

Meeting Date: Thursday 15 April 2021
Location: 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 APPLICATIONS

- | | | |
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| 1 | 19-21 Myra Avenue, Ryde - New multi dwelling housing development containing 5 dwellings (2 x 5 bed and 3 x 3 bed) as well as strata subdivision - LDA2020/0185 | 3 |
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DEVELOPMENT APPLICATION

- 1 19-21 Myra Avenue, Ryde - New multi dwelling housing development containing 5 dwellings (2 x 5 bed and 3 x 3 bed) as well as strata subdivision - LDA2020/0185**

Report prepared by: Creative Planning Solutions

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

File Number: GRP/09/6/12/1/2 - BP21/282

City of Ryde Local Planning Panel Report

DA Number	LDA2020/0185
Site Address & Ward	19-21 Myra Avenue, Ryde NSW 2112 Lot A Deposited Plan 408670 and Lot 11 Deposited Plan 12555 Central Ward
Zoning	R2 Low Density Residential
Proposal	New multi dwelling housing development containing 5 dwellings (2 x 5 bed and 3 x 3 bed) as well as strata subdivision.
Property Owners	Robert De Nicola and Patricia De Nicola
Applicant	Robert De Nicola and Patricia De Nicola
Report Author	Brendon Clendenning, Consultant Planner
Lodgement Date	29 May 2020
No. of Submissions	Seven (7) submissions and a petition during first notification. Four (4) submissions and a petition during second notification.
Cost of Works	\$2,476,320.00
Reason for Referral to LPP	Contentious development – (b) in any other case – is the subject of 10 or more unique submissions by way of objection. <i>Schedule 1, Part 2 of Local Planning Panels Direction</i>

ITEM 1 (continued)

Recommendation	Refusal
Attachments	Attachment 1 – LEP & DCP Compliance Tables Attachment 2 – Plans submitted with the DA

1. Executive Summary

The subject development application (LDA2020/0185) was lodged on 29 May 2020 and seeks consent for a new multi dwelling housing development containing 5 dwellings (2 x 5 bed and 3 x 3 bed), as well as strata subdivision.

A previous development application (DA), also for multi dwelling housing, with some similarities to that currently being proposed on the site, was refused by Council on 19 November 2018.

In accordance with the *Environmental Planning and Assessment Act 1979* (“the Act”), Section 9.1 – Directions by the Minister, this application is reported to the Ryde Local Planning Panel for determination as it is a contentious development. The DA has received in excess of ten (10) submissions objecting to the development.

The application was advertised, and the amended proposal renotified in accordance with the provisions of the *Ryde Community Participation Plan*. In response, seven (7) submissions and a petition with nineteen (19) signatures was received during the first notification and four (4) submissions and a petition with thirty (30) names was received during the renotification, all objecting to the development.

The proposal has been assessed in accordance with the relevant matters for consideration under Section 4.15 of the Act. The proposal land use, multi dwelling housing is now prohibited form of the development with R2 Low Density Residential zone. Amendment 28 to Ryde Local Environmental Plan 2014 (RLEP) was gazetted on 5 March 2021, which prohibits multi dwelling housing within R2 zoned land. Clause 1.8A of RLEP provides savings and transitional provisions. The application was lodged on 29 May 2020, at which time multi dwelling housing was a permissible form of development within the R2 zone. The proposal is a permissible form of development.

The application is supported by insufficient information to ascertain the flooding impacts from the proposed development and is contrary to Clause 6.3 Flood Planning of RLEP. The proposal has not demonstrated it is compatible with the flood hazard and will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affection of other development or properties. Therefore, it cannot be determined whether the proposal is suitable for the site.

The proposal also includes insufficient information to demonstrate compliance with required solar access, and the vehicular manoeuvring controls contained within the

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RDCP 2014. For these reasons approval of the DA would not be contrary to the public interest.

The additional information needed to carry out a proper assessment of the DA has been the subject of multiple requests for information dating back to August 2020. Council considers the applicant has failed to provide the requested information within a reasonable period, and has now decided the DA should be determined accordingly.

For these reasons, the DA is recommended for refusal.

2. The Site and Locality

The site at 19 and 21 Myra Avenue, Ryde comprises of two allotments legally described as Lot A in DP 408670 and Lot 11 in DP 12555. The site is rectangular in shape, with a total area of 2,372m², and a front boundary to Myra Avenue of 30.48m.

The site is located on the eastern side of Myra Avenue and experiences a rise of approximately 2.82m from the south-western corner of the street frontage (RL46.57) to the north-eastern corner of the site (RL49.39). The site also contains a small depression that crosses the front third of the two allotments, falling to approximately RL45.98.

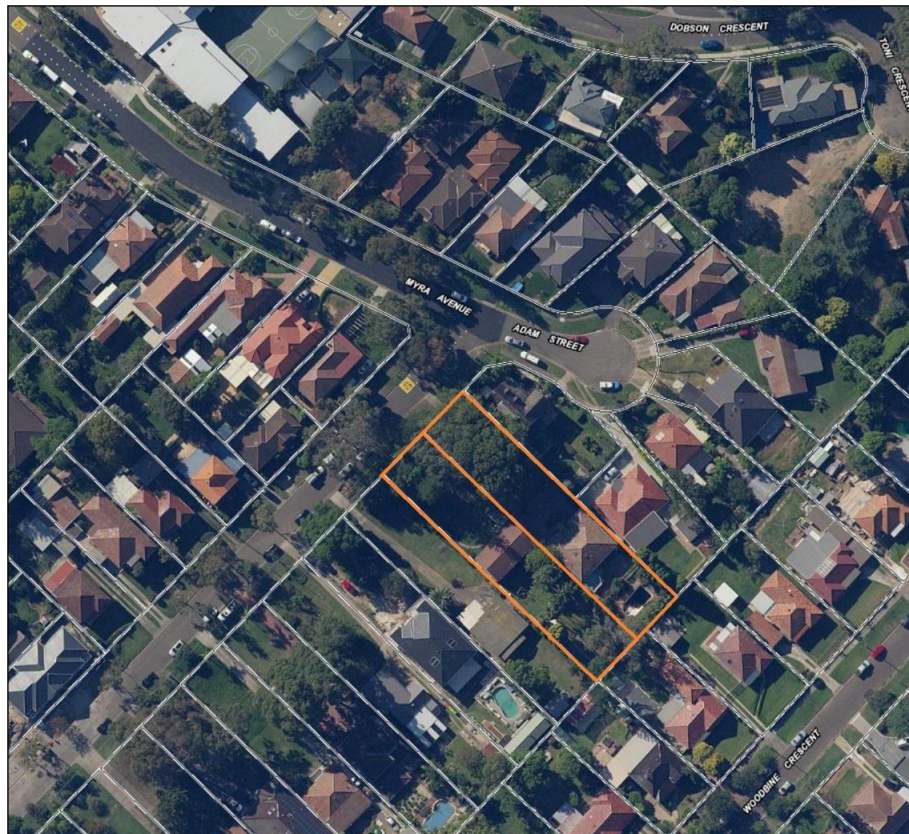


Figure 1 Aerial photograph of the site and locality.

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The site accommodates two detached dwellings and associated outbuildings.

No. 19 Myra Avenue, accommodates a detached dwelling (**Figure 3**), two separate free-standing carports and a swimming pool. Owing to the location of stormwater and sewer pipelines which traverses the site within the front setback area, the carports are setback approximately 27m from the front boundary while the dwelling is setback approximately 45m from the front boundary.

No. 21 Myra Avenue (**Figure 4**) accommodates a detached dwelling, carport and shed. Similar to No. 19, the front setback area accommodates stormwater and sewer pipelines which results in the carport being setback approximately 26m from the front boundary while the dwelling is setback approximately 34m from the front boundary. The front of the site (between the carports and the front boundary) is heavily vegetated and predominantly consists 13 mature Liquid Amber trees interspersed with smaller tree and shrub species (**Figure 2 and 3**).



Figure 2 Nos. 19 and 21 Myra Avenue, as viewed from street during spring with tree foliage



Figure 3 No. 19 Myra Avenue, as viewed from streetscape during winter

ITEM 1 (continued)



Figure 4 No. 21 Myra Avenue as viewed from streetscape

An existing stormwater pipe and sewer line traverse the site (**Figure 5**) resulting in the siting of the existing buildings. The eastern side of Myra Avenue contains allotments which have established front setbacks of between 30m to 40m as a result of the pipes.

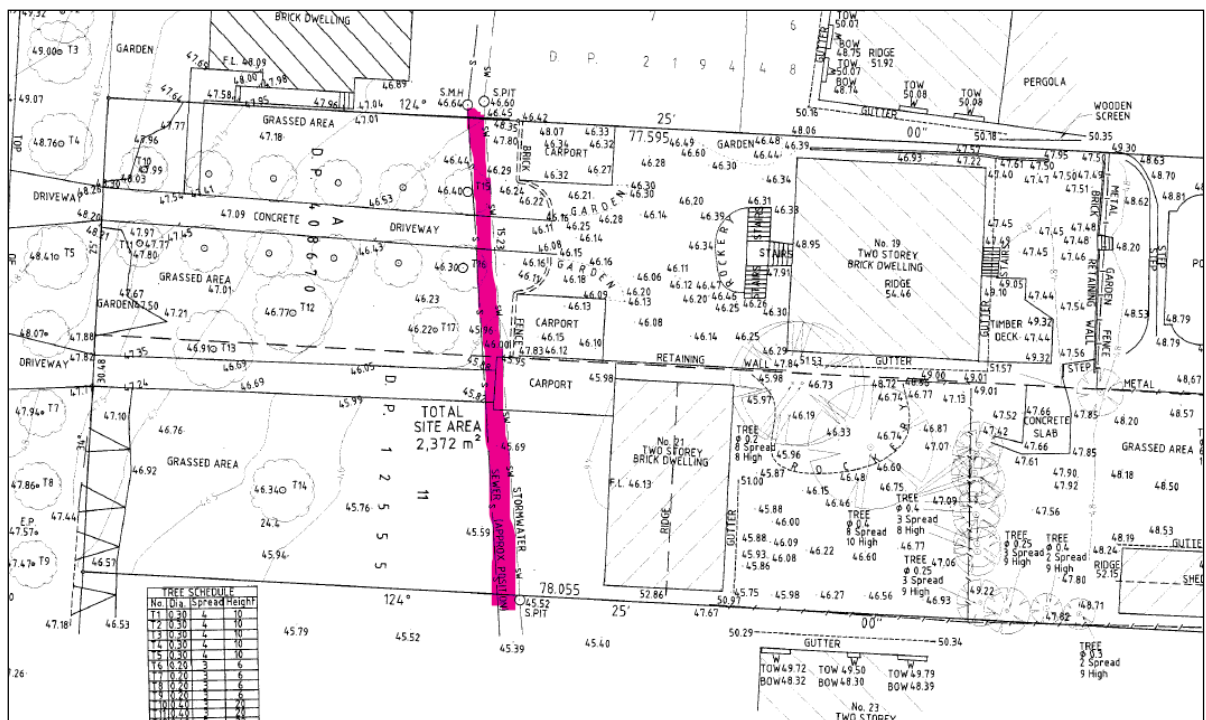


Figure 5 Survey of site showing existing stormwater pipe and sewer

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The adjoining property to the north is located on the corner of Myra Avenue and Adam Street. The property is known as No.17 Myra Avenue (**Figure 6**) and No.2 Adam Street and is a battle-axe subdivision with each lot containing a two-storey brick dwelling house.

The adjoining allotment to the south is No.23 Myra Avenue (**Figure 6**), comprising a single storey dwelling house. To the east (rear) of the subject site is Nos.30 and 32 Woodbine Crescent which both comprise of two-storey brick dwelling houses with detached single garages.

On the opposite side of Myra Avenue to the west is No.12 Myra Avenue which comprises a two-storey brick dwelling house with an attached single carport.

The local area mostly consists of original single and two-storey dwelling houses, with some newer development intermixed. Some examples of allotments containing multiple dwellings are evident.



Figure 6 Adjoining dwelling to north, No. 17 Myra Avenue

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Figure 7 Adjoining property to the south, No. 23 Myra Avenue

3. The Proposal

The proposal seeks consent for the construction of a multi dwelling housing development comprising of 5 dwellings – 2 x 5-bedroom dwellings and 3 x 3-bedroom dwellings, with strata subdivision. The layout of the proposed dwelling is shown in **Figure 8**.

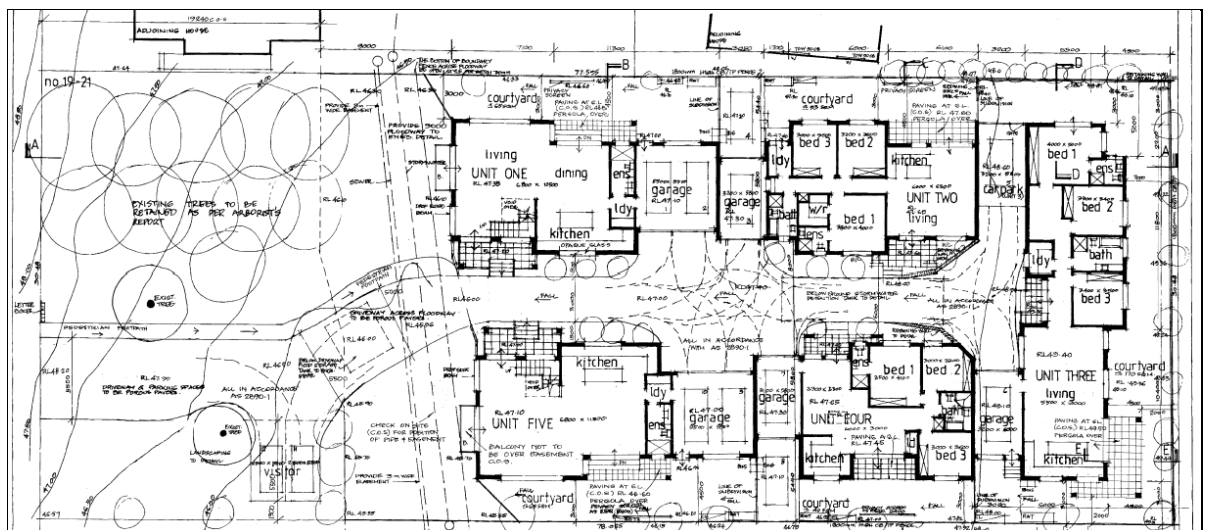


Figure 8 Proposed ground floor plan

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Details of the proposed development are as follows:

Unit 1 and Unit 5

Unit 1 and Unit 5 are two storey dwellings, which despite being setback more than 25m from Myra Avenue, are provided with frontages facing the street. The dwellings are mirror images of one another, although Unit 5 is provided with a slightly larger front setback than Unit 1.

