

**Meeting Date:** Tuesday 10 May 2016  
**Location:** Committee Room 2, Level 5, Civic Centre, 1 Devlin Street, Ryde  
**Time:** 5.00pm

**NOTICE OF BUSINESS**

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**1 CONFIRMATION OF MINUTES - Meeting held on 12 April 2016**

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**Report prepared by:** Senior Coordinator - Governance**File No.:** CLM/16/1/3/2 - BP16/395

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**REPORT SUMMARY**

In accordance with Council's Code of Meeting Practice, a motion or discussion with respect to such minutes shall not be in order except with regard to their accuracy as a true record of the proceedings.

**RECOMMENDATION:**

That the Minutes of the Planning and Environment Committee 3/16, held on 12 April 2016, be confirmed.

**ATTACHMENTS**

- 1 MINUTES - Planning and Environment Committee Meeting - 12 April 2016

**ITEM 1 (continued)**

**ATTACHMENT 1**

**Planning and Environment Committee  
MINUTES OF MEETING NO. 3/16**

**Meeting Date:** Tuesday 12 April 2016

**Location:** Committee Room 2, Level 5, Civic Centre, 1 Devlin Street, Ryde

**Time:** 5.00pm

**Councillors Present:** Councillors Pendleton (Chairperson), Etmekdjian, Pickering, and Yedelian OAM.

Note: Councillor Pickering arrived at the meeting at 5.12pm during the public participation on Item 2. He was not present for consideration of Item 1.

**Apologies:** Councillor Simon.

**Leave of Absence:** Councillor Chung.

Note: In the absence of Councillor Simon, the Deputy Chairperson – Councillor Pendleton chaired the meeting.

**Staff Present:** Acting Director – City Strategy and Planning, Acting Manager – Assessment, Manager – Environment, Health and Building, Solicitor, Senior Coordinator – Development Assessment, Assessment Officer – Town Planner, Senior Development Engineer, Acting Senior Coordinator – Community Engagement, Heritage Officer, Business Support Coordinator – City Strategy and Planning, Senior Coordinator – Governance and Governance, Risk and Audit Coordinator.

**DISCLOSURES OF INTEREST**

There were no disclosures of interest.

**1 CONFIRMATION OF MINUTES - Meeting held on 8 March 2016**

Note: Councillor Pickering was not present for consideration or voting on this Item.

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

That the Minutes of the Planning and Environment Committee 2/16, held on 8 March 2016, be confirmed.

**Record of Voting:**

For the Motion: Unanimous

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

**ITEM 1 (continued)**

**ATTACHMENT 1**

**2 2 CLIVE ROAD, EASTWOOD. LOT 78 DP 8043. Local Development Application for alterations and first floor addition to dwelling and new secondary dwelling. LDA2015/0381.**

Note: Helge Sangkuhl (objector), Allan Beeston (objector), Coralie Jensen (objector), and Ken Sonjes (representing the applicant) addressed the meeting in relation to this Item.

Note: Councillor Pickering arrived at the meeting at 5.12pm during the public participation on this Item.

Note: Photographs of the streetscape were tabled by the Acting Director - City Strategy and Planning in relation to this Item and a copy is ON FILE.

Note: Documentation containing three (3) photographs and an elevation plan from Coralie Jensen was tabled in relation to this Item and a copy is ON FILE.

**RECOMMENDATION:** (Moved by Councillors Yedelian OAM and Pickering)

- (a) That consideration of this application be deferred for a mediation to be undertaken by the Acting Director - City Strategy and Planning between the applicant and the objectors, with the aim of providing a more appropriate design of the first floor addition to the existing dwelling.
- (b) That if the matter can be resolved through the mediation process, the Acting Director - City Strategy and Planning be delegated the authority to determine the application.

**Record of Voting:**

For the Motion: Unanimous

Note: This matter will be dealt with at the Council Meeting to be held on **26 APRIL 2016** as substantive changes were made to the published recommendation.

**3 115 ROWE STREET, EASTWOOD. LOT A DP 407059. Local Development Application for erection of a new building containing a pub (comprising bar/dining areas, alfresco dining and seating areas, bar with outdoor gaming) at ground floor with three (3) levels of parking above (containing 45 parking spaces), signage, alterations and additions to rear of the existing Eastwood Hotel. LDA2015/0263.**

Note: Sergeant Kerry Bernard (objector representing the NSW Police Local Area Command) addressed the meeting in relation to this Item.

Note: An A3 aerial photograph was tabled by the Acting Director - City Strategy and Planning in relation to this Item and a copy is ON FILE.

**ITEM 1 (continued)**

**ATTACHMENT 1**

**RESOLUTION:** (Moved by Councillors Yedelian OAM and Pickering)

(a) That Local Development Application No. 2015/263 at 115 Rowe Street, Eastwood being LOT A in Deposited Plan 407059 (Car park) and LOT 1 & 2 in Deposited Plan 304384 (Eastwood Hotel) be refused for the following reasons:

- The proposal is inconsistent with the objectives of the B4 Mixed Use zoning applying to the land under Ryde LEP 2014, most notably the first two objectives:
  - The pub is considered incompatible with the adjoining land uses. The pub will result in the suburb of Eastwood having 4 of 9 hotel licences within the Ryde Local Government Area (LGA). Three out of the four hotel licences would be on Rowe Street and the fourth (Landmark Hotel) is within 300m, on the western side of Eastwood Train Station. This would contribute to a cluster of pubs/hotels and result in adverse alcohol related harm onto the population of Eastwood.
  - The pub will result in shortfall of ninety three (93) car parking spaces and increase the demand for already limited on street car parking and contribute to traffic congestion within Rowe Street and the Eastwood Town Centre.
- The proposal is inconsistent with Part 4.1 (Eastwood Town Centre) of the Ryde Development Control Plan 2014, most notably:
  - Contrary to section 3.4.1 (Parking design and location) of the DCP, the proposed building fails to adequately screen the three levels of car parking (above ground), creating an undesirable streetscape element within Rowe Street and the Eastwood Town Centre.
  - Contrary to section 3.6 (Signage) of the DCP, the proposed flush walls signs, no. 7 and no. 8 are located above the awning and inconsistent with other business identification signage types within Rowe Street.
    - The overall area (sqm) of sign no. 7 and No. 8 exceed the maximum prescribed area of 5sqm, having a signage area of 5.4sqm and 6.8sqm respectively.
    - The proposed under awning signs are 450mm in height, contrary to the control which restricts the maximum height of the signs to 300mm.
- The proposal is inconsistent with Part 8.2 (Stormwater) of the Ryde Development Control Plan 2014, most notably:
  - The proposal fails to provide details of a drainage easement that is required to be created.

**ITEM 1 (continued)**

**ATTACHMENT 1**

- The proposal fails to demonstrate that any building, eave or permanent structure (existing and/or proposed) does not encroach the deemed drainage easement.
  - The proposal fails to specify the location of new drainage pits.
- The proposal is inconsistent with Part 9.1 (Signage) of the Ryde Development Control Plan 2014, most notably:
  - Contrary to section 4.0, two projecting wall signs are proposed (no. 1 and no. 2) which are prohibited signage types throughout the City of Ryde.
  - The proposal fails to provide adequate detail with regards signage content material, colour and illumination concerning all signs proposed.
- The proposal is inconsistent with Part 9.3 (Car parking) of DCP 2014 of the Ryde Development Control Plan 2014, most notably:
  - The proposed development provides an inadequate number of car parking spaces for staff, patrons and other building users. The proposal results in a shortfall of ninety three (93) car parking spaces.
  - The proposal will result in adverse localised traffic congestion and impact upon pedestrian safety as a result of the shortfall in off street car parking spaces.
- The development is Inconsistent with SEPP 64: Advertising & Signage, most notably:
  - The proposal is inconsistent with Schedule 1 of SEPP 64 in that it is not compatible with the character of the area;
- The proposal will have significant adverse alcohol-related social impacts and increase the risk of alcohol related harm.
- The proposal will adversely impact upon the amenity, safety and security of the local community, particularly within the Eastwood Town Centre.
- The Plan of Management is inadequate, failing to address the management of patrons affected by alcohol between the existing Eastwood Hotel and the proposed hotel.
  - The plan of management fails to identify who will be responsible for monitoring patrons within the passageway between the two hotels.
- In the circumstances of the case, approval of the development is not in the public interest.

**ITEM 1 (continued)**

**ATTACHMENT 1**

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

**Record of Voting:**

For the Motion: Unanimous

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

**4 PLANNING PROPOSAL - 87 BOWDEN STREET RYDE - DELLINA PALM COTTAGE**

Note: Suellen Hazell and Doriana Donnelly (representing Meadowbank Residents Group) addressed the meeting in relation to this Item.

Note: An online petition titled 'Save 87 Bowden Street Residents' Committee – Signature 12 Apr 2016' together with a comments document from Doriana Donnelly were tabled in relation to this Item and copies are ON FILE.

**RESOLUTION:** (Moved by Councillors Yedelian OAM and Pendleton)

- (a) That Council endorse forwarding the planning proposal for 87 Bowden Street, Ryde (LOT 17 DP 663261) to receive a gateway determination in accordance with Section 56 of the Environmental Planning and Assessment Act 1979 and that the Ministers delegation enabling Council to determine the LEP be requested.
- (b) That Council endorse that, in the event of a gateway determination being issued pursuant to Section 56 of the Environmental Planning and Assessment Act 1979, the proposal be placed on public exhibition in accordance with the Community Engagement Consultation Program and a further report be presented to Council following the completion of the exhibition period.

**Record of Voting:**

For the Motion: Unanimous

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

**5 DRAFT AFFORDABLE HOUSING POLICY- RESULTS OF COMMUNITY ENGAGEMENT**

Note: Greg South (representing Link Housing) and Nathan Moulds (representing the Salvation Army) addressed the meeting in relation to this Item.

**ITEM 1 (continued)**

**ATTACHMENT 1**

**RESOLUTION:** (Moved by Councillors Pickering and Etmekdjian)

- (a) That Council adopt the “City of Ryde Affordable Housing Policy 2016-2031”.
- (b) That Council prepare a Planning Proposal to amend Ryde Local Environmental Plan 2014 to include affordable housing provisions as outlined in the City of Ryde Affordable Housing Policy.
- (c) That Council invite Lane Cove and Hunters Hill Councils (JRA Partners) to participate in expanding the Affordable Housing Policy to address affordable / key worker housing within their local government areas.
- (d) That the Mayor write to the Minister for Planning advocating an amendment to State planning policies requiring the mandatory delivery of affordable housing in the development and rezoning of land.
- (e) That Council adopt an interim position in relation to the delivery of affordable housing as part of the development and planning process with:
  - 2 % of dwellings in new residential and mixed use developments be affordable housing.
  - 4 % of dwellings constructed on land to be rezoned to permit residential / mixed use development be affordable housing.

**Record of Voting:**

For the Motion: Unanimous

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

**6 PEDESTRIAN ACCESS AND MOBILITY PLAN - TOP RYDE CENTRE AND NORTH RYDE SMALL CENTRES**

**RESOLUTION:** (Moved by Councillors Yedelian OAM and Etmekdjian)

- (a) That Council endorses the exhibition of the Draft Top Ryde Centre & North Ryde Small Centres Pedestrian Access and Mobility Plan for a period of 28 days.
- (b) That subject to (a), a further report be submitted for Council to determine the Draft Pedestrian Access and Mobility Plan after the public exhibition period has finished and all submissions have been considered.



**ITEM 1 (continued)**

**ATTACHMENT 1**

**Record of Voting:**

For the Motion: Unanimous

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

**7 EASTWOOD PLAZA - SMOKE FREE ZONE**

**RECOMMENDATION:** (Moved by Councillors Pickering and Yedelian OAM)

- (a) That Council endorse the implementation of Eastwood Plaza as a 'Smoke Free Zone'.
- (b) That the local chambers, local businesses, and the individuals who made submissions during the trial will be advised of Council's decision.
- (c) That the change is to be promoted through Council's regular media channels.

**Record of Voting:**

For the Motion: Unanimous

Note: This matter will be dealt with at the Council Meeting to be held on **26 APRIL 2016** as Councillor **PERRAM** requested that the matter be referred to the next Council Meeting.

The meeting closed at 6.03pm.

CONFIRMED THIS 10TH DAY OF MAY 2016.

Chairperson

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**2 38 CONRAD STREET, NORTH RYDE. LOT 23 DP 222878. Further Report. Section 96 application (MOD2015/77) to modify development consent LDA2011/343 for alterations and additions to dwelling.**

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

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

**File Number:** GRP/09/5/6/2 - BP16/424

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**1. Report Summary**

**Applicant: Robert Carbone**

**Owners: Robert and Susana Carbone**

**Date lodged: Section 96 lodged 28 April 2015 (amended plans and support information received 14 August and 2 September 2015. Further information received 12 January 2016 following previous Council resolution)**

This report has been prepared to enable Council's further consideration of a Section 96(1A) application for alterations and additions to an existing approved dwelling house at 38 Conrad Street, North Ryde. The proposed modifications are as follows:

- Conversion of a previously approved garage to a sitting room with approved elevated driveway to be used for vehicle parking for one (1) vehicle;
- Amended profile of elevated concrete driveway to incorporate a new pedestrian path and relocated entry to the dwelling;
- New carport atop of the elevated structure within the front setback (**Note: This formed part of revised plans submitted during the processing of this s96 application, but has been deleted from the proposal as part of the latest plans**);
- Relocation of planter beds within the front setback area, and deletion of front stairs from the elevated driveway to the lower ground entrance;
- Internal amendments to the existing dwelling, including new walls, windows etc.;
- New workshop within the revised driveway structure envelope;
- Deletion of approved swimming pool and replacement with additional patio area, landscaping and turf; and
- Various amendments to external landscaping works and retaining walls to the front of dwelling-house (some already constructed).

Council at its Ordinary Meeting of 15 December 2015 resolved to defer consideration of this Section 96(1A) to allow the applicant to submit amended plans to address Items (a) to (e) of the staff recommendation which was put to the Planning and Environment Committee, which was in summary:

**ITEM 2 (continued)**

- (a) Revised BASIX commitments.
- (b) Deleting the proposed carport.
- (c) An additional privacy screen on the Northern boundary.
- (d) A revised landscaping plan.
- (e) A provision of a pedestrian pathway to separate the driveway from the pedestrian entry.

Council also resolved at this Ordinary Meeting that a further report be presented to a future Planning and Environment Committee Meeting, no later than March 2016.

Following Council's resolution, Council received revised plans from the applicant on 12 January 2016 addressing Items (a) to (e) of the staff recommendation put to the Planning and Environment Committee.

Notification of the revised plans to adjoining neighbours in accordance with *Ryde Development Control Plan 2014* (DCP2014) was undertaken from 15 January 2016 to 15 February 2016. It is noted that Council's DCP2014 requires the standard notification periods to be doubled over December and January to allow for the holiday period. In response to the neighbour notification, two (2) submissions objecting to the revised plans were received from the adjoining neighbour at No.36 Conrad Street. These submissions are attached to this report for Councillors consideration. Some of the issues raised in the submissions relate to issues of concern about the original (such as the inclusion of an elevated driveway as part of the development); and some of the issues relate to the current proposed modifications. The Submissions section of this report contains detailed consideration of the issues of concern raised in the neighbour's submissions.

This current report is presented to enable the Planning & Environment Committee's further consideration of the Section 96(1A) application. It is recommended that this Section 96(1A) application be approved.

**Reason for Referral to Development Committee:** Previously considered by Planning & Environment Committee and by full Council; Section 96 originally requested by the Mayor, Councillor Laxale.

**Public Submissions:** Two (2) submissions received during previous consideration of Section 96 application.

Two (2) further submissions received following re-notification of amended plans dated 12 January 2016 following Council's resolution (15 December 2015). Refer to **ATTACHMENT 1** for these further submissions.

**SEPP 1 (or clause 4.6 RLEP 2014) objection required?** None required

**Value of works?** Original DA \$300,000.

**ITEM 2 (continued)**

**RECOMMENDATION:**

- (a) That the Section 96 application number MOD2015/0077 to modify Local Development Application No. 2011/343 at 38 Conrad Street, North Ryde being LOT 23 DP 222878 be approved in the following manner:

- (a) *That Section 96 application MOD2015/0077 to LDA2011/0343 at No.38 Conrad Street, North Ryde being LOT 23 DP 222878 be APPROVED in the following manner:*

- **Condition 1** is deleted and replaced with:

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

Document Description	Date	Plan No/Reference
Ground Floor/Site Plan	11.01.2016	Dwg. No. A1.01, Rev. E
Lower Ground Floor/Site Plan	11.01.2016	Dwg. No. A1.02, Rev. D
Elevations & Section	11.01.2016	Dwg. No. A1.03, Rev. E
Cover Sheet	11.01.2016	L/00, Rev. A
Proposed Lower Ground Floor Landscape Plan	11.01.2016	L/01, Rev. A

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

- (b) **Landscape Plan.** *Of the ten (10) Acmena smithii 'Minor' Lilly Pilly trees proposed along the northern side setback, the three (3) Lilly Pilly trees closest to the front boundary are to be substituted for three (3) Syzygium australe Pinnacle 'Lilly Pilly Pinnacle' trees.*

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

- **Condition 7** is deleted and replaced with the following:

- *The development is to be carried out in compliance with BASIX Certificate No. A177112\_02 dated 07 May 2015.*

**ITEM 2 (continued)**

- **Condition 21** is deleted.

**New Condition**

- **Number of Car Parking Spaces** - One (1) motor vehicle, boat or other vehicle is permitted to park on the elevated parking structure at any one time.
  - **ALL** other conditions remain unaltered and must be complied with.
- (b) That the persons who made submissions be advised of Council's decision.

**ATTACHMENTS**

- 1 Previous Report to Planning and Environment Committee - 8 December 2015
- 2 Submissions from neighbour at 36 Conrad Street
- 3 A3 Plans - Amended Plans 12 January 2016 - subject to copyright provisions -  
CIRCULATED UNDER SEPARATE COVER

Report Prepared By:

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

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

Report Approved By:

**Sandra Bailey**  
**Acting Manager - Assessment**

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

**ITEM 2 (continued)****2. Background**

The previous report to Planning & Environment Committee 8 December 2015 contains a full assessment of the proposal as originally submitted, and details of the background to the Section 96(1A) modification up until that point in time. At the Planning & Environment Committee meeting of 8 December 2015, Council officers recommended approval of the Section 96 application, subject to various conditions, including a condition requiring submission of various amendments to the approved plans and support documents. In summary, those amendments related to:

- (a) Revised BASIX commitments.
- (b) Deleting the proposed carport.
- (c) An additional privacy screen on the Northern boundary.
- (d) A revised landscaping plan.
- (e) A provision of a pedestrian pathway to separate the driveway from the pedestrian entry.

On being put to the Planning & Environment Committee at the meeting of 8 December 2015, the voting on the Officer's recommendation was two (2) votes **for** and three (3) **against**. Accordingly, the Section 96 remained "at large" and was considered at the Ordinary Meeting of Council on 15 December 2015.

At this meeting, Council resolved as follows:

- (a) *That consideration of this matter be deferred to allow the applicant to submit amended plans to address Items (a) to (e) of the staff recommendation which was put to the Planning and Environment Committee;*
  - (a) *Revised BASIX commitments.*
  - (b) *Deleting the proposed carport.*
  - (c) *An additional privacy screen on the Northern boundary.*
  - (d) *A revised landscaping plan.*
  - (e) *A provision of a pedestrian pathway to separate the driveway from the pedestrian entry.*
- (b) *That a further report be presented to a future Planning and Environment Committee Meeting, no later than March 2016.*

## ITEM 2 (continued)

### 3. Actions Following Council's Resolution

#### Submission of Revised Plans by Applicant

On 12 January 2016 the applicant submitted to Council a set of revised plans for the Section 96 application, following Council's resolution above. These plans include:

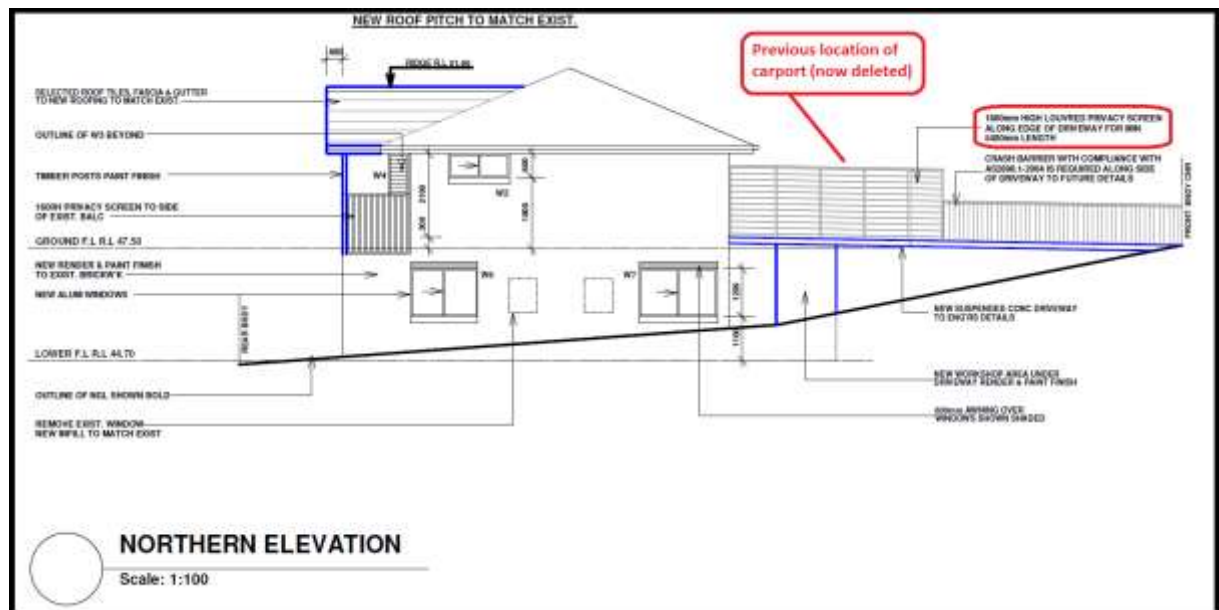
- *Ground Floor/Site Plan – Dwg. No. A1.01 – Revision E dated 11 January 2016;*
- *Lower Ground Floor/Site Plan – Dwg. No. A1.02 – Revision D dated 11 January 2016;*
- *Elevation & Section – Dwg. No. A1.03 – Revision E dated 11 January 2016;*
- *Cover Sheet – L/00 – Revision A dated 11 January 2016;*
- *Proposed Lower Ground Floor Landscape Plan – L/01 – Revision A dated 11 January 2016;*

The revised plans have been assessed, and it is considered that Items (a) to (e) of Council's resolution have been satisfactorily addressed as discussed below:

- **BASIX** – All revised BASIX commitments are now shown and detailed on the revised plans.
- **Carport** – the previously proposed carport forward of the building line has been deleted from the revised plans.
- **Privacy Screen – Northern Boundary.** A 1.8m high fixed louvered privacy screen is now shown along the northern edge of the proposed parking structure for a length extending 5.4m from the building façade with compliant vehicle barriers noted where the vertical fall to the adjacent ground level exceeds 600mm under Australian Standards 2890.1-2004.

The following is an extract of the amended plans showing deletion of the carport and details of the privacy screen.

**ITEM 2 (continued)**



- **Revised Landscape Plan** – A revised landscape plan for the site prepared by a suitably qualified landscape architect has been submitted to Council which shows ten (10) semi-established Lilly Pilly (*Acmena smithii* 'Minor') trees in 15 litre pots are to be planted along the northern boundary between the front boundary and front building line to provide screening to the adjoining property at No.36 Conrad Street.

Confirmation has been obtained from Council's Consultant Landscape Architect that the proposed Lilly Pilly trees (*Acmena smithii* 'Minor') are a variety which is ideal for hedges and thick screen planting, as it responds well to hard pruning and is very long lived. Although capable of growing to 5m in height, they can be pruned to any suitable height. The following is a photo of this type of Lilly Pilly:



**ITEM 2 (continued)**



**Photo of Lilly Pilly *Acmena smithii* 'Minor'**

The revised Landscape Plan submitted by the applicant on 12 January 2016 notes the screen planting on the northern boundary will be maintained to a maximum height of 3m.

However, Council's Consultant Landscape Architect has commented that the selected species would be less appropriate as the landscape strip narrows closer to the front boundary. A more suitable species has been nominated for this location, being the *Syzygium australe Pinnacle* – which has a much smaller growing habit and would be more effective in a narrower location such as where the landscape strip narrows down due to the location of the driveway.

For this reason, the following condition of consent has been recommended:

***Landscape Plan.*** *Of the ten (10) Acmena smithii 'Minor' Lilly Pilly trees proposed along the northern side setback, the three (3) Lilly Pilly trees closest to the front boundary are to be substituted for three (3) Syzygium australe Pinnacle 'Lilly Pilly Pinnacle' trees.*

**ITEM 2 (continued)**

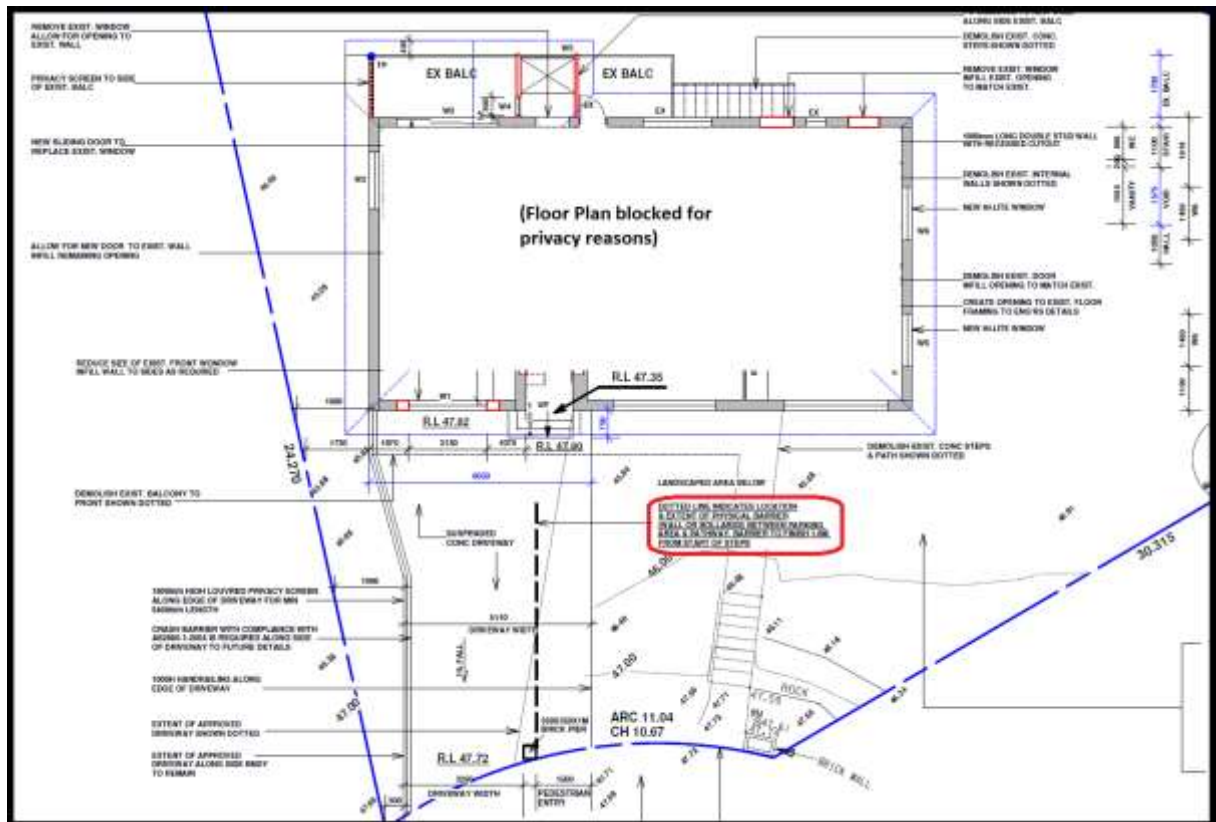
The following is a photo of this type of Lilly Pilly:



**Photo of *Syzygium australe Pinnacle***

- **Pedestrian Pathway** – A physical separation barrier in the form of a wall/bollards has been noted and placed between the pedestrian and driveway components of the elevated structure to ensure pedestrians visiting the dwelling house are guided away from the northern boundary that is common with the adjoining property at No.36 Conrad Street. This is shown on the site plan below:

**ITEM 2 (continued)**



**Site Plan showing location of the physical separation barrier for pedestrian pathway**

Given the above has now been satisfactorily undertaken by the applicant, in accordance with Council's resolution at the Ordinary Meeting of 15 December 2015, it is now appropriate that a further report be prepared for presentation to the Planning and Environment Committee.

Public Exhibition of Revised Plans

In accordance with the provisions of the *Ryde Development Control Plan 2014*, the revised plans submitted by the applicant dated 12 January 2016 to address Items (a) to (e) of the staff recommendation to Council were re-notified to neighbours. The public exhibition period commenced on 15 January 2016 and was completed on 15 February 2016 – note double notification due to holiday period.

In response to the public notification, two (2) submissions were received objecting to the proposal from the adjoining property at 36 Conrad Street on 22 February 2016, and on 7 March 2016. Below is the principal issues raised in the submissions along with a response from the assessment officer on how the revised plans perform against each issue raised in the submission.

**ITEM 2 (continued)**

**A. *The validity of the Section 96(1A) application has been questioned on the basis that Council's Tree Permit Application under TMA2012/005 approved removal of a tree that was identified to be retained under LDA2011/0343. The objector has requested this matter be referred to City of Ryde's Legal Counsel for investigation.***

*Assessing Officer Comment:* In terms of background to this issue, the approved plans for LDA2011/343 (dated 29 November 2011) showed a notation that a *Cupresses* tree (that was close to the common boundary with the objector's property) was to be retained. There were no specific conditions on the DA for the retention of this tree.

On 6 January 2012, the owner/applicant for the DA lodged a Tree Management Application (TMA No 2015/005) for the removal of this tree. Approval for removal of this tree (via a TMA) was issued by Council on 7 March 2012, and the tree was removed shortly afterwards (date unknown).

Normally, because there was an approved DA for the site, any proposed removal of a tree shown to be retained on the DA should have been assessed as a Section 96 application to that DA rather than a TMA.

Advice has been sought and received from Council's General Counsel in relation to what impact (if any) the approval of the TMA has on the validity of the development consent issued by Council. This advice is subject to legal professional privilege and is available for Councillors information only, on Council's File (rather than being an attachment to this report). However in summary, it is advised that whilst a Section 96 application may have been required to remove the tree, impacts for its removal were considered and an approval for its removal was granted by Council; and further removal of the tree does not invalidate the consent.

**B. *The Section 96 proposal is development creep and it seeks to utilise the Section 96 to attain something that should not be granted development consent.***

*Assessing Officer Comment:* It is important to be aware the NSW Land and Environment Court consistently describes the Section 96 modification provision as "beneficial and facultative". It is designed to assist the modification process rather than to act as an impediment to it; "It is to be construed and applied in a way that is favourable to those who seek to benefit from the provision" (see *North Sydney Council v Michael Standley & Associates Pty Limited [1998]*). In this regard it is considered essential that councils exercise caution in demanding that a full DA be lodged – the modification power is there for a reason – namely, to avoid the full DA process that is always otherwise available.

## ITEM 2 (continued)

Section 96 of the EP&A Act 1979 allows applicants to apply for modifications to development consents – either changes to the consent conditions or to the design shown on approved plans. Section 96 applications can include a large number of individual design changes in a single s96 application, or several individual s96 applications over a period of time (more common for larger projects). There are several tests for s96 applications, including that the modifications must be of minimal environmental impact, must be substantially the same as originally approved, must be notified, and Council must consider any submissions received.

The proposed modifications have been assessed by Council as being substantially the same development as that approved under LDA2011/0343 when having regard to the relevant tests established by the NSW Land and Environment Court in *Moto Projects (No 2) Pty Ltd v North Sydney Council*.

It is also important to remember that the elevated structure is essentially already approved, and although not constructed, could lawfully be carried out in accordance with the approval under LDA2011/0343.

The assessment has also concluded that the proposal is satisfactory with respect to the matters for consideration under Section 79C of the *Environmental Planning and Assessment Act 1979* (the Act), as required by Section 96(3) of the Act.

Accordingly, it is not agreed with the objector that the proposal represents 'development creep' but rather a reasonable attempt by the applicant to modify their existing approval. The current Section 96 application enables Council to impose further conditions to address possible impacts on the objector's property.

***C. It is not substantially the same development and a new DA should be lodged.***

Assessing Officer Comment: The report prepared for the Planning and Environment Committee dated 8 December 2015 (herein simply referred to as the Report), outlined how the originally submitted Section 96(1A) application was not considered substantially the same development. However, following the applicant's submission of the revised plans on 14 August 2015, which were further revised on 2 September 2015, it was subsequently considered the proposal was capable of satisfying the 'substantially the same development' test, subject to the conditions Itemed (a) to (e) in the Report recommendations.

At Council's Ordinary Meeting on 15 December 2015, this recommendation was essentially agreed with by Council, however instead of imposing the Items (a) to (e) by way of condition, Council resolved to defer consideration of the Section 96(1A) to allow the applicant to submit amended plans to address Items (a) to (e). This was essentially to be certain the requested changes to the proposal would be made, rather than potentially leave confirmation of compliance to a private certifier.

**ITEM 2 (continued)**

The revised plans submitted by the applicant on 12 January 2016 following Council's Ordinary Meeting now address Items (a) to (e) for which Council sought to defer consideration of the Section 96(1A) on. Accordingly, the plans for the proposed modifications to the approved dwelling house are now considered to constitute 'substantially the same development' as per Section 96(1A) of the Act.

***D. The proposal is jarringly discordant with the existing and desired future character of Conrad Street.***

Assessing Officer Comment: The report prepared for the Planning and Environment Committee dated 8 December 2015, undertook a comprehensive assessment of the proposal and was satisfied that a qualitative and quantitative assessment of the applicant's then revised plans enabled the proposal to be considered substantially the same development as that previously approved by Council under LDA2011/0343, subject to conditions.

When considering the impact of the proposal on Conrad Street, it is important to remember that the elevated structure is essentially already approved, and although not constructed, could be carried out in accordance with the approval under LDA2011/0343.

On the basis the revised proposal (12 January 2016) constitutes substantially the same development as that approved under LDA2011/0343, the impacts of the proposal are now considered to satisfactory as they are not substantially indifferent to that which can already be lawfully constructed on the site.

***E. The approval of the Section 96 would only reward a calculated approach to poor environmental planning outcomes.***

Assessing Officer Comment: The environmental planning outcomes of the modified proposal under the subject Section 96(1A) are substantially the same as that approved under the original DA for alterations and additions to the dwelling house under LDA2011/0343.

The current Section 96(1A) application is not seeking consent for the structure, but rather minor modifications which result in a built form outcome and use that as substantially indifferent to that which could be lawfully constructed and used on the site already.

***F. There is no precedent. Nor should Council create any precedent for elevated hardstand parking platforms and or aerial pedestrian bridges.***

Assessing Officer Comment: Again, when considering the impact of the proposal, it is first important to remember that the elevated structure is essentially already approved, and could lawfully be carried out in accordance with the approval under LDA2011/0343.

**ITEM 2 (continued)**

It is also important to consider the practical operation of the elevated structure if it were to be constructed and used as per the approved DA. For example, as commonly found with most dwelling houses, it would be reasonable to expect that a motor vehicle could be parked in front of the garage, thus meaning the approved elevated driveway could act as a platform for the parking of a motor vehicle akin to that which is now proposed under the Section 96(1A) application.

Given the above, it is considered that a precedent for the elevated structure has already been set by Council's granting of approval to LDA2011/0343.

Nevertheless, Council has sought to ensure the impacts associated with the Section 96(1A) application remain substantially the same as that approved under LDA2011/0343 by requesting changes to the design (see Item's (a) to (e) of the Report) and also imposing conditions that ensure only one (1) motor vehicle, boat or other vehicle is permitted to park on the elevated structure at any one time.

It is also noted that Council has approved some examples of elevated driveways and/or parking structures forward of the building line, especially on properties where there is a large slope down from the front boundary. Whilst these are more common in waterfront properties (such as in Putney, Gladesville or Tennyson Point) where properties slope very steeply from the street towards the rear boundary, the same principles apply to the subject site.

***G. Such structures detract from open streetscape and occasion real adverse harm to neighbouring properties - their privacy – their amenity.***

Assessing Officer Comment: As outlined above, on the basis the revised proposal (12 January 2016) now constitutes substantially the same development as that approved under LDA2011/0343, the streetscape and privacy/amenity impacts of the proposal are now considered to be satisfactory as they are not substantially indifferent to that which can already be lawfully constructed on the site.

It is acknowledged that the elevated structure, as already approved, will present the opportunity for some overlooking of the adjoining property at No.36 Conrad Street. This is partly due to the elevated structure, and partly due to the topography of the land and the subdivision layout.

With the applicant's modified plans for the Section 96(1A) application, the elevated structure is now setback from the northern side boundary with No.36 Conrad Street consistent with that of the previously approved DA, whereas originally the Section 96(1A) application proposed it closer to the northern boundary.

Further, given the pedestrian entry to the dwelling is on the southern side of the structure, it is considered overlooking opportunities are now clearly limited.

## ITEM 2 (continued)

In the latest revision to the plans received by Council on 12 January 2016, a number of modifications have been made to the design to assist in maintaining a reasonable level of privacy and amenity to the property at No.36 Conrad Street, this has included deletion of the carport, introduction of privacy screens, planting of semi-established suitable vegetation along the boundary, and features to delineate the pedestrian entry to the dwelling from the parking area.

With the above modifications, it is now considered the proposal no longer detracts from streetscape or occasions any greater adverse impact to neighbouring property over that already approved under LDA2011/0343.

***H. We submit that Council's powers under S96 legislation are insufficient to grant this S96 and we seek a new DA to ensure the proposal can be properly assessed. This very poor proposal should be refused.***

Assessing Officer Comment: Again it is important to be aware the NSW Land and Environment Court consistently describes the section 96 modification provision as "beneficial and facultative", and designed to assist the modification process rather than to act as an impediment to it.

With the above in mind, the Council's assessment of the Section 96(1A) application has sought to work with both the applicant and adjoining land owners to bring the modifications in line with Council's expectations as what could reasonably be considered as substantially the same development to that approved under LDA2011/0343. In doing so, this has resulted in three (3) revisions to the originally submitted plans with the Section 96(1A) application, including bringing forward those requested changes that were to be addressed via condition of consent to being required prior to determination.

The latest revisions to the plans, as received by Council on 12 January 2016, now address all outstanding matters that were required to be covered in Council's decision to defer the Matter at the Ordinary Meeting on 15 December 2015.

As such, it is considered that a new DA for the design modifications is not warranted, and that it is appropriate consent be granted to the subject Section 96(1A) application.

***I. If this section 96 is approved, it should only be approved subject to the conditions proposed below.***

- 1. Investigation into why the retain tree was removed without a S96 or DA modification – actions to relocate and plant a 45 year old tree to return the development to its original consent conditions – if the 45 year old tree cannot be replaced then a new DA is required.***
- 2. New layback and crossing outside of the TPZ.***



**ITEM 2 (continued)**

3. **Enforce a minimum 6M Tree Root Protection Zone along with a Council supervised management plan.**
4. **Relocate the free standing S96 elevated hardstand parking platform outside of the TPZ of 6M.**
5. **Allocate a 2M wide deep soil landscaping strip for amenity/privacy screening.**
6. **Exclude all services and infrastructure from the 2M landscaping strip.**
7. **Reinstate the DA approved solid walls (floor to ceiling) on both front and rear balconies facing the northern boundary.**
8. **Provide an opaque or solid 1.8M privacy wall for 9M along the elevated hardstand parking platform then dropping down to 1M.**
9. **Splay the driveway for pedestrian safety according to the DCP.**
10. **Revise landscaping plan to incorporate tree management and mature trees to replace preserved trees removed.**
11. **Reject the workshop.**
12. **Reduce the elevated hardstand parking platform to 3M width.**
13. **Reject separate aerial pedestrian walkway and reinstate the DA front door.**
14. **Impose conditions to ensure work occurs.**

Assessing Officer Comment: Each of the requested conditions of approved are reiterated below, followed by a comment from the assessing officer:

1. **Investigation into why the Cupressus tree was removed without a S96 or DA modification – actions to relocate and plant a 45 year old tree to return the development to its original consent conditions – if the 45 year old tree cannot be replaced then a new DA is required.**

Comment: This matter has been previously addressed (refer to submission comments above).

2. **New layback and crossing outside of the TPZ.**

Comment: The layback and crossing, as it presents to the northern side boundary, are essentially the same as the alignment approved under LDA2011/0343. To ensure adjacent vegetation is adequately protected during construction works, Condition 53 of the original consent is to be maintained:

**Tree Condition** should any major tree roots be encountered during development work in that area is to cease and will need to be checked by a suitably qualified Arborist or Landscape Consultant. Their requirements are to be carried out as necessary prior to work continuing.

**ITEM 2 (continued)****3. Enforce a minimum 6M Tree Root Protection Zone along with a Council supervised management plan**

Comment: Tree protection measures are considered to have already been covered under the approval of LDA2011/0343. The proposal includes no additional tree removal, and presents an alignment no closer to adjoining vegetation at No.36 Conrad Street.

Accordingly, it is considered appropriate to maintain the existing Condition 53 outlined above in relation to tree retention.

**4. Relocate the free standing S96 elevated hardstand parking platform outside of the TPZ of 6M**

Comment: The position of the elevated structure, as it presents to the northern boundary and also adjoining vegetation, is to remain unchanged over the alignment approved under LDA2011/0343. The modification of the structure principally occurs to the south.

As such, it is considered that tree protection measures for retention of nominated trees are already covered within the existing consent for LDA2011/0343 – refer to Condition 53 copied above.

**5. Allocate a 2M wide deep soil landscaping strip for amenity/privacy screening**

Comment: A revised landscape plan for the site which has been prepared by a landscape architect has been submitted to Council which shows ten (10) semi-established Lilly Pilly trees in 15 litre pots are to be planted along the northern boundary between the street front boundary and front building line to provide screening to the adjoining property at No.36 Conrad Street.

Council's Consultant Landscape Architect has undertaken an assessment of the revised landscape plan and commented that the selected Lilly Pilly species would be less appropriate as the landscape strip narrows closer to the front boundary. A more suitable species has been nominated for this location, being the *Syzygium australe Pinnacle* 'Lilly Pilly Pinnacle' trees.

For this reason, the following condition of consent has been recommended:

***Landscape Plan.*** *Of the ten (10) Acmena smithii 'Minor' Lilly Pilly trees proposed along the northern side setback, the three (3) Lilly Pilly trees closest to the front boundary are to be substituted for three (3) Syzygium australe Pinnacle 'Lilly Pilly Pinnacle' trees.*

**ITEM 2 (continued)**

Approval of the revised Landscape Plan under a modified Condition 1, subject to of the above condition, will ensure that the proposed landscape strip is completed as part of the works and functions as intended. Accordingly, additional conditions for deep soil landscaping planting in this area of the site are considered superfluous.

**6. Exclude all services and infrastructure from the 2M landscaping strip**

Comment: The proposed Section 96 modification did not include any stormwater plans or details. This is because the following condition (60) relating to stormwater disposal is already in place under the consent for LDA2011/0343 which requires engineering plans and certification to be submitted with the construction certificate application. The current Section 96 application does not propose any additional works that require further stormwater details (compared to the original DA approval). Condition 60 reads as follows.

***Stormwater Disposal.*** *Stormwater runoff from all roof areas of the site shall be collected and piped by a charged stormwater system to Conrad Street via a rainwater tank in accordance with BASIX (where applicable) and the City of Ryde, Development Control Plan 2010: - Part 8.2; Stormwater Management. Stormwater runoff from other low lying impervious areas e.g driveways etc are to be collected and piped to an absorption system located at the rear of the site. Accordingly engineering plans including engineering certification indicating compliance with this condition are to be submitted with the construction certificate application.*

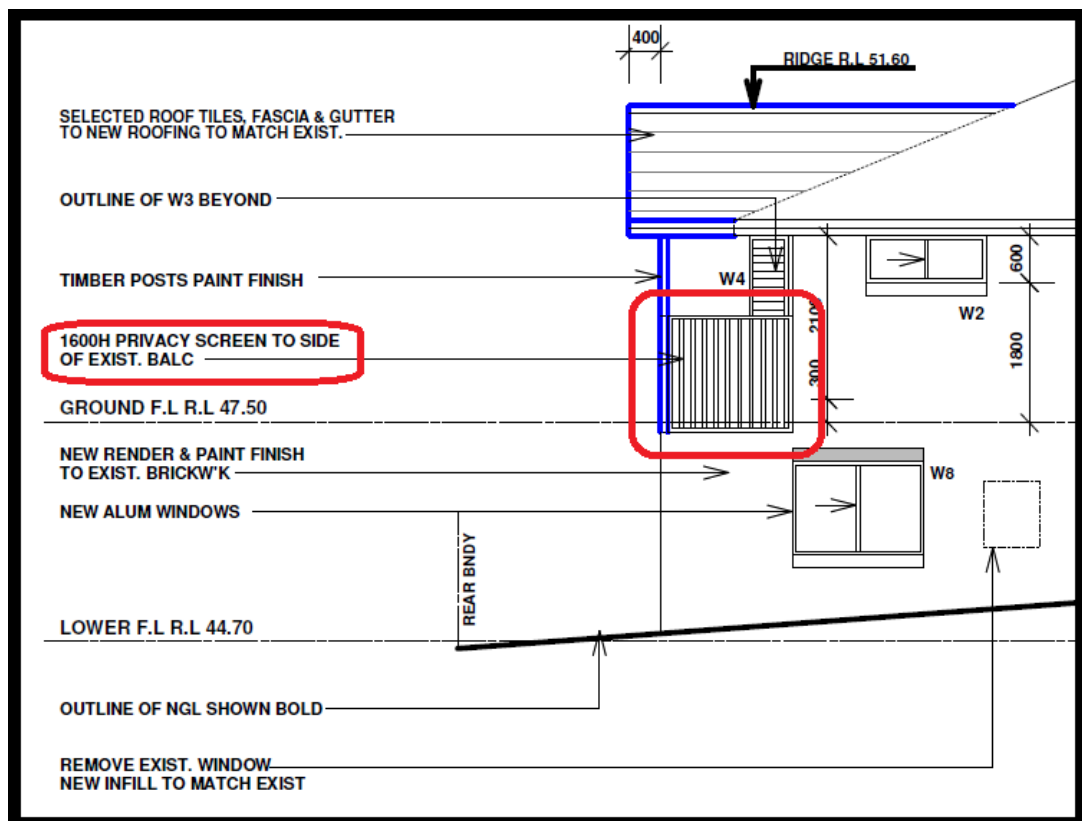
As part of the assessment of the subject Section 96(1A), the proposal has been reviewed by Council's Senior Development Engineer who has indicated that the maintenance of the existing condition above with the approval of the subject Section 96(1A) application would be satisfactory to ensure stormwater disposal on site remains acceptable.

Additionally, Council's Consultant Landscape Architect has also undertaken a review of the subject Section 96(1A) landscape plan (as revised in January 2016) with regard to landscape planting, in particular landscape planting along the northern boundary with No.36 Conrad Street. The Consultant Landscape Architect is satisfied the proposed landscaping can be accommodated within this location, subject to condition, without unduly impeding on any infrastructure services.

**ITEM 2 (continued)**

**7. Reinstate the DA approved solid walls (floor to ceiling) on both front and rear balconies facing the northern boundary**

Comment: The revised plan submitted to Council on 12 January 2016 show a 1.6m high privacy screen is to be located on the northern elevation of the rear balcony of the dwelling (see elevation below). Given the average sitting/standing eye-level, as well as the viewing angle from the balcony to adjoining land, this nominated privacy screen is considered satisfactory for maintaining a reasonable level of visual privacy to the adjoining property at No.36 Conrad Street, while at the same time providing some sky exposure to the north at higher levels to enable solar access to penetrate to the balcony.



**Northern elevation showing 1.6m high privacy screen to northern side of rear balcony**

The requirement for a floor to ceiling wall on this elevation is not considered to be a fair and reasonable outcome as it will not necessary deliver a greater level of visual privacy, but only reduce the level of solar access to the dwelling house balcony.

**ITEM 2 (continued)**

In relation to request for a solid wall to the balcony at the front of the site, this is no longer required because 1.8m high privacy screening is now to be provided to the northern side of the driveway facing the objector's property.

**8. Provide an opaque or solid 1.8M privacy wall for 9M along the elevated hardstand parking platform then dropping down to 1M**

Comment: A condition of consent has been recommended that vehicular parking on the structure be limited to one (1) vehicle space only. Under the relevant Australian Standards, a standard vehicular parking space has a length of 5.4m. Accordingly, the required length of the 1.8m high privacy screen on the northern elevation of the parking space has been set at 5.4m.

Council also must consider the visual impact imposed by a 1.8m high privacy screen, as well as reduce the height of the privacy screen as it approaches the front boundary for pedestrian safety purposes. For this reason, the privacy screen is required to revert to a railing and drop to a height of 1m towards the front boundary.

Given the pedestrian entry is separated from the parking area and located to the southern side of the structure; it is considered privacy will be suitably maintained when considered in conjunction with the limitation of parking and the privacy screen.

**9. Splay the driveway for pedestrian safety according to the DCP**

Comment: As outlined above, from the end of the privacy screen to the boundary, the northern side of the structure is to include a 1m handrail. As such, this is not considered to impact on pedestrian safety.

While no formal referrals of the Section 96(1A) application have taken place, as part of the assessment of the application, the Consultant Assessing Officer has taken advice from Council's Senior Development Engineer on relevant engineering matters.

The advice provided has been that the proposal is satisfactory from an engineering and perspective, subject to the nominated conditions of consent.

Accordingly, there is considered to be no need to splay the driveway for pedestrian safety reasons given the nature of the current design as submitted to Council on 12 January 2016.

**ITEM 2 (continued)*****10. Revise landscaping plan to incorporate tree management and mature trees to replace preserved trees removed***

Comment: Consent has been granted by Council for the removal of the tree referred to by the objector under TMA2012/005. This has been identified by Council's Legal Counsel as being valid.

A revised landscape plan was submitted to Council as part of the package of information in response to Council's resolution on the Matter in its Ordinary Meeting on 15 December 2016.

The landscape plan will include the planting of ten (10) semi-established Lilly Pilly trees along the northern boundary. This landscape plan has been assessed, both by the Consultant Assessment Officer and Consultant Landscape Architect, as satisfactorily addressing the requirements outlined in Item (a) to (e) of the Report, subject to the imposition of conditions.

Additionally, mature trees to be retained are considered to be satisfactorily protected via the existing conditions of consent for LDA2011/0343 - refer to Condition 53 copied above.

On the above basis, it is considered a further revised landscape plan is not necessary in the circumstances of the case.

***11. Reject the workshop***

Comment: The existing approved setbacks of the structure are maintained, and the enlargement of the structure is to occur only to the south where it will have minimal impacts on the adjacent property. The proposed workshop beneath the hardstand area will have no windows, and the entrance is on the southern elevation away from the objector's property boundary.

The submitted Landscape Plan on 12 January 2016 demonstrates the workshop within the undercroft area of the approved structure will not encroach on the landscaped area between the approved structure and the northern side boundary.

In this regard it is considered the proposed workshop will have minimal impacts on privacy or amenity of the adjoining property.

For this reason, the assessment has determined there to be no valid reasons for rejection of the workshop.

## ITEM 2 (continued)

### **12. Reduce the elevated hardstand parking platform to 3M width**

Comment: The parking area on the elevated structure has a width of 3.2m, which widens to 4.27m adjacent to the dwelling. Adjacent to this area is the pedestrian path to dwelling house which has a width of approximately 1.7m.

With the modifications made to the design to address privacy, overlooking and visual impact, the structure is now considered to be satisfactory in terms of its impact on the built environment, particularly given the structure is substantially the same as that already approved under LDA2011/0343.

On this basis, the Consultant Assessment Officer sees no valid reason for reducing the structure to a minimum 3m width. This is because such an outcome would only serve to hinder the separation of pedestrian and vehicular entry to the site, and not necessarily deliver any significant improvements to the environmental performance of the structure itself.

### **13. Reject separate aerial pedestrian walkway and reinstate the DA front door**

Comment: Given the steeply sloping block, the originally approved pedestrian access to the dwelling under LDA2011/0343 was considered to be convoluted by virtue of it being via three separate stair cases totaling twenty-eight (28) stairs.

The dwelling entry arrangements proposed under the revised Section 96 application will facilitate a higher level of accessibility to the dwelling house as a reasonably level access way can be gained from the front boundary.

While this revised pedestrian entry arrangement has resulted in the widening of the elevated structure, it is noted that this widening has occurred to the southern elevation only and is no closer to the common boundary of the objector at No.36 Conrad Street. An extract of the amended plans showing the pedestrian pathway is shown earlier in this report (refer to description of amended plans above).

Accordingly, despite the minor increase in visual impact of the structure as it presents to Conrad Street, given it will deliver a better site access outcome without any significant environmental impacts, the proposal is considered to be supportable.

On this basis there is considered to be no need to reject the new more accessible pedestrian access to the dwelling house.

**ITEM 2 (continued)*****14. Impose conditions to ensure work occurs***

Comment: This issue appears to relate to concerns that (now that the development has been physically commenced) it will not be completed within a reasonable timeframe, and that such long construction timeframes will cause further amenity impacts to neighbours.

The provisions of the Environmental Planning and Assessment Act 1979 state that developments must be physically commenced within 5 years of consent being issued. However, once physically commenced, there is no time limit on how long it takes for developments to be completed. Council does have enforcement powers to ensure that construction sites are maintained in a reasonably safe and tidy manner. It is also noted that the applicant has expressed a desire to complete the development as quickly as possible to minimise disruption to their family life.

**Conclusion**

The proposal has been assessed pursuant to the provisions of Section 96(1A), and also by using the heads of consideration listed in Section 79C of the Environmental Planning & Assessment Act 1979 as outlined in the previous report to Planning & Environment Committee.

Following Council's resolution of 15 December 2015, revised plans were prepared by the applicant in relation to the matters raised in Items (a) to (e) of the previous report to Planning & Environment Committee.

Accordingly this Section 96(1A) application is presented back to the Planning & Environment Committee for consideration and determination. Approval is recommended subject to the conditions in the recommendation below.



