

Meeting Date: Tuesday 24 July 2012
Location: Council Chambers, Level 6, Civic Centre, 1 Devlin Street, Ryde
Time: 7.30pm

Councillors Present: The Mayor, Councillor Etmekdjian and Councillors Butterworth, Campbell, Li, Maggio, O'Donnell, Petch, Perram, Pickering, Salvestro-Martin and Tagg.

Councillor Salvestro-Martin arrived at the meeting at 7.34pm during Disclosures of Interest.

Apologies: Councillor Yedelian OAM.

Staff Present: Acting General Manager, Group Manager – Community Life, Acting Group Manager - Corporate Services, Group Manager – Environment & Planning, Group Manager - Public Works, General Counsel, Communications and Media Manager, Manager – Community Relations & Events, Service Unit Manager – Urban Planning, Service Unit Manager – Assessment, Manager – Operations, Team Leader – Major Development, Section Manager – Open Space Planning & Assets and Meeting Support Coordinator.

PRAYER

Reverend Michael Smith of Eastwood Anglican Church was present and offered prayer prior to the commencement of the meeting.

DISCLOSURES OF INTEREST

Note: Councillor Salvestro-Martin arrived at the meeting at 7.34pm during this Item.

Councillor Tagg disclosed a non-pecuniary interest in Item 6 – Draft Ryde LEP 2011 - Submissions for the reason that he is member and Director of the Ryde X Club.

Councillor Pickering disclosed a non-pecuniary interest in Item 6 – Draft Ryde LEP 2011 - Submissions for the reason that one of the speakers represents HyCorp which is a firm he once represented.

PUBLIC PARTICIPATION ON ITEMS LISTED ON THE AGENDA

MOTION: (Moved by Councillors Tagg and Salvestro-Martin)

That Mr Andy Ludvik be allowed to speak for three minutes for each company/organisation that he is representing, being a total of 21 minutes.

AMENDMENT: (Moved by Councillors Pickering and Maggio)

That Mr Andy Ludvik be allowed to speak for a total of fourteen minutes.

On being put to the Meeting, the voting on the Amendment was six (6) votes For and five (5) votes Against. The Amendment was CARRIED. The Amendment then became the Motion.

Record of Voting:

For the Amendment: The Mayor, Councillor Etmekdjian and Councillors Li, Maggio, Pickering, Salvestro-Martin and Tagg

Against the Amendment: Councillors Butterworth, Campbell, O'Donnell, Perram and Petch

FURTHER AMENDMENT: (Moved by Councillors Campbell and Perram)

That each speaker registered be given three minutes in total as provided in Council's Code of Meeting Practice.

On being put to the Meeting, the voting on the Further Amendment was four (4) votes For and seven (7) votes Against. The Further Amendment was LOST.

Record of Voting:

For the Amendment: Councillors Campbell, O'Donnell, Perram and Pickering

Against the Amendment: The Mayor, Councillor Etmekdjian and Councillors Butterworth, Li, Maggio, Petch, Salvestro-Martin and Tagg

RESOLUTION: (Moved by Councillors Pickering and Maggio)

That Mr Andy Ludvik be allowed to speak for a total of fourteen minutes.

Record of Voting:

For the Motion: The Mayor, Councillor Etmekdjian and Councillors Li, Maggio, Petch, Pickering, Salvestro-Martin and Tagg

Against the Motion: Councillors Butterworth, Campbell, O'Donnell and Perram

The following persons then addressed the Council:-

Name	Topic
Andy Ludvik (representing Ryde-Eastwood Leagues Club Ltd, Investron Pty Ltd, Alramon Pty Ltd, Enrico Bietola Pty Ltd,	Item 6 – Draft Ryde LEP 2011 - Submissions