Unit 1 is located on the north-east side of the site and Unit 5 on the south-west side. Each dwelling is accessed off the internal driveway with the ground floor areas each occupied by kitchen, living, and dining areas, and containing an ensuite and laundry. An attached double garage adjoins each dwelling to the rear.

The first floor of these dwellings each contain five bedrooms, a retreat, and a bathroom. Ensuited and walk in robes are also provided to the master bedrooms.

Private courtyards are located between the dwelling and the respective side boundary at ground level, with a pergola located over the area adjacent to the dining room door which connects the internal and external areas.

Unit 2 and Unit 4

Unit 2 and Unit 4 are each attached, via single garages, to the double garages of Unit 1 and Unit 5 in front. Unit 2 is located on the north-east side of the site and Unit 4 on the south-west side.

These dwellings are each arranged centrally amongst the other dwellings, but are not mirror images of one another. Both dwellings are single storey only and contain 3 bedrooms. However, the living areas of Unit 2 are provided towards the rear boundary, whereas the living areas of Unit 4 are located towards the front boundary.

Private courtyards are located between the dwelling and the respective side boundary, with a pergola located over the area adjacent to the door which connects the internal and external areas.

Unit 3

Unit 3 is located parallel to the rear boundary, stretching across the site, behind the aforementioned dwellings in the development. A single parking space is located at either end of the dwelling, providing points of attachment to Unit 2 and Unit 4. Living areas are located in the southern end of the property, with 3 bedrooms, a bathroom, ensuite and laundry, all located towards the northern end. A 170sqm private open space area wraps around the rear and sides of the dwelling.

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4. Background

The same applicant for the subject DA previously sought consent for a multi dwelling housing development. Development Application LDA2017/0287 proposed a similar dwelling arrangement to that under the current DA, however proposed a total of 7 dwellings (**Figure 9**).

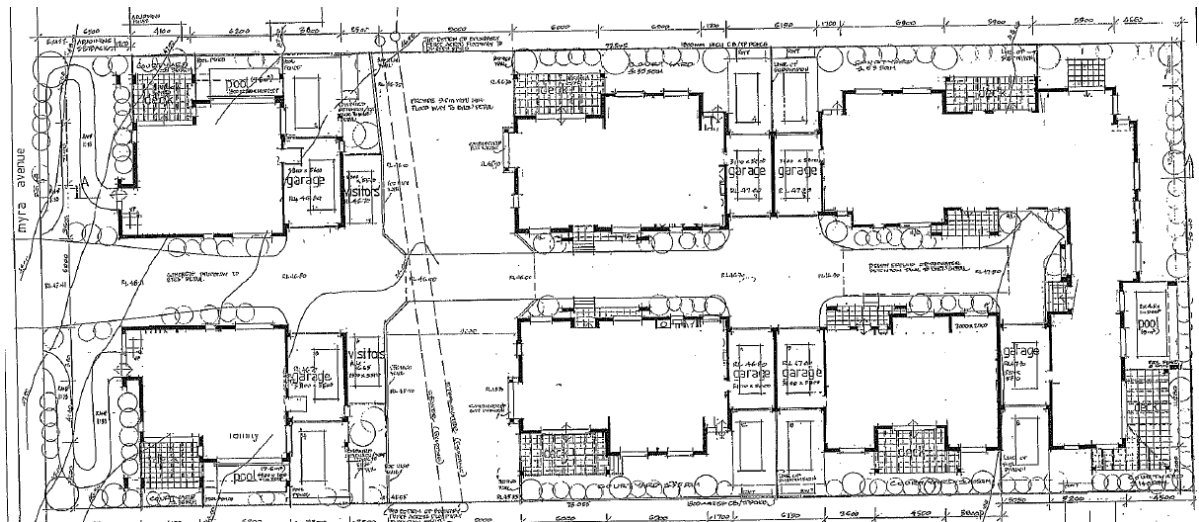


Figure 9 Site plan of seven (7) dwellings proposed under LDA2017/0287

The application was refused, in summary for the following reasons:

- Insufficient information including plans to AHD, elevation of ramps to proposed dwelling, fencing details, cut and fill, sections, shadow diagrams, insufficient survey information, inconsistencies with landscape plan and materials and finishes not being shown.
- The site is within a non preferred location and is flood affected. The proposal had not been supported by a satisfactory flood report.
- The proposal was not considered complementary to the existing streetscape. The proposed front setback was inconsistent with the streetscape.
- The proposed altering of levels across the site resulting in privacy impacts.
- Non compliance with site coverage requirement.
- The proposed internal, side and rear setbacks being non compliant and creating overlooking opportunities.
- The proposed removal of vegetation within the front setback, which contributed to the character of the local area.
- The proposal not being designed with for people with disability, given the number of dwellings proposed.
- No communal bin enclosure.
- Non compliance with Part 9.3 of RDCP in regards to width of visitor parking spaces and internal driveway enabling two vehicles to pass each other.

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One of the key reasons for refusal of LDA2017/0287 on 19 November 2018, amongst the other reasons identified above, was the applicant failing to provide Council's requested additional information, notably a flood report satisfying all of the requirements within Part 8.2 of the *Ryde Development Control Plan 2014* (RDCP 2014). The flood report included with the DA by StormCivil was deemed unsatisfactory by both Council's Development Engineers and the City Works and Infrastructure (Drainage) Officers for the following reasons:

- Inadequate pre and post-development flood modelling.
- Inadequate depth and velocity reporting for the 100yr ARI storm event in accordance with Part 8.2 of the RDCP,
- Insufficient existing survey spot levels to accurately define the existing flood cross-sections.
- Council had requested StormCivil calibrate their flood model against the Buffalo & Kitty Creek model, however this had not been undertaken.
- The site is subjected to unsafe velocity and flow depth conditions across a number of cross-sections.
- Evacuation and access for emergency vehicles to the rear units is not possible in the 100yr ARI and PMF flood events.

A Section 8.3 review of LDA2017/0287 was lodged by the applicant on 18 April 2019, some 5 months after the DA determination. However, given the applicant had left Council insufficient time to carry out and complete the review within the prescribed 6 month timeframe, the Section 8.3 application was withdrawn.

A summarised history of the current DA is contained within the table below:

29 May 2020	The DA was lodged with Council. The development sought consent for six (6) dwellings (Figure 10).
9 June 2020	Notification were letters sent, with submissions closing on 9 July 2020. In response, seven (7) submissions and a petition were received, all objecting to the development. The petition with a total of nineteen (19) signatures.
25 August 2020	A request for information (RFI) was sent to the applicant. Issues outlined within the RFI related to: <ul style="list-style-type: none"> • Insufficient information to demonstrate the development minimises flood risk to property and life and ensuring the proposal is compatible with the flood hazard to ensure no resultant impacts upon flood behaviour. Amended flooding and stormwater information was requested. • Front Setback, Streetscape Character/Landscaping. It was recommended the front dwelling be deleted. • Fill/Visual Privacy impacts • Pedestrian Access throughout the site

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	<ul style="list-style-type: none"> • A communal bin enclosure was required, as the development exceeded five (5) dwellings. • Vehicle Access and Parking being non compliant with AS2890.1 in terms of size, required passing bay and swept path analysis. • Lack of information relating to shadow diagrams and location of neighbouring buildings
16 September 2020	Council held a meeting with the town planning consultant, engineer, architect and owner to discuss the RFI.
21 September 2020	The applicant provided a concept plans in response to the issues relating to the front setback and streetscape concerns. The concept still proposed six (6) dwellings, but the dwelling adjacent to Myra Avenue has been setback 8 metres, rather than 6.5 metres.
30 September 2020	The applicant was advised Council was not willing to support six (6) dwellings on site given the resultant front setback of 8m. There is an established front setback of 30 – 40m along the eastern side of Myra Avenue. The provision of two (2) driveways and hard stand parking within the front setback was also not supported.
19 October 2020	First amended application package submitted by the applicant which included amended architectural plans, landscape plan, stormwater plans and flood report. The dwelling within the front setback was deleted as part of this amendment.
10 November 2020	<p>The second RFI was sent to the applicant.</p> <p>Aside from the applicant's deletion of the front dwelling, the majority of the issues persisted and were reiterated within the letter. Council requested further changes within the front setback, noting that 3 visitor parking spaces were provided, despite only 2 being required by the RDCP 2014. The third space was located only 6m from the front boundary and the RFI had indicated that this would not be supported, given the incongruity of this arrangement in Myra Avenue.</p>
23 December 2020	<p>Second amended application package submitted by the applicant including architectural plans and stormwater documents.</p> <p>The design changes included the provision of a pedestrian path, and some reduction in finished levels to address issues</p>

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	related to privacy. A window to Unit 2 was amended to a highlight window to address internal privacy concerns.
13 January 2021 – 3 February 2021	<p>The amended proposal was renotified.</p> <p>In response to the second notification period, four (4) submissions were received. A petition with thirty (30) signatures was also received.</p> <p>The combined first and second notifications result in a total of eleven (11) unique submissions, meaning the DA constitutes 'contentious development' under Schedule 1, Part 2 of Local Planning Panels Direction necessitating determination of the DA by the Ryde LPP.</p>
8 February 2021	A third RFI letter was sent to the applicant. This letter reiterated that issues from the first RFI remained outstanding and needed to be addressed before the DA could be supported.
17 February 2021	<p>The applicant requested a six (6) week extension to submit the requested information.</p> <p>Council advised it was unable to grant the extension of 6 weeks. Given the age of the application (263 days) and the numerous requests for the same information and Council needing to report the application to the RLPP for determination the timeframe could not be supported. It was recommended the application be withdrawn. The applicant was advised, Council will be proceeding to report the matter to the April planning panel for determination if the application is not withdrawn.</p>
22 February 2021	<p>Third amended application package submitted by the applicant. The plans were amended to delete the front visitor parking space, and further changes to courtyard levels to address issues related to privacy. The window to Unit 2 was shown to be treated with obscure glazing, to address internal privacy concerns.</p> <p>The final resubmission package also contained a letter from a new consultant flood engineer (Capital Engineering Consultants) indicating Council's long-stated issues with regard to flood modelling were understood, and were able to be addressed in the future.</p> <p>Pursuant to Clause 54 of the <i>Environmental Planning and Assessment Regulation 2000</i>, the applicant has failed to</p>

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provide the RFI within a reasonable time period, and Council has decided to have the DA determined accordingly.

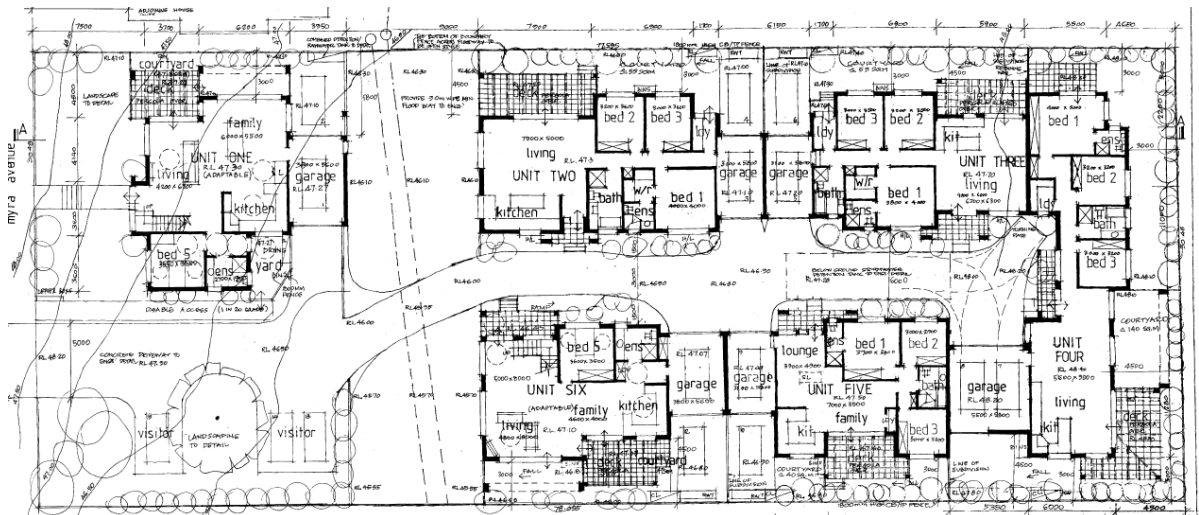


Figure 10 Proposal original submitted under LDA2020/185 including six (6) dwellings

5. Planning Assessment

5.1 State Environmental Planning Instruments

State Environmental Planning Policy No. 55 – Remediation of Land

Clause 7 of State Environmental Planning Policy No. 55 – Remediation of land (SEPP 55) requires Council to consider whether the site is contaminated, and if so whether it is suitable for the proposed development.