**ITEM 2 (continued)**

**ATTACHMENT 1**

**PREVIOUS REPORT**

**3 38 CONRAD STREET, NORTH RYDE - LOT 23 DP 222878.  
Section 96(1A) Application to modify consent for alterations  
and additions to dwelling. LDA2011/343 (MOD2015/77)**

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**Report prepared by:** Creative Planning Solutions; Supervisor - Environmental Assessment

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

**File Number:** GRP/09/5/6/2 - BP15/1721

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**1. Report Summary**

**Applicant: Robert Carbone**

**Owner: Robert and Susana Carbone**

**Date lodged: 28 April 2015 (amended plans and support information received 14 August and 2 September 2015)**

This report considers an application for modifications to development consent LDA2011/0343 pursuant to Section 96(1A) of the *Environmental Planning and Assessment Act 1979* (the Act) at No.38 Conrad Street, North Ryde. The proposed modifications are as follows:

- Conversion of a previously approved garage to a sitting room with approved elevated driveway to be used for vehicle parking for one (1) vehicle;
- Amended profile of elevated concrete driveway to incorporate a new pedestrian path and relocated entry to the dwelling;
- New carport atop of the elevated structure within the front setback;
- Relocation of planter beds within the front setback area, and deletion of front stairs from the elevated driveway to the lower ground entrance;
- Internal amendments to the existing dwelling, including new walls, windows etc.;
- New workshop within the revised driveway structure envelope;
- Deletion of approved swimming pool and replacement with additional patio area, landscaping and turf; and
- Various amendments to external landscaping works and retaining walls to the front of dwelling-house (some already constructed).

The subject Section 96 application was notified in accordance with the Ryde Development Control Plan 2014 (DCP2014) from 22 May 2015 to 8 June 2015. In response one (1) submission from a planning consultant on behalf of the neighbouring property at No.36 Conrad Street was received objecting to the development.

**ITEM 2 (continued)**

**ATTACHMENT 1**

Following a letter to the applicant raising issues with the originally lodged proposal not being considered 'substantially the same development', as required by Section 96 of the Act, amended plans were received and renotified from 17 August 2015 and 1 September 2015. One (1) further/revised submission was received in response to these amended plans from the neighbour at No.36 Conrad Street. The issues of concern raised in both submissions are summarised as follows:

- Proposed was still not considered to be 'substantially the same development' by the objector;
- Claimed breaches of the Act with the applicant's private certifier issuing an incorrect Construction Certificate for LDA2011/0343;
- Appearance/Visual Impact of the modified proposal;
- Privacy impacts;
- Pedestrian Safety impacts;
- Suggestions for alternative design options;
- Development engineering and landscaping concerns; and
- Requested conditions of consent should the proposal be approved.

It is also noted that as part of the assessment of the Section 96 application, Council undertook multiple meetings with both the applicant and neighbouring objector from no 36 Conrad Street, which included site inspections from properties.

A detailed assessment of the Section 96(1A) modification application to consent LDA2011/0343 has determined the proposed modifications will have minimal environmental impact, and subject to conditions, be substantially the same development pursuant to Section 96(1A)(a)(b) of the Act.

The conditions recommended to be imposed on the proposal for it to be considered to have minimal environmental impact and be 'substantially the same development' relate to:

- Deletion of the proposed carport atop of the structure within the front setback;
- Installation of a privacy screen for part of the northern elevation of the structure where the vehicle is to be parked to reduce opportunities for overlooking and to address visual impact;
- Provision of a revised landscape plan for Council's approval prior to the issue of CC, with a focus for landscape planting on the northern side boundary adjacent to the structure for screening to No.36 Conrad Street;
- Limiting parking on the structure to one (1) vehicle to ensure compliance with the relevant parking space requirements under Australian Standard 2890.1 2004; and
- Delineating the proposed pedestrian entry from the car parking component on the structure by way of bollards, low wall, planter or similar.

**ITEM 2 (continued)**

**ATTACHMENT 1**

The current Section 96 application presents a further opportunity to impose conditions which will help address issues of concern regarding the approved development and also the current Section 96 modifications. With the applicant's submission of revised plans, and with the imposition of conditions referenced above (refer to report for more detail), it is considered that the Section 96 application is able to be supported and therefore approval is recommended.

**Reason for Referral to Planning and Environment Committee:** Requested by the Mayor, Councillor Laxale.

**Public Submissions:** Two (2) submissions received – one (1) each in relation to the original Section 96 plans and revised Section 96 plans. (refer to Attachment 1 for submissions received.)

**SEPP 1 (or clause 4.6 RLEP 2014) objection required?** Not applicable

**Value of works** – Original DA: \$300,000

**RECOMMENDATION:**

This assessment report has considered the submitted documentation and makes the following recommendations to Council:

- (a) That Section 96 application MOD2015/0077 to LDA2011/0343 at No.38 Conrad Street, North Ryde being Lot 23 DP 721631 be **APPROVED** in the following manner:

- **Condition 1** is deleted and replaced with:

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

<b>Document Description</b>	<b>Date</b>	<b>Plan No/Reference</b>
Ground Floor/Site Plan	02/09/2015	A1.01, Revision D
Lower Ground Floor/Site Plan	13/08/2015	A1.02, Revision C
Elevations & Section	02/09/2015	A1.03, Revision D

**ITEM 2 (continued)**

**ATTACHMENT 1**

Prior to the issue of a **Construction Certificate**, the following amendments shall be made:

- (a) **BASIX.** All revised BASIX commitments are to be detailed on the Construction Certificate plans and be submitted to Council for approval prior to the issue of a **Construction Certificate**.
- (b) **Carport** - the proposed carport forward of the building line is not approved and shall be deleted from the submitted plans. Plans detailing this change are to be submitted to Council for approval prior to the issue of a **Construction Certificate**.
- (c) **Privacy Screen – Northern Boundary.** A 1.8m high fully opaque (translucent) or fixed louvered privacy screen be installed along the northern edge of the proposed parking structure for a length extending 5.4m from the building façade with compliant vehicle barriers required where the vertical fall to the adjacent ground level exceeds 600mm under Australian Standards 2890.1-2004. Plans that include details demonstrating compliance with this condition are to be submitted and approved by Council prior to the issue of a **Construction Certificate**.
- (d) **Revised Landscape Plan.** A revised landscape plan for the site that is prepared by a suitably qualified landscape architect is to be submitted to Council for approval prior to the issue of **Construction Certificate** for the works covered in Condition 1 of this consent. The revised landscape plan is to ensure semi-established fast growing plants are planted along the northern boundary (between the street boundary and the front of the dwelling) to provide screening to the adjoining property at No.36 Conrad Street.
- (e) **Pedestrian Pathway** - Physical separation be placed between the pedestrian and driveway components of the elevated parking structure via a low level wall, bollard, or planter etc. Plans detailing compliance with this condition are to be submitted to Council for approval prior to the issue of a **Construction Certificate** works covered in the plans under Condition 1.

**Number of Car Parking Spaces** - *One (1) motor vehicle, boat or other vehicle is permitted to park on the elevated parking structure at any one time.*

**ITEM 2 (continued)**

**ATTACHMENT 1**

- **Condition 7** is deleted and replaced with the following:
  - The development is to be carried out in compliance with BASIX Certificate No. A177112\_02 dated 07 May 2015.
- **Condition 21** is deleted.
- **ALL** other conditions remain unaltered and must be complied with.

That the objectors be advised of Council's decision.

**ATTACHMENTS**

- 1 Compliance Table
- 2 Submission from Daintry Associates Pty Ltd (on behalf of neighbour at No 36 Conrad Street
- 3 Map
- 4 A4 Plans
- 5 A3 Plans - subject to copyright provisions - CIRCULATED UNDER SEPARATE COVER

Report Prepared By:

**Ben Tesoriero Planning Consultant  
Creative Planning Solutions**

**Chris Young  
Supervisor - Environmental Assessment**

Report Approved By:

**Liz Coad  
Manager - Assessment**

**Meryl Bishop  
Acting Director - City Strategy and Planning**

**ITEM 2 (continued)**

**ATTACHMENT 1**

**2. Site** (*Refer to attached map overleaf*)

**Address** : No.38 Conrad Street, North Ryde (LOT 23 DP 222878)

**Site Area** 600.705m<sup>2</sup>  
Curved frontage to Conrad Street of 11.12m  
Rear boundary 43.16095m  
Northern side boundary 24.270m  
Southern side boundary of 30.3149m

*Note: All areas and dimensions sourced from Deposited Plan 222878.*

**Topography and Vegetation** : The topography of the site falls steeply from a height of RL47.7 at the street front boundary, to a height of approx. RL45 at the northern corner of the site. This occurs over a distance of approximately 20m for an average gradient of around 1:7.5.  
No existing significant vegetation has been identified on the site. It is noted that adjacent to the site on the neighbouring allotment at No.36 Conrad Street are a number of mature height *cypress pine* trees.

**Existing Buildings** : Elevated single storey dwelling house, tandem garage.  
*N.B. some parts of the approved DA under LDA2011/0343 including retaining walls within the front setback have been constructed.*

**Planning Controls Zoning** : R2 – Low Density Residential under Ryde Local Environmental Plan 2014

**Other** : Ryde Development Control Plan 2014  
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004  
Constraint – Easement

ITEM 2 (continued)

ATTACHMENT 1



**Figure 1** - Aerial Image of subject site including an annotation of the neighbouring property objecting to the proposed development by way of submission to Council as part of the notification of the Section 96.

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

**ITEM 2 (continued)**

**ATTACHMENT 1**



**Figure 2** – View of subject site from the Conrad Street frontage. Noted in this image is the existing garage on the ground floor of the dwelling. Also noted is the existing front balcony which demonstrates a prevailing level of overlooking inherent to subject site and adjoining property at No.36 Conrad Street.  
Source: CPS photograph

**3. Councillor Representations**

Name of Councillor: The Mayor Councillor Laxale

Nature of the representation: Call-up to Planning & Environment Committee

Date: 7 August 2015

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

On behalf of applicant or objectors? Applicant

Any other persons (e.g. consultants) involved in or part of the representation: None

**4. Political Donations or Gifts**

None disclosed in applicant's Section 96 application or in any submission received.



## ITEM 2 (continued)

## ATTACHMENT 1

### 5. Proposal

This report considers an application for modifications to development consent LDA2011/0343 pursuant to Section 96(1A) of the *Environmental Planning and Assessment Act 1979* (the Act).

The proposed modifications were originally described within the applicant's submitted SEE as follows:

- Deletion of the swimming pool from the scope of works;
- Amended rear landscaping, patio and courtyard area to replace pool;
- The retention of the front sitting room and adjoining Bedroom 1 on the western façade;
- Retention of existing entry located on the ground floor;
- Deletion of the approved garage and relocation of the required car spaces onto the driveway area;
- Amended profile to concrete driveway within front setback area;
- Relocation of planter bed along concrete driveway to front setback area;
- Deletion of existing external stair to front façade;
- Deletion of existing stair within front setback landscape area; and
- Internal changes to lower ground workshop.

It is noted from the above that the SEE stated the lower ground workshop was approved in the previous DA under LDA2011/0343. A review of the file notes indicate that whilst the workshop was originally proposed, it was deleted from the proposal prior to determination by Council. The workshop is therefore **not approved** by LDA2011/0343 and should be assessed as a new modification. Also not approved is the planter bed on the driveway.

Further revised plans were submitted on 14 August and 2 September 2015 following comments from Council Officers. The final plans included the following amendments to the submitted design.

*The new single off street car space is proposed to be located on the suspended concrete driveway with the inclusion of a light weight carport roof structure over. To minimise the perceived bulk and scale of the carport when viewed from the street or adjoining neighbours, the post supports are to be setback approx. 1m from the edge of the roofing to enable the roof to cantilever over the car space.*

The revised plans also show that the setbacks of the elevated parking structure from the northern boundary revert back to the setbacks approved in LDA2011/343. The 1.8m privacy screen has also reverted back to a 1m fence as per the approved LDA2011/343.

**ITEM 2 (continued)**

**ATTACHMENT 1**

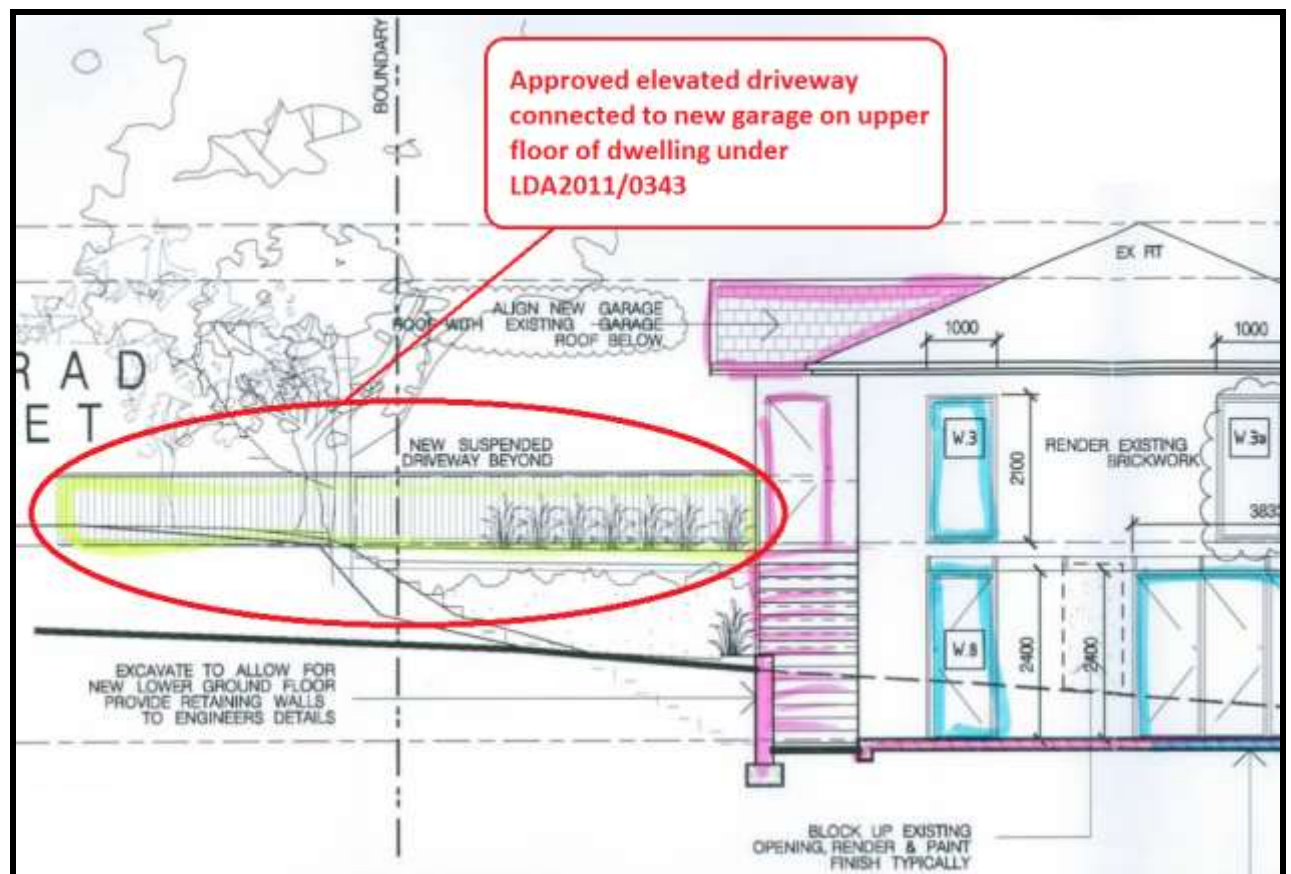
**6. Background**

The following provides a brief history on the originally approved DA, and subsequent events that have led to the lodgement of the subject Section 96(1A) application by the applicant:

**Original DA - LDA2011/0343**

*Alterations and additions to an existing dwelling including new pool and deck.*

The original DA was approved subject to conditions on 29 November 2011. Importantly for the subject Section 96 application, the DA approved an elevated concrete driveway structure extending from the street frontage to a new garage located on the upper floor of the dwelling house – refer **Figure 3** below.



**Figure 3** – Extract of elevation from stamped plans of LDA2011/0343 showing the approved elevated driveway structure connecting to the garage on the upper floor of the dwelling.

Source: CPS photograph

**ITEM 2 (continued)**

**ATTACHMENT 1**

Also of particular note for discussion later within this report are the following conditions of consent which were imposed:

- 21** **Privacy Screening** – *Semi established fast growing plants are to be planted along the northern boundary (Between the street boundary and the front of the dwelling façade) to provide privacy screening to the adjoining property at No.36 Conrad Street. Planting is to take the form of dense hedging with a maximum height of 3m and spacing of plants to 1 metre. Details are to be submitted and approved by Council or an accredited certifier prior to the release of a **Construction Certificate**.*
- 60** **Stormwater Disposal** – *Stormwater runoff from all roof areas of the site shall be collected and piped by a charged storm water system to Conrad Street via a rainwater tank in accordance with BASIX (where applicable) and the City of Ryde Development Control Plan 2010: Part 8.2 Stormwater Management. Stormwater runoff from other low lying impervious areas e.g. driveways etc are to be collected and piped to an absorption system located at the rear of the site.*

*Accordingly engineering plans including engineering certification indicating compliance with this condition are to be submitted with the **Construction certificate**.*

**Post DA Approval**

Since approval of the DA, and then subsequent issue of the Construction Certificate (CC), the applicant has commenced construction on site with some excavation and construction of retaining walls (now subject to this application), removal of the entrance stairs to the front balcony and tree removal (refer above). It is noted that construction of the retaining walls on the subject site differ in height and location to those approved within LDA2011/0343, however these are consistent with the subject Section 96(1A) application.

There have also been multiple correspondences from/on behalf of the neighbour at No 36 Conrad, repeating objections that they made about approval of the original DA in general, raising concerns that the Construction Certificate plans (first approved 20 December 2013, and then amended CC plans approved 17 February 2015, both by AR Building Certifiers) contain significant unapproved variations from the approved DA plans, and also their concerns that the owner/builder cannot be trusted to build in accordance with the approved CC (or DA) plans.

**ITEM 2 (continued)**

**ATTACHMENT 1**

It is noted that enforcement actions have been undertaken through Council's Environmental Health and Building team in particular regarding non-conformity of the approved CC with the approved DA. As a result, the Private Certifier has been requested to withdraw the CC by letter dated 22 April 2015. In response, the applicant has lodged the subject Section 96 application (the subject of this report) – and if this Section 96 application is approved then a new Construction Certificate will be required as it proposes further changes to what was approved in both the original DA and the most recent CC approvals.

Council's Environmental Health and Building Compliance Officers have accordingly suspended any further enforcement actions pending the outcome of this Section 96 application.

**Subject Section 96(1A) Application - MOD2015/0077**

The Section 96(1A) modification seeks permission to, *inter alia*, remove the approved garage at Level 1 and vary the design of the proposed elevated driveway. Deletion of the previously-approved pool, external landscaping and minor internal modifications to the dwelling are also proposed.

The application was placed on notification between 22 May and 8 June 2015. In this period one (1) submission was received from planning consultants on behalf of the adjoining owners at No.36 Conrad Street. A response to the issues raised within the submission is provided later in this assessment report.

**Meeting with applicant - 18 June 2015**

On 18 June 2015, Council Officers (Team Leader Assessment and Consultant Town Planner) met with the applicant (and their project architect and PCA) at their property, to discuss the submission received on behalf of the neighbour.

In this meeting the applicant discussed the historical acrimony between themselves and the neighbouring owners and expressed frustration at inability to resolve the issue(s) relating to their application, and move forward with construction.

Council Officers explained the requirement for Section 96 applications to be substantially the same development as that originally approved, and also discussed details of the neighbours' concerns in relation to the Section 96 application, as covered their submission see discussion later in this report). The applicant was also clearly advised that it was a fundamental requirement for CC plans to be consistent with the approved DA plans

Following discussion of the neighbour's concerns to the applicant, the applicant was requested to provide Council with a written response to their neighbour's submission.

**ITEM 2 (continued)**

**ATTACHMENT 1**

A letter dated 22 June 2015 was received by Council in response to the objector's submission from the applicant. A summary of the key points of this letter and an Assessment Officer response is also provided later in this report.

Meeting with objector (No.36 Conrad Street) - 13 July 2015

Council Officers (Team Leader Assessment and Consultant Town Planner) met with the neighbour and their consultant planner at No.36 Conrad Street. This meeting provided Council's Consultant Planner an opportunity to listen the objectors concerns and to also undertake an inspection of the internal and external areas of the dwelling potentially impacted by the subject Section 96 application. The historical acrimony between the neighbours was similarly mentioned by the objectors during this meeting.

It was pointed out in this meeting by Brett Daintry (Planning Consultant acting on behalf objector) that in issuing the CC the private certifier had breached Clause 145 and 146 of the *Environmental Planning and Assessment Regulations 2000* (the Regulations) due to inconsistency with the approved DA plans. The meeting also presented an opportunity to go through the objections raised in their submission to Council.

The objectors presented anecdotal evidence that the applicant often parked more than two vehicles and a boat both on the subject site and the street. The objectors also noted that the applicant had wilfully removed tree branches of significant trees overhanging their property.

The objector also presented a document which detailed the extent of inconsistencies between the Section 96 and the approved DA. It was requested by Council that this be included as part of the submission. This additional information was received by Council on 13 July 2015. The neighbour submission and applicant response is discussed within the submission section of this report.

Additional Information/Withdrawal Email - 24 July 2015

Following Council's assessment of the originally submitted Section 96 application, it was considered the issues with the proposed modification were significant, and unable to be supported. Council conveyed to the applicant that its main concern was that the deletion of the proposed garage and the use of the elevated structure as a parking platform for two (2) vehicles does not satisfy the 'substantially the same development' tests that apply to Section 96(1A) applications before a proposal can be assessed on its merits.

Council also outlined that even if it were to be considered substantially the same development, it was Council's opinion that the subsequent impacts of the enlarged structure meant the proposal could not be supported on its merits.

**ITEM 2 (continued)**

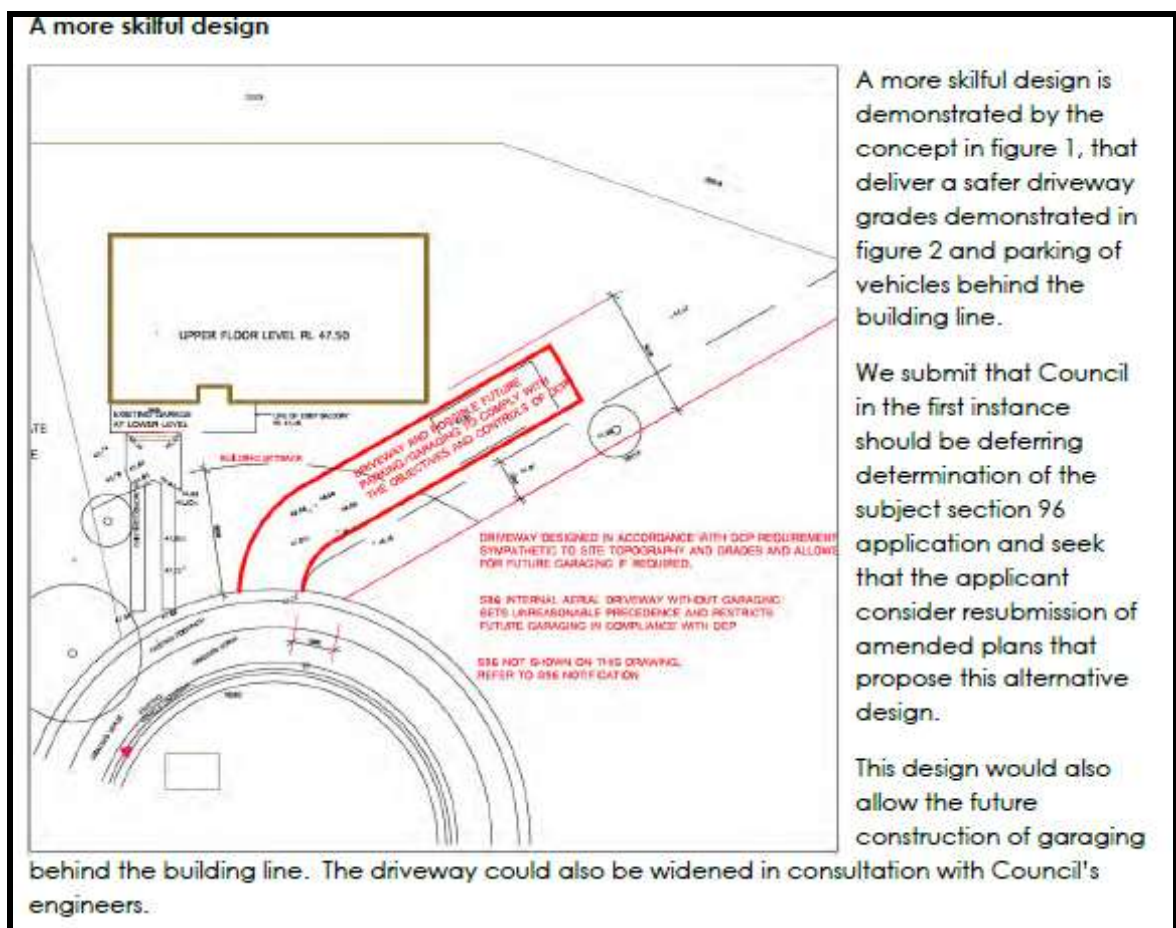
**ATTACHMENT 1**

It was therefore recommended the Section 96(1A) application be withdrawn. Should it not be withdrawn, Council advised it would continue to determine the application based on the information currently provided.

Meeting with Applicant - 3 August 2015

Council Officers (Team Leader Assessment and Consultant Town Planner) met with the applicant at the Ryde Planning & Business Centre on 3 August 2015. In this meeting the applicant was advised that Council could not support the subject Section 96 as it did not constitute substantially the same development.

The applicant stated that maintaining their off street parking was paramount. The applicant was requested to consider an alternate driveway design provided by the objector (generally to the south/western side of the dwelling, instead of the approved elevated driveway on the western side). The applicant advised this was not possible as retaining walls had already been constructed within the front setback.



**Figure 4** - An alternative driveway design submitted by the objectors.

Source: Objector submission

**ITEM 2 (continued)**

**ATTACHMENT 1**

The applicant emphasised that they needed to relocate the dwelling entry back to the first floor, and as such required the elevated access to be maintained. The applicant also stated the costs of the works associated with strengthening the existing timber floor framing to accommodate the garage at first floor level (as per LDA2011/0343) was not practical or feasible – and this was a key reason why it is now proposed to revert the use of the first floor of the dwelling to living area floor space (ie sitting room) instead of a garage.

Council advised the applicant that it would be unlikely that the development would be approved in its current form and that any amendment would require the elevated driveway structure to maintain an adequate setback from the northern boundary. Council saw less of an issue with the proposed driveway being extended to the south to accommodate the required pedestrian entry as the main impacts on the neighbour at No.36 Conrad Street are to the northern boundary.

The applicant asked whether Council would consider erection of a carport on top of the elevated driveway/parking platform. The applicant was advised that issues regarding increased visual bulk and scale impacts on the neighbouring property would need to be considered, together with compliance with the front setback requirements of Council's DCP 2014.

*Revised Plans - 14 August 2015 (further revised on 2 September 2015)*

Revised plans were received by Council on 14 August 2015 (and then further amended following a Council request for additional detail on 2 September 2015). These plans illustrate the elevated structure's setback to the northern boundary being more consistent with the setback shown on the original approved DA plans. In addition it is noted that the driveway has been extended to the south to incorporate a more legible pedestrian entry, with separation provided by virtue of a wall at the driveway crossover. A plan of the driveway showing the revised setback of the driveway is shown below.

The revised plans show that the 1.8m visual privacy screen has been deleted and replaced with a 1m fence and railing more consistent with the original consent. The plans also show a new carport structure as discussed in the meeting on 3 August 2015. The applicant's revised elevation (showing the location of the 1.8m high privacy screen to be required as a condition of consent) is shown below.

ITEM 2 (continued)

ATTACHMENT 1

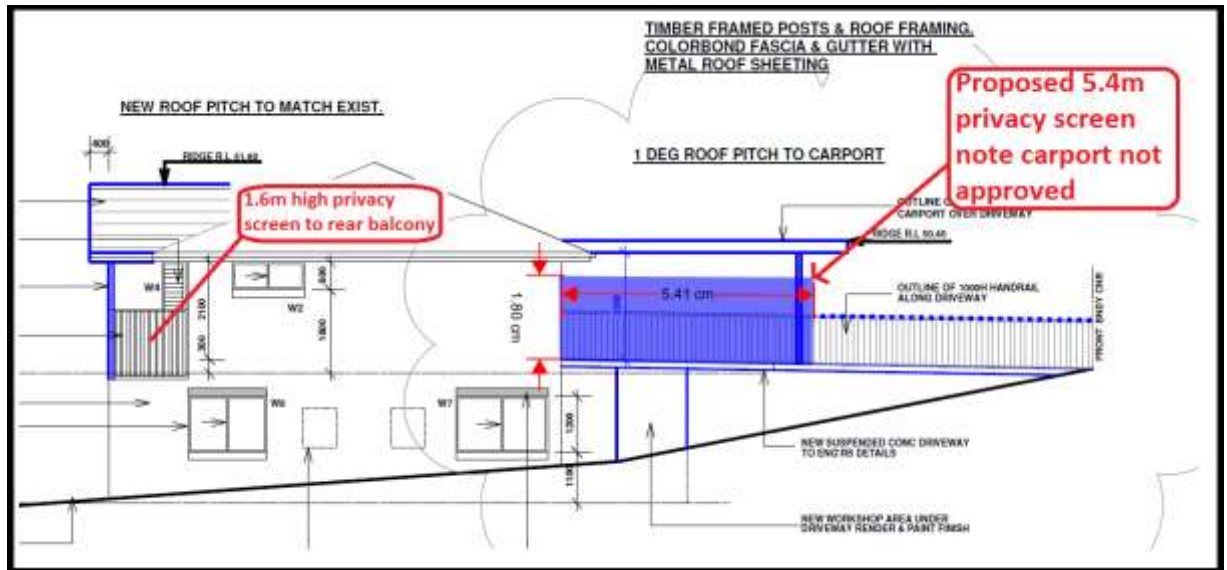


Figure 5 - Proposed 1.8m privacy screen provided for 5.4m (standard car space length) from the building façade. Note the carport is not approved, but the balcony privacy screen is considered acceptable.

Source: submitted architectural plans edited by CPS

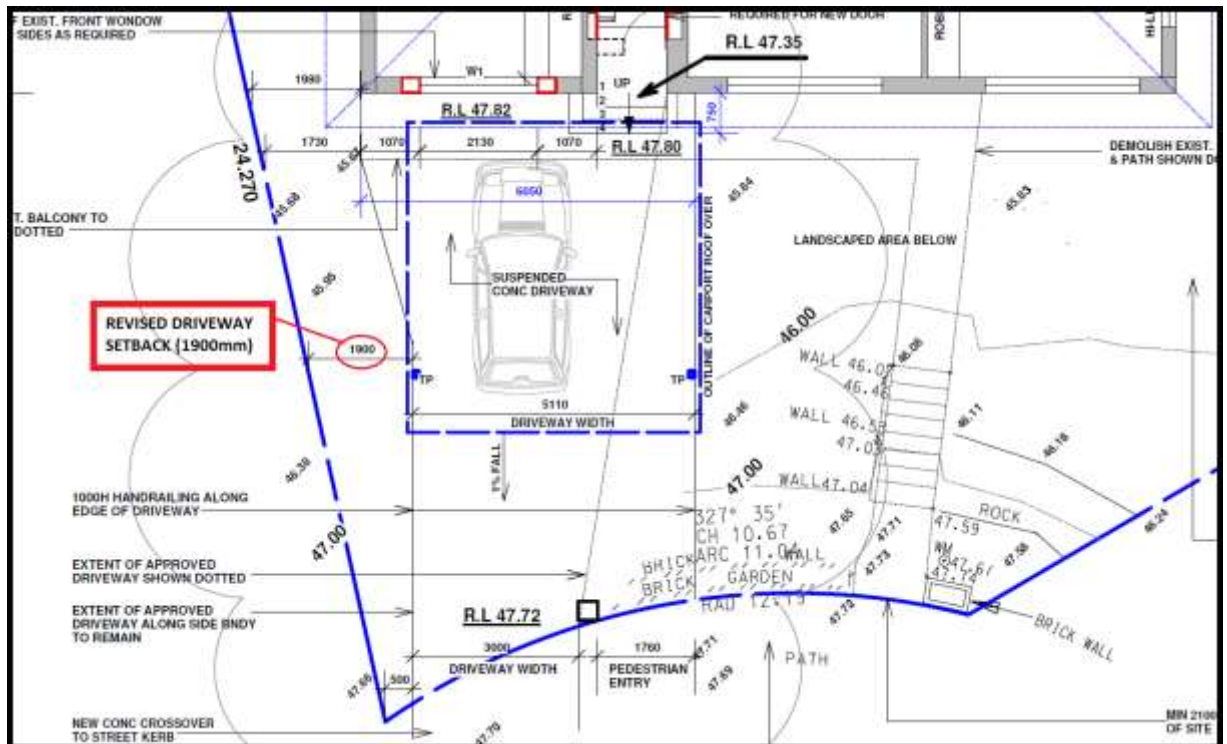


Figure 6 – Plan showing side setbacks of proposed driveway.

A measurement of the revised plans has revealed that the structure can now only accommodate parking for one (1) vehicle according to the minimum dimensions provided within the DCP2014, which are based on the Australian Standard.



## ITEM 2 (continued)

## ATTACHMENT 1

The assessment herein is based on the latest plans and revisions received from the applicant on 14 August 2015, and further amended by the applicant on 2 September 2015.

### 7. Submissions

The original proposal submitted with the Section 96(1A) application was notified to adjoining property owners in accordance with the DCP 2014 – Part 2.1, Notification of Development Applications for a period from 22 May to 8 June 2015. In addition, the revised plans received by Council on 14 August 2015 (amended on 2 September 2015) were re-notified between 17 August 2015 and 1 September 2015.

In response, multiple submissions were received from the owner(s) of the neighbouring property to the north of the subject site (No. 36 Conrad Street) as shown on the aerial photograph at **Figure 1** earlier in this report. Submissions received were dated as follows:

- Submission by Daintry Associates dated 8 June 2015 on behalf of the owner of No.36 Conrad Street;
- Response to neighbour submission by the owners of No.38 Conrad Street on 22 June 2015,
- Revised submission by Daintry Associates dated 18 September 2015 in relation to the amended plans notified on 17 August 2015.

The key planning issues raised in the neighbour submissions are summarised and discussed below. Following this, the applicant's response is discussed.

**A. *Not substantially the same development.*** *The objector states that the application seeks to essentially and materially change the essence from a driveway accessing a garage to an elevated double carport forward of the building line. Both quantitatively and qualitatively this is not substantially the same development.*

**Assessment Officer Comment:** As detailed later in this report (Discussion on Section 96 of the Environmental Planning & Assessment Act), the originally submitted proposal for the Section 96 application was not considered substantially the same development. Following the applicant's submission of the revised plans, it is now considered that the proposal is capable of satisfying the substantially the same development test, subject to a condition recommending deletion of the carport atop the elevated parking platform, and limiting parking on the platform to one (1) vehicle.

Accordingly the objector contention that the proposal does not constitute substantially the same development is considered to be addressed via imposition of the recommended conditions of consent.

**ITEM 2 (continued)**

**ATTACHMENT 1**

**B. Breaches of the Environmental Planning and Assessment Act.** *The objector claims the Section 96 application seeks to regularise a breach of council's development consent that has been altered in breach of clause 145 and clause 146 of the Regulations by the Accredited Certifier issuing the Construction Certificate (CC).*

**Assessment Officer Comment:** Under Section 145 and 146 of the Regulations it is necessary for CC plans to be 'not inconsistent' with the stamped approved plans.

A review of the CC Drawings held on file has revealed that the PCA engaged by the applicant has utilised the originally submitted DA plans, titled Revision A and dated 25/06/11 for the CC. However, these plans are clearly marked superseded on Council's file, with amended plans forming part of the development consent under LDA2011/0343.

The originally submitted Section 96 plans were based off the superseded DA plans, and hence the CC plans which present a considerably different driveway design and setback to that which was approved by Council within under LDA2011/0343.

This issue was raised in Council's additional information letter sent to the applicant on 24 July 2015. The revised Section 96 plans from the applicant now reflect the originally approved setback to the northern boundary with the neighbour at No.36 Conrad Street, and state that semi-established plants are to be planted between the front boundary and the front building line.

With the amended plans submitted by the applicant, the proposed Section 96 modifications are assessed from the basis of the approved plans under LDA2011/0343.

With regard to whether the PCA has incorrectly issued the applicant's CC, it is noted that Compliance Officers in Council's Environmental Health and Building Team are currently undertaking an investigation into this matter and reserve the right to take action should it be proven that the CC has been issued inconsistent with the approved development.

In any case, if the current Section 96 application is to be approved by Council, then a further amended Construction Certificate (with plans consistent with the current Section 96 application) will be required.

**C. Appearance/Visual Impact** *The objectors have raised the concern that the revised design of proposed elevated driveway not only appears visually intrusive within the streetscape but when viewed from the dining and living areas within No.36 it will be visually obtrusive.*

**ITEM 2 (continued)**

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**Assessment Officer Comment:** When considering the visual impact of the proposal, it is first important to remember that the elevated structure is essentially already approved, and although not constructed, could be carried out in accordance with the approval under LDA2011/0343.

It is also important to consider the practical operation of the elevated structure if it were to be constructed and used as per the approved DA. For example, as commonly found with most dwelling houses, it would be reasonable to expect that a motor vehicle could be parked in front of the garage, thus meaning the approved elevated driveway could act as a platform for the parking of a motor vehicle akin to that which is now proposed under the Section 96 application.

The originally submitted Section 96 application proposed to delete the garage, and then enlarge the elevated driveway structure so as to accommodate two (2) motor vehicles. This enlarged structure was also to be shifted closer to the neighbour's boundary at No.36 Conrad Street.

It was agreed that the enlarged elevated structure will have a greater visual impact on the neighbouring property at No.36 Conrad Street. For this reason, the issue of visual impact was raised with the applicant in correspondence from Council.

In response, the applicant submitted revised plans which moved the structure away from the neighbouring property boundary, and also limits parking on the structure to one (1) motor vehicle. This therefore would result in a visual outcome essentially the same as that approved under LDA2011/0343. The applicant also added a new carport on top of the elevated structure.

The carport adds further bulk and scale to an approved element that is of considerable scale in the context of the site – see **Figure 7** below. For this reason, it has been recommended that approval of the Section 96 be on the condition that this carport is excluded from the plans via the conditions below:

**Carport** - *the proposed carport forward of the building line is not approved and should be deleted from the submitted plans. Plans detailing this change are to be submitted to Council for approval prior to the issue of a **Construction Certificate**.*

Given the above it is considered that the visual impacts of the structure, as identified by the objector, can be appropriately mitigated by conditions of consent.

ITEM 2 (continued)

ATTACHMENT 1



**Figure 7** – View from the elevated ground floor dining room of 36 Conrad Street. An indicative location of parking structure and carport is shown.

Source: CPS photograph – edited for diagrammatic purposes.

**D. Privacy Impacts.** *The proposed elevated hardstand area is worse than a terrace or balcony as it will also become the elevated entry to the house and if the garage is not to be constructed then the existing garage should be retained.*

**Assessment Officer Comment:** The elevated structure, as already approved, will present the opportunity for some overlooking of the adjoining property at No.36 Conrad Street. This is partly due to the elevated structure, and partly due to the topography of the land and the subdivision layout.

With the applicant's modified plans for the Section 96 application, the elevated structure is now setback from the northern side boundary with No.36 Conrad Street consistent with that of the previously approved DA, whereas originally the Section 96 application proposed it closer to the northern boundary. Further, given the pedestrian entry to the dwelling is on the southern side of the structure, it is considered overlooking opportunities are now clearly limited.

**ITEM 2 (continued)**

**ATTACHMENT 1**

In practice, the dwelling entry will more than likely be screened by the vehicle parked in this location - which as stated will be consistent with the existing and approved arrangement which would have no doubt resulted in one (1) vehicle parked in the garage and one parked in tandem in front of the garage.

In addition, the following condition is proposed for a 1.8m high opaque or fixed louvered privacy screen from the building line along the northern edge of the structure. This screen will ensure visual privacy is maintained to the living areas and private open space of the adjacent dwelling and private open space area.

**Privacy Screen – Northern Boundary.** *A 1.8m high fully opaque (translucent) or fixed louvered privacy screen be installed along the northern edge of the proposed parking structure for a length extending 5.4m from the building façade with compliant vehicle barriers required where the vertical fall to the adjacent ground level exceeds 600mm under Australian Standards 2890.1-2004. Plans that include details demonstrating compliance with this condition are to be submitted and approved by Council prior to the issue of a **Construction Certificate**.*

- E. Pedestrian Safety** - *The proposal does not comply with Part 3.3 Clause 2.5.3. of the DCP requiring fences to be splayed (ie to ensure pedestrian safety).*

**Assessment Officer Comment:** Pedestrian safety was raised as a significant issue when assessing the originally submitted plans which proposed a 1.8m high privacy screen for the full length of the structure along its northern edge. The applicant was also advised that this screen was unacceptable due to its visual impacts on the built environment and streetscape.

The revised plans now detail a 1m fence height consistent with the fence approved in LDA2011/0343. Given that the driveway cross over has been significantly reduced and that the fence runs along the structure and not the boundary, it is considered unreasonable to splay this fence to the boundary without providing additional hardstand in the area of the splay. It is therefore considered that by providing a fence consistent with the previous approval along the northern edge of the structure to the front boundary, the application is acceptable when having regard to pedestrian safety.

Furthermore, the subject Section 96 application has been reviewed by Council's Senior Development Engineer and is satisfied with the modified design when having regard to pedestrian safety.

- F. Stormwater Impacts.** *There must be no services or pipes located within the area between the elevated hardstand and the northern boundary with No.36 as these services or pipes would conflict with the provision of landscaping required by condition 21 of the original development consent.*

**ITEM 2 (continued)**

**ATTACHMENT 1**

**Assessment Officer Comment:** The proposed Section 96 modification did not include any stormwater plans or details. This is because the following condition (60) relating to stormwater disposal is already in place under the consent for LDA2011/0343 which requires engineering plans and certification to be submitted with the CC application. The current Section 96 application does not propose any additional works that require further stormwater details (compared to the original DA approval). Condition 60 reads as follows.

**Stormwater Disposal.** *Stormwater runoff from all roof areas of the site shall be collected and piped by a charged stormwater system to Conrad Street via a rainwater tank in accordance with BASIX (where applicable) and the City of Ryde, Development Control Plan 2010: - Part 8.2; Stormwater Management. Stormwater runoff from other low lying impervious areas e.g driveways etc are to be collected and piped to an absorption system located at the rear of the site. Accordingly engineering plans including engineering certification indicating compliance with this condition are to be submitted with the construction certificate application.*

As part of the assessment of the subject DA, the proposal has been reviewed by Council's Senior Development Engineer who has indicated that the maintenance of the existing condition above with the approval of the subject Section 96 application would be satisfactory to ensure stormwater disposal on site remains acceptable.

Additionally, Council's Consultant Landscape Architect has also undertaken a review of the subject DA with regard to landscape planting, in particular landscape planning along the northern boundary with No.36 Conrad Street. The Consultant Landscape Architect is satisfied that a condition be included to provide a revised landscape plan to that approved with the original DA as part of the CC for the Section 96 works.

- G. A more skillful driveway design** – *the objector has proposed an alternative design whereby the driveway extends to the south of the existing dwelling at a reduced gradient.*

**Assessment Officer Comment:** The alternative design suggested by the objector was put to the applicant in a meeting on 3 August 2015 - refer **Figure 4** above. The applicant advised that this is not feasible because site preparatory works have already been undertaken including the construction of retaining walls which would conflict with this alternative arrangement.

While one may argue whether the alternative design presents a better outcome or not, it is important to remember this assessment relates to an assessment the proposed modifications within the revised Section 96 plans only, and does not undertake an assessment of alternative hypothetical options.

**ITEM 2 (continued)**

**ATTACHMENT 1**

**H. Requested design changes.** *In their submission the objector has made a number of suggested design changes. Each of these is discussed below.*

1. *The proposed elevated hardstand parking area must be setback not less than 2m from the northern boundary of the site abutting No.36 at any point.*

**Assessment Officer Comment:** The revised plans (see **Figure 5** above) now detail setbacks that are generally consistent with the originally approved development. These are now proposed to be 1900mm (1.9m) at the widest point and 500mm from the northern boundary (at the front boundary). Given the angle of the allotment's northern boundary it is considered that the existing setbacks approved by the original development are generally appropriate and that setting the structure 2m for its entire length would require additional internal and external changes to the development that would be onerous.

Given that the setbacks now remain unchanged from the original approval which was assessed by Council as acceptable, the objectors request that the structure be setback 2m from the northern boundary is not supported.

Nevertheless additional conditions relating to visual privacy and use of the structure have been recommended – refer to comments earlier.

2. *Proposed Workshop - proposed room under the proposed elevated hardstand area being deleted from the plans and the rain water tanks being located in accordance with drainage details together with pumps under the elevated hardstand area.*

**Assessment Officer Comment:** The existing approved setbacks of the structure are maintained, and the enlargement of the structure is to occur only to the south where it will have minimal impacts on the adjacent property. The proposed workshop beneath the hardstand area will have no windows, and the entrance is on the southern elevation away from the objector's property boundary. In this regard it is considered the proposed workshop will have minimal impacts on privacy or amenity of the adjoining property.

With regard to rainwater tanks and pumps, it is noted that Condition 60 of the original consent relating to stormwater disposal will remain. Further this has been assessed by Council's Development Engineer as being satisfactory with regard to the stormwater disposal on the site as part of the Section 96 application.

3. *Landscaping - landscape plan be submitted including provision for screen planting consistent with condition 21 of the original development consent and a Blueberry Ash (*Elaeocarpus reticulatus*), minimum 100 litre pot size, is to be planted in the location where the pre-existing tree was unlawfully removed.*

**ITEM 2 (continued)**

**ATTACHMENT 1**

**Assessment Officer Comment:** The following revisions to Condition 21 of LDA2011/0343 has been recommended to include the submission of a landscape plan for Council approval prior to the issue of a CC for the Section 96 works. This is because the modification proposes changes to the landscaping on the site, however little detail is provided by way of planting.

**Revised Landscape Plan.** *A revised landscape plan for the site that is prepared by a suitably qualified landscape architect is to be submitted to Council for approval prior to the issue of **Construction Certificate** for the works covered in Condition 1 of this consent. The revised landscape plan is to ensure semi-established fast growing plants are planted along the northern boundary (between the street boundary and the front of the dwelling) to provide screening to the adjoining property at No.36 Conrad Street.*

In respect of the objector's comment stating the pre-existing tree (within the northern side setback adjacent to the driveway) has been unlawfully removed, it is noted that this tree was removed in accordance with *Tree Management Application No:TMA2012/0005* (dated 7 March 2012). This approval required the replacement of the *Cupressus spp.* (Cypress) tree with one (1) *Syzygium paniculatum* (Lilly Pilly) which was to be verified by Council six (6) months after the approval.

The tree removal consent was valid until 21 March 2013. It is noted however that this replacement tree has not been planted.

Given the above it is considered that the objector's request for a revised landscape plan is reasonable and agreed with. As such this has been included in a revised Condition 21. This condition is considered appropriate given that changes to the landscaping are proposed within this Section 96(1A) application.

The objector comments relating to unlawful removal of trees is considered to have been addressed via the applicant's tree management application.

4. *A 1.8m high translucent or solid privacy screen be detailed along the length of the proposed hardstand parking area together with compliant vehicle barriers required where the vertical fall to the adjacent ground level exceeds 600mm under AS 2890.1-2004.*
5. *A 1.8m high translucent or solid privacy screen be erected to the balcony off the master bedroom.*



**ITEM 2 (continued)**

**ATTACHMENT 1**

**Assessment Officer Comment:** In respect to recommendations under number 4 from the objector, a condition has already been discussed and is proposed for a 1.8m high privacy screen to address potential overlooking from the elevated structure. This screen will help minimise overlooking given the new use of the structure as a parking platform rather than a driveway. This is shown in **Figure 5** above.

In respect of the proposed 1.6m privacy screen to the rear facing balcony, this is considered an appropriate privacy treatment and it is not considered necessary to raise this to 1.8m. This is because the average eye level of a person is closer to 1.6m rather than 1.8m. The 1.6m high rear balcony privacy screen is also shown in **Figure 5**.

6. *Tree Protection Zones - setback from the driveway to the nearest significant tree so as to ensure that any excavation does occur in the TPZ or root mapping to ensure excavation in the TPZ will not damage the tree – see **Figure 8**.*

**Assessment Officer Comment:** It is considered that the above comments from the applicant are already addressed by the approved plans indicating tree retention and Condition 53 of the consent for LDA2011/0343 which states:

**Tree Condition** *should any major tree roots be encountered during development work in that area is to cease and will need to be checked by a suitably qualified Arborist or Landscape Consultant. Their requirements are to be carried out as necessary prior to work continuing.*



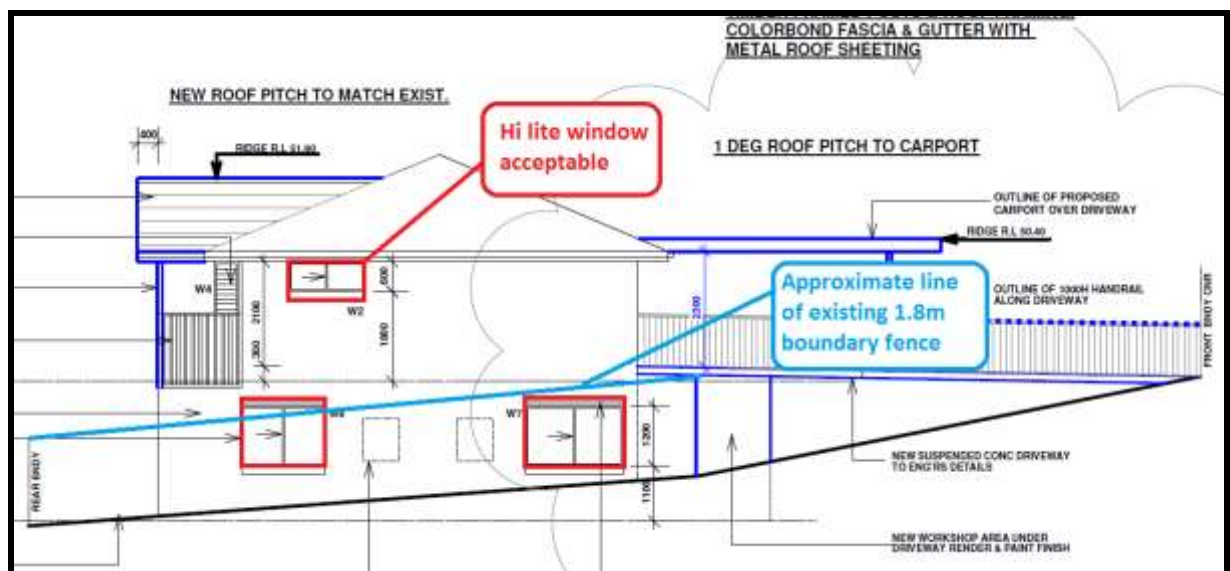
**Figure 8** - Cypress Tree requested to be protected by existing Condition 53.  
Source: CPS photography

ITEM 2 (continued)

ATTACHMENT 1

- I. **Visual Privacy – Windows.** All north facing windows to have a minimum window sill height of 1.7m above the finished floor level unless fixed and translucent glazing is provided.

**Assessment Officer Comment:** An analysis of the proposed windows on the northern elevation has revealed that the first floor window is a highlight window with a sill height of 1.8m. The ground floor windows are considered to be acceptable - refer **Figure 9**. This is because there is currently a 1.8m boundary fence which will prevent overlooking into the neighbouring private open space. Further an analysis of the southern elevation of the adjacent dwelling reveals that living area windows are located at the first floor and due to the site orientation, these windows face the street frontage and front setback areas of No.38 Conrad Street not the side boundary.



**Figure 9** - Northern elevation windows with indicative location of existing 1.8m boundary fence considered acceptable for maintaining visual privacy from the ground floor windows.  
Source: submitted architectural plans edited by CPS

The following photograph illustrates the existing fence providing adequate mitigation to visual privacy - refer Figure 10.

Accordingly the proposed changes by the objector to the north facing ground floor windows are considered unreasonable in the circumstances of the site, and as such are not supported.

ITEM 2 (continued)

ATTACHMENT 1



**Figure 10** - View from elevated Kitchen window of 36 Conrad of proposed ground floor bedroom window. Note that ground floor of 36 Conrad Street is significantly elevated and due to the poor orientation of both allotments within the existing subdivision pattern, extensive views into neighbouring front and side yards is unavoidable.

Source: CPS photography

**J. Requested Conditions** – *The objector has recommended a number of conditions of consent. These have been listed below, followed by a comment from the assessing officer as to whether these conditions are supportable.*

1. *Reference to the final approved plans.*

**Assessment Officer Comment:** Agreed. The most recently submitted plans (i.e. the amended plans submitted with the Section 96 application) will become the final approved plans and detailed within a revised Condition 1.

2. *Prior to the commencement of any works the applicant must procure a new Construction Certificate for the works under the amended development consent.*

**Assessment Officer Comment:** Agreed. A new Construction Certificate will be required for all work approved by this modification.

**ITEM 2 (continued)**

**ATTACHMENT 1**

3. *A separate application being lodged with and approved by Council under the Roads Act 1993, prior to the issue of any Construction Certificate under the amended development consent, for the driveway crossing and the location of the stormwater discharge from the site to the road. The applicant is advised that Council will only approve a new layback being setback not less than 2m from the prolongation of the north boundary line and that stormwater discharged from the site must be discharge to the road gutter on the southern side of the proposed driveway.*

*Reason for this Condition: This condition has been imposed to ensure that the new driveway and hardstand area are setback not less than 2m from the northern boundary of the site to No.36, to comply with Part 3.3 Clause 2.5.3 of the DCP and to ensure that no stormwater pipes or excavation occurs within the TPZ of the street trees (without root mapping and hand excavation) or within the 2m setback area required to be landscaped in accordance with Condition 21 of the original development consent and approved landscape plans.*

**Assessment Officer Comment:** Council's standard conditions in relation to approvals under the Roads Act were imposed in LDA2011/0343 and will remain in place as part of the Section 96 approval.

As discussed earlier, the objector's request to increase the setback of the entire structure is not supported as the structure provides setbacks that are now consistent with the already approved setbacks under LDA2011/0343.

The modification has been reviewed by Council's Senior Development Engineer who has indicated that no additional conditions of consent are required from an engineering perspective over that included within the original consent.

As also discussed earlier, Condition 21 of LDA2011/0343 has been revised to include the requirement for a revised landscape plan to be submitted to Council for approval prior to the issue of construction certificate for the works subject to the Section 96 application.

