of the RLEP 14 controls.”

Comment

It is agreed that the variation to the development standard raises no significant matters for State or regional environmental planning.

However, it is not agreed that the variation to the height of building development standard is required for the orderly or economic use of the land. The proposal contains setbacks and voids adjacent to the western and southern boundaries with areas that have not been utilised by the building.

As discussed above, the proposed 5 storey form is inconsistent with the desired future character for development in the local area and will present a visual prominent built form that will have adverse impact on the amenity of the public domain. Given that the properties on the southern side of Victoria Road are yet to be developed, the proposal and the variation to the height of buildings control will set an undesirable and unnecessary precedent that will diminish the intent of the development standard to achieve appropriate built form in the West Ryde Town Centre.

5.5. Public benefit of maintaining the development standard?

In response to this question, the author of the Clause 4.6 variation states:

“The non-compliance is insignificant in nature.

There is no public benefit in maintaining the control.”

Comment

It is considered that the contravention of this development standard will set an undesirable precedent for development in the Victoria Road West Precinct. The site comprises of a visually prominent corner at the intersection of Victoria Road and

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Maxim Street and as such, maintaining the height of building development standard informs built form controls and is of public benefit.

5.6 Matters required to be taken into consideration by the secretary before granting concurrence?

There are no additional matters to be considered.

It is understood that only local or regional planning panel can assume the Secretary's concurrence where the variation to a numerical standard is greater than 10%.

The variation exceeds 10% and concurrence is therefore required from the Local Planning Panel.

5.7 Considerations arising from 'Wehbe and Four2Five'?

The five part test established by Preston J in *Wehbe v Pittwater Council [2007] NSWLEC 827* and furthered in *Four2FivePty Ltd v Ashfield Council [2015] NSWLEC 90* are considered below:

Wehbe Five Part Test

- *Would the proposal, despite numerical non-compliance be consistent with the relevant environmental or planning objectives?*

The proposal is not considered to be consistent with the relevant environmental or planning objectives.

- *Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard unnecessary?*

The underlying objective or purpose of the standard is relevant to the development thereby making compliance with Clause 4.3 necessary.

- *Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable?*

The underlying objective or purpose would not be defeated were compliance required.

- *Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that departs from the standard, making compliance with the development standard by others both unnecessary and unreasonable?*

Council has not abandoned or destroyed the development standard.

- *Is the "zoning of particular land" unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable and unnecessary as it applied to that land. Consequently compliance with that development standard is unnecessary and unreasonable?*

The B4 Mixed Use zone is reasonable and appropriate for the site and its context within the West Ryde Town Centre. The development standard is also considered

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reasonable and appropriate as it relates to built form and contributes to the desired future character of the local area and amenity of adjoining properties.

6. Conclusion

The proposed variation to the height of buildings development standard is inconsistent with the objectives of the development standard and will result in environmental impacts and set an undesirable precedent for built form in the locality. The Clause 4.6 written request has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and is not supported.

Clause 4.4 Floor Space Ratio

The maximum permitted FSR for the site is 1.25:1. The proposal seeks approval for a FSR of 1.63:1 which exceeds the FSR control under the RLEP 2014, however it complies with the bonus FSR control of 0.5:1 above the maximum FSR (1.75:1) under the RLEP 2014 pursuant to Clause 29(1)(c)(i) of the SEPP (Affordable Rental Housing) 2009.

Other Relevant Clauses**Clause 6.4 - Stormwater Management**

Clause 6.4 addresses stormwater management and requires the following matters to be considered:

- (a) *is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*
- (b) *includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*
- (c) *avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.*

The amended proposal includes an underground OSD tank located immediately beneath the garbage storage room adjacent to the eastern boundary. Council officers have raised concern that the location and design of the OSD tank may result in potential contamination through seepage from the garbage storage room to the OSD tank and stormwater system. This issue could be resolved with design modifications to the OSD tank and stormwater management plan, and could be conditioned.

5.3 Draft Environmental Planning Instruments

There are not draft environmental planning instruments relevant to the site or proposal development.

5.4 Development Control Plans

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The site is located in the Victoria Road West Precinct within the West Ryde Town Centre under the RDCP 2014.

Part 3.5 of the RDCP 2014 provides the development controls which are applicable to boarding house developments in the City of Ryde. However, as per Section 1.6 of this Part, applicable controls for boarding houses are also contained within:

- Part 4.3 – West Ryde Town Centre
- Part 7.2 - Waste Minimisation and Management
- Part 8.2 – Stormwater and Floodplain Management
- Part 9.3 - Parking Controls

An assessment of the relevant sections of the RDCP 2014 is provided below.

Part 3.5 – Boarding Houses

Section 1.3 states that the objectives of Part 3.5 are:

1. *“To recognise boarding house accommodation as a component of the City of Ryde’s residential housing mix.*
2. *To facilitate the provision of high quality affordable rental housing in the form of boarding houses where permissible in residential and business zones in the City of Ryde.*
3. *To support government policy which facilitates the retention and mitigates the loss of existing affordable rental housing.*
4. *To encourage appropriate design of boarding house development to ensure the impact and operation does not interfere with surrounding land uses and amenity.*
5. *To provide controls for boarding houses that are not within “accessible area” as defined under the SEPP ARH.*
6. *To ensure that boarding houses are designed to be compatible with and enhance the local area character and the desired future character.*
7. *To ensure that any building that has been developed or adopted into a boarding house maintains a satisfactory standard of amenity for both the needs of occupants and neighbours alike”.*

Of the above objectives, it is considered that the development does not satisfy the following:

2. *To facilitate the provision of high quality affordable rental housing in the form of boarding houses where permissible in residential and business zones in the City of Ryde.*

The proposed development does not provide sufficient information particularly relating to the internal fitout of boarding rooms and communal living areas, or adequate operational management provisions. The proposal does not satisfactorily

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demonstrate that the design of the boarding house and management of the premises will provide high quality development with good amenity for future occupants.

4. *To encourage appropriate design of boarding house development to ensure the impact and operation does not interfere with surrounding land uses and amenity.*

Given the issues identified within this report, the proposed development is not considered to be of appropriate design that is consistent with surrounding properties or the desired future character of the local area. The proposed ground floor level fronting Victoria Road does not contribute to the continuity of shopfronts built to the street alignment and the eastern façade does not provide appropriate activation or passive surveillance at the pedestrian level. The proposed POM is inadequate and fails to demonstrate the operation of the boarding house will minimise impacts on the amenity of surrounding properties.

6. *To ensure that boarding houses are designed to be compatible with and enhance the local area character and the desired future character.*

As demonstrated through the assessment of report, it is not considered that the proposed internal layout, built form or articulation of the façade have a positive contribution to the desired character of the streetscape or the level of pedestrian amenity to enhance the retail and commercial activities within the West Ryde Town Centre. As such, the proposed development has failed to demonstrate compatibility with the desired built form character of the local area.

7. *To ensure that any building that has been developed or adopted into a boarding house maintains a satisfactory standard of amenity for both the needs of occupants and neighbours alike.*

As identified within this report, the proposed development has not sufficiently demonstrated good internal amenity for occupants within boarding rooms or communal living areas, insufficient car parking spaces and access will have additional impacts on traffic volumes, demand for parking and pedestrian safety. In addition, the development has not demonstrated satisfactory operational provisions to ensure the use will not have any adverse impacts on the amenity of surrounding properties.

The following table provides an assessment of the development against the applicable clauses of Part 3.5.

Provision	Required	Proposed	Complies
1.6 Relationship of this Part to other Plans and Policies	Where boarding house development is associated with residential flat building design, the provisions of State	An assessment against the provisions of SEPP65 and the ADG is provided earlier in this report as the proposal is associated with a residential flat building design.	No

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Provision	Required	Proposed	Complies
	Environmental Planning Policy No. 65 Residential Flat Development (SEPP 65) are also relevant.	The assessment concluded that the proposal does not adequately meet the design provisions of SEPP65 and will result in poor amenity for occupants.	
2.0 Location and Character	The design must demonstrate compatibility with character of local area and address: <ul style="list-style-type: none"> • Existing character (streetscape and visual catchment areas) • Predominant building type • Predominant height • Predominant front setback and landscape treatment • Permissible FSR and site coverage • Predominant pattern of subdivision and spacing of buildings • Predominant parking arrangement • Predominant side setbacks • Predominant rear setback and rear landscaping 	<p>A local character assessment has been provided within the SEE.</p> <p>The applicant identifies the site and locality as being in transition from 2 storey commercial developments to developments of greater scale.</p> <p>The proposal is not considered compatible with the character of the local area for the reasons as follows:</p> <p>Whilst the proposed built form is contained within the maximum height control for the site, with the exception of the lift overrun, fire stairs and a portion of the north-western façade, the proportions of the building do not contribute to the desired character of the streetscape. In particular, the floor to ceiling height and setback of the ground floor from Victoria Road is inconsistent with the existing built form and street alignments, and will not contribute to the future character of the area as a retail/commercial core seeking to enhance the pedestrian environment.</p> <p>The proposal does not articulate the building facades, particularly the north-eastern splay corner at the intersection of Victoria Road</p>	No

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Provision	Required	Proposed	Complies
		<p>and Maxim Street with high quality architectural elements.</p> <p>The proposed landscaping that is visible from the public domain and surrounding properties comprise of the vertical garden and planter boxes adjacent to private balconies and communal open space. No landscape management plan has been prepared demonstrating that appropriate maintenance will be provided to ensure the long term health of landscaping.</p> <p>Insufficient car parking is provided and details have not been provided demonstrating that the required number of motorcycle and bicycle parking spaces can be accommodated within the car park.</p>	
2.3(c) Heritage	Within vicinity of heritage item needs to be sympathetic to heritage significance	The site is not immediately adjacent to heritage items. Heritage items are located further to the east and south of the site. The development is not considered to have any adverse impact on the significance of these heritage items.	Yes
2.3(f) Size and Scale	<p>The bulk and scale of the development must demonstrate acceptable impacts for the street and adjoining properties relating to:</p> <ul style="list-style-type: none"> • Overshadowing and privacy • Streetscape • Building setbacks • Parking and traffic impact 	<p>The proposal contains a 5 storey form with varying setbacks at the ground floor level fronting Victoria Road and is built to the eastern boundary, except for the setback to provide fire stair access.</p> <p>The amended proposal has provided insufficient information to demonstrate that the built form and management of the</p>	No