A contamination assessment has not been submitted with this application; however, a review of the site history indicates that the land has been used for residential purposes for an extended period of time. Such a use is not typically associated with activities that would result in the contamination. Furthermore, the submitted documentation does not provide any information which suggests that the site may be contaminated.

With consideration to the above, it is unlikely that the site is contaminated, and the site would therefore be suitable for the continued use as residential accommodation.

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

In accordance with Clause 6(1) of this SEPP, BASIX applies to BASIX affected development which includes a building that contains one or more dwellings.

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BASIX Certificate 830210M_04, dated 18 October 2020 had accompanied the first and second set of amended plans which reduced the number of dwellings and parking. The proposal had achieved compliant project scores as follows:

Project Score		
Water	41	(Target 40)
Thermal Comfort	Pass	(Target Pass)
Energy	51	(Target 50)

An amended BASIX certificate was not required with the final package, given the minor nature of the changes to the design of the proposed dwellings.

Were the application recommended for approval, compliance with the commitments in this BASIX Certificate would have featured as a condition of consent.

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

The objectives of this SEPP are to protect biodiversity values and amenity, through the preservation of trees and other vegetation.

Council's Consultant Landscape Architect had raised initial concerns with the impact of the proposal on the landscape setting toward the front of the property. However, upon receipt of the final set of amended plans, updated referral comments were provided which indicated that with the retention of the large established *Liquidambar* trees at the front of the property, the proposal satisfies the objectives of the Ryde Tree Management Policy, Ryde Tree Management Plan and Part 9.5 Tree Preservation of the RDCP.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The deemed SEPP applies to the whole of the Ryde Local Government Area. The aims are to establish a balance between promoting a prosperous working harbour, maintaining a healthy and sustainable waterway environment and promoting recreational access to the foreshore and waterways by establishing planning principles and controls for the catchment as a whole.

Given the residential scale of the project and the location of the site away from the waterway, there are no specific controls that directly apply to this proposal and the proposal is not inconsistent with this SEPP.

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

The subject site is zoned R2 Low Density Residential under the provisions of the RLEP 2014. The proposed use is defined as 'multi dwelling housing', which at the time of DA

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lodgement was a permissible land use within the R2 zone. However, with the publication of Amendment 28 to the RLEP 2014 on 5 March 2021, 'multi dwelling housing' is now prohibited within the R2 zone. For further discussion of this matter, refer to Section 5.2 of this report.

The following outlines provisions of the current RLEP 2014 that are relevant to the proposal.

Aims and objectives for low density residential zones:

The objectives of the R2 low density residential zone are as follows:

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

It is reasonable that housing be provided in a manner that doesn't pose a risk to human life or property. In the absence of requested information to satisfy Council's technical officers that the flood impacts to the site and neighbouring property is satisfactory, the proposal cannot satisfy the first objective of the R2 zone.

The following table provides a summary of the key provisions that apply to the proposal:

RLEP 2014	Proposed	Compliance
4.1B Minimum Lot Size		
<ul style="list-style-type: none"> • 900 square metres • Road frontage of the lot is equal to or greater than 20 metres. 	<p>The proposed development seeks a multi dwelling housing development on two separate lots.</p> <p>19 Myra Avenue, Ryde (Lot A DP 408670)</p> <p>21 Myra Avenue, Ryde (Lot 11 DP 12555)</p> <ul style="list-style-type: none"> • Total Site Area = 2,372m² • Total Road Frontage = 30.48m 	Yes
4.3(2) Height of buildings		
<ul style="list-style-type: none"> • 9.5m – maximum building height 	<p>Maximum building height:</p> <p>Unit 1 – 8.12m – Calculated from the top of the roof ridge at RL: 54.20 and existing ground level beneath at RL: 46.08.</p> <p>Unit 5 – 8.1m – Calculated from the top of the roof ridge at RL:54.00 to an interpreted existing ground level directly beneath at RL:45.90.</p>	Yes

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RLEP 2014	Proposed	Compliance																
	Units 2, 3, and 4 are affected by cl. 4.3A discussed below.																	
4.3A(2) Exceptions to height of buildings																		
Despite clause 4.3, the maximum height of multi dwelling housing on land in Zone R2 Low Density Residential is 5 metres for any dwelling that does not have a road frontage.	Units 2, 3, 4 do not have a road frontage, therefore a maximum building height of 5m applies. <table><tr><td>D</td><td>Ridge</td><td>EGL RL</td><td>Height (m)</td></tr><tr><td>2</td><td>51.35</td><td>47.45</td><td>3.9</td></tr><tr><td>3</td><td>53</td><td>48.48</td><td>4.52</td></tr><tr><td>4</td><td>51.65</td><td>47.35</td><td>4.3</td></tr></table>	D	Ridge	EGL RL	Height (m)	2	51.35	47.45	3.9	3	53	48.48	4.52	4	51.65	47.35	4.3	Yes
D	Ridge	EGL RL	Height (m)															
2	51.35	47.45	3.9															
3	53	48.48	4.52															
4	51.65	47.35	4.3															
4.5A Density controls for Zone R2 Low Density Residential																		
(a) The site area for the building is not less than: i. For each 1, 2 or 3 bedroom dwelling – 300 square metres and ii. For each 4 or more bedroom dwelling – 365 square metres	2 x 5 Bedroom dwelling. 3 x 3 Bedroom dwellings. Required: 1630m ² (2 x 365m ²) (3 x 300m ²) The subject site has a site area of 2372m ² and therefore complies.	Yes																
(b) each dwelling will have its own contiguous private open space	Each dwelling would have its own contiguous private open space.	Yes																
5.10 Heritage Conservation																		
(5) Heritage assessment. The consent authority may, before granting consent to any development: (a) on land on which a heritage item is located or (b) on land that is within a heritage conservation area or (c) on land that is within the vicinity of land referred to in paragraph (a) or (b).	The subject site does not contain a heritage item, and is not located within a heritage conservation area. However, the subject site is located within 100m of heritage Item No.79 – 26-28 Myra Avenue, listed within Schedule 5 of RLEP 2014. Council's Heritage Officer has advised that there are no concerns associated with the potential impacts on the nearby heritage item. Information on the referral comments is provided within Section 10 of this report.	Yes																
6.2 Earthworks																		
(1) The objectives of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.	There are no significant earthworks proposed that would have an impact on environmental functions, processes and/or surrounding sites.	Yes																

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RLEP 2014	Proposed	Compliance
6.3 Flood Planning		
<p>(1) The objectives of this clause are as follows—</p> <p>(a) to minimise the flood risk to life and property associated with the use of land,</p> <p>(b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,</p> <p>(c) to avoid significant adverse impacts on flood behaviour and the environment.</p> <p>(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development—</p> <p>(a) is compatible with the flood hazard of the land, and</p> <p>(b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and</p> <p>(c) incorporates appropriate measures to manage risk to life from flood, and</p> <p>(d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and</p> <p>(e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.</p>	<p>The subject site is affected by overland flow. As part of the assessment of the subject DA, the proposal was referred to City Works & Infrastructure (Drainage) for comment. Issues have remained throughout the assessment of the application. The referral comments are provided within Section 10 of this report.</p> <p>The proposal has not achieved the objectives of the clause (1) .The RLPP cannot be satisfied in accordance with 3(a)(b) and(c) as discussed below.</p>	No
6.4 Stormwater Management		
<p>(1) The objective of this clause is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and all receiving water.</p>	<p>The proposal has been considered acceptable by Council's Senior Development Engineer in regards to stormwater management.</p>	Yes

ITEM 1 (continued)**Clause 6.3 Flood planning**

The site is identified as being a “Flood Planning Area” on the Flood Planning Map. The proposal has been supported by a Flood Impact Assessment Report Rev C prepared by StormCivil Pty Ltd. The objective of this clause is to minimise the flood risk to life and property, allow for development that is compatible with the flood hazard and to avoid significant adverse impacts on flood behaviour and the environment. The site is mapped as being impacted by Low to Medium Risk flooding over a large proportion of the front and middle of site as shown in **Figure 11**.

The submitted Flood Impact Assessment does not satisfactorily address the requirements of Part 8.2 of DCP 2014 and Stormwater and Floodplain Management Technical Manual Section 2.2. The amended information submitted does not adequately respond to Council’s request for information including:

- The proposal does not maintain the current flood storage.
- The proposal results in a 80mm increase in flood depth.
- The proposal has not achieve acceptable post-development VxD values, when compared with pre development VxD values.
- The HEC-RAC Model has not been calibrated to match the pre development overland flow levels and the flood levels provided by Council.
- There is no record of a Flood Certificate request being issued by Council and included in the flood assessment.

Council cannot be satisfied with the resultant impacts without satisfactory information as specified in Section 2.3.1 of Council’s DCP 2014 Part 8.2 to demonstrate the proposed development is suitable. The report has not demonstrated that the development is compatible with the flooding and prevents adverse impact to surrounding property. The proposed development provides for 3 additional dwellings and due to the provision of additional building footprints it will have implications for the overland flow and has potential to exacerbate existing flooding conditions. The submitted supporting information has not adequately addressed this potential.

In accordance with Clause 6.3(3) Council is not satisfied for the following reasons:

- The proposal has not demonstrated compatibility with the flood hazard. A significant portion of the land is mapped as being subject to medium flood risk and proposes 5 dwellings.
- The proposal due to the building footprints and associated structures will affect the flood behaviour and the development has not demonstrated that it will not result in adverse impacts upon neighbouring properties.

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- The proposal has not been supported by satisfactory information.

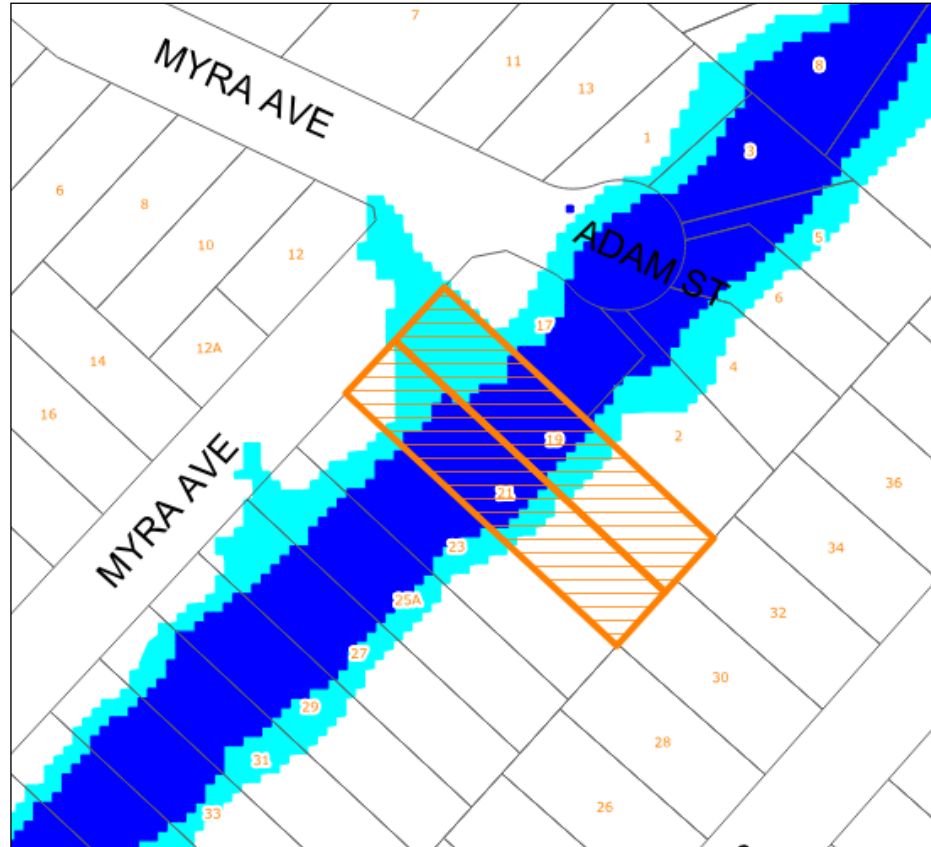


Figure 11 Flood Risk Map – low (light blue) medium (dark blue)

5.3 Draft Environmental Planning Instruments

Draft Remediation of Land State Environmental Planning Policy

The Draft SEPP is a relevant matter for consideration as it is an environmental planning instrument that has been placed on exhibition. The explanation of intended effects accompanying the draft SEPP advises:

As part of the review of SEPP 55, preliminary stakeholder consultation was undertaken with Councils and industry. A key finding of this preliminary consultation was that although the provisions of SEPP 55 are generally effective, greater clarity is required on the circumstances when development consent is required for remediation work.

The draft SEPP does not seek to change the requirement for consent authorities to consider land contamination in the assessment of DAs. The proposal meets the requirements of this policy, for the same reasons outlined within the assessment against SEPP 55.

ITEM 1 (continued)
Draft Environment SEPP

The draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018. The consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways and urban bushland areas. Changes proposed include consolidating SEPPs and deemed SEPPs, which includes:

- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The proposal is not inconsistent with the provisions of the draft SEPP.

Draft Amendment to the Ryde Local Environmental Plan 2014

The City of Ryde prepared a draft Local Housing Strategy and a Planning Proposal to amend the *Ryde Local Environmental plan 2014* (RLEP) to remove multi dwelling housing as a permitted use in the R2 zone.

The exhibition for these documents ended on Monday 16 November 2020, and at that point the draft became a matter for consideration. At its meeting of 15 December 2020, Council resolved to refer the planning proposal to the Minister following amendments to proposed changes to dual occupancy development. No changes were made regarding the prohibition of multi dwelling housing. .

On 5 March 2021, Amendment 28 to the RLEP 2014 was gazetted. Multi dwelling housing is now prohibited within the R2 zone.

The savings provisions within Clause 1.8A of RLEP 2014 require the subject DA to be determined as though the Amendment had not been finalised. However, the savings provisions do not apply to the draft Amendment, and therefore the draft instrument applies to the development, irrespective of when the application was lodged.