4. *Conditions under section 109H of the Act that reinforce the amendments requested to be made in 1 to 7 and prohibiting the issue of any occupation certificate until all the works have been completed including;*
  - a. *The driveway and stormwater connection within the road are completed to Council's satisfaction in accordance with Council's approval under the Roads Act 1993 noting that the driveway must be located not less than 2m south of the prolongation of the northern boundary to the kerb and gutter and stormwater must discharge on the southern side of the driveway layback.*

**ITEM 2 (continued)**

**ATTACHMENT 1**

- b. *elevated hardstand parking area must be setback not less than 2m from the northern boundary of the site abutting No.36 at any point*
- c. *the rain water tanks being located in accordance with drainage details together with pumps under the elevated hardstand area*
- d. *compliance with the approved landscaping plan including the planting of a Blueberry Ash (*Elaeocarpus reticulatus*), minimum 100 litre pot size, between the driveway and the north boundary where the pre-existing tree was unlawfully removed.*
- e. *1.8m high translucent or solid privacy screen being erected along the length of the hardstand parking area integrated with compliant vehicle barriers required where the vertical fall to the adjacent ground level exceeds 600mm under Australian Standards 2890.1-2004*
- f. *1.8m high translucent or solid privacy screen being erected along the length of the balcony off the master bedroom.*

**Assessment Officer Comment:** It is considered that Council's standard conditions will adequately ensure that all conditions issued under this modification to consent LDA2011/0343 will form part of the Construction Certificate and subsequent issue of any Occupation Certificate.

Nevertheless, the historical differences between the approved DA plans and the applicant's Construction Certificate are noted. However, it is also noted that if the subject Section 96 application is approved, it will be necessary for the applicant to obtain a further amended Construction Certificate that is consistent with the approved DA plans as amended by the current Section 96 application.

**Applicant response to Neighbour Submission**

A letter was received by Council dated 22 June 2015 from the applicant in response to the objector's submission. A summary of the key points of this letter and the Assessment Officer response is provided below.

1. *Feel the suggestions made by the objectors is unjustifiable to all parties involved in the modification,*

**Assessment Officer Comment:** Noted

2. *Cypress tree removed (with council's consent)*

**Assessment Officer Comment:** Agreed that approval was received from Council to remove this tree, refer TMA2012/005, detailed above,

**ITEM 2 (continued)**

**ATTACHMENT 1**

- 3. All appropriate measures have been made to ensure maximum privacy along the boundary including 1.6m privacy screen. Suggested objector provide their own screening if still unsatisfied,*

**Assessment Officer Comment:** A 1.6m balcony screen has been deemed satisfactory for the balcony as this is an appropriate height for the average human eye level to prevent overlooking.

For the elevated parking structure, the 1.8m high screen adjacent to the vehicular parking area, dropping down to a height of 1m for the balance of the structure is considered adequate for visual privacy and screening of the vehicle parked.

Having regard to the above, the proposed privacy screens are considered to be a balanced measure to address both overlooking and visual impact.

- 4. Suggested that the driveway is to provide off street parking for their vehicles which they are 'entitled' to in Ryde and to provide the main dwelling entry.*

**Assessment Officer Comment:** Dwellings are not 'entitled' to two (2) car parking spaces under the DCP2014. Dwelling houses may provide parking for up to two (2) vehicles provided the spaces are located within a garage or a carport behind the front building elevation. DCP2014 states that parking within the front setback will only be permitted where there is no other suitable position on the allotment.

It is considered that both the approved DA subject to this modification and the existing garage on the ground level sufficiently demonstrate that it is possible for parking to be provided within a garage behind the front building elevation.

Therefore, the view that the applicant is 'entitled' two (2) car parking spaces is not supported. It is now noted that the revised plans received by Council show that one (1) space is now proposed on the elevated structure.

- 5. Noted that no condition was imposed stating that the driveway has to have a 2m offset from the adjoining boundary.*

**Assessment Officer Comment:** Whilst no specific condition was imposed requiring this setback it is noted that the stamped approved plans show that the driveway is setback approximately 2m from the adjoining northern boundary. These plans formed part of Condition 1 of consent LDA2011/343. The setback shown on the approved plans is therefore a requirement of the conditions of consent of the approved development under LDA2011/0343 by virtue of Condition 1.

**ITEM 2 (continued)**

**ATTACHMENT 1**

Therefore, the contention that this setback was not imposed by a condition of consent is not supported. It is noted that the approved setback within LDA2011/0343 has now been re-incorporated into the revised plans for the Section 96 application.

6. *Noted that 'people do not socialise on driveways, they simply park their cars and walk into their home,' and as such cannot understand why privacy is an issue.*

**Assessment Officer Comment:** In *Meriton v Sydney City Council* [2004] NSWLEC 313, Dr John Roseth Senior Commissioner noted that

*When visual privacy is referred to in the context of residential design, it means the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space.*

The judgment also noted that:-

*"The use of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time."*

It is agreed that people do not socialise on driveways, and that this area is an area where 'people tend to spend less waking time' – ie only using the driveway space to park a vehicle and then to walk in to the dwelling via the front door. The lodgement of the current Section 96 application presents the opportunity to impose further conditions to address potential privacy impacts. As such conditions of consent are recommended to mitigate this overlooking impact as detailed earlier within this assessment report.

It is therefore considered that on balance the potential impacts on privacy are a relevant concern in the context of this Section 96 application and as such the view that privacy is not an issue is not supported – hence justification for the recommended conditions imposed.

7. *Workshop does not intrude on the streetscape as is cannot be seen and within the 6m offset.*

**Assessment Officer Comment:** It is generally agreed that the proposed workshop will have minimal visual impact on the street as it is part of the revised driveway structure. As the driveway has been enlarged to the south and the original approved setbacks to the north now respected, it is considered that the workshop does not materially contribute to an increased visual impact on the neighbouring property.

**ITEM 2 (continued)**

**ATTACHMENT 1**

As such this assessment considers that the proposed workshop beneath the parking structure is generally acceptable.

8. *Recommended conditions of amended development consent' provided by the objector are unjustifiable.*

**Assessment Officer Comment:** Noted. Any conditions imposed on the development will be for a planning purpose and will relate to the subject Section 96 application. Conditions will be based on this assessment report and any referrals received.

Nevertheless, points raised within the submission(s) have been considered in the assessment of the subject Section 96 application as required by Section 79C(1)(d) of the Act. Where proposed conditions by the objector are considered to have merit, these have incorporated into the draft consent.

**8. SEPP1 (or clause 4.6 RLEP 2014) objection required?**

Not required.

**9. Policy Implications**

**Environmental Planning and Assessment Act 1979**

Section 96 (1A) - Modifications involving minimal environmental impact

In accordance with Section 96(1A) of the Act, Council may consider a modification of development consent provided:

- The proposed development is of minimal environmental impact;
- The proposed development is substantially the same as the approved;
- The application for modification has been notified in accordance with the regulations; and
- Council has considered any submissions regarding the proposed modification.

Section 96(3) also requires Council to consider relevant matters referred to in Section 79C(1) in assessing and application for modification of development consent.

In the 1999 case *Moto Projects (No 2) Pty Ltd v North Sydney Council*, the Land and Environment Court (LEC) gave some guidance on the legal tests that need to be satisfied before a modification application can be considered on its merits. Essentially one should undertake the following when assessing Section 96 applications:

- Consider the numerical differences in all key aspects of the development;
- Consider non-numerical factors (e.g. in visual impact, traffic impacts or changed land uses);



**ITEM 2 (continued)**

**ATTACHMENT 1**

- Consider any changes relating to a material and essential feature of the approved development.

It is also acknowledged that there are two separate legal tests that apply to Section 96 applications before the consent authority can ultimately determine the application on its merits.

The first of these tests is whether a proposal can only be regarded a modification if it involves “alteration without radical transformation” (Sydney City Council v Ilence Pty Ltd [1984]). The second test is if the proposed modification is proposing more than mere correction of minor errors, the consent authority must also be “satisfied” that the modified development proposal will be “substantially the same development” as that approved under the original development consent.

In **Attachment 2**, a quantitative and qualitative analysis has been undertaken in relation to the revised plans submitted by the applicant as part of the Section 96 application. The results of the analysis have determined the revised plans are capable (subject to conditions) of being substantially the same development, and not a radical transformation of the alterations and additions to the dwelling house approved under LDA2011/0343.

It is acknowledged that the originally submitted plans for the Section 96 application were assessed as not constituting ‘substantially the same development’ because of the increased visual impact the original plans demonstrated. This was essentially because the proposal enlarged the elevated structure and placed it closer to the northern boundary. Additionally, the original plans proposed to accommodate two (2) parking spaces on the structure and include a 1.8m high fence along the entirety of the northern side of the structure.

The modified plans have now significantly reduced the visual impact of the proposal by maintaining a northern side setback consistent with the plans approved under LDA2011/0343, reducing the fence to a height of 1m consistent with LDA2011/0343, and also reducing parking to one (1) vehicle only. Combined with the conditions to delete of the proposed carport atop of the elevated structure, and the limitation of parking to comply with the relevant Australian Standards, it is now considered the proposal is capable of being considered substantially the same development due to the comparable visual impact.

**ITEM 2 (continued)**

**ATTACHMENT 1**

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

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

*Zoning*

Under the Ryde Local Environmental Plan 2014 (LEP2014) the zoning of the subject site is R2 Low Density Residential. The proposal, being alterations and additions to a dwelling house is permissible with consent under this zoning.

*Objectives for R2 Low Density Residential Zones*

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

The proposal for modification to development consent LDA2011/0343 is considered to generally satisfy the objectives for residential developments as it will provide for the needs of the community within a low density residential environment. Further the proposal will not impact on the provision of other land uses within the local area to meet the day to day needs of residents.

*Development Standards*

<b>RYDE LEP 2014</b>	<b>PROPOSAL</b>	<b>COMPLIANCE</b>
<b>4.3(2) Height</b> 9.5m overall	6.85m	Yes
<b>4.4(2) &amp; 4.4A(1) FSR</b> 0.5:1	0.38:1	Yes

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

State and Sydney Regional Environmental Planning Policies

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

As covered by Clause 55A(3) of the Environmental Planning and Assessment Regulation 2000, if an amendment or variation of a DA, or of any accompanying document, results in the proposed development differing in any material respect from the description contained in a current BASIX certificate for the development, the application to amend or vary the DA must have annexed to it a replacement BASIX certificate whose description takes account of the amendment or variation.

**ITEM 2 (continued)**

**ATTACHMENT 1**

A revised BASIX Certificate (No. A177112\_02 dated 07 May 2015) has been submitted with the subject Section 96 application. In respect to the revised BASIX certificate it is noted that the swimming pool has been deleted and the rainwater tank no longer a commitment. Nevertheless a review of the revised plans has revealed that the commitments listed still relate to the previous BASIX certificate in respect of the swimming pool and rainwater tank.

For this reason the following condition requiring the plans to list the revised BASIX commitments is recommended, as well as a condition to update the BASIX Certificate within the original consent.

***BASIX.*** All revised commitments are to be detailed on the plans and submitted to Council for approval prior to the issue of a **Construction Certificate**.

***BASIX.*** Compliance with all commitments listed in BASIX Certificate(s) numbered No. A177112\_02 dated 07 May 2015.

**(c) Any draft LEPs**

No draft LEPs currently exist.

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

**Ryde Development Control Plan 2014**

Part 3.3 Dwelling Houses and Dual Occupancy Attached

The proposal has been assessed using the development controls contained in the Ryde Development Control Plan 2014 (DCP2014). A full assessment is detailed in the Compliance Check table in **Attachment 2**. The following is an assessment of the non-compliances of the subject Section 96 application against the key components of the DCP2014 that are considered to apply to the development.

***Non-Compliances: Not Justifiable***

*Proposed Carport*

Multiple controls within DCP2014 provide controls relating to garages and carports. In summary these controls generally state that carports:

- Must not be visually prominent features;
- Must be no higher than 4.5m above ground level;
- Must be setback 1m from the dwelling façade however can be in front if no other suitable position on the allotment.

## ITEM 2 (continued)

## ATTACHMENT 1

An assessment of the proposed carport has revealed it is to be approximately 5m above ground level, and entirely forward of the dwelling façade. Further, given the existing dwelling house includes a garage behind the building line, and also given LDA2011/0343 accommodated a garage behind the building line it is not agreed that no other suitable position could have been made for the carport on the allotment.

With regard to the above, the proposed carport has therefore been assessed as unsupportable as it will be a visually prominent feature in the street and when viewed from adjoining property, particularly No.36 Conrad Street who have objected to the proposal based on visual impact.

Having regard to the above the following condition is proposed to be included in the draft consent.

***Carport – The carport shown on the submitted plans A1.01 Ground Floor and Site Plan REV C and A1.03 Elevations REV C and marked in red on the plans is not approved.***

### **Non Compliances - Justifiable**

#### Setbacks – Front Setback

Section 2.8.1 of Part 3.3 of DCP2014 prescribes development controls for front setbacks. Specifically, the control states that the front setback is to be free of structures, and ancillary elements such as rainwater tanks and air conditioning units. The exception is car parking structures which comply with section 2.11.

An assessment of the proposed development has revealed that the front setback contains an ancillary element in the form of a workshop beneath the proposed car parking structure.

Although not complying with the front setback control, this non-compliance with Council's controls can be supported for the following reasons:

- The workshop is located fully beneath the elevated parking platform and does not protrude beyond the proposed envelope of the structure;
- It is noted that there are no windows to this structure and the entrance is on the southern elevation of the structure. In this regard there will be minimal impacts on privacy from the use of this workshop;
- Whilst still being located forward of the main building line the workshop is setback 6.5m from the boundary and as such beyond the minimum front setback of 6m under DCP2014.

**ITEM 2 (continued)**

**ATTACHMENT 1**

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

In this regard an assessment of the proposed development against the objectives of the front setback controls contained within DCP2014 has determined the following:

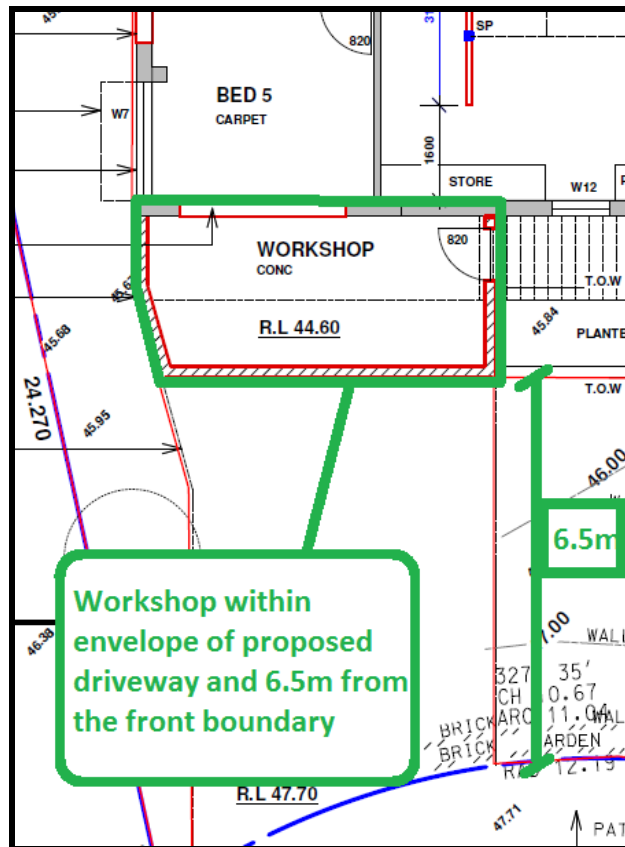
The workshop will not prevent the transition between public and private space. The setback is consistent with what is currently approved by LDA2011/0343. The workshop does not prevent the provision of a front garden as it is below the parking structure.

Whilst workshop is part of a structure that could be considered a visually prominent element within the streetscape, it is noted that a structure is already approved and if constructed would have a similar visual prominence. Nevertheless it is considered that the proposed workshop within the envelope of this structure does not necessarily increase its visual prominence - refer to **Figure 11** below.

Given the above it is considered that the proposed front setback is justifiable in this instance, particularly having regard to the provisions of Section 79C(3A)(b) the Environmental Planning and Assessment Act 1979.

**ITEM 2 (continued)**

**ATTACHMENT 1**



**Figure 11** - Workshop shown within the envelope of the driveway and 6.5m from the front boundary.  
 Note that the door to workshop opens to the south and that no windows are proposed.  
**Source:** Submitted plans by applicant edited for diagrammatic purposes by CPS.

***Non Compliances – Resolved by Condition***

***Front Setback and Car Parking***

Section 2.9.1 of the DCP2014 provides controls in relation to front setbacks. The introduction to these controls states that:

- The general 6m front setback provides sufficient space at the front to park a car in the driveway.

The revised plans have indicated that one (1) car space is now proposed on the elevated parking structure which is consistent with the intent of this control and what would be reasonably expected under the approved DA - i.e. one car parked in front of the garage.

As covered earlier within this report, despite the structure being used for car parking and not a driveway it can be considered substantially the same development given only one (1) car is to be parked on the elevated structure.

ITEM 2 (continued)

ATTACHMENT 1

It is noted that according to the Australian Standard, two (2) vehicles would not be able to fit on the structure either side by side or in tandem. Nevertheless, to ensure that only one (1) motor vehicle, boat or trailer is parked on the structure at any one time, the following conditions of consent are recommended.

**Number of Car Parking Spaces** - One (1) motor vehicle, boat or other vehicle is permitted to park on the elevated parking structure at any one time.

**Pedestrian Pathway** - Physical separation be placed between the pedestrian and driveway components of the elevated parking structure via a low level wall, bollard, or planter etc. Plans detailing compliance with this condition are to be submitted to Council for approval prior to the issue of a **Construction Certificate** works covered in the plans under Condition 1.

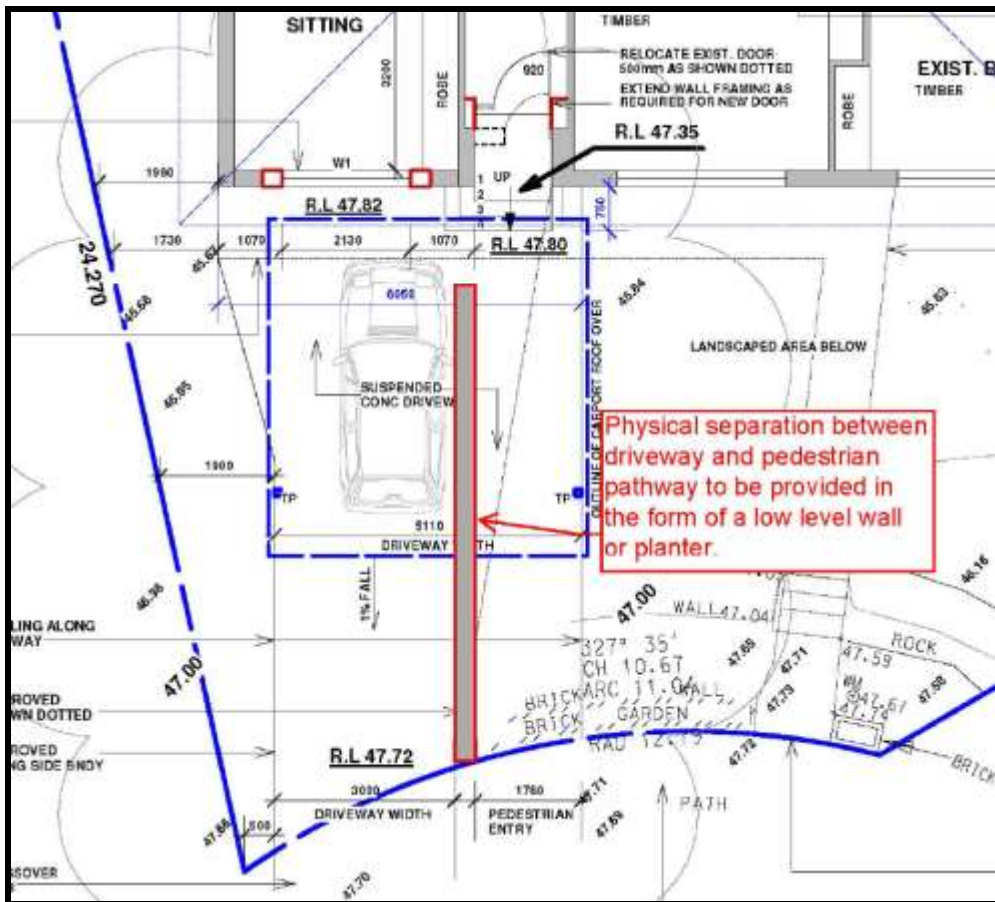


Figure 12 - Physical separation between driveway and pedestrian pathway in the form of a low level wall or planter to be provided by a condition of consent.  
Source: submitted architectural plans edited by CPS

**ITEM 2 (continued)**

**ATTACHMENT 1**

*Landscaping*

Section 2.13 of the DCP2014 provides controls in relation to landscaping. The controls state that

*h. The front garden is to have at least 1 tree capable of a minimum mature height of 10m with a spreading canopy.*

*i. Where the backyard does not have a mature tree at least 15 m high, plant a minimum of one large canopy tree in the back yard. The tree is to be capable of a mature height of at least 15 m and is to have a spreading canopy. The tree is to be located in the 8 m x 8 m deep soil area*

In addition to the above, a condition was included in the previous development consent (LDA2011/0343) to ensure that privacy screening was to be planted along the northern boundary (between the street boundary and the front of the dwelling). This planting was to satisfy the objective of the then DCP2010 to provide privacy between adjoining dwellings and their private open space.

It is noted that no landscape plan has been received as part of the Section 96 application despite there being changes to the landscaping arrangements on the site as part of the works associated with the Section 96 proposal - i.e. enlarged driveway structure and deletion of swimming pool etc.

In this regard it is considered that the below condition requiring a revised landscape plan be submitted to Council for approval prior to the issue of CC is appropriate.

***Revised Landscape Plan.*** *A revised landscape plan for the site that is prepared by a suitably qualified landscape architect is to be submitted to Council for approval prior to the issue of **Construction Certificate** for the works covered in Condition 1 of this consent. The revised landscape plan is to ensure semi-established fast growing plants are planted along the northern boundary (between the street boundary and the front of the dwelling) to provide screening to the adjoining property at No.36 Conrad Street.*

*Visual Privacy*

Section 2.14.2 of Part 3.3 of DCP2014 prescribes development controls relating to visual privacy. Specifically, the DCP2014 stipulates the following:

- a. Orientate terraces, balconies and outdoor living areas to either the front or the rear of allotments, and not to the side boundaries.*
- b. Terraces and balconies are not to overlook neighbour's living areas and private open space.*



## ITEM 2 (continued)

## ATTACHMENT 1

It is noted that the 1.8m privacy fence from the originally submitted plans has been reduced to 1m which is consistent with the previously approved structure.

Nevertheless the objector has made it clear that they favour a 1.8m screen to maintain privacy across the entire length of the structure, however have also objected to the imposing visual impact of the structure which was in part exacerbated by the 1.8m privacy screen.

In this regard it is considered that the following condition requiring this 1m fence be increased 1.8m for just 5.4m (standard car length) be imposed to maintain visual privacy whilst also reducing the visual bulk and scale of the structure. The Northern Elevation drawing, edited to show the required 1.8m high privacy screen (5.4m long), is shown at **Figure 5** (above).

***Privacy Screen – Northern Boundary.*** A 1.8m high fully opaque (translucent) privacy screen be installed along the northern edge of the proposed parking structure for length extending 5.4m from the building façade. Plans that include details demonstrating compliance with this condition are to be submitted and approved by Council prior to the issue of a **Construction Certificate**.

### 10. Likely impacts of the Development

#### (a) Built Environment

A thorough assessment of the impacts of the proposed development on the built environment has been undertaken as part of the overall assessment of the subject Section 96 application. This has included a compliance check against all relevant planning controls and a detailed assessment report.

The resultant impacts of the proposed modification on the built environment are considered to result in a development that is generally consistent with the previous approval and the desired future character of the low density residential areas, and consistent with the nature of development in North Ryde and wider Ryde local government area.

As a result, the proposed development is considered to be satisfactory in terms of impacts on the built environment subject to appropriate conditions of consent.

#### (b) Natural Environment

Given the nature of the proposed development being for the modification of an existing development approval, and the overall development includes only minimal vegetation removal with compensatory planting to be conditioned, it is considered there will be no significant impact upon the natural environment as a result of the proposal.

**ITEM 2 (continued)**

**ATTACHMENT 1**

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

A review of Council's map of Environmentally Sensitive Areas (held on file) identifies that the subject site is not subject to any environmental constraints.

Given the proposal is considered to constitute 'substantially the same development' the proposal is therefore considered to remain suitable for the site, as was determined the case under LDA2011/0343.

**12. The Public Interest**

The modification of DA2011/0343 complies with Council's current development controls, and, subject to imposition of specific conditions of consent, includes a built form that is in keeping with the existing and desired future character of the low density residential area. For this reason the proposal is considered to be in the public interest.

**13. Consultation – Internal and External**

*Internal Referrals*

No formal referrals of the subject Section 96 application have taken place. However, as part of the assessment of the application, the Consultant Assessing Officer has taken advice from Council's Senior Development Engineer on relevant engineering matters, and also taken advice from Council's Consultant Landscape Architect on matters relating to site landscaping.

The advice provided has been that the proposal is satisfactory from an engineering and landscape architectural perspective, subject to the conditions of consent recommended within this report.

*External Referrals*

None.

**14. Critical Dates**

There are no critical dates or deadlines to be met.

**15. Financial Impact**

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

**ITEM 2 (continued)**

**ATTACHMENT 1**

**16. Other Options**

The recommendation of this report is approval of the Section 96 application. However, the following options may also be considered in the determination of the subject Section 96 application.

*Option 1*

This assessment has determined that whilst the current modifications propose a different parking arrangement to what was approved within LDA2011/0343 the proposal is, on balance considered to constitute substantially the same development from a quantitative and qualitative assessment.

It is considered that approving the application will result in the most balanced outcome to both the applicant and objector. This is because the specific conditions listed below will ensure the modification has minimal additional impacts on the adjacent property whilst still allowing the applicant to modify their approved alterations and additions to reflect their needs and move forward with their renovations.

In this regard, Option 1 recommends Council **APPROVE** the Section 96 modification subject to the following conditions:

***BASIX.*** All revised commitments are to be detailed on the plans and submitted to Council for approval prior to the issue of a **Construction Certificate**.

***BASIX.*** Compliance with all commitments listed in BASIX Certificate(s) numbered No. A177112\_02 dated 07 May 2015.

***Carport*** - the proposed carport forward of the building line is not approved and should be deleted from the submitted plans. Plans detailing this change are to be submitted to Council for approval prior to the issue of a **Construction Certificate**.

***Privacy Screen – Northern Boundary.*** A 1.8m high fully opaque (translucent) or fixed louvered privacy screen be installed along the northern edge of the proposed parking structure for a length extending 5.4m from the building façade with compliant vehicle barriers required where the vertical fall to the adjacent ground level exceeds 600mm under Australian Standards 2890.1-2004. Plans that include details demonstrating compliance with this condition are to be submitted and approved by Council prior to the issue of a **Construction Certificate**.

**ITEM 2 (continued)**

**ATTACHMENT 1**

**Revised Landscape Plan.** A revised landscape plan for the site that is prepared by a suitably qualified landscape architect is to be submitted to Council for approval prior to the issue of **Construction Certificate** for the works covered in Condition 1 of this consent. The revised landscape plan is to ensure semi-established fast growing plants are planted along the northern boundary (between the street boundary and the front of the dwelling) to provide screening to the adjoining property at No.36 Conrad Street.

**Number of Car Parking Spaces** - One (1) motor vehicle, boat or other vehicle is permitted to park on the elevated parking structure at any one time.

**Pedestrian Pathway** - Physical separation be placed between the pedestrian and driveway components of the elevated parking structure via a low level wall, bollard, or planter etc. Plans detailing compliance with this condition are to be submitted to Council for approval prior to the issue of a **Construction Certificate** works covered in the plans under Condition 1.

*Option 2*

Another option available for Council is full approval of the Section 96 application as currently proposed – ie including the carport proposed on top of the approved elevated driveway, and without the additional conditions as has been recommended within this report as summarised above.

This option is not recommended, as it is considered that this would not adequately satisfy the objectors concerns with regard to the visual impact of the proposal in particular the carport on top of the approved driveway, and as such could potentially not be within the public interest.

*Option 3*

Another option for determination of this Section 96 application is **refusal**.

However it should be noted that this option would still enable the applicant to construct the elevated driveway structure in accordance with LDA2011/0343, and in practice would still enable the parking of a motor vehicle on the elevated driveway structure. Nevertheless given that the applicant has stated that the DA as approved is not feasible, it may leave the applicant with an unworkable consent.

**17. Conclusion**

The proposal has been assessed pursuant to the provisions of Section 96(1A), and also by using the heads of consideration listed in Section 79C of the Act.

**ITEM 2 (continued)**

**ATTACHMENT 1**

With regard to Section 96(1A), the Assessment Officer is satisfied that a quantitative and qualitative assessment of the revised plans enables the proposal to be considered substantially the same development, subject to conditions, for the following reasons:

- The revised design provides for one (1) car parking space in front of the main building line. It is considered that the previously approved development for a first floor garage would have resulted in a similar arrangement which is consistent with the intent of Council's front setback controls within DCP2014. Further the revised plan includes a modified layout of the structure to ensure that it maintains a consistent setback with the northern boundary, and reduced fencing height consistent with that approved under LDA2011/0343.
- The other modifications to the dwelling house, workshop, removal of the swimming pool, and associated works are considered to be minor do not impact on the ability of the proposal to remain substantially the same as that approved under LDA2011/0343.

The conditions required to be imposed on the proposal for it to be considered 'substantially the same development' relate to:

- Deletion of the proposed carport atop of the structure;
- Installation of a privacy screen for part of the northern elevation of the structure where the vehicle is to be parked to reduce opportunities for overlooking and to address visual impact.
- Provision of a revised landscape plan for Council's approval prior to the issue of CC, with a focus for landscape planting on the northern side boundary adjacent to the structure for screening to No.36 Conrad Street;
- Limiting parking on the structure to one (1) vehicle to comply with the relevant parking space requirements under the Australian Standard; and
- Delineating the proposed pedestrian entry from the car parking component on the structure by way of bollards, low wall, planter or similar.

The assessment of the proposal with regard to the heads of consideration under Section 79C of the Act has determined that the proposal satisfactorily complies with the provisions of LEP2014 and DCP2014. Further it is been determined that the impacts of the proposed modification on the built and natural environment are minimal, and capable of being mitigated against by imposition of the recommended conditions, and the continued application of the existing conditions of consent under LDA2011/0343.

On the above basis it is recommended that subject Section 96(1A) application be **APPROVED**.

**ITEM 2 (continued)**

**ATTACHMENT 2**

21 March 2016

**Attention: City of Ryde Legal department  
Copy Lara Dominish and Sharon Wood**

**Subject: Legal assessment - 38 Conrad Street, S96 matters**

With reference to the above subject, I understand legal counsel has been asked to make an assessment. I wish to bring the following to their attention:

I kindly ask legal counsel to consider my lengthy submission re: S96, dated 22 February 2016 – particularly the significant environmental changes and planning impacts. I have attempted to quote some legal cases to support of my submission. Please see attached.

The negative impacts of the S96 proposal are not in the public interest as it requires a significant departure from the DCP objectives without sufficient justification.

I apologise for any poor grammar or typos in my submission – my spare time is between 8pm and 6am in the morning. Please let me know if you have any questions or require clarification.

1. **LEGAL ISSUE: Survey drawing does not show critical dimensions - Council is being asked to approve something that is not based on fact.**
  - a. Survey drawing submitted with DA on file at Council – BMA (Brunskill McClenahan and associates) reference 10103-1 dated 6/10/10. The drawing notes the following:

*"No boundary survey has been made, boundaries have only been approximately located, dimensions and areas have been taken from the title plan. Critical features on this plan must be verified by user as to the accuracy required for the intended purpose".*
  - b. A factual assessment of this S96 is not possible without the actual location of the property boundaries and the location of the pre-existing structures and salient features relative to the boundaries.
  - c. Without establishment of these critical survey dimensions, **Council is being asked to approve something that is not factual.**

**ITEM 2 (continued)**

**ATTACHMENT 2**

- d. No absolute offset dimension to the boundary has been given and in any case the dimensions that are shown on this S96 fail to comply with the established boundary setback in the DA.
- e. For example, the significant S96 elevated hardstand parking platform and pedestrian path dimensions are not shown in accordance with LEP Dictionary *"horizontal distance measured at 90 degrees from the boundary"* (square to the boundary) and are misleading.
- f. The existing layback shown on the survey drawing overlaps the prolongation of the side boundary and is damaged. Therefore it is inconsistent with the DCP requirement that a layback may only be used when *"the existing crossing is in the correct location, at the correct level and in good condition"*. Reasonable alternatives exist for the layback and footway crossing to conform to the DCP.
- g. There is no existing footway crossing, none has been shown in the S96, Council's street levels are not incorporated in the design and the extension of the S96 elevated hardstand proposed does not align with the existing layback and in any case would be inconsistent with the intentions of the DCP to be square to the boundary.
- h. This is a breach of the Environmental Planning and Assessment Act 1979. It fails to comply with Condition 66 and Condition 67 of the Development Consent which requires the driveway crossing location to conform to Council's requirements which include by statute a requirement for a crossing approval under Section 138 of the Road Act 1993 and Ryde DCP which requires compliance the design criteria in AS2890.1-2004 Parking Facilities, Part 1 Off Street Parking. The DCP objectives within Part 8.3 would not be achievable.
- i. We therefore believe this S96 submission is incomplete and cannot be properly assessed.
- j. Some within Council's Planning Department appear not to believe, as Brett Daintree advises (in our earlier submissions) that Council is empowered to require a new layback position when Council believes the existing layback is not in the appropriate location. We seek your legal opinion on this.

**2. LEGAL ISSUE: Drainage Easement – applicants failure to comply with City of Ryde Onsite Dispersal Design Guide**

**ITEM 2 (continued)**

**ATTACHMENT 2**

- a. With reference to Council's pre-requisite requirements (as stated on pages 2 – 7 of the Design Guide for On-Site Dispersal Stormwater Drainage Systems), I wish to state that my parents (as adjoining property owners) **have never refused to grant a drainage easement.**
- b. It appears due process regarding this matter has not been followed.
- c. Appendix A is a copy of our latest communication from our lawyer (Bartier Perry). The applicant withdrew from this matter and left us dangling with costly, out of pocket legal fees.
- d. The intentions of the S96 hydraulics, as demonstrated in the Construction Certificate, breeches DCP, it is inconsistent with DA conditions and is inconsistent with the above referenced guideline.
- e. Please refer to my 22 February 2016 submission for further details regarding d. above.

**3. LEGAL ISSUE: Failure to comply with S96 application requirements.**

- a. The process states that the applicant must show all modifications in colour (or cloud). **There is no S96 drawing(s) available to date that clearly and accurately shows all modifications in colour or cloud** thereby making it extremely difficult for anyone/public to accurately determine the differences between the DA and S96.
- b. I believe the applicant's S96 documentation also fails to identify some of the design changes.
- c. There is no discretionary choice when it comes to complying with the requirements as stated in the S96 application form. See DeAngelis V Pepping (2014) NSWLEC 108 in regards 4a above.

**4. LEGAL ISSUE: Council's intent to take legal action and stop work order**

- a. I refer to Gary Pavlou (Building Surveyor – Ryde Council) letter dated 22 April 2015 requesting written confirmation that the Construction Certificate would be withdrawn *"as it was deemed outside the scope of works and not in compliance with the Development Consent Approval"*.



ITEM 2 (continued)

ATTACHMENT 2

- b. The applicant has continued construction not withstanding this S96 and request by Council for the Certifying Authority (Omar Zaher) to issue a **stop work notice**.
- c. To my knowledge Council has not received a stop work order or written confirmation as per 5a. and 5b. above.
- d. Some construction work on site breeches the DA. **The S96 seeks to regularise what is a blatant breach of Council's Development Consent** that has been altered in breach of clause 145 and clause 146 of the *Environmental Planning and Assessment Regulation 2000* (the Regulation) by the Accredited Certifier (AC) issuing a Construction Certificate (CC).
- e. Omar Zaher, the AC, represented the applicant (to whom he referred to as his client) at Council's PEC meeting on 8 December 2015 and provided false and misleading information. Specifically he contradicted what he stated previously with Council as referenced in the letter above.

5. **LEGAL ISSUE: Applicant's Architect provided false and misleading information to Councillors prior to the December 2015 General Council Meeting.**

I refer to an email from Mark Makhoul (Architect) dated 14 December 2015 that was addressed to all Councillors - on file at Council reference number D15/163516.

The architect states "the proposed driveway along the northern boundary is in accordance with the DA approved plans issued by council dated 29/11/2011". The architect attaches a copy of what he refers to as the approved DA plan and a copy of the S96 for comparison. The S96 is not coloured thereby making it impossible for the reader to accurately see the proposed modifications. The provided DA drawing was NOT the approved DA as stamped and dated by Council.

6. **LEGAL ISSUE: There was no S96 application for the removal of a critical environmental element – the DA "retain" tree located along the northern boundary.**

ITEM 2 (continued)

ATTACHMENT 2

- a. The 40 year old DA "retain" tree was a critical amenity/privacy/landscaping element and was a pivotal pre-existing condition of the DA.
- b. The removal of this tree now significantly changes the environmental conditions and the conditions under which the DA was originally granted approval.
- c. On Council record, the applicant provided Council with written assurances that this tree would remain and is shown on multiple DA drawings.
- d. We understand the applicant failed to declare, on TMA2012/005 that the tree was a critical condition of the DA.
- e. This tree was surveyed by Brian Kent in October 2010 – it was dimensioned at 10M x 6M.
- f. I would also like to inform Council that the one and only landscaping plan, dated 15 January 2016, shows three (3) existing 40 year old trees to be retained. These "retained" trees were also recently removed without a S96. The landscaping plan fails to show the most critical "retain" tree along the northern boundary.

**7. LEGAL ISSUE: The belligerent disregard of critical DA conditions**

- a. With the removal of the DA retain tree along the northern boundary, the S96 disregards critical DA conditions as indicated on DA+01 "retain existing tree no ground works or footings within 4.5M of the tree centre", "no new footings or excavation . . ." DA+03, "no works scheduled for this area" DA+03, "retain all existing footings and brickwork of existing balcony over" DA+03.
- b. On Council record, the applicant prior to DA consent provided written assurances to Council that:  
  
*"The existing tree will remain. Amendments to the design of the proposed driveway will ensure protection and minimal intervention of the proposed works to the deep tree root system. The changes implemented to the design would be the **suspension of the driveway** above ground level and no excavation or footings detailed within the 4.5M of the tree centre".*
- c. The DA was approved based on the justification that the suspended driveway would provide access to the DA approved garage on the first

**ITEM 2 (continued)**

**ATTACHMENT 2**

floor and construction work would occur within the existing building envelope. The S96 deletes all garaging and introduces new elevated hardstand parking elements.

- d. Individually and combined, the proposed S96 elevated hardstand parking area and elevated pedestrian walkway are new elements and are considerably longer, wider, higher and heavier than what was approved at DA. That is, they are significantly bigger in volume, plan area and surface area.
- e. To support the proposed S96 elevated hardstand parking, elevated pedestrian walkway and new workshop (located forward of the building), the Construction certificate structural engineering drawings demonstrate massive excavations outside of the existing building envelope (extensively breaching DCP and applicant's assurances in b. above) and DA conditions as stated above.
- f. The hydraulic drawings demonstrate excessive excavation in zones allocated to amenity/privacy screening and tree root protection – breaching DCP.
- g. Without enforcement of a Tree Root Protection Zone, the above S96 excavations and building infrastructure puts our 45 year old tree in danger or irreversible damage and presents a serious public safety concern.

**8. LEGAL ISSUE: TPZ required to ensure Public Safety and the protection of our tree**

- a. As extensively outlined in my submission to Council dated 22 February 2016, the S96 proposes massive excavations and building infrastructure within the DA "no excavation" "no work" zone and within the tree root zone of our 45 year old very tall tree. In fact, the S96 encroaches into the TPZ by more than 10% and this is considered, by council, to be major.
- b. We ask Council to ensure the above referenced DA conditions are maintained and to enforce a Tree Root Protection Zone (TPZ) for our tree. A TPZ not only protects the tree and its roots from harm and irreversible damage, it also reduces the risk of it falling and seriously harming the public and/or damaging residential/public property.

ITEM 2 (continued)

ATTACHMENT 2

9. **LEGAL ISSUE: Not substantially the same development and significant environmental and planning impacts**

- a. The original DA proposed to replace a tandem garage at the ground floor with a new garage at the first floor within the existing building envelope.
- b. The fact that this was favourable considered at all by Council, in the first instance, given the clearly apparent privacy and amenity impacts was bad enough. The subsequent abuse clause 145 of the regulations and the removal of screening landscaping (the DA retain tree) compounds the issues.
- c. What this S96 now seeks is **to essentially and materially change the essence** from a driveway accessing a garage to an elevated hardstand parking platform and elevated pedestrian walkway forward of the building.

The S96 proposes to remove all garaging and reduces DA approved off street parking from two cars to one car (ie forcing the second car onto the street). Both **quantitatively and qualitatively this is not substantially the same development.**

- d. If the applicant wants an elevated hardstand parking platform forward of the building with additional and excessive excavation to create a workshop, rather than a driveway as approved, **the applicant needs to lodge a new Development Application.**
- e. The applicant has not made out their argument that this proposal is substantially the same development.
- f. The proposal fails the substantially the same development test and cannot be lawfully considered.

10. **The change in use from the DA approved first floor garage to S96 habitable space – due process.**

- a. According to Council Planners and Consultants, Residents who seek to convert their existing garage into habitable space must demonstrate to Council an alternative DCP compliant parking solution. You can only use your existing driveway as your car space only if there are no other alternatives.
- b. Our architect, Mr Falconer, has provided a DCP compliant solution that puts parking near on grade, 1M behind the building line and capable of providing garaging for one or more vehicles/boats etc if required. The applicant is

**ITEM 2 (continued)**

**ATTACHMENT 2**

unwilling to entertain this or any options notwithstanding the options being reasonable.

- c. If Council approves the S96 oversized elevated parking platform, Council is then "cornered" into approving future lock-up garaging on this platform – setting precedence for bulky, elevated parking that is forward of the building with adverse amenity and safety impacts us as neighbours.

**Considering the planning and environmental impacts and proposed change, perhaps if the applicant wishes to proceed with this proposal it would be appropriate to do so as a Development Application.**

Thank you for reviewing this. Please do not hesitate to contact me if you have any questions or require further information.

Regards  
Robyn Slothouber

**ITEM 2 (continued)**

**ATTACHMENT 2**

**Appendix A – final email from Bartier Perry re: Drainage Easement**

This sounds like very good news to me!

Mary-Lynne Taylor | Consultant | Bartier Perry  
D +612 8281 7935 F +612 8281 7805 M 0438 671 640  
Level 18, 133 Castlereagh Street, SYDNEY NSW 2000  
mtaylor@bartier.com.au  
www.bartier.com.au

-----Original Message-----

From: Peter Barakate  
Sent: Wednesday, 12 December 2012 9:14 AM  
To: Robyn Slothouber  
Cc: Mary-Lynne Taylor  
Subject: RE: Your Ref: MLT:124762 [BP-BPWSDB.FID553798]

Hi Robyn,

I spoke to Harry Papadopoulos this morning and he told me that Carbone and Perez will not provide him with instructions on the matters raised in our letter.

Harry thinks that the matter has fallen by the wayside and won't proceed.

We agree that you should cancel all appointments with your plumber and surveyor.

You may wish to raise the removal of the 40 year old tree with Council.

All the best,

Mary-Lynne and Peter

Peter Barakate | Consultant | Bartier Perry D +612 8281 7970 F +612 8281 7888 Level 18, 133 Castlereagh Street, SYDNEY NSW 2000  
pbarakate@bartier.com.au www.bartier.com.au

-----Original Message-----

From: Robyn Slothouber  
Sent: Tuesday, 11 December 2012 1:55 PM  
To: Mary-Lynne Taylor  
Subject: Your Ref: MLT:124762

Hello Mary-Lynne,

I hope this finds you well.

Yesterday my parents gave me your invoice totalling \$3,076.90 - for work performed to-date (briefing and 20/11/2012 letter to Harry Papadopoulos).

Harry/Carbone's have not replied to our letter or actioned payment as required. Why are they delaying matters - given their threats of court action and urgency?

Mum and dad question if the Carbone's are legitimately interested in resolving this matter in a timely, co-operative and stress free manner. They are also concerned about escalating costs and spending money (which they don't have) on plumbers, etc, should this matter be dropped.

**ITEM 2 (continued)**

**ATTACHMENT 2**

As such, I will postpone our surveyor and plumber (was scheduled for Friday, 14 December 2012) until we hear back from them. The Carbone's lack of co-operation and action is unnecessarily dragging out this process and given the Christmas period will now further delay matters until the New Year.

To further upset my parents, the Carbone's on Friday 7 December 2012 deliberately removed the one remaining 40 y/old 10m+ tree (located along the boundary and was clearly marked on the Carbone's DA with conditions). Mum and dad's entire backyard and internal private spaces are now completely exposed.

As you can appreciate, mum and dad are struggling to cope with this unnecessary stress and aggravation.

Thank you for your support and understanding Mary-Lynne.

Regards,

Robyn Slothouber

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This email, and any attachments, is confidential and may be privileged. If you are not the intended recipient, please delete it and notify us. Liability limited by a Scheme approved under Professional Standards Legislation. Legal practitioners employed by Bartier Perry Pty Limited are members of the Scheme. Bartier Perry Pty Limited ABN 30 124 690 053.

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**ITEM 2 (continued)**

**ATTACHMENT 2**

**To:**

Ms Gail Connolly, General Manager  
Mr Chris Young, Supervisor – Environmental Assessment  
Ms Meryl Bishop – Acting Director – City of Strategy and Planning

**Re: Submission to Council re: Section 96 MOD2015/0077 (revision 3) – 38  
Conrad Street North Ryde 2113 (site)**

Thank you for the opportunity to review and comment on the S96 revision 3.

We again submit that the granting of development consent to an elevated driveway was a poor planning outcome.

- The S96 proposal is development creep and it seeks to utilise the Section 96 to attain something that should not be granted development consent.
- It is not substantially the same development and a new DA should be lodged.
- The proposal is jarringly discordant with the existing and desired future character of Conrad Street.
- The approval of the S96 would only reward a calculated approach to poor environmental planning outcomes.
- There is no precedent. Nor should Council create any for elevated hardstand parking platforms and or aerial pedestrian bridges.
- Such structures detract from open streetscape and occasion real adverse harm to neighbouring properties - their privacy – their amenity
- We submit that Council's powers under S96 legislation are insufficient to grant this S96 and we seek a new DA to ensure the proposal can be properly assessed. This very poor proposal should be refused
- If this section 96 is approved, it should only be approved subject to the conditions proposed below

Conditions at a glance and covered in further detail in this submission:

- Investigation into why the retain tree was removed without a S96 or DA modification – actions to relocate and plant a 45 year old tree to return the development to its original consent conditions – if the 45 year old tree cannot be replaced then a new DA is required.
- New layback and crossing outside of the TPZ
- Enforce a minimum 6M Tree Root Protection Zone along with a Council supervised management plan
- Relocate the free standing S96 elevated hardstand parking platform outside of the TPZ of 6M
- Allocate a 2M wide deep soil landscaping strip for amenity/privacy screening



**ITEM 2 (continued)**

**ATTACHMENT 2**

- Exclude all services and infrastructure from the 2M landscaping strip
- Reinstate the DA approved solid walls (floor to ceiling) on both front and rear balconies facing the northern boundary
- Provide an opaque or solid 1.8M privacy wall for 9M along the elevated hardstand parking platform then dropping down to 1M
- Splay the driveway for pedestrian safety according to the DCP
- Revise landscaping plan to incorporate tree management and mature trees to replace preserved trees removed
- Reject the workshop
- Reduce the elevated hardstand parking platform to 3M width
- Reject separate aerial pedestrian walkway and reinstate the DA front door
- Impose conditions to ensure work occurs

We appreciate this has been a long and exhausting process for everyone involved. Unfortunately this has, and I dare say will, continue to be one of those projects that Councils and Planning consultants across Sydney are complaining about – **Section 96 creep**.

We understand that Councils alike across Sydney are collectively voicing their frustrations to the NSW Planning Minister and Planning Department in highlighting the "S96 development creep loophole". Councils and residents are sick of the abuse and misuse of S96 legislation.

It appears to be a common trend that sees developments cunningly transform and grow, little by little, until they achieve something that would not have been granted approval in the first place.

Brett Daintry, a highly respected Planning and Environment Consultant in NSW, as you are aware from our meetings with him, appreciates that the S96 process is flawed and recognises the immense pressures that it puts on Council and planning professionals. The everyday resident that neighbours these is also under immense pressures!

We all need to lobby for change and if we don't stand tall and make a difference then we continue to see repeat behaviours and abuse of the intended code. At the end, as Brett puts it "**approval of the section 96 would only reward a calculated approach to poor environmental planning**".

Added to this mixing pot we then have some Private Certifiers that are best described as "creative" that exercise "unusual" powers thereby fuelling the issue at heart.

**ITEM 2 (continued)**

**ATTACHMENT 2**

We understand the severity of complaints made against them to the Building Professionals Board is on the increase and Councils (and the public) are urged to report unsatisfactory professional conduct or misconduct.

Having spent some time at Council, it appears (over hearing conversations and speaking with fellow residents) that many (like my family) are equally frustrated with the planning process and apparent misuse of the S96 along with the continuous number of iterations that most probably designed to exhaust Council staffs and residents that voice objections.

Mindful of the chain of events that have taken place so far, we believe 38 Conrad Street is going to be one of those S96 developments of which Brett Daintry has essentially covered in his earlier submissions to Council.

We don't know how this DA got approved in the first place – and for now that is "water under the bridge" – but we do need to be mindful that the circumstances were "different". (On a personal note: I have seen some of the intra office communications on file and if this case was ever investigated, I feel opportunities to improve processes would assist – that's not a stab at Council – it is my opinion and disappointment at the path this matter has taken to date).

At least now we have some insight as to what 38 Conrad Street is trying to achieve – the plans are on file with Council and have been since early 2013 when the Private Certifier created a new Construction Certificate inconsistent to the DA as evidenced in Council documentation. Likewise the structural engineering drawings and the hydraulic engineering drawings – all show the intended outcome. So now we know the destination – it is proposed that with S96 creep it will eventually be realised.

As neighbours we do not object to No. 38 Conrad Street doing alterations and additions. In fact we welcome it and if done the right way it will enhance the character of the street and the neighbourhood in general. However, we do object to a development that appears to purposefully go out of its way to "break all of the rules" resulting in an imposing and adverse outcome for us as neighbours. My parents have lived at No. 36 Conrad St for over 45 years – all they want to do now is enjoy their retirement years and have a quiet cuppa in their backyard, potter around in their little vegie patch and enjoy eating lunch in their dining room. They simply ask for their privacy to be respected and amenity considerations. They are also worried sick about their tall, 45 year old tree, dying and falling down because of the neighbouring excavation and construction work.

As neighbours we don't have to like each other, but we do need to respect the intention of the development and building assessment process to ensure a desired planning outcome is achieved for all parties. This is not about a neighbourhood dispute. This is about fairness and truthful information - and what should reasonably be expected.

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In our submission, we have incorporated relevant legal cases and feedback for your consideration. Here is a little "intermission" before we continue.

A paper Presented by Dr Ian Ellis-Jones (Solicitor of the Supreme Court of NSW and the High Court of Australia) in March 2013 at the Inaugural Property and Planning Law Conference of the Commercial Law Association of Australia, spoke about regulatory functions and drawing upon his own experiences (having worked intimately with NSW local councils for many years) states that:

" has seen the unfortunate result of Council decision along with certain other statutory 'innovation' such as private certification a demonstrable upsurge in authorised building work, with retrospective reliance being placed upon s96 by offenders if and when the local Council becomes aware of and takes issue with the unauthorised work". Dr Ellis-Jones claims that it is **"one thing to provide an opportunity to deal with anomalies in design unforeseen at the date of grant of development consent, is in another to give encouragement, tacit or otherwise, and even retrospective approval, to persons who deliberately offend against the terms of a development consent for their own personal or private benefit and often to the detriment of adjoining or adjacent landowners and residents"** (p 14, The Great Leap Backwards, page 14) Reference: [www.lqsa.org.au/files/LE\\_CourtReporter\\_Issues\\_5.pdf](http://www.lqsa.org.au/files/LE_CourtReporter_Issues_5.pdf)

Please keep Dr Ellis-Jones' claims in mind as we continue.

The collective plans (on file at Council) dated 2013, show an oversized **elevated hardstand parking platform** capable of parking two or more cars, along with two front door entries (upper and lower levels). We believe, from the start, that the applicant had always intended on building a double carport/garage/car parking forward of the building and the only way to get it approved was with S96 development creep.

**Frankly, if the entire driveway and its associated services were re-located to the southern side of the property, where there is ample room and would essentially operate in parallel with No. 40's driveway and front yard, then we would withdraw our objections in a flash and get on with life.**

However, the applicant is determined to move the S96 parking platform closer and closer to our backyard fence and is pulling every trick in the book to make it look like it conforms to the DA. It doesn't. Its location is now not consistent with the DA and the environmental and planning impacts are accumulating.

We feel we have a significant leverage point here, one that is guided in essence by Moto Projects (thank you Brett).

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Submission to S96 38 Conrad Street Objectors V1

**ITEM 2 (continued)**

**ATTACHMENT 2**

Our understanding is that Council, under the s96 application would not be able to re-open issues of the original DA approval if they are not part of the S96 application (such as the provision of an elevated driveway in this instance) unless the issues relate to the driveway. This is also supported by Gadens team of lawyers "if an application is made to change the approved DA colour of a building, matters relevant to colour must be considered . . . this could extend to the apparent height or bulk of the building". I've included Gaden's reference in the details of my submission.

So, what this is saying, if we look at the bigger picture and consider the **function of the DA approved elevated driveway** and its proposed justification that led to it being approved in the first instance – then we note it was approved to service a garage. That is - to provide a short private road from the street to a first floor garage. Now there is no garage and **its function has gone**. The conditions that determined the location of the elevated driveway to service the garage no longer exists.

We seek a condition to enforce a TPZ and move the S96 elevated hardstand parking platform 6M away from the northern boundary and out of the Tree Protection Zone.

**Problem solved!**

Either way you look at it, this S96 parking platform is objectionable – it is an invasion of our privacy - it is ugly, bulky and obtrusive – as viewed from all of our private spaces - and until it is deleted or moved away from the boundary and our backyard fence, we will continue to lobby for change.

We have been told by Council planners that this type of elevated driveway/hardstand development now only happens on commercial sites and for many planners they are unsure how to process something like this given no guidance in the DCP. It's just simply out of character and absurd!