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Provision	Required	Proposed	Complies
	<ul style="list-style-type: none"> • Landscape requirements • Visual impacts and impact on views • Impact on significant trees • Suitable lot size, shape and topography 	<p>premises will not have adverse impacts on the amenity of surrounding properties.</p> <p>The articulation of the facades, particularly on the eastern elevation, does not demonstrate appropriate architectural elements that will define the prominent street corner and will not contribute to the desired character of the retail/commercial streetscape.</p> <p>There are no specific landscaping requirements for the site however, the proposed planter boxes and vertical garden require substantial maintenance. No landscape management plan has been submitted to demonstrate how the proposed landscaping of the site will be maintained.</p> <p>Insufficient car parking and access will likely increase traffic volumes in surrounding streets, increase demand for on street parking and impact on pedestrian safety.</p> <p>Amended shadow diagrams have not been provided therefore it cannot be determined if sufficient solar access will be maintained for adjoining properties.</p>	
2.3(g) and (h) Parking and Traffic	Parking is not to be located within communal open space or landscape areas.	Car parking is proposed on the ground floor and lower ground floor levels with a single vehicular driveway on Maxim Street.	No

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Provision	Required	Proposed	Complies
	<p>A boarding house with 30 or more rooms is to be supported by a Traffic and parking Impact Assessment report, prepared by a suitably qualified person, addressing as a minimum the following:</p> <ul style="list-style-type: none"> • prevailing traffic conditions • the likely impact of the proposed development on existing traffic flows and the surrounding street system • pedestrian and traffic safety, and • justification of any variation to the parking requirements (if proposed). 	<p>A Traffic Impact Assessment Report has been prepared by ParkTransit.</p> <p>The proposal has a shortfall of 9 car parking spaces in accordance with the requirements of the SEPP (Affordable Rental Housing) 2009 and the RDCP 2014.</p> <p>The justification provided in the Traffic Impact Assessment Report, being the shortfall is adequately addressed by provision of 3 car share spaces, is not supported as it has not been demonstrated how the car share spaces will be managed to meet the demands of the development and not the needs of the wider community.</p> <p>The design of vehicular access to and from the site, and within the car park levels does not satisfy relevant Australian Standards and the requirements in the RDCP 2014. The proposal is likely to result in traffic, parking and pedestrian impacts on surrounding streets.</p>	
3.2 Privacy and Amenity	(a) Main entrance to be located and designed to address street	The main entrance to the boarding house use is located at the ground floor level fronting Victoria Road.	Yes
	(b) Access ways to front entrance located away from windows of boarding rooms for privacy	The front entrance is directly accessed from the footpath on Victoria Road. There are not boarding rooms on the ground floor level.	Yes

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	(c) Designed to minimise and mitigate visual and acoustic privacy impacts on neighbours	The amended proposal provides a number of communal outdoor areas across four levels of the boarding house. The Plan of management does not provide adequate operational provisions demonstrating that use of the boarding house will not result in any adverse amenity impacts for surrounding properties.	No
	(d) An acoustic report prepared by a suitably qualified acoustic consultant may be required where there is the potential for noise impacts on occupants and neighbours.	An acoustic report addressing noise impacts on surrounding properties, particularly mechanical ventilation and servicing of the site, was submitted at the request of Council.	Yes
3.3 Accessibility	All boarding house developments to be accompanied by accessibility report	An Access Report dated 21 June 2019 was submitted with the original proposal. An amended Access Report has not been submitted with the amended architectural plans. An assessment cannot be made to determine if the amended proposal satisfies the relevant accessibility requirements under the BCA or Disability (Access to Premises) Standards 2010.	No
3.4 Waste Minimisation and Management	Required in accordance with Part 7.2 of the RDCP 2014	The submitted waste management plan is inconsistent with the amended architectural plans and does not satisfy the requirements of the RDCP 2014. The amended proposal does not provide a separate garbage storage room for the retail/commercial tenancy.	No

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		The proposal has not provided sufficient information to demonstrate that equitable access is provided for persons with disabilities to traverse safely between the boarding room, carpark and garbage storage room.	
3.5 Sustainability and Energy Efficiency	BASIX Certificate required	An amended BASIX Certificate has been submitted. The architectural plan do not clearly show the provision of kitchenettes in boarding rooms. As such, the proposal has not demonstrated that boarding rooms are self-contained dwellings under BASIX requirements.	Partially complies
3.6 Internal Building Design	Must make provision for laundry facilities, communal food preparation facilities, sanitary facilities and storage areas	The architectural plans show that each boarding room has a bathroom. The proposal states that each boarding room contains a kitchenette however this is not reflected on the plans. Communal kitchen, dining and laundry facilities are provided on the fourth floor.	Yes
	Safety to be optimized by providing for overlooking of communal areas, provision of lighting and providing clear definition between public and private spaces	The communal living area on the fourth floor is adjacent to a communal open space that overlooks Victoria Road and intersection of Victoria Road and Maxim Street. Private balconies to boarding rooms fronting on to the void overlook the communal open space on the first floor and the south facing communal deck on the fourth floor. The eastern elevation particularly at ground floor level contains predominantly blank walls with openings to service	Partially complies

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		<p>areas. The eastern elevation along Maxim Street does not contribute to passive surveillance.</p>	
<p>3.6(e)(i) Bedrooms</p>	<ul style="list-style-type: none"> • Not to open directly onto a communal area • Must comply with SEPP (Affordable Rental Housing) 2009 • Minimum 2.1m² required for basin and toilet plus 0.8m² for shower, 1.1m² for laundry which must include a tub and 2m² for a kitchenette • Kitchenettes must have small fridge, cupboards, shelves, microwave and 0.5m² of bench space 	<p>Boarding rooms do not open directly to communal living areas.</p> <p>The boarding rooms range between 12.2m² and 17.6m². The SEE and POM both identify 7 x 2 lodger boarding rooms, however the internal layout of all boarding rooms only show single beds. The architectural plans do not clearly show the maximum occupation of each room.</p> <p>No room exceeds 25m² and comply with the areas specified in the SEPP (Affordable Rental Housing) 2009.</p> <p>Whilst the proposal states that kitchenettes are provided in boarding rooms, this is not shown on the architectural plans and cannot be properly assessed.</p>	<p>Partially complies</p>
<p>3.6(e)(ii) Communal Living Room</p>	<ul style="list-style-type: none"> • Locate adjacent to communal open space to minimise impact on neighbours • Minimum size 15m² plus additional 15m² for each additional 12 persons • Openings to be oriented away from adjoining residential properties 	<p>Communal living areas and communal facilities are located adjacent to the northern and southern boundaries. Whilst the communal open spaces and communal living areas are not directly overlooking adjoining properties, the proposal does not provide a sufficient Plan of Management to demonstrate that the operation of the boarding house will not have adverse amenity impacts on surrounding properties.</p>	<p>Partially complies</p>

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		<p>The communal living area comprising of kitchen and dining spaces comply with the minimum 54.9m² required by the DCP.</p> <p>However, the communal kitchen measuring 54.9m² does not satisfy the minimum area (58.8m²) required for a communal kitchen for a 41 room boarding house. In addition, the facilities provided in the communal kitchen are insufficient and will not provide good amenity for occupants. Specifically, the DCP requires 8 sinks and 8 stove tops within the kitchen, however the proposal provides only 1 sink and 1 stovetop.</p> <p>Given that kitchenettes are not shown on the architectural plans, occupants are reliant on the communal kitchen facilities. As such, the communal kitchen is inadequate.</p>	
3.6(e)(iii) Communal Kitchen and Dining Areas	<ul style="list-style-type: none"> • To be in accessible location • Area to be minimum 6.5m² or 1.2m² per resident that does not contain a kitchenette and provide one sink and stove top cooker per 6 people • Combined kitchen/dining areas to have minimum 15m² area and 1m² per room = 56m² 	<p>The communal kitchen and dining area on the fourth floor is in an accessible location. Details of the communal kitchen are outlined above.</p> <p>The combined kitchen dining area has an area of 54.9m² and does not comply with the minimum required area of 58.8m².</p> <p>Details have not been provided on the architectural plans demonstrating adequate storage for lodgers can be accommodated within the kitchen/dining area.</p>	No

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3.6(e)(iv) Bathroom	Communal bathrooms must be accessible 24 hours a day	1 communal accessible WC is provided on the fourth floor adjacent to the communal living area and outdoor area.	Yes
3.6(e)(v) Laundry and Drying Facilities	Outside drying areas shall be located in communal open space: <ul style="list-style-type: none"> • minimum space of 4m² for every 12 lodgers; an additional 3m² for every additional 12 lodgers or part thereof – 13.24m² • 15m² external clothes drying area for every 12 residents in an outdoor area (can be retractable – 61.25m² 	<p>A communal laundry and outdoor drying area is provided on the second floor. The laundry and drying area is in an accessible location.</p> <p>The laundry has an area of approximately 11.6m² and does not satisfy the minimum requirement of 13.24m². The outdoor drying area measuring 21.9m² is insufficient and is significantly less than the required 61.25m².</p> <p>The proposal has not provided sufficient information to demonstrate that the facilities provided can adequately service the needs of occupants.</p>	No
3.6(e)(vi) Management office design	The Manager's office is to be in a central, visible location for occupants and visitors.	A Manager's office is provided on the ground floor adjacent to the reception area.	Yes
4.2(a) to (d) Management Controls	<ul style="list-style-type: none"> • To be managed by a manager who has overall responsibility including the operation, administration, cleanliness, maintenance and fire safety of the premises. • A Plan of Management is to be submitted to address the ongoing management and 	<p>A Plan of Management has been submitted, however it has not been amended to reflect the amended architectural plans.</p> <p>The Plan of Management is deficient and does not demonstrate how the use will be managed to minimise amenity impacts on surrounding properties and streets, particularly in regard to noise, privacy, traffic and parking and landscape maintenance.</p>	No

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	operational aspects of the boarding house		
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It is noted that the NSW Police have raised concerns that the POM and CPTED Report fails to demonstrate the operation of the boarding house will satisfactorily manage safety, security or amenity impacts on future occupants and surrounding properties.