The weight to be given to a draft instrument is considered at length in the Court of Appeal's judgement in *Terrace Tower Holdings Pty Limited v Sutherland Shire Council* (2003). The following extracts of this judgement are of relevance to the appropriate weight to be given to the draft Amendment to RLEP 2014:

At [5] Spiegelman CJ states that:

"I agree with the proposition that the greater the certainty that a draft instrument will in fact be adopted, the greater the weight that may be given to that draft."

At [7] Spiegelman CJ states that:

"Where a draft instrument seeks to preserve the character of a particular neighbourhood, that purpose will be entitled to considerable weight in deciding whether or not to reject a development under the pre-existing instrument, which would in a substantial way undermine that objective".

ITEM 1 (continued)

At [56] Mason P states that:

“Section 79C(1) does not stipulate or imply a hierarchy among its various paragraphs or among the subparagraphs of (a)”.

The draft instrument has been finalised, and is therefore certain. Further, the draft instrument seeks to preserve the low density character of the R2 zone. The proposed development would clearly undermine the intent of the prohibition of multi dwelling housing.

Finally, Section 4.15 (former Section 79C(1) does not provide a hierarchy to which to sort planning instruments and draft planning instruments. Whilst Council may still approve the development, despite the prohibition, Council and the Panel are entitled to give determinative weight to the draft LEP, and the prohibition of multi dwelling housing development could alone form the basis for refusal of this application.

5.4 Development Control Plans**Ryde Development Control Plan 2014 (RDCP 2014)**

The proposal is subject to the provisions of the following parts of RDCP 2014:

- Part 3.4: Multi Dwelling Housing;
- Part 7.2: Waste Minimisation and Management;
- Part 8.2: Stormwater & Floodplain Management;
- Part 8.3: Driveways; and
- Part 9.3: Parking Controls.

A full assessment of the proposal under RDCP 2014 is illustrated in the compliance table at **Attachment 1**.

The provisions of RDCP 2014 have been considered in this assessment, and it is concluded that the proposal is inconsistent with the aims and objectives of RDCP 2014. The key RDCP 2014 (Part 3.4) discussion points are below:

Section 2.3 Non-Preferred Location

Section 2.3 provides that specific locations have been identified by the Council as unsuitable for MDH development. These non-preferred locations are listed within Section 3.1 and Schedule 2 of Part 3.4, and the subject site is identified as a non-preferred location for multi dwelling housing on the following two (2) accounts.

- Land affected by overland flow; and
- Land where there is significant vegetation identified as “Urban Bushland in the Ryde LGA”, April 2001

ITEM 1 (continued)

Schedule 2 also includes possible exemptions in instances where the location has been identified as a non-preferred location. With regard to 'land affected by overland flow' the exception is where the applicant is able to demonstrate no adverse impact when referring to Part 8.2 Stormwater of RDCP 2014. The proposal has not been supported by sufficient information to demonstrate there will be no resultant adverse impact in accordance with Clause 6.3 Flood Planning, Clause 6.4 Stormwater Management and Part 8.2 and the Stormwater and Floodplain Management Technical Manual Section 2.2.

As such, a possible exemption from the nomination of the site as a non-preferred location for multi dwelling housing cannot be entertained at this stage.

Regarding the site's nomination as a non-preferred location based on it including urban bushland, Schedule 2 includes no possible exemptions. Despite this, it is noted the referral response from Council's Consultant Landscape Architect/Arborist is supportive of the proposed development, namely because unlike the previous DA for the site, the dwellings are now well set back from the street, and do not encroach on the landscape setting of Myra Avenue.

Section 3.2 Altering the Levels of the Site

Site levels associated with the driveway are proposed to be altered more than the 300mm and is non compliant with control (b). The maximum level of fill proposed within the driveway is 1.14m at the front of the site and is non compliant with control (a) which require no imported fill.

There is a depression in the site associated with the overland flow path. In these circumstances, it is not unreasonable to expect that fill would be required for the driveway, particularly where this fill is designed to raise the driveway to levels that correspond with those within the street. Given the driveway is located centrally within the site, the fill is unlikely to create any amenity impacts.

In relation to the levels of the private open space areas, the proposal has been amended to ensure that natural ground levels are generally used for the majority of these spaces in accordance with the requirements of control (d). There is some ambiguous information contained on the plans in relation to the size and location of rear pergolas and privacy screening, as well as the extent to which ground levels would be maintained. These issues could be remedied through conditions of consent to limit the nature of the works within the courtyard.

With regard to the above, the proposal has not demonstrated satisfactorily the impacts and acceptability in regards to the flooding affectation. Until this occurs, the reasonableness of the non-compliant level changes cannot be verified.

ITEM 1 (continued)**Section 3.5.4 Side and Rear Setbacks**

The proposal is non compliant with (a) in that the development does not provide for a 4.5 metre side setback. Unit 3 and 4 and is setback 3.0 metres from the south-western side boundary. The proposal seeks to rely upon the provisions of (d) which enables variation to the setbacks to 3 metres for 50% of the elevation. The proposal has also not included the setbacks to the outer face of the decks and results in a non compliance with (d).

The proposal includes the following non compliant setbacks:

- The south-western wall of Unit 3 has a total width of 10.51m. 6.07m (57.75%) of the total width of Unit 3 is setback 3m from the southern side boundary.
- The south-western wall of Unit 4 has a total width of 15.06m. 7.9m (52.45%) of the total width of Unit 6 is setback 3m from the southern side boundary.
- The north-eastern wall of Unit 3 has a total width of 7m. 5.5m (78.5%) of the total width of Unit 3 is setback 3m from the northern side boundary.

These non-compliances are of a minor nature, and are partly a consequence of the relatively wide area of private open space along the south-western boundary (approximately 12m). Given these walls are well articulated, that the courtyard areas comfortably comply with the minimum area requirements, and that there is minimal fill proposed to the non-compliant portions, this minor variation is supported/

Section 3.5.5 Internal Setbacks

Control (b) of Section 3.5.5 requires a minimum 9m setback between habitable windows within the development. Control (a) of Section 3.10 Visual and Acoustic Privacy requires a minimum 9m separation between the windows of habitable rooms of facing dwellings within a multi dwelling housing development.

Concerns were earlier raised with the following non-compliances:

- Unit 1 kitchen window aligns with Unit 5 kitchen window, with a 6m separation provided.
- Unit 4-bedroom 2 window aligns with living room window of Unit 2, with a 7m separation provided.

The following amendments were made by the applicant to the proposal:

- Unit 1 kitchen window was amended to contain opaque glass. However, a condition would be required to ensure that the window is also fixed, or partially fixed.
- The Unit 2 living room window is now a highlight window.

Given the above, the non-compliance would not result in any undue privacy impacts, subject to conditions.

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Section 3.6 Private Open Space and 3.9 Overshadowing and Access to sunlight

The proposal is non compliant with control (c) of Section 3.6 and control (b) of Section 3.9 in that 50% of the private open space does not receive the required solar access of 2 hours. For private open space on adjacent properties that are already non-compliant, sunlight must not be further reduced by more than 20%. The submitted shadow diagrams depict the 9am, 12pm and 3pm shadow impact in midwinter (**Figure 12**).

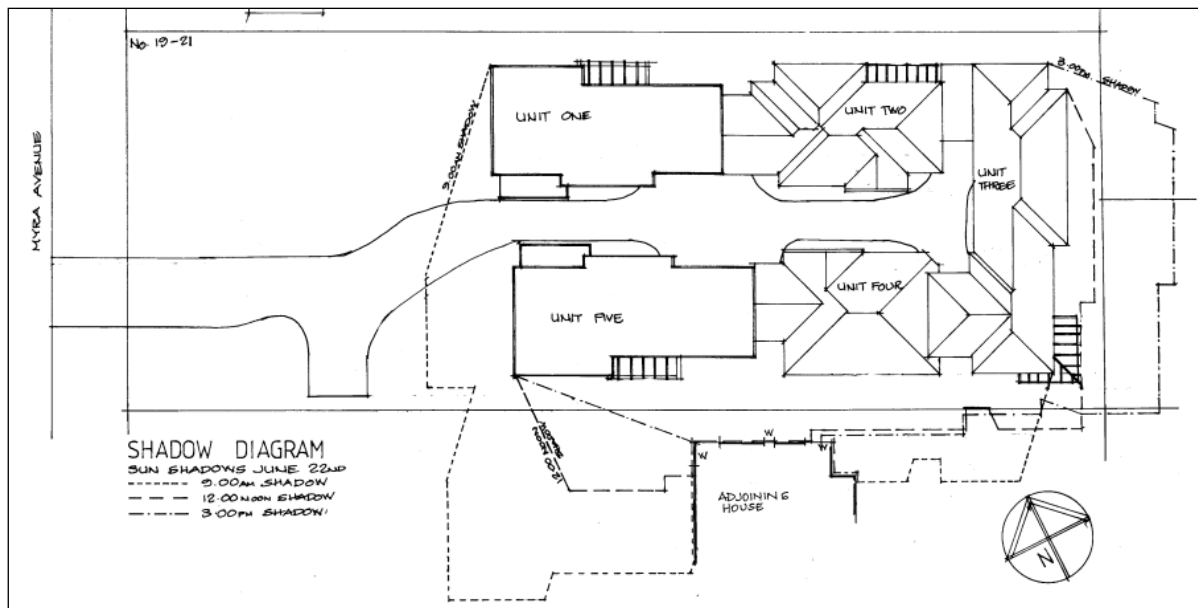


Figure 12 Shadow diagrams on 21 June

The submitted shadow diagrams indicate that the private open space of the southern oriented units, being Unit 4 and Unit 5, will each receive non-compliant solar access during midwinter. Unit 5 contains a western and northern elevation associated with the living room receives reasonable solar access and is acceptable despite the private open space not receiving compliant solar access.

The submitted shadow diagrams does not show the shadow cast from Unit 1 and 2 at 12 noon and 3pm and the impacts upon the proposed Units 3, 4 and 5, which are located to the south and south-east cannot be determined. It is considered likely, the living areas of Unit 4 and 3 will not receive the required solar access.

The two northern oriented units, Unit 1 and Unit 2, as well as the eastern oriented unit, Unit 3, are likely to receive more solar access than those units oriented towards the south. However, shadows associated with boundary fencing have not been shown on the shadow diagrams, and the solar access that would be available is unable to be determined.

The shadow diagrams demonstrate that the proposal will create limited overshadowing impacts to the property adjoining to the south at No.25 Myra Avenue. Given the size of

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that property, the additional shadows cast will not create a non-compliance, and the proposal would not create undue solar access impacts to that property.

Section 3.4 Appearance and Roofscape

Control (a) requires roofs to generally be pitched between 22°-30° where visible from public areas or streets. Unit 1 and 5 presenting to Myra Avenue have a low pitched skillion roof form and is non compliant.

Myra Avenue, Adam Street and Semple Street contain primarily pitched and gabled roof forms. However, a far more important characteristic of the streetscape, is the provision of generous landscaped front setbacks. After several requests by Council, the proposal has now provided front setbacks commensurate with the locality. The roof forms of the proposed front dwellings will be well hidden beyond the significant landscaping within the front setback. As a consequence, strict compliance with the control is not required, and the proposed roof forms are acceptable.

Section 3.8.2 Manoeuvring

The proposal has not been supported by swept paths to demonstrate compliant vehicle manoeuvring on site. This forms part of the recommendation for refusal.

Section 5.1 Drainage

The proposal has not demonstrated an acceptable design in response to the flood affectation and discussed under Clause 6.3 Flood Planning of RLEP and Section 10.

5.5 Planning Agreements OR Draft Planning Agreements

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

5.6 Section 7.11 Development Contributions Plan 2020

The Section 7.11 Development Contributions Plan 2020 commenced on 1 July 2020 and is applicable to the proposal. Although the development attracts contributions, the application has been recommended for refusal and contributions have not been calculated for this development.

5.7 Any matters prescribed by the regulations

The Regulation underpins the day-to-day operation of the NSW planning system. The Regulation guides the processes, plans, public consultation, impact assessment and decisions made by local councils, the Department of Planning and others. Standard

ITEM 1 (continued)

conditions are able to be imposed relating to compliance with the BCA and Australian Standards.

6. The likely impacts of the development

The proposal is inconsistent with the provisions of RLEP 2014. The proposal has not demonstrated satisfactorily the flooding impacts associated with the development. The proposal is contrary to Clause 6.3 Flood Planning and Clause 6.4 Stormwater Management with regard to the land's flood affectation. There is insufficient information provided to properly understand the flooding impacts and this forms one of the reasons the subject DA is being recommended for refusal.

7. Suitability of the site for the development

The subject site is located within a non-preferred location for multi dwelling housing, given the site is affected by overland flow and urban bushland. Insufficient information has been provided to demonstrate an acceptable outcome in regards to the flood hazard. For these reasons outlined within this report, the proposal is not suitable for the subject site.

8. The Public Interest

Based on the assessment contained in this report, approval of the development is contrary to the public interest, and this forms a reason for refusal.

9. Submissions

In accordance with Part 2.1 Notice of Development Application of the RDCP 2014, the proposal was advertised on Council's webpage, and notification letters were sent to surrounding properties on 9 June 2020. In response to the first notification period, seven (7) submissions and a petition were received, all objecting to the development. The petition contained a total of nineteen (19) signatures.

In response to the second notification period commencing on 13 January 2021, four (4) more submissions were received. One (1) of the submissions attached a petition with thirty (30) signatures.

The objections raised in the submissions are covered below, followed by a comment from the assessing planner:

(a) Overdevelopment, noting other development approvals issued since the previous application was refused.

Comment: The application seeks consent for a development that is now prohibited under the site's R2 zone. However, given the application was lodged prior to this prohibition coming into force, it is available for Council to approve the application by

ITEM 1 (continued)

utilising the savings and transition provisions contained in clause 1.8A of the RLEP 2014.