Gladesville Industrial Area Land Owners, Rutledge Property Group and Ms V Quek)	
Ray Dresdner (representing J Goubran, BA & SR Wilson, PJ Smith, HL & M Dresdner, A & R Zweig, E Kreiger and R Markland)	Item 6 – Draft Ryde LEP 2011 - Submissions
Graeme Cordiner	Item 6 – Draft Ryde LEP 2011 - Submissions
Peter Lubrano (representing Strata Plan 5991)	Item 6 – Draft Ryde LEP 2011 – Submissions
Estelle Shields (representing Friends of Crowle Home Inc)	Item 6 – Draft Ryde LEP 2011 - Submissions
Diane Erickson (representing Dorothy Kennedy)	Item 6 – Draft Ryde LEP 2011 - Submissions
Denise Pendleton (representing Residents for Ryde)	Item 6 – Draft Ryde LEP 2011 - Submissions
Rebecca Ho (representing Touched by Olivia Foundation)	Item 15 – Livvi's Place Playground, Yamble Reserve – Tender Evaluation and Construction Planning
Ellen Robertshaw (representing Morling College)	Item 6 – Draft Ryde LEP 2011 - Submissions
Jennifer Rollo (representing Friends of Crowle Home Inc)	Item 6 – Draft Ryde LEP 2011 - Submissions
Gordana Vasic	Item 6 – Draft Ryde LEP 2011 - Submissions
Patricia Bloomfield	Item 6 – Draft Ryde LEP 2011 - Submissions
Kevin Bevitt (representing Charles Dawborn)	Item 6 – Draft Ryde LEP 2011 - Submissions
Angela Penklis (representing June Madden and Friends of Crowle Home Inc)	Item 6 – Draft Ryde LEP 2011 - Submissions
Tim Flett (representing Pirasta Pty Ltd)	Item 6 – Draft Ryde LEP 2011 - Submissions
Shaun Gilchrist (representing Greens Candidate for East Ward)	Item 7 – Draft Development Control Plan 2011 Part 3.3 - Dwelling Houses and Dual Occupancies
Stephen Abolakian (representing HyCorp)	Item 6 – Draft Ryde LEP 2011 - Submissions
Lee Cummings	Item 6 – Draft Ryde LEP 2011 - Submissions
Sherie Barton	Item 6 – Draft Ryde LEP 2011 - Submissions
Aaron Lynch	Item 6 – Draft Ryde LEP 2011 - Submissions
Philip Peake	Item 8 – Integrated Open Space Plan – for Adoption
Tod Anderson (representing himself and Taleen Tashjian)	Item 6 – Draft Ryde LEP 2011 - Submissions
Kevin Page	Item 6 – Draft Ryde LEP 2011 – Submissions

Jennie Minifie (representing Ryde Community Alliance and Ryde Environment Group)	Item 6 – Draft Ryde LEP 2011 - Submissions
Diane Erickson	Item 6 – Draft Ryde LEP 2011 - Submissions
Justin Kucic	Item 6 – Draft Ryde LEP 2011 – Submissions and Item 7 – Draft Development Control Plan 2011 Part 3.3 - Dwelling Houses and Dual Occupancies

Note: The Mayor called on registered speakers Margaret Saunders, Elizabeth Harrison, Justin Loe, Laurie Kennedy and Emilio Vinci to address the Meeting. Ms Saunders, Ms Harrison, Mr Loe, Mr Kennedy and Mr Vinci were not present and did not speak.

RESOLUTION: (Moved by Councillors Salvestro-Martin and Maggio)

That the late request to address Council on Items Listed on the Agenda and members of the public who had requested to address Council on Items Not Listed on the Agenda be allowed to address the meeting, at this time.

Record of Voting:

For the Motion: Unanimous

PUBLIC PARTICIPATION ON ITEMS LISTED ON THE AGENDA

The following person addressed the Council:-

Name	Topic
Marian Higgins	Item 6 – Draft Ryde LEP 2011 - Submissions

PUBLIC PARTICIPATION ON ITEMS NOT LISTED ON THE AGENDA

The following person addressed the Council:-

Name	Topic
Rose Marie Lavery	Building of new Civic Centre and having not received a response to my written letter

ORDER OF BUSINESS

RESOLUTION: (Moved by The Mayor, Councillor Etmekdjian and Councillor Maggio)

That Council now consider the following Items in order:-

- Item 1 – Confirmation of Minutes – Council Meeting held on 26 June 2012,
- Item 2 – Confirmation of Minutes – Extraordinary Council Meeting held on 17 July 2012,
- Item 6 – Draft Ryde LEP 2011 – Submissions,

- Item 7 – Draft Development Control Plan 2011 Part 3.3 – Dwelling Houses and Dual Occupancies
- Item 8 – Integrated Open Space Plan – for adoption
- Item 13 – Request for Tender – RFT 08/12 – for the provision of catering services to the City of Ryde
- Item 14 – Request for Tender – COR-RFT-01/12 – Cleaning Services to City of Ryde Council Buildings
- Item 15 – Livvi’s Place Playground, Yamble Reserve – Tender Evaluation and Construction Planning

Record of Voting:

For the Motion: Unanimous

COUNCIL REPORTS

1 CONFIRMATION OF MINUTES - Council Meeting held on 26 June 2012

RESOLUTION: (Moved by Councillors Pickering and Maggio)

That the Minutes of the Council Meeting 10/12, held on 26 June 2012 be confirmed.

Record of Voting:

For the Motion: Unanimous

2 CONFIRMATION OF MINUTES - Extraordinary Council Meeting held on 17 July 2012

RESOLUTION: (Moved by Councillors Campbell and O’Donnell)

That the Minutes of the Extraordinary Council Meeting 11/12, held on 17 July 2012 be confirmed.