The applicant, with this S96 writes that "the overall cost of works and disruption" is the driver behind this S96 modification. Further stating "the outline of the suspended concrete is proposed to be increased as shown on plan to accommodate for the 2 off street parking spaces" (BDT architects Statement of Environmental effects dated April 2015).

If cost and inconvenience were the truthful drivers behind the S96 modification, then we question why the most expensive construction element on site (the S96 parking platform) is proposed to be substantially over engineered and increased in size and height and be capable of supporting two or more cars. And, what about the extensive excavations (that exceed DCP) required accommodating the new big S96 concrete workshop under the driveway? And then there is the new S96 rear balcony roof (this modification was not evident in the S96 paperwork or the PEC report – it crept in)? What about the extensive excavations and effort in converting their existing ground floor tandem garaging into habitable space?

**ITEM 2 (continued)**

**ATTACHMENT 2**

It doesn't stack up.

There needs to be more substance – for example, where are the structural engineering drawings and details that show the DA approved lounge room to garage conversion? The only drawings on file reflect the S96.

If the applicant legitimately wishes to end building disruption and reduce costs, then why don't they just simply keep using their existing garage as it is – after all, they park their family sized SUV in it every day/night and it is also big enough to park their smaller 2<sup>nd</sup> car in it if they wanted to. We know the insides of the house intimately and knew the builder that lived in the house all those years ago. The existing garage has accommodated two cars for over 45 years and yes, according to today's DCP standards the driveway no longer complies – but not by much - but it was compliant when the house was built and the applicant was fully aware of the site limitations when they purchased the house.

We feel that the applicant has not put forward a valid argument to support the S96 garage deletion and new S96 parking platform - likewise, they need to demonstrate to Council that they have acted according to the DCP in trying to find alternative DCP compliant car parking. We believe this to be the process when you decide to convert your garage into habitable space (ie, a change of use) then you must demonstrate to Council how you plan to accommodate car parking. Only if and when you are able to demonstrate to Council that compliant car parking is not possible (behind the building line etc) only then can approval be granted to park on the driveway.

This test must therefore be applied now. They have DA approval today to build a single car elevated driveway to service a single car garage on the 1<sup>st</sup> floor – they do not have DA approval to build an oversized, over engineered **free standing aerial parking platform with an aerial pedestrian walkway** as shown on the S96.

In any case, we feel that the applicant is trying to justify the increase in hardstand area and height above ground level, by changing the front door access from what was originally proposed in the DA.

The S96 front door on the first floor is a new element. The S96 aerial pedestrian walkway is also a new element and compared with the DA it presents a significant qualitative and quantitative change. So too is the change from a DA approved garage (and allocated car space on the driveway) to just a single car parked out in the open on the S96 parking platform – and forcing the 2<sup>nd</sup> car out on to the street.

Compounded are the significant environmental changes that the engineering and hydraulic plans bring to the table. Landscaping along the northern boundary is pitiful, to say the least, and we continue to voice our grave concerns about the health and stability of our 45 year old tree. Excavation with this S96 parking platform and services is extensive and planned in the most sensitive area of the TPZ.

**ITEM 2 (continued)**

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The tree will suffer and if it falls it will probably injure if not kill someone. This is a serious safety matter than can no longer be avoided. We believe Council need legal consul to avoid legal liability now knowing this significant impact on public safety. The structural engineering changes are quantitatively significant this should be the grounds to bring this to an end.

The applicant claims that the "front, side and rear setbacks to the dwelling have not been amended and remain consistent with the DA approved plans" – this is incorrect – they have changed and the plans provided to us for review are flawed and misleading. They are not correctly dimensioned and in some cases the most critical dimensions are missing. Some dimensions are not taken square to the boundary. The same sloppiness happened in the DA stage. This will be further covered by Mr Falconer (Architect) later.

Additionally, the applicant claims that "the proposed modifications will still achieve compliance with the controls of the Ryde DCP 2014 whilst still being consistent and reflecting the design and layout of the development consent" is a fabrication of the truth.

As quoted by the applicant, the S96 is not "sympathetic to the existing neighbours" nor has it "been demonstrated that the proposal will not result in any unacceptable impacts on the amenity of neighbouring properties, the streetscape or existing environment".

Whilst you read through our very lengthy and detailed submission, please reflect on Lane Cove Council v Ross (No 14) [2013] court case. This was an S96 enforcement case about whether demolition and reinstatement orders were appropriate where modifications were performed inconsistent to development consent.

In our case with 38 Conrad St, the applicant has exceeded excavation, built retaining walls and hardstand landscaping and steps that are not in accordance with the DA. This case is relevant to our situation.

With the Lane Cove Council case, Mr Ross had obtained development consent for alterations and additions to an existing dwelling and carried out works otherwise than in accordance with the DC and approved plans. The unauthorised works essentially consisted of excavation, construction of concrete slabs, removal of windows and staircases, and a double garage (unbelievable).

Mr Ross was ordered to stop carrying out any further works in breach of the consent until Council were in a position to determine the S96 modification application that Mr Ross had submitted for the unauthorised works. He essentially tried to regularise the CC. The section 96 modification application was refused by Council.

**ITEM 2 (continued)**

**ATTACHMENT 2**

In the case of 38 Conrad St we also asked for a stop work as we could see the rapid building of retaining walls, increases to hardstand areas, and excavation contrary to the DA.

The court heard how Mr Ross had unlawfully constructed elements and attempted to justify his actions:

- "that significant changes had been required from an engineering standpoint and had been communicated to the Council. He stated that:
- the changes were within the approved building footprint;
- the works would have been approved by Council;
- and the works were necessary to complete the construction in an efficacious manner."

Reflecting on our situation with No. 38 Conrad Street, structural and hydraulic engineering plans have in isolation (not holistically) been reviewed and approved by the Certifier and subsequently submitted to Council. We know the significance of the environmental impacts that these S96 plans will have and the detriment on safety and amenity if the DA Conditions of "no excavation" and "no work zone" are ignored.

In Mr Ross' case, the Court essentially said that you can't contravene DA conditions because engineering says so. This situation is very relevant in our case. Just because the applicant has approved drainage and structural engineering drawings (that are inconsistent to the DA) **does not empower the applicant** to proceed with those designs. The S96 engineering and hydraulic plans must be designed mindful of the DA conditions and the site.

The additional height of the S96 parking platform above ground level is essentially a belligerent change to justify the new S96 workshop underneath and drainage to the front of the property (right in the middle of the sensitive TPZ zone) where there are other design options that reduce the height of the driveway and solve the drainage challenge at the same time. We do not believe it is reasonable that the applicant be allowed to contravene DA conditions and ignore tree and public safety because they choose to use an easy and convenient solution.

We seek that Council exercise their powers by enforcing conditions to address these significant environmental and planning impacts and seek alternative plans.

Back to Mr Ross. The court considered the prolonged procedural history of the matter and evidence and found that he had breached the EP&A Act. The court ruled

**ITEM 2 (continued)**

**ATTACHMENT 2**

in favour of Lane Cove Council making orders for demolition and reinstatement. The "court took into account that:

- the breaches were more than merely technical
- the unapproved works impacted on the privacy and amenity of neighbours
- the removal of the works were viable
- the conduct of Mr Ross, which Justice Pepper considered demonstrated a cavalier attitude with respect to the law"

Her Honour stated that she:

"did not have confidence that Mr Ross would comply with conditions of consent if the works were permitted to remain; while the costs of complying with the demolition and reinstatement orders would not be insignificant, this factor alone was not sufficient to prevent the orders from being made; Mr Ross had won a private advantage for himself by building works not approved by the development consent and the order for demolition would return Mr Ross to the position he was in had he complied with the consent; and the **Council (as opposed to a neighbour) was the party seeking the demolition orders, consistent with the Council's duty to ensure the planning regime is not thwarted**, and in these circumstances, the Court is less likely to deny the relief sought".

The court ordered that Mr Ross cause the unauthorised works to be demolished and for Mr Ross to rebuild or reinstate the property in accordance with the development consent, within 90 days.

**The Mr Ross case, we believe, is a powerful example that demonstrates strong leadership from Council that sends a stern and powerful message to developers that unlawful building, breeches to building codes and a blatant disrespect of process will not entertained.**

Going back to what Brett Daintry stipulated in our earlier submission to council, that is also supported by Court and Lane Cove Council in the Mr Ross case: **THEY DO NOT:**

- reward bad behaviour
- allow blatant S96 development creep
- allow regularisation of inconsistencies between the DA and CC.

Council, in previous submissions and with this one, we continue to ask that you grant us reasonable and sensible conditions. These conditions have previously been



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overlooked by Council with statements made by the Assessment Officer or applicant in the PEC report - to quote:

"The applicant advised that this is not feasible because site preparatory works have already been undertaken including the construction of retaining walls which would conflict with this alternative arrangement" and "setting the structure 2m for its entire length would require additional internal and external changes to the development that would be onerous".

Please remember that some of the retaining walls, handstand, walkways etc have/are being built inconsistent to what was approved in the DA. **This excuse didn't work for Mr Ross!**

**Is this case any different?**

**A wrongdoer is not to benefit from his wrongdoing.**

Where there is building work without consent but the works themselves comply with relevant standards, cause no environmental harm and are not otherwise objectionable then there is little justification for seeking injunctive relief and the appropriate sanction would normally be prosecution.

Where there is some non-compliance with standards or some environmental harm then neither a Council nor the Court should resile from requiring rectification just because the work has been completed. (Griffiths, S – Pikes Lawyers, 12 February 2012, titled: Illegal building work council responses)

Please find following our submission in more detail.  
If you have any questions please do not hesitate to contact me.

Regards  
Robyn Slothouber

**ITEM 2 (continued)**

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**Our Submission in Detail**

- About S96 – Gadens Team of Lawyers
- Background information – the dwelling before modifications
- The proposal justifying the Development Application (DA)
- What was approved - DA
- S96 Justification and proposed changes
- Significant Environmental Matter - Information about the 2M setback at all points along the northern boundary
- Background Information – Consultation with Planners about garaging and elevated driveways
- The Planning Matters at Heart - CHANGE – IMPACTS – CONDITIONS
- From Ian Falconer - Architect

**Summary of Words**

**Elevated hardstand S96 parking platform** – now referred to as "S96 parking platform"

**Aerial pedestrian walkway** – now referred to as "S96 aerial walkway"

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**With regards to Section 96 applications, Gadens Team of Lawyers state:**

"The Land and Environment Court once took the view that modification applications were to be assessed on a 'yes' or 'no' basis. That is, they were to be approved or rejected, but could not be approved conditionally (*Benalup Holdings Pty Limited v Lismore City Council* (1993)).

However, as a consequence of a 2004 Court decision (*1643 Pittwater Road Pty Ltd v Pittwater Council*) this is no longer the case. It is now understood that when an application is made to modify an existing consent, it is impossible to consider the impact of the proposed modification without an understanding of the effect of the existing conditions upon the modified consent.

Consequently, the court said that it would be 'unreal' to require a consent authority to evaluate an application to modify a consent without considering whether **new or revised conditions** may be necessary as a result of the modifications.

This gives a consent authority some discretion to make changes to a development consent that was **not** sought by the applicant.

However, the consent authority does not have the freedom to simply re-write the consent.

Firstly, the consent authority still needs to be satisfied that any modified development approved under sections 96(1A) or 96(2) is still substantially the same development as the original development. While this limits what applications can seek via a modification application, it also prevents the consent authority from unilaterally making functional changes to consent.

Secondly, the limits of the consent authority's discretion will be defined by the matters raised for consideration by the application. **Any new or revised conditions must relate to the same 'planning matter'**. The Court gave the following useful examples:

If an application is made to modify the heights of a building, consideration of any matter which is either directly or indirectly related to height will arise for consideration. This might, for example, lead to new conditions on car parking that was not requested by the applicant.

If an application is made to change the approved colour of a building, matters relevant to colour must be considered. This could, in an unusual case, extend to the apparent height or bulk of the building. However, an application to change the colour of a building is unlikely to provide a basis to reconsider the provision of car parking for the development."

Source: Ask Gadens, March 2013 at [www.gadens.com.au](http://www.gadens.com.au)

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**Background Information – the dwelling before modifications (in brief)**

The existing dwelling house is about 45 years old and includes a tandem lock-up garage on the ground floor and is capable of accommodating up to two (2) cars. The applicant parks the larger of their two cars (a family size SUV) in the garage nightly. Since the dwelling was built, the garage has parked cars daily and has driveway access. The opening to this garage is at the building line, at ground level, and currently there is no concrete crossing between the gutter layback and the driveway. The driveway has a gradient of 28% which at the time of construction complied but now slightly exceeds current standards of 25% (or 1 in 4).

Ground floor also has ample storage space and includes a bathroom and laundry room. There are stairs from the street to the garden area and front door.

The site has established vegetation including many, tall 45 year old trees. There is one significant tree in the front yard located along the northern boundary.

**The proposal justifying Development Application (DA):**

With reference to the applicants (Statement of Environmental Effects, dated 25 June 2011) and letters from their architect (on file at Council), the applicant sought to use the existing spaces of the current house on the subject site to increase their living useability.

The applicant wished to keep modifications to within the building envelope and as such sought to extensively excavate below ground level to create basement living. Existing balconies (front and rear) were to be fully enclosed to decrease overlooking issues to the adjacent neighbours at No. 36 Conrad Street.

As such the applicant expressed desire to exercise DCP compliance and sought to relocate their existing tandem garage and driveway from ground level to the first floor of their residence. This meant changing the use of their first floor living room and front balcony into a single car lock up garage with access via a single width elevated driveway. The applicant claimed that the existing driveway was steep and dangerous.

The applicant claimed that the existing vegetation on site would remain unchanged and proposed additional plantings. Of significance a mature 10M x 6M tree in the front garden along the northern boundary and 3 tall 45 year old gum trees on site.

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**What was approved (DA):**

Development Application (LDA2011/0343) was approved and stamped by Ryde Council on 29 November 2011

It was a very poor planning outcome and arguably should not have been approved in the first instance. In part, it approved:

- the preservation of a significant 6M x 10M tree along the northern boundary – this tree provided thick green privacy screening and blocked out the existing balcony and the site of the proposed 1<sup>st</sup> floor garage and part of the 11M long elevated driveway.
- 2M setback off the northern boundary to allow for Condition 21 – privacy screening: dense vegetation from the front of the building façade to the street boundary (to complement the preserved tree). See next section – Significant Environmental Matter – the 2M setback at all points along the northern boundary
- The conversion of the family room and front balcony into a new single car garage on the 1<sup>st</sup> floor with access via an suspended driveway
- Car parking for two (2) cars – one in the garage and the other in front of the garage (optional).
- The existing ground floor garage was approved to be converted into a bedroom.
- A new front door entry at ground level and steps along the ground.
- Defined "no excavation", "no works" and "No driveway footings or excavation within 4.5 meters of the tree".
- Additional landscaping to complement the existing mature landscaping on site.
- New water tanks and drainage at the rear of the property.

**S96 justification and proposed changes**

With this Section 96, part of MOD2015/0077 proposes:

- A change in use – Convert part of the LDA2011/0343 approved garage (rear section) into a sitting room
- New element - **S96 elevated hardstand parking platform.**

**ITEM 2 (continued)**

**ATTACHMENT 2**

- Delete LDA2011/0343 approved garage and reduce off-street parking from two (2) cars (1 in garage and 1 in front) to one (1) car on S96 elevated hardstand parking platform.
- New element – **S96 aerial pedestrian walkway** from street boundary to new element – new S96 front door at first floor
- New element – new S96 workshop forward of building
- Water tanks and drainage moved from the rear to under S96 elevated hardstand parking platform
- Changes to structural engineering and drainage in DA 'no excavation' and 'no work zone'.

ITEM 2 (continued)

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**Significant Environmental Matter – The 2M Setback at all points along the Northern Boundary**

New information has become available after investigating this matter at Council. It has always been our understanding that Council had intended on a 2M setback at all points off the northern side boundary from the building façade to the street level. This was to satisfy deep soil requirements for landscaping and some tree root protection.

It appears, however, that the architect put in writing to Council his agreement to amend the plans, ie, show 2005mm at all points off the side boundary, however failed to act. As such it went undetected by Council and the plans were approved.

There is no side setback dimensioning the elevated driveway at the street boundary on any plan, including the site survey. It is our understanding that Council intended it to be 2M and we had repeatedly asked for confirmation.

On **11 November 2011** the applicant (Saki architects) wrote to Council stating:

"The side setback 1.42 as shown on the previous drawings (DA+03) indicated the setback of the previously proposed line of driveway. **We have since amended the setback of the proposed driveway to 2005mm.** The attached amended drawings DA03 rev C11.11.11 indicates and confirms the new setback of the proposed driveway to 2005mm".

On **29 November 2011**, Council confirmed this change in writing to my parents (B & S Slothouber) stating:

"The proposed driveway is set 2m from the side boundary and is at street level. To assist in any visual impact on the adjoining property at No. 36 Conrad Street a condition will be placed on the consent stating the following: Privacy Screening – Semi-established fast growing plants are to be planted along the northern boundary (between the street boundary and the front of the dwelling façade) to provide privacy screening to the adjoining property at No 36 Conrad Street".

**Based on the above written communications from the applicant (architect) and Council, it is therefore reasonable to conclude that a 2M side setback at all points along the driveway was always intended.**

**ITEM 2 (continued)**

**ATTACHMENT 2**



**ITEM 2 (continued)**

**ATTACHMENT 2**

**Background Information – Consultation with Planners about  
garaging and elevated driveways**

**February 2016**

**Q: If I build a new house, what car parking would I require?**

A: A garage, carport or parking space – they would need to be 1M behind the building line and in accordance with DCP.

**Q: If I convert our existing garage into a bedroom, can I use the existing driveway as a designated car space?**

A: You can do this – you may want to look at the Comply and Develop guidelines on the internet. You can use the existing driveway as your car space only if there are no other alternative. If there is room to fit the dedicated car space on the side of the house and 1M behind the building line then you would need to do that. It is covered in the DCP. But you need to think about if you want a parking structure in the future – you don't want to create a situation forcing Council to approve a garage or carport.

**Q: What if I don't want to use the space on the side of the house – how can I get parking in front of the existing house?**

A: You can park your car in front of the house where there is an existing garage. You have to be careful not to deliberately set up the situation where council is forced into approving a garage or carport in the future if there are other alternatives.

**Q: How are garage sizes calculated?**

A: The size and shape of a car is taken into consideration. Generally the size of a large car like a Holden Commodore is used when calculating the size.

**Q: What if I wish to buy a 4WD, it won't fit in my garage today?**

A: Then you probably have a good case to apply for a larger garage.

**Q: Can I create a suspended driveway?**

A: I have not seen this in a residential area before, generally cut and fill is used to satisfy parking requirements. You would need to come in and discuss this matter with us as it would need to be reviewed on a case basis.

**Q: Can I create an elevated S96 parking platform to park my car?**

**ITEM 2 (continued)**

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A: This is something that is not residential but commercial. You would need to put a case forward for something like this - make an appointment and you can discuss this with us.

**Q: Is there something in the DCP that covers this or somewhere I can look?**

It wouldn't be in the DCP. No one has asked me these questions before - most people ask about garages or carports and you can find information about these.

**Q: Can privacy from my driveway be considered an issue?**

A: It is a privacy issue if a person can look into someone's backyard.

**CHANGE ONE: CAR PARKING ARRANGEMENTS**

The applicant proposes a change in car parking arrangements which bring about the following planning impacts on the public and neighbours

**IMPACT:**

- 1.1 Public safety and tree safety concerns
- 1.2 Public footpath pedestrian safety
- 1.3 Increased off street parking

**IMPACT 1.1. PUBLIC SAFETY AND TREE SAFETY CONCERNS**

The S96 elevated hardstand parking platform puts our 45 year old tree, located at street level close to the northern boundary, in danger of irreversible damage and possible "death".

**This presents a serious public safety concern and cannot be dismissed.**

The enforcement of a Tree Root Protection Zone (TPZ) not only protects the tree and its roots from harm and unnecessary damage, it also reduces the risk of it falling and seriously injuring the public and damaging residential property. **The consequences of not enforcing a TPZ could result in loss of life.** We believe

**ITEM 2 (continued)**

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Council has legal responsibility and duty of care to ensure the public are not harmed and ask for legal counsel.

In accordance with **Ryde's Urban Forest Technical Manual and Part 9.5 of the DCP**, the tree root protection zone for this tree is calculated at about 8.5M. It states that "this is a hypothetical estimation of the area to be protected" as a "tree's crown and roots may not always grow in a perfect circle around the stem".

The S96 presents significant and substantial changes with the amount of new excavation and building works now proposed. The environmental conditions have changed since DA and the S96 ignores critical conditions that provide 'some' protection to our tree.

DA+03 architectural plans (Council stamped and dated 29 November 2011) show "no works scheduled for this area", no works and any new footings or excavation - these provided some assurances and must be adhered to. However, looking at the S96 plans and supporting engineering and hydraulic diagrams, construction and building infrastructure ignores these DA Conditions.

We have a problem.

The S96 structural changes required to support the increased size and weight of the S96 parking platform, along with the hydraulics, encroach into the TPZ **by more than 10%. This is considered by Council "to be major"**. No construction activities or changes to soil levels should occur within the TPZ.

As stipulated in **Part 9.5 of the DCP**, "the roots of a tree can be 4 to 7 times larger than the crown area and most roots are found in the top of the soil. Roots can be damaged or severed, the soil compacted, root space lost, soil levels changed (eg by stripping the soil surface, excavation and cut and fill), soil hydrology altered and surfaces sealed.

Damage to roots may lead to loss of tree stability, reduction in water and nutrient uptake adversely affecting tree vitality, and decay as a result of wounding. Trees can be injured or killed in a very short time and it is usually not possible to repair trees that are stressed or injured through construction damage. Tree protection on all development sites within the City of Ryde must comply with Australian Standard 4970 – 2009 Protection of trees on development sites".

Here are the planning matters at play:

**ITEM 2 (continued)**

**ATTACHMENT 2**

1. The structural engineer's construction certificate drawing indicates that the footing at the front boundary of the S96 platform parking will now require over 1M of excavation for the full width of the driveway along the front boundary which is in **the most sensitive area of the TPZ**.

This is a significant change from the applicant's assurances at DA stage that "works have been designed to minimise excavation along the tree line area. The proposed suspended slab & aerial driveway will minimise excavation" (Saki letter dated 11 November 2011 section Tree Protection).

This does not conform to **Part 9.5 of the DCP**.

2. Below the proposed S96 platform parking are three (3) new 900mm x 900mm (wide) pad footings to a depth exceeding 800mm (on the low side). Again, they are located in **the sensitive area of the TPZ**.

In the DA+03 drawings (**Council stamped and dated 29 November 2011** this area was marked "no works scheduled for this level", "no new footings or excavation. This change is environmentally significant.

3. The S96 parking platform situates a new grated drain and sump (with its own geofabric seepage drain) again in the **most sensitive area of the TPZ**. The grated drain requires over 700mm (deep) x 600 (wide) x 5M (length) of excavation plus additional excavation to the required seepage drain and 100 diameter subsoil discharge.

**Additionally, this drainage is not compliant** with DA Condition 60 where it requires stormwater run-off from "low lying impervious areas, eg, driveways etc., are to be collected and piped to an absorption system located at the rear of the site".

The S96 changes this. The charged pipe system connecting the drainage pits to the rainwater tank, shown on the engineering drawings of the CC, is now located in the deep soil landscaping strip along the northern boundary that is allocated for DA Condition 21 privacy and amenity landscaping.

The applicant offers no justification for the change which impacts the extent of excavation. DCP Part 8.2 Stormwater Management clearly prohibits this.

4. The existing driveway crossing is dirt and has never been concreted. The existing layback is incorrectly located (ie, it currently extends across the prolongation of the common boundary line) and is damaged. S96 proposes to

**ITEM 2 (continued)**

**ATTACHMENT 2**

position the crossing in the most **sensitive area of the TPZ**. The S96 removes the DA approved garage and as such is no longer a determinant for the driveway crossing's position. The impost of a new layback is all that is required.

5. The S96 elevated hardstand parking platform is a concrete eyesore and is significantly bigger than the DA approved driveway. It should be reduced to 3M in width as specified in the DCP.

We believe, Council has a duty of care and legal responsibility to ensure development and construction does not jeopardise public safety.

**Let's get to the bottom of this driveway location planning matter.**

Our understanding is that Council, under the s96 application cannot to re-open issues of the original DA approval if they are not part of the s96 application (such as the provision of an elevated driveway in this instance) and they need to assess whether the modifications are "substantially the same" for issues that relate to the driveway.

Let's explore this point in detail. **The definition of a driveway is "a short road leading from a public road to a house or other building".**

So, let's take a look at the **function of the DA approved driveway** and its proposed justification that led to it being approved in the first instance.

The DA elevated driveway was approved to service a garage. That is to provide a short private road from Conrad Street to a first floor garage. Now there is no garage. The function originally justifying its "reason for existence" has gone.

The "first floor garage and elevated driveway" were justified and approved as one entity – that is, it is not one or the other. If the applicant requested a first garage without an aerial driveway then it would not have been approved – and the same applies vice versa. The location of a parking space on the drive in front of a garage is contingent on there being a garage.

Note: With reference to "Background Information – Consultation with Planners about garaging and elevated driveways" - Council planners have confirmed our understanding that if an applicant wishes to change their garage into habitable space, then they will need to show Council if it is possible to accommodate similar parking that is DCP compliant. Only if the applicant is able to demonstrate that it

**ITEM 2 (continued)**

**ATTACHMENT 2**

cannot, only then will parking forward of the building be considered by Council. The S96 parking platform does not satisfy this test.

The conditions that determined the location of the elevated driveway to service the garage no longer exists. It has deceased – it is pushing up daisies!!

Now, we now longer have an elevated driveway but rather a free standing S96 elevated hardstand parking platform with an additional new element – a new aerial pedestrian bridge. The proposed aerial pedestrian bridge wasn't even in the DA.

This is now a totally independent element that can and should be located anywhere on site providing that it is **assessed on its own merits as would be required if it were submitted as a new and fresh application.**

The new aerial pedestrian bridge is wider than I am tall. The pedestrian component is as wide as the bridge across Epping Road to Domayne. We are talking serious commercial grade construction and engineering here – all for a few pedestrians to walk to a front door. And even then to get to the front door they need to step down 4 or 5 steps from the pedestrian walkway. This is a very expensive aerial pedestrian walkway and its not even level from the street to the front door – who does that?

Anyway, this is not what was intended in the DCP nor was the aerial pedestrian walkway even mentioned in the DA. The function of the S96 aerial pedestrian walkway is fundamentally different. The DA approved a new entry at ground level and stairs on ground to access it. Compared with the S96, it is qualitatively and quantitatively different.

**This is now a totally independent element that can and should be located anywhere on site providing that it is assessed on its own merits as would be required if it were submitted as a new/fresh application.**

Gadens lawyers advise with reference to Moto Projects (No 2) Pty Ltd v North Sydney Council that "These elements must be considered in their proper context – which includes the circumstances in which the development consent was granted in carrying out this exercise – it is the consent that is to be modified. This means all of the changes to the consent should be considered, not just changes to plans".

We ask the following conditions to ensure public and tree safety planning impacts are addressed.

**CONDITIONS**

**ITEM 2 (continued)**

**ATTACHMENT 2**

**CONDITION 1.1.1**

It would therefore be reasonable for the public to expect the **enforcement of a Tree Root Protection Zone to a minimum of 6M** away from the northern boundary. Additional are strict conditions to ensure compliance as outlined in **Section 9.5 Tree Preservation of the DCP** and supervised by Council Officer.

This will ensure the ongoing longevity and stability of the tree. The condition must stipulate that "all tree protection measures must be in place prior to the commencement of construction works (including demolition, excavation or earthworks) and before any machinery or materials are taken onto the site".

**CONDITION 1.1.2**

It is essential that the proposed S96 drain and sump is moved away from the front boundary and water is directed to the drainage pits at the rear of the property, and is consistent with DA Condition 60. This would also maintain the S96 parking platform at the maximum level of RL 45.70 as shown in the DA Consent. This avoids any impact on the TPZ. **DCP Part 8.2 Stormwater Management** must also be adhered to ensure S96 deep soil landscaping can be achieved.

**CONDITION 1.1.3**

No essential services such as drainage, power poles, gas, electricity or telecommunications conduits or pipes shall be placed in the 2M deep soil landscaping zone, or within the TPZ. Specifically, if an electricity pole is required then it is to be located near the existing street pole on the southern side of the S96 parking platform. An amended stormwater design must accompany any CC relocating the stormwater pipes and infrastructure proposed to comply with this condition.

**CONDITION 1.1.4**

The damaged layback will need to be removed and a new crossing constructed outside of the above stated 6M Tree Protection Zone. It is also necessary to ensure minimal excavation and earth works near the protected tree.

Council is empowered to relocate the driveway as detailed in Daintry Associates Report dated 13 December 2015 and Council should do so.

Prior to the issue of any Construction Certificate the owner's shall obtain consent under section 139 of the Road Act 1993 for a new driveway crossing. Council will only approve a new layback being setback not less than 6M from the prolongation of

**ITEM 2 (continued)**

**ATTACHMENT 2**

the northern boundary line and stormwater discharge from the site must be discharged to the road gutter on the southern side of the S96 parking platform to ensure adequate setbacks, landscaping and safety of pedestrians and preserved trees.

**CONDITION 1.1.5**

Reduce the concrete bulk and size of the S96 elevated hardstand parking platform so that it is 3M in width and conforms to the DCP. Lower the level above ground level – it has raised significantly with the S96.

Reject the separate S96 aerial pedestrian walkway and reinstate the DA approved front door at ground level and ground level steps. The internal layout has not significantly changed and there is a large void where the doorway was DA approved.

The above new and modified conditions are necessary to ensure the ongoing health and safety of the tree and are essential to ensuring public safety is maintained. If this change is beyond Council's powers under s96 legislation then Council is unable to grant this Section 96. A new Development Application enables the proposal to be properly assessed.

**IMPACT 1.2 PUBLIC FOOTPATH AND PEDESTRIAN SAFETY**

The applicants in their DA proposal stressed the importance of safety and DCP compliance. In this case we are referring to public safety – those that use the Council footpath and when cars are exiting the S96 parking platform.

Existing physical obstructions and inadequate sightlines – at the street boundary the existing 1.8M divided backyard fence (northern boundary) combined with the dense vegetation from our large tree at No. 36 Conrad Street (about 1M away from the public footpath) restricts clear sight lines to the footpath and the road. The S96 parking platform is 500mm away from the dividing fence.

Council has a duty of care and legal responsibility to ensure public pedestrian safety along footpaths at all times. It would therefore be reasonable for the public to expect, at minimum, safety standards and compliance as stipulated in Ryde's Development Control Plan.



**ITEM 2 (continued)**

**ATTACHMENT 2**

DCP 2.5.3 Pedestrian and Vehicle Safety (illustrated in figure 3.3.09 of the DCP) shows how fences are to be splayed to ensure adequate sight lines where fences and other existing physical objects obstruct views. The DCP stipulates a minimum property boundary setback from 2M however this setback must consider other environmental conditions when determining the required setback. In this case the 6M TPZ.

A new condition is paramount when it comes to public safety. It is unacceptable and insulting for Council, in their PEC report to suggest that it would be "onerous" for the applicant to make design changes in order to accommodate this safety issue.

Pedestrian safety is a top priority. The applicant in their DA proposal stipulated the importance of safety in their DA justification – this therefore means the same argument and discipline is valid with this planning matter.

The S96 parking platform is now independent and free standing. It no longer connects to a garage or parking structure and can therefore be positioned anywhere on site.

**CONDITIONS**

**CONDITION 1.2.1**

Enforce a condition to ensure the S96 parking platform is setback 6M from the northern boundary at No. 36 Conrad Street to comply with DCP 2.5.3 Pedestrian and Vehicle Safety where driveways are splayed.

**IMPACT 1.3 Increased off street car parking**

The applicant proposes a change in car parking arrangements that bring about the following planning impacts on the public and neighbours.

The most significant quantitative change is the reduction of off-street car parking from 2 spaces to down to 1.

DA provided a single car lock-up garage (behind the building) plus one car space on an elevated driveway in front of the garage.

S96 deletes the garage and restricts car parking to one (1) stand-alone car space on the proposed S96 parking platform can be located anywhere on site. The applicant's architect, in a letter dated 20 April 2015, seeks to further widen it to accommodate two (2) off street car spaces, stating "Off street parking is now proposed on the approved suspended concrete driveway located on the western side of the dwelling

**ITEM 2 (continued)**

**ATTACHMENT 2**

in front of the sitting room and entry. This area has been modified to provide sufficient room for 2 car spaces".

This change will lead to an increase in on-street parking and congestion in a cul-de-sac. This quantitative change must be taken into consideration as it fails to achieve the DA proposal.

Please note: the applicant is **incorrect in stating** that "Car spaces are to be relocated on the driveway – the widening of the concrete driveway has also been approved under LDA 2011/0343" (30 April 2015) is in correct.

**CONDITION**

**Condition 1.3.1**

It would be reasonable to expect that the car parking arrangements (for two cars) as intended in the DA proposal are maintained. The applicant should demonstrate to Council alternative car parking arrangements that are consistent with the DA proposal and satisfy DCP compliance.

**CHANGE 2: REMOVAL OF PRESERVED TREE**

The removal of the preserved tree, marked as "retain" on the DA drawings, has now created a number of significant and new planning impacts.

**IMPACTS:**

- 2.1 Significant change in environmental conditions
- 2.2 Decreased amenity

**IMPACT 2.1 Significant change in environmental conditions**

The following information is based on facts and written correspondence on file at Council. The information contained within is pivotal to this S96 and Council in making an informed decision.

**Preserved Tree Along The Northern Boundary (our backyard) marked as "RETAIN"**

27 of 42 pages

Submission to S96 38 Conrad Street Objectors V1

**ITEM 2 (continued)**

**ATTACHMENT 2**

**on the Development Application (DA+03, dated 29 November 2011)**

The above tree was a significant and critical element in determining the Development Application. It was pivotal to the environmental considerations around our amenity and privacy in particular.

Throughout the DA process, we **tirelessly voiced strong objections** to the proposed relocation of No. 38 Conrad Street's garage from the ground floor to the first floor with access via an elevated driveway positioned close to and above our 1.8M backyard fence.

The entire concept presented significant planning issues around safety, amenity, privacy, visual impact and noise. We repeatedly asked for the elevated driveway to be rejected and requested a friendlier compliant alternative.

Elevated (or aerial) driveways of this nature are significantly "out of character" for Residential developments in Ryde, in fact, they are so out of character that the Development Control Plan (DCP) is completely void of any guidance or planning controls.

According to Planners, this type of development is typically found only in Commercial developments where the "cut and fill" method, guided by the DCP, typically satisfies car parking arrangements in Ryde.

**Background Information**

The above stated tree was one of many that once formed a dense privacy hedge between the two properties. The hedge was jointly planted by the original owners of No. 38 Conrad Street and my parents about 40 years ago. Aerial photographs on file at Council can verify this hedge. We understand from discussions with Council that the trees (but one) were removed without approval. It was upsetting to see them go.

At my parents request this tree was surveyed by Brian Kent, a registered surveyor in **October 2010**. See job number: 14222 – it was dimensioned with a **height of 10M and a span of 6M**. The tree was stable and healthy.

**Pivotal in determining the DA approval**

As the only remaining tree along the boundary (our backyard fence) it had **significant** environmental and social benefits.

- It was critically positioned by way of amenity.
- The height of the tree extended above No. 38 Conrad Street's roof and provided thick green privacy screening, blocking out the front door, front balcony area and

**ITEM 2 (continued)**

**ATTACHMENT 2**

part of the driveway. In fact, it would have screened out the DA approved 1<sup>st</sup> floor garage and a significant amount of the approved aerial driveway.

- It prevented overlooking into my parents backyard and into their private spaces (significantly their dining room and eat-in-kitchen areas).
- It enhanced the visual "green" landscaping and quality of the properties.
- It blocked out some noise.
- It would have provided a sense of protection, ie, acted as a safety buffer should a car "drive off" the elevated driveway and fall into my parent's backyard.
- And it had emotional significance.

**Given its environmental significance, why was the tree removed?**

**Why weren't we given the opportunity to prevent its removal?**

The below contains critical information and a series of events for Council's consideration.

**Before the Development Application Process - In December 2010**, the applicant applied for the tree to be removed and we understand from Council's Tree Management Officer that it was rejected because it was a healthy tree and that it did not interfere with access to the driveway or garage. Please see **Tree Management Application: TMA2010/0567** on file at Council.

**During the DA process** we continuously voiced disapproval of the elevated driveway and the amenity impacts on us. We also highlighted the need for deep soil allocation and privacy screening trees to replace what had been stripped away from along the northern boundary. This vegetation was additional to the tree marked as "RETAIN" on the plans. We wanted assurance from Council and the Applicant that this tree would remain.

On **16 August 2011**, the applicant (Saki architects) confirmed in writing to Council:

**"Existing Tree – the existing tree will remain.** Amendments to the design of the proposed driveway will ensure the protection and minimal intervention of the proposed works to the deep tree root system. The changes implemented to the design would be the suspension of the driveway above ground level and no excavation or footings detailed within the 4.5m of the tree centre."

**ITEM 2 (continued)**

**ATTACHMENT 2**

On **11 November 2011**, the applicant (Saki architects) confirmed in writing to Council:

"Tree Protection – we confirm that all trees will be subject to tree protection as deemed by Council conditions and arborist details. Furthermore the proposed works have been designed to minimise excavations along the tree line area".

On **29 November 2011**, Council wrote to my parents (B & M Slothouber) stating:

"The existing landscaping of the site remains substantially the same with this development. The applicant will be providing additional landscaping to provide privacy between adjoining dwellings and their private open spaces".

**The Development Application was approved on 29 November 2011.**

Council please note: there are four (4) trees to be retained as shown on the DA+01, DA+02 and DA+03 architectural plans.

The tree along the northern boundary is clearly marked "**RETAIN EXISTING TREE – No Footings Or Excavation Works Within 4.5M of Tree Centre**" on DA+02 and DA+03 plans.

**In March 2012**, the applicant again applied for the tree to be removed and we understand from Council's PEC report that approval was granted under **TMA2012/005**. The Tree Management Approval Order required the replacement of the Cupressus spp (Cypress) tree with one (1) Syzygium Paniculatum (Lily Pilly) which was to be planted by 21 March 2013.

Part 5 of **Council's Tree Permit Application Form** specifically asks the applicant a series of questions before an order is granted.

- a) Is this the first Tree Permit application for the tree?
- b) Is there a current approved Development Application (DA) Consent for the property?
- c) Has a Development Application been submitted for the property?
- d) Are the tree/s included in the Development Application (DA)? If yes, the Tree Works will be assessed as part of the DA?
- e) Is this application for tree removal of tree/s required to be retained in the DA consent?

It is important for Council to examine the truthfulness of how the above questions were

**ITEM 2 (continued)**

**ATTACHMENT 2**

answered by the applicant.

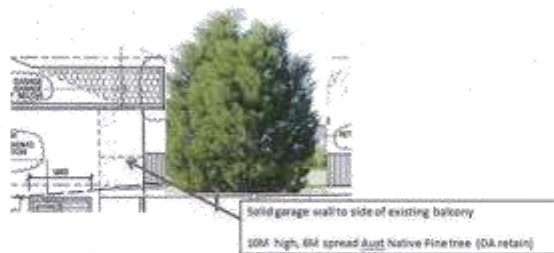
The disclosure of the above information would have resulted in modifications to the DA drawings before approval on 29 November 2011.

**If the order was granted after the approval then a Section 96 application was required** to address the tree removal by way of an amendment to the LDA2011/0343 consent. There is no Section 96 on file.

Given the opportunity we would have voiced very strong objection to its removal on two grounds:

1. It's Tree Protection Zone of 4.5M provided some protection to our very tall 45 year old tree located near the northern boundary at street level.
2. Retention was critical as it played a significant role in protecting our amenity and offering some privacy to the relocated 1<sup>st</sup> floor garage and elevated driveway.

The below picture provides an indicative view of what it looked like at DA approval.



Guided by Bignold J (Moto Projects (No. 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 298) and looking at the facts and circumstances presented above and considering the S96 application before us today, the question must be asked of Council – are you satisfied about "substantial sameness"?

The removal of this tree is not a mere detail – it is a "matter of substance" where the impact of change is significant. Council, in your PEC report you play down the importance of this tree – almost saying "oh well the tree has been removed and they got approval to do it".

It is important for Council to put this in context and take a holistic view on what has happened and the impacts associated with this change. The removal of this tree is a significant environmental change and pivotal to the S96 "not the same development" argument.

**ITEM 2 (continued)**

**ATTACHMENT 2**

Have we been misled by the applicant?

From the written communications on file at Council it appears that the applicant knowingly removed this tree with full knowledge of its significance to the DA and neighbouring amenity. It is essential that Council further investigate this matter and reconsider their position on this changed and important environmental element.

**2.1.1 Conditions /Actions**

The public, including Council, would reasonably expect that anyone who purposefully provides Council with false and misleading information - that not only significantly changes the DA environmental conditions but also results in adverse impacts on neighbouring properties, visual amenity and changes to landscape character of the area - should at minimum be ordered to rectify the matter.

This could be done two ways:

1. Replace the tree with like for like – that is make good the DA Conditions by planting a replacement tree that is 45 years old of the same type and size or
2. provide alternative car parking arrangements that takes into consideration the new environmental conditions.

If this cannot be achieved, then we believe a new DA should be submitted.

Council must investigate into why this tree was removed given the countless reassurances that it would be preserved.

Why wasn't a S96 raised?

Why has the applicant, until version 3 of the S96, kept the tree marked on the plans?

The environmental impact is so significant that the above is essential in restoring amenity and making good a severed environmental condition.

If this change is beyond Council's powers under Section 96 legislation then Council is unable to grant this Section 96. A new Development Application enables the proposal to be properly assessed.

**ITEM 2 (continued)**

**ATTACHMENT 2**

**IMPACT 2.2 DECREASED AMENITY**

The S96 parking platform itself presents an intrusive and obtrusive "ugly eye sore" from our dining room, eat-in-kitchen and backyard private open spaces. It is essentially an elevated terrace and where the privacy screen height changes from 1.8M to 1M will provide direct viewing (eye-to-eye) into the dining room area and aerial viewing across our entire backyard.

Noise from the S96 parking platform will also amplify into our private spaces.

This is disruptive and intrusive – it is an invasion of privacy and right for peace and quiet – it takes away the enjoyment from our private spaces – both internally and externally.

When considering this S96, it is important for Council to remember that this S96 parking platform is positioned close to and above a backyard fence. That is, it is not at ground level and requires special consideration when addressing the overall amenity issues that are presented with the changed environmental conditions. The DCP does not have provisions that cater for the unique situation that presents here.

Consequently the impacts of this situation are more severe than the DCP intended because it fails to take steeper slope sites into account.

Comparing the two, the DA approved garage was inside the building envelope, behind the brick walls of the building line and was sufficiently screened by the DA "retain" tree. The removal of the tree alone is a significant environmental change as previously discussed.

The S96 proposes to change the physical position of the S96 parking platform on the allotment – it will be closer to our backyard fence. In the DA it was parallel to the boundary and now it is at an angled along the northern boundary thereby making it easier to view down into and across into our entire backyard.

The S96 parking platform has been further raised taking it to 2.2M above ground level and it will have an increased concreted area of 6.05M in width (at the front building façade) and 5.11M at the street boundary.

The structure is over 11M in length and extending from the building façade is a 1.8M high x 5.4M length louvered privacy screen. The remaining 5.6M of the hardstand is proposed to have a one (1) meter high balustrade or fence and with this - privacy and increased noise issues are introduced.

The size and bulk has significantly changed from what the DA intended.



**ITEM 2 (continued)**

**ATTACHMENT 2**

The detailing, materials, finishes and colours of the privacy screen are unknown and a louvered system is ineffective and fails to stop sound. A solid opaque wall is beneficial in this situation.

The DA solid brick garage would essentially hide the majority of noises generated from car maintenance and other garaging activities. The same activities on the S96 elevated open air hardstand essentially amplifies noise directly across into neighbouring private spaces. It's not blocked by a backyard fence because it is elevated.

The depth of a typical parking space is no less than 5.5M and the louvered privacy screen is only 5.4M in length; this will not screen the length of the applicants' SUV car. It needs to be extended.

The S96 louvered privacy screen needs to address acoustic issues. Sound proof screening is essential along the entire length of the elevated hardstand however this comes at an unacceptable and unreasonable cost to amenity and enjoyment within No. 36 Conrad Street's private open spaces. It also blocks out cooling southerly winds that are essential in Sydney's hot humid climate.

The DA approved a garage that closed-in the front pre-existing balcony with a solid brick wall. The S96 proposes a 1.8M louvered privacy screen.

The DA approved a solid "floor to ceiling" high wall on the northern side of the rear balcony and the S96 proposes to substitute this with a 1.6M high louvered screen. This is a step backwards from what was granted in the DA.

The applicant is about 180cm tall (eye level 170cm) and can easily overlook the 1.6M high screen and view directly into our entire backyard.

**CONDITION 2.2.1**

The proposed S96 privacy screens are ineffective and insufficient. The solid "floor to ceiling wall" must be reinstated on both balconies per the approved DA. The 1.6M privacy louver fails to address **DCP 2.14.2 Visual Privacy**. It must be a minimum of 1.8M but in this case a solid wall per the approved DA.

**CONDITION 2.2.2**

The 1.8M privacy screen along the S96 parking platform is ineffective and needs to be 9M in length (from the front façade) then dropping down to 1M

**CONDITON 2.2.3**

**ITEM 2 (continued)**

**ATTACHMENT 2**

The applicant needs to provide details on finishes, colour and materials of the privacy screen.

**CHANGE THREE: Privacy Landscaping**

The DCP stipulates that deep soil areas are designed to enhance vegetation corridors and provide space for tree growth and other vegetation. They are free of structures such as outbuildings (workshop), driveways, impervious surfaces, tanks or paved terraces and fit nicely around the building without obstruction. Figure 3.3.11 of the DCP clearly illustrates the required setbacks to deep soil areas.

The S96 landscape plans are a qualitative change to the DA conditions and intentions established in the Development Consent that trees have been removed that were to be preserved also make it a quantitative change.

The general screen plants are a smaller variety than specified in the TMA2012/2005 Order (dated 7 March 2012) and at maturity will not reach the same height or cover of the removed tree. This replacement tree should be shown on the landscape plan.

DA Condition 21 must be re-evaluated in light of the S96 changes.

**IMPACT: 3.1 Inadequate and insufficient privacy landscaping along the northern boundary**

We acknowledge that the applicant has now made an attempt to landscape this area. Until now we have not seen a landscaping plan per condition 21 of the DC.

The proposed S96 deep soil landscaping strip along the northern boundary, from the front of the building (sitting room) to the street boundary, is inadequate in size and is incapable of fulfilling its purpose of replacing the DA "retain" mature tree and sustaining dense privacy hedging and amenity screening.

The S96 landscaping strip is a tiny 500mm (at the street boundary) and widens to 1700mm at the building façade – nowhere does it satisfy the DA condition 2005mm at all points – but it should. Additionally the landscaping strip is wedged tightly between a 1.8M colour bond fence and the S96 parking platform (and combined with the 1.8M street in part) – the "eye sore" occupies about 4M above ground level at the front of the dwelling.

There are big asks of the S96 landscaping strip and in its current state it:

- is too small making it inaccessible for ongoing landscaping maintenance including weeding and the removal of dead leaves, branches, and other

**ITEM 2 (continued)**

**ATTACHMENT 2**

debris thereby creating a potential fire hazard (which is dangerous considering the proximity to the Lane Cove National Park)

- lacks the required deep soil area needed to absorb water and promote healthy trees and vegetation
- is shared within and alongside S96 drainage and building infrastructure such as pipes, water tanks, deep concrete footings, workshop walls, etc
- prevents maintenance access to the rain water tanks and drainage infrastructure
- fails to provide adequate separation between plants, drainage and building infrastructure. This conflict on zoning will likely see the removal of trees should drainage problems occur.
- fails to promote healthy vegetation growth as it is hemmed in by deep large concrete footings that are required to support the elevated structure
- lacks adequate sunlight to promote healthy vegetation growth

Disappointingly, the landscaping report is a generalised landscape specification and fails to specifically address the conditions required here. It marks the trees on site that should have been "retained" but subsequently removed.

This landscaping strip requires special attention as it contains tree roots and tree stumps from the former privacy hedge, it requires soil preparation and other specialised treatment. We have no idea how to do this given the TPZ.

The replacement tree, per Council's order, is of a smaller variety and will not achieve the growth that is required. Remember that the preserved tree was 40 years old – this tree should be replaced with like for like (40 year old tree) or at minimum two mature tall trees.

Given the importance of this landscaping strip, and the changed condition with the removed preserved tree, it would be reasonable that all trees planted in this zone are a minimum of 100 litre pot size.

It is also normal practice to stagger the trees to provide optimum screening coverage by the plants. This also promotes optimum utilisation of the deep soil available and promotes health tree growth.

The tree type and height must be capable of growing taller than the level of the aerial S96 parking platform. So at the highest point, the tree would need to reach a height of at 5M minimum.

The landscape drawing should be updated to reflect this.

**ITEM 2 (continued)**

**ATTACHMENT 2**

**Conditions**

**Condition 3.1.1**

At minimum, a 2M wide deep soil landscaping strip (at all points along the northern boundary) be set aside to enable fast growing trees capable of providing a privacy hedge reaching a minimum height of 5M. Each tree must be a minimum of 100 - 130 litre pot size. Landscaping must be subject to **DCP Part 9.5 (Tree Preservation)** compliance and when Council is happy with the extent and management of landscape screening, it can then be a specific requirement of the development consent to comply with that landscape plan.

A failure to comply with the landscape plan and 2M landscape zone can by condition prevent the issue of an Occupation Certificate or any use of the S96 S96 parking platform until the landscaping is completed (section 109H of the Act) and further, require the maintenance of the landscaping to ensure the ongoing protection of neighbours amenity and privacy screening within the landscape.

**Condition 3.2.2**

In relation to the ongoing use and occupation of the S96 parking platform, the owners of the land must ensure that the privacy screen and screen planting is maintained to provide acceptable aural and visual privacy to the private open at No. 36 Conrad Street and to limit the visual impact of S96 parking platform within the streetscape, and when viewed from the neighbour.

The above revised condition is necessary to ensure an acceptable outcome is achieved. If this change is beyond Council's powers under s96 legislation then Council is unable to grant this Section 96. A new Development Application enables the proposal to be properly assessed.

**IMPACT 3.2 Workshop encroachments in the deep soil landscaping strip along the northern boundary**

The workshop is a new modification and did not form part of the Development Consent.

The S96 proposed new workshop is positioned forward of the building and is located under the proposed S96 parking platform. It encroaches on the above landscaping strip and will be built in the "no excavation" and "no work zone" area marked on DA+02 approved plans, dated 29 November 2011.

**ITEM 2 (continued)**

**ATTACHMENT 2**

On the low side it requires between 1.7 (low side) and 2.02M (high side) of excavation which breeches the DCP 2.6.2 Topography and Excavation limits of just 900mm.

**CONDITION 3.2.1**

The proposed new workshop breeches DCP conditions and it encroaches on the deep soil landscaping strip. As such it cannot be supported and **should be rejected**.

The environmental impact is so significant that the above revised conditions are essential in restoring amenity and making good a severed environmental condition. If this change is beyond Council's powers under Section 96 legislation then Council is unable to grant this Section 96. A new Development Application enables the proposal to be properly assessed.

**ITEM 2 (continued)**

**ATTACHMENT 2**

**From Ian Falconer – Architect**

**Ryde City Council S96 Application, What must be included in an Application for Modification?**

In DeAngelis v Pepping [2014] NSWLEC 108 the court looked at the relevant language of the application guide, where the word "must" is used there is no discretionary choice but to comply with the requirements stated in the form. That is, there is an obligation to comply.

Your application **must** clearly explain the amendments that you wish to make. If these amendments involve changes to the design, the application **must** include copies of plans that show these changes **plus** all relevant supporting documentation that justify the change/s.

- A copy of the original stamped approved plans with area/s to change clearly identified by colouring in or clouding
- 3 x copies of new plans with area/s changed clearly identified by colouring in or clouding
- Changes should be in colour
- Plans **should** include: site plan, elevations, floor plan and/or sections.
- 3 copies of completed application form and any other documentation.
- 3 x A4 **colour** copies of new plans if notification is required.
- Plus 1 optional electronic version (PDF) of all documents and plans.
- Fees will be charged in accordance with Council's fees in the Management Plan.

The applicant has not complied with this requirement either in identifying what has changed or a reasonable justification for the change. It is left for everyone to discover the changes. I put to Council that it simply not good enough. Changes to the Development Consent should be self-evident on the drawings and should not require someone with special knowledge to be able to identify the changes.

Changes in depth and extent of excavation for the driveway and hydraulic services not allowed in the tree sensitive zones and in the landscape "no-services in ground" zone by the Engineer design changes are inconsistent with the intention of the Development Consent.

Design by various disciplines have to be in accordance with the appropriate codes and DCP in themselves but are not in a vacuum, they must also comply with all the

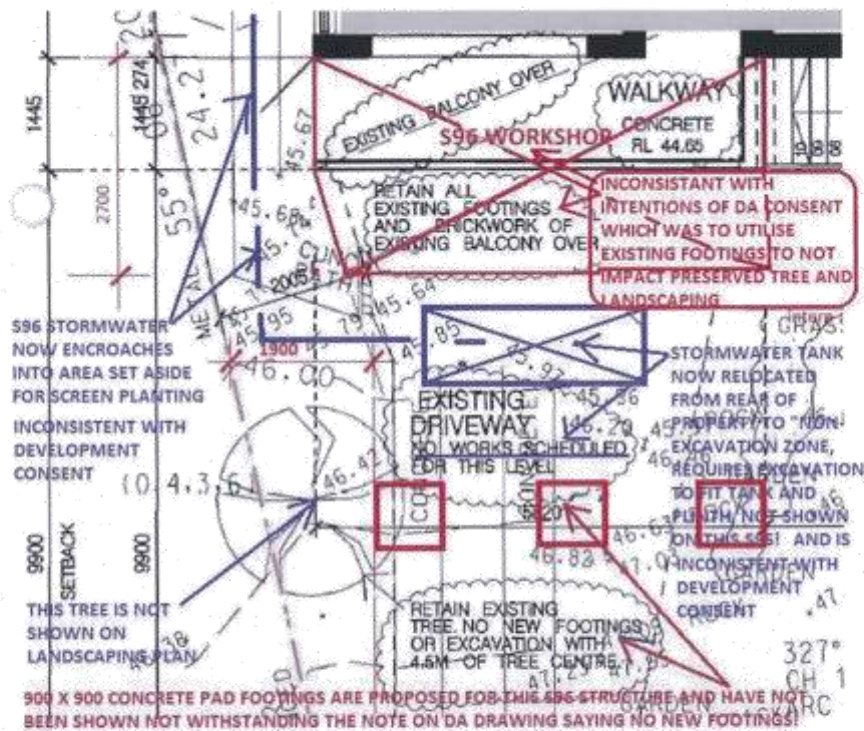
ITEM 2 (continued)

ATTACHMENT 2

conditions of the original consent. The CC drawings on which this S96 attempts to regularise is inconsistent with the intentions of the development consent.