The multi dwelling housing development is relatively low scale when having regard to the site area, noting that the proposal comfortably complies with the density requirements of the now repealed clause 4.5A of RLEP 2014. Having regard to the above, it is not agreed that the application is an overdevelopment of the site.

(b) Increase in traffic congestion, noting that:

- **Signage surrounding Northcross School has increased the local traffic flow.**
- **Potential safety impacts to school students.**
- **Safety impacts given location near corner.**

Comment: While ‘traffic congestion’ has not been raised as a specific concern from the referral officers, issues were nonetheless raised in relation to the adequacy of on-site vehicular movement. In the event that the development is not able to effectively cater for the vehicular movements and parking demand that it creates, it is perceivable this would transpose to an on-street impact. As such the objector’s concerns may be indirectly warranted. However, Council’s Senior Development Engineer has advised that the traffic generated by this development will not be significant.

(c) Parking noting that:

- **Single garages are not sufficient to cater for modern car ownership.**
- **Issues related to safety and vehicle movements.**

Comment: The proposal provides eight (8) residential parking spaces and two (2) visitor spaces and complies with the parking requirements of RDCP 2014. As indicated above and elsewhere, there remains outstanding information in relation to vehicular movements.

(d) The proposed development is not compatible with the streetscape character of Myra Avenue.

Comment: Council had requested several times that these generous setbacks, and the associated vegetation, be maintained. The proposal has now provided front setbacks commensurate with the locality. This has been achieved by the deletion of one (1) dwelling and amendments to the setbacks.

Although the flat roof designs provided to Unit 1 and 5 is unusual in the locality, the roof forms of the proposed front dwellings will not be dominant within the streetscape given the proposed front setback of 30m and retention of existing vegetation. Strict compliance with the control is not required, and the proposed roof forms are acceptable.

ITEM 1 (continued)**(e) Overland Flow Path/Flooding impacts, specifically:**

- Query as to why the development is not raised above the flood level.
- A request for the land to be subject to a stormwater easement.
- Stormwater pipe alignment notated incorrectly.
- Potential diversion of flood water onto neighbouring properties.

Comment: The final resubmission package also contained a letter dated 22 February 2021 indicating that Council's long-stated issues with the flood modelling methodology were understood and were able to be addressed in the future by the applicant's new flood consultant.

However, as this issue has not yet been satisfactorily addressed, it forms a key reason for the refusal of the DA. The stormwater easement is maintained on the property, although its relative location on the subject site may be different to those on neighbouring properties.

(f) Setback does not account for the overland flow area, and Units 3 and 4 are within the overland flow zone, having regard to the reports prepared for 25 Myra Avenue.

Comment: The amended design has accounted for these matters. As indicated above, the relative location of the stormwater easement on the subject site may be different to those on neighbouring properties, given the orientation of the localised depression.

(g) Noise impacts associated with development, both during construction and following occupation.

Comment: Noise impacts during construction could be addressed through conditions of consent. The proposal is not considered to generate any additional noise than expected in a residential area.

(h) Impacts to health and wellbeing, including concern relating to access for emergency vehicles.

Comment: There are no known potential impacts to the health and wellbeing of nearby residents that are sufficient to warrant refusal of the application. Similarly, the proposal would not unduly restrict access for emergency vehicles, to neighbouring properties, or to the subject development under normal circumstances. It is appreciated however that advice on the flood implications of the proposal remain outstanding, and until which time compliance with the RDCP 2014 can be demonstrated to Council, suitable access during a flood event cannot be confirmed.

ITEM 1 (continued)

- (i) Previous advice received from Council that only two dwellings are permitted on each lot.**

Comment: Limited information was provided to substantiate this submission. Part 3.4 of RDCP 2014 permits a maximum of twelve (12) dwellings within a multi dwelling housing development. The proposal provides for five (5) dwellings and complies with Clause 4.5A of RLEP.

- (j) Fencing not consistent with streetscape.**

Comment: Boundary fencing is not notated on the architectural plans. It is agreed that boundary fencing should not be provided forward of the building line, and conditions to that effect could be imposed on any development consent. In the event of an approval, conditions regarding fencing configuration would also likely be imposed by Council's flood engineer.

- (k) Noise, parking, and operational issues associated with garbage collection.**

Comment: The proposal would not create any undue intensification of existing issues associated with garbage collection. These issues are understood to partly relate to a perceived lack of parking; however, the proposal provides compliant on site car parking.

- (l) Impact on wildlife habitat.**

Comment: The proposed development now minimises the impact on significant vegetation, and will ensure large trees within the front setback area are retained. The proposed vegetation removal on the land has been supported by Council's Landscape Architect/Arborist.

- (m) Development should be refused on the basis that the previous application was also refused.**

Comment: A number of amendments have been made to the previous design. Should these amendments satisfactorily address all outstanding issues, the previous refusal would not provide grounds for refusal of a subsequent application. However, a deficiency of information sufficient to satisfy flooding concerns has persisted with this application, and the proposal is therefore recommended for refusal.

- (n) Solar access impacts to No.23 Myra Avenue.**

Comment: Section 3.9 of Part 3.4 of RDCP 2014 requires 2 hours of midwinter solar access to ground level private open space of adjacent properties. The shadow diagrams demonstrate that the proposal will create limited overshadowing impacts to the property adjoining to the south, No.23 Myra Avenue. Given the size of that property, the additional shadows cast will not create a non-compliance.

ITEM 1 (continued)**(o) Privacy impacts to No.23 Myra Avenue.**

Comment: Throughout the assessment of the DA, the proposal has been amended to ensure that natural ground levels are maintained to minimise privacy impacts resulting from fill. As noted elsewhere within this report, there is some ambiguous information contained on the plans in relation to the size and location of rear pergolas and privacy screening, as well as the extent to which ground levels would be maintained. These issues could be remedied through conditions of consent to limit the nature of the works within the courtyard.

(p) Tree issues / general tree removal issues

Comment: The proposed development has undergone a number of ongoing amendments and modifications since the DA was lodged. The proposal is now considered satisfactory, given that the amended front setback is now consistent with the existing streetscape character, defined by significant landscape setbacks of 30-40m with large parcels of deep soil and established canopy tree plantings. This includes retention of the grove of large established *Liquidambar formosana* tree plantings which contributes towards the landscape character of the streetscape and locality, as well as contributing positively to the urban forest and canopy cover to the site. With the retention of these large established *Liquidambar* trees, the proposal better reflects the objectives of the Ryde Tree Management Policy, Ryde Tree Management Plan or Part 9.5 Tree Preservation of the RDCP 2014.

10. Referrals**City Works and Infrastructure (Drainage)**

As part of the assessment of the subject DA, the proposal was referred to Council's City Works and Infrastructure (CWI) team for comment on drainage matters. The site is identified to be affected by the 1 in 100 year flood event. The topography of the site slopes away from the street frontage and has a valley traversing the lot located approximately 20m from the front boundary. It is in this location that the overland flow path is located, identified as being of medium risk.

A number of technical matters associated with the development were raised by CWI Drainage, and were included in the RFI letters sent to the applicant. An extract of these comments is reproduced below:

1. *Referring Flood Report Rev C StormCivil Pty Ltd dated 19/12/2020, table 1, 8 cm increase in the flood depth at section 20.2 is not acceptable. Design to be modified to minimize the increase in flood depth.*

ITEM 1 (continued)

Design Cross-Section	Pre-Development Overland Flow Level (m)	Post-Development Overland Flow Level (m)	Impact on Overland Flow Level (m)	Flood Levels From Council Flood Information
40.5	47.31	47.31	0.00	
35.5	47.11	47.11	0.00	
33.5	46.78	46.55	-0.23	46.74 (D) - 46.85 (F)
27.8	46.56	46.41	-0.15	
20.2	46.35	46.43	+0.08	46.42 (C) - 46.48 (E)
12.7	45.99	46.00	+0.01	
5.0	45.95	45.86	-0.09	
0.0	45.61	45.61	0.00	

Table 1 : 100 Year ARI Overland Flow Levels

Please note that 80 mm increase in the flood depth at 20.2 section is caused by a reduction of the cross section at that point. According to City of Ryde DCP all developments must avoid reducing the flood storage.

- Referring Flood Report Rev C StormCivil Pty Ltd dated 19/12/2020, table 2, VD product values are not adhering to Table 1.

The velocity at section 27.8 and 12.7 are 5.18 m/s and 2.67 m/s respectively. Section 20.2 is located within the flood affected area and bounded by the 27.8 and 12.7 section. Therefore, the Velocity value is critical and shall be determined.

Design Cross-Section	Pre-Development			Post-Development		
	Depth (m)	Velocity (m/s)	VD (m ² /s)	Depth (m)	Velocity (m/s)	VD (m ² /s)
40.50	0.71	0.51	0.36	0.71	0.57	0.40
35.5	0.69	1.97	1.35	0.69	na	na
33.5	0.54	na	na	0.25	3.59	0.89
27.8	0.46	5.18	2.38	0.31	2.86	0.89
20.2	0.35	na	na	0.43	2.07	0.89
12.7	0.34	2.67	0.91	0.30	3.01	0.90
5.0	0.43	1.69	0.73	0.31	2.39	0.74
0	0.31	2.60	0.81	0.31	2.69	0.83

Table 2 : Velocity-Depth Values

Please adjust the centre line of the flow to provide VD values in all pre- and post-development sections. "NA" is not an acceptable value.

Also, please be aware that for such a complex site, a 2D model is strongly recommended, as it will give more reliable information.

- Please note that the HEC-RAS Model shall be calibrated to match Pre-Development Overland Flow levels and Flood Levels provided by Council.

ITEM 1 (continued)

Referring the City of Ryde DCP 2014 (Stormwater and Floodplain Management Technical Manual) below is applicable:

“For sites where flood level information is available, the issued flood level information should be utilised to calibrate the model”.

- 4. It is also noted that no records of flood certificate request have been found in Council data base.
The flood Certificate of both properties at 19 and 21 Myra Avenue, Ryde shall be included in the flood report.*
- 5. Flood levels must be used as per flood certificate issued by City of Ryde. As per Council investigations, the proposed levels for the development does not comply with the freeboard requirements of City of Ryde (e.g. the deck level at Unit 1 is proposed below 100-year ARI level). Please adopt correct freeboard on decks to (non-habitable areas) as per City of Ryde DCP.*

Once the architectural plans are modified, the applicant shall address the following issues to facilitate further review of the application:

- Current flood storage and overland flow path shall be maintained. Pre and Post Development Storage calculation shall be included in the report. OSD tanks are not designed as Flood Storage chambers and cannot be considered in this calculation.*
- Following changes may be adopted in order to reduce the flooding risk in this development, maintain the flood storage and keep VD within acceptable levels:*
 - 1. A reduction of the footprint to maintain the current flood storage and overland flow path could be an alternative.*
 - 2. Other option could be to propose a partially elevated development to allow flow passing under the slab. If this option is chosen, the following premises will apply:*
 - **Flooding – Suspended Structures** - As a minimum, the blockage factor for suspended structures (considering debris and piers) shall be 60%. If the applicant is willing to use the space under the slab as storage, the blockage factor will have to be increased to 100%.*
 - **Flooding – Undercroft Clearances:***
 - Referring Council DCP2014 the minimum freeboard required for the property’s finished floor level is 500 mm above 1% AEP flood level.*
 - For maintenance purposes, a minimum of 500mm clearance from finished ground level to the bottom of the slab shall be maintained.*

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- *Any area underneath the slab that has clearances (from 1% AEP Flood Level to the bottom of the slab) less than 300mm, shall be considered as fully blocked (100% blockage). Fully blocked and/or partially blocked (e.g. areas behind dense landscaping) areas must be incorporated into the hydraulic calculations.*
 - *Note: The applicant is required to provide details of the proposed slab and piers, width and height of the openings under the slab and electronic copies of the models used (HEC-RAS, DRAINS, TUFLOW, etc.).*

The third letter sent to the applicant also outlined some general requirements for building in the vicinity of Council stormwater infrastructure.

The final resubmission package contained a letter from Capital Engineering Consultants, dated 22 February 2021. This firm had not previously authored any information contained within the application package. The letter indicated that a revised 1-D flood model would be prepared to support the application, and that a request for flood levels had been lodged with Council on 17 February 2021. The letter concludes with the following:

“A high-level review of the latest flood study prepared by StormCivil has been carried out and a lack of calibration to Council’s Flood Study and unacceptable increases in post-development flood levels is evident. It is anticipated however that the current architectural layout may comply with Council’s requirements subject to additional modelling and mitigation measures e.g. suspending part of the proposed structure(s)”.

On the basis of the extract above, and given that this concern was raised in each of Council’s three letters sent to the applicant, Council has determined that no further information would be accepted for this application, and that the application is therefore to be recommended for refusal.

Pursuant to Clause 54 of the *Environmental Planning and Assessment Regulation 2000*, if the applicant fails to provide the requested information within a reasonable timeframe, the consent authority may determine a DA based on the information currently available.

As outlined within Section 4 Background of this report, similar issues were also raised in the previously refused DA for this site. Given the applicant’s representative had acknowledged that there was information outstanding in relation to flooding issues, the latest application amendment was not referred to CWI Drainage.