Record of Voting:

For the Motion: Unanimous

SUSPENSION OF STANDING ORDERS – MATTER OF URGENCY

MOTION: (Moved by Councillors Petch and Perram)

That Standing Orders be suspended for Council to consider a Matter of Urgency to consider the Rescission Motion submitted from the Extraordinary Council Meeting held on 23 July 2012, the time being 9.30pm.

The Acting General Manager advised the meeting that a Motion for Suspension of Standing Orders required a reason to allow Councillors to consider the Motion, prior to voting on the matter.

As the matter related to consideration of the Rescission Motion that was lodged during the Extraordinary Meeting held on Monday, 23 July 2012, the Acting General Manager advised that if this was proposed as a Matter of Urgency, the Mayor as Chairperson had to firstly determine that this matter was of a great urgency. If the Mayor agreed the Motion would be put to the meeting. If the Mayor determined it was not a matter of great urgency, the matter could not be considered at this meeting. The Acting General Manager further advised that a determination by the Mayor as to a matter being of great urgency, could not be the subject of a Motion of Dissent as it was not a Point of Order.

The General Counsel also advised the meeting on the above matters and confirmed the above advice to the meeting.

Note: The Mayor, Councillor Etmekdjian then ruled that this matter was not a Matter of Urgency and therefore would not be considered at this meeting.

MOTION OF DISSENT

Councillor Petch attempted to move a Motion of Dissent against the Mayor's ruling in respect of not allowing the Suspension of Standing Orders – Matter of Urgency.

Note: The Mayor, Councillor Etmekdjian ruled that in accordance with previous advice from the Acting General Manager and General Counsel, the Motion of Dissent was out of order.

SUSPENSION OF STANDING ORDERS – MATTER OF URGENCY

MOTION: (Moved by Councillors Petch and Perram)

That Council allow Councillor Petch to table a Memorandum of Advice from AJL Legal and allow the legal representatives present in the gallery to address Council.

Note: In accordance with the earlier discussion and determination relating to a Suspension of Standing Orders – Matter of Urgency, the Mayor, Councillor Etmekdjian ruled that this matter was not a Matter of Urgency and therefore would not be considered at this meeting.

6 DRAFT RYDE LEP 2011 - SUBMISSIONS

Note: Councillor Tagg disclosed a non-pecuniary interest in this Item for the reason that he is member and Director of the Ryde X Club.

Note: Councillor Pickering disclosed a non-pecuniary interest in this Item for the reason that one of the speakers represents HyCorp which is a firm he once represented.

Note: A Memorandum from the Group Manager – Environment and Planning dated 24 July 2012 was tabled in relation to this Item and a copy is ON FILE.

Note: Andy Ludvik (representing Ryde-Eastwood Leagues Club Ltd, Investron Pty Ltd, Alramon Pty Ltd, Enrico Bietola Pty Ltd, Gladesville Industrial Area Land Owners, Rutledge Property Group and Ms V Quek), Ray Dresdner (representing J Goubran, BA & SR Wilson, PJ Smith, HL & M Dresdner, A & R Zweig, E Kreiger and R Markland, Graeme Cordiner, Peter Lubrano (representing Strata Plan 5991), Estelle Shields (representing Friends of Crowle Home Inc), Diane Erickson (representing herself and Dorothy Kennedy), Denise Pendleton (representing Residents for Ryde), Ellen Robertshaw (representing Morling College), Jennifer Rollo (representing Friends of Crowle Home Inc), Gordana Vasic, Patricia Bloomfield, Kevin Bevitt (representing Charles Dawborn), Angela Penklis (representing June Madden and Friend of Crowle Home Inc), Tim Flett (representing Pirasta Pty Ltd), Stephen Abolakian (representing HyCorp), Lee Cummings, Sherie Barton, Aaron Lynch, Tod Anderson (representing himself and Taleen Tashjian), Kevin Page, Jennie Minifie (representing Ryde Community Alliance and Ryde Environment Group), Justin Kucic and Marian Higgins addressed the meeting in relation to this Item.

MOTION: (Moved by Councillors Campbell and O'Donnell)

- (a) That Council amend Draft Ryde LEP 2011 in accordance with the changes identified in *Table 3 – Amendments to LEP 2011* attached to this report titled Draft LEP 2011 – Submissions.
- (b) That Council forward to the Department of Planning and Infrastructure draft LEP 2011 as amended with a Section 68 report requesting that the Minister make the Plan.
- (c) That the General Manager write to the Minister for Planning seeking flexibility for the City of Ryde to develop boarding house controls that reflect local character and affordable housing.
- (d) That the General Manager amend the draft LEP to address the roads that have been zoned RE1 or E2 as a consequence of abutting RE1 lands and E2 lands in part, and that they be amended to the dominant adjacent zone in their entirety.