The Engineering drawings of the inconsistent Construction Certificate must form part of this S96 to enable assessment from the perspective of complying with the intentions of the development consent (which the function of the AC in the situation of assessing this S96 is not party to).

As the S96 Application states: "If these amendments involve changes to the design, the application **must** include copies of plans that show these changes " and "all relevant supporting documentation that justify the change/s." "must" be submitted.



PART PLAN DA+03 REVISION C:  
COLOUR OVER LAY TO SHOW ELEMENTS OF THIS S96

**ITEM 2 (continued)**

**ATTACHMENT 2**

The proposed S96 Workshop (in red) clearly encroaches into the 2005 setback off boundary.

This S96 proposes to run the main stormwater line likewise encroaches into the 2005 setback with 300mm minimum cover through the middle of the deep soil area set aside for screen planting. This is contrary to the intentions of the Development Consent and the Council's Stormwater code. It was easily avoided and should have been, Council should place clear instructions in any consent that footings and services are not permitted in the area set aside for landscape screening nor the TPZ zones including.

The driveway has clearly moved towards the boundary diminishing the width of the area set aside for landscape screening.

This should have a cloud to indicate that the north side of the boundary has moved north and encroaches on the area set aside for deep soil screen planting and or be coloured.

The supposed maximum and minimum distances to locate the width of the new driveway location should be dimensioned at 90 degrees to the boundary to be meaningful.

The dimension 1900mm is useless as it is a "floating dimension" and is not 90 degrees (square) to the boundary, None-the-less it is clearly less than the 2005 setback established in the Development Consent.

**Dimensions**

The Applicant should be required to resubmit dimensions square to the boundary prior to assessment.

The minimum dimension at the front boundary is neither square to the boundary or a measure along the boundary, it is another useless "floating dimension". In any case the Survey on which all the Applicant's drawings have been overlaid advises the following:

**NOTES**

1. NO BOUNDARY SURVEY HAS BEEN MADE, BOUNDARIES HAVE ONLY BEEN APPROXIMATELY LOCATED, DIMENSIONS AND AREAS HAVE BEEN TAKEN FROM THE TITLE PLAN.
2. CRITICAL FEATURES ON THIS PLAN MUST BE VERIFIED BY USER AS TO THE ACCURACY REQUIRED FOR THE INTENDED PURPOSE.



**ITEM 2 (continued)**

**ATTACHMENT 2**

AMENDMENT		DATE	REV	<b>bma</b> BRUNSKILL MCLENAHAN & ASSOCIATES Pty Ltd SURVEYORS & PLANNERS SUITE 32, 1-3 HAWAII STREET CHARMWOOD NSW 2197 Ph: (02) 9415 1115 Fax: (02) 9415 1476	WILLIAM L. HAMER REGISTERED SURVEYOR
ORIGINAL ISSUE		06/10/10	--		CLIENT: SUSANNE PEREZ PLAN SHOWING DETAIL & LEVELS LOT 23 DP 222878 38 CONRAD STREET NORTH RYDE
				REF: 10103-1	FILE: 10103-1.DWG 1 of 1

Measuring off the drawing is not satisfactory. The survey drawing advises that the boundaries are only approximate and dimensions to critical features is unprofessional and can unnecessarily lead to a perpetuation of misinformation.

No 36 Conrad advised repeatedly, including during the DA assessment that if clearances to pre-existing features, such as the driveway or corner of building, then these should be established by an approved surveyor to be submitted to Council for confirmation to it's satisfaction before it can be properly assessed whether approved or not. It should not be up to the Applicant to establish or verify by approved Survey drawing. It is too late establishing the location of a pre-existing driveway if it has already been demolished or a legal nightmare if discovered after the event and has to be returned to the original condition.

- 
- 3 58 DENISTONE ROAD, DENISTONE. LOT 19 SEC 4 DP 7997. Local Development Application for demolition, construction of two storey (with attic above) new child care centre with 46 places, 11 car parking spaces, fencing and business identification signage. LDA2015/0209.**
- 

**Report prepared by:** Senior Coordinator - Development Assessment

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

**File Number:** GRP/09/5/6/2 - BP16/477

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## 1. Report Summary

**Applicant:** Galileo Developments P/L.

**Owner:** Galileo Developments Pty Limited.

**Date lodged:** 4 May 2015 (latest amended plans received 24 November 2015)

This report considers a development application (DA) for demolition of the existing dwelling and structures, and construction of a new child care centre for forty-six (46) children. The proposal will also include car parking, business identification signage, stormwater and landscaping works. Operational hours will be 7am to 6pm, Monday to Friday.

The DA has been notified to neighbours in accordance with Ryde DCP 2014 on 2 occasions during the DA process and a total of 15 submissions and 1 petition were received objecting to the proposal – 9 submissions and 1 petition with 58 signatures to the original notification; and a further 6 submissions once amended plans were received. The submissions raised the following key issues:

- Traffic generation and congestion, parking and vehicle manoeuvrability
- Amenity impacts, including overshadowing, noise and overlooking
- Bulk and scale (building height, locational criteria)
- Stormwater runoff
- Height of retaining walls & fencing
- Reduction in property values surrounding site
- Location of bin storage area
- Ramp access from disabled car space
- Removal of Jacaranda tree
- Demolition & construction timeframes

One of the main issues of concern raised in the submissions relates to traffic and parking impacts. To ensure that these issues are completely addressed, Council engaged the services of external traffic consultants (Bitzios Consulting) to undertake an independent assessment of the proposal. In summary, Bitzios advised that the applicant's traffic report was found to be generally satisfactory, and clarification on particular matters was requested from the applicant. When the applicant provided this

**ITEM 3 (continued)**

clarification (from their traffic engineer), it was referred back to Bitzios Consulting for review, and Bitzios advised *“that the traffic and parking impacts have been shown to be minimal and that the site layout generally conforms to the Australian Standards”*. Further details of Bitzios Consulting’s assessment of the proposal is contained in the body of the report, and also a copy of their Independent Review report is an attachment to this report.

The proposal has been assessed against the heads of consideration of Section 79C of the Environmental Planning and Assessment Act 1979 (the Act), the Children (Education and Care Services) Supplementary Provisions Regulation 2012, Education and Care Services National Regulations, Ryde Local Environmental Plan 2014 (LEP 2014), and Ryde Development Control Plan 2014 (DCP 2014).

The proposal fully complies with the mandatory requirements of the Ryde LEP 2014, and satisfactorily meets the development controls relating to Part 3.2 Child Care Centre of Ryde DCP 2014, with areas of non-compliance adequately justified or mitigated via a condition of consent. In summary, the areas of non-compliance with Ryde DCP 2014 are:

- Signed undertaking (required to demonstrate that proposal complies with relevant Regulations and Department of Education and Community Services requirements; none submitted)
- Height (single storey preferred; two storeys with attic proposed)
- Pathway width (1.2m-1.5m width required; 1.065m width proposed)
- Outdoor play space (10m<sup>2</sup> per child required; 8.08m<sup>2</sup> per child proposed)
- Size of cot room (min. 2.5m<sup>2</sup> floor space per child; 2m<sup>2</sup> per cot proposed)
- Pram storage (designated area required; none proposed)

The proposed development is considered to be acceptable and therefore, the subject DA is recommended for approval.

**Reason for Referral to Planning and Environment Committee:** Requested by Councillor Perram and the number of submissions received objecting to the development.

**Public Submissions:** 15 submissions and 1 petition with 58 signatures were received objecting to the development:

- (a) 9 submissions and 1 petition containing 58 signatures to the original notifications.
- (b) 6 submissions following notification of the amended plans.

**Clause 4.6 RLEP 2014 objection required?** No

**Value of works?** \$938,705

**ITEM 3 (continued)****RECOMMENDATION:**

- (a) That Local Development Application No. 2015/209 at 58 Denistone Road, Denistone, being LOT 19 Section 14 DP 7997 be approved subject to the **ATTACHED** conditions (**Attachment 1**).
- (b) That the persons who made submissions be advised of Council's decision.

**ATTACHMENTS**

- 1 Draft Conditions of Consent
- 2 Part 3.2 - Child Care Centres Compliance Check
- 3 Part 9.1 - Signage Compliance Check
- 4 Independent Traffic Review Report - Bitzios Consulting
- 5 Heritage Comments
- 6 Map
- 7 A4 Plans
- 8 A3 Plans - subject to copyright provisions - CIRCULATED UNDER SEPARATE COVER

Report Prepared By:

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

Report Approved By:

**Sandra Bailey**  
**Acting Manager - Assessment**

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

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

<b>Address</b>	: 58 Denistone Road Denistone (LOT 19 Section 4 in DP 7997)
<b>Site Area</b>	: 1,012m <sup>2</sup> Frontage to Denistone Road: 20.115m Rear Boundary: 20.115m Northern Side Boundary: 50.29m Southern Side Boundary: 50.29m
<b>Topography and Vegetation</b>	: Cross-fall of 5.04m towards rear south-eastern corner. A <i>Jacaranda Mimosifolia</i> (Jacaranda) approximately 8m high is situated in the centre of the rear yard. A <i>Podocarpus elatus</i> (Brown Pine), approximately 18m high situated on the Council nature strip along Denistone Road frontage.
<b>Existing Buildings</b>	: Single storey dwelling house and detached garage and carport.
<b>Planning Controls</b>	: Ryde LEP 2014
<b>Zoning</b>	: R2 Low Density Residential under Ryde LEP 2014
<b>Other</b>	: Ryde DCP 2014

**ITEM 3 (continued)**



**Aerial photo of subject site and surrounds (note – other objections received from outside the area of the aerial photo).**

**ITEM 3 (continued)**



**View of subject site from Denistone Road.**

**3. Councillor Representations**

Name of Councillor: Councillor Perram

Nature of the representation: Call-up to Planning & Environment Committee

Date: 23 October 2015

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

On behalf of applicant or objectors? Objectors

Any other persons (e.g. consultants) involved in or part of the representation: None

**4. Political Donations or Gifts**

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

**ITEM 3 (continued)****5. Proposal**

The proposal seeks approval for the demolition of an existing dwelling house, detached garage and carport and construction of a child care centre.

General

The development proposes the construction of a new building to be used as a child care centre, with at-grade parking within the front setback area, with new driveways off Denistone Road. Details of the development are as follows:

- The child care centre will be licenced for forty-six (46) children and eight (8) full-time staff.
- Five (5) staff parking spaces (inc. one (1) director's car space).
- Six (6) drop off / pick up parking spaces (inc. one (1) disabled car space).
- One (1) delivery bay.
- The proposed hours of operation will be 7am to 6pm weekdays.
- One (1) business identification signage with dimensions of 0.65m x 0.9m (area: 0.585m<sup>2</sup>).

Internal Layout

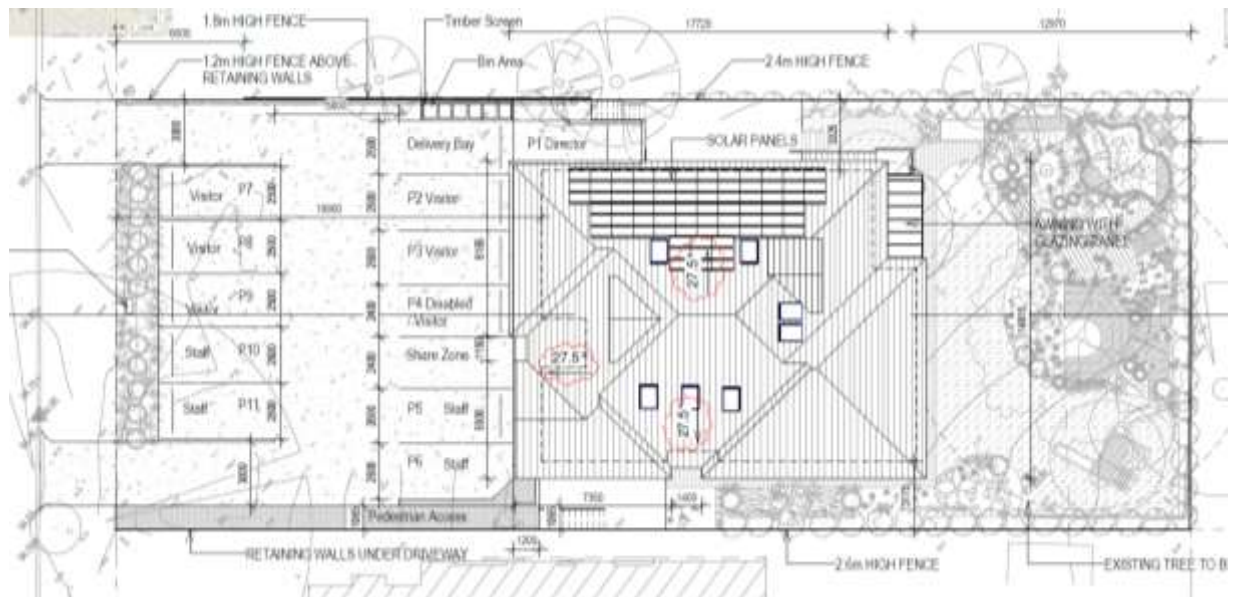
- 4 play rooms allocated depending on the age of children: 0-2 year olds (8 children); 2-3 year olds (8 children); 3-6 year olds (30 children)
- 1 cot room containing 4 cots
- Bottle preparation area for the play rooms of 0-2 year olds
- Nappy change rooms and toilets (accessible for the play rooms of 0-2 year olds and 2-3 year olds)
- Office
- Kitchen
- Parent room
- Staff room
- Lobby
- Disabled toilet
- Staff toilet
- Staff training room
- Laundry

External Layout

- Playground will be equipped with a covered outdoor transition area for playrooms 3 and 4, play equipment, sandpits, bench seating, vegetable garden, bike track, rope climbers, boardwalk, outdoor play kitchen.
- Artificial turf / soft fall surface will feature heavily in the outdoor play areas. Mulch will be used on garden beds featuring various planting and vegetation surrounding perimeter of site.



### ITEM 3 (continued)



### Site Plan

#### 6. Background

The DA was lodged on 4 May 2015. It was then advertised in the local press and placed on public notification from 11 May to 27 May 2015.

On 17 July 2015, Council issued a letter requesting additional information and raising various concerns with the design of the child care centre including:

- Stormwater management - easement required
- Rear setback – to be increased
- Attic – amendments to design requested to ensure this space complies with development controls for attics
- First floor rear balcony to be deleted due to privacy and noise impacts
- Pathway to front entry from street to be provided
- Fencing – clarification of fence height
- Bin storage – access and location
- Air quality impact assessment report requested
- Preliminary site investigation report requested
- Business sign – to be reduced in size
- Landscaping – additional information on retaining wall height and impact on trees

### ITEM 3 (continued)

Additional information and amended plans were submitted to Council on multiple occasions between 6 August and 9 September 2015. Once all documentation was received and reviewed, the application was then re-notified between 18 October and 28 October 2015 to neighbouring properties and all objectors.

In order to ensure that issues regarding traffic and parking impacts were completely addressed, Council engaged the services of external traffic consultants (Bitzios Consulting) to undertake an independent assessment of the proposal by letter dated 15 February 2016.

Bitzios responded to Council on 18 March 2016, advising that the traffic report submitted for this DA (by Auswide Traffic Engineers) was found to be generally satisfactory, with acceptable impacts imposed by the site. However clarification was requested to be sought from the applicant in regard to background traffic volumes; statement regarding environmental capacity and any amenity-related impacts on Denistone Road; swept path analysis for a Small Rigid Vehicle to access the delivery bay; and an assessment/statement of the driveway gradient at the access for compliance with AS2890.1.

Council requested this clarification from the applicant by email 18 March 2016, and they responded on 30 March 2016 with a letter from Auswide, as well as architectural drawings to illustrate the matters to be clarified. This was referred back to Bitzios on 31 March 2016 for further comment. On 1 April 2016, Bitzios provided an updated Independent Review Report, including a review of the matters to be clarified, which concludes *“that the traffic and parking impacts have been shown to be minimal and that the site layout generally conforms to the Australian Standards”*.

A copy of the Independent Review by Bitzios Consulting is **Attachment 4** to this report.

## 7. Submissions

The proposal was notified in accordance with Development Control Plan 2010 - Part 2.1, Notification of Development Applications from 11 May to 27 May 2015. The application was advertised on 13 May 2015.

Due to the numerous design changes that were made to the plans, the application was re-notified for a period from 13 October to 28 October 2015.

In response, a total of 15 submissions and 1 petition were received from the owners of neighbouring properties, NSW Health (on behalf of Ryde Hospital) and workers at Ryde Hospital. The location of objectors and petitioners in relation to the subject site is shown on the aerial photo earlier in this report. In particular, 9 submissions and 1 petition were received during the original notification, and a further 6 submissions were received following re-notification.

**ITEM 3 (continued)**

At the conclusion of each notification period, a copy of all submissions and the petition were provided to the applicant.

The key issues raised in the submissions are summarised and discussed as follows:

- A. Traffic Generation and Congestion.** *Concerns are raised that the development will exacerbate existing traffic issues. The site is opposite the entry and exit driveways to Ryde Hospital's car park and Ambulance Station within Ryde Hospital which will cause confusion for motorists and congestion.*

Assessment Officer's Comment

These were the main issues of concern raised in the submissions received. Council's Senior Development Engineer has undertaken an assessment of the traffic issues relating to the development and provided the following comments:

*"Whilst the applicant has not provided any comment regarding this, the arrangement of the Hospital access points opposite the property are considered.*

*Previous development applications for the Hospital site notes that the parking area accessed from Denistone Road has a parking capacity of 132 parking spaces. The allocation of parking between staff/ visitors and staff levels is unknown but NSW Health indicates the facility has a 148 bed capacity. Based on the RMS traffic surveys, a hospital of this capacity would generate 72 vtp/h in the morning peak period. Assuming this is mostly incoming (60%) associated with the staff dayshift, this would produce some 43 vehicle trips per hour (vtp/h) at the entry (approx. a vehicle every 1.4 min.).*

*In contrast, the development is anticipated to generate 23 vtp/h at its entry, representing a vehicle movement every 2½ min.*

*It is worth noting these traffic movements are significantly less than what would be experienced at a typical approach legs of an intersection of a local road (75 vehicle per hour) and collector road (200 vehicle per hour) in the morning peak hour which is (most often) governed by Give Way/ Stop traffic control signs.*

*The probability for two vehicles to arrive and turn right to enter the alternate property at the same time (presenting a conflict point) is considered low. This is further reduced when considering that the dominant traffic flow to this location will be from Blaxland Road (a classified roadway) and therefore most traffic entering the hospital will be approaching from the south, turning left to enter the site.*

*This is not considered to be a valid reason for refusal"*

**ITEM 3 (continued)**

As noted earlier in this report, Council has engaged external Traffic Consultants (Bitzios Consulting) to undertake an independent assessment of the proposal, and their comments are included as an attachment to this report (see **Attachment 4**). This report has concluded that the development is satisfactory and that the risk of traffic amenity or capacity impacts would be minimal based on the expected site traffic generation and distribution.

- B. Vehicle Manoeuvrability.** *Concerns are raised that delivery trucks and cars entering the car park will need to manoeuvre 2-3 times when entering / exiting car spaces and the driveways.*

Assessment Officer's Comment

Council's Senior Development Engineer has responded to this issue by stating:

*"These types of developments utilise service vehicles having dimensions of large vans (Mercedes Sprinter) which would have a level of manoeuvrability similar to a B99 vehicle, as per the definition of AS 2890.1. As the carpark has been designed to this standard, this matter does not warrant further attention. Notwithstanding this, service vehicles would typically utilise the parking area outside parent pickup – dropoff hours.*

*Parent pickup-dropoff spaces are noted to have dimensions complying with the user class 3 as defined in AS 2890.1, which is applicable for short term parking demand as in this case.*

*A review of the parking area notes that there is scope for improvement by locating staff parking spaces to adjoin the front boundary. As these spaces need only be 2.4m wide (to accommodate long term parking) it provides a further 700mm of clearance which is to be applied to the vehicle exit thereby facilitating vehicle egress from the parking area and allowing the gutter crossover to be constructed clear of the street tree near this exit location. This is addressed by a condition of consent."*

Matters regarding vehicle manoeuvrability are also addressed in the independent assessment by Bitzios Consulting, who have advised that the development is generally satisfactory.

- C. Parking.** *Concerns are raised the provision of parking on the site is not adequate for the number of children and staff proposed. Parents / carers will block driveways of adjoining residents to drop off / pick up children or utilise Ryde Hospital's car park which regularly reaches capacity. Also, the disabled car space does not achieve the required 3.6m in width as per the Ryde DCP.*

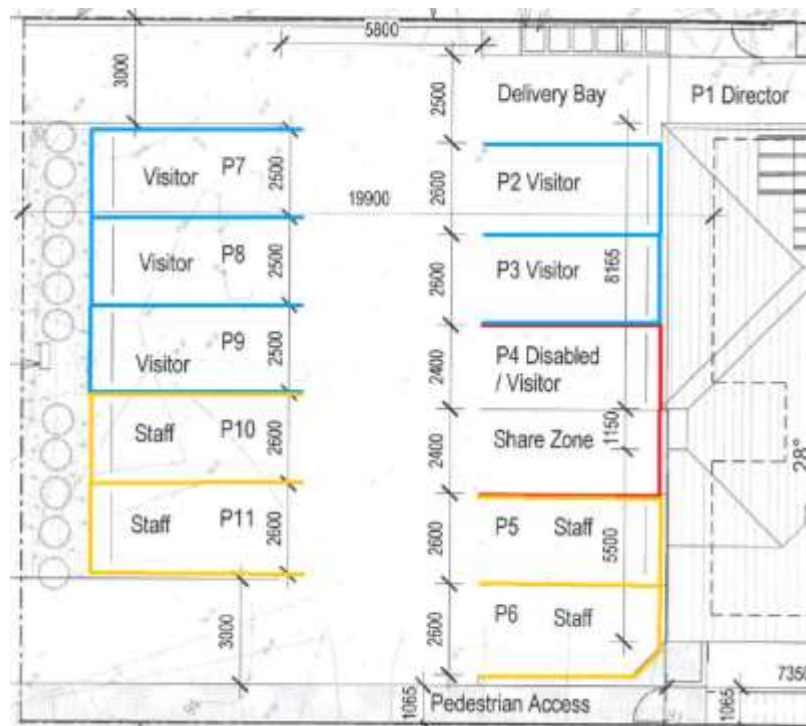
**ITEM 3 (continued)**

Assessment Officer's Comment

Part 3.2 of Ryde DCP 2014 requires off-street parking to be provided at a rate of one (1) space per eight (8) children and one (1) space per two (2) staff. The proposal includes forty-six (46) children and seven (7) staff resulting in a need for 5.75 (say 6) drop off / pick up car spaces and 3.5 (say 4) car spaces.

The proposal complies with these requirements with six (6) drop off / pick up car spaces provided (including one (1) disabled car space) and four (4) staff car spaces.

In regard to the dimensions of the disabled car space, the plans show that a 2.4m wide shared zone adjoins the disabled car space which will allow the required 3.6m to be achieved. This is identified in the following plan extract:



There is no substantive evidence to support the claim that parents / carers will park in front of neighbouring properties' driveways which would be in breach of road rules. Line markings outlining the position of car spaces along the kerb exist along Denistone Road to guide motorists when parking kerbside.

**ITEM 3 (continued)**

Potential issues regarding use of the Ryde Hospital car park (opposite) would not form valid reasons for refusal and would be largely a private matter for Ryde Hospital to manage. In any case, it is noted that the development provides sufficient on-site parking according to Council's DCP to meet the needs of the development, which should ensure that parking on other sites are not required to be used by parents or staff related to this child care centre.

Matters regarding car parking provision and car park layout are also addressed in the independent assessment by Bitzios Consulting, who have advised that the development is generally satisfactory.

- D. Locational Criteria.** *Concerns are raised that the proposal does not comply with locational criteria stated in Council's planning controls.*

Assessment Officer's Comment

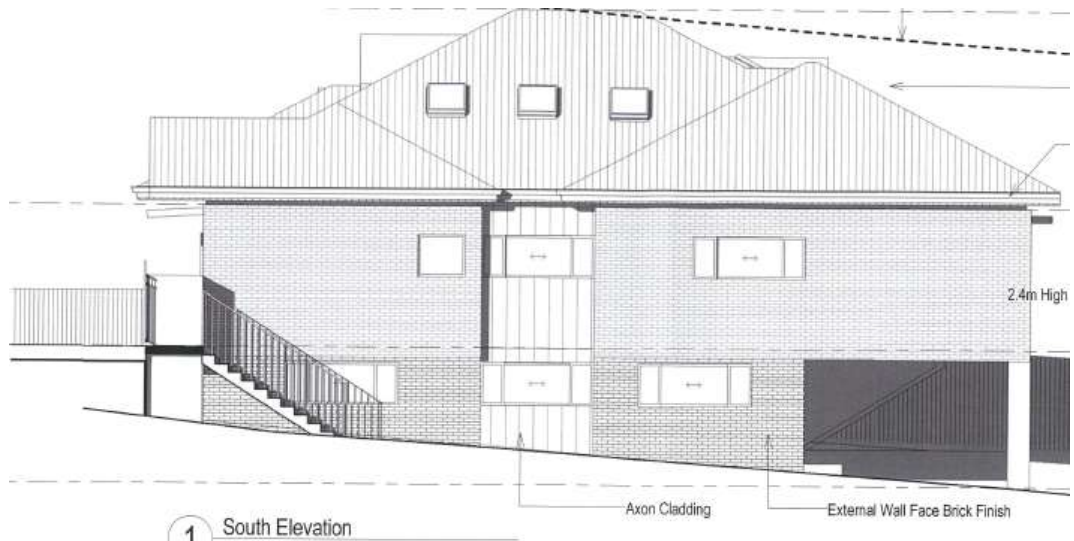
The subject site achieves compliance with key criterion for child care centre development when assessed against the development controls appearing in Part 3.2 of Ryde DCP 2014. An assessment of the proposal against the site selection criteria can be found at **Attachment 2** to this report. These include site area (minimum 800m<sup>2</sup> achieved), frontage width (minimum 20m achieved) and aspect (considerable solar access to site achieved). The proposal is not identified as being a site which is a non-desirable location criteria that is identified in the DCP. This includes cul-de-sac and battle-axe lots, fronting an arterial or sub-arterial road, proximity to a brothel, bushfire and flood prone land.

- E. Privacy.** *Concerns are raised that the stairs on the southern side will allow overlooking into No. 60 Denistone Rd. Further, the upper level of this centre has windows on side elevations overlooking onto adjoining properties.*

Assessment Officer's Comment

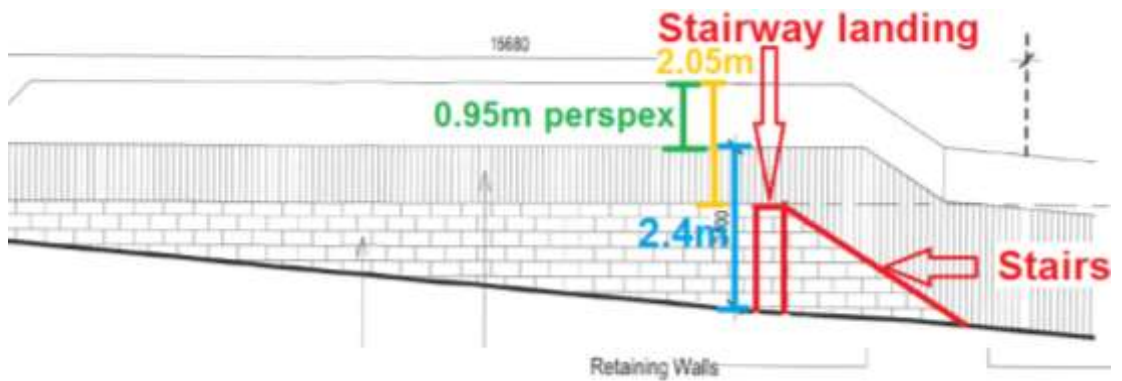
The following plan extracts show the location of the southern stairs and fencing styles and heights which are proposed to address any potential overlooking concerns.

**ITEM 3 (continued)**



1 South Elevation

**Plan showing location of stairs**



**Proposed fencing treatment**



**Plan showing fence heights**

**ITEM 3 (continued)**

The proposed fencing treatment on the boundary with the objector's property at No 60 Denistone Road (to the south) varies in height along its length. At the front of the site (where the car park is proposed), the overall height of the fence varies from 1200mm near the front boundary, up to 2.4m where the car park adjoins the front of the building. From there, the height of the fence reduces to 1.8m for the length of the common boundary with No 60 Denistone Road.

In addition to the above fencing heights, the development proposes to fit perspex panels ranging from 800mm high (for most of the boundary length) to 950mm (at the location of the car park) to ensure that noise emissions are minimised, and to achieve compliance with the criterion in the Noise Impact Assessment prepared by Noise and Sound Services. This will result in an overall maximum height of the fence of 3.35m (ie 2.4m plus 0.95m perspex panel) in the vicinity of the carpark to 2.6m (ie 1.8m plus 0.8m perspex panel) for the rest of the boundary.

Although this fencing arrangement is higher than would normally be provided in a residential setting, it is considered to be acceptable because it is required to provide noise attenuation required for the child care centre development. The translucent (frosted) nature of the perspex panels will also prevent overlooking to the immediate neighbour at No 60, whilst still enabling some natural light to pass through.

Furthermore, consideration of the design of the dwelling at No 60 shows that there is only one (1) ground floor window (to a home theatre room) facing the highest part of the proposed fence, which also helps to minimise any visual or amenity impacts of this section of the proposed fencing. The windows of the adjoining dwelling at first floor level will be above the height of the fence and so they will not be directly impacted. The following photo shows the northern elevation adjoining dwelling which faces the subject site.



**ITEM 3 (continued)**

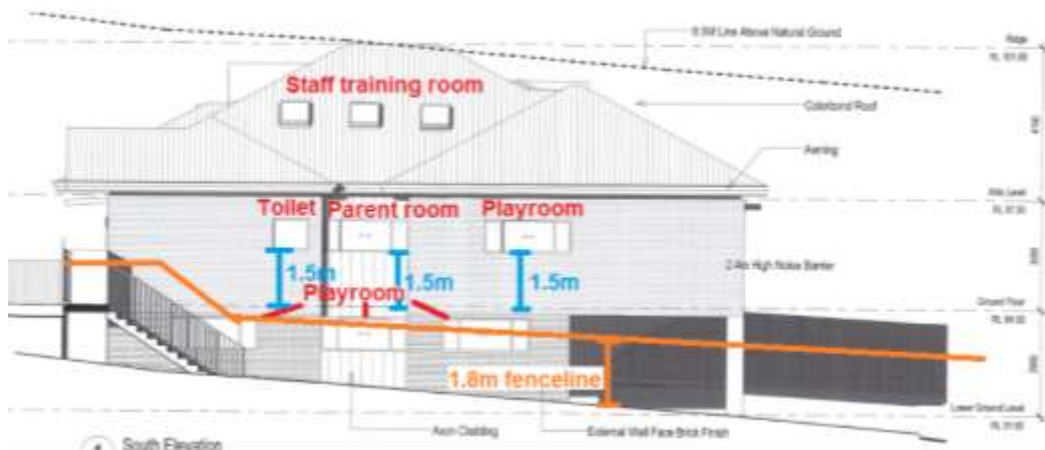


Therefore, having regard to the above, it is considered that the proposed fencing will be acceptable in terms of impacts on the neighbouring property. The following condition of consent will be imposed on the consent (condition 1(e)).

- *All Perspex material fitted on top of boundary fencing is to be frosted to prevent overlooking.*

**Windows to south elevation**

In regard to windows on the south elevation facing the objector's property, the sill heights and rooms to which these relate are shown below:



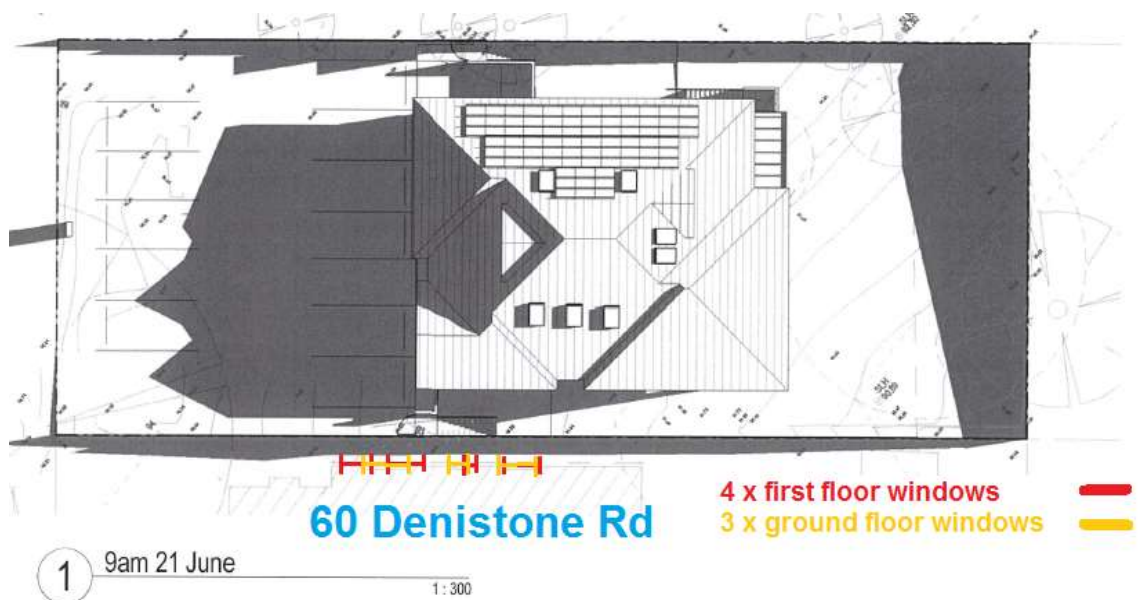
**ITEM 3 (continued)**

Windows within the attic to the staff room and staff training room are skylight windows angled towards the skyline, so that they don't overlook neighbouring properties on the south and north elevations. Visibility to adjoining properties will not be possible from these windows. Windows provided on the ground floor level each have sill heights of 1.5m to prevent overlooking. Finally, at the lower ground floor level, windows will be below the 1.8m fence line. On the southern side, 0.8m high perspex will be fitted to the top of the 1.8m fence commencing in line with the front façade and extending to the rear boundary. This is to accord with the recommendations of the Noise Impact Assessment submitted with the DA.

**F. Overshadowing.** *Concerns are raised that the development will cast a significant amount of shadow onto adjoining properties.*

Assessment Officer's Comment

Review of the subdivision pattern for this location shows that the only property likely to be affected by overshadowing is No 60 Denistone Road to the south. As can be seen in the following shadow diagrams, overshadowing will only affect north facing windows within No. 60 Denistone Rd marginally at midday and increasing to a larger impact by 3pm. Shadow to the rear private open space of No. 60 Denistone Rd will also increase between midday and 3pm, but the level of overshadowing will be significantly less than 50% of this space. The development is considered acceptable in terms of overshadowing of the neighbouring property to the south.



**ITEM 3 (continued)**



### ITEM 3 (continued)

There are no development controls within Part 3.2 of Ryde DCP 2014 regarding overshadowing to adjoining properties. However, if the development was a dwelling house the extent of overshadowing would be subject with the requirements of Part 3.3 DCP 2014, which contains the following requirements for solar access to neighbouring properties:

*e. For neighbouring properties ensure:*

*i. sunlight to at least 50% of the principal area of ground level private open space of adjacent properties is not reduced to less than two hours between 9 am and 3 pm on June 21; and*

*ii. windows to north-facing living areas of neighbouring dwellings receive at least 3 hours of sunlight between 9 am and 3 pm on 21 June over a portion of their surface, where this can be reasonably maintained given the orientation topography of the subject and neighbouring sites.*

As shown in the shadow diagrams above, the adjoining property No 60 Denistone Road will be able to receive at least 2 hours sunlight to 50% of the ground level private open space, and also at least 3 hours sunlight to the windows of north facing living room windows between 9am and 3pm on 21 June.

It is considered that the overshadowing arises due to the orientation of the site and regardless of the type of redevelopment undertaken on the subject land, it is unavoidable that some overshadowing of No. 60 Denistone Rd would occur. However, this development seeks to minimise these impacts through the design, and it is considered that such impacts are reasonable in this proposal.

**G. Building Height.** *Concerns are raised that the proposed building height is not in keeping with surrounding residential development.*

Assessment Officer's Comment

At its maximum, the proposal will have a maximum building height of 9.5m. Pursuant to Clause 4.3 of Ryde LEP 2014, a maximum overall building height of 9.5m is permissible on the site. The development is therefore similar in terms of height, and also has a similar built form (two storey building, brick walls and colorbond pitched roof) as other residential development and therefore it is considered to be consistent with the desired future character of the immediate locality.

**ITEM 3 (continued)**

- H. Stormwater Runoff.** *Concerns are raised that stormwater from the site (in particular from the proposed carpark) will runoff into adjoining properties causing dampness. Further, the applicant wishes to install an underground absorption system which is only suitable for single dwellings and dual occupancy developments and not child care centres.*

Assessment Officer's Comment

Council's Senior Development Engineer has responded to this issue by stating:

*"The applicant has proposed a gravity drainage system which addresses runoff from the entire site. The system is to discharge to public drainage infrastructure in Blaxland Road via a new drainage easement to be created through the downstream properties. The capacity of this infrastructure is sufficient for the level of runoff arising from the proposed development and therefore unlikely to result in overland flow of burdened or adjoining properties."*

It should be noted that there has been no consent granted from adjoining properties to the creation of an easement that will be required to dispose of stormwater from the proposed development. Therefore, if approval is to be granted for the development, this will need to be in the form of a Deferred Commencement consent, with such creation of an easement to be satisfied before the consent becomes operational.

- I. Noise.** *Concerns are raised that the development will generate excessive noise which will disrupt surrounding residential development. This is the result of the number of children proposed and the incorporation of a balcony used as an outdoor play area.*

Assessment Officer's Comment

These concerns were made in respect of the original DA plans and have since been addressed in the amended plans, which were re-notified to neighbours. Amended plans show a reduction in the size of the balcony from 79.9m<sup>2</sup> to 8m<sup>2</sup>. The balcony will no longer be used as a designated outdoor play space. A condition of consent has been imposed to ensure compliance with this requirement. (See condition 121).

In terms of noise impacts in general, a Noise Impact Assessment was submitted with the DA recommends the following practical noise amelioration measures to reduce potential noise emissions:

- Replacement of all boundary fencing with timber lap and cap fencing that has a minimum 15mm thickness.

### ITEM 3 (continued)

- Fencing to have a minimum height of 2.6m on the southern and eastern boundaries and 2.4m on the northern side boundary. In this regard, the applicant has addressed this by provision of a 1.8m high fence with perspex panel on top of the fence.
- Sound absorptive treatment to flooring of outdoor play area which is under the first floor level.
- 6mm thick glass to windows within playrooms.
- 2.4m high wall tiles within each playroom.
- Outdoor air-conditioner units are not to exceed a noise emission level (LAeq, 15 minute) of 45dBA at the nearest residential boundary (see condition 123).

The Noise Impact Assessment concludes that the proposal will adhere to the criterion for outdoor noise goals of 40dBA + 5Dba (i.e. 40dBA).

As discussed in the referrals section, the DA has been assessed by Council's Environmental Health Officer who agrees with the recommendations within the Noise Impact Assessment and has imposed the following condition of consent:

- **Noise Limits** - *The noise level emitted from the premises generally must not exceed the background noise level by more than 5dBA. As a minimum, all the noise control recommendations nominated in the report by Noise and Sound Services, Report No. nss 22220-Drft C, April 2015 submitted with the development application must be implemented.*

**J. Retaining Wall & Fencing.** *Concerns are raised that the boundary fencing exceeds the allowable suburban residential limit. Further, the retaining wall on the property boundary reaches 1.7-1.9m in height which will have an adverse impact to adjoining properties. The addition of a 1.8m high boundary fence on top of this retaining wall is not in scale or character with adjacent properties.*

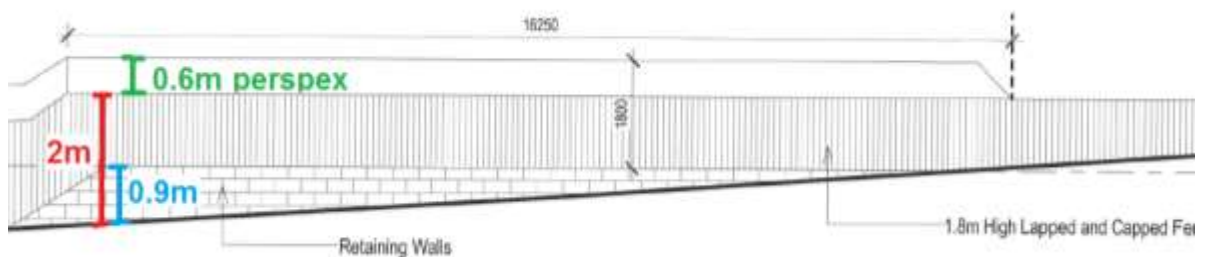
#### Assessment Officer's Comment

The location of the retaining walls along the side boundaries can be seen in the following plan extracts with the maximum height of retaining walls shown (note – plan showing finished heights of fencing appears earlier in the report):

**ITEM 3 (continued)**



**Southern Boundary Fencing**



**Northern Boundary Fencing**

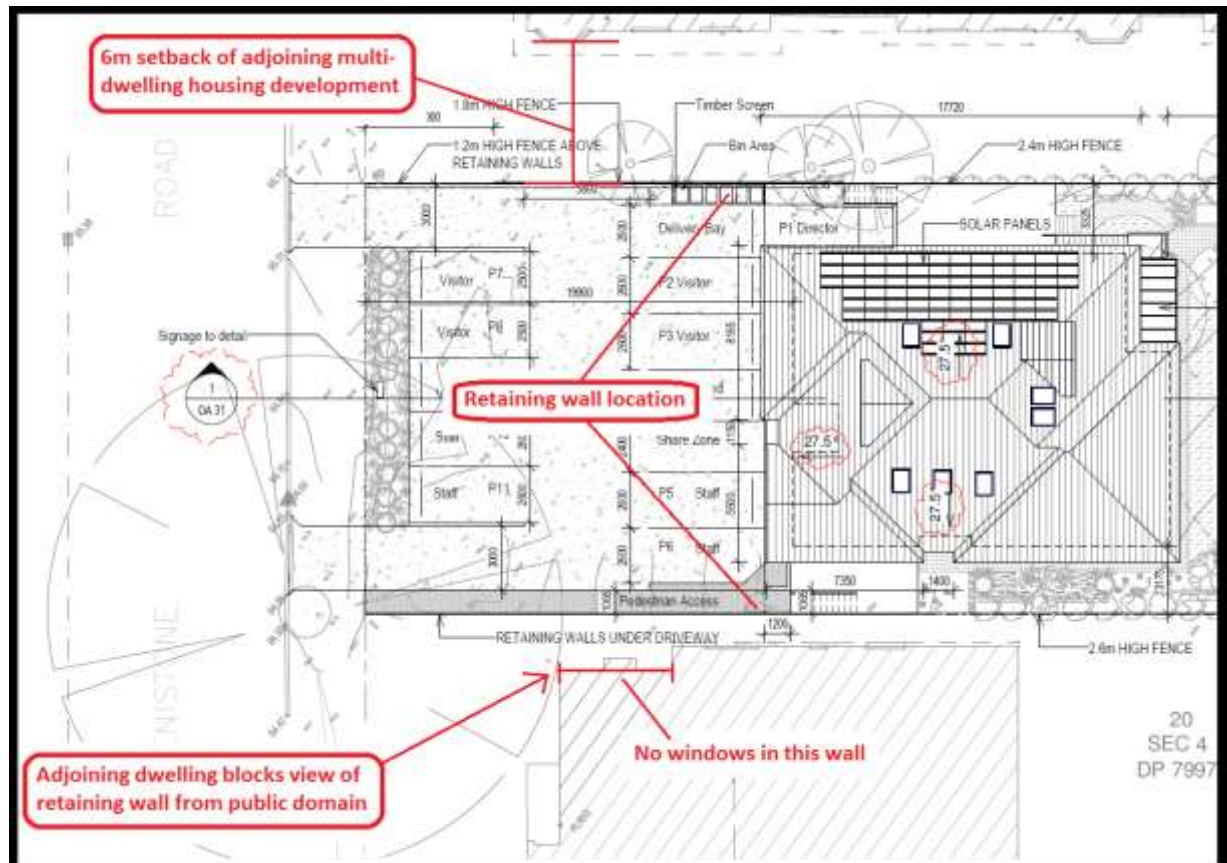
A retaining wall along each side boundary is necessary to accommodate the stairway connecting the car park to the outdoor play areas. The retaining wall will only be visible to the front of the development where the carpark will be located (as shown in the drawings of the “southern boundary fencing” and “northern boundary fencing” above). From there, it will be below ground level towards the rear of the property, and then 1.8m high boundary fence (with 0.8m-0.95m Perspex on top) will be the only elements seen from both the multi dwelling housing development at No. 56 Denistone Road and the dwelling house at No. 60 Denistone Road.

Where the retaining wall is at it’s highest is on the southern side (as shown in the above drawing). The retaining wall will be mostly unable to be seen from the public domain because of the position of the adjoining dwelling on No 60 Denistone Road. There will also be minimal impact on this dwelling itself, because the room at the front of this house does not contain any windows.

On the northern side, the retaining wall is lower (900mm or 0.9m), and so the height of the boundary fencing on top of the wall will be a total of 2m high, which is a more typical height of boundary fencing in a residential environment. Further, on this side (No 56) there is a multi-dwelling housing development with a building setback of approximately 6m from the common boundary.

**ITEM 3 (continued)**

Overall, having regard to the above, the proposed retaining walls at the front are considered acceptable.



**K. Property Value.** *The proposal will reduce the value of surrounding properties.*

Assessment Officer's Comment

Development proponents have a right, under the provisions of the Environmental Planning and Assessment Act, 1979, to apply for developments that achieve the aim of orderly and economic use and development of land. Concerns about possible decreases in surrounding property values do not constitute a reasonable ground for refusal. This position has been reinforced by planning and development decisions in the Land and Environment Court.

**L. Bin Storage.** *Concerns are raised that the disposal of nappies in bins along the side boundary will cause a health hazard to adjoining properties. Further, questions are raised as to where the bins will be put out for collection? Will a 'no parking' sign be provided out the front of the site so they can put their bins there?*

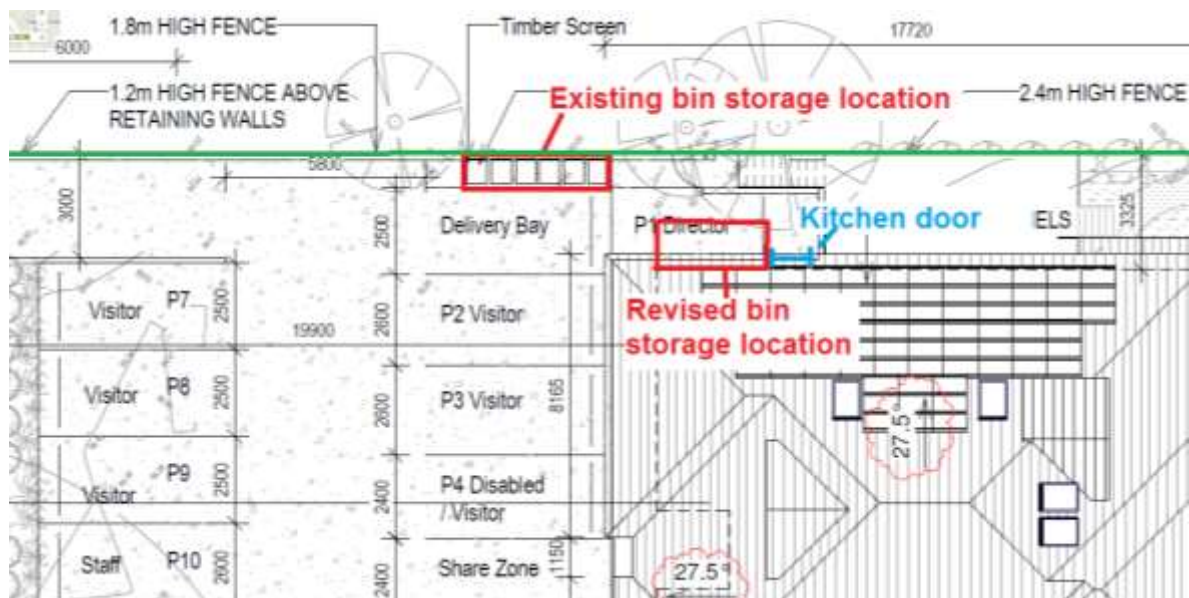


### ITEM 3 (continued)

#### Assessment Officer's Comment

It is accepted that the bin storage area is situated close to the northern boundary. The Applicant's inclusion of a Director's car space is not a requirement of Part 3.2 of Ryde DCP 2014. Subsequently, the following condition of consent (condition 45) is imposed requiring the relocation of the bin storage area:

- *The garbage storage area is to be relocated adjacent to the northern wall of the child care centre within the Director's car space. Details of this revised location must be submitted for approval with the application for the Construction Certificate.*



In regard to nappy waste, Council's Environmental Health Officer noted that "a specific service for this will need to be implemented". In this regard, it is advised that in child care centres, nappies disposed of in bins inside the child care centre building, and from there they are emptied into external garbage bins that are sealed and lined to prevent escape of odours. The external bins are then collected frequently (usually every 1-2 days maximum) to ensure the amenity of neighbouring properties is not compromised. Council's Environmental Health Officer has recommended the following condition (127):

- **Nappy Wastes** - *Suitable specialist contractors must be employed for the collection and disposal or processing of soiled nappies and associated articles.*

**ITEM 3 (continued)**

In relation to removal of waste, the Applicant has noted that a commercial waste contractor will be engaged to empty the waste and recycling bins. Five (5) waste bins and 3 x 240L recycling bins will be stored within a designated bin storage area on the northern side of the site. Staff will not be required to wheel bins out to Denistone Road for collection. No change to parking signage along Denistone Road is required.

**M. Ramp Access.** *Concerns are raised that there is no ramp access for disabled persons to the entry from the disabled car space.*

Assessment Officer's Comment

A pedestrian path (continuous path of travel) is available to the front entry of the child care centre from both the disabled car space and Denistone Road. No stairs are provided along this path.

**N. Tree Removal.** *Request is made for the Jacaranda tree in the rear yard to be retained.*

Assessment Officer's Comment

The *Jacaranda mimosifolia* (Jacaranda) tree is proposed to be removed. This matter has been assessed by Council's Consultant Landscape Architect who has provided the following comment:

*"The Arborist states that the tree is in average condition with medium landscape significance. Although this tree does contribute to the landscape, given its structural defects its removal is considered acceptable provided appropriate replacement planting is installed to compensate for the loss of shade, privacy and habitat in the rear yard."*

The Landscape Plan illustrates that extensive boundary planting incorporating fifty (50) *acmena smithii* firescreen (firescreen lilly pilly) is proposed, in addition to one (1) *ulmus parvifolia* 'todd' (Todd Chinese elm) which has the capacity to reach 11m at maturity and three (3) *ceratopetalum gummiferum* 'albery's red' (albery's red Christmas bush) which has the capacity to reach 5m in height. This level of planting is considered to satisfactory compensate for the removal of the *Jacaranda mimosifolia* (Jacaranda) tree.

**O. Demolition and Construction.** *Concerns are raised that trucks and tradesmen at the site during demolition and construction will impact on the neighbourhood for 6-8months.*

**ITEM 3 (continued)**Assessment Officer's Comment

It is acknowledged that during the demolition and construction phases, heavy vehicles movements, tradesman and construction noise may occur. However, this is a temporary inconvenience only occurring in the construction phase which is an acceptable and unavoidable consequence of redevelopment.

The following condition (condition 82, requirement for a Traffic Management Plan) is recommended to ensure that impacts on neighbouring properties are minimised during the construction phase:

- **Traffic Management Plan.** *To ensure safe construction traffic flow on site a Traffic Management Plan (TMP) and report shall be prepared by a RMS accredited person and submitted to and approved by Council prior to issue of **Construction Certificate**.*

*The TMP shall be prepared in accordance with Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, the RMS’s Manual – “Traffic Control at Work Sites” and City of Ryde, Development Control Plan 2014: - Part 8.1; Construction Activities. The TMP is to address but not be limited to the loss of on-street parking, construction vehicles travel routes, safety of the public, materials storage, handling and deliveries including construction traffic parking.*

*Additionally, all traffic controllers on site must be RMS accredited traffic controllers and a minimum of seven (7) days notice shall be given to residents if their access will be affected by proposed construction activities. All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and to be paid at the time that the TMP is submitted.*

**8. Clause 4.6 RLEP 2014 objection required?**

None required.

**9. Policy Implications****Relevant Provisions of Environmental Planning Instruments etc:****(a) Ryde Local Environmental Plan 2014****Zoning**

Under the Ryde LEP 2014, the zoning of the subject site is R2 Low Density Residential. The proposed development for a ‘child care centre’ and ‘business identification signage’ are permissible with consent under this zoning.

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

#### **Mandatory Requirements**

The following mandatory provisions under Ryde LEP 2014 apply to the development:

- Clause 4.3 (2) – Height of Buildings
- (c) This clause states that the height of a building on any land is not to exceed the maximum height shown for the land on the 'Height of Buildings Map' – which is 9.5m for the subject site. The maximum height of the development as currently proposed is 9.5m, which complies with this clause.
- Clause 4.4 – Floor Space Ratio

This clause prescribes a maximum floor space ratio (FSR) of 0.5:1. The FSR for the proposed development has been calculated to be 0.455:1, which complies with this clause.