Part 4.3 – West Ryde Town Centre

The site is located at the southern edge of the West Ryde Town Centre and is in the Victoria Road West Precinct. Assessment of the proposed development against relevant provisions relating to built form, public domain and amenity are provided below.

Clause 2.3 – West Ryde Town Centre Vision

The vision for the redevelopment of the West Ryde Town Centre seeks to enhance the importance of Victoria Road and define the Town Centre with new uses and built form, and improvement to the public domain with priority for pedestrians and open spaces. The DCP also seeks to provide a mix of developments that provide a transition between the retail core and surrounding residential areas.

The proposed boarding house use with a retail tenancy is consistent with desired mixed use character of the Town Centre, however, as discussed in this report, the proposed built form and articulation of development is not consistent with the desired future character along Victoria Road and will not contribute to the streetscape or amenity of the area.

Clause 2.5 – Key Town Centre Principles

Give key principles have been adopted to guide desired built form and public domain outcomes for the West Ryde Town Centre as follows:

- Green Strategy & Water Management
- Pedestrian Circulation
- Safety & Accessibility
- Retail & Employment Areas
- Residential Precincts

The site is not located within the areas identified as green links within the Town Centre.

The proposed boarding house use is consistent with the intention of providing a mix of residential uses particularly at the edge of the town centre. The retail tenancy is also consistent with uses within the retail and commercial core along Victoria Road. However, the intensification of the site results in a built form that does not satisfy other principles that seek to facilitate appropriate built form to achieve desired future

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character of the Town Centre. As discussed in this report, the design of the ground floor comprising of a setback from the alignment to Victoria Road fails to define and activate the street at the pedestrian level, is inconsistent with existing built form along Victoria Road and will not contribute to pedestrian safety.

The internal configuration of the ground floor results in extensive amounts of blank walls and servicing areas along the Maxim Street elevation. The ground floor elevation along Maxim Street does not contribute to passive surveillance or pedestrian amenity.

The proposed built form does not satisfy the principles for design within the Town Centre and forms part of the reasons for refusal.

Clause 3.1.1 – Building height and bulk

As discussed in the report above, provisions in Clause 3.1.1 informs appropriate built forms in the Town Centre, and specifically development in the Victoria Road West Precinct. The proposal does not achieve the minimum floor to ceiling heights for ground floor retail and commercial uses and consequently impacts on the proportions of the remainder of the floors above which is inconsistent with the proportion of existing and future developments.

As the proposed 5 storey building occupies the maximum building height permitted for the site, the proposal does not comprise of a roof articulation zone and does not incorporate a roof form that provides articulation or visual interest. In addition, as the 5 storey development occupies the maximum building height, the lift overrun and fire stairs adjacent to the eastern elevation exceeds the height of buildings development standard, is visually prominent and contributes to excessive building bulk.

Clause 3.1.2 – Mixed Use Development

Mixed use developments, such as the proposed boarding house and retail tenancy, are permitted on the site and within the Victoria Road West Precinct, subject to appropriate design that contributes to street activation, visual interest, pedestrian safety and amenity and desirable built form.

The proposal does not satisfy the objectives and provisions for mixed used developments in the Town Centre as the built form and configuration of internal uses does not maximise opportunities for passive surveillance and the car parking arrangement for the site is considered insufficient and likely to increase traffic and parking demands in surrounding streets, and also increase safety risk to pedestrians.

Clause 3.1.3 – Street Setback and Alignments

Setback to street alignments in the West Ryde Town Centre, particularly within the Victoria Road West Precinct, requires the first two storeys of a building to be built to the property boundary. The proposal does not satisfy this provision as the ground floor level fronting Victoria Road is setback from the property boundary with the first floor to fourth floor levels built to the boundary and overhanging the ground floor. The proposed northern façade will further impact on pedestrian amenity as no awning is provided along the Victoria Road frontage or the return to Maxim Street as required

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under Clause 3.1.7. The proposal is consistent with built forms along Victoria Road that contribute to pedestrian amenity.

The proposed eastern elevation of the building is not built to the boundary along Maxim Street in part, to provide access to fire stairs and a splay that accommodates a vertical garden. Insufficient details have been provided relating to the construction and maintenance of the vertical garden and therefore the impact of the garden cannot be determined. The design and setting of the building does not achieve high quality design that provides visual interest and character to the visually prominent corner site location. As such, the proposed development is inconsistent with the desired future character of the Town Centre and is not supported.

Clause 3.1.4 – Urban Design

Having regard to the above assessment of built form and public domain provisions, the proposed development does not satisfy the objectives to create a high quality urban environment under Clause 3.1.4. In particular, the proposed built form does not satisfactorily address objectives for urban design as follows:

- 3. To provide opportunities for a range of commercial/retail uses at ground level.*
- 4. To ensure future scale and mix of development recognises the residential/commercial interface and encourages a transition between high density development and lower density residential land.*
- 7. To encourage a variety of built form in new development and to assist in defining street blocks.*
- 8. To encourage high quality urban design of new development.*
- 9. To ensure new and refurbished development responds to the urban context.*

The proposed floor to ceiling height of 3m at the ground floor level does not provide the flexibility to accommodate a range of retail and commercial uses and is also inconsistent with the proportions of retail and commercial developments along Victoria Road. The proposed built form with setbacks along the northern and eastern boundaries does not assist in the definition of the retail and commercial character of Victoria Road or the intersection of Victoria Road and Maxim Street. In this regard, the proposal also does not satisfy the active street frontages provisions in Clause 3.1.6.

As discussed in the report above, the proposed building proportions and articulation of facades does not contribute to the character of the streetscape and is not considered to achieve a high quality urban design. As such, the proposed development is considered out of context with existing development and is inconsistent with the desired future character of the Town Centre.

Clause 3.1.9 – Visual Privacy and Acoustic Amenity

The proposed private open spaces to boarding rooms and communal open spaces across four levels are predominantly orientated towards Victoria Road and Maxim Street. A total of 10 boarding rooms (24.4%), 3 communal open spaces and the

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Manager's Unit are orientated toward the void adjacent to the south-western portion of the site. Louvred screens are proposed to all private open spaces to minimise acoustic impacts for occupants.

Although the proposal does not directly overlook surrounding residential developments, the proposed POM contains insufficient operational management provisions that demonstrate the boarding house will not result in any adverse visual or acoustic impacts for occupants or surrounding properties.

Clause 3.2 – Traffic, Access and Pedestrian Amenity

As discussed in this report, the proposed design of the car parking layout and access raises safety concerns for occupants, visitors and pedestrians particularly as the vehicular point of entry from Maxim Street and the internal ramps do not satisfy relevant Australian Standards and provisions in Part 9.3 of the RDCP 2014.

The proposed development also does not satisfy the objectives and requirements for vehicular access and pedestrian safety in Clause 3.2 as insufficient information has been submitted to demonstrate that the proposed car parking arrangement will not result in conflicts between vehicle and pedestrian movements in surrounding streets.

Clause 3.3 – Environmental Controls

The environmental controls to be considered under Clause 3.3 including solar access, natural ventilation and stormwater have already been addressed in this report under relevant clauses in the SEPP (Affordable Rental Housing) 2009, Parts 3.5 and 8.2 of the RDCP 2014.

Part 7.2 Waste Minimisation and Management

Section 2.7 in Part 7.2 of the RDCP 2014 is applicable to the proposed development as the boarding house comprising of more than 12 lodgers is classified as a Class 3 building under the BCA.

Section 2.9 in Part 7.2 of the RDCP 2014 is applicable to the proposed retail tenancy on the ground floor.

The requirements for garbage and recycling for a Class 3 boarding house is provided as follows:

DCP Controls	Proposed	Compliance
Section 2.3 – All developments Must provide space for on-site sorting and storage or waste and containers.	A bin storage room within the ground floor car park, adjacent to the vehicular entrance with an area of 15.8m ² to contain 10 x garbage bins and 7 x recycling bins.	Partially complies. The proposal provides storage for more bins than the required 7 x garbage bins and 7 x recycling bins for the boarding house development. The

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DCP Controls	Proposed	Compliance
	<p>An additional area adjacent to accessible car parking spaces is provided for 2 recycling bins and 2 garbage bins.</p>	<p>storage room complies with the requirements.</p> <p>The bin storage identified as 'accessible bin storage' provides sufficient bins however it has not been demonstrated that the location is accessible and safe for persons with disabilities.</p> <p>The retail tenancy is required to have a separate garbage storage room to accommodate 266L of garbage and 53.3L of recycling. The proposal does not indicate a waste storage area of the exclusive use of the retail tenancy.</p>
<p>Storage areas and number of containers in accordance with Schedule 1 and 2.</p> <p>Garbage - 40L/occupant space – 7 x 240L bins</p> <p>Recycling – 35L/occupant space – 7 x 240L bins</p>	<p>12 x 240L garbage bins 9 x 240L recycling bins</p>	<p>Yes</p>
<p>Additional space must be provided for storage of bulky waste</p>	<p>No bulky waste storage area has been provided.</p>	<p>No</p>
<p>Preparation of a Site Waste Minimisation and Management Plan</p>	<p>An amended Site Waste Minimisation and Management Plan has not been submitted with the amended proposal.</p>	<p>No</p>

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DCP Controls	Proposed	Compliance
Gradient of 14:1 path between waste storage and collection point	The proposal does not provide sufficient information regarding the gradient of the vehicular ramp adjacent to the garbage storage room. It cannot be determined if the access between the bin storage areas and the collection point is satisfactory.	No
<p>Section 2.7 – residential flat buildings of 4 storeys or more</p> <p>This section applies to residential components of mixed use developments including hotels, motels, serviced units, Class 3 boarding houses and backpacker accommodation.</p> <p>Waste and recycling storage rooms designed in accordance with Schedule 4.</p> <p>Minimum 700mm wide x 750mm deep space per bin</p> <p>Adequate access to and from bin storage area.</p>	<p>The bin storage area adjacent to the eastern boundary complies with the storage requirements. Insufficient information has been submitted to determine if the additional bin storage area in the shared zone is accessible for persons with disabilities.</p>	Partially complies. See discussion in the table above.
<p>Section 2.9 – Mixed Use Developments</p> <p>Separate waste and recycling storage from residential use</p>	<p>No separate garbage and recycling storage area is provided for the retail tenancy.</p> <p>The Waste Management Plan contains insufficient</p>	No

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DCP Controls	Proposed	Compliance
<p>The residential and commercial/retail waste management systems must be in locations which are easily accessible to their respective users and waste collection staff.</p> <p>Commercial tenants in a mixed development must be actively discouraged from using the residential waste facilities</p>	<p>information and does not address relevant requirements for the mixed use development.</p>	

Having regard to the assessment provided in the table above, the proposal does not provide sufficient information that demonstrates appropriate and separate waste storage for the boarding house use and retail tenancy and does not satisfy the requirements in Part 7.2 of the RDCP 2014.