AMENDMENT: (Moved by Councillors Pickering and Maggio)

That Council defer the Draft LEP 2011 until all verbal submissions made at the Council meeting of 24 July 2012 have been addressed with a further report to the next Council, elected at the 2012 Local Government Election.

On being put to the Meeting, the voting on the Amendment was nine (9) votes For and two (2) votes Against. The Amendment was CARRIED. The Amendment then became the Motion.

Record of Voting:

For the Amendment: The Mayor, Councillor Etmekdjian and Councillors Butterworth, Li, Maggio Perram, Petch, Pickering, Salvestro-Martin and Tagg

Against the Amendment: Councillors Campbell and O'Donnell

RESOLUTION: (Moved by Councillors Pickering and Maggio)

That Council defer the Draft LEP 2011 until all verbal submissions made at the Council meeting of 24 July 2012 have been addressed with a further report to the next Council, elected at the 2012 Local Government Election.

Record of Voting:

For the Motion: The Mayor, Councillor Etmekdjian and Councillors Butterworth, Li, Maggio Perram, Petch, Pickering, Salvestro-Martin and Tagg

Against the Motion: Councillors Campbell and O'Donnell

SUSPENSION OF STANDING ORDERS – TABLING OF ADVICE

RESOLUTION: (Moved by Councillors Petch and Perram)

That Standing Orders be Suspended to allow Councillor Petch to table a Memorandum of Advice from AJL Legal, with such advice to be attached to the Minutes, the time being 10.50pm.

Record of Voting:

For the Motion: The Mayor, Councillor Etmekdjian and Councillors Butterworth, Li, Perram, Petch, Salvestro-Martin and Tagg

Against the Motion: Councillors Campbell, Maggio, O'Donnell and Pickering

Note: The legal advice was tabled and a copy of the Memorandum of Advice from AJL Legal is ATTACHED to these Minutes.

7 DRAFT DEVELOPMENT CONTROL PLAN 2011 PART 3.3 - DWELLING HOUSES AND DUAL OCCUPANCIES

Note: Shaun Gilchrist (representing Greens Candidate for East Ward) and Justin Kucic addressed the meeting in relation to this Item.

MOTION: (Moved by Councillors Campbell and O'Donnell)

(a) That Council adopt the draft Development Control Plan (DCP) 2011 Part 3.3 – Dwelling houses and Dual Occupancies (attached) to be placed on public

exhibition in accordance with the requirements of the Environmental Planning and Assessment Act 1979.

- (b) That a report be prepared for Council's consideration following the exhibition period of draft DCP 2011 Part 3.3 – Dwelling houses and Dual Occupancies (attached).

AMENDMENT: (Moved by Councillors Tagg and Petch)

That Council defer the Draft Development Control Plan 2011 Part 3.3 – Dwelling Houses and Dual Occupancies for further consideration by the next Council, elected at the 2012 Local Government Election.

On being put to the Meeting, the voting on the Amendment was six (6) votes For and five (5) votes Against. The Amendment was CARRIED. The Amendment then became the Motion.

Record of Voting:

For the Amendment: Councillors Butterworth, Li, Perram, Petch, Salvestro-Martin and Tagg

Against the Amendment: The Mayor, Councillor Etmekdjian and Councillors Campbell, Maggio, O'Donnell and Pickering

RESOLUTION: (Moved by Councillors Tagg and Petch)

That Council defer the Draft Development Control Plan 2011 Part 3.3 – Dwelling Houses and Dual Occupancies for further consideration by the next Council, elected at the 2012 Local Government Election.

Record of Voting:

For the Motion: The Mayor, Councillor Etmekdjian and Councillors Butterworth, Li, Perram, Petch, Salvestro-Martin and Tagg

Against the Motion: Councillors Campbell, Maggio, O'Donnell and Pickering

COMPLETION OF BUSINESS

MOTION: (Moved by Councillors Pickering and Maggio)

That the meeting time be extended to deal with the remaining Items on which speakers had addressed the meeting.

AMENDMENT: (Moved by Councillors Petch and Butterworth)

That the meeting time be extended until 11.30pm, the time being 11.00pm.

On being put to the Meeting, the voting on the Amendment was six (6) votes For and five (5) votes Against. The Amendment was CARRIED. The Amendment then became the Motion.