Development Engineer

The amended plans and information were considered by Council’s Senior Development Engineer. The following comments were received:

ITEM 1 (continued)

- *The landscape plan has been amended relocating the water tanks as shown on drainage/architectural plans. Addressed.*
- *The driveway detail has been amended on the architectural plans to 5.0m near the dwellings and 5.5m closer to the visitor parking areas. The dimensions are not marked across the width of the driveway but close to this area. As this is a minor drafting issue and the detail is acceptable.*
- *The architectural plans show swept path diagrams. However, these swept path diagrams were very poor as they simply depicted hand drawn radial curves. When checked some of them did not appear to be working. This requirement has not been satisfactorily addressed.*
- *There was no revised long section provided. The letter from the applicant referred to the architectural plan sheet D05 and this plan did not show any gradients/levels and indicated “check engs. details”. However, there was no amended engineering plan submitted with the details provided on 15th Feb 2021. The levels shown over the driveway adjoining unit 3 on the amended drainage plan Rev E slightly vary to the architectural plans. Also, the architectural/drainage plans do not provide additional finished levels over the visitor parking areas which is critical due to the location of the overland flow path. This issue has not been addressed satisfactorily.*

Planner’s comment: The amended proposal has still not demonstrated the required vehicle manoeuvring and the insufficient information has been provided regarding finished levels of parking areas. This forms part of the recommendation for refusal.

Landscape Architect/Arborist

Council’s Consultant Landscape Architect / Arborist had raised initial concerns associated with the impact of the proposal on the landscape setting toward the front of the property. However, upon receipt of the final set of amended plans, the following comments were provided:

The proposed development has undergone a number of ongoing amendments and modifications since the initial development application was lodged. The proposal is now considered satisfactory, given that the amended front setback is now consistent with the existing streetscape character, defined by significant landscape setbacks of 30-40m with large parcels of deep soil and established canopy tree plantings. This includes retention of the grove of large established Liquidambar formosana trees plantings which contributes towards establishing the landscape character of the streetscape and locality, as well as contributing positively to the urban forest and canopy cover to the site. With the retention of these large established Liquidambar trees, the proposal better reflects the

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objectives of the Ryde Tree Management Policy, Ryde Tree Management Plan or Part 9.5 Tree Preservation of the Ryde Development Control Plan 2014.

On this basis, the proposal was supported, subject to conditions.

Heritage

As part of the assessment of the DA, the proposal has been referred to Council's Heritage Officer for comment.

In the referral response issued on 13 July 2020, it was advised that both of the existing dwellings situated on the subject site do not display features or characteristics of any particular architectural interest or value and demolition is supported.

The comments also acknowledged that the subject site is situated approximately 100m from heritage Item No.79 – 26-28 Myra Avenue, listed within Schedule 5 of RLEP 2014, but that the item does not share a direct visual relationship with the subject site, given the intervening development which obscures any direct line of sight. As such the development is supported on heritage grounds, subject to standard conditions relating to unexpected archaeological finds.

11. Conclusion

After consideration of the development against the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, and the relevant statutory and policy provisions, it has been determined there is insufficient information to ascertain the flooding implications of the proposed development on adjoining land or the development itself. Therefore, it cannot be determined whether the proposal is suitable for the site. For these reasons approval of the DA would not be in the public interest.

The proposal also includes insufficient information to ascertain compliance with solar access and potentially the vehicular manoeuvring controls contained within the RDCP 2014.

The additional information needed to carry out a proper assessment of the DA has been the subject of multiple RFIs dating back to August 2020, with no confirmation on when such information will be received, particularly in regards to flooding.

Pursuant to Clause 54 of the *Environmental Planning and Assessment Regulation 2000*, the applicant has failed to provide the requested information within a reasonable time period, and Council has decided to have the DA determined accordingly.

With the publication of Amendment 28 to the RLEP 2014 on 5 March 2021, multi dwelling housing is now prohibited within the site's R2 zone. Although clause 1.8A of the RLEP 2014 provides savings and transitional provisions, Council consider determinative weight should be given to Amendment 28 when having regard to the

ITEM 1 (continued)

Court of Appeal's judgement in *Terrace Tower Holdings Pty Limited v Sutherland Shire Council* (2003).

For these reasons, the DA is recommended for refusal.

12. Recommendation

Pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979*, the following is recommended:

A.- The Ryde Local Planning Panel refuse LDA2020/0185 for a new multi dwelling housing development containing 5 dwellings (2 x 5 bed and 3 x 3 bed) as well as strata subdivision, for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the development is inconsistent with the provisions of the *Ryde Local Environmental Plan 2014* in that:
 - The proposal is contrary to the objectives of the R2 Low Density Residential Zone given the proposal fails to demonstrate it will deliver housing that is safe from flooding to the community.
 - The proposal has not satisfied clause 6.3 as inadequate information has been submitted to demonstrate that the proposal will not create adverse flooding impacts.
 - The proposal has not satisfied clause 6.4 as inadequate information has been submitted to demonstrate that the stormwater drainage system adequately responds to flooding constraints.
2. Pursuant to Clause 4.15(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979*, the development is inconsistent with the following draft planning instruments:
 - The development would become prohibited by the Draft Amendment 28 to the Ryde Local Environmental Plan 2014.
3. Pursuant to Section 4.15(1)(a)(b) and (c) of the *Environmental Planning and Assessment Act 1979*, the development has not demonstrated an acceptable environmental impact or that the site is suitable for the proposed development in regards to flood impact:
 - The proposal is contrary to Clause 6.3 Flood planning of Ryde Local Environmental Plan 2014 and Part 8.2 of Ryde Development Control Plan 2014. The objective of this clause is to minimise the flood risk to life and property, allow for development that is compatible with the flood hazard and to avoid significant adverse impacts on flood behaviour and the environment. The proposal is inconsistent with the objectives of Clause 6.3(1).

ITEM 1 (continued)

- The proposal is not considered satisfactory with respect of Clause 6.3(3) for the following reasons:
 - (i) The proposal has not demonstrated compatibility with the flood hazard. A significant portion of the land is mapped as being subject to medium flood risk.
 - (ii) The proposal does not provide sufficient detail regarding the measures to manage the risk to life from flood.
 - The submitted Flood Impact Assessment does not satisfactorily address the requirements of Part 8.2 and Stormwater and Floodplain Management Technical Manual Section 2.2:
 - (i) The proposal does not maintain the current flood storage.
 - (ii) The proposal results in a 80mm increase in flood depth.
 - (iii) The proposal has not achieve acceptable post-development VxD values, when compared with pre development VxD values.
 - (iv) The HEC-RAC Model has not been calibrated to match the pre development overland flow levels and the flood levels provided by Council.
 - (v) There is no record of a Flood Certificate request being issued by Council and included in the flood assessment.
4. Pursuant to Clause 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the development is inconsistent with the following provisions of *Ryde Development Control Plan 2014*,
- Part 3.4 Multi Dwelling Housing specifically:
 - Section 2.3 and Section 3.1, as the site is in a non-preferred location for multi dwelling housing because it is affected by overland flow. Insufficient information has been provided to address this constraint.
 - Section 3.9, as the submitted solar diagrams are unsatisfactory to demonstrate that the proposal will not have any unreasonable solar amenity impacts on proposed dwellings.
 - Part 8.2 Stormwater and Floodplain Management, as inadequate information has been submitted to demonstrate that the proposal will not create adverse flooding or stormwater impacts.
 - Part 9.3 Parking Controls, the proposal has not demonstrated compliant vehicle manoeuvring is achieved.
5. Pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the flood impacts of the development to human life and property cannot be ascertained.
6. Pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, in the absence of sufficient flooding information to determine otherwise, the site is unsuitable for the proposed development.

ITEM 1 (continued)

7. Having regard to the reasons noted above, pursuant to the provisions of Section 4.15(1)(d) and Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, approval of the development application is not in the public interest.

B. That the objectors be advised of the decision.

ATTACHMENTS

- 1 LEP & DCP Compliance Tables
- 2 A3 Plans - subject to copyright provisions

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ITEM 1 (continued)

ATTACHMENT 1

Attachment 1 – Compliance Table

Compliance Check - Quality Certification

**Assessment of a Multi Dwelling
Housing (attached) Development**

LDA No: 2020/0185	Date Plans Rec'd: 29/05/2020 Amended Plans Rec'd: October 2020, December 2020 and February 2021.
Address: 19-21 Myra Avenue, Ryde NSW 2112	
Original Proposal: New multi dwelling housing development containing 6 dwellings - 2 x 5 bed and 4 x 3 bed, as well as strata subdivision.	
Amended Proposal: New multi-dwelling housing development containing 5 dwellings - 2 x 5 bed and 3 x 3 bed, as well as strata subdivision.	
Constraints Identified: Overland Flow Path, Urban Bushland, within 100m of a Heritage Item,	

RLEP 2014	Proposed	Compliance
4.1B Minimum Lot Size		
<ul style="list-style-type: none"> 900 square metres Road frontage of the lot is equal to or greater than 20 metres. 	<p>The proposed development seeks a multi dwelling housing development on two separate lots.</p> <p>Existing Lots:</p> <p>19 Myra Avenue, Ryde (Lot A DP 408670)</p> <p>21 Myra Avenue, Ryde (Lot 11 DP 12555)</p> <ul style="list-style-type: none"> Total Site Area = 2,372m² Total Road Frontage = 30.48m 	Yes
4.3(2) Height of buildings		
<ul style="list-style-type: none"> 9.5m – maximum building height 	<p>Maximum building height:</p> <p>Unit 1 – 8.12m – This has been calculated from the top of the roof ridge at RL: 54.20 and existing ground level beneath at RL: 46.08.</p> <p>Unit 5 – 8.1m – This has been calculated from the top of the roof ridge at RL:54.00</p>	Yes

ITEM 1 (continued)

ATTACHMENT 1

RLEP 2014	Proposed	Compliance																
	to an interpreted existing ground level directly beneath at RL:45.90. Units 2, 3, and 4 are affected by cl. 4.3A, discussed below.																	
4.3A(2) Exceptions to height of buildings																		
Despite clause 4.3, the maximum height of multi dwelling housing on land in Zone R2 Low Density Residential is 5 metres for any dwelling that does not have a road frontage.	Units 2, 3, 4 do not have a road frontage, therefore a maximum building height of 5m applies. <table><tr><th>D</th><th>Ridge</th><th>EGL RL</th><th>Height (m)</th></tr><tr><td>2</td><td>51.35</td><td>47.45</td><td>3.9</td></tr><tr><td>3</td><td>53</td><td>48.48</td><td>4.52</td></tr><tr><td>4</td><td>51.65</td><td>47.35</td><td>4.3</td></tr></table>	D	Ridge	EGL RL	Height (m)	2	51.35	47.45	3.9	3	53	48.48	4.52	4	51.65	47.35	4.3	Yes
D	Ridge	EGL RL	Height (m)															
2	51.35	47.45	3.9															
3	53	48.48	4.52															
4	51.65	47.35	4.3															
4.5A Density controls for Zone R2 Low Density Residential																		
(a) The site area for the building is not less than: i. For each 1, 2 or 3 bedroom dwelling – 300 square metres and ii. For each 4 or more bedroom dwelling – 365 square metres	2 x 5 Bedroom dwelling. 3 x 3 Bedroom dwellings. Required: 1630m ² (2 x 365m ²) (3 x 300m ²) The subject site has a site area of 2372m ² and therefore complies.	Yes																
(b) each dwelling will have its own contiguous private open space	Each dwelling would have its own contiguous private open space.	Yes																
5.10 Heritage Conservation																		
(5) Heritage assessment. The consent authority may, before granting consent to any development: (a) on land on which a heritage item is located or (b) on land that is within a heritage conservation area or (c) on land that is within the vicinity of land referred to in paragraph (a) or (b).	The subject site does not contain a heritage item, and is not located within a heritage conservation area. However, the subject site is located within 100m of three Item No.79 – 26-28 Myra Avenue, listed within Schedule 5 of RLEP 2014. Supported by Heritage Advisor.	Yes																
6.2 Earthworks																		
(1) The objectives of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.	There are no significant earthworks proposed that would have an impact on environmental functions, processes and/or surrounding sites.	Yes																

ITEM 1 (continued)

ATTACHMENT 1

RLEP 2014	Proposed	Compliance
6.3 Flood Planning		
(1) The objectives of this clause are as follows— (a) to minimise the flood risk to life and property associated with the use of land, (b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change, (c) to avoid significant adverse impacts on flood behaviour and the environment.	The subject site is affected by overland flow. As part of the assessment of the subject DA, the proposal was referred to City Works & Infrastructure (Drainage) for comment. Issues have remained throughout the assessment of the application and the previous development application for the site. The referral comments are provided within Part 10 of this report.	No
6.4 Stormwater Management		
(1) The objective of this clause is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and all receiving water.	The proposal has been considered acceptable by Council's Senior Development Engineer in regards to stormwater management.	Yes

DCP 2014	Proposed	Compliance
PART 3.4 – Multi Dwelling Housing		
PART 2.0 – Site Analysis, Location Number and Type of Dwelling		
2.1 Site Analysis		
(a) Site analysis submitted (b) The site analysis should be used to: i. how future dwgs will relate to their immediate surroundings and to each other ii. produce a design that minimise the negative impact on the amenity of adjoining properties and street/neighbourhood	Site analysis prepared by Peter Hall Architects, Drawing No. D08 ^B and dated February 2020.	Yes
2.2 Minimum allotment size		
• Frontage and site area not less than 20m and 900sqm respectively.	Frontage = 30.48m. Site area = 2372m ²	Yes
2.3 Non-preferred locations		
(c) The site is suitable for more intense residential development being multi dwelling. The site is not a non preferred location.	As per Schedule 2, the subject site is located within a non-preferred location on two accounts: <ul style="list-style-type: none">Being located within an overland flow path.Being identified and mapped as 'Urban Bushland'.	No