Part 9.3 – Parking Controls

As outlined in the report above, the proposed development is required to provide 24 car parking spaces to accommodate the demands generated by a 41 x boarding rooms, 1 x Managers Unit and 1 x 40m² retail tenancy in accordance with Clause 29(e) of the SEPP (Affordable Rental Housing) 2009 and Section 2.2 in Part 9.3 of the RDCP 2014.

The proposal seeks consent for 15 car spaces across two levels of car parking consisting 10 car spaces, 2 accessible spaces and 3 car share spaces, and 1 loading bay. The proposal does not satisfy the minimum car parking requirements under Clause 29(e) of the SEPP (Affordable Rental Housing) 2009 and the RDCP 2014, with a shortfall of 9 car spaces.

The Traffic Impact Assessment Report prepared by Park Transit seeks to justify the shortfall of car parking spaces with the provision of 3 car share spaces, with each car share space equivalent to the demand of 10-12 car spaces. Notwithstanding the ability for car share spaces to reduce the demand for private car spaces in a development, the nature of car share schemes service not only the occupants of a development where the car share spaces are provided, but also the demand for cars within the surrounding community. In the circumstances of the case, provision of car share spaces to eliminate the need to provide the required 9 additional car parking spaces, for the exclusive use of boarding house occupants, is not justified as the proposal has not demonstrated how it will ensure that the car share spaces will be available to meet the demand for cars and car parking generated by the 49 lodgers.

Concern is raised that the car share spaces service any persons in the community and at any given time, the proposed 3 car share spaces could be used by person

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outside of the development. This will likely result in lodgers parking private vehicles or rental cars in surrounding streets and will increase traffic volumes in local streets. As part of the assessment, Council officer's advised that car share spaces in lieu of car parking spaces within the development may be considered on merit, if the car share spaces are provided for the exclusive use of occupants of the boarding house and written confirmation of such an arrangement with a car share company is submitted to Council.

The applicant provided a letter from Go-Get Car Share regarding the proposed 3 car share spaces. The letter advised that the Go-Get could provide car share spaces for the exclusive use of the development at the cost of the boarding house operator. However, no confirmation or agreement between Go-Get and the applicant have been provided regarding provision of car share spaces for the exclusive use of lodgers of the boarding house. The proposed car parking arrangement and shortfall of car parking spaces does not satisfy the requirements under the SEPP (Affordable Rental Housing) 2009 and Council's parking controls, and have not demonstrated that it will not result in any adverse additional traffic and parking impacts on surrounding streets. The proposed shortfall in car parking is not acceptable and forms part of the reasons for refusal.

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)

The Section 7.11 Development Contributions Plan 2020 commenced on 1 July 2020 and is applicable to the proposal under Clause 7.2 – Savings and transitional arrangements, as the application was submitted but not yet determined on the date the plan took effect.

The contribution that are payable with respect to the increase housing density (based on the number of lodgers) on the subject site (being for residential development outside the Macquarie Park Area) are as follows:

A – Contribution Type	B – Contribution Amount
Community & Cultural Facilities	\$113,107.19
Open Space & Recreation Facilities	\$194,765.20
Transport Facilities	\$59,792.25
Plan Administration	\$5,514.95
The total contribution is	\$373,179.59

ITEM 1 (continued)**5.7 Any matters prescribed by the regulations**

There are no matters prescribed by the Regulation that have not been satisfied.

6. The likely impacts of the development

The proposed development is considered to have an adverse environmental impact for the following reasons:

- The proposed 5 storey building is inconsistent with the built form of existing surrounding retail and commercial developments and is inconsistent with the desired future character for the West Ryde Town Centre in relation to bulk and scale, pedestrian amenity, the character of the retail and commercial core along Victoria Road and defining the street alignment with appropriate building setbacks and active uses.
- The proposed exceedance in building height results additional building bulk that does not contribute to the architectural appearance of the development and is out of character with building height of existing surrounding developments or desired future developments and will detract from the continuity of built form along Victoria Road.
- The proposed design of the ground floor including setbacks from Victoria Road, insufficient floor to ceiling heights and lack of awnings along the length of the active frontage does not enhance the retail and pedestrian character of Victoria Road and the West Ryde Town Centre.
- The proposed ground floor level of the eastern elevation comprises extensive blank wall and servicing that does not contribute to the activation of the public domain or enhance pedestrian amenity as it does not provide satisfactory passive surveillance to surrounding streets.
- The proposed car park layout and vehicular access is insufficient and is likely to result in additional traffic and parking in surrounding streets and will impact on the amenity of surrounding properties and pedestrians.
- The proposed Plan of Management does not adequately address operational provisions and fails to demonstrate how the boarding house use will maintain high levels of amenity for lodgers and the use of communal living areas and car parking not result in any adverse amenity impacts on surrounding properties.
- Insufficient information has been submitted to demonstrate how the proposed vertical garden will be constructed and maintained to ensure the health of

ITEM 1 (continued)

plants and the gardens contribution to visual interest when viewed from the public domain and surrounding properties. The location of the vertical garden is visually prominent and the structure would have a detrimental impact on the appearance of the development if landscaping is not adequately maintained.

- The proposed intensification of the site to provide a mixed use development comprising of 41 boarding rooms and a retail tenancy within the height of building control has resulted a building with proportions that are not consistent with the form of retail and commercial buildings along this section of Victoria Road and will detract from the desired future character of the Victoria Road West Precinct and the West Ryde Town Centre.

7. Suitability of the site for the development

The proposed development is not compatible with the scale and character of existing developments in the vicinity of the site and will detract from the desired future streetscape and character of West Ryde Town Centre. In particular, the proposal does not provide an appropriate active street frontage that is consistent with the form of retail and commercial uses along Victoria Road. The development has failed to demonstrate that it is consistent with relevant planning controls including built form, consistency with the character of the local area, carparking and access, waste storage, landscaping and satisfactory management of the boarding house.

The site cannot accommodate the required services and facilities to meet the needs of the proposed 41 boarding room, 49 lodger development and will result in poor amenity for future occupants and surrounding properties.

The subject site is not a suitable location for the development of a 5 storey mixed use building having regard to built form controls, the topography of the site and the desired future character of the West Ryde Town Centre. Notwithstanding that the development is contained within the building height control, the proportions of the building, particularly at ground floor level, is inconsistent with the retail and commercial character along Victoria Road and will result in a building that does not provide appropriate transition between high density development and surrounding low density residential areas.

The proposed development on the site has not satisfactorily demonstrated compliance with built form and amenity provisions that are compatible with the retail and commercial nature of the local area and will have unacceptable amenity impacts on adjoining properties and the character of the area.

Having regard to the above, the proposed development is not considered to be suitable for the subject site.

8. The Public Interest

Given the above assessment, it is not considered that approval of the application would not be in the public interest as the site is not suitable for the proposed

ITEM 1 (continued)

development and the proposal fails to satisfy relevant provisions of the SEPP (Affordable Rental Housing) 2009 and RDCP 2014.

9. Submissions

In accordance with the RDCP 2014 Part 2.1 Notice of Development Applications, the proposal was advertised in *The Weekly Times* on 11 March 2020 and owners of surrounding properties were given notice of the application between 6 March to 25 March 2020. During the notification period, three (3) submissions were received raising objection to the proposal. The issues raised in the submissions included the following:

- A. The density proposed by a café and boarding house comprising of 41 lodgers and 1 manager is out of character with the density of surrounding developments and will generate excessive vehicular and pedestrian traffic in Maxim Street. Vehicles will contribute to traffic congestion on Victoria Road during peak hours.**

Comment: The proposed development is considered to be out of character with surrounding developments, particularly in relation to built form and contribution to the retail/commercial and pedestrian nature along Victoria Road. The proposal does not provide the minimum required car parking spaces for the boarding house use and is considered to have additional traffic and parking impacts on surrounding streets. These issues form part of the recommendation for refusal.

- B. The proposed building height exceeds the maximum height control and is out of character with the scale of surrounding 2 storey developments along Victoria Road.**

Comment: The proposed 5 storey form is out of character with the existing scale of predominantly 2 storey retail and commercial developments along Victoria Road. The proposal is also considered to be out of character with the future desired character for developments in the West Ryde Town Centre and is not supported.

The exceedance in the height of buildings development standard is not supported and assessment of the proposal and the Clause 4.6 request for variation to the height of building development standard has been provided in the report and forms part of the recommendation for refusal.