Record of Voting:

For the Amendment: Councillors Butterworth, Li, Perram, Petch, Salvestro-Martin and Tagg

Against the Amendment: The Mayor, Councillor Etmekdjian and Councillors Campbell, Maggio, O'Donnell and Pickering

RESOLUTION: (Moved by Councillors Petch and Butterworth)

That the meeting time be extended until 11.30pm, the time being 11.00pm

Record of Voting:

For the Motion: Unanimous

ORDER OF BUSINESS

RESOLUTION: (Moved by Councillors Maggio and Petch)

That Council now consider the following Items in order:-

- Item 15 – Livvi's Place Playground, Yamble Reserve – Tender Evaluation and Construction Planning
- Item 8 – Integrated Open Space Plan – for adoption
- Item 13 – Request for Tender – RFT 08/12 – for the provision of catering services to the City of Ryde
- Item 14 – Request for Tender – COR-RFT-01/12 – Cleaning Services to City of Ryde Council Buildings

Record of Voting:

For the Motion: Unanimous

15 LIVVI'S PLACE PLAYGROUND, YAMBLE RESERVE - TENDER EVALUATION AND CONSTRUCTION PLANNING

Note: Rebecca Ho (representing Touched by Olivia Foundation) addressed the meeting in relation to this Item.

RESOLUTION: (Moved by Councillors Li and Maggio)

- (a) That Council accept the tender from Hargraves Landscaping for the construction of an inclusive playground at Yamble Reserve, Ryde for the

amount of \$688,889.85 (excluding GST) as recommended in the Tender Evaluation Report.

- (b) That Council delegate to the General Manager the authority to enter into a contract with Hargraves Landscaping on the terms contained within the tender.
- (c) That Council advise all the respondents of Council's decision.
- (d) That Council approve the removal of 18 trees within Yamble Reserve as identified in drawing *Tree Removal Plan*, 5 April 2012
- (e) That Council plant 40 advanced tree species within Yamble Reserve in accordance with the Livvi's Place Playground concept Plan.
- (f) That Council acknowledge the contribution of Rebecca Ho and the Touched by Olivia Foundation.

Record of Voting:

For the Motion: Unanimous

8 INTEGRATED OPEN SPACE PLAN - FOR ADOPTION

Note: Philip Peake addressed the meeting in relation to this Item.

RESOLUTION: (Moved by Councillors Tagg and Petch)

- (a) That Council adopt the draft Integrated Open Space Plan (July 2012), as amended.
- (b) That the Integrated Open Space Plan form the basis for the consideration of open space issues in the future review of Section 94 plan.

Record of Voting:

For the Motion: Unanimous

13 RFT 08/12 - FOR THE PROVISION OF CATERING SERVICES TO THE CITY OF RYDE

RESOLUTION: (Moved by Councillors Pickering and O'Donnell)

- (a) That Council accept the tenders from:
 - Amadeus Catering Pty Ltd
 - U@MQ-ltd (Crunch Events and Catering)
 - Toast Food North Ryde

and that they be placed on a preferred provider panel for the provision of catering services as recommended in the Tender Evaluation Report.

- (b) That Council advise all the respondents of Council's decision.

Record of Voting:

For the Motion: The Mayor, Councillor Etmekdjian and Councillors Campbell, Li, Maggio, O'Donnell, Perram, Petch, Pickering and Tagg

Against the Motion: Councillors Butterworth and Salvestro-Martin

14 REQUEST FOR TENDER - COR-RFT- 01/12 - Cleaning Services to City of Ryde Council Buildings

RESOLUTION: (Moved by Councillors Petch and O'Donnell)

- (a) That Council accepts the tender from Broadlex Services Pty Limited for the Cleaning of Council Buildings to the amount of \$500,000 per annum, for a two (2) year period with an option to extend for a further one (1) year as recommended in the Tender Evaluation Report.
- (b) That Council delegate to the General Manager the authority to enter into a contract with Broadlex Services Pty Limited on the terms contained within the tender and for minor amendments to be made to the contract documents that are not of a material nature.
- (c) That Council advise all the respondents of Council's decision.

Record of Voting:

For the Motion: The Mayor, Councillor Etmekdjian and Councillors Campbell, Li, Maggio, O'Donnell, Perram, Petch, Pickering and Tagg

Against the Motion: Councillors Butterworth and Salvestro-Martin

ADJOURNMENT

RESOLUTION: (Moved by Councillors Perram and Butterworth)

That the meeting be adjourned as follows, the time being 11.15pm.

The meeting was adjourned to:

Tuesday, 14 August 2012 at 7.30pm in the Council Chambers, Level 6, Civic Centre, 1 Devlin Street, Ryde.

Record of Voting:

For the Motion: The Mayor, Councillor Etmekdjian and Councillors Butterworth, Campbell, Li, Maggio, Perram and Salvestro-Martin

Against the Motion: Councillors O'Donnell, Petch, Pickering and Tagg

The following Councillors were present:

The Mayor, Councillor Etmekdjian and Councillors Butterworth, Campbell, Li, Maggio, O'Donnell, Perram, Petch, Pickering, Salvestro-Martin and Tagg.

An apology had been received from Councillor Yedelian OAM.

MEETING RECONVENED

The Meeting reconvened at 7.30pm on Tuesday, 14 August 2012 in the Council Chambers, Level 6 of the Civic Centre, 1 Devlin Street, Ryde.