ITEM 1 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
	The overland flow matters have not been able to be addressed satisfactorily.	
2.4 Retention of Existing Dwellings		
(a) Retention of existing dwelling as part of a MDH will not be approved. Exception being heritage significant building or contributory building.	Demolition of all existing structures is proposed as part of this development application.	Yes.
2.5 Density controls in R2 zone		
(a) The proposal complies with Clause 4.5A RLEP 2014 (b) The area of any access handle or the area bwn the FSBL and MHWM is not included in site area.	The proposal complies with density requirements within cl. 4.5A or RLEP 2014.	Yes
2.6 Number of Dwellings		
(a) No more than 12 Dwellings	Five (5) dwellings proposed.	Yes
2.7 Type of Dwellings		
(a) 4 or more dwgs, not more than 75% should have same number of bedrooms. (Round down)	The proposed development includes five (5) dwellings, 2 x 5 bedroom dwellings, and 3 x 3 bedroom dwellings. Not more than 75% have the same number of bedrooms.	Yes
(b) The proposed slope, levels, building height, site coverage, landscaping, setbacks, accessibility and shadowing to be considered when assessing: i. whether the development complements existing neighbourhood, and ii. whether the development meet needs of householders including older persons with disabilities.	<p>Height: Unit 1 and Unit 5 (dwellings with a road frontage) would achieve compliance with the 9.5m development standard. Units 2, 3 and 4 do not have a road frontage and achieve compliance with the 5m building height development standard.</p> <p>Side Setback The northern elevation ground floor of Dwelling 1 has been setback less than 4.5m for greater than 50% of the wall length.</p> <p>Site Coverage The proposal includes a total site coverage of 30.5% achieving compliance with the <40% control.</p> <p>The subject site includes a pervious area of 52% achieving compliance with the minimum 35% control.</p> <p>Solar Access</p>	<p>Yes</p> <p>No</p> <p>Yes</p>

ITEM 1 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
	The submitted shadow diagrams do not accurately depict the solar access arrangements to the subject site. As such an accurate assessment of the solar access arrangements cannot be undertaken.	No
PART 3.0 Site Planning		
3.1 Slope of Site		
(a) Dwellings presentation to street. At least one dwelling clearly seen from street.	Unit 1 and Unit 5 would present to Myra Avenue.	Yes
(b) Sites with a down slope > than 1:6 unacceptable.	The subject site slopes up from Myra Avenue. Refer below.	N/A
(c) Site that slope up from street > than 1:6 unacceptable.	Aside from the overland flow path running through the front portion of the allotment, the subject site generally has a slope up from Myra Avenue to the rear boundary. This is measured from an existing ground level RL:45.76 at the front south western corner of the site to an existing ground level RL:49.44 at the rear south-eastern corner of the site. This fall of 3.68m occurs over a distance of 60.35m which equates to an average slope of approximately 1:16.3.	Yes
(d) Cross fall > than 1:14 not acceptable.	The front of the subject site falls 2.18m from north to south. This is based on a spot level RL:47.77, at the north western corner of the site, and a spot level RL:45.59, adjacent to the south western side boundary at the front of the site that occurs over a distance of 32.64m. This equates to an average cross fall of 1:14.9 .	Yes
3.2 Altering the Levels of the Site		
(a) No imported Fill.	1.14m of fill proposed	No
(b) Levels of the site outside of the building footprint not altered by >300mm	<u>Driveway</u> Fill The maximum level of fill proposed within the driveway is 1.14m at the front of the site within the driveway. This has been calculated between the finished floor level of the driveway at RL:47.90 and existing ground level at RL:46.76. Within the central driveway, adjacent to the visitor parking, 510mm of fill is	No

ITEM 1 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
	<p>proposed. This has been calculated between the finished level of the driveway at RL:46.50 and existing ground level at RL:45.99.</p> <p>Also, within the central driveway, between Unit 1 and Unit 5, 520mm of fill is proposed. This has been calculated between the finished level of the driveway at RL:46.50 and existing ground level directly beneath at RL:45.98.</p> <p>Cut</p> <p>Within the driveway, 1.56m of cut is proposed to accommodate the underground stormwater detention tank. This has been calculated from the base of the tank at RL:46.10 within the north-eastern corner and existing ground level at RL:47.66.</p> <p><u>Private Open Space (POS)</u></p> <p>All POS areas have been amended to now be generally provided at natural ground level.</p> <p><u>Tandem Car Parking Spaces</u></p> <p>Levels are within 500mm of natural ground level.</p>	
(c) Basement garages not permitted. Steps to be minimised and minimal retaining walls.	The proposed development does not include a basement garage.	Yes
(d) Private open space generally at natural ground level.	The private open space of each dwelling would generally be at ground level.	Yes
3.3 Storey and Height		
3.3.1 Storeys		
<p>(a) Street facing dwelling may be two storeys provided:</p> <p>i. Two storey dwelling not attached to any other two storey dwelling.</p> <p>ii. Two storey dwelling is suitable within streetscape.</p>	<p>The proposal includes 2 x two storey dwellings orientated towards Myra Avenue. Both Unit 1 and Unit 5 would not be attached to any other two (2) storey dwelling.</p> <p>The two storey dwelling would be suitable within the streetscape.</p>	Yes

ITEM 1 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
3.3.2 Height		
(a) Proposal complies with Clause 4.3 and 4.3A (2) of RLEP 2014.	Unit 1 and Unit 5 achieve compliance with Clause 4.3. Units, 2, 3 and 4 achieve compliance with Clause 4.3A(2). Refer above.	Yes
3.4 Site Coverage		
(a) Site coverage < 40%	Site coverage: 723.51m ² (30.5%)	Yes
(b) Pervious area > 35%	Pervious area: 1,233.55m ² (52%) It is to be noted, the amended landscape plan, is not of an accurate scale.	Yes
3.5 Setbacks		
3.5.1 Front Setbacks		
(a) Development must be i. N/A ii. Average of setback between the two if the setback of adjoining dwellings is >2m (b) Setback of 1m less than the above standard for not more than 50% of the front elevation.	The buildings located on the adjoining allotments are setback as follows: - 23 Myra Avenue (adjoining property to the south-west) – 40m. - 17 Adam Street (adjoining property to the north-east) – 6m. Given the above, the difference between the setbacks of adjoining dwellings is greater than 2m. The proposal would necessitate an average front setback of 23m. Unit 1 Front Setback – 28.3m Unit 5 Front Setback – 30.12m. Notably, there is a consistent landscape character within Myra Avenue that is characterised by 30-40m setbacks. The setbacks proposed ensure the development is in keeping with the existing streetscape character. A setback of 1m less than the above standard would necessitate a minimum front setback of 27.3m to 50% of the front elevation to Unit 1 and 29.12m to 50% of the front elevation to Unit 5.	Yes

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DCP 2014	Proposed	Compliance
3.5.4 Side and Rear Setbacks		
<p>(a) Min 4.5m unless vehicular access is included in this area, then min 6m.</p> <p>(b) Must be adequate to provide appropriate solar access.</p> <p>(c) Ensure existing substantial trees not within proposed courtyard areas.</p> <p>(d) Min 3m up to 50% permitted.</p>	<p>The northern-eastern ground floor wall of Unit 1 has a total width of 18.4m. 7.1m (38.5%) of the width of Unit 1 is setback 3m from the northern-eastern side boundary.</p> <p>The northern-eastern first floor wall of Unit 1 has a total width of 18.4m. 7.1m (38.5%) of the width of Unit 1 is setback 3m from the northern-eastern side boundary.</p> <p>The north-eastern wall of Unit 2 has a total width 17.75m. 6.90m (37.5%) of the width of Unit 2 is set back 3m from the north-eastern side boundary.</p> <p>The north-eastern wall of Unit 3 has a total width of 7m. 5.5m (78.5%) of the total width of Unit 3 is setback 3m from the northern side boundary.</p> <p>The south-eastern wall of Unit 3 has a total width of 24.65m. 11.95m (48.47%) of the total width of Unit 3 is setback 3m from the southern side boundary.</p> <p>The south-western wall of Unit 3 has a total width of 10.51m. 6.07m (57.75%) of the total width of Unit 3 is setback 3m from the southern side boundary.</p> <p>The north-eastern wall of Unit 3 has a total width of 7m. 5.5m (78.5%) of the total width of Unit 3 is setback 3m from the northern side boundary.</p> <p>The south-western wall of Unit 4 has a total width of 15.06m. 7.9m (52.45%) of the total width of Unit 6 is setback 3m from the southern side boundary.</p> <p>Unit 5 – the south-western ground floor wall of Unit 5 has a total width of 19.4m. 7.7m (39.7%) of the total width of Unit 5 is setback 3m from the south-western side boundary.</p> <p>Unit 5 – the south-western first floor wall of Unit 5 has a total width of 19.4m. 7.7m (39.7%) of the total width</p>	No

ITEM 1 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
	<p>of Unit 5 is setback 3m from the south-western side boundary.</p> <p>Further detail is required to determine provision of solar access.</p> <p>Existing substantial trees are not proposed within courtyard areas</p>	
3.5.5 Internal Setbacks		
<p>(a) Habitable windows do not overlook habitable windows of another dwelling.</p> <p>(b) Min 9m separation provided between habitable windows within development.</p>	<p>The following habitable room do not comply.</p> <ul style="list-style-type: none"> Unit 1 kitchen window aligns with Unit 5 kitchen window - 6m separation provided. However Unit 1 kitchen window is obscure glazing and acceptable on merit. Unit 4-bedroom 2 window aligns with living room window of Unit 2- 7.03m separation provided. Living room window of Unit 2 is highlight and acceptable. 	No – acceptable on merit
3.6 Private Outdoor Space (courtyards)		
<p>(a) Minimum:</p> <p>i. 30m² for 2 bed.</p> <p>ii. 35m² for >3 bed.</p> <p>(b) Min 4m dimensions.</p> <p>(c) At least 50% access to sunlight for 2 hours.</p> <p>(d) Courtyards do not contain existing substantial trees.</p>	<p>Unit 1 – 68.44m² Unit 2 – 53.97m² Unit 3 – 173.46m² Unit 4 – 41.08m² Unit 5 – 67.42m²</p> <p>It is to be noted that the above calculations do not include tandem car parking spaces proposed within the rear courtyard areas.</p> <p>A minimum 4m dimension is achieved for all dwellings.</p> <p>Insufficient information provided.</p> <p>No existing substantial trees within courtyards.</p>	No

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ATTACHMENT 1

DCP 2014	Proposed	Compliance
<p>(e) Access other than through dwelling to POS and not less than 1m wide.</p> <p>(f) Private outdoor space securely enclosed and visible from living area.</p> <p>(g) Must be one area, can be partially paved but not roofed.</p> <p>(h) Courtyards not in front setback.</p> <p>(i) Min 1.2m wide landscape privacy strip between courtyard and adjoining property.</p>	<p>All units provide access to the POS (other than through the dwelling) via the 'drive-thru' garages.</p> <p>The POS areas are suitably enclosed by fencing.</p> <p>The POS of each dwelling is limited to a single area.</p> <p>No courtyard areas are proposed within the front setback.</p> <p>Screen planting is proposed adjacent to the boundaries of each unit.</p>	
3.7 Landscaping		
<p>Landscape plans</p> <p>(a) A concept landscape plan submitted.</p> <p>(b) Landscaping completed prior to occupation. Should include watering system.</p> <p>Protection and retention of trees</p> <p>(c) Existing trees retained and buildings setback appropriately.</p> <p>(d) Existing substantial trees not located within courtyards.</p> <p>(e) Tree location must not cause damage to building.</p> <p>(f) Arboricultural assessment where significant tree/s impacted.</p>	<p>A concept Landscape Plan has been submitted (refer to plans prepared by Horticultural Resource Consulting Group, Issue D, Drawing No. LCP1 and LCP2, dated 21.02.2021).</p> <p>Capable of being satisfied by a condition of consent.</p> <p>Unit 1 and Unit 5 have been appropriately setback.</p> <p>The site contains a significant number of mature trees. The site is also mapped as Urban Bushland.</p> <p>However, given the modified setbacks proposed, there are no existing substantial trees located within courtyard areas.</p> <p>Landscape design acceptable.</p>	<p>Yes</p>

ITEM 1 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
<p>Privacy planting</p> <p>(a) Planting along the driveway and around pathways. Landscape strips included for privacy purposes must be not less than 1.2 metres wide</p> <p>(b) Landscape strip not less than 1.2m wide between driveway and boundary. Shrubs 2 - 2.5m high. Trees 5 - 6m high.</p> <p>(c) Landscape strip not less than 1m between driveway and wall of dwgs.</p> <p>(d) Edge between driveway & paths edged with concrete, not timber.</p> <p>(e) Rolled edge between driveway & garden/lawn areas.</p> <p>Nature strips</p> <p>(f) Trees within footpath to be protected.</p> <p>On site detention</p> <p>(g) OSD tanks and above ground OSD not located in front setback. Driveway preferable. In landscape area, min 300mm soil cover.</p>	<p>An Arborist Report (prepared by Horticultural Resource Consulting Group, dated 17 Oct 2020) has been submitted.</p> <p>Planting areas of appropriate width.</p> <p>A central driveway is proposed.</p> <p>A landscaping strip of not less than 1m would be provided between the driveway and wall Units 1 and 5 and Units 2 and 4.</p> <p>Able to be required by condition.</p> <p>Able to be required by condition.</p> <p>The submitted Arborist Report (prepared by Horticultural Resources Consulting Group indicates that three (3) existing established street trees are to be removed. These are 2 low category and 1 medium category trees. Three (3) medium category established street trees are to be retained and protected.</p> <p>The proposed OSD tank has been located beneath the driveway.</p>	
3.8 Car Parking, Manoeuvrability and Driveway crossings		
3.8.1 Car Parking		