- C. Insufficient parking will place more pressure on limited street parking in surrounding streets.**

Comment: The proposal to provide 15 car parking spaces including 3 car share spaces does not satisfy the minimum car and motorcycle parking

ITEM 1 (continued)

requirement under Clause 29(e) of the SEPP (Affordable Rental Housing) 2009 for the boarding house use or café use under Part 9.3 of the RDCP 2014. The shortfall of 9 car parking spaces, and insufficient information showing adequate motorcycle and bicycle parking spaces is not acceptable and will likely result in additional demand on street parking in surrounding streets, and impact on the amenity of surrounding properties. This matter forms part of the recommendation for refusal.

D. Ground floor could become a licensed premises and result in unacceptable noise impacts and anti-social behaviour.

Comment: The proposed use of the ground floor retail tenancy as a food and drink premises is consistent with retail and commercial uses in the local area and is permissible within the B4 Mixed Use Zone. The fit out of the tenancy and any application for use as a licensed premises is subject to a separate application and is not a consideration as part of this assessment.

E. The loading dock will introduce trucks into local traffic.

Comment: Having regard to the size of the proposed retail tenancy, it is unlikely that the loading dock will be frequently utilised by trucks. The traffic impact caused by the retail tenancy is considered to be acceptable.

F. Bicycle parking within the site could result in bike share schemes where bicycle are left in surrounding streets causing clutter and pedestrian hazards

Comment: The proposal has not identified the use of bike share schemes as part of the bicycle parking arrangement. Insufficient details have been provided to demonstrate the proposed number of bicycles to be stored in the car park can be adequately accommodated and will not have any adverse impacts on the amenity of surrounding streets. This forms part of the recommendation for refusal.

G. Details of potable water and waste water servicing for the development has not been shown on the architectural plans and will be required to be submitted to Sydney Water for approval as part of any Section 73 application process.

Comment: The recommendations provided by Sydney Water are noted.

ITEM 1 (continued)**10. Referrals****NSW Police**

The proposal was referred to the NSW Police – Ryde Area Command. The Police raised concerns that the proposal did not address Crime Prevention Through Environmental Design (CPTED) principles in the Statement of Environmental Effects and the POM does not contain sufficient provisions to demonstrate proper management of occupants and visitors. The preparation of a comprehensive CPTED report was requested.

The applicant submitted an amended Statement of Environmental Effects and CPTED report with the amended proposal. The Police have reviewed the amended proposal and supporting documentation and have advised that the CPTED Report is insufficient and does not satisfactorily address crime prevention, control of access to and from the premises and surveillance. In addition, the POM has not been amended to reflect the amended proposal and is not supported.

The Police have also noted that insufficient car parking provisions will have additional impacts on demand for on street parking spaces which are limited in the vicinity of the site.

Assessing Officer comment:

The issues identified by the NSW Police are supported as the proposal has not failed to demonstrate that the design of the building and management of use will not result in any adverse impacts on the amenity of the public domain and surrounding properties.

Senior Development Engineer

The application was referred to Council's Senior Development Engineer who advised that insufficient information has been submitted and the proposal cannot be supported in its current form. The following comments have been provided:

Stormwater Management

The proposed stormwater management system for the development discharges to the existing kerb inlet pit in Victoria Road and incorporates an onsite detention system complying with Councils requirements.

A review of the plan, completed by StormCivil Pty Ltd, drawing number 301331 S1 and S2, revision A, dated 7th December 2018, has noted the following matters which need to be addressed;

- *The OSD storage tank is to be relocated away from the garbage room to avoid contamination of the stormwater system.*
- *The stormwater plans must be consistent with the latest architectural plans*

These will require the stormwater management plan to be amended prior to development consent.

ITEM 1 (continued)Vehicle Access and Parking

The parking demand for the proposed café has been assessed against Section 2.3 of Part 9.3 of Council's DCP, which requires 1 space per 25m² of GFA. The proposed café has a total GFA of 40m², thus requiring a total of 2 off-street parking spaces to comply. The boarding house component of the development falls under the requirement of the SEPP which stipulates a parking requirement of 0.5 spaces per room. As the total development consists of 41 boarding rooms, the development requires a total of 21 parking spaces and 1 space for the building manager. The SEPP also requires 1 motorbike space per 5 rooms, thus requiring a total of 9 motorbike spaces. Therefore, it can be concluded the total generated off-street parking required for the development is 24 car spaces.

The architectural plans depict a total of 15 off-street parking spaces and 1 loading bay space, failing to comply with the above arrangement and resulting in a shortfall of 9 spaces. (Note – a loading bay is not required and this space can be converted to a car parking space). The provided Traffic Impact Statement, completed by ParkTransit Pty Ltd, has proposed the use of Car Share scheme to justify the shortfall. Council are not supportive of the proposal as the Applicant has not demonstrated why the required parking spaces cannot be accommodated within the site. Note – As the lot is not constrained, there is scope to expand the basement level to accommodate additional parking spaces.

The proposed car parking area has been reviewed against the requirements of AS2890.1 and Council's DCP where the following issues that must be addressed are outlined below;

- *The vehicular crossing along Maxim Street is to be widened to 5.5m. This is to continue within the site boundary for the first 6m before splaying to the reduced width. This is to provide a passing bay in order to accommodate two-way access, and increase pedestrian safety.*
- *The architectural plans must depict the length and grades of all proposed ramps. Note – the first 6m within the site must not exceed 5%.*
- *Swept path analysis demonstrating forward entry and exit from the site is required for the following car spaces identified as 4, 5, 7, and 8. Note – for the nominated accessible spaces, the B99 template must be utilised.*
- *The access ramp to the basement is designed as a one-way aisle. Due to the restricted driver visibility, a two way aisle shall be provided. Alternatively, a traffic management system could be utilised provided sufficient area is allocated to accommodate a waiting bay. Note – The architectural plans must be amended to depict sufficient manoeuvring area as noted within the swept path completed within Traffic Report.*
- *The Traffic Report states 10 motor-bike spaces have been provided. These must be shown on the architectural plans and be dimensioned in accordance with AS2890.1. In addition, clarification is required to address access to the designated bike spaces as they appear to be located along the access ramp with limited driver visibility, which is highly discouraged.*
- *Evidence must be provided to Council demonstrating sufficient area has been provided to accommodate the electrical substation as this could affect the parking layout.*

ITEM 1 (continued)*Flooding and Overland Flow*

The site is identified to be affected by flooding during the PMF event. The extent of flooding is minimal, and has been supported with a Flood Impact Statement, completed by StormCivil Pty Ltd, reference 301331, dated 28th June 2019, which satisfactorily addresses the requirements of Council's DCP.

Assessing Officer comment:

Council's Senior Development Engineer's assessment that the location of the proposed On Site Detention tank is not acceptable and insufficient stormwater management plans have been submitted is supported. In particular, the applicant submitted amended architectural plans to address issues raised in Council's letter dated 25 September 2019 and comments provided by the Urban Design Review Panel date 7 November 2019 but did not submit amended stormwater management plans to reflect the amended proposal. As such, insufficient information regarding the stormwater management is a reason for refusal.

The issues raised by the Senior Development Engineer relating to insufficient car parking and vehicle access is supported as the proposal in its current form will result in additional traffic and parking impacts on surrounding streets and safety concerns for occupants within the carpark. It is also noted that the amended architectural drawings are inconsistent with the Traffic Impact Statement prepared by ParkTransit Pty Ltd, dated 26 February 2020 and does not satisfactorily demonstrate adequate provision of motorcycle and bicycle parking within the development. As such, insufficient provision of car parking, unsatisfactory vehicle access and egress and insufficient information relating to motorcycle and bicycle parking forms reasons for refusal.

City Works – Transport

The amended proposal was referred to Council's Traffic Engineer who advised that the proposal, in its current form, is not supported as insufficient car parking will likely increase demand for parking on local roads which have been identified as currently accommodating high parking demands. Concern has also been raised that vehicular access within the site is insufficient and does not satisfy relevant Australian Standards.

Council's Traffic Engineer advised that insufficient information has been submitted and further informant is required as follows:

- *The application is for a 5-storey building comprising 41 boarding rooms and 1 Manager's unit and a ground floor café with a floor area of 40m² above two (2) levels of basement parking containing 16 car spaces, including 3 car share spaces and the loading bay. The State Environmental Planning Policy for Affordable Rental Housing (ARHSEPP) requires a boarding house development that is not carried out by or on behalf of a social housing provider to provide at least 0.5 parking spaces for each boarding room. Council's DCP*

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specifies a minimum parking rate of 1 space per 25m² for restaurant/café type developments. Based on the proposed yield of the mixed use development, a minimum of 24 off-street parking spaces is required in accordance with ARHSEPP/Council's DCP.

- The proposed parking provision of 15 off-street parking spaces and 1 loading dock represents a shortfall of nine (9) parking spaces with respect to ARHSEPP/Council's DCP parking requirements. Such a significant shortfall in parking is not supported by Council's Transport Team, as it increases the likelihood of parking generated by the proposed development spilling over onto the adjoining local public roads, which has been observed to accommodate high parking demands. In this regard, it is recommended that the on-site parking associated with the proposed development be provided in accordance with ARHSEPP/Council's DCP parking rates.*
- The straight internal roadway/ramp is required to provide a minimum width of 5.5m in accordance with Clause 2.5.2 of AS2890.1 for two-way traffic flow.*
- The number of bicycle and motorcycle parking provided on-site shall be clearly shown on the plan and documented in the report for assessment.*
- Details of the ramp grades shall be provided for review by Council.*
- Swept paths shall be provided demonstrating that a B99 passenger vehicle is able to manoeuvre to/from the internal loading bay in a safe and efficient manner.*
- Swept paths shall be provided demonstrating that the largest passenger vehicle (B99) is capable of accessing/vacating all the off-street parking spaces in a safe and efficient manner.*
- The swept paths contained in the traffic report indicate that a passenger vehicle travelling down the internal ramp would hit the corner of the bicycle parking room. The bicycle parking room needs to be redesigned to enable a passenger vehicle to travel down the ramp without encroachment.*
- The width of the internal ramp is only capable of supporting traffic in one direction at a time. It is noted that the width of the internal road at the bottom of the ramp does not allow a vehicle travelling down the ramp to pass a stationary vehicle at the bottom of the ramp. This is considered an unsafe arrangement.*

Assessing Officer comment:

ITEM 1 (continued)

Council's Traffic Engineer's assessment of the proposal and concerns raised regarding the impact of insufficient car parking and vehicular access is supported. In addition, the concerns raised relating to the use of car share spaces to justify the shortfall of car parking spaces for the boarding house use is also supported.