The following Councillors were present:

The Mayor, Councillor Etmekdjian and Councillors Campbell, Maggio, O'Donnell, Petch, Perram, Pickering, Tagg and Yedelian OAM.

Apologies had been received from Councillors Butterworth, Li and Salvestro-Martin.

Staff Present: General Manager, Group Manager – Community Life, Acting Group Manager - Corporate Services, Group Manager – Environment & Planning, Group Manager - Public Works, General Counsel, Manager - Communications and Media, Manager – Community Relations & Events, Service Unit Manager – Assessment, Manager – Strategy and Organisational Development , Team Leader – Major Development, Team Leader – Building & Development Advisory Service, Service Unit Manager - Governance and Acting Section Manager - Governance.

3 REPORT OF THE PLANNING AND ENVIRONMENT COMMITTEE MEETING 9/12 held on 17 July 2012

RESOLUTION: (Moved by Councillors Pickering and O'Donnell)

That Council determine Items 2 and 3 of the Planning and Environment Committee report, noting that Items 1, 4 and 5 were dealt with by the Committee within its delegated powers.

Record of Voting:

For the Motion: Unanimous

- 2 3-5 TRELAWNEY STREET, EASTWOOD. LOTS A & B IN DP 401296. Construction and strata subdivision of a mixed use development, consisting of a building with 6 retail / commercial tenancies; 61 units and basement parking for 108 cars. LDA2011/0611.**

Note: A Memorandum from the Group Manager – Environment and Planning dated 2 August 2012 was tabled in relation to this Item and a copy is ON FILE.

MOTION: (Moved by Councillors Pickering and Yedelian OAM)

- (a) That Local Development Application No. 2011/0611 at 3-5 Trelawney Street, Eastwood, being Lots A and B in DP 401296 be approved subject to the following conditions:

DEFERRED COMMENCEMENT CONSENT CONDITIONS

Part 1 – Deferred Commencement Conditions

The following are the Deferred Commencement condition(s) imposed pursuant to Section 80(3) of the Environmental Planning & Assessment Act 1979.

This consent shall not become operative until the proposal demonstrates satisfactory compliance with the following items to the satisfaction of Council's Group Manager Environment & Planning and that the applicant is advised in writing:

- (a) That the applicant shall submit a revised Voluntary Planning Agreement to Council to address the concerns raised by Council staff in relation to Clause 23.2 of the VPA. The wordings of the VPA and the Explanatory Notes must be revised to comply with the *Environmental Planning and Assessment Act 1979*.

This information is to be submitted to Council within six months from the date of determination or the Consent will have lapsed, in accordance with the *Environmental Planning & Assessment Act, 1979*.

GENERAL

The following conditions of consent included in this Part identify the requirements, terms and limitations imposed on this development.

1. **Approved Plans.** 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:

Plan Numbers:	Document Description	Date	Issue
DA-01	Colour Scheme – Photomontage	-	A
DA-04	Demolition Plan	6/10/2011	A
DA-07	Site Plan	21/10/2011	A
DA-08	Basement	12/04/2012	A
DA-09	Lower Ground Floor (as amended by levels shown on DA-47 Issue B)	10/05/2012	C
DA-10	Ground Floor (as amended by levels shown on DA-47 Issue B)	10/05/2012	C
DA-11	Level 1	7/11/2011	A
DA-12	Levels 2 to 4 (floor layout)	7/11/2011	A
DA-13	Level 5	7/11/2011	A
DA-14	Roof Plan	7/11/2011	A
DA-15	Elevations North & South	12/04/2012	A
DA-16	Elevations – East & West	12/04/2012	A
DA-17	Section A	21/10/2011	A
DA-18	Section B	21/10/2011	A
DA-26	Open Space & Deep Soil	7/11/2011	A
DA-28	Materials Finishes Board	21/10/2011	A
DA-38	Storage Areas & as amended by condition below	12/04/2012	N/A
DA-47	Flood & Floor Levels and Access	17/05/2012	B
11_023 L00	Landscape Plan (by Habitation)	11/07/2011	B
11_023 L01	Landscape Plan - Ground level	02/11/2011	C
11_023 L02	Landscape Plan – Level One	02/11/2011	C
11_023 L03	Landscape Plan – Level Five	06/09/2011	C
385935M	BASIX Certificate	12 October 2011	-
	Waste Management Plan		
Access Report	Prepared by Mark Relf	20 October 2011	-
Doc No.11183 Job No. 2172/4	Acoustic Report by West & Associates Pty Ltd	21 September 2011	A