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

##### SEPP No. 64 – Advertising and Signage:

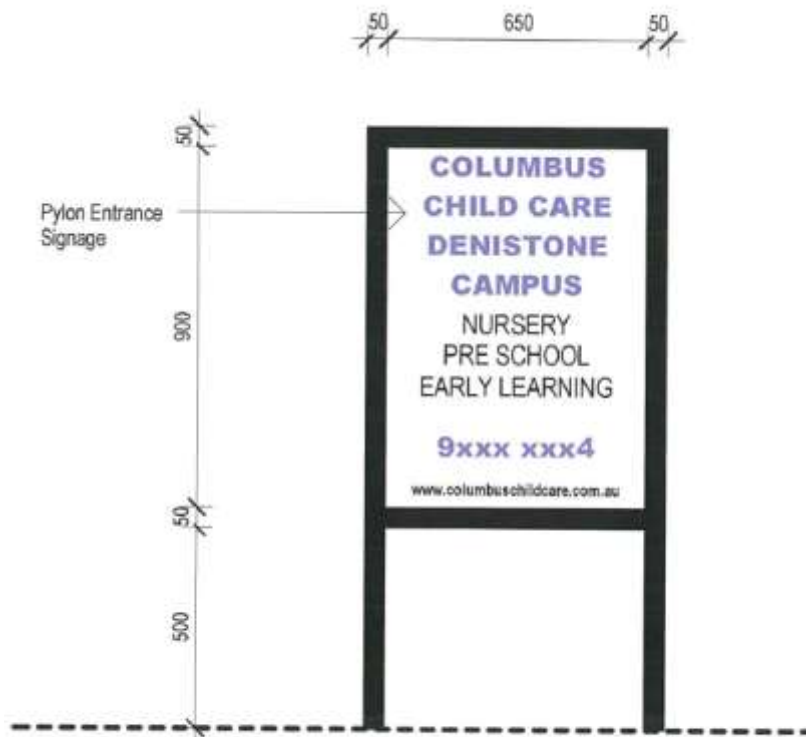
The provisions of State Environmental Planning Policy No. 64 – Advertising and Signage came into force in March 2001.

Clause 6 indicates the types of signs that fall within the scope of the policy. The proposed signs are a type of sign that is subject to the requirements of the policy.

Clause 8 provides the matters to be considered as part of the assessment of the development application. Council must consider the signs in terms of the objectives of the policy and the assessment criteria provided in Schedule 1.

The proposed sign is a single business identification sign located at the front of the property, and the height and details of the sign appears below.

**ITEM 3 (continued)**



This sign is considered acceptable having regard to these matters (see table below):

**Table 1:** Assessment Criteria under Schedule 1 of SEPP 64.

<b>SCHEDULE 1 – ASSESSMENT CRITERIA</b>	
<b>1 Character of the area</b>	
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The proposal is considered compatible with the existing low density character of the locality.
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	With Ryde Hospital located opposite the subject site, signage is prevalent along the streetscape. A free standing business sign exists on the opposite side of road. The proposed sign will be consistent in size with this sign.

**ITEM 3 (continued)**

<b>SCHEDULE 1 – ASSESSMENT CRITERIA</b>	
<b>2 Special areas</b>	
Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	<p>The subject site is not located in close proximity to any environmentally sensitive areas, natural or conservation areas, open space areas, waterways or rural landscapes.</p> <p>It is noted that Ryde Hospital is located on the opposite side of Denistone Road.</p>
<b>3 Views and vistas</b>	
Does the proposal obscure or compromise important views?	The proposed sign will not obscure or compromise important views.
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposal will not impact upon the skyline or reduce the quality of vistas.
Does the proposal respect the viewing rights of other advertisers?	The proposed sign will not impact on adjoining properties potential to erect signage.
<b>4 Streetscape, setting or landscape</b>	
Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The proposed sign is considered to keep with the scale, proportion and form of development within Denistone Road.
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposed sign will provide high quality identification of the premises from Denistone Road.
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposed sign is simple in design and will not increase visual clutter.
Does the proposal screen unsightliness?	The proposed sign will create interest from the streetscape.
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposed sign is located in the garden bed aligning the front boundary.

**ITEM 3 (continued)**

<b>SCHEDULE 1 – ASSESSMENT CRITERIA</b>	
Does the proposal require ongoing vegetation management?	Adequate amount of separation provided between planting around the sign to ensure visibility to the sign is retained.
<b>5 Site and building</b>	
Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The proposed sign is considered compatible with the proposed scale, proportion and character of the proposed child care centre.
Does the proposal respect important features of the site or building, or both?	The existing building does not feature any important architectural features that would be impacted by the proposed sign.
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The sign is modern and reflective of signage in Denistone Road associated with Ryde Hospital opposite the site.
<b>6 Associated devices and logos with advertisements and advertising structures</b>	
Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	The proposed sign does not include the use of any safety devices or platforms.
<b>7 Illumination</b>	
Would illumination result in unacceptable glare?	Sign is not illuminated.
Would illumination affect safety for pedestrians, vehicles or aircraft?	
Would illumination detract from the amenity of any residence or other form of accommodation?	
Can the intensity of the illumination be adjusted, if necessary?	
Is the illumination subject to a curfew?	

**ITEM 3 (continued)**

<b>8 Safety</b>	
Would the proposal reduce the safety for any public road?	The proposed sign will not distract the attention of drivers on Denistone Road.
Would the proposal reduce the safety for pedestrians or bicyclists?	The proposed sign will not detract from the attention of pedestrians or cyclists.
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	Sightlines of pedestrians will not be adversely impacted.

Clause 18 of the SEPP stipulates guidelines for advertisements greater than 20 square metres and within 250 metres of, and visible from, a classified road. The proposed sign will not be visible from a classified road and does not exceed 20 square metres and as such clause 18 is not applicable to this development.

Accordingly, the signage is considered to be satisfactory, having regard to the aims and objectives of SEPP 64 Advertising and Signage.

**(c) Relevant Regional Environmental Planning Policies (REPs)**

N/A

**(d) Any draft Local Environmental Plans (LEPs)**

There are no relevant Draft Environmental Planning Instruments for the subject site.

**(e) Any Development Control Plan**

Ryde Development Control Plan (DCP) 2014

**Part 3.2 Child Care Centres**

A full assessment of the proposal under DCP 2014 is illustrated in the compliance table held at **Attachment 2**. The non-compliances identified in the table are assessed below.

1. Child Care Centre Design: 1.8 states the following:

*“Child care centre development applications are required to be accompanied by a signed undertaking by the applicant, licensee or proposed licensee that demonstrates that the proposal has been designed to comply with respect to the Children’s Service’s Regulation 2004 or DoCS requirements as relevant at the time of application.”*



**ITEM 3 (continued)**

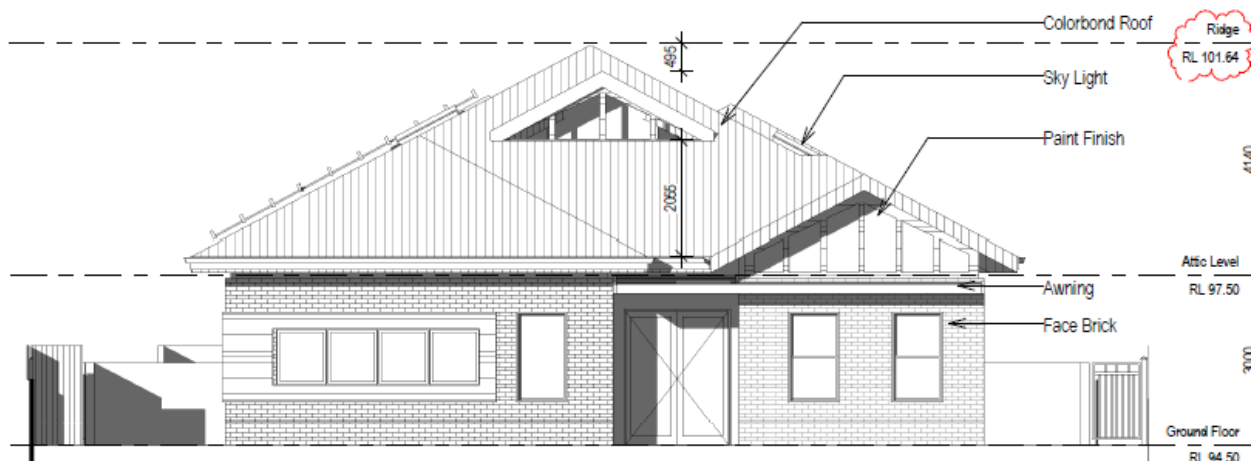
Comment: A signed declaration has not been submitted. The following condition has been as imposed as a Deferred Commencement condition (3) to address this requirement:

- **Signed Undertaking.** A signed undertaking by the applicant, licensee or proposed licensee that certifies the proposal has been designed to comply with respect to the Children (Education and Care Services) Supplementary Provisions Regulation 2012 and Department of Education and Communities requirements is to be submitted to Council for approval prior to this Development Consent being activated.

2. Detached centres and centres in residential areas: 3.2(c) states the following:

*“In low density residential areas, child care centres are encouraged to be single storey in height for reasons of safety and access. In the case of 2 storey buildings, the second storey should only be used for the purposes of storage and facilities.”*

Comment: The proposal is two (2) storeys in height with an attic. Although this does not meet the requirement that centres are encouraged to be single storey, it should be noted that the lower ground level is partly excavated below ground level (by up to 1.9m) which helps to ensure the building has the appearance of a single storey building when viewed from the street.



**View of development from Denistone Road**

From a functionality perspective, a lift is provided centrally within the child care centre to ensure easy access between floors for staff and children. Further, the slope of the site towards the rear boundary allows for pedestrian access from the street to be provided to the building, without the need for stairs or a ramp as a level car park can be achieved.

### ITEM 3 (continued)

From a safety perspective, the lift and staircases cannot be directly accessible from any playroom. The outdoor play space is provided at natural ground level without the need for incorporation of any stairs.

The attic will be used by staff only with a staff room, toilet and staff training room provided in this space.

An objective of this development control is for the design of child care centres to integrate into the existing environment and be unobtrusive in terms of bulk, scale, height and appearance. This is considered to be achieved for the following reasons:

- The proposal will appear single storey when viewed from Denistone Road. Therefore the development will not present as visually dominant or as being inconsistent with other surrounding residential development within the immediate locality.
- 1.9m of excavation will occur to accommodate the lower ground floor thereby concealing a large portion of this level below the natural ground level.
- Approximately 1/3 of the lower ground floor will be open to accommodate the outdoor play space.
- The proposal complies with the maximum permissible floor space ratio and overall building height development controls.

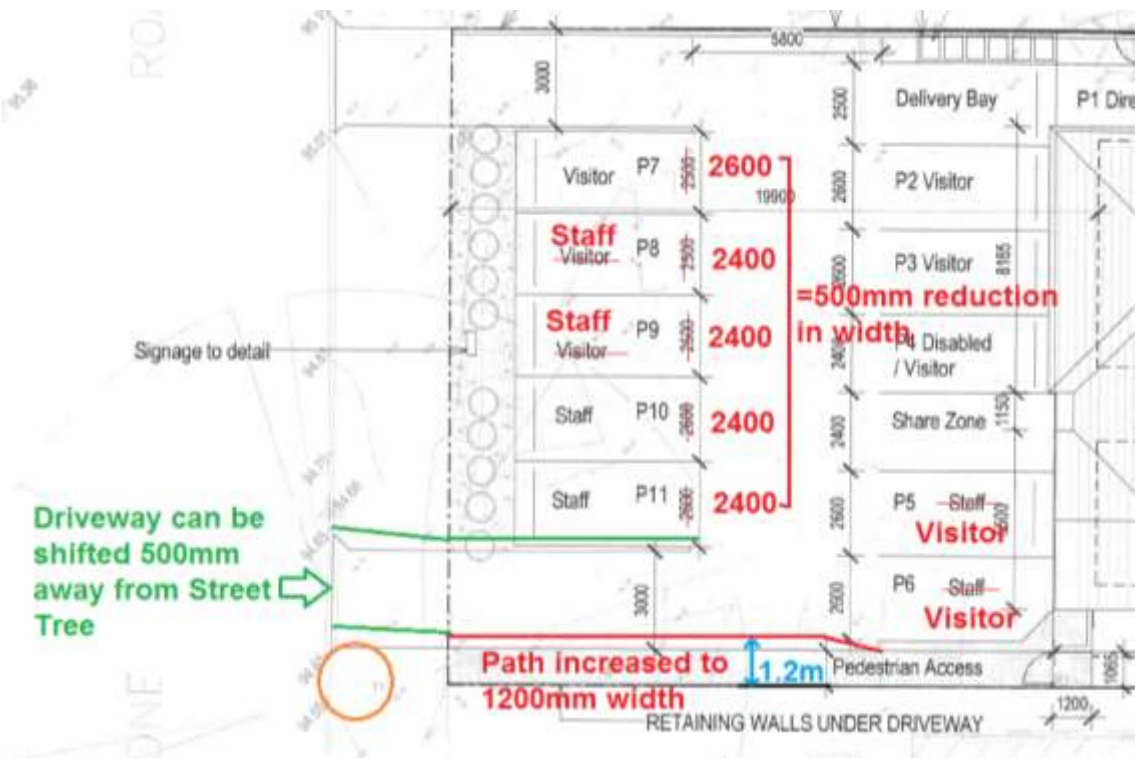
3. Accessibility: 5.5(c)iv. states the following:

*“Pathways with extra width (1200 – 1500mm) and grades no steeper than 1:14 to allow easy circulation throughout the site.”*

Comment: A 1.065m pedestrian path has been provided along the southern side boundary. This represents a non-compliance of 0.135m (11.25%).

Council’s Senior Development Engineer has recommended the re-allocation of staff and visitor car spaces because staff parking spaces are considered long term parking and only require a 2.4m width car space compared with short stay visitor car spaces which require a 2.6m wide space. By reducing the width of car spaces aligning the front boundary, this allows for the widening of the pedestrian path by 0.135m for approximately 2/3 of its length and also allows for additional clearance for vehicles exiting the property. Further, the driveway will be able to be marginally shifted away from Council’s Street Tree. These changes are shown in the following plan extract:

**ITEM 3 (continued)**



Subsequently, the following condition (1(b)) is recommended:

*1(b) The pedestrian pathway along the southern side boundary is to widened to 1.2m for a length of 10m commencing at the front boundary.*

4. Unencumbered outdoor play space: 6.2.1 (d) states the following:

*“All new child care centres are to provide at least 10m<sup>2</sup> of unencumbered outdoor play space for each licensed child care place, **inclusive** of transition areas provided in accordance with section 6.2.4 of this Part.”*

Comment: A total of 371m<sup>2</sup> unencumbered outdoor play space is provided on the site, equating to an average of 8.08m<sup>2</sup> per child. This results in a shortfall of 1.92m<sup>2</sup> per child.

A footnote to this control states that “*this minimum area requirement (to no less than the DoCS minimum requirement) may be considered subject to the satisfactory compliance with the general landscaping requirements under section 6.1, 6.2.2 and 6.2.4*” of the DCP. Clause 108 of the Education & Care Services National Regulation and the Children (Education & Care Services) Supplementary Provisions 2012 and stipulates that a minimum 7m<sup>2</sup> of unencumbered outdoor play space is provided. Assessing the DA against

**ITEM 3 (continued)**

these DoCS requirements alone demonstrates compliance. In regard to section 6.1, 6.2.2 and 6.2.4, these requirements require outdoor spaces to have consideration for surrounding development, existing landscaping and to offer children sensory stimulation. The Landscape Plan includes outdoor apparatus' which appeal to a range of ages and include sandpits, a vegetable garden, bike tracks, blackboards, water spouts and bridges. The outdoor play area will be located at ground level and is surrounded by 35.69m<sup>2</sup> of natural landscaping which is excluded from the outdoor play area calculation. Subsequently, the proposal is compliant with these sections of the DCP.

**5. Centre Facilities: Section 7.1(d) states the following:**

*"In centres where children under the age of 2yrs are proposed to be cared for, the following are to be provided:*

- i. A sleeping room with a 2.5m<sup>2</sup> of floorspace per cot and a maximum of 10 cots per room."*

**Assessment Officer's Comment:**

The DA plans provide a cot room of 8m<sup>2</sup> and containing 4 cots. Whilst this complies with the requirement for maximum number of cots (maximum 10; 4 proposed), it does not comply with the floor space requirement of the DCP (8m<sup>2</sup> / 4 = 2m<sup>2</sup> floorspace per cot).

Compliance with the cot room requirements in DCP 2014 could be achieved by enlarging the cot room by 2m<sup>2</sup> (to be 10m<sup>2</sup>). This would only require a minor alteration to the internal layout of the ground floor such as a slight (2m<sup>2</sup>) reduction in the size of the internal play rooms – which would be feasible given that the proposal exceeds the internal play room sizes prescribed by DCP 2014. Accordingly, the following condition of consent (condition 1(l)) is recommended.

***Size of cot rooms.*** *The size of the cot rooms shall be modified to comply with the controls contained in Section 7.1(d) of Ryde DCP 2014.*

**6. Centre Facilities: Section 7.0(f) states the following:**

*"Consideration should be given to the provision of a pram storage area. Informal pram storage can be an occupational health and safety risk."*

**Assessment Officer's Comment:**

No pram storage area is shown on the submitted plans.

This non-compliance can be addressed through the imposition of a condition requiring an area allocated and marked for parents / carers to store prams should the need arise.

### ITEM 3 (continued)

Subsequently, the following condition (1(f)) is recommended:

*Within the entry and foyer, an area is to be allocated and marked for the parents / carers to store prams should the need arise. This area is to be shown on plans prior to the issue of the **Construction Certificate**.*

## 10. Likely impacts of the Development

### (a) Built Environment

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

The proposal's compliance with the overwhelming majority of controls indicated in various state and local planning instruments demonstrates that the amenity of the area will be retained and resultant impacts on the built environment are considered satisfactory, subject to appropriate conditions of consent.

The proposed hours of operation of the child care centre of 7am to 6pm Monday to Friday will ensure the proposal will not impact on the built environment in the evening, night time, weekend or public holidays.

As noted throughout this report, issues regarding traffic and related impacts were considered both by Council's Senior Development Engineer and also independent traffic consultants (Bitzios Consulting). In summary, Bitzios have advised *"that the traffic and parking impacts have been shown to be minimal and that the site layout generally conforms to the Australian Standards"*.

### (b) Natural Environment

A child care centre is permitted in the zone and is located within an established urban area. There will be no significant adverse impact on the surrounding land uses or the natural environment. Imposition of Council's standard conditions of consent relating to protection of the natural environment are considered satisfactory to mitigate any adverse impact the demolition, construction and operation of the child care centre will have.

Removal of the *Jacaranda Mimosifolia* (Jacaranda) tree in rear year is supported by Council's Consultant Landscape Architect due to the trees structural defects and the level of compensatory planting proposed which will ensure shade, privacy and habitat in the rear yard is maintained.

**ITEM 3 (continued)****11. Suitability of the site for the development**

A review of Council's map of Environmentally Sensitive Areas identifies the following constraints affecting the subject property:

Urban Bushland: Approximately half of the site extending along the southern side boundary is identified as containing non-conservation urban bushland. A site inspection revealed that little vegetation exists within this area, which is predominantly grassed area. However, a significant sized Council tree does exist within the Council verge in front of the site. The Applicant's Arboricultural Impact Assessment and Council's Tree Management Officer has identified this tree to be a *Podocarpus elatus* (Brown Pine) tree. Council's Tree Management Officer is satisfied that the health of this tree will not be compromised by the proposal provided that the recommendations within the submitted Arboricultural Impact Assessment are implemented.

These requirements have been reviewed by Council's Senior Development Engineer having regard to issues regarding the driveway design and location, and no objections have been raised. Subsequently, the following conditions have been imposed on the consent:

- *The exit driveway from is to be shifted north as far as possible from Tree 1. Details are to be shown on amended plans submitted with the Construction Certificate. (condition 1(c))*
- *Prior to demolition, Tree 1's trunk and branches are to be protected in accordance with the Arboricultural Impact Assessment, dated 27 March 2015 and prepared by Australis Tree Management for Tree 1 must be undertaken and inspected and certified by the site Arborist prior to work occurring. (condition 31)*
- *Tree protection measures are to be undertaken and construction activity is to be managed in accordance with the Arboricultural Impact Assessment, dated 27 March 2015 and prepared by Australis Tree Management. (condition 80)*
- *Existing soil levels within council land must be maintained. (condition 81)*
- *All tree roots within Tree 1's (as identified in the Arboricultural Impact Assessment, dated 27 March 2015 and prepared by Australis Tree Management) Structural Root Zone must be left in situ. Any excavation within the Structural Root Zone of Tree 1 must be undertaken by non-destructive methods such as hand digging, air knife, air spade and hydro jet. (condition 82)*

**ITEM 3 (continued)**

- *The driveway cross-over adjacent to Tree 1 (as identified in the Arboricultural Impact Assessment, dated 27 March 2015 and prepared by Australis Tree Management) shall be constructed from a permeable product such as crushed granite. (condition 1(d)).*

Within 100m of Heritage Item: The site is situated opposite “Denistone House” and “Trigg House” (Ryde Hospital) at 1 Denistone Road, Denistone, which is listed as having local heritage significance. Council’s Heritage Officer considers that “the proposed development is considered acceptable and will have an acceptable heritage impact.”

**12. The Public Interest**

The proposal will ensure much needed supply of additional child care spaces are provided for in the City of Ryde.

**13. Consultation – Internal and External**Internal Referrals

**Senior Development Engineer:** The proposed development and revised plans were referred to Council’s Senior Development Engineer who provided the following comments. Conditions of consent have been provided, and these are included in the Draft Conditions of Consent (see **Attachment 1**).

“Background

*The initial review note several matters to be addressed in relation to the proposed method of drainage. A review of these items in light of the revised plans is as follows;*

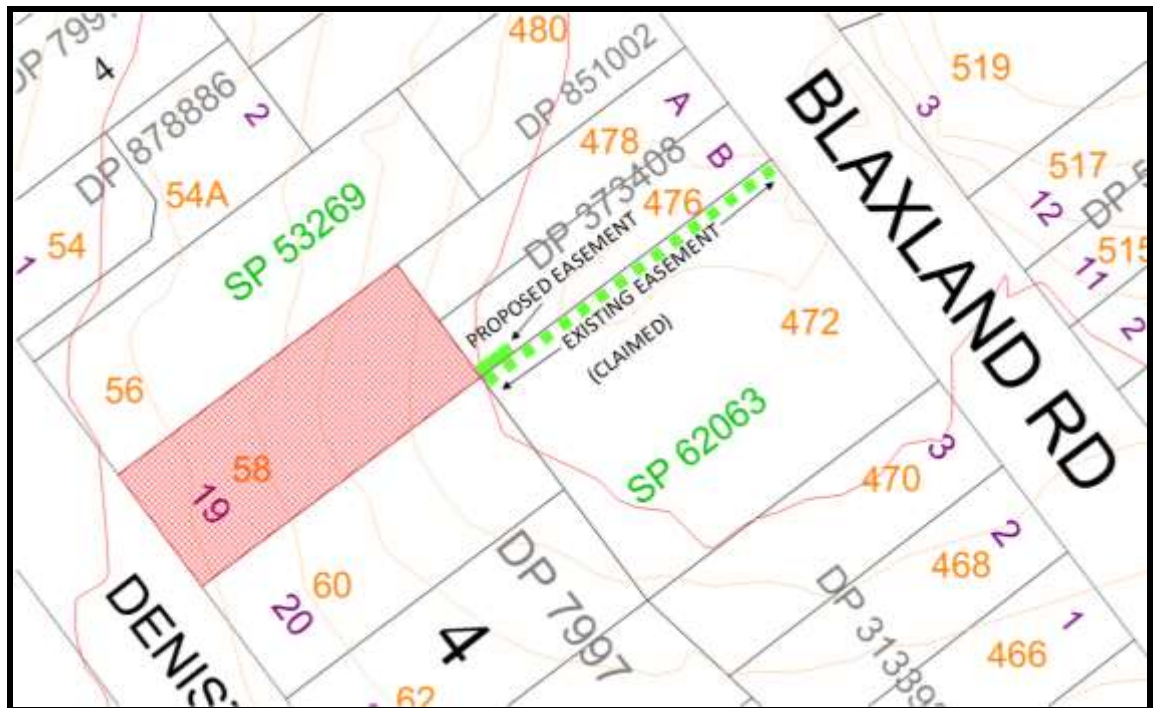
- *The proposed development would be required to formalise the drainage easement through the downstream property.*

*The applicant has not provided any further information regarding formal approval from land owners related to the easement. These are;*

- *No. 476 Blaxland Road (to be burdened with a proposed new easement introduced by the development works on No. 58 Denistone Road)*
- *No. 472-474 Blaxland Road (currently burdened by the drainage easement benefitting No. 60 Denistone Road)*
- *No. 60 Denistone Road (currently benefitting from the drainage easement over No. 472 Blaxland Road).*

**ITEM 3 (continued)**

*As proposed, the applicant will need to acquire a new drainage easement over No. 476 Blaxland Road as well as obtain approval from No. 472-474 Blaxland Road and No. 60 Denistone Road for the right to drain through the existing drainage easement.*



*Despite the complexities associated with this process, the extent of the works required to undertake this is relatively minor.*

- *The applicant was requested for clarification that the existing drainage line in No. 472-474 Blaxland Road has sufficient capacity to accommodate runoff from the proposal.*

*With reference to the report “Stormwater Easement: Existing Pipe Capacity” by Capital Consulting Engineers dated 8 September 2015, the applicant has presented a summary and analysis validating that the existing drainage system on No. 472-474 Blaxland Road has sufficient capacity to accommodate runoff from the proposed development.*



**ITEM 3 (continued)**

*In summary, the report has presented the following levels of runoff;*

<b>Site</b>	<b>Runoff (L/s)</b>
<i>No. 472-474 Blaxland Road - (Northern Catchment)</i>	<i>77.1</i>
<i>No. 58 Denistone Road (OSD)</i>	<i>21<sup>+</sup></i>
<i>No. 60 Denistone Road (OSD)</i>	<i>26.4<sup>*</sup></i>
<b>TOTAL</b>	<b>124.5 L/s</b>

*\*The applicants OSD calculation sheet specifies the required PSD as 18.1 L/s however a catchment plan has not been demonstrated to validate this. Preliminary calculations indicate that the required PSD is slightly less and this will be enforced by a condition of deferred commencement requiring the updated stormwater management plans.*

*\*Consultant's report incorrectly specifies 26.1 L/s.*

*The consultant has gone on to present that the capacity of the drainage line is in the order of 170L/s (225mm diameter line with a 2.5% fall).*

*A review of the development application for No. 472-474 Blaxland Road notes that the stormwater management system on that property was designed with potential to accommodate the potential runoff from upstream lots. This was due to the proposed development being constructed over localised sag and the potential for the development to dam stormwater runoff. In response to this, the applicant had proposed a drainage system designed to accommodate the potential runoff from upstream lots, including No. 58 Denistone Road.*

*Noted in the planning assessment file for No. 472-474 Blaxland Road is a submission from the applicants engineer (Aztec Consulting Engineers) dated 7 November 1998 in which it is estimated the anticipated volume of runoff from No. 58 Denistone and partly the rear of the neighbouring duplex at 472-474 Blaxland Road, as being in the order of 77.5 L/s and this runoff has been accounted for in the design of the drainage system on the property by way of surface inlet pits connected via a 225mm diameter pipe along the northern boundary, draining to Blaxland Road. Accordingly there is no evidence that precludes that the proposed system should not drain through this line.*

*It is recommended that the drainage component be addressed by a condition of deferred commencement, requiring that the applicant submit a detailed stormwater drainage plan and proof of registration of the drainage easement, prior to activation of the development consent.*

**ITEM 3 (continued)**Other Matters

Council's planner has requested the review of a number of submissions of objection that relate to engineering matters. These are as follows;

**“Stormwater Runoff.** Concerns are raised that stormwater from the site (in particular from the proposed carpark) will runoff into adjoining properties causing dampness. Further, the applicant wishes to install an underground absorption system which is only suitable for single dwellings and dual occupancy developments and not child care centres.”

The applicant has proposed a gravity drainage system which addresses runoff from the entire site. The system is to discharge to public drainage infrastructure in Blaxland Road via a new drainage easement to be created through the downstream properties. The capacity of this infrastructure is sufficient for the level of runoff arising from the proposed development and therefore unlikely to result in overland flow of burdened or adjoining properties.

It appears the applicant has used Councils pro-forma letter for the request of the easement. Its format is suited for single residential dwellings and suggests the use of an absorption system may be an alternative in lieu of an easement. Under Councils DCP, such systems would not be permitted due to the scope of development proposed.

**“Traffic Generation and Congestion.** Concerns are raised that the development will exacerbate existing traffic issues. The site is opposite the entry and exit driveways to Ryde Hospital's car park and Ambulance Station within Ryde Hospital which will cause confusion for motorists and congestion.”

Whilst the applicant has not provided any comment regarding this, the arrangement of the Hospital access points opposite the property are considered.

Previous development applications for the Hospital site notes that the parking area accessed from Denistone Road has a parking capacity of 132 parking spaces. The allocation of parking between staff/ visitors and staff levels is unknown but NSW Health indicates the facility has a 148 bed capacity. Based on the RMS traffic surveys, a hospital of this capacity would generate 72 vtph in the morning peak period. Assuming this is mostly incoming (60%) associated with the staff dayshift, this would produce some 43 vehicle trips per hour (vtph) at the entry (approx. a vehicle every 1.4 min.).

**ITEM 3 (continued)**

*In contrast, the development is anticipated to generate 23 vph at its entry, representing a vehicle movement every 2 ½ min.*

*It is worth noting these traffic movements are significantly less than what would be experienced at a typical approach legs of an intersection of a local road (75 vehicle per hour) and collector road (200 vehicle per hour) in the morning peak hour which is (most often) governed by Give Way/ Stop traffic control signs.*

*The probability for two vehicles to arrive and turn right to enter the alternate property at the same time (presenting a conflict point) is considered low. This is further reduced when considering that the dominant traffic flow to this location will be from Blaxland Road (a classified roadway) and therefore most traffic entering the hospital will be approaching from the south, turning left to enter the site.*

***“Vehicle Manoeuvrability.*** *Concerns are raised that delivery trucks and cars entering the car park will need to manoeuvre 2-3 times when entering / exiting car spaces and the driveways. “*

*These type of developments utilise service vehicles having dimensions of large vans (Mercedes Sprinter) which would have a level of manoeuvrability similar to a B99 vehicle, as per the definition of AS 2890.1. As the carpark has been designed to this standard, this matter does not warrant further attention. Notwithstanding this, service vehicles would typically utilise the parking area outside parent pickup – dropoff hours.*

*Parent pickup-dropoff spaces are noted to have dimensions complying with the user class 3 as defined in AS 2890.1, which is applicable for short term parking demand as in this case.*

*A review of the parking area notes that there is scope for improvement by locating staff parking spaces to adjoin the front boundary. As these spaces need only be 2.4m wide (to accommodate long term parking) it provides a further 700mm of clearance which is to be applied to the vehicle exit thereby facilitating vehicle egress from the parking area and allowing the gutter crossover to be constructed clear of the street tree near this exit location. This is addressed by a condition of consent.*

**Recommendation**

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

**ITEM 3 (continued)**

**Assessment Officer's Comment:** Further to the comments from Council's Senior Development Engineer (above) in relation to traffic impacts, Council has engaged traffic consultants (Bitzios Consulting) to undertake an independent, external review of the traffic impacts of the proposal. See the External Referrals section of this report (below).

**Heritage Officer:** The subject DA was referred to Council's Heritage Officer as the subject site is located within the vicinity of "Denistone House" and "Trigg House" (Ryde Hospital) at 1 Denistone Road, Denistone (Item No. 147).

The following comments have been provided from Council's Heritage Officer:

***"Consideration of the heritage impacts:***

*The subject site comprises a c1920s single storey dwelling, displaying the principal characteristics and architectural embellishment attributed to the Inter-War period and of the 'Californian Bungalow' architectural style.*

*The Heritage Impact Statement (Colin Israel Heritage Advice, April 2015) provides a concise assessment of the significance of the subject site and impact assessment of the proposed development.*

*The Heritage Impact Statement considers that the dwelling has 'little to no heritage significance as it is a modified example of a c1930s house that is typical of development in the immediate area which generally took place between 1920 and 1940. It is also noted that the item has undergone considerable major changes since the 1940s.'*

*I concur with this assessment of the significance of the existing dwelling and demolition is supported, subject to conditions below.*

*The subject site is situated opposite the Ryde Hospital site, which is a listed heritage item, although the significance is principally embodied in 'Denistone House' and 'Trigg House' which are more centrally positioned in the site. The site is directly opposite two late 20<sup>th</sup> Century buildings which are considered austere in their character and appearance. These buildings obscure any direct visual relationship between the subject site and 'Denistone House' and 'Trigg House'. Subsequently, the redevelopment of the site will not result in any adverse visual or physical impacts on the setting of the heritage item.*

**ITEM 3 (continued)**

*The proposed built form has been designed to respond to the inherent site characteristics, with the bulk of the building following the contour of the site. In this regard, the building has the character and appearance of a detached style, single storey dwelling house and incorporates design elements and features which complement the Inter-War housing typology which is prevalent throughout the streetscape.*

*Resultantly, the proposed development is considered acceptable and will have an acceptable heritage impact.*

**Recommended conditions**

Conditions which must be complied with prior to the issue of any Construction Certificate:

- **Salvage of materials and building elements**

*Traditional building materials and architectural elements (such as windows, doors, internal and external joinery, masonry, tiles etc) are to be dismantled, salvaged and sold to an established dealer in second-hand heritage building materials.*

*Prior to the issue of any Construction Certificate and the commencement of any works, documentation of the salvage methodology must be submitted for the approval of Council prior to the commencement of demolition.”*

**Consultant Landscape Architect:** The proposed development was referred to Council’s Consultant Landscape Architect who is supportive in principal to the proposal and has provided a lengthy report outlining many issues to be addressed via condition of consent (see Attachment 1).

**Community & Culture:** Provides the following supportive comments:

- *“The Child Care centre will accommodate children aged 0-2 (8 places) - care for this age group is in high demand due to mothers returning to work and general demand for child care services in the area.*
- *Educational programs at child care are an important aspect of improving educational outcomes, especially in the developmental early years. The amenities for the children, which included variety of plants species, play surfaces, and structures, provide opportunities for early learning about the natural environment, and provide for maximised year around use of the outdoor spaces.”*

### ITEM 3 (continued)

**Environmental Health Officer:** The proposed development was referred to Council's Environment Health Officer who provided the following comments. Conditions of consent have been provided, and these are included in the Draft Conditions of Consent (see **Attachment 1**).

**Building Surveyor:** Provides the following comments:

***“BCA Comment***

*A BCA Compliance Assessment report has been prepared in respect to the proposal and submitted with the application; no BCA non-compliances area noted in the report.*

***Conclusion***

*As the proposal is for a new building no conditions, other than the standard building conditions area required.”*

**Tree Management Officer:** The proposed development was referred to Council's Tree Management Officer who raises no objection subject to conditions of consent (see **Attachment 1**).

### External Referrals

#### **External Traffic Consultant (Bitzios Consulting):**

In order to ensure that issues regarding traffic and parking impacts were completely addressed, Council engaged the services of external traffic consultants (Bitzios Consulting) to undertake an independent assessment of the proposal by letter dated 15 February 2016.

Bitzios responded to Council on 18 March 2016, advising that the traffic report submitted for this DA (by Auswide Traffic Engineers) was found to be generally satisfactory, with acceptable impacts imposed by the site. However clarification was requested to be sought from the applicant in regard to background traffic volumes; statement regarding environmental capacity and any amenity-related impacts on Denistone Road; swept path analysis for a Small Rigid Vehicle to access the delivery bay; and an assessment/statement of the driveway gradient at the access for compliance with AS2890.1.

Council requested this clarification from the applicant by email 18 March 2016, and they responded on 30 March 2016 with a letter from Auswide, as well as architectural drawings to illustrate the matters to be clarified. This was referred back to Bitzios on 31 March 2016 for further comment. On 1 April 2016, Bitzios provided an updated Independent Review Report, including a review of the matters to be clarified, which concludes *“that the traffic and parking impacts have been shown to be minimal and that the site layout generally conforms to the Australian Standards”*.

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

A copy of the Independent Review by Bitzios Consulting is **Attachment 4** to this report.

#### **14. Critical Dates**

There are no critical dates or deadlines to be met.

#### **15. Financial Impact**

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

#### **16. Other Options**

The recommendation in this report is approval (Deferred Commencement) subject to conditions.

The only practical alternative to this recommendation of approval would be refusal. In this regard, various issues of concern raised in neighbour's submissions (as outlined above) and the areas of non-compliance with DCP 2014 could form the basis for reasons for refusal. However, however this option of refusal is not recommended because (overall) the development is considered to be satisfactory, the areas of non-compliance with Council's planning controls are justifiable and the neighbours' concerns have been addressed as noted in the assessment above, and can be addressed via conditions of consent.

#### **17. Conclusion**

The proposed development has been assessed using the heads of consideration listed in Section 79 of the Environmental Planning & Assessment Act 1979 and is generally considered to be satisfactory for approval.

Although areas of non-compliance with Part 3.2 of Ryde DCP 2014 were identified, these were either considered to be justifiable given the circumstances of the subject site and the development proposed, or alternatively addressed via imposition of conditions of consent.

The proposed child care centre is considered to result in a development that is consistent with the objectives of the R2 Low Density Residential zone as it will provide a much needed facility to assist with the day to day requirements of local residents and workers. The building itself is considered compatible with the current and likely future character of the low density residential area. This is largely due to the fact that the proposal includes a compliant bulk and scale from a floor space ratio and setback perspective, which is based on the numerical requirements for low density residential development.

**ITEM 3 (continued)**

The proposed number of children, and the intended hours of operation of the child care centre are considered appropriate for the subject site's location, and consistent with other recently approved child care centres within the City of Ryde.

The traffic, parking, impacts of the proposal, along with the acoustic and visual amenity of impacts has been assessed and is considered to be satisfactorily consistent with the relevant development controls and objectives outlined in Part 3.2 of the Ryde DCP 2014 for child care centres.

On the above basis, LDA2015/209 at 58 Denistone Road, Denistone is recommended for approval subject to conditions.



**ITEM 3 (continued)**

**ATTACHMENT 1**

**DRAFT CONDITIONS OF CONSENT  
58 DENISTONE ROAD, DENISTONE  
LDA2015/209**

**DEFERRED COMMENCEMENT**

The following are the Deferred Commencement condition(s) imposed pursuant to Section 80(3) of the Environmental Planning & Assessment Act 1979.

1. **Drainage Easement.** An easement to drain stormwater must be created over the adjoining properties of No. 476 Blaxland Road (Lot B of DP 373408) and No. 472 – 474 Blaxland Road (SP 62603) located generally as shown on the Concept Stormwater Plan by United Consulting Engineers Pty Ltd. (Refer to Project No. 15MB6493 Dwgs D01 & D02 Rev B. dated 27 March 2015). Documentary evidence of registration with the Land & Property Information Authority, including the terms of the drainage easement and its location on the burdened lots must be submitted to Council prior to this Development Consent being activated.
2. **Stormwater Management.** Stormwater runoff from the development must be collected and piped by gravity flow to the public drainage infrastructure in Blaxland Road. To assure this is achieved in accordance with Council's DCP and any further revisions required in the acquisition of the drainage easement, a revised stormwater management plan must be submitted to Council for approval prior to activation of this development consent.

The submitted plans must be prepared by a suitably qualified and practising engineer and are to be generally in accordance with the plans by United Consulting Engineers Pty Ltd. (Refer to Project No. 15MB6493 Dwgs D01 & D02 Rev B. dated 27 March 2015), subject to the following variation(s);

- A grass swale is to be provided along the downstream boundary to ensure that any sheet flow is to be arrested and diverted to the surface inlet pit located in the southeastern corner, prior to the point of discharge from the site.
- A site catchment plan is to be included, depicting the areas discharging through the OSD and those bypassing the system.
- Further to the above point, the OSD design parameters (SSR & PSD) are to be recalculated consistent with the nominated determined catchment Councils simplified OSD design procedure and the OSD design revised to be consistent with the plans.

**ITEM 3 (continued)**

**ATTACHMENT 1**

3. **Signed Undertaking.** A signed undertaking by the applicant, licensee or proposed licensee that certifies the proposal has been designed to comply with respect to the Children (Education and Care Services) Supplementary Provisions Regulation 2012 and Department of Education and Communities requirements is to be submitted to Council for approval prior to this development consent being activated.

The conditions in the following sections of this consent shall apply upon satisfactory compliance with the above requirements and receipt of appropriate written confirmation from Council.

**GENERAL**

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

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

<b>Document Description</b>	<b>Date</b>	<b>Plan No/Reference</b>
Site Plan	20.11.15	DA 01 – Issue D
Demolition and Construction Management	17.04.15	DA 03 – Issue A
Lower Ground Level	28.07.15	DA 11 – Issue C
Ground Floor	28.07.15	DA 12 – Issue C
Elevations – East & North	20.11.15	DA 21 – Issue D
Elevations – South & West	20.11.15	DA 22 – Issue D
Section AA	20.11.15	DA 31 – Issue D
Section BB & Signage	20.11.15	DA 32 – Issue D
Fence Detail 1	28.07.15	DA 33 – Issue C
Fence Detail 2	28.07.15	DA 34 – Issue C
Schedule of Finishes	17.04.15	DA 91 – Issue A
Landscape Plan - Surfacing	18 Aug. 2015	Dwg no. 1/5
Landscape Plan – Plants	18 Aug. 2015	Dwg no. 2/5
Landscape Plan – Details	28 April 2015	Dwg no. 3/5
Landscape Plan – Details	28 April 2015	Dwg no. 4/5
Landscape Plan – Details	28 April 2015	Dwg no. 5/5
Site and Roof Drainage Plan	-	1 of 2 – Issue B
Lower Ground Floor Drainage Plan	-	2 of 2 – Issue B
Noise Impact Assessment	April 2015	Prepared by: Noise & Sound Services

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<b>Document Description</b>	<b>Date</b>	<b>Plan No/Reference</b>
Arboricultural Impact Assessment	27 March 2015	Prepared by: Australis Tree Management
BCA Compliance Assessment	24 March 2015	Prepared by: BCA Vision
Plan of Management	-	Prepared by: David Farrugia

Prior to the issue of a **Construction Certificate**, the following amendments shall be made:

- (a) The parking area design and allocation of parking spaces must be reconfigured in accordance with the condition "Vehicle Access and Accommodation" so as to improve the safety and efficiency of the parking area.
- (b) The pedestrian pathway along the southern side boundary is to be widened to 1.2m for a length of 10m commencing at the front boundary.
- (c) The exit driveway is to be shifted 500mm north to avoid damage/impacts on tree 1.
- (d) The driveway cross-over adjacent to Tree 1 (as identified in the Arboricultural Impact Assessment, dated 27 March 2015 and prepared by Australis Tree Management) shall be constructed from a permeable product such as crushed granite.
- (e) All Perspex material fitted on top of boundary fencing is to be frosted to prevent overlooking.
- (f) Within the entry and foyer, an area is to be allocated and marked for the parents / carers to store prams.
- (g) All glass in the playroom windows and doors is to be 6mm thick.
- (h) Sound absorptive treatment is to be provided to the flooring of the outdoor play area which is under the first floor level
- (i) Each playroom is to be provided with 2.4m high wall tiles.
- (j) Boundary Fencing shall be timber lap and cap fencing that has a minimum thickness of 15mm.
- (k) The fencing on the southern and eastern boundaries is to have a minimum height of 2.6m, and 2.4m on the northern boundary.

**ITEM 3 (continued)**

**ATTACHMENT 1**

- (l) **Size of cot rooms.** The size of the cot rooms shall be modified to comply with the controls contained in Section 7.1(d) of Ryde DCP 2014.

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

2. **Building Code of Australia.** All building works approved by this consent must be carried out in accordance with the requirements of the Building Code of Australia.
3. **Energy Efficiency.** The fittings, fixtures and materials installed in association with the development (including but not limited to hot water systems, ceiling/roof insulation, shower heads, toilet cisterns and the like) shall comply with the requirements of Council's DCP. Details are to be noted on the plans submitted with the **Construction Certificate**.
4. **Support for neighbouring buildings.** If the development involves excavation that extends below the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (a) Protect and support the adjoining premises from possible damage from the excavation, and
- (b) Where necessary, underpin the adjoining premises to prevent any such damage, in accordance with relevant Australian Standards.
5. **Signage – not approved unless shown on plans.** This consent does not authorise the erection of any signs or advertising structures not indicated on the approved plans. Separate approval must be obtained from Council for any additional signs, unless such signage is "exempt development".

**Protection of Adjoining and Public Land**

6. **Hours of work.** Building activities (including demolition) may only be carried out between 7.00am and 7.00pm Monday to Friday (other than public holidays) and between 8.00am and 4.00pm on Saturday. No building activities are to be carried out at any time on a Sunday or a public holiday.
7. **Hoardings.**
- (a) A hoarding or fence must be erected between the work site and any adjoining public place.
- (b) Any hoarding, fence or awning erected pursuant this consent is to be removed when the work has been completed.

**ITEM 3 (continued)**

**ATTACHMENT 1**

8. **Illumination of public place.** Any public place affected by works must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
9. **Development to be within site boundaries.** The development must be constructed wholly within the boundaries of the premises. No portion of the proposed structure shall encroach onto the adjoining properties. Gates must be installed so they do not open onto any footpath.
10. **Public space.** The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances, without prior approval from Council.

**Works on Public Road**

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

Conditions imposed by Environmental Health Officer:

13. **Construction and fit-out of kitchen** – Kitchen must be constructed and fitted-out in accordance with the requirements of:
  - (a) Food Safety Standard 3.2.3: *Food Premises and Equipment*; and
  - (b) Australian Standard AS 4674-2004: *Design, construction and fit-out of food premises*.
14. **Construction of walls** - The walls of the proposed kitchen must be constructed of brick, concrete blocks, preformed panels filled with suitable material or other solid materials.
15. **Plumbing and drainage work** - All plumbing and drainage work must be carried out in accordance with the requirements of Sydney Water Corporation and the NSW Department of Fair Trading.

**ITEM 3 (continued)**

**ATTACHMENT 1**

Conditions imposed by Senior Development Engineer:

16. **Design and Construction Standards.** All engineering plans and work inside the property shall be carried out in accordance with the requirements of the relevant Australian Standard. All Public Domain works or modification to Council infrastructure which may be located inside the property boundary, must be undertaken in accordance with Council's 2014 DCP Part 8.5 (Public Domain Works), except otherwise as amended by conditions of this consent.
17. **Restoration.** Public areas must be maintained in a safe condition at all times. Restoration of disturbed road and footway areas for the purpose of connection to public utilities will be carried out by Council following submission of a permit application and payment of appropriate fees. Repairs of damage to any public stormwater drainage facility will be carried out by Council following receipt of payment. Restoration of any disused gutter crossings will be carried out by Council following receipt of the relevant payment.
18. **Road Activity Permits.** To carry out work in, on or over a public road, the Consent of Council is required as per the Roads Act 1993. Prior to issue of a Construction Certificate and commencement of any work, permits for the following activities, as required and as specified in the form "*Road Activity Permits Checklist*" (available from Council's website) are to be obtained and copies submitted to Council with the *Notice of Intention to Commence Work*.
  - a) Road Use Permit - The applicant shall obtain a Road Use Permit where any area of the public road or footpath is to be occupied as construction workspace, other than activities covered by a Road Opening Permit or if a Work Zone Permit is not obtained. The permit does not grant exemption from parking regulations.
  - b) Work Zone Permit - The applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site. Separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane. A Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.
  - c) Road Opening Permit - The applicant shall apply for a road-opening permit and pay the required fee where a new pipeline is to be constructed within or across the road pavement or footpath. Additional road opening permits and fees are required where there are connections to public utility services (e.g. telephone, telecommunications, electricity, sewer, water or gas) within the road reserve. No opening of the road or footpath surface shall be carried out without this permit being obtained and a copy kept on the site.

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**ATTACHMENT 1**

- d) Elevated Tower, Crane or Concrete Pump Permit - The applicant shall obtain an Elevated Tower, Crane or Concrete Pump Permit where any of these items of plant are placed on Council's roads or footpaths. This permit is in addition to either a Road Use Permit or a Work Zone Permit.
- e) Crane Airspace Permit - The applicant shall obtain a Crane Over Airspace Permit where a crane on private land is operating in the air space of a Council road or footpath. Approval from the Roads and Maritime Services for works on or near State Roads is required prior to lodgement of an application with Council. A separate application for a Work Zone Permit is required for any construction vehicles or plant on the adjoining road or footpath associated with use of the crane.
- f) Hoarding Permit - The applicant shall obtain a Hoarding Permit and pay the required fee where erection of protective hoarding along the street frontage of the property is required. The fee payable is for a minimum period of 6 months and should the period is extended an adjustment of the fee will be made on completion of the works. The site must be fenced to a minimum height of 1.8 metres prior to the commencement of construction and throughout demolition and/or excavation and must comply with WorkCover (New South Wales) requirements.
- g) Skip Bin on Nature Strip - The applicant shall obtain approval and pay the required fee to place a Skip Bin on the nature strip where it is not practical to locate the bin on private property. No permit will be issued to place skips within the carriageway of any public road.

**DEMOLITION CONDITIONS**

The following conditions are imposed to ensure compliance with relevant legislation and Australian Standards, and to ensure that the amenity of the neighbourhood is protected.

A Construction Certificate is not required for Demolition.

19. **Provision of contact details/neighbour notification.** At least 7 days before any demolition work commences:
- (a) Council must be notified of the following particulars:
    - (i) The name, address, telephone contact details and licence number of the person responsible for carrying out the work; and
    - (ii) The date the work is due to commence and the expected completion date

**ITEM 3 (continued)**

**ATTACHMENT 1**

- (b) A written notice must be placed in the letter box of each property identified in the attached locality plan advising of the date the work is due to commence.
20. **Compliance with Australian Standards.** All demolition work is to be carried out in accordance with the requirements of the relevant Australian Standard(s).
21. **Excavation**
- (a) All excavations and backfilling associated with the development must be executed safely, properly guarded and protected to prevent the activities from being dangerous to life or property and, in accordance with the design of a structural engineer.
- (b) A Demolition Work Method Statement must be prepared by a licensed demolisher who is registered with the Work Cover Authority, in accordance with AS 2601-2001: *The Demolition of Structures*, or its latest version. The applicant must provide a copy of the Statement to Council prior to commencement of demolition work.
22. **Asbestos.** Where asbestos is present during demolition work, the work must be carried out in accordance with the guidelines for asbestos work published by WorkCover New South Wales.
23. **Asbestos – disposal.** All asbestos wastes must be disposed of at a landfill facility licensed by the New South Wales Environmental Protection Authority to receive that waste. Copies of the disposal dockets must be retained by the person performing the work for at least 3 years and be submitted to Council on request.
24. **Waste management plan.** Demolition material must be managed in accordance with the approved waste management plan.
25. **Disposal of demolition waste.** All demolition waste must be transported to a facility or place that can lawfully be used as a waste facility for those wastes.
26. **Imported fill – type.** All imported fill must be Virgin Excavated Natural Material as defined in the *Protection of the Environment Operations Act 1997*.
27. **Imported fill – validation.** All imported fill must be supported by a validation from a qualified environmental consultant that the fill constitutes Virgin Excavated Natural Material. Records of the validation must be provided upon request by the Council.



**ITEM 3 (continued)**

**ATTACHMENT 1**

28. **Delivery docket to be provided.** Each load of imported fill must be accompanied by a delivery docket from the supplier including the description and source of the fill.
29. **Delivery docket – receipt and checking on site.** A responsible person must be on site to receive each load of imported fill and must examine the delivery docket and load to ensure that only Virgin Excavated Natural Material that has been validated for use on the site is accepted.
30. **Delivery docket – forward to PCA on demand.** The delivery docket must be forwarded to the Principal Certifying Authority within seven (7) days of receipt of the fill and must be produced to any authorised officer who demands to see them.

Conditions imposed by Tree Management Officer:

31. Prior to demolition, Tree 1's trunk and branches are to be protected in accordance with the Arboricultural Impact Assessment, dated 27 March 2015 and prepared by Australis Tree Management for Tree 1 must be undertaken and inspected and certified by the site Arborist prior to work occurring..

**PRIOR TO CONSTRUCTION CERTIFICATE**

A Construction Certificate must be obtained from a Principal Certifying Authority to carry out the relevant building works approved under this consent. All conditions in this Section of the consent must be complied with before a Construction Certificate can be issued.

Council Officers can provide these services and further information can be obtained from Council's Customer Service Centre on 9952 8222.

Unless an alternative approval authority is specified (eg Council or government agency), the Principal Certifying Authority is responsible for determining compliance with the conditions in this Section of the consent.

Details of compliance with the conditions, including plans, supporting documents or other written evidence must be submitted to the Principal Certifying Authority.

32. **Compliance with Australian Standards.** The development is required to be carried out in accordance with all relevant Australian Standards. Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Principal Certifying Authority prior to the issue of the **Construction Certificate**.

**ITEM 3 (continued)**

**ATTACHMENT 1**

33. **Structural Certification.** The applicant must engage a qualified practising structural engineer to provide structural certification in accordance with relevant BCA requirements prior to the release of the **Construction Certificate**.
34. **Security deposit.** The Council must be provided with security for the purposes of section 80A(6) of the *Environmental Planning and Assessment Act 1979* in a sum determined by reference to Council's Management Plan prior to the release of the **Construction Certificate**. (category: other buildings with delivery of bricks or concrete or machine excavation)
35. **Fees.** The following fees must be paid to Council in accordance with Council's Management Plan prior to the release of the **Construction Certificate**:
- (a) Infrastructure Restoration and Administration Fee
  - (b) Enforcement Levy
36. **Long Service Levy.** Documentary evidence of payment of the Long Service Levy under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 is to be submitted to the Principal Certifying Authority prior to the issuing of the **Construction Certificate**.
37. **Dilapidation Survey.** A dilapidation survey is to be undertaken that addresses all properties (including any public place) that may be affected by the construction work namely, No. 56 and 60 Denistone Rd. A copy of the survey is to be submitted to the PCA (*and Council, if Council is not the PCA*) prior to the release of the **Construction Certificate**.
38. **Sydney Water Tap in™.** The approved plans must be submitted to the Sydney Water Tap in™ on-line service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.

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

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

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

39. **Reflectivity of materials.** Roofing and other external materials must be of low glare and reflectivity. Details of finished external surface materials, including colours and texture must be provided to the Principal Certifying Authority prior to the release of the **Construction Certificate**.
40. **Lighting of common areas (driveways etc).** Details of lighting for internal driveways, visitor parking areas and the street frontage shall be submitted for approval prior to issue of the **Construction Certificate**. The details to include certification from an appropriately qualified person that there will be no offensive glare onto adjoining residents.
41. **Plan of Management.** The Plan of Management is to be updated to include all child care centre operational recommendations contained within the approved consultant reports detailed in Condition 1. An updated Plan of Management is to be submitted to Council for approval prior to issue of a **Construction Certificate**.
42. **Exterior Lighting** – Installation of exterior lighting is to be undertaken in accordance with the provisions of the Ryde Development Control Plan 2014. Lighting details are to be submitted to the Principal Certifying Authority prior to issue of the **Construction Certificate**. The lighting details are to include certification from an appropriately qualified person that there will be no offensive glare or adverse impact onto adjoining properties.
43. **Access Control.** An electronic key pad to all access points is required to ensure there is no unauthorised access to the child care centre. Details of compliance are to be provided in the plans for the **Construction Certificate**.
44. **Screen Doors and Windows.** Insect screens are to be installed to all operable windows and doors. Plans detailing the insect screens are to be approved by Principal Certifying Authority prior to the issue of the **Construction Certificate**.
45. The garbage storage area is to be relocated adjacent to the northern wall of the child care centre within the Director's car space. Details of this revised location must be submitted for approval with the application for the Construction Certificate.