It is identified that insufficient information has been provided to demonstrate safe vehicular access to and from the site and within the car park. In this instance, a proper assessment of the impacts of the proposal cannot be determined and this forms part of the recommendation for refusal.

City Works – Drainage

The proposal was referred to Council's Drainage Team who raises no objection to the proposal.

Assessing Officer comment:

The comments provided by the Drainage Team have been noted.

City Works – Public Domain

The proposal was referred to Council's Public Domain who raises no objection to the proposal.

Assessing Officer comment:

The comments provided by the Public Domain Team have been noted.

City Works – Waste

The proposal was referred to Council's Waste Team who identified that the proposal does not satisfy Part 7.2 of the RDCP 2014 as there is no provision for a separate garbage and recycling storage area for the retail/commercial tenancy and a bulky waste storage area for the occupants of the boarding house.

Assessing Officer comment:

The issues raised by Council's Waste Team are supported. Given the scope of the proposed development, it is considered necessary for the proposal to demonstrate compliance with Part 7.2 of the RDCP 2014 to ensure the management of waste generated by the site has minimal amenity impact on surrounding properties.

Consultant Structural Engineer

The proposal was referred to Council's Consultant Structural Engineer for review of the geotechnical report. No objection has to be raised to the recommendations provided in the Geotechnical report prepared by JKGeotechnics. However, Council's

ITEM 1 (continued)

structural engineer identified an On Site Detention tank located below ground and beneath the proposed garbage room creates potential contamination of stormwater and is not supported. The location of the proposed on site detention tank is required to be amended.

Assessing Officer comment:

The comments provided by Council's Consultant Structural Engineer have been noted. Further to the recommendations provided by Council's Development Engineer regarding the On Site Detention Tank, the proposal has not satisfied relevant stormwater management requirements under the RDCP 2014 and is not supported.

Environmental Health Officer

The first referral to Council's Environmental Health Officer for review identified that the site is suitable for the proposed development and satisfies the matters for consideration relating to contamination of the site under SEPP 55. However, review of other supporting information for the proposal identified insufficient information relating to management of dewatering of sediment laden waters, management of dust during demolition and construction, and preparation of a report by a suitably qualified mechanical engineer demonstrating that the proposed mechanical exhaust system complies with relevant Building Code of Australia and Australian Standard requirements. An acoustic report assessing noise impacts from the mechanical plant on surrounding residential properties was also requested.

The amended information submitted by the applicant was referred to Council's Environmental Health Officer for review. Council's Environmental Health Officer advised that the submission of a dust, sediment and erosion control management plan and an acoustic assessment is considered satisfactory and no objection is raised to the proposal, subject to conditions.

Assessing Officer comment:

Council's Environmental Health Officer's assessment of the site and contamination provisions under SEPP 55, environmental impacts relating to dust, sediment and erosion, and impacts of mechanical ventilation is supported. Notwithstanding this, assessment of the proposal has identified other significant issues relating built form, car parking and landscaping that will have adverse impacts on the character of the area and amenity of surrounding properties, and therefore the proposal is recommended for refusal.

Landscape Architect

The amended proposal was referred to Council's Landscape Architect who reviewed the proposal and advised that insufficient information has been submitted including the following:

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- *The **Landscape Plan** does not match the amended Architectural Plans. An updated Landscape Plan is required.*
- *The only information supplied on the **Vertical Garden** is a general broacher published by Fytogreen. A site specific design is required that as a minimum gives the following information:*
 - *Elevation of building with vertical garden layout*
 - *Growing medium*
 - *Attachment to the building*
 - *Irrigation / reticulation system*
 - *Plant species*
 - *Maintenance. Who is going to maintain the system. How is access to maintain the vertical garden to be achieved.*

Assessing Officer comment:

Council's Landscape Architect assessment that the amended landscape plan is insufficient and cannot be supported in its current form is supported given the visual prominence of the proposed planter boxes and the vertical green wall viewed from the public domain and surrounding properties. As such, insufficient information regarding the landscape plan forms a reason for refusal.

11. Conclusion

After consideration of the development against section 4.15 of the Environmental Planning and Assessment Act 1979, the development application is unable to be supported by Council's Officers for the following reasons:

1. The proposal has a maximum building height of 17.1m and exceeds the building height development standard of 15.5m under Clause 4.3 of the RLEP 2014 with a variation of 10.32%. The applicant has failed to provide an adequate Clause 4.6 written justification demonstrating that compliance with the development standard is unreasonable and unnecessary, and that the variation will not result in any adverse environmental impacts on surrounding properties. The proposed exceedance in building height presents excessive building bulk and scale, and is inconsistent with the desired future character of the local area and will detract from the streetscape.
2. The proposed development is not suitable for the site as the intensification of use requires provision of car parking that have not been satisfactorily provided on the site. The proposal presents a shortfall in car parking of 9

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car spaces which does not satisfy Clause 29(e) of the State Environmental Planning Policy (Affordable Rental Housing) 2009, and Section 2.2 in Part 9.3 of the RDCP 2014.

3. The proposed development does not provide satisfactory waste management facilities and has failed to demonstrate the site is suitable to service the mixed use development under Sections 2.3, 2.7 and 2.9 in Part 7.2 of the RDCP 2014.
4. The proposed development does not present a built form that is consistent with the predominant retail and commercial character of buildings along Victoria Road as the building is not built to the street alignment along the active street frontage boundaries on Victoria Road and its return to Maxim Street. The proposed development does not reinforce the retail and commercial character of the street or enhance pedestrian amenity, and does not satisfy the objectives and provisions under Sections 2.3, 2.5 and 3.0 in Part 4.3 of the RCP 2014.
5. The proposed ground floor level provides insufficient floor to ceiling heights and will not support a range of retail and commercial uses that will contribute to the character of the local area and the West Ryde Town Centre.
6. The proposed development has not satisfactorily demonstrated that the intensification of the use and vehicular traffic will not have any impact on pedestrian safety.
7. The proposed development does not provide a boarding house that is of high quality design and has not sufficiently demonstrated that the amenity of lodgers and adjoining properties will not be adversely affected.
8. The proposed development has failed to satisfactorily address stormwater management in accordance with Part 8.2 of the RDCP 2014.
9. The Plan of Management lodged with the application does not provide adequate information as required under Section 4 in Part 3.5 of the RDCP 2014. The operation of the boarding house has not demonstrated management of the premises will minimise amenity impacts on surrounding properties.
10. The proposed development has not provided sufficient information to demonstrate the built form will not have any adverse overshadowing impacts on adjoining properties or proposed communal open space within the development.

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11. The proposed intensification of the use comprising a 41 boarding rooms, 1 Managers Unit, 1 retail tenancy and 2 levels of car parking for 16 vehicles contained in a 5 storey building is considered an overdevelopment of the site as the design will have adverse environmental and amenity impacts on the locality and surrounding properties.
12. The proposed development is not considered to be in the public interest.

12. Recommendation

Pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979*, the following is recommended:

- A. That the Local Planning Panel refuse the Development Application LDA2019/0325 for the construction of a five (5) storey mixed use building containing a retail tenancy and a 41 room boarding house at No. 964-970 Victoria Road, West Ryde, for the reasons as follows:
 1. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the development does not comply with *Clause 4.3 of the Ryde Local Environmental Plan 2014*, and the Clause 4.6 variation written request does not satisfy *Clause 4.6(3) and (4) of the Ryde Local Environmental Plan 2014* as it has not adequately demonstrated that compliance with the development is unreasonable or unnecessary and there are sufficient environmental planning grounds to justify contravening the development standard. The proposed exceedance in building height and the proportions of the built form are out of character with surrounding developments and does not contribute to the reinforcement of Victoria Road as a precinct for retail and commercial uses.
 2. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the development does not comply with the following provisions of the *State Environmental Planning Policy (Affordable Rental Housing) 2009*:
 - *Clause 29(2)(a)* – Building Height, in that the proposed development exceeds the maximum permitted height under Clause 4.3 of the *Ryde Local Environmental Plan 2014* and will be out of character with the streetscape and desired future character of the local area.
 - *Clause 29(2)(e)* – Parking, in that the proposal does not provide the minimum 21 car parking spaces for the 41 room boarding house and

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1 space for the manager, and will impact on traffic and demand for parking in surrounding streets.

- *Clause 30A* – Character of Local Area, in that the proposed built form, proportions of the building and architectural design does not respond to the desired built form character for the local area and will not contribute to the character of the streetscape, pedestrian amenity and is inconsistent with the desired future character of the West Ryde Town Centre.
 - *Clause 30(d)* - Standards for boarding houses, in that the proposal has not demonstrated that adequate private or communal kitchen facilities or laundry facilities to meet the needs of the lodgers. The proposal does not satisfy Clause 3.6 in Part 3.5 of the RDCP 2014, and will impact on the amenity of occupants.
 - *Clause 30(h)* - Standards for boarding houses, and Clause 2.7 in Part 9.3 of the RDCP 2014, in that the proposal has provided insufficient information to demonstrate that the required number of motorcycle and bicycle parking spaces can be accommodated within the car park levels.
3. 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 3.5 – Boarding Houses

- *Clause 1.3(2), (4), (6) and (7)* – Objectives in that the boarding house does not:
 - provide high quality affordable rental housing in the form of boarding houses;
 - ensure the design and operation would not adversely impact upon the amenity of surrounding properties;
 - enhance the character of the local area and is not compatible with existing or desired future built form in the streetscape; and
 - provide for a satisfactory standard of amenity for the needs of the occupants.
- *Clause 2.1 – Design and Local Area Character* in that the proposed servicing of the site results in a built form with setbacks and blank walls that do not contribute to the character of the public domain and

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amenity of surrounding properties.