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

- (a) **Adaptable Units:** Unit numbers G01, 111, 112, 211, 212, 311 and 312 are to be designed as adaptable units. Each of these units is to be allocated an *accessible* parking bay.
- (b) **Awning:** The height of the street awning shall not be less than 3 metres or greater than 4.5 metres measured from the finished pavement level of the footpath. Such awning must:
 - i) Be set back from the face of the kerb by 0.6m;
 - ii) Have cut-outs of 1m wide by 1m deep to accommodate street trees, where the frontage is proposed to accommodate street trees in relation to proposed public domain improvement works;
 - iii) Be weather sealed to the face of the building to which they are attached and to the adjoining awnings;
 - iv) Have a height clearance as stated above or consistent with adjacent awnings; and
 - v) Maintain sufficient clearances from any overhead electricity or telecommunications installations.
 - vi) The street awning should continue the full length of the street and must not be glazed.
- (c) **Accessible Ramps:** *Accessible* ramps must be provided at the entrance to all retail tenancies from the Trelawney Street frontage. The ramp must be wholly within the site and not encroach on Council's footpath.

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

- 2. **Voluntary Planning Agreement:** The Voluntary Planning Agreement between City of Ryde and N & G Projects Pty Ltd that is subject of this Development Consent must be registered on the title of Lots A & B in DP401296 prior to the issue of any **Construction Certificate**.
- 3. **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.
- 4. **Excavation Works.** 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. **Advertising Signs:** 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”.

6. **Security Grill:** This consent does not authorise the erection of any security grilles or barriers on the shopfront. Separate approval must be obtained for any such works.
7. **Public Domain Works:** The applicant or the owner shall at their own expense carry out the following public domain improvement works on the road reserve fronting the subject site prior to the issue of any Occupation Certificate:
 - (a) **Footpath Paving:** Public Footpaths in Trelawney Street and Rutledge Street are to be paved with clay pavers in accordance with the Public Domain Technical Manual Section 3 – Eastwood. The clay paving must comply with the Eastwood section of Council's Public Domain Technical Manual. Details must be submitted for Council's approval prior to issue of any Construction Certificate.
 - (b) **Under grounding of overhead powerlines:** Overhead mains in Trelawney Street shall be placed underground, and Multifunction Poles with new street lighting provided along the Trelawney Street frontage. An Electrical Design for dismantling the existing network and installing the new network shall be prepared and submitted to Council and Ausgrid for approval prior to commencement of work. Such utility modifications will be carried out to the satisfaction of the responsible authority (e.g.AUSGRID/ Energy Australia) and cost borne by the applicant.
 - (c) **Multifunction Light Poles:** The multifunction light poles along Trelawney Street frontage shall be erected within the road reserve adjacent to the premises at locations approved by Council. All costs are to be borne by the applicant.
 - (d) **Street Trees Rutledge Street:** The street trees in Rutledge Street are to be *Angophora floribunda* (Rough Barked Apple) planted at approximately 7m intervals.
 - (e) **Street Trees on Trelawney Street:** The street trees in Trelawney Street road reserve are to be *Acer negundo* planted at approximately 7m intervals.

Full engineering details, including plans, sections, finished levels and schedule of materials and finishes complying with the Public Domain Technical Manual must be submitted to Council and approval obtained prior to the issue of any **Construction Certificate**.

8. **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.

9. **Hoardings.**
 - (a) A hoarding or fence must be erected between the work site and any adjoining public place.
 - (b) An awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
 - (c) Any hoarding, fence or awning erected pursuant this consent is to be removed when the work has been completed.

10. **Public place kept lit:** 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.

11. **Construction within site boundaries.** The development must be constructed wholly within the boundaries of the premises. No portion of the proposed structures shall encroach onto the adjoining properties including any other public, private or land owned by the Roads and Maritime Services. Gates must be installed so they do not open onto any footpath.

12. **No obstruction to the public way.** The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances, without prior approval from Council.

13. **Works on public road.** Compliance with the requirements (including financial costs) of any relevant utility provider (e.g. Energy Australia, Sydney Water, Telstra, RTA, Council etc) in relation to any connections, works, repairs, relocation, replacements and/or adjustments to public infrastructure or services affected by the development.

14. **Works in public road.** 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.

15. **Design and Construction Standards.** All engineering plans and work shall be carried out in accordance with the requirements as outlined within Council's publication *Environmental Standards Development Criteria* and relevant Development Control Plans except as amended by other conditions.

16. **Service Alterations.** All mains, services, poles, etc., which require alteration shall be altered at the applicant's expense.

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.