**ITEM 3 (continued)**

**ATTACHMENT 1**

Conditions imposed by Environmental Health Officer:

46. **Mechanical ventilation details** - Details of all proposed mechanical ventilation systems, and alterations to any existing systems, must be submitted for approval with the application for the Construction Certificate. Such details must include:
- (a) Plans (coloured to distinguish between new and existing work) and specifications of the mechanical ventilation systems; and
  - (b) A design certificate from a professional mechanical services engineer certifying that the mechanical ventilation systems will comply with the *Building Code of Australia* and the conditions of this Consent.

Conditions imposed by Senior Development Engineer:

47. **Boundary Alignment Levels.** The applicant is to apply to Council for site specific boundary alignment levels prior to the issue of the Construction Certificate. The application would need to be accompanied by engineering plans of any civil works along the frontage of the development site. Fees are payable in accordance with Council's Schedule of Fees & Charges at the time of the application.
48. **Vehicle Footpath Crossing(s).** New footpath crossings and associated gutter crossovers must generally be constructed fronting the approved vehicle access location(s). The exit driveway access and crossover is to be constructed at least 500mm clear of the adjoining street tree of a permeable pavement treatment such as crushed granite (detail subject to consultation and approval with Council's Public Works). Otherwise the entry driveway must be constructed in plain reinforced concrete with location, design and construction conforming to Council requirements and AS 2890.1 – 2004 (Offstreet Parking). Accordingly, prior to the issue of a Construction Certificate, an application shall be made to Council's Public Works division for driveway crossing alignment levels. These issued levels are to be incorporated into the design of the driveway access and clearly delineate on plans submitted with the Construction Certificate application.
49. **Vehicle Access & Parking.** All internal driveways, vehicle turning areas, garages and vehicle parking space/ loading bay dimensions must be designed and constructed to comply with the relevant section of AS 2890 (Offstreet Parking standards).

**ITEM 3 (continued)**

**ATTACHMENT 1**

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

- a) To facilitate vehicle access and safety of pedestrians in the parking area, the parking area is to be reconfigured as follows;
- All 4 staff parking spaces must be reduced to 2.4m wide and occupy parking spaces P8 to P11.
  - The additional clearance provided by the reduced width of the spaces P7 to P11 (500mm) is to be applied to widen the driveway exit, allowing the gutter crossover to be offset from the trunk of the tree and facilitating egress movements.
  - In accordance with a separate condition of this consent, the Director's space is to be deleted and the bin area relocated to this area.
  - All remaining spaces six (6) (excluding delivery bay) adjoining the building are to be allocated for parent pickup / dropoff. All spaces, accept the disabled parking space and shared bay which are to remain at 2.4m width, are to be no less than 2.6m wide.

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

50. **Stormwater Management.** Stormwater runoff from the development shall be collected and piped by gravity flow to the public drainage infrastructure in Blaxland Road without impact to the subject site, neighbouring properties or receiving drainage system.

To assure this, detailed plans, documentation and certification of the proposed Stormwater Management system must be prepared by a chartered civil engineer and submitted with the application for a Construction Certificate. The documentation is to comply with the following;

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

**ITEM 3 (continued)**

**ATTACHMENT 1**

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

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

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

Conditions imposed by Council's Heritage Officer:

52. **Salvage of materials and building elements.** Traditional building materials and architectural elements (such as windows, doors, internal and external joinery, masonry, tiles etc) are to be dismantled, salvaged and sold to an established dealer in second-hand heritage building materials.

Prior to the issue of any Construction Certificate and the commencement of any works, documentation of the salvage methodology must be submitted for the approval of Council prior to the commencement of demolition.

**ITEM 3 (continued)**

**ATTACHMENT 1**

Conditions imposed by Consultant Landscape Architect:

53. The proposed fence will mean minor encroachment into the TPZ of Tree 4 (as identified in the Arboricultural Impact Assessment prepared by Australis Tree Management) and shrubs along the western rear boundary and protective measures are recommended. Fence footings can be designed to span over roots to minimise the impact of root disturbance to a level that is considered acceptable. The Project Arborist is to recommend measures to protect the trees throughout the construction process.
54. New retaining walls are required on the site due to the slope of the lot. The location and extent of retaining walls is to be indicated on the Landscape Plans. Top and Bottom Wall Heights are to be indicated along the length of retaining walls. This information is also to be included as part of the Architectural fencing elevations. This information is to be reviewed and coordinated with the Project Arborist to review the potential impact on neighbouring trees. The Arborist is to recommend measures to protect the trees throughout the construction process in accordance with AS 4970-2009 Australian Standard – Protection of trees on development sites.
55. **Tree works – provision of arborist details.** Council is to be notified, in writing, of the name, contact details and qualifications of the Consultant Arborist appointed to the site. Should these details change during the course of works, or the appointed Consultant Arborist alter, Council is to be notified, in writing, within seven working days.
56. Access for people with disabilities must be provided from the building(s) to kerb ramps and footpaths by means of a continuous path of travel in accordance with Australian Standard AS1428.1. The Landscape Plans fulfil the requirement at this level of documentation. Further detail on the following items listed in Section 4.2 of the Accessibility Report will be included as part of the Construction Certificate documentation:
  - Tactile indicators
  - Accessible ground surfaces
  - Grates within the accessible path of travel
  - Stairways (handrails)
  - Accessible parking.

**PRIOR TO COMMENCEMENT OF CONSTRUCTION**

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

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**57. Site Sign**

- (a) A sign must be erected in a prominent position on site, prior to the commencement of construction:
  - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work,
  - (ii) showing the name of the principal contractor (if any) or the person responsible for the works and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.
- (b) Any such sign must be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

**58. Excavation adjacent to adjoining land**

- (a) If an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must, at their own expense, protect and support the adjoining premises from possible damage from the excavation, and where necessary, underpin the adjoining premises to prevent any such damage.
- (b) The applicant must give at least seven (7) days notice to the adjoining owner(s) prior to excavating.
- (c) An owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

**59. Pre-commencement dilapidation report.** The submission of a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public and private properties namely No. 56 and 60 Denistone Rd, and public infrastructure (including roads, gutters, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of the affected adjoining private properties, prior to the commencement of construction.

**60. Safety fencing.** The site must be fenced prior to the commencement of construction, and throughout demolition and/or excavation and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.



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**ATTACHMENT 1**

**DURING CONSTRUCTION**

Unless otherwise specified, the following conditions in this Part of the consent must be complied with at all times during the construction period. Where applicable, the requirements under previous Parts of the consent must be implemented and maintained at all times during the construction period.

61. **Critical stage inspections.** The person having the benefit of this consent is required to notify the Principal Certifying Authority during construction to ensure that the critical stage inspections are undertaken, as required under clause 162A(4) of the *Environmental Planning and Assessment Regulation 2000*.
62. **Construction noise.** The L<sub>10</sub> noise level measured for a period of not less than 15 minutes while demolition and construction work is in progress must not exceed the background noise level by more than 20 dB(A) at the nearest affected residential premises.
63. **Survey of footings/walls.** All footings and walls within 1 metre of a boundary must be set out by a registered surveyor. On commencement of brickwork or wall construction a survey and report must be prepared indicating the position of external walls in relation to the boundaries of the allotment.
64. **Sediment/dust control.** No sediment, dust, soil or similar material shall leave the site during construction work.
65. **Use of fill/excavated material.** Excavated material must not be reused on the property except as follows:
  - (a) Fill is allowed under this consent;
  - (b) The material constitutes Virgin Excavated Natural Material as defined in the *Protection of the Environment Operations Act 1997*;
  - (c) the material is reused only to the extent that fill is allowed by the consent.
66. **Construction materials.** All materials associated with construction must be retained within the site.
67. **Site facilities**  
The following facilities must be provided on the site:
  - (a) toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees, and
  - (b) a garbage receptacle for food scraps and papers, with a tight fitting lid.

**ITEM 3 (continued)**

**ATTACHMENT 1**

**68. Site maintenance**

The applicant must ensure that:

- (a) approved sediment and erosion control measures are installed and maintained during the construction period;
- (b) building materials and equipment are stored wholly within the work site unless an approval to store them elsewhere is held;
- (c) the site is clear of waste and debris at the completion of the works.

**69. Work within public road.** At all times work is being undertaken within a public road, adequate precautions shall be taken to warn, instruct and guide road users safely around the work site. Traffic control devices shall satisfy the minimum standards outlined in Australian Standard No. AS1742.3-1996 "Traffic Control Devices for Work on Roads".

**70. Drop-edge beams.** Perimeters of slabs are not to be visible and are to have face brickwork from the natural ground level.

Conditions imposed by Consultant Landscape Architect:

**71. Tree removal.** This consent authorises the removal of the following trees:  
- Tree 3 is a mature *Jacaranda mimosifolia* (Jacaranda)

All tree removal work is to be carried out in accordance with NSW Workcover Code of Practice (2007) and undertaken by an Arborist with minimum AQF Level 2 qualifications.

**72. Tree protection – no unauthorised removal.** This consent does not authorise the removal of trees unless specifically permitted by a condition of this consent or identified as approved for removal on the stamped plans. Trees shown on the approved plans as being retained must be protected against damage during construction.

Neighbouring Trees

- Tree 1 is a mature *Podocarpus elatus* (Brown Pine)
- Tree 2 is a semi-mature *Melaleuca bracteata* 'Golden Gem' (Melaleuca)
- Tree 3 is a semi-mature *Jacaranda mimosifolia* (Jacaranda)

**73. Tree works – Australian Standards.** Any works approved by this consent to trees must be carried out in accordance with all relevant Australian Standards.

**74.** An AQF Level 5 Arborist is to be engaged to monitor the trees throughout the development process and ensure compliance with the tree protection measures.

**ITEM 3 (continued)**

**ATTACHMENT 1**

75. **Hold points and certification.** The Tree Protection Schedule provides a logical sequence of hold points for the various development stages including pre construction, construction and post construction. It also provides a checklist of various hold points that are to be signed and dated by the Project Arborist. This is to be completed progressively and included as part of the final certification. A copy of the final certification is to be made available to Ryde City Council on completion of the projection.
76. Any damage caused to Council property (during construction) within the public domain (Road Reserve) along Denistone Road shall be rectified at the expense of the Applicant.
77. The location of underground services and any on-site detention tanks is to be coordinated in consultation with the Project Arborist to minimise the potential impact on site trees.
78. **Replacement Fencing.** Replacement of all boundary fencing is to be at the full cost of the developer.

Conditions imposed by Tree Management Officer:

79. **Tree protection.** All work is to comply with AS4790 "Protection of Tree on Development Sites."
80. Tree protection measures are to be undertaken and construction activity is to be managed in accordance with the Arboricultural Impact Assessment, dated 27 March 2015 and prepared by Australis Tree Management.
81. Existing soil levels within council land must be maintained.
82. All tree roots within Tree 1's (as identified in the Arboricultural Impact Assessment, dated 27 March 2015 and prepared by Australis Tree Management) Structural Root Zone must be left in situ. Any excavation within the Structural Root Zone of Tree 1 must be undertaken by non-destructive methods such as hand digging, air knife, air spade and hydro jet.

Conditions imposed by Senior Development Engineer:

83. **Traffic Management Plan.** To ensure safe construction traffic flow on site a Traffic Management Plan (TMP) and report shall be prepared by a RMS accredited person and submitted to and approved by Council prior to issue of **Construction Certificate**.

**ITEM 3 (continued)**

**ATTACHMENT 1**

The TMP shall be prepared in accordance with Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, the RMS’s Manual – “Traffic Control at Work Sites” and City of Ryde, Development Control Plan 2014: - Part 8.1; Construction Activities. The TMP is to address but not be limited to the loss of on-street parking, construction vehicles travel routes, safety of the public, materials storage, handling and deliveries including construction traffic parking.

Additionally, all traffic controllers on site must be RMS accredited traffic controllers and a minimum of seven (7) days notice shall be given to residents if their access will be affected by proposed construction activities. All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and to be paid at the time that the TMP is submitted.

84. **Erosion and Sediment Control Plan - Implementation.** The applicant shall install erosion and sediment control measures in accordance with the Construction Certificate approved Soil Erosion and Sediment Control (ESCP) plan at the commencement of works on the site. Erosion control management procedures in accordance with the manual “Managing Urban Stormwater: Soils and Construction” by the NSW Department – Office of Environment and Heritage, must be practiced at all times throughout the construction.
85. **Stormwater Management - Construction.** The stormwater drainage system on the site must be constructed in accordance with the Construction Certificate version of the Stormwater Management Plan submitted in compliance to the condition labelled “Stormwater Management.”
86. **Stormwater Management – Works in the new easement.** To ensure there is minimal imposition and loss of amenity to the owner/ occupants of the property burdened by the new drainage easement in construction of new drainage services, the builder/ developer must;
  - (i) provide a minimum 14 days notification to the burdened property owner and occupants prior to the commencement of works in the neighbouring property.
  - (ii) ensure the works are completed in a timely manner.
  - (iii) comply with any terms agreed upon by both parties in regard to the construction of the drainage services and restoration of the land, in the granting of the easement.

**ITEM 3 (continued)**

**ATTACHMENT 1**

**PRIOR TO OCCUPATION CERTIFICATE**

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

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

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

87. **Landscaping.** All landscaping works approved by condition 1 are to be completed prior to the issue of the final **Occupation Certificate**.
88. **Fire safety matters.** At the completion of all works, a Fire Safety Certificate must be prepared, which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

89. **Sydney Water – Section 73.** A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) then refer to “Water Servicing Coordinator” under “Developing Your Land” or telephone 13 20 92 for assistance.

Following application a “Notice of Requirements” will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

**ITEM 3 (continued)**

**ATTACHMENT 1**

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

90. **Post-construction dilapidation report.** The submission of a post-construction dilapidation report which clearly details the final condition of all property, infrastructure, natural and man-made features that were recorded in the pre-commencement dilapidation report. A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of the affected adjoining and private properties, prior to the issue of any **Occupation Certificate**.
91. **Public domain – work-as-executed plan.** A works as executed plan for works carried out in the public domain must be provided to and endorsed by Council prior to the issue of the **Occupation Certificate**.
92. **Letterboxes and street / house numbering.** All letterboxes and house numbering are to be designed and constructed to be accessible from the public way. Council must be contacted in relation to any specific requirements for street numbering.
93. **Emergency Evacuation.** Prior to the issue of an Occupation Certificate for the child care centre, a “Fire Safety and Evacuation Plan” complying with Australian Standard AS3745 is to be prepared by a suitably qualified person and submitted to the Principal Certifying Authority.

The Fire Safety and Evacuation Plan is to address:

The mobility of children and how this is to be accommodated during an

- i. Evacuation;
- ii. The location of a safe congregation area, away from the evacuated building, busy roads and other hazards, and away from evacuation points for use by other occupants/tenants of the same building or of surrounding buildings; and
- iii. The supervision of children during the evacuation and at the congregation area with regard to the capacity of the child care centre including child to staff ratios.

Conditions imposed by Environmental Health Officer:

94. **Certification of mechanical ventilation work** - Where any mechanical ventilation systems have been installed or altered, an installation certificate from a professional mechanical services engineer certifying that the systems comply with the approved plans and specifications must be submitted to the Principal Certifying Authority before the issue of an Occupation Certificate.

**ITEM 3 (continued)**

**ATTACHMENT 1**

95. **Certification of fit-out work** - Where Council is not the Principal Certifying Authority, the PCA must inspect the completed fit-out and issue a compliance certificate certifying that the fit-out complies with Food Safety Standard 3.2.3: *Food Premises and Equipment* and Australian Standard AS 4674-2004: *Design, construction and fit-out of food premises*, and a copy of the compliance certificate must be submitted to Council, before the issue of an Occupation Certificate.

Conditions imposed by Senior Development Engineer:

96. **Footpath Paving Construction.** The applicant shall, at no cost to Council, construct standard concrete footpath paving across the frontage of the property. Levels of the footpath paving shall conform to levels issued by Council's Engineering Services Division.
97. **Stormwater Management - Work-as-Executed Plan.** A Work-as-Executed plan (WAE) of the as constructed Stormwater Management System must be submitted with the application for an Occupation Certificate. The WAE must be prepared and certified (signed and dated) by a Registered Surveyor and is to clearly show the constructed stormwater drainage system (including any onsite detention, pump/ sump, charged/ siphonic and onsite disposal/ absorption system) and finished surface levels which convey stormwater runoff.
98. **Stormwater Management – Positive Covenant(s).** A Positive Covenant must be created on the property title(s) pursuant to the relevant section of the Conveyancing Act (1919), providing for the ongoing maintenance of the onsite detention components incorporated in the approved Stormwater Management system. This is to ensure that the drainage system will be maintained and operate as approved throughout the life of the development, by the owner of the site(s). The terms of the instrument are to be in accordance with the Council's terms for these systems as specified in City of Ryde DCP 2014 - Part 8.4 (Title Encumbrances) - Section 7, and to the satisfaction of Council, and are to be registered on the title prior to the release of the Occupation Certificate for that title. Note that completed WAE plans as well as certification of the completed stormwater management system must be provided with the application, prior to it being endorsed by Council.
99. **Engineering Compliance Certificates.** To ensure that all engineering facets of the development have been designed and constructed to the appropriate standards, Compliance Certificates must be obtained for the following items and are to be submitted to the Accredited Certifier prior to the release of any Occupation Certificate. All certification must be issued by a qualified and practising civil engineer having experience in the area respective of the certification unless stated otherwise.

**ITEM 3 (continued)**

**ATTACHMENT 1**

- a) Confirming that all components of the parking areas contained inside the site comply with the relevant components of AS 2890 and Council's DCP 2014 Part 9.3 (Parking Controls).
- b) Confirming that the Stormwater Management system (including any constructed ancillary components such as onsite detention) servicing the development complies with Council's DCP 2014 Part 8.2 (Stormwater and Floodplain Management) and associated annexures, and has been constructed to function in accordance with all conditions of this consent relating to the discharge of stormwater from the site.
- c) Confirming that after completion of all construction work and landscaping, all areas adjacent the site, the site drainage system (including any on-site detention system), and the trunk drainage system immediately downstream of the subject site (next pit), have been cleaned of all sand, silt, old formwork, and other debris.
- d) Confirming that erosion and sediment control measures were implemented during the course of construction and were in accordance with the manual "*Managing Urban Stormwater: Soils and Construction*" by the NSW Department – Office of Environment and Heritage and Council's DCP 2014 Part 8.1 (Construction Activities).
- e) Compliance certificate from Council confirming that all external works in the public road reserve have been completed to Council's satisfaction.

100. **On-Site Stormwater Detention System - Marker Plate.** To ensure the constructed On-site detention will not be modified, a marker plate is to be fixed to each on-site detention system constructed on the site. The plate construction, wordings and installation shall be in accordance with Council's DCP 2014 Part 8.2 (Stormwater and Floodplain Management) and associated annexures. The plate may be purchased from Council's Customer Service Centre at Ryde Civic Centre (Devlin Street, Ryde).

**OPERATIONAL CONDITIONS**

The conditions in this Part of the consent relate to the on-going operation of the development and shall be complied with at all times.

101. The maximum number of children permitted in the child care centre is forty-six (46).
102. **Hours of operation.** The hours of operation are to be restricted to:
  - (a) The hours of operation of the child care centre are restricted to 7:00am to 6:00pm Monday to Friday.
  - (b) The child care centre is not permitted to operate on, Saturdays, Sundays or Public Holidays.



**ITEM 3 (continued)**

**ATTACHMENT 1**

103. Warning signs informing motorists to be aware of pedestrians / children are to be installed in the vicinity of the child care centre parking spaces.
104. The outdoor play area must be fenced at all times. Any entry or exit proposed along the fence around these areas must incorporate child proof gates.
105. Any noise generated from air conditioning units is not to impact on the children at the child care centre.
106. The main entry door providing access to the internal areas of the child care centre shall be clearly marked to avoid confusion for the patrons visiting.
107. The child care centre is to comply with the licensing requirements of the NSW Department of Community Services (i.e. Education & Care Services National Regulation and Children (Education and Care Services) Supplementary Provisions Regulation 2012).
108. A total of ten (10) car parking spaces must be allocated on the site (as shown on the approved plan) for exclusive use by the child care centre. Four (4) spaces are to be allocated for staff parking and six (6) spaces are to be allocated for the drop off / pick up of children.

Note: One (1) delivery space is to be provided in addition to these ten (10) car parking spaces.

109. The designated staff parking spaces must be sign posted for exclusive use by the child care centre staff.
110. **Waste storage/disposal – hours of collection.** Waste and recyclable material generated by these premises must not be collected between the hours of 9pm and 8am on any day.
111. **Waste storage/disposal – method.** All wastes generated on the premises must be stored and disposed of in an environmentally acceptable manner.
112. **Waste storage/disposal – containers.** An adequate number of suitable waste containers must be kept on the premises for the storage of garbage and trade waste.
113. **Waste storage/disposal – recycling.** Wastes for recycling should be the stored in separate bins or containers and transported to a facility where the wastes will be recycled or re-used.
114. **Delivery times.** All deliveries to and from the child care centre are not to occur between the hours of 7pm and 9am on any day.

**ITEM 3 (continued)**

**ATTACHMENT 1**

115. **Loading area.** The delivery bay is to be used for the loading and unloading of goods, materials etc. only and no other purpose.
116. **Delivery and loading/unloading – location.** All loading and unloading in relation to the use of the premises shall take place wholly within the property.
117. **Noise and Vibration.** A validation report must be obtained from a suitably qualified and experienced consultant in acoustics three (3) months after the business commences trading and from time to time as reasonably requested by Council. The report should demonstrate and certify that noise and vibration intrusion within the development and from the development to adjoining sensitives receivers satisfies the relevant provisions of the Protection of the Environment Operations Act 1997, NSW Office of Environment & Heritage / Environment Protection Authority Noise Control Manual & Industrial Noise Policy, NSW Department of Environment and Conservation's Assessing Vibration: a technical guideline 2006 and conditions of Council's development consent.

The report is to be forwarded to and approved by Council. This report must address (but not be limited to) the level of noise intrusion from road traffic noise within the building and the accumulation effect of mechanical plant and equipment and noise generated from all children in the outdoor play area on adjoining residential properties. Any recommendations outlined in the acoustic report are to be implemented in accordance with the report.

118. **Signage – English language.** All advertising signs are to be displayed in the English language but may include a translation into another language using letters or characters that are no larger than the English language letters or characters.

Any translated message must be accurate and complete.

No amendment to the size of a sign will be permitted to allow for both the English and translated language to be displayed.

119. Illumination of any sign on the site is prohibited.
120. No approval is granted in this consent for general or third party advertising which is prohibited.
121. The balcony on the ground floor plan is not to be used by any children as a designated outdoor play area.

**ITEM 3 (continued)**

**ATTACHMENT 1**

Conditions imposed by Environmental Health Officer:

122. **Offensive noise** - The use of the premises must not cause the emission of 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997*.
123. **Noise and vibration from plant or equipment** - Unless otherwise provided in this Consent, the operation of any plant or equipment installed on the premises must not cause:
- (a) The emission of noise that exceeds the background noise level by more than 5dBA when measured at, or computed for, the most affected point, on or within the boundary of the most affected receiver. Modifying factor corrections must be applied for tonal, impulsive, low frequency or intermittent noise in accordance with the *New South Wales Industrial Noise Policy* (EPA, 2000).
  - (b) An internal noise level in any adjoining occupancy that exceeds the recommended design sound levels specified in Australian/New Zealand Standard AS/NZS 2107:2000 *Acoustics – Recommended design sound levels and reverberation times for building interiors*.
  - (c) The transmission of vibration to any place of different occupancy.
124. **Noise Limits** - The noise level emitted from the premises generally must not exceed the background noise level by more than 5dBA. As a minimum, all the noise control recommendations nominated in the report by *Noise and Sound Services, Report No. nss 22220-Drft C, April 2015* submitted with the development application must be implemented. The outdoor air conditioner condenser units are not to exceed a noise emission level (LAeq 15 minute) of 45dBA at the nearest residential boundary.
125. **Outdoor Areas** - No music, musical instruments or amplified sound equipment can be used in outdoor areas, including balconies.
126. **Waste Containers** - An adequate number of suitable waste containers must be provided on the premises for the storage of all wastes generated on the premises between collections.
127. **Maintenance of waste storage areas** - All wastes generated on the premises must be stored and disposed of in an environmentally acceptable manner.
128. **Nappy Wastes** - Suitable specialist contractors must be employed for the collection and disposal or processing of soiled nappies and associated articles.

**ITEM 3 (continued)**

**ATTACHMENT 1**

**Registration and Notification Requirements:**

129. **Notification to the NSW Food Authority** - The operator must notify their business details to the NSW Food Authority before trading commences. Notifications may be lodged on-line at [www.foodnotify.nsw.gov.au](http://www.foodnotify.nsw.gov.au).
130. **Registration with Council** - The operator of the business must register the premises with Council's Environmental Health Unit before trading commences. Registration forms may be obtained from Council's Customer Service Centre on Tel. 9952 8222.

**ADVISORY NOTES**

**Health Inspection Services:**

1. **Inspections and fees** - Council officers may carry out periodic inspections of the premises to ensure compliance with relevant environmental health standards and Council may charge an approved fee for this service in accordance with Section 608 of the *Local Government Act 1993*.  
The approved fees are contained in Council's Management Plan and may be viewed or downloaded at [www.ryde.nsw.gov.au](http://www.ryde.nsw.gov.au).

**ITEM 3 (continued)**

**ATTACHMENT 2**

**PART 3.2 CHILD CARE CENTRES COMPLIANCE CHECK**

<b>Requirements</b>	<b>Proposed</b>	<b>Compliance</b>
<b>SUBMISSION REQUIREMENTS</b>		
Designed by an architect	ARTIVA Architects.	Y
Signed undertaking that proposal complies with Education & Care Services Regulation (DoCS)	Declaration not submitted.	No (addressed via condition)
Traffic Impact Assessment, Road Safety Audit, Acoustic Report/ Noise Impact Assessment, Contamination Report etc as per Clause 1.10.	All required documentation received for assessment.	Y
<b>SITE, LOCATION &amp; SITE SELECTION</b>		
Min. lot <b>width</b> = 20m, corner lot 17m	Width at frontage = 20.115m	Y
Min site <b>area</b> = 800m <sup>2</sup> (single use)	1,012m <sup>2</sup>	Y
Not recommended on Arterial, sub-arterial Rd or busy intersection. Mixed use CCC to face distance away from arterial/ <b>busy roads</b> .	Site is located on Denistone Rd which is not identified as an arterial or sub-arterial. Acoustic report reviewed.	Y
Site not to be <b>battle axe</b> shaped	Regular allotment with low density residential use.	Y
<b>Cul-de-sacs</b> not preferred (if located - see special requirements)	N/A	N/A
Not near <b>brothel</b>	No known brothel nearby.	Y
Site to be flat, gently sloping, well drained and easily accessible	Accessible with carpark area flat – 5m slope towards rear. Outdoor play space will be relatively flat.	Y
<b>Aspect</b> to maximise solar access	Single storey villa development situated on property adjoining site to the north. Appropriate level of solar access can be gained to the outdoor play areas. Shade sails and planting incorporated in the proposed design.	Y
Site not be affected by <b>overshadowing</b>	North is situated along the longest side boundary with minimal overshadowing occurring to the outdoor play area.	Y

**ITEM 3 (continued)**

**ATTACHMENT 2**

<b>Requirements</b>	<b>Proposed</b>	<b>Compliance</b>
Site should not be subject to <b>overlooking</b>	2.4m & 2.6m boundary fencing. Balcony element reduced to 8m <sup>2</sup> and will only be used as access to ground level outdoor play space.	Y
<b>Large scale centres</b> (50 - 90 places) in residential areas to be on corner lots & not share common boundaries with more than 3 residential properties.	CCC will have 46 places.	Y
<b>Work based</b> CCC to preferably be adjacent to non-commercial/ non-residential components of uses to protect privacy/ amenity of workers/ centre and residents	CCC is located within a low density residential area with Ryde Hospital opposite. Residential housing adjoining site. Balcony reduced to 8m <sup>2</sup> and is not used as outdoor play space. 1.5m sill height on side windows to deter overlooking.	Y
Not on land affected by <b>overland flow</b> (See Flood Study requirement Cl. 2.1.2)	Site is not affected by overland flooding.	Y
Not on <b>Bushfire</b> prone land (Integrated development)	Site is not identified as bushfire prone land.	Y
Not affected by environmental hazard such as <b>contaminated land</b> , vehicle fumes, asbestos, and electromagnetic fields etc.	Site is not affected by contamination and has in the past been used for residential purposes only. EHO has not raised any concerns.	Y
If within 125m of arterial roads, <b>toxicity levels</b> of air and soil to be tested.	<p>Air quality impact assessment provided as site is 52m from Blaxland Rd. The assessment concludes that 'potential air quality impacts' in this report indicate that the proposed site at 58 Denistone Rd is a satisfactory location for a child care centre.</p> <p>Soil testing undertaken deeming land contamination to be present as 'low' and that 'the site is considered suitable (from a land contamination perspective) for the proposed child care redevelopment.'</p>	Y

**ITEM 3 (continued)**

**ATTACHMENT 2**

<b>Requirements</b>	<b>Proposed</b>	<b>Compliance</b>
Must comply with SEPP 55 – Site Contamination	Contamination is not an issue. Previous and existing use is low density residential. No history of contamination on the site.	Y
<b>Number</b> of child care places, <b>age group</b> and number and role of <b>staff</b> to be identified.	46 places & 7 staff (exc. director) <u>Groups:</u> 0-2years: 8 children (2 staff) 2-3years: 8 children (1 staff) 3-6 years: 30 children (4 staff)	Y
<b>Justification</b> of proposed number of children in each age group (refer DCP).	Based on current demand.	Y
Detailed <b>site analysis</b> to be carried out (see DCP for details of what required)	Site analysis has been carried out.	Y
<b>DESIGN &amp; CHARACTER</b>		
<b>All Child Care Centres</b>		
Must comply with CPTED (Safer by Design)	Proposed in residential dwelling with sufficient security & safety. The proposal is satisfactory in relation to Safer by Design principles.	Y
Avoid proximity to UV reflecting surfaces	No large span of reflective surface nearby.	Y
Comply with Energy Efficiency and sustainability requirement – Part 7.1 of DCP	Proposal will ensure water and hot water systems are energy efficient.	Y
Incorporate energy efficient appliances	Proposal has potential for incorporate energy efficient appliances.	Y
Building to be consistent with desired future character of the area	Building contemporary and Council's Heritage Officer is accepting of design.	Y
Frontages and entries to be readily apparent from street	Readily apparent.	Y
SEE demonstrate how proposed design responds to site analysis	Details submitted are satisfactory.	Y
If fill, only clean filled to be brought on site	No fill brought on the site.	Y
<b>Detached Centres and Centres in Residential Areas</b>		
Designed to appear domestic in scale and character and shall have a bulk, height, scale and appearance which is compatible with the existing surrounding development.	Design appears domestic in scale with minimal change to style of building façade (exc. parking).	Y

**ITEM 3 (continued)**

**ATTACHMENT 2**

<b>Requirements</b>	<b>Proposed</b>	<b>Compliance</b>
Existing streetscape and character of the locality should be maintained as much as possible through the use of appropriate building materials, finishes, landscaping, fencing and plantings	Acceptable change to front façade of existing dwelling which will retain a single storey appearance. Surfacing of front yard to occur to accommodate 11 spaces however, this is balanced as best as possible with landscaping provided along front boundary.	Y
CCC are encouraged to be single storey in height.	2 storey with attic.	No (variation supported)
Complies with 3.3 Dwelling Houses & Dual Occ. of DCP in terms of FSR, height, setbacks	FSR: 0.441:1 Height: 9.5m Front setback: 22.2m (6m required) Rear setback: 12.97m (12.57m required) Northern side setback: 3.5m Southern side setback: 3m	Y
Bulk and scale of building form to be compatible with existing and expected future desirable character and context.	Bulk and scale of CCC is compatible with existing and future desirable character of Denistone Rd.	Y
<b>Fence Design</b>		
Appropriate materials & finishes to be used to complement the streetscape	2.4-2.6m high noise barrier will be installed around the perimeter of the outdoor play area. 1.8m high boundary fencing with perspex 600-800mm high screen on top to minimise noise to adjoining properties.	Y
Outdoor play area must be fenced on all sides	Will be fenced as per landscape plan.	Y
Child proof locks to be used on gates	Child proof locks to be used on gates – will be a condition of consent should DA be approved.	Y (condition)
Raised undercroft areas eg. stairs to be enclosed	No raised undercroft area proposed.	Y
Safety provision to prevent access to other parts of building	Well considered, other parts not accessible without supervision.	Y
Ensure adequate sight lines for vehicles	Sightlines not achieved.	Y



**ITEM 3 (continued)**

**ATTACHMENT 2**

<b>Requirements</b>	<b>Proposed</b>	<b>Compliance</b>
<b>PRIVACY</b>		
<b>Privacy - Acoustic</b>		
Locate sleep rooms & play areas away from noise source eg. heavy traffic road.	Cot rooms located in centre of building. Appropriate distance from noise sources. Complies with the requirements.	Y
Internal noise level to meet AS2107 (eg sleep areas 30dBA, internal activity areas 40dBA)	Can comply as per EHO assessment.	Y
Noise impact on adj. property to be minimised through design measures: <ul style="list-style-type: none"> <li>• Orient play areas etc away from living areas, bedrooms of affected property.</li> <li>• Use laminate or double glaze, sound proof.</li> <li>• Design fence to minimise noise transmission- lapped timber etc</li> <li>• Sound insulated roof &amp; walls</li> <li>• Other measures.</li> </ul>	As the site adjoins residential properties either side and to the rear boundary, there is a potential for noise impacts to arise. The submitted noise report recommends various noise measures to be imposed as conditions of consent.	Y
An acoustic report may be required indicating noise levels and attenuation measures	Acoustic Report was required for this proposal given the proximity to residential properties. This report regards the noise impact to be satisfactory.	Y
Elevated play & transition areas to be avoided.	Rear balcony initially proposed has been removed to ensure all play areas and transition areas are provided at ground level.	Y
Details regarding group management in the outdoor play area and time spent, group sizes, rotation, staff numbers etc to be provided.	Details on group routine have been provided although light on detail. Condition imposed for plan of management to be updated.	Y
<b>Privacy – Visual</b>		
Direct overlooking of indoor amenities & outdoor play areas from public spaces to be avoided.	Views to indoor and outdoor play areas will be minimal as a car park will be located in front of the CCC providing separation between the indoor play areas and public areas. Outdoor play areas will be confined to the rear of the CCC	Y

**ITEM 3 (continued)**

**ATTACHMENT 2**

Requirements	Proposed	Compliance
	with a 2.4m high fence recommended in the noise report to be erected around its perimeter. Overlooking potential has been minimised from adjoining properties and will not occur from streetscape.	
Windows & doors located to maximise security of children & minimise loss of privacy of adjoining residents.	Security maximised – entrance located next to staff office and kitchen. Windows on side elevations have a sill height of 1.5m at the ground level to ensure overlooking to adjoining properties is deterred.	Y
<b>CAR PARKING, TRAFFIC &amp; ACCESS</b>		
<b>Car Parking - All Child Cares</b>		
Parking to comply with AS2890.1 & AS2890.2	Council's Senior Traffic Engineer is satisfied parking complies with AS2890.1 & AS2890.2.	Y
Provide parking at a rate of 1 per 8 children and 1 space per 2 staff (stack parking staff only)	46 children (= 5.75 spaces req'd) 6 drop off / pick up spaces proposed. 7 staff (= 4 spaces req'd) 4 spaces allocated for staff.	Y
One disabled parking 3.6m wide to be provided – height clearance of 2.5m	1 disabled parking space has been provided – 2.4m wide with a 2.4m wide shared space adjacent. No structure overhead to restrict height clearance.	Y
New centres to comply with access requirements as per Part 9.2 Access of DCP 2006	The building was designed to be accessible. The child care centre will be fully accessible.	Y
<b>Car parking– Work based/mixed use centres</b>		
Drop off pick up areas provided in close proximity (max of 30m) to the main entrance preferably same floor level to assist with accessibility & safety.	The proposed drop off area is within 30m of the entrance to the child care centre. Despite this, development is not within a mixed use centre.	Y

**ITEM 3 (continued)**

**ATTACHMENT 2**

<b>Requirements</b>	<b>Proposed</b>	<b>Compliance</b>
Drop off/pick up areas to be exclusively available for use in conjunction with the Child Care Centre throughout the opening hours of the centre.	Site will only be developed for a CCC – public will not be allowed to park on the site.	Y
Driveway access, manoeuvring areas and parking are not to be shared with access, parking, manoeuvring areas used by other uses or truck movements.	Site will only be developed for a CCC – driveway access, manoeuvring areas and parking will not be shared.	Y
<b>Manoeuvrability</b>		
Provide min. of 12m between driveway laybacks	12.2m distance between driveway laybacks.	Y
Variations to 'U' shape design can be approved following criteria met: <ul style="list-style-type: none"> <li>• Separate entry/exit at safe distance</li> <li>• Vehicles leave in a forward direction</li> <li>• Use does not endanger people/ vehicle</li> <li>• Front setback is not given over to traffic circulation and parking requirement &amp; compromises landscaping &amp; streetscape.</li> </ul>	U-shaped design proposed.	Y
Separate entry and exit driveway at minimum safe distance.	Separate entry and exit driveway provided a safe distance. Driveway distances discussed with Council's Senior Traffic Engineer.	Y
Vehicles to leave the site in forward gear	Will leave site in forward direction.	Y
Vehicles must not encroach on pedestrian accessways. Use eg bollards	Does not encroach on pedestrian access way. Separate path provided from street to entry.	Y
Driveway use variation in pavement to distinguish car parking & driveways and reduce visual impact.	Variation in driveway not specified – condition can be imposed to ensure difference in materials is provided.	Y
<b>Traffic &amp; Pedestrian Safety</b>		
Pick up/drop off as separate area to that used for manoeuvring.	Separation provided.	Y
Provide information on the impact of traffic on the local streets – Traffic Impact Assessment	Traffic & Parking Report provided.	Y

**ITEM 3 (continued)**

**ATTACHMENT 2**

<b>Requirements</b>	<b>Proposed</b>	<b>Compliance</b>
Road Safety Audit may be required if development along major roads. See DCP	Audit not required as CCC is not proposed along a Collector Rd.	Y
Pedestrian access segregated from vehicular access – paths clearly defined	Separate pedestrian access provided from street to entry.	Y
<b>Accessibility</b>		
New Development must comply with: <ul style="list-style-type: none"> <li>AS 1428.1 Design for Access &amp; Mobility.</li> <li>BCA Part D</li> <li>Part 9.2 of DCP</li> </ul>	Development can comply with the requirements - condition can be imposed.	Y
Minor Alterations – accessibility is not to be made worse	New CCC.	Y
Other matters to be considered are: <ul style="list-style-type: none"> <li>Continuous path of travel from street/ parking area to rooms/ play area</li> <li>Hard paved surfaces leading into the entry of a play environment and continuing inside</li> <li>Parking areas to incorporate kerb cuts to eliminate barriers for prams or individuals using mobility aid</li> <li>Pathways 1200-1500mm wide &amp; grades no steeper than 1:14</li> </ul>	Continuous path of travel provided.  Transition area provided where hard paved surfaces are provided.  Details not shown however kerb cuts can be achieved – via a condition of consent. Pathway 1.065m in width.	Y  Y  Y  No (variation not supported)
<b>LANDSCAPING &amp; PLAY SPACES</b>		
<b>General Landscaping Requirements</b>		
Landscaping plan to be submitted (prepared by qualified landscape architect). Show existing & proposed planting, including a schedule of species. The plan must: <ul style="list-style-type: none"> <li>Show any significant trees on site</li> <li>Avoid plants which may be poisonous or a hazard to children/ babies/ toddlers</li> <li>Consider the compaction &amp; erosion of soil</li> <li>Consider potential of tree roots to up lift outdoor surface eg footpath</li> <li>Identify opportunities for deep soil planting and appropriate species</li> <li>Include shrubs &amp; trees which offer</li> </ul>	Landscaping and the outdoor play area is considered satisfactory as it is in accordance with the specific requirements under the DCP: <ul style="list-style-type: none"> <li>Trees to be removed are supported. Replacement species are all considered appropriate by Council's Consultant Landscape Architect.</li> <li>Covered area under ground floor level within outdoor play area to offer an area for children</li> </ul>	Y

**ITEM 3 (continued)**

**ATTACHMENT 2**

<b>Requirements</b>	<b>Proposed</b>	<b>Compliance</b>
range of textures, colours etc	with adequate shade. <ul style="list-style-type: none"> <li>• Sand pits have been proposed.</li> <li>• Artificial grass &amp; soft landscaping.</li> <li>• Various plant species to be planted.</li> </ul>	
Irrigation – use rainwater or recycled water	6 water spouts proposed in rear yard for play. For gardening purposes, a condition can be included to ensure appropriate irrigation on the site.	Y
Landscape buffer of min 1m to be provided along side and rear boundaries for Res zones	1m buffer provided along side and rear boundaries.	Y
Landscaping setback of min. 2m to be provided along front boundary of all new child care centres in Res zones	2m landscaping setback provided.	Y
<b>Play Spaces - Size and Functionality</b>		
Outdoor play area in the front yard should be avoided.	Outdoor play area at the rear only.	Y
Play areas to be of regular shape rather than segmented and provide opportunities for easy supervision by staff.	Supervision by staff achievable.	Y
Provide unencumbered <b>indoor play</b> area at a rate of 4.5m <sup>2</sup> per licenced child care place, exclusive of transitional areas.	213m <sup>2</sup> or 4.63m <sup>2</sup> per child. 0-2 yrs play room 1: 4.88m <sup>2</sup> per child 3-6 yrs play room 2: 4.37m <sup>2</sup> per child 2-3 yrs play room 3: 5.026m <sup>2</sup> per child 3-6 yrs play room 4: 4.45m <sup>2</sup> per child	Y
Indoor spaces designed to achieve passive surveillance from all rooms	Design is satisfactory. Sleep rooms located for easily access and surveillance.	Y
<b>Outdoor Play Spaces -</b>		
<b>All child care centres</b>		
Provide unencumbered <b>Outdoor play</b> area at rate of 10m <sup>2</sup> per child care place inclusive of transition areas. <b>Note:</b> This can be varied to DoCs	Total area provided: 371m <sup>2</sup> equates to 8.08m <sup>2</sup> per child. Short by 88.12m <sup>2</sup> or 1.92m <sup>2</sup> per child.	No (variation supported)

**ITEM 3 (continued)**

**ATTACHMENT 2**

Requirements	Proposed	Compliance
requirement – refer to DCP	<u>NOTE:</u> Education & Care Services National Regulation require 7m <sup>2</sup> per child.	
Shape of space to maximise supervision and usability of space	Adequate levels supervision can be achieved.	Y
Must be well drained	Well drained and connected to drainage system.	Y
Design of outdoor play area to aim for: <ul style="list-style-type: none"> <li>• 30% natural planting with 30% turfed area</li> <li>• 40% hard surfaces (sand, timber, pav)</li> </ul>	35.69m <sup>2</sup> natural planting around perimeter of outdoor play space (representative of 8.75% of the outdoor play space's area) 90.9m <sup>2</sup> or 24.4% artificial turf interspersed with sandpits, sandstone stepping stones, bike tracks and timber inlays comprising remaining outdoor play area surfacing. On balanced look at design of outdoor play area, provision is satisfied.	Y
Distinct areas in outdoor play area to include: <ul style="list-style-type: none"> <li>• An open grassed area for gross motor skills (run, games etc)</li> <li>• Formal quiet areas, for focussed play – with sandpit)</li> <li>• An active area (eg. Climbing, digging)</li> <li>• A transition area</li> <li>• Storage area</li> </ul> Note: See DCP for details	Play area is satisfactory in that it provides: <ul style="list-style-type: none"> <li>• 24.4% open artificial turfed area for GMS.</li> <li>• Quiet areas such as sand pits, vegetable garden, seats, bike tracks etc.</li> <li>• A transition area has been provided under ground floor level.</li> </ul> Outdoor play area contains 2 storage rooms.	Y
Include suitable species to achieve canopy cover of 50-60% of outdoor play area within 5 years of planting	Plant species will provide canopy with shade sails also provided over sandpit area.	Y
Outdoor play area must be adequately shaded from establishment as per <i>Shade for child Care Services</i> (NSW Cancer Council).	Adequate shading provided.	Y

**ITEM 3 (continued)**

**ATTACHMENT 2**

<b>Requirements</b>	<b>Proposed</b>	<b>Compliance</b>
Outdoor play space should relate directly to the Indoor play space for relevant age groups. Separate play areas are encouraged for 0-2 year olds.	Spaces connected and relates to indoor play space. Separate area for 0-2 years.	Y
Appropriate access to be provided to the outdoor play area for maintenance.	Access provided.	Y
Vehicles not to be parked in the outdoor play areas	No vehicular access/parking provided in the play area.	Y
<b>Work based / in mixed use child care</b>		
If outdoor space external above ground level: <ul style="list-style-type: none"> <li>• Ensure outdoor space of similar quality to that achievable at ground floor level and complies with Clause 6.2.2</li> <li>• Implement measures to protect from natural elements for year-round use</li> <li>• Fencing to be provided for safety and prevent objects being thrown over.</li> </ul>	1.8m high fencing proposed with additional height of 600-800mm as per recommendations within noise report to minimise disturbance of residents in surrounding properties. Adequate measures enforced offering protection from natural elements.	Y
Storage be provided to 0.5m <sup>2</sup> of space per child and not impede supervision of play areas.	Proposal is not work based/in mixed use.	NA
<b>Transition Areas</b>		
Transition area to be located between indoor and outdoor areas	Transition area connects each play room to the outdoor area	Y
Designed to allow indoor & outdoor activities to be conducted under cover	Transition area covered	Y
Designed to offer protection from unfavourable weather conditions	71.67m <sup>2</sup> transition area under ground level floor provided to offer protection from poor weather.	Y
Can incorporate facilities for educational experiences & storage areas	These are provided outdoors.	Y
<b>Swimming Pools and Water Hazards</b>		
New swimming pools are not permitted on premises of any child care centre	No pool proposed	N/A
Existing pool must be fenced as per Swimming Pools Act 1992	No pools exist on site	N/A
Pool filters must be housed so are inaccessible by children	N/A	N/A

**ITEM 3 (continued)**

**ATTACHMENT 2**

<b>Requirements</b>	<b>Proposed</b>	<b>Compliance</b>
<b>GENERAL CONTROLS</b>		
<b>Centre Facilities</b>		
Provide rooms for administration/office and staff respite	Provided.	Y
Locate office adjacent to entry area (security)	Located adjacent to entry.	Y
Staff room to include min 20m <sup>2</sup> floor space	30m <sup>2</sup>	Y
If children below under 2 year are to be cared for then these be provided: <ul style="list-style-type: none"> <li>• a sleeping room with 2.5m<sup>2</sup> of floorspace per cot and maximum of 10 cots per room</li> <li>• a nappy change area adj. to the cot room to be provided</li> </ul>	1 cot room (8 children < 2yrs): Room 8m <sup>2</sup> (4 cots) =2m <sup>2</sup> per cot.  Provided.	No (variation supported)  Y
Provide laundry facilities	Situated on lower ground level.	Y
Provide pram storage area	Not provided.	No (variation not condition)
<b>Signage</b>		
Must comply with Part 9.1 of DCP	Business identification sign proposed compliant with Part 9.1.	Yes
<b>Exterior Lighting</b>		
Provide lighting at main entrance and within the site as necessary Spot light is discouraged	Details not provided – condition can be provided.	Y
Street number to be clearly visible	Details not provided - condition can be imposed.	Y
<b>Waste Storage and Management</b>		
Waste Management Plan to be submitted and must comply with Part 7.2 of DCP	Detailed Waste Management Plan provided.	Y
Adequate provision be made for storage & collection of waste and recycling receptacle	EHO recommended various conditions to address this issue.	Y
In addition the following to be addressed: <ul style="list-style-type: none"> <li>• special removal service</li> <li>• frequency of removal of waste</li> <li>• opportunities for reuse and recycling</li> <li>• location, size and capacity of bins and ease of removal</li> <li>• Avoid access by children</li> </ul>	Private waste collector to be engaged when waste bins begin to exceed Council's waste bins once operation commences. Staff to monitor collection	Y



**ITEM 3 (continued)**

**ATTACHMENT 2**

Requirements	Proposed	Compliance
<ul style="list-style-type: none"> <li>Requirements for waste from kitchen facilities</li> <li>Impact of waste storage and collection on adjoining residential developments in terms of unsightliness, odour and noise.</li> </ul>	frequency. EHO has recommended conditions relating to waste storage to ensure compliance. Not accessible by children.	
New child care centres being built must incorporate waste storage area designed to be visually and physically integrated with the development and not stored within the front setback.	Consolidated waste storage area to be constructed in accordance with EHO conditions.	Y
Waste facilities are not to be sited within the areas required for car parking, driveway, access or landscaping areas.	Will not affect the car parking or the landscaping areas.	Y
Waste storage area not to be visible from street – elements such as fencing, landscaping & roof treatment can be added for aesthetic improvement	Timber screen provided to western side of bin storage area to restrict visibility from street. EHO has recommended conditions to ensure waste storage area is constructed appropriately and to Council's standards.	Y
If food preparation on site, designate waste storage area with cover – subject to Sydney Water Requirement.	Sydney water requirements to be met – via a condition should DA be approved.	Y
Any composting area must not impact on amenity of adjoining properties	No composting area proposed.	N/A
<b>Emergency Evacuation</b>		
A 'Fire Safety and Evacuation Plan' complying with AS3745 is to be submitted to PCA prior to Occupation Certificate: <ul style="list-style-type: none"> <li>Address mobility of children during evacuation</li> <li>Safe congregation area</li> <li>Procedure and supervision of children during evacuation.</li> </ul>	Condition can be imposed to ensure Fire Safety and Evacuation Plan is submitted prior to Occ. Cert. should approval be granted.	Y

**ITEM 3 (continued)**

**ATTACHMENT 3**

**PART 9.1 SIGNAGE COMPLIANCE CHECK**

DCP 2010	Proposed	Compliance
<b>Part 9.1 Signage</b>		
<b>2.1 Signage Content</b>		
<ul style="list-style-type: none"> <li>- A sign must be either:               <ul style="list-style-type: none"> <li>i) A business identification sign or a building identification sign as defined in RLEP 2010;</li> <li>ii) A directional sign that is a sign which directs persons to development on the land to which it is displayed.</li> </ul> </li> </ul>	Business identification signage is proposed.	Y
<b>2.2 Language</b>		
<ul style="list-style-type: none"> <li>- All advertising signs are to be displayed in the English language but may include a translation into another language using letters or characters that are no larger than the English language letters or characters.</li> <li>- Any translated message must be accurate and complete.</li> </ul>	<p>All language will be the English language.</p> <p>No translation required. Signage will be in English.</p>	<p>Y</p> <p>Y</p>
<b>2.3 Number of Signs</b>		
<ul style="list-style-type: none"> <li>- Visual clutter through the proliferation of signage and advertising structures are not permitted.</li> </ul>	Signage is minimal in bulk to ensure consistency with low density residential zone objectives.	Y
<b>2.4 Design, Safety and Maintenance</b>		
<ul style="list-style-type: none"> <li>- All signs must be sympathetic to, and compatible with the architectural style and</li> </ul>	Proposal is compatible with the architectural style and finishes of the proposed child care centre.	Y

**ITEM 3 (continued)**

**ATTACHMENT 3**

<b>DCP 2010</b>	<b>Proposed</b>	<b>Compliance</b>
finishes of the building to which they are attached.		
- Signs are to be unobtrusive in design, colour, height and scale	Signage is unobtrusive in bulk and scale.	Y
- Signs must be attractive and professionally written as well as being simple, clear and efficient.	Signage will be professionally prepared and clearly written and efficient.	Y
- Signs should be located at a height which avoids impact from footpath maintenance vehicles and discourages vandalism.	The sign will be located within garden bed aligning front boundary.	Y
- Council will give due attention to all applications with respect to possible distraction of motorists due to illumination, position, colours, design and proximity to traffic.	Signage will not be near any intersection and will not be illuminated.	Y
- Signs facing roads with high traffic volumes, traffic lights or major intersections may be referred to other relevant authorities.	It is not considered necessary to refer proposal to the RMS.	Y
- Signs must be kept in good and substantial repair and in clean and tidy condition.	Signage will be kept in good condition at all times, with repairs undertaken when necessary.	Y
- Council will not favour signs prone to deterioration in appearance and condition, and may order removal of objectionable or unsightly advertisements.	High quality materials will be incorporated in the sign avoiding the potential for deterioration.	Y

**ITEM 3 (continued)**

**ATTACHMENT 3**

DCP 2010	Proposed	Compliance
<b>3.1 Residential Zones</b>		
- Max. 1 sign per site.	1 x business sign proposed.	Y
- Sign options area: i. business signs ii. real estate signs iii. home occupation signs iv. temporary signs	Business sign proposed.	Y
- Illumination of signs prohibited.	Sign will not be illuminated.	Y
<b>4.0 Definitions and requirements for different types of signage</b>		
<b>Business Sign</b>		
(A sign that provides information about a business, industry or profession on the land where it is displayed. The information may include the use of the land or a building, goods manufactured or offered for sale, services offered and the name of any business or product.)		
- Max. area 0.75m <sup>2</sup>	0.75m <sup>2</sup>	Y
- Max. height and / or width of 1500mm.	Height and / or width do not exceed 1.5m	Y

**ITEM 3 (continued)**

**ATTACHMENT 4**

**Ryde Child Care TIAs Independent Review**  
58 Denistone Road, Denistone 

**Issue History**

File Name	Prepared by	Reviewed by	Issued by	Date	Issued to
P2486.001T Ryde Child Care TIAs Independent Review – 58 Denistone Rd, Denistone	C. Roberts	D. Bitzios	T. Wheatley	17/03/16	Chris Young City of Ryde
P2486.002T Ryde Child Care TIAs Independent Review – 58 Denistone Rd, Denistone	C. Roberts	D. Bitzios	T. Wheatley	01/04/16	Chris Young City of Ryde

**Ryde Child Care TIAs Independent Review – 58 Denistone Road, Denistone**

**1. INTRODUCTION**

Bitzios Consulting has been engaged by the City of Ryde Council to undertake an independent review of the Traffic Report associated with the Development Application at 58 Denistone Rd, Denistone: LDA2015/0209. As indicated by the documents received, the proposal seeks approval for a child care centre with capacity for 46 children with 8 staff within an R2 General Residential zone. The scope of work includes a review of the proposed parking layout.