- *Clause 2.3(a) – Development subject to provisions of Part 2 of the SEPP (Affordable Rental Housing) 2009* in that the proposed development is not considered compatible with the character of the local area and does not enhance the amenity for pedestrians within the public domain as required under *Clause 2.1 in Part 3.5 and Clause 2.3, 2.5, 3.0 and 4.1 in Part 4.3 of the RDCP 2014*.
- *Clause 2.3 (f) – Size and Scale* in that:
 - the proposal has not demonstrated that there is an acceptable level of solar access has been provided to the adjoining properties;
 - the five storey built form does not present proportions and setbacks that are compatible with the scale of existing and desired future developments particularly along the active street frontage of Victoria Road;
 - the proposed lift overrun and fire stairs adjacent to the eastern elevation exceeds the height of building development standard in *Clause 4.3 of the Ryde Local Environmental Plan 2014*, is visually prominent and has not been integrated into the architectural design or form of the building, particularly as viewed from the intersection of Victoria Road and Maxim Street;
 - the proposal has not adequately demonstrated that on-going maintenance of landscaping of the site will be achieved and the proposed landscape structures will not detract from the appearance of the building and surrounding streetscape; and
 - the proposed intensification of the use requires provision of car parking spaces that have not been incorporated into the architectural plans. The proposed car parking layout and vehicular access has not demonstrated compliance with requirements in *Clause 2.2 in Part 9.2 of the RDCP 2014*;
- *Clause 3.29(c) - Privacy and Amenity* in that the proposal has not adequately demonstrated with a satisfactory Plan of Management that the use of the boarding house, with various communal outdoor open space areas, will not have any adverse amenity impacts on surrounding properties or future occupants.
- *Clause 3.3(a) – Accessibility* in that an Accessibility Report has not been prepared relating to the amended proposal.

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- *Clause 3.4(a) – Waste Minimisation and Management* in that:
 - the proposal does not demonstrated that the waste storage area located in the share zone adjacent to accessible car parking spaces provides satisfactory and safe access for persons with disabilities in *Clause 2.3(g) in Part 7.2 of the Ryde Development Control Plan 2014*;
 - insufficient information has been provided to demonstrate that the garbage storage spaces are located in accessible areas that facilitate easy transfer of bins to and from the collection point required in *Clause 2.3(g) in Part 7.2 of the Ryde Development Control Plan 2014*;
 - the Waste Management Plan is insufficient and does not satisfy the requirements *Clauses 2.3(f) and 2.9(f) in Part 7.2 of the Ryde Development Control Plan 2014*, as the proposal does not demonstrate adequate waste management to meet the needs of the retail use and boarding house;
 - The proposal does not provide any bulky waste storage area within the development required by *Clauses 2.3(c) and 2.7(f) in Part 7.2 of the Ryde Development Control Plan 2014*;
 - The proposal does not provide separate waste storage facilities for the retail tenancy and does not satisfy *Clause 2.9(a), (b) and (e) in Part 7.2 of the Ryde Development Control Plan 2014*, and has not demonstrated the management of retail and residential waste will not conflict;

- *Clause 3.6(e)(i)(c), (d)(iv) – Internal Building Design* in that:
 - The proposal does not identify on the architectural plans the accommodation of up to 2 lodgers in 7 boarding rooms. As the layout of all boarding rooms show the provision of a single bed per room, the proposal has not satisfactorily demonstrated that the proposed occupancy capacity complies with internal amenity requirements.

- *Clause 3.6(e)(ii) and (iii)– Communal Living Room* in that:
 - the combined kitchen and dining living area does not satisfy the minimum required area or provision of adequate cooking appliances, sinks and storage to service a 41 room boarding house; and
 - the proposal does not provide a sufficient Plan of Management to

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demonstrate that the operation of the boarding house will not have adverse amenity impacts on surrounding properties.

- *Clause 3.6(e)(v) – Laundry and Drying Facilities Outside* in that the proposed communal laundry does not satisfy the minimum required internal or outdoor area to facilitate the needs of occupants.
- *Clause 4.1(2) – Objectives* in that:
 - the proposal has not demonstrated that the operation and management of the boarding house will ensure the safety and wellbeing of occupants; and
 - the proposal has not demonstrated that the operation will be managed in a manner that minimises amenity impacts on adjoining properties.
- *Clause 4.2 (a) to (b) – Management* in that the Plan of Management fails to provide the following information:
 - the plan is not consistent with the plans and documentation provided;
 - the plan contains insufficient details relating to definitions of loud music and noise;
 - the plan contains insufficient details relating to allocation and management of car parking spaces, motorcycle spaces and bicycle spaces;
 - the plan does not contain sufficient information to demonstrate the management of occupants in communal and private open spaces to ensure that the use does not result in adverse amenity impacts on surrounding properties and lodgers;
 - insufficient details are provided on emergency evacuation training; and
 - the plan contains insufficient detail relating to the on-going care and management of landscaping within the development.

Part 4.3 – West Ryde Town Centre

- *Clause 2.1(4), (5), (6), (8) (13)– Objectives* in that:
 - the proposal is consistent with the desired bulk and scale for new developments within the Town Centre as the proportions of the building are out of character with existing and desired retail and commercial uses;

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- The proposed built form does not enhance the character of the retail and commercial core as the ground floor is consistent with the established zero building setback along Victoria Road and does not enhance pedestrian amenity along active street frontage; and
- The proposed car park and vehicular access design does not demonstrate compliance with relevant Australian Standards and requirements in *Part 9.3 of the RDCP 2014*, for provision of safe car parking.
- *Clause 2.5 – Key Town Centre Principles* in that:
 - The proposed built form is inconsistent with the principles for pedestrian safety and amenity and does not define the street along Victoria Road to contribute to street activation in *Clause 2.5.2(1), (3), (4) and (5) – Pedestrian Circulation, Clause 2.5.4(2) – Retail and Employment Areas*,
 - The proposed built form is excessive and out of character with existing and desired future developments in the Town Centre and does not provide an appropriate transition between the Town Centre and surrounding residential areas in *Clause 2.5.5(3)*.
- *Clause 3.0 – General Development Controls* in that:
 - The proposal does not satisfy the requirements for built form, particularly building height and proportions is consistent with the height of building development standard under *Clause 4.3 of the Ryde Local Environmental Plan 2014* and the objectives and controls in *Clause 3.3.1(1), (a), (c)(i) and (ii), (d), (e) and (f)*.
 - The proposed floor to ceiling height of the ground floor does not provide flexibility and adaptability of the non-residential use for a range of retail and commercial uses that complement the character of the Town Centre. The proposal does not satisfy the objectives in *Clause 3.1.4(1), (3), (4), (8) and (9) – Urban Design* and the provisions for built form in *Clause 3.1.4(a) and (c)*; objectives for active street frontages and street address in *Clause 3.1.6(1) to (6)* and provisions in *Clause 3.1.6(a) to (d)*.
 - The proposed building bulk does not demonstrate satisfactorily

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articulation and architectural features that provide visual interest and contribute to the character of the streetscape and Town Centre required in *Clause 3.1.2(3) and (5)*. In particular, the proposed development does not include an awning along Victoria road and is inconsistent with the built form and pedestrian amenity provided by immediately adjoining developments as required in *Clause 3.1.7(a) to (d)*.

- The proposal provides setbacks to the northern and eastern boundaries and does not contribute to the existing and desired character of the street and is not appropriate for the corner site. The proposal does not satisfy the objectives in *Clause 3.1.3(1), (2), (4), (5) and (7)* and provisions in *Clause 3.1.3(a) to (d)*.

Part 8.2 – Stormwater and Floodplain Management

- *Clause 1.3 – Objectives* in that insufficient information has been provided to demonstrate the proposed stormwater management plan is safe, will not have any adverse impacts to adjoining properties and public safety, and minimises property damage.

Part 9.3 – Parking Controls

- *Clause 1.1(1), (2), (4) and – Objectives* in that:
 - insufficient car parking provisions and vehicular access will impact on traffic flow and parking in surrounding streets;
 - the proposal has not adequately addressed the impact of traffic in the surrounding streets and pedestrian safety;
 - the proposed design of car parking vehicular access ramps do not demonstrate safety for vehicles, pedestrian and cyclists within the car park;
 - insufficient information has been provided to demonstrate that the proposal will accommodate vehicles exiting the site in a forward direction, particularly from the accessible car parking spaces; and
 - the proposal has failed to demonstrate that the intensification of the site will not have additional traffic, parking and pedestrian safety impacts on surrounding properties.
- *Clause 2.2 – Residential Land Uses* in that insufficient car parking spaces are provided and the proposal does not satisfy the minimum car parking requirements in *Clause 29(e) of the SEPP (Affordable Rental Housing) 2009*.

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4. *Section 4.15(1)(b) and (c) of the Environmental Planning and Assessment Act 1979 and Section 50(1)(a) and Schedule 1 of the Environmental Planning Assessment Regulations 2000*, the proposal includes insufficient information and does not enable a proper assessment to determine the likely impacts of the proposal and the suitability of the site.
5. Pursuant to *Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979*, the development is not in the public interest because it fails to achieve the objectives and requirements of the applicable environmental planning instruments.

B. That the objectors be advised of the decision.

ATTACHMENTS

- 1 Clause 4.6 variation
- 2 Architectural & Landscape Plans - subject to copyright provisions
- 3 Stormwater Plans - subject to copyright provisions

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Clause 4.6 variation - Exception to Development Standards

Property: 964-970 Victoria Road, West Ryde.

Development: Demolition of all existing improvements and structures, construction of a multi storey building with basement car parking levels, new food and drink premises and use for Affordable Rental Housing (Boarding House).

Introduction

Clause 4.1B(2)(b) of Ryde Local Environmental Plan 2014 (RLEP 14) allows Council to permit consent for development even though the proposal seeks a dispensation from a development standard imposed by RLEP 14.

Clause 4.6 requires that a consent authority may be satisfied of three matters before granting consent to a development that contravenes a development standard in RLEP 14:

- The applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- The applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- 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.