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DCP 2014	Proposed	Compliance
<p>Number of car spaces</p> <p>(a) Number of parking spaces, refer to Part 9.3 of DCP:</p> <ul style="list-style-type: none"> - 1 space per 1 or 2 B dwelling, - 2 spaces per 3+B dwelling, - 1 visitor space per 4 dwellings. <p>(b) At least 1 space per dwg must be lockable garage (round up).</p>	<p>Unit 1 – 5 bedrooms – 2 car spaces required. Unit 1 includes 2 car parking spaces within a lockable garage.</p> <p>Unit 2 – 3 bedrooms – 2 car spaces required. Unit 2 includes 1 car parking space within a lockable garage and an additional tandem car parking space.</p> <p>Unit 3 – 3 bedrooms – 2 car spaces required. Unit 3 includes 1 car parking space within a lockable garage and an additional car parking space between Unit 2 and bedroom 1 of Unit 3.</p> <p>Unit 4 – 3 bedrooms – 2 car spaces required. Unit 4 includes 1 car parking space within a lockable double garage and an additional tandem car parking space.</p> <p>Unit 5 – 5 bedrooms – 2 car spaces required. Unit 5 includes 2 car parking spaces within a lockable garage.</p> <p>Two (2) visitor car parking spaces are proposed within the front setback.</p>	Yes
<p>Hatchet shaped allotments</p> <p>(c) N/A</p> <p>(d) N/A</p> <p>Location</p> <p>(e) Garages not located between dwellings and street frontage.</p> <p>(f) Garages and parking spaces do not dominate streetscape.</p> <p>(g) Garage (doors) should be designed to reduce visual prominence.</p> <p>(h) Tandem parking not permitted in front of a garage.</p>	<p>No garages within the proposed development are located between the dwellings and the street frontage.</p> <p>The proposal would include two (2) visitor car parking spaces within the front setback. The car parking spaces are of a permeable surface, and would not warrant the removal of any significant trees which are defining landscape feature of Myra Avenue.</p> <p>The garages doors have been recessed 250 to 300mm from the</p>	

ITEM 1 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
<p>(i) Garages and parking areas convenient.</p> <p>(j) Garages separate dwellings.</p>	<p>outside building wall, thus reducing the visual prominence of the doors.</p> <p>No tandem parking has been proposed in front of the garages.</p> <p>Each garage is conveniently located with internal access provided to each garage from the respective dwellings.</p> <p>The garages have been provided in an arrangement that will separate each of the dwellings within the development.</p> <p>Notably an open hard stand car parking space has been provided between Unit 2 and Unit 3 which separates the dwellings.</p>	
3.8.2 Manoeuvrability		
<p>(a) Vehicles enter and leave in a forward direction.</p> <p>(b) Corner lots, reversing out permitted depending on traffic conditions.</p> <p>(c) Corner lot, vehicle access point not less than 6m from property boundary at intersection of 2 roads.</p> <p>(d) Tandem arrangement permitted where no impact on manoeuvrability.</p> <p>(e) Enter and leave parking spaces in a single 3-point turn</p> <p>(f) Comply with AS 2890.1.</p>	<p>Swept path diagrams and driveway visibility matters not resolved.</p>	No
3.8.3 Driveways		
<p>(a) Driveways paved and extent minimised appropriately.</p>	<p>The concrete driveway is suitably paved and leads to each lockable garage.</p>	Yes
3.8.4 Driveway crossings		
<p>(a) Up to 10 spaces – Minimum 4m More than 10 spaces – not more than 6m</p>	<p>14 car parking spaces are proposed within the development. The proposal includes a 5.5m driveway crossing.</p>	Yes
3.9 Overshadowing and Access to Sunlight		

ITEM 1 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
<p>(a) Habitable room windows face courtyard or other outdoor space open to the sky, no closer than 1.5m to facing wall.</p> <p>(b) Sunlight to at least 50% of each courtyard, and principal ground level open space of adjacent properties must not be reduced to less than 2hrs between 9am and 3pm on June 21.</p> <p>Where existing overshadowing by buildings and fences is greater than this on adjoining properties, sunlight must not be further reduced by more than 20%.</p> <p>(c) Shadow diagrams must indicate extent of shadowing within development and adjoining properties.</p>	<p>Habitable room windows have been orientated towards the courtyard areas and common driveway.</p> <p>The submitted shadow diagram does not show the shadow cast from the proposed Unit 1 and 2 at 12noon and 3pm. These dwellings are located to the north of the proposed Unit 3, 4 and 5.</p> <p>Unit 5 is considered to receive solar access to the west and north facing living room throughout the day, despite the POS not receiving the required solar access.</p> <p>Unit 3 and 4 are considered highly likely to be overshadowed from proposed Units 1 and 2 and would not receive compliant solar access to the living areas or the POS.</p>	<p>No</p>
3.10 Visual and Acoustic Privacy		
<p>(a) Min 9m separation between facing habitable room windows.</p> <p>(b) No direct views between living area windows or adjacent dwellings (otherwise screening or obscuring necessary).</p> <p>(c) Direct views from living areas to private open space of other dwellings should be screened or obscured within privacy sensitive zone of 12m radius</p> <p>(d) No balconies. Elevated landings (or similar associated with stairs into courtyard) max 1m wide</p> <p>(e) Living and sleeping areas protected from high levels of external noise.</p> <p>(f) Noise levels of air con pool pumps etc must not exceed background noise level by more than 5dB(A)</p> <p>(g)</p>	<p>Privacy measures provided for windows within 9m.</p> <p>Privacy screening is proposed within courtyard areas. Conditions to be required to limit size of screening to 1.8m.</p> <p>As above.</p> <p>No balconies proposed.</p> <p>The layout of each dwelling of the development is considered to be acceptable in terms of protecting living and sleeping areas of high levels from external noise.</p> <p>Capable of compliance via the imposition of consent conditions.</p>	<p>Condition</p> <p>Yes</p> <p>Yes</p> <p>N/A</p> <p>Yes</p> <p>Yes</p>

ITEM 1 (continued)

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DCP 2014	Proposed	Compliance
3.11 Accessibility		
3.11.1 Pedestrian Access		
(a) Safe access achieved for pedestrians.	The proposed development has been designed to provide safe and accessible access for pedestrians	Yes
(b) Continuous access path provided and separate from vehicle access.	A pathway is provided parallel to the driveway.	
PART 4.0 Building Form		
4.1 Appearance		
(a) Complement streetscape.	The proposed development is considered to complement the streetscape given the large setbacks proposed, and the retention of significant vegetation with the front setback which provide a valuable contribution to the character of the street.	Yes
(b) Includes pitched roof, eaves, vertically oriented windows, verandahs, rendered and face brick.	Flat roof designs to Unit 1 and Unit 5.	
(c) At least 1 dwg must face street.	Unit 1 and Unit 5 orientated towards Myra Avenue.	
4.2 Ceiling Height		
(a) Floor to Ceiling min 2.7m	<u>Two Storey Dwellings.</u> Unit 1 Ground Floor – 3.3m Unit 1 First Floor – 2.7m Unit 5 Ground Floor – 3.3m Unit 5 First Floor – 2.7m <u>Single Storey Units</u> Unit 2 – 2.7m Unit 3 – 2.7m Unit 4 – 2.7m	Yes
4.3 Roofscape and Roof Materials		
(a) Pitch 22-30 degrees where visible from a public place.	Unit 1 and Unit 5 fronting Myra Avenue would include a flat roof design with slight fall from front to rear.	No
(b) Pitch increase to 35% where second storey contained in roof.		

ITEM 1 (continued)

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DCP 2014	Proposed	Compliance
<p>(c) Eaves of at least 300mm.</p> <p>(d) Gables fronting street is required and hip roofs generally not permitted.</p> <p>(e) Variation in roof line.</p> <p>(f) Use materials consistent with traditional materials.</p>	<p>The proposed development would not include a second storey contained within a roof.</p> <p>300mm to 460mm eaves proposed.</p> <p>Unit 1 and Unit 5 would front the street and would not include gables, given the flat roof design proposed.</p> <p>Limited variation proposed to the flat roof designs to both Unit 1 and Unit 5.</p> <p>Metal roofing proposed.</p>	
4.4 Building materials for Walls		
<p>(a) Exterior walls use materials consistent in form and colour of existing development.</p> <p>(b) Windows have vertical proportion of between 2:1 and 3:1.</p>	<p>The materials proposed include face brick and rendered, as well as a metal roofing for all dwellings. This is consistent with the predominately brick and rendered dwellings, as well as tiled and metal roofing dwellings in the street.</p> <p>Windows are considered to be consistent with the surrounding area of development, and the majority of street facing windows are vertically proportioned. Floor to ceiling street facing windows are larger than windows typically provided to the street; however, these provide additional light to rooms and are acceptable.</p>	Yes
4.5 Fences		
4.5.1 Front fence		
<p>(a) Front fences not higher than 1m and must be at least 70% visually permeable.</p> <p>(b) Front fences constructed of materials including`:</p> <p>i. Wooden pickets (open),</p> <p>ii. Masonry (sand stone or facebrick); and</p> <p>iii. Wrought iron or similar.</p>	No front fencing proposed.	N/A
4.5.2 Other Boundary Fences which Face a Street		
<p>(a) Boundary fences facing another street must be constructed of similar materials to front fence.</p> <p>(b) Boundary fencing facing another street, capped and capped timber fences and 'colorbond' not permitted.</p>	<p>The subject site is not located on a corner allotment and therefore does not have a secondary street frontage.</p> <p>As above.</p>	<p>N/A</p> <p>N/A</p>

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DCP 2014	Proposed	Compliance
(c) If boundary fencing is solid, no indentation less than 600mm by 300mm must be provided.	As above.	N/A
4.5.3 Other boundary fences		
(a) Fences other than boundary fences facing street must be a min of 1.8m high.	The submitted ground floor and site plan indicates a 1.8m high Colourbond or timber paling fencing is proposed to the side and rear boundaries. Condition recommended to ensure this does not sit forward of the building line.	Yes
(b) Side, return and rear boundary fencing constructed of timber to lapped and capped standard.	Refer above.	Yes
4.6 Clotheslines and drying area		
(a) Clothes drying facility provided to each dwelling in appropriate location.	Clothes drying facilities are proposed within the POS areas of each dwelling.	Yes
(b) Laundry within each dwelling.	Laundries have been provided within each dwelling.	Yes
4.7 Lighting		
(a) Front yard lighting and front of dwelling provided	No information provided. Standard condition able to be imposed.	No-Condition
(b) External lighting must not adversely affect adjoining properties.	Capable of compliance via the imposition of standard consent conditions to be imposed.	No-Condition
(c) Spot lights discouraged.	No spot lights are proposed.	Yes
4.8 Location of bin enclosures		
(a) A. Waste and recycling storage areas and facilities provided in accordance with Part 7.2 of Waste DCP.	Waste and recycling storage areas and facilities have been provided in accordance with the requirements for multi dwelling housing developments (of up to 5 dwellings) within Section 2.6 of Part 7.2 of DCP2014.	Yes
(b) Up to 5 dwellings, not steeply sloping and wide road frontage:	Notably, the proposal has included dedicated bin storage areas within the POS of each unit.	Yes
i. Each dwelling provided with storage area.		
ii. Storage area not visible from public spaces, habitable rooms or common areas within development or other properties.		
PART 5.0 – Engineering		

ITEM 1 (continued)

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DCP 2014	Proposed	Compliance
5.1 Drainage		
<p>Stormwater Runoff</p> <p>(a) Refer to Part 8.2 Stormwater & Floodplains Management DCP 2014.</p> <p>Property Drainage</p> <p>(b) Runoff from roofs and hard surfaces must not cause nuisance or damage to other private properties.</p> <p>(c) Runoff from roofs, driveways and hard surfaces collected and drained via gravity to on-site stormwater detention system before discharge to street gutter or council pipe or watercourse.</p> <p>(d) Inter-allotment easement acquired where runoff cannot be directed to street or a suitable pipeline.</p> <p>(e) Pump out systems not permitted.</p> <p>Minimising Flowrates</p> <p>(f) Surface on-site detention basis not permitted.</p> <p>(g) Pervious area must not be less than 35%.</p> <p>(h) On-site detention system must be provided.</p> <p>(i) Use of porous paving for patios and pathways encouraged.</p> <p>(j) Porous paving considered to be 25% impervious. Use for driveways not permitted.</p> <p>Stormwater Conservation</p> <p>(k) Rainwater tanks encouraged.</p> <p>(l) Details of tanks in Part 8.2 of Stormwater Management DCP.</p> <p>Overland Flow</p> <p>(m) Consideration given to overland flow.</p> <p>(n) If water entering property is sizeable, demonstrate proposed development complies with minimum design standards.</p>	<p>Issues remain; refer to CWI Drainage & Senior Development Engineer Referral Comments.</p>	<p>No</p>

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DCP 2014	Proposed	Compliance
<p>(o) If overland flow is small, hydraulic study generally unnecessary</p> <p>(p) Overland flow must not:</p> <p>ii. Be redirected in a manner which increases the quantity or concentration of flows through adjoining properties;</p> <p>iii. Enter buildings, lockup garages or sheds;</p> <p>iv. Enter the piped drainage system unless that system has been designed to accept those flows;</p> <p>v. Enter the on-site detention system.</p> <p>(q) Overland flow must:</p> <p>i. Be conveyed through the site in a safe manner,</p> <p>ii. Be conveyed in a manner which will not result in scour.</p> <p>(r) Details of the method of dealing with stormwater are to be submitted with the Development Application to Council's satisfaction.</p>		
Part 6.0 Public Facilities		
6.1 Local Open Space Facilities		
<p>(a) Increased demand for local open space facilities is to be satisfied through the acquisition and embellishment of certain land for open space purposes identified in Council's Open Space and Recreation Facilities Plan. Contributions required.</p>	Section 7.11 contribution would be applicable,	Condition
6.2 Local Road Facilities		
<p>(a) The construction of kerb and gutter, paved road shoulder, foot paving and landscaping where such facilities do not exist across the entire frontage of the land adjacent to the proposed development will be requested to be undertaken as part of the development. This work is to be carried out in accordance with the requirements of Council.</p>	Public domain works would be applicable; however, application is to be refused.	Subject to engineer's referral