The following relevant documents were received from City of Ryde Council:

- Chapman Planning Pty. Ltd., “Statement of Environmental Effects: Childcare Centre – 58 Denistone Rd, Denistone”, 29 April 2015;
- Auswide, “Traffic Report: 58 Denistone Rd, Denistone – Proposed Childcare Centre”, March 2015;
- Auswide, “Response to Peer Review by Auswide”, March 2016; and
- Artiva Architects, “Proposed Childcare Centre – 58 Denistone Rd, Denistone” Project No. 1479 Drawings 01 - Issue A. April 2015.

Of these, Auswide’s Traffic Report (in Attachment A) is the main focus of this peer review along with their response in March 2016 (Attachment B).

**2. PEER REVIEW OF AUSWIDE TRAFFIC & PARKING ASSESSMENT**

**2.1 SECTION 2: BACKGROUND AND EXISTING CONDITIONS**

This section correctly described some of the background conditions, but lacked a number of details required to adequately describe the existing conditions; such as:

- there is no description or measurement of the background traffic volumes on Denistone Road;
- there is insufficient description or context provided of the surrounding road hierarchy;
- The “on-road markings identifying it as a cyclist friendly environment” isn’t exactly clear, however, this was interpreted to mean on-road mixed-lane markings. No further description of cycling infrastructure is offered.
- There is no discussion of adjacent intersections beyond a mention of Denistone Road / Blaxland Road.

**2.2 SECTION 3: PUBLIC TRANSPORT ACCESSIBILITY**

We agree with the proponent’s traffic report that the site is well-positioned in relation to public transport. The hospital bus stop ~120m away is serviced by the 515, with the X15 stopping on Blaxland Road ~300m away. Denistone Station serviced by the Northern Line is also ~800m away. Both of these services are within the expected walking distance for their associated mode (400m for bus stops, 800m for rail).

However, Auswide highlights the 544, accessed from the stop on First Avenue. Its closest stops are actually on Lovell Road ~600m away. Both the stops on First Avenue and Lovell Road are well outside the expectation of walking distance for a bus stop of 400m. The 544 shouldn’t be considered a feasible alternative to private vehicles and cannot be expected to substantially increase the public transport amenity to the site.

ITEM 3 (continued)

ATTACHMENT 4

Ryde Child Care TIAs Independent Review  
58 Denistone Road, Denistone

 BITZIOS  
Consulting

*Regardless of inconsistencies within the Auswide report, public transport is not central to the traffic impact. The availability of more sustainable options is well established.*

2.3 SECTION 5: TRAFFIC IMPACTS OF THE PROPOSED CHILDCARE CENTRE

The traffic generation rates used in Auswide's analysis are consistent with the RMS Guide to Traffic Generating Developments (2002), as is the distribution split of 50/50, indicating drop-off behaviour or stay durations shorter than an hour. The total of 23 vehicles (23 movements in, 23 movements out) in the AM peak is considered correct. However, the statement that "these rates can be considered to be conservative", playing down the generated volume and traffic impact bears comment on various grounds.

Firstly, the public transport amenity is good, but not so good as to justifiably caveat the traffic impact and does not seem to take into account the encumbered nature of the user group.

Secondly, Auswide states that the RMS traffic generation rate is conservative, because the high modal split of private vehicle trips (94%) in the data "does not necessarily reflect the surrounding conditions". On the contrary, the Journey to Work 2011 indicates a private vehicle share in the order of 90% indicating that users are most likely to drop their children off by car, at least in the case of working parents. Auswide does not present any justification regarding mode choices in the "surrounding conditions" or suggest a discount to the traffic generation rate. Auswide does not challenge the RMS Traffic Generation Rate strongly enough to diminish the potential traffic impact.

Finally, the assertion that "a significant proportion of patrons are expected to originate from the surrounding neighbourhood, and may opt to drop-off/pick-up their children while walking between homes and public transport" is reasonable, but may be overestimated. Relying on a local-concentration of potential users does not represent a worse case planning approach and no quantifiable reduction in generated vehicle trips is offered, as such the application must be considered using the RMS rate.

Although the 23 generated vehicles per AM peak hour is a small increase, the traffic report does not contain background traffic volumes. The existing movements during the worst-case peak hour are required to contextualise the generated volumes. A 15-minute spot count would have been sufficient to establish the order of existing traffic volumes and whether the local road was at a particular environmental capacity threshold.

2.4 SECTION 6: ON-SITE CAR PARKING

Auswide's assessment of the on-site car parking provision and layout is sufficient. The correct DCP rate is provided for with 10 spaces (4 staff, 6 visitor) and a delivery bay. The geometric guidance for employee spaces (2.4x5.4m) and visitor spaces (2.6x5.4m) is consistent with AS2890.1. We concur with Auswide Traffic that it would be acceptable for employee spaces to be 2.5x5.4m and visitor spaces to be 2.6x5.4m, however this was not shown in the separately - received plans. The driveway width guidance of 3.0m and aisle width of 5.8m are also correct although gradients in these two areas are not assessed.

The reference to The City of Ryde DCP's direction of a 3.6x5.4m accessible space is irrelevant, as AS2890.6 overrules (as Auswide stated). The plans show an acceptable layout for the accessible parking space under the current standards.

3. PARKING PROVISION AND LAYOUT REVIEW

Bitzios Consulting reviewed the parking provision and layout independently and found it to be generally consistent with the DCP and AS2890. However, Bitzios Consulting would like to note:

- the AS2890.1 direction on driveways and aisle widths is for passenger cars, usually catering for a B85. There is no guarantee that a delivery vehicle up to the size of a van will be able to manoeuvre into its delivery bay. The suitability of the current layout should be proven using swept paths on a Small Rigid Vehicle.

**ITEM 3 (continued)**

**ATTACHMENT 4**

Ryde Child Care TIAs Independent Review  
58 Denistone Road, Denistone

**BITZIOS**  
Consulting

- in Artiva's drawing *DA01 Issue A*, staff spaces were shown as 2.6x5.4m which is suitable for high turnover (Type 3) parking under *AS2890.1, Figure 2.2*, while visitor spaces were 2.6m or 2.5m wide. It is preferable for the visitor parking to be provided as 2.6m wide spaces. The layout shown in the Tessa Rose Playspace and Landscape Design drawings for the original DA submission in April 2015 is more appropriate.
- no information on driveway gradient was supplied. As such, its compliance with driveway gradient requirements in *AS2890* cannot be checked.

**4. SUGGESTED REQUEST FOR CLARIFICATION**

The traffic report for this DA as submitted by Auswide was found to be generally satisfactory, with acceptable impacts imposed by the site.

Clarification was however sought on:

- background traffic volumes (a 15-minute spot count during the AM peak on Denistone Road);
- a statement regarding environmental capacity and any amenity-related impacts on Denistone Road;
- a swept path analysis for a Small Rigid Vehicle to access the delivery bay; and
- an assessment/statement of the driveway gradient at the access for compliance with *AS2890.1*.

**5. APPLICANT'S SUPPLEMENTARY TRAFFIC REPORT**

Following the receipt of the above advice, Auswide provided a response to Council on the 30<sup>th</sup> of March 2016. This advice is contained in Attachment B along with revised drawings from Artiva. On our above points for clarification, we note:

- the driveway gradients were proven to be compliant with *AS2890.1*. We also note that the revised drawings have re-arranged the staff and visitor parking to provide easier turnover for visitors and that these spaces have all remained compliant with *AS2890.1* and *2890.6* (where applicable);
- a swept path was conducted for a 5.2m van which demonstrated acceptable access for that vehicle, although the three-point turn on a slight grade change to exit the deliver space is not ideal, we don't believe that this is sufficient grounds for refusal. We also accept that assertion that this is an appropriate design vehicle, rather than a Small Rigid Vehicle;
- in relation to the spot-counts and the environmental amenity impact, given that the applicant's traffic engineer has not agreed to undertake the suggested traffic count, we have reviewed the surrounding traffic conditions in more detail ourselves and determined that the risk of traffic amenity or capacity impacts would be minimal based on the expected site traffic generation and distribution. That is, we maintain that this assessment should have been undertaken by the applicant but can otherwise conclude that the risk of excessive impacts is minimal.

**6. CONCLUSIONS**

We accept that the traffic and parking impacts have been shown to be minimal and that the site layout generally conforms to the Australian Standards.

**ITEM 3 (continued)**

**ATTACHMENT 4**



**BITZIOS**  
CONSULTING

**ATTACHMENT A**

**AUSWIDE TRAFFIC REPORT**



**ITEM 3 (continued)**

**ATTACHMENT 4**



Tel: 02 8004 0460  
www.auswidetraffic.com.au  
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ABN 18 162 361 042

**TRAFFIC REPORT**  
**58 Denistone Road, Denistone**  
*Proposed Childcare Centre*

Prepared for:	Galileo Developments
Date Prepared:	March 2015
Revision:	1.1
Ryde City Council Development Application #:	TBA

**ITEM 3 (continued)**

**ATTACHMENT 4**



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**ITEM 3 (continued)**

**ATTACHMENT 4**



**1. Introduction**

AusWide Traffic Engineers were engaged by Galileo Developments to prepare a Traffic Report for the proposed childcare centre at 58 Denistone Road, Denistone.

The proposal includes the construction of a childcare centre to accommodate 46 children at 58 Denistone Road, Denistone. The proposed childcare centre includes on site car parking, at the frontage of the proposed building, which can accommodate 11 cars (including 1 handicap parking space) and 1 delivery bay.

This report will assess the traffic impacts of this proposed development on the surrounding environment and the compliance of the proposed car parking with the Australian Standards and Ryde Council Development Control Plans (DCP). In the course of preparing this assessment, the subject site and its environment have been inspected, plans of the development examined, and all relevant traffic data collected and analysed.

**2. Background and Existing Conditions**

The subject site is located on Denistone Road, approx. 200m from its intersection from Blaxland Road. At the frontage of the subject site, Denistone Road is a collector road with one lane in each direction with a combination of 2 restricted and unrestricted on-street parking provisions on both sides of the road reserve. Denistone Road includes a 50km/hr speed limit in the vicinity of the subject site, same as that of the surrounding local road network. Denistone Road includes footpath provisions along both sides of the carriageway and it includes on road markings identifying it as a cyclist friendly environment.

The subject site is currently occupied by a single low density dwelling. The land use in proximity to the subject site is predominantly residential, however Ryde Hospital is located directly opposite the proposed development on Denistone Road.

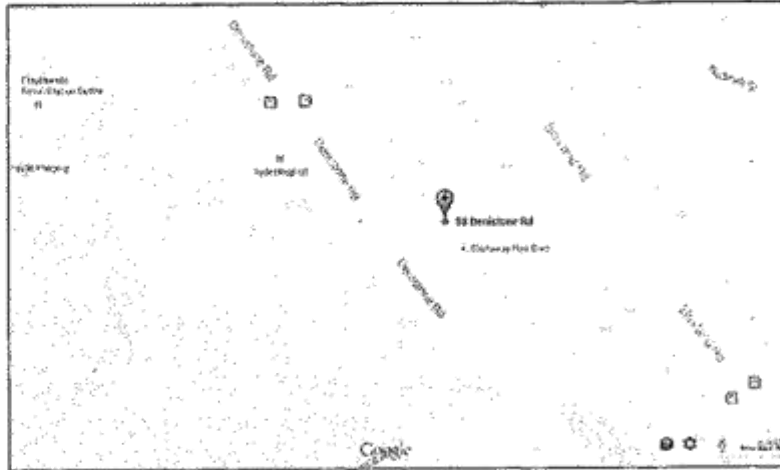
Figure 1 provides an overview of the area and its surrounding land uses in street map perspective.

Figure 2 provides an aerial view of the immediate area surrounding the subject site.

Figure 3 illustrates the Denistone Road as seen from the frontage of the subject site.

**ITEM 3 (continued)**

**ATTACHMENT 4**



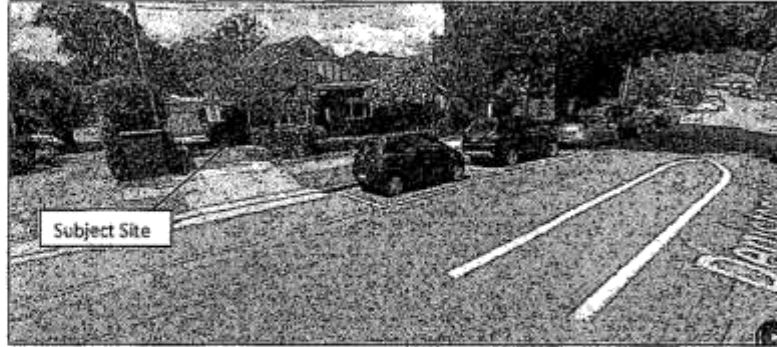
*Figure 1: Location of the subject site*



*Figure 2: Aerial View of the Subject Site*

**ITEM 3 (continued)**

**ATTACHMENT 4**



*Figure 3: Denistone Road at the Frontage of the Subject Site*

**3. Public Transport Accessibility**

The subject site is located in an area that has good access to public transport facilities. The bus service 515 and X15 providing a service between Eastwood and the Sydney CBD via Ryde, Gladesville and Drummoyne and bus service 544 which provides a service between Auburn and Macquarie Centre via Eastwood, Denistone and Macquarie University.

Bus stops for bus service 515 are located on Denistone Road in close proximity to the subject site, while bus stops for the 544 service are located on First Avenue approximately 750m north of the subject site.

Denistone Station is located approximately 800m to the south west of the subject site. The station is located on the Northern Line which provides access to Epping, Strathfield and the Sydney CBD.

Table 1 below, summarises the public transport service details while Figures 4 illustrates, in a map, the bus and services available within the subject area.

ITEM 3 (continued)

ATTACHMENT 4

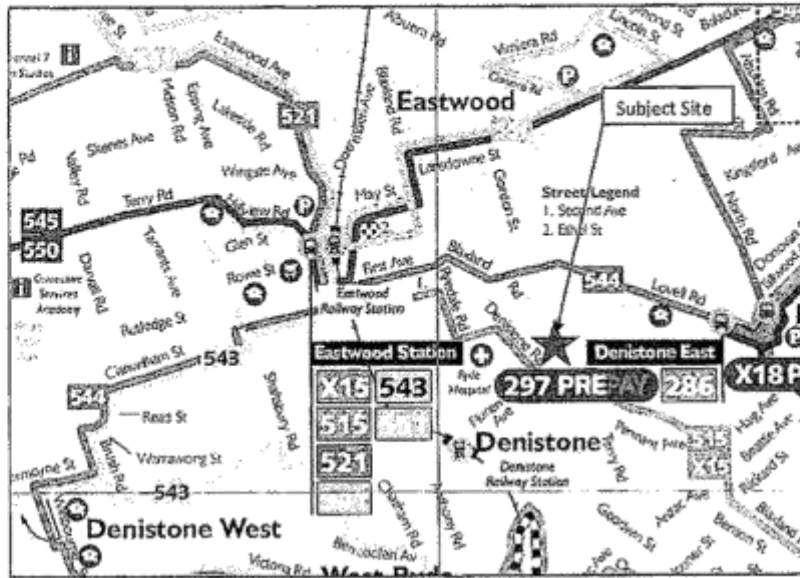


Figure 4: Local Bus Services Table 1: Local Bus Service Details

**ITEM 3 (continued)**

**ATTACHMENT 4**



Service	Origin	Destination	Route Description	Number of Service	
				AM Peak (7-9 am)	PM Peak (4-6 pm)
515	City	Eastwood	Circular Quay to Eastwood Station via Rozelle, Drummoyne, Gladesville and Ryde. Service operates 7 days	4 services	4 services
	Eastwood	City		5 services	4 services
544	Auburn	Macquarie Centre	Auburn to Macquarie Centre via Silverwater, Eastwood, Denistone and Macquarie Uni. Services operate 6 days.	11 services	10 services
	Macquarie Centre	Auburn		9 services	11 services

*Table 1: Local Bus Service Details*

As per the bus service details presented in the table above for the AM and PM peak periods, it is clear that the subject site is serviced by frequent bus services which are also easily accessible from the subject site. Additionally the site is with a convenient walking distance to Denistone Station. Therefore, this site is well located to access public transport services.

**4. Operation of the Proposed Childcare Centre**

The proposed childcare centre will operate from 7:00am to 6:00pm from Monday to Friday.

There will be a maximum of 46 children and 8 staff members (including a director) at the childcare centre at any given time. Of the 46 children the following is noted:

- 8 are proposed to be between ages 0 -2;
- 8 are proposed to be between ages 2-3; and
- 30 are proposed to be between ages 3-6.

ITEM 3 (continued)

ATTACHMENT 4



5. Traffic Impacts of the Proposed Childcare Centre

The proposed development is categorised under "Child Care Centres" in Section 3.11.3 of NSW RTA Guide to Traffic Generating Development (2002). The following table outlines the peak traffic generation rates for a long day child care centre as presented in this document.

Table 2: Trip Generation Rates (RMS 2002)

Centre Type	Peak Vehicle Trips / Child		
	7.00-9.00am	2.30-4.00pm	4.00-6.00pm
Pre-school	1.4	0.8	-
Long-day care	0.8	0.3	0.7
Before/after care	0.5	0.2	0.7

For the purposes of analysis it has been assumed that the children aged 0-3 shall be at the 'pre-school' stage and the children aged between 3-6 shall be at the 'long-day care'. Rates have been proportioned appropriately between 'pre-school' and 'long-day care' and Table 3 outlines the expected trip rate generations of the proposed development.

Table 3: Proposed Trip Generation Rates

Centre Type	No. of Children	Peak Vehicle Trips (Hourly)		
		7:00-9:00am	2:30-4:00pm	4:00-6:00pm
Pre-School	16	22.4	12.8	-
Long-day Care	30	24	9	21
	<b>TOTAL:</b>	<b>46</b>	<b>22</b>	<b>21</b>

From the table above, it can be seen that the most critical period shall likely occur during the weekday morning drop-off period (7am-9am). During this period, it is predicted that the site will generate approximately 46 trips. Given the short term drop-off/pick-up nature of the site, these trips will be split approximately 50/50, with 23 in and 23 out. These volumes shall be marginally offset by the existing trips made to and from the on-site dwelling, however, it can be assumed that the proposal shall generate an additional 23 vehicles during the morning drop-off period. These rates could be seen as conservative, when considering the following:

- The site is ideally situated within a residential neighbourhood with numerous public transport options; as such
- A significant proportion of patrons are expected to originate from the surrounding neighbourhood, and may opt to drop-off/pick-up their children while walking between homes and public transport; and



**ITEM 3 (continued)**

**ATTACHMENT 4**



- The rates used in the RMS record a very high modal split (94%), which does not necessarily reflect the surrounding conditions of the subject site.

Nonetheless, with less than 1 trip every minute during the development peak period, these volumes are unlikely to result in any considerable impacts to the local road network. As such, the proposal has been endorsed in a traffic context.

**ITEM 3 (continued)**

**ATTACHMENT 4**



**6. On-Site Car Parking**

The Part 3.2 (5.1-b) of the Ryde Council DCP (2010) outlines the following parking requirements for childcare centres;

*1 space per 8 children and 1 space per 2 staff*

The proposed childcare centre includes 8 employees and 46 children. As per the DCP requirement, the site must ensure parking for 10 cars (4 staff parking spaces and 6 visitor parking spaces). The proposed car park includes the following:

- 4 staff parking bays;
- 6 visitor/drop off parking bays; and
- 1 parking bay for the director of the facility.

Therefore, the car parking provisions on the proposed site satisfies the DCP requirement.

In addition a delivery bay has been provided for deliveries to the kitchen of the facility. It is expected that the delivery bay will only be utilised by vehicles up to the size of a van. The director's parking bay and the delivery bay are tandem, which is considered acceptable.

Australian Standard AS2890.1-2004 Off-street car parking specifies the following dimensions for car parks:

- Employee parking bays should have dimensions of 2.4m by 5.4m
- Short term parking/high turnover parking bays should have dimensions of 2.6m by 5.4m; and
- Circulation aisles should have a minimum width of 5.8m.

It is noted that the proposed staff parking bays have dimensions of 2.5m by 5.4m, visitor parking bays have dimensions of 2.6m by 5.4m and a 5.8m circulation aisle is provided.

The driveways have widths of 3.0m which also complies with Australian Standards.

For the on-site car parking space for the mobility impaired, the following dimensions have been specified in Ryde Council DCP Part 9.2 – Access for people with Disabilities. The DCP states the following:

*Parking spaces are to be a minimum of 3660 mm wide to allow a wheelchair user to fully open the car door and then transfer from the car to the wheelchair.*

However, the proposed on-site disabled car space has been designed at 2.4m width, but has an adjacent shared space of 2.4m width (shared with pedestrian aisle) to facilitate the transfer between the car door and the wheelchair. Accordingly the proposed layout is in line with the

**ITEM 3 (continued)**

**ATTACHMENT 4**



requirements outlined in AS 2890.6:2009. Therefore, the exiting car park design satisfies the Australian Standards and the Ryde Council DCP requirements.

**7. Conclusions**

Based on the assessment presented in this report, it is considered that:

- The proposed development consists of a childcare centre that will accommodate up to 8 staff and 46 children of varying ages.
- The proposed site is very well located in proximity to a number of bus services and is located approximately 800m from Denistone Station.
- There are good walking and cycling infrastructure provisions within the road network in the vicinity of the subject site.
- The proposed site will generate additional, but low levels of, trips in the weekday AM and PM peak hours.
- The car park assessment indicates that the design is compliant with AS 2890.1-2004 and the car spaces have been designed to satisfy the requirements outlined by the Ryde Council DCP.

Based on the conclusions of this assessment, the subject proposal is endorsed within the context of traffic and parking.

**ITEM 3 (continued)**

**ATTACHMENT 4**



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CONSULTING

**ATTACHMENT B**

**AUSWIDE RESPONSE**

**ITEM 3 (continued)**

**ATTACHMENT 4**

Aus Wide Traffic Engineers Pty Ltd  
32/4 Young St, Neutral Bay, NSW 2088  
T 02 8004 0400 E info@auswidetraffic.com.au  
ABN 19 162 201 242



30 March 2016

Dear Sir or Madam,

In March 2015 AusWide Traffic Engineers prepared a Traffic Impact Assessment (TIA) for a proposed childcare centre located at 58 Denistone Road Denistone. The development proposed to provide places for up to 46 children and employ up to 9 staff.

In March 2016 Bitzios Consulting were commissioned to undertake a peer review of the TIA. The review specified that the report prepared by AusWide was generally satisfactory, but identifies four areas where they believe additional clarification should be sought

- Background traffic volumes (15 minute spot count during the AM peak on Denistone Road;
- Statement of Environmental Capacity and any amenity related impacts on Denistone Road;
- A swept path analysis for a Small Rigid Vehicle to access the delivery bay; and
- An assessment of the driveway gradient for compliance with AS2890.1.

This letter addresses each of these points.

**Background Traffic Volumes**

As stated in the TIA, Denistone Road is a collector road with one lane in each direction with a combination of 2 restricted and unrestricted on-street parking provisions on both sides of the road reserve. Denistone Road includes a 50km/hr speed limit in the vicinity of the subject site.

Denistone Road provides access to a number of low density residential developments and Ryde Hospital.

The trip generation for the proposed development was undertaken in accordance with the RMS Guide to Traffic Generating Developments. The analysis indicated that in the critical AM peak the proposed development would generate 23 inbound and 23 outbound vehicle trips. No reduction was applied for use of public transport or local residents walking to collect or drop off their children.

As stated in the TIA at an average of a trip every 60 – 90 minutes the proposed development is expected to have a negligible impact on the adjoining road network.

It is considered that a 15 minute spot count would offer very limited utility in quantifying the traffic volumes on Denistone Road or the surrounding road network. Traffic surveys when required are typically undertaken in peak periods for 2 – 3 hour periods and we do not consider that the development is large enough to justify a requirement for peak hour surveys.

Therefore, in accordance with the low trip generation characteristics of the proposed development it is not considered that traffic counts (including spot counts) are required for the proposed development.

**ITEM 3 (continued)**

**ATTACHMENT 4**

**Environmental Amenity**

The RMS Guide to Traffic Generating specifies that environmental capacity (the two way volumes of traffic that beyond which may impact detract from residential amenity) for collector roads is 500veh/h.

As stated previously it is noted that a 15 minute spot count would not be expected to quantify if the current AM peak hour traffic volumes on Denistone Road exceed this threshold.

However, the following is noted:

- It is expected that the nearby Blaxland Road would accommodate the majority of through traffic in the area and very limited through traffic is expected on Denistone Road;
- The land uses that are accessed from Denistone Road are unlikely to generate traffic volumes beyond its environmental capacity;
- The proposed development is expected minor volumes of trips (46 in the AM peak hour), approximately 9% of Denistone Road's environmental capacity.

Accordingly, it is expected that the proposed childcare centre will have a negligible impact on the environmental amenity of Denistone Road.

**Swept Path Analysis**

A swept path analysis indicates a 5.2m van can enter the subject site, access the loading bays and exit the site in a forward direction.

As service vehicle activity at the development will typically consist of small deliveries of food to the kitchen, a 5.2m van is an appropriate design vehicle.

**Ramps**

Australian Standard AS:2890.1 specifies the following with respect to ramp gradients:

- The maximum gradient for a domestic driveway shall 1 in 4 (25%).
- Up to 20 m long straight ramps—1 in 4 (25%) maximum. The allowable 20 m maximum length shall include any parts of grade change transitions at each end that exceed 1 in 5 (20%).
- To prevent bottoming or scraping changes in grade in excess of 1 in 8 (12.5%) require transition ramps

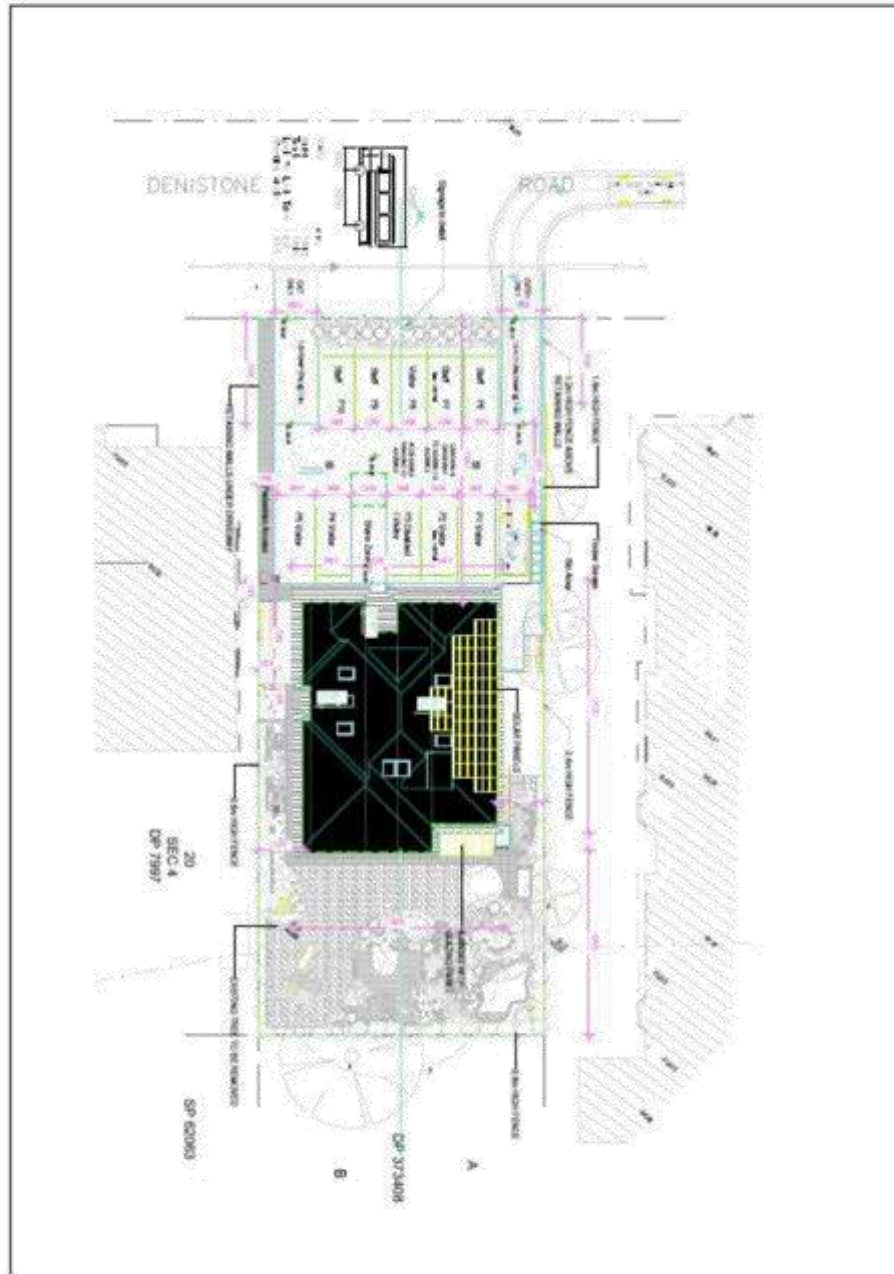
The proposed childcare centre provides ramps of 7.4m

The proposed development's entry ramp provides a gradient of 1 in 8.4 (11.9%) and the exit ramp provides a gradient of 1 in 20 (5%) and thus comply with Australian Standards.

**ITEM 3 (continued)**

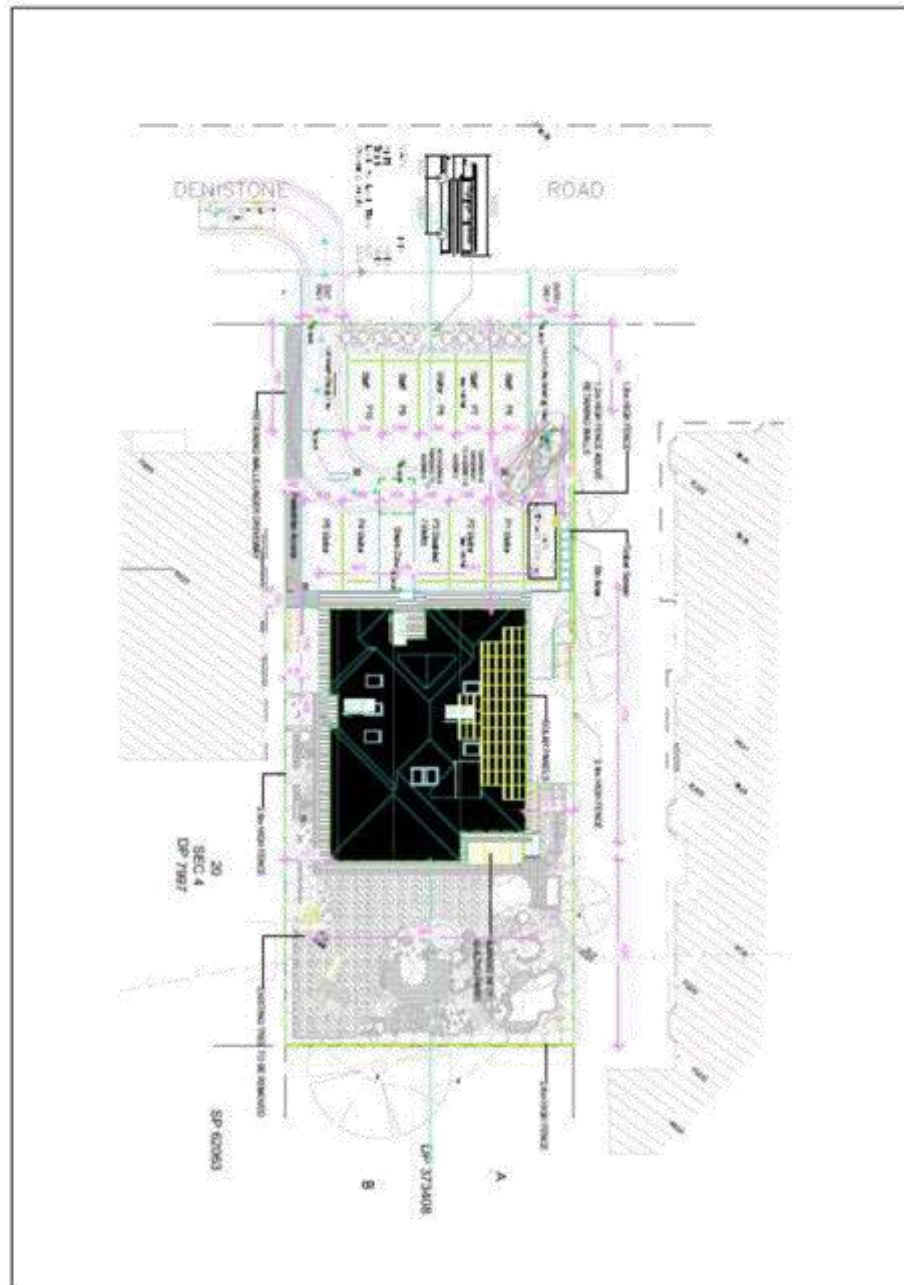
**ATTACHMENT 4**

**Swept Path Diagrams – 5.2m Delivery Van**



ITEM 3 (continued)

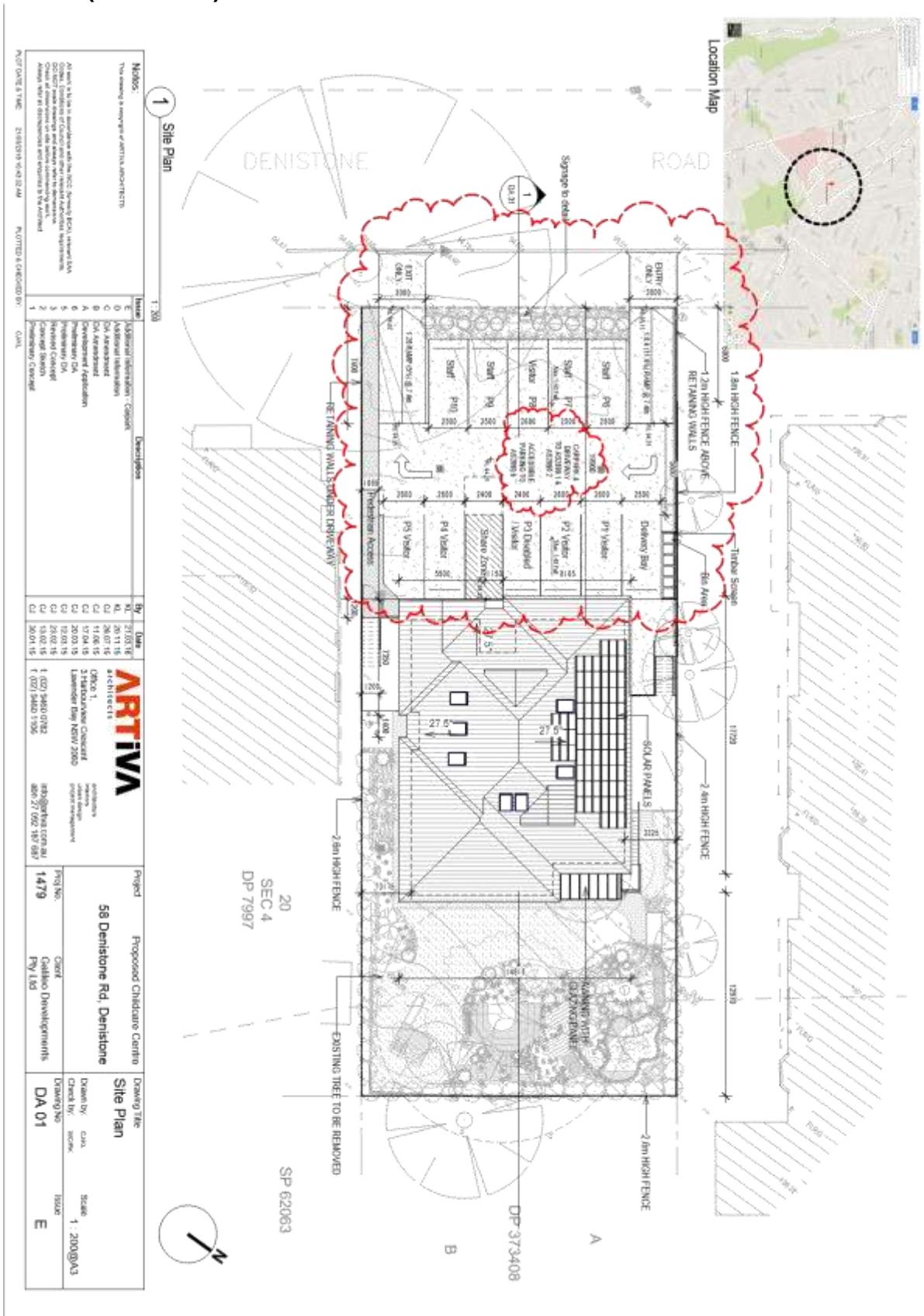
ATTACHMENT 4





**ITEM 3 (continued)**

**ATTACHMENT 4**



**ITEM 3 (continued)**

**ATTACHMENT 5**

## Heritage Referral Response

To: Lauren Franks  
From: Michael Edwards  
Application No.: LDA2015/0209  
Date: 26 May 2015  
Address: 58 Denistone Road, Denistone

---

### Consideration of the proposal:

The development proposal seeks Council's approval for the demolition of the existing building on the site and construction of a two-storey detached style dwelling for use as a childcare centre.

### Heritage listing status:

58 Denistone Road, Denistone:

- **Is not** an item of heritage significance, listed on Schedule 5 of *Ryde LEP 2014*
- **Is not** located within a Heritage Conservation Area
- **Is not** located within a Character Area.
- **Is** within the vicinity of the following items of heritage significance listed under Schedule 5 of *Ryde LEP 2014*:
  - i) 'Denistone House' and 'Trigg House' (Ryde Hospital) 1 Denistone Road, Denistone (Item No.147)

### Consideration of the heritage impacts:

The subject site comprises a c1920s single storey dwelling, displaying the principal characteristics and architectural embellishment attributed to the Inter-War period and of the 'Californian Bungalow' architectural style.

The Heritage Impact Statement (Colin Israel Heritage Advice, April 2015) provides a concise assessment of the significance of the subject site and impact assessment of the proposed development.

The Heritage Impact Statement considers that the dwelling has 'little to no heritage significance as it is a modified example of a c1930s house that is typical of development in the immediate area which generally took place between 1920 and 1940. It is also noted that the item has undergone considerable major changes since the 1940s.'

I concur with this assessment of the significance of the existing dwelling and demolition is supported, subject to conditions below.

**ITEM 3 (continued)**

**ATTACHMENT 5**

The subject site is situated opposite the Ryde Hospital site, which is a listed heritage item, although the significance is principally embodied in 'Denistone House' and 'Trigg House' which are more centrally positioned in the site. The site is directly opposite two late 20<sup>th</sup> Century buildings which are considered austere in their character and appearance. These buildings obscure any direct visual relationship between the subject site and 'Denistone House' and 'Trigg House'. Subsequently, the redevelopment of the site will not result in any adverse visual or physical impacts on the setting of the heritage item.

The proposed built form has been designed to respond to the inherent site characteristics, with the bulk of the building following the contour of the site. In this regard, the building has the character and appearance of a detached style, single storey dwelling house and incorporates design elements and features which complement the Inter-War housing typology which is prevalent throughout the streetscape.

Resultantly, the proposed development is considered acceptable and will have an acceptable heritage impact.

**Recommended conditions**

Conditions which must be complied with prior to the issue of any Construction Certificate:

**1. Salvage of materials and building elements**

Traditional building materials and architectural elements (such as windows, doors, internal and external joinery, masonry, tiles etc) are to be dismantled, salvaged and sold to an established dealer in second-hand heritage building materials.

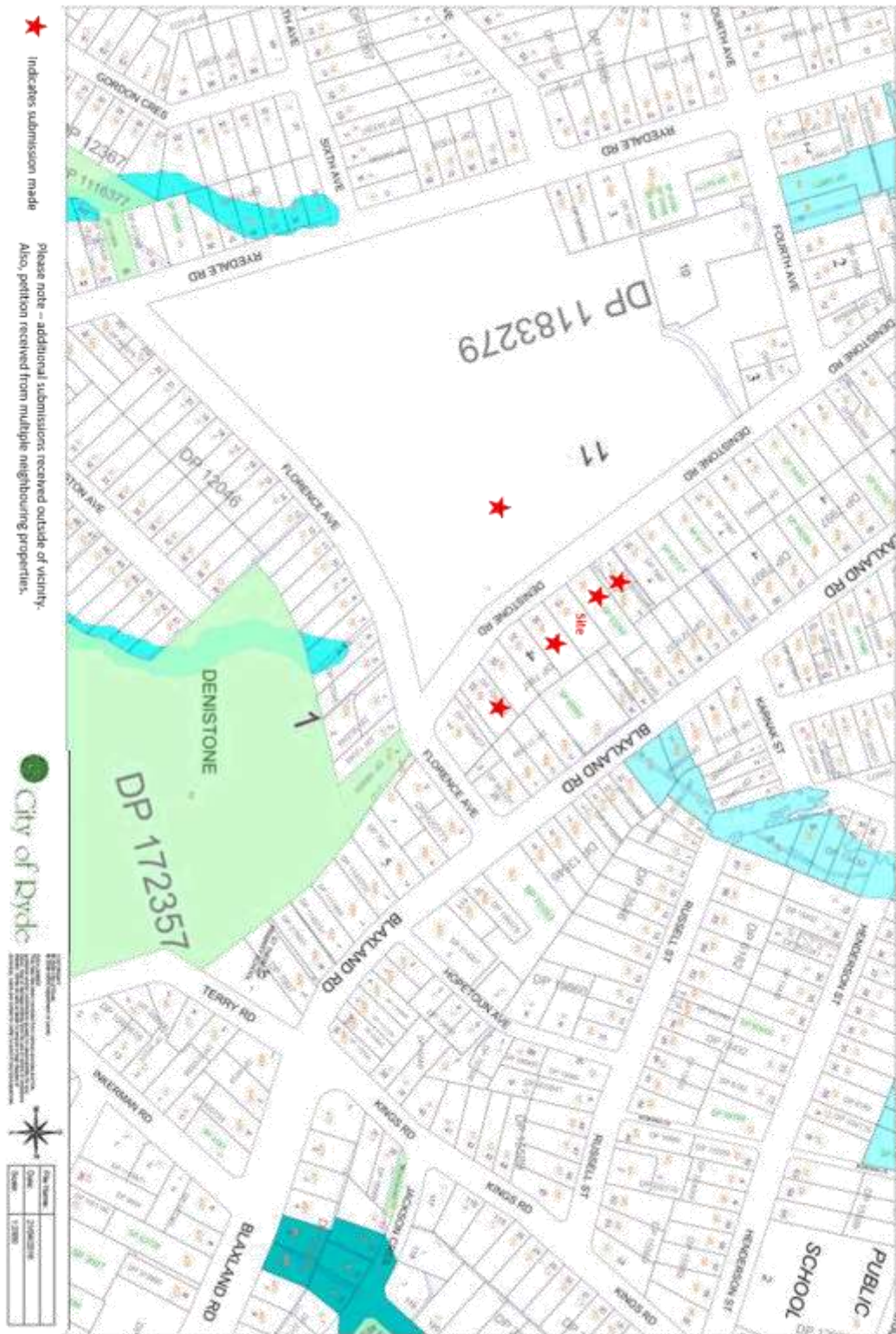
Prior to the issue of any Construction Certificate and the commencement of any works, documentation of the salvage methodology must be submitted for the approval of Council prior to the commencement of demolition.

Regards,

Michael Edwards  
Heritage Advisor

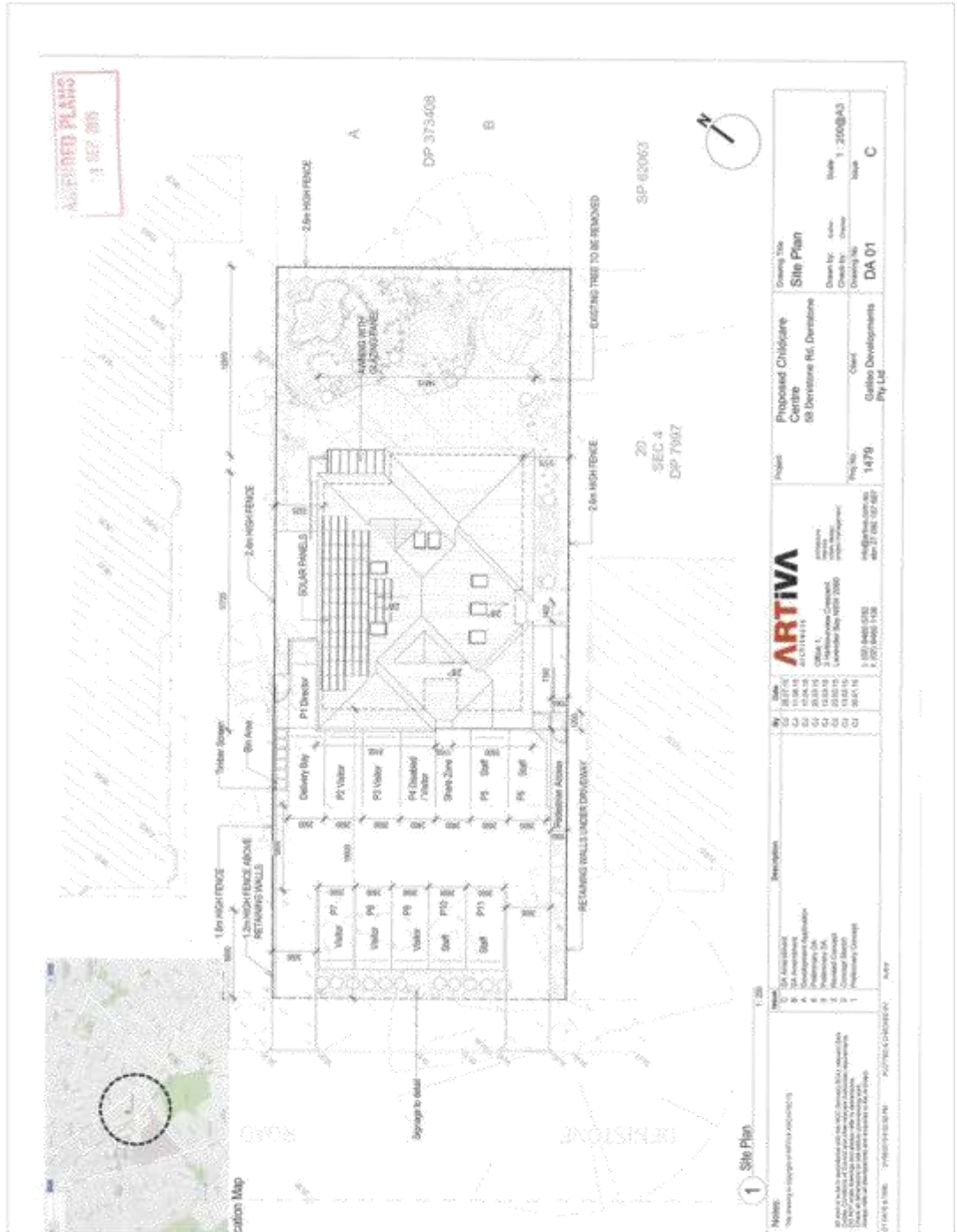
ITEM 3 (continued)

ATTACHMENT 6



ITEM 3 (continued)

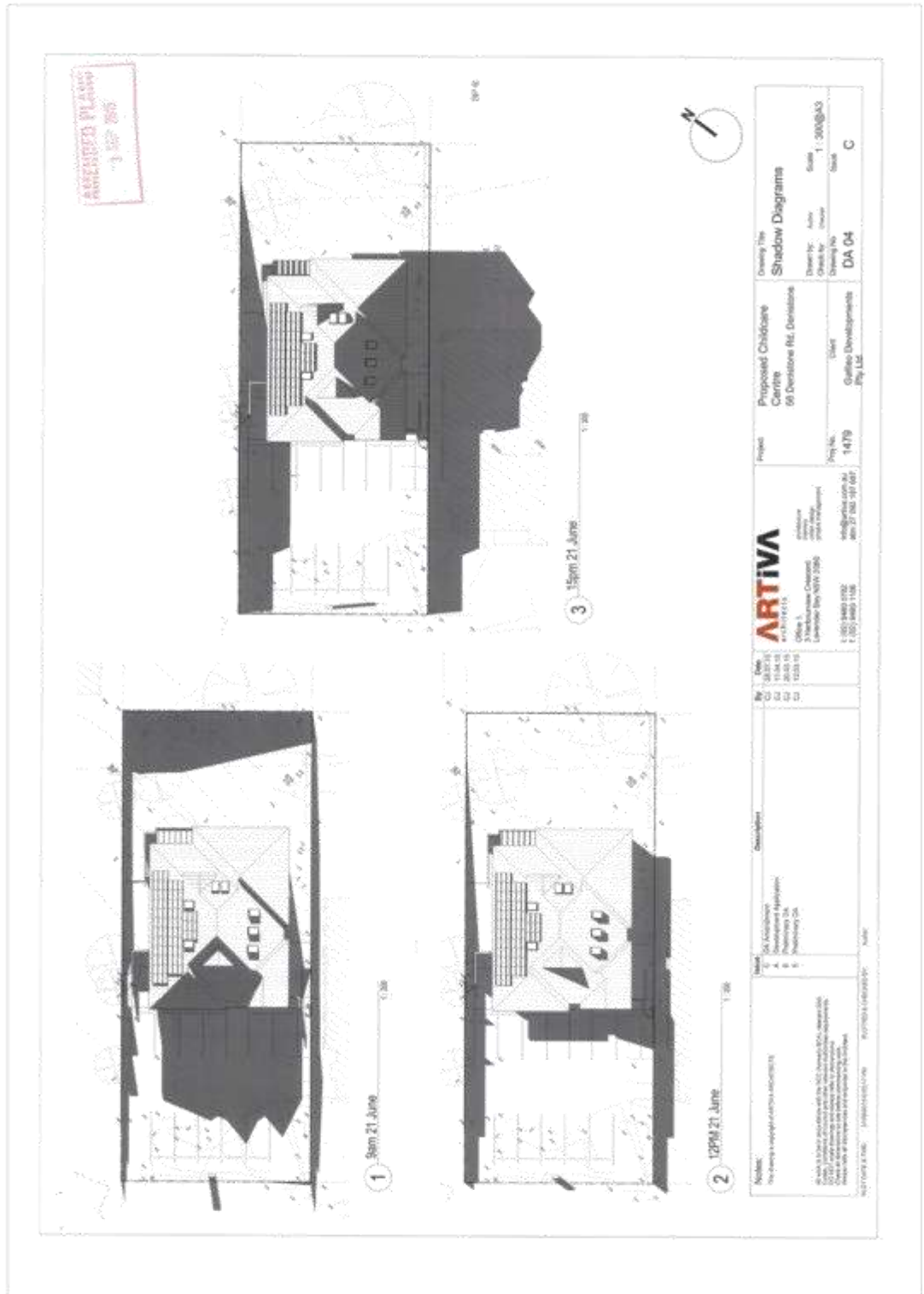
ATTACHMENT 7



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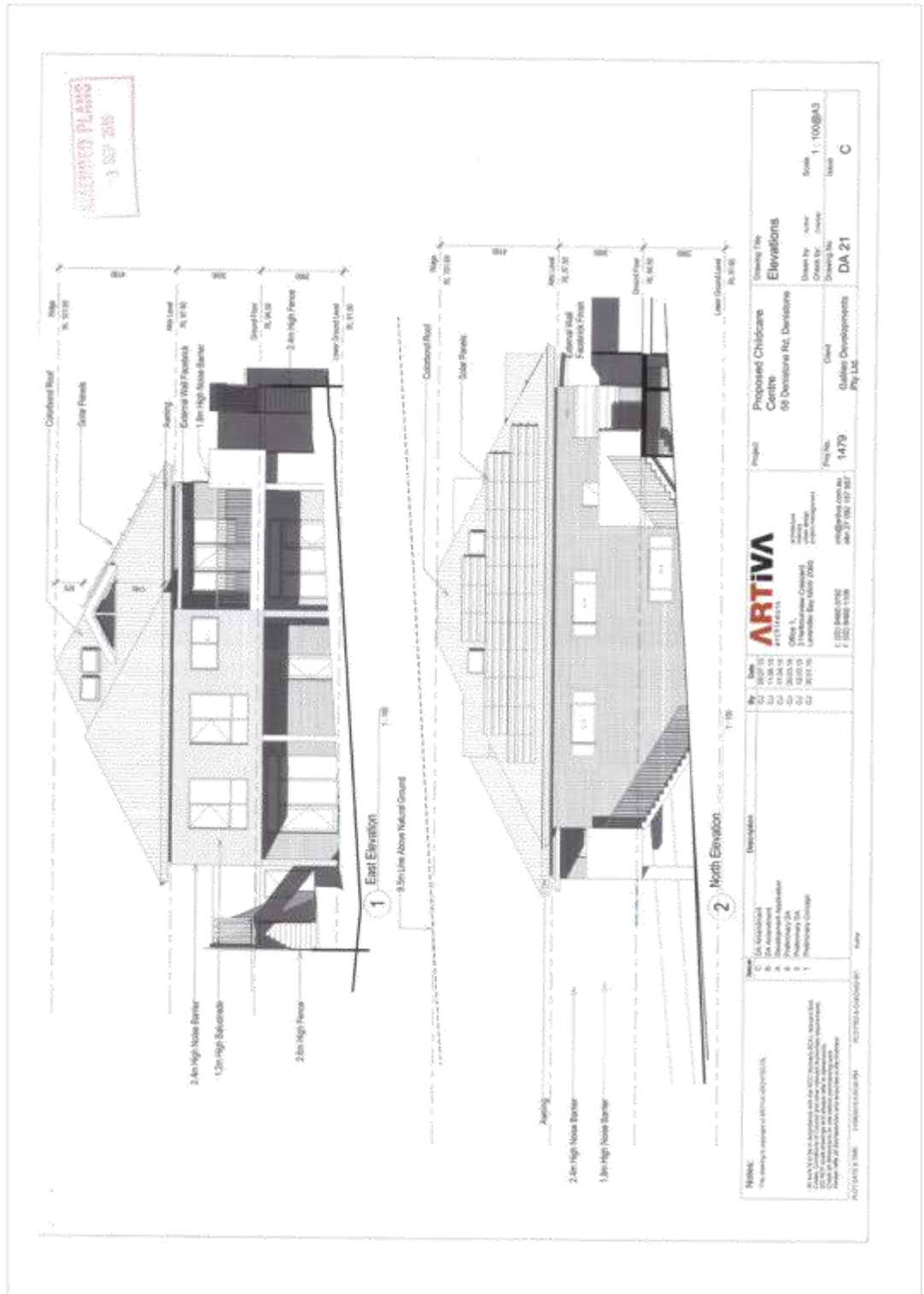
**ITEM 3 (continued)**

**ATTACHMENT 7**



**ITEM 3 (continued)**

**ATTACHMENT 7**



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