Assistance on the approach to justifying a contravention to a development standard is taken from legal decisions of the Land and Environment Court of NSW in the following cases:

1. Wehbe v Pittwater Council [2007] NSWLEC 827;
2. Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;
3. Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386; and
4. Moskovich v Waverley Council [2016] NSWLEC 1015.

With respect to the matters above, this Clause 4.6 request outlines the departure sought to the Height of buildings control and establishes that compliance with this development standard is unreasonable and unnecessary in the circumstances.

It also demonstrates that there are enough environmental planning grounds to justify the contravention and provides an assessment of the matters the Council is required to consider in the development assessment process.

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The Development Standard to be Varied

The development standard that is sought to be varied as part of this application is Clause 4.3 of RLEP 14, relating to the Height of buildings, and reads:

4.3 Height of buildings

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

- (a) *to ensure that street frontages of development are in proportion with and in keeping with the character of nearby development,*
- (b) *to minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area,*
- (c) *to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure,*
- (d) *to minimise the impact of development on the amenity of surrounding properties,*
- (e) *to emphasise road frontages along road corridors.*

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The Height of Buildings Map prescribes a 15.5m control for the site.

The Proposed Variation

RLEP 14 requirement	Subject site	Variation
15.5 metres	North/Western elevation (topmost ceiling level/roof section).	Maximum 0.3 metres.
	Lift overrun and access stairwell for the roof top common deck.	Maximum 1.6 metres.

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Justification for Contravention of the Development Standard

Clause 4.6 of RLEP 14 states:

- (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.*
- (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*

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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).*

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court and the NSW Court of Appeal in:

- *Wehbe v Pittwater Council [2007] NSW LEC 827; and*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009.*

The relevant matters contained in Clause 4.6 of the RLEP 14, with respect to the Height of building control development standard, are each addressed below, including with regard to these decisions.

Clause 4.6(3)(a): Compliance with the development standard is unreasonable and/or unnecessary in the circumstances of the particular case

In *Wehbe*, Preston CJ of the Land and Environment Court provided some assistance by outlining five main ways in which a variation to a development standard had been shown as unreasonable or unnecessary.

While *Wehbe* related to objections made pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]). As the language used in subclause 4.6(3)(a) of the SLEP 12 is the same as the language used in Clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 variation request.

The five methods outlined in *Wehbe* include:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method).
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Method).

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3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method).
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 (Fourth Method).
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 (Fifth Method).

The 'First Way' is of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary.

The following section addresses the matters in clause 4.3, in particular how the objectives of the Height of building control are achieved notwithstanding the non-compliance with the numerical control.

The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method)

The first method, demonstrating that the objectives of the Height of building control can be achieved.

The first exceedance is the north/western elevation building element and relates to the topmost ceiling level/roof section where there is an exceedance by 300mm due to the site's topography.

The façade/ceiling line could technically be shaped or redefined to follow the height of building line projection; however, this treatment would create imbalance with the overall shape and geometry of the building. The exceedance provides:

- better architectural geometry, and
- better architectural outcome.

The second exceedance is the lift overrun and access stairwell for the roof top common deck and exceeds the height by 400mm to 1600mm for the east elevation only due to the topography of the site and the architect's vision.

The lift overrun and access stairwell is viewed as an integral architectural feature and provides:

- better amenity,
- better accessibility access for all occupiers,
- an anti-discriminatory design (noting that access to the topmost floor is not needed under the National Construction Code as not all common areas require access), and

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- future WH &S considerations for roof maintenance.

The non-compliance of 300mm to 1600mm should not be a reason for refusal on merit.

The objectives of Clause 4.3 are:

- a. to ensure that street frontages of development are in proportion with and in keeping with the character of nearby development,*

Assessment:

The overall built form, geometry and architectural design is consistent with the current and future character of development occurring in the West Ryde Town Centre.

An active street frontage is stimulated by inclusion of a food and drink premises at the ground floor.

The lift overrun would not be noticeable and is a common feature for similar sized developments.

- b. to minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area,*

Assessment:

The proposal will not adversely impact on the amenity of adjoining properties by way of overshadowing.

The architectural presentation of the new building will improve the appearance of the area and is consistent with current trends and scale of re-development.

- c. to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure,*

Assessment:

The development of the site does not require consolidation with any adjoining properties and its location within the West Ryde commercial precinct (West Ryde Town Centre) and 180 metres walking distance to West Ryde Railway Station meets Council's forward planning guidelines.

- d. to minimise the impact of development on the amenity of surrounding properties,*

Assessment:

The noncompliance does not affect amenity of surrounding properties as the north/western elevation building envelope is a modern form of architecture with vertical and horizontal elements.

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Strict compliance with the standard would mean that any design changes to make the roof and facade compliant with the projection of the height of building control versus the NGL at the intersection of the wall would create imbalance with the overall shape and geometry of the building. This would result in a poorer architectural outcome and an architect should be allowed some degree of flexibility to be applied to maintain architectural form.

The non-compliance does not affect the building bulk and scale as foreseen by the architect and the outlook is appropriate for the area.

The lift overrun/stairwell is marginal in the scheme of the overall external height of the building when viewed from the eastern elevation (Maxim Street).

From this end, the building would not result in any additional bulk connotations given the vertical definition and incorporation of the lift overrun/stairwell is at the point where the floor plate is staggered and integrated as an architectural feature.

Under the National Construction Code not all common areas are to be accessible and removal of the roof top common open space would be disadvantageous for those who have accessible needs.

Strict compliance with the standard would mean removing access to the roof top common open space and this would significantly reduce the overall amenity of the building, particularly when the role of an architect is to improve it.

e. to emphasise road frontages along road corridors.

Assessment:

The building design offers a positive contribution to both street frontages and given the sites frontage to Victoria Road (a defined road corridor), the building is compliant with the Height of building control.

As discussed above, from the Maxim Street frontage, the additional bulk connotations would not be perceived given the vertical integration.

Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard

There are sufficient environmental planning grounds to justify a flexible approach to the application of the Height of building as it applies to the site.

Conclusion on Clause 4.6(3)(b)

In light of the above it is considered that there are no environmental planning grounds that warrant maintaining and/or enforcing the Height of building standard.

If the control was to be enforced, the architectural design would be of an inferior quality and the roof top common open space could be removed under the National Construction Code and would discriminate persons with accessibility needs and offer poorer amenity.

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There are clear and justifiable environmental planning merits which justify the application of flexibility allowed by Clause 4.6.

Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard

Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the Height of building development standard, for the reasons discussed earlier in this report.

Consistency with objectives of the zone

The subject site is zoned B4 Mixed Use under Ryde Local Environmental Plan 2014.

Assessment:

The development proposal satisfies the objectives of Ryde Local Environmental Plan 2014 whereby the Boarding House is a permissible form of development.

Due to increasing costs of land in the Ryde area, this type of development is in strong demand and is needed to provide additional accommodation at a reasonable cost for patrons visiting Macquarie University/Macquarie Park.

The site is also in an accessible location and future lodgers can support local businesses at the same instance and the proposal will complement and support the existing established commercial centre.

No unreasonable impacts are associated with the proposed variation.

Therefore, the proposal does not result in any circumstance that would be contrary to those objectives.

The development proposal satisfies the objectives of RLEP 14.

Secretary Concurrence

Under Clause 4.6(5), in deciding whether to grant concurrence, the Secretary must consider the following matters:

- (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.*

These matters are addressed in detail below.

Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

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The variation does not raise any matter of significance for State or regional planning.

The variation allows for the orderly and economic use of land as envisaged by the Environmental Planning and Assessment Act, 1979.

There are no detrimental impacts on amenity and environmental impacts to neighbours.

The architectural presentation is site responsive and meets the desired future local character.

The variation to the standard will not undermine the legitimacy or future standing of the RLEP 14 controls.

Clause 4.6(5)(b): The public benefit of maintaining the development standard

The non-compliance is insignificant in nature.

There is no public benefit in maintaining the control.

Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Secretary before granting concurrence.

None.

Note, pursuant to the Notification of assumed concurrence of the Director-General under clause 4.6(4) (and the former clause 24(4)) of the Standard Instrument contained in Planning Circular PS 08-003 (dated 9 May 2008), the concurrence of the Director-General under clause 4.6(4)(b) may be assumed to the granting of development consent to the development that contravenes the development standards.

Conclusion

For reasons mentioned herein, the proposed development satisfies the provisions of Clauses 4.6(3) and (4) of RLEP 14 despite the 2 building elements that exceed the height of building control.

The first exceedance is the north/western elevation building envelope and relates to the topmost ceiling level/roof section where there is an exceedance by 300mm due to the site's topography and projection of the vertical and horizontal building elements to the commercial zero lot building line.

The façade/ceiling line could technically be shaped or redefined to follow the height of building line projection; however, this treatment would create imbalance with the overall shape and geometry of the building and impact on the future Victoria Street streetscape by introducing an unconventional architectural style.

The slight exceedance of 300mm provides:

- better architectural geometry, and
- better architectural outcome.

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The second exceedance is the lift overrun and access stairwell for the roof top common deck and exceeds the height by 400mm to 1600mm for the east elevation only due to the topography of the site and the architect's vision.

The architect's intent is to maximise amenity for all lodgers and not to be inequitable for those of accessibility needs.

The lift overrun and access stairwell is viewed as an integral architectural feature and provides:

- better amenity,
- better accessibility access for all lodgers,
- an all-inclusive/anti-discriminatory design (noting that access to the topmost floor is not needed under the National Construction Code as not all common areas require access), and
- future WH &S considerations for roof maintenance.

The land is suitable to accommodate the boarding house and no unreasonable environmental impacts are introduced as a result of the proposal.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

There are sufficient environmental planning grounds to justify contravening the development standard.

There is no public benefit in maintaining strict compliance with the standards.

The proposed development is in the public interest.

The objective of better amenity is achieved despite noncompliance with the standard itself.

This Clause 4.6 variation is forwarded to Council in support of the development proposal and this request be looked upon favourably by Council.

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Dated: 25 February 2020

There are no LPP Planning Proposals