18. **Road Opening Permit.** The applicant shall apply for a road-opening permit where works are proposed to be constructed within the public road reserve, e.g. where connections to public utility services (e.g. telephone, electricity, sewer, water or gas) are required within the road reserve. No work shall be carried out on the road reserve without this permit being paid and a copy kept on the site.
19. **Waste Disposal** To facilitate waste disposal from the site, the site Building Manager shall co-ordinates with the Council and the Waste Collection Contractor to ensure that the loading dock area is accessible at the relevant times.
20. **Parking Management Plan:** An external (on-street) parking management plan to be prepared by the proponent (to Council's satisfaction which requires approval via the Ryde Local Traffic Committee prior to the issue of any Occupation Certificate. An internal signposting and line marking plan shall be provided for Council's approval.
21. **Vehicle Entry:** All vehicles must enter and leave the property in a forward direction from the basement car park.
22. **Construction Traffic Management:** The Applicant must submit a Construction Traffic Management Plan to Council prior to the issue of Construction Certificate.
23. **Queuing Space:** A minimum of 3 queuing spaces should be provided for more than 100 cars at a car park with control point at entrances as per AS2890.1 – 2004 Clause 3.4. Details are to be submitted on the Construction Certificate plans which ensure compliance.
24. **No Stopping Signs:** Full time "No Stopping" restrictions are to be maintained on Rutledge Street and Trelawney Street frontages of the development site.
25. **Design and Geotech Reports:** The developer is to submit detailed design drawings and geotechnical reports relating to the excavation of the site and support structures to RMS for assessment. The developer is to meet the full cost of the assessment by the RMS. The Report would need to address the following key issues:
 - (a) The impact of excavation/ rock anchors on the stability of Rutledge Street and detailing how the carriageway would be monitored for settlement.
 - (b) The impact of the excavation on the structural stability of Rutledge Street.

The report and any enquiries should be forwarded to:
Project Engineer, External Works
Sydney Asset Management
Roads and maritime Services
P O Box 973 Parramatta CBD 2124

Telephone: 8848 2114
Fax: 8849 2766

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) days notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

26. **Existing Driveways:** The redundant driveways along Rutledge Street shall be removed and replaced with kerb and gutter to match existing.

The design and construction of the gutter crossing on Rutledge Street shall be in accordance with RMS's requirement. Details of these requirements should be obtained from RMS's Project Services Manager, Traffic Projects Section, Parramatta (Telephone 8849 2496).

Detailed design plans of the proposed gutter crossing are to be submitted to RMS for approval prior to the commencement of any road works.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant/ developer prior to the release of the approved road design plans by the RMS.

27. **Hydraulic Calculations:** Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to RMS for approval, prior to the commencement of any works.

Details should be forwarded to:

The Sydney Asset management
Roads and maritime Services
PO Box 973 Parramatta CBD 2124

A plan checking fee will be payable and a performance bond may be required before RMS's approval is issued. With regards to the Civil Works requirement please contact the RMS's Project Engineer on phone 8849 2114 or fax 8849 2766.

28. **Additional Sightlines:** Vegetation and proposed landscaping/ fencing must not hinder sight lines to and from the proposed access driveways to pedestrians and cyclists.
29. **Layout of parking and circulation:** The layout of the proposed car parking areas associated with the subject development (including

driveways, grades, sight distance requirements, and parking bay dimensions) should be in accordance with AS2890.1 – 2004, AS2890-2002 for heavy vehicles and to Council satisfaction.

30. **Turning areas to be kept clear:** The proposed turning areas within the subject site are to be kept clear of any obstacles, including parked cars, at all times.
31. **Work Zone:** All construction vehicles and activities are to be contained wholly within the site. As no work zone permits will be permitted by RMS on Rutledge Street.

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.

32. **Demolition work.** All demolition work must be carried out in accordance with Australian Standard AS 2601-1991 *The Demolition of Structures*.
33. **Notification of works to Council.** The applicant must notify Council of the following particulars in writing at least seven (7) days before demolition work commences:
 - (a) the name, address, telephone contact details and licence number of the person responsible for carrying out the work; and
 - (b) the date the work is due to commence and the expected completion date.
34. **Notification of works to adjoining property owners.** At least seven (7) days before demolition work commences the applicant must notify the occupiers of all neighbouring premises of the date the work is due to commence by placing a written notice in the letter box of each premises.
35. **Asbestos materials.** All work involving asbestos products and materials, including asbestos-cement sheeting (ie. fibro), must be carried out in accordance with the guidelines for asbestos work published by WorkCover New South Wales.
36. **Hours of work.** All demolition and construction work must be restricted to between the hours of 7.00am and 7.00pm Mondays to Fridays and 8.00am and 4.00pm on Saturdays. No work is to be carried out on Sundays or public holidays.
37. **Noise.** Noise must be minimised by the selection of appropriate methods and equipment and the use of screening or barriers where practical.

38. **Noise monitoring.** Noise monitoring must be carried out by a qualified acoustics consultant if complaints are received, or if directed by Council, and any control measures recommended by the acoustical consultant must be implemented during the work.
39. **Removal of wastes.** All demolition and construction wastes must be stored in an environmentally acceptable manner and be removed from the site at such intervals as may be necessary to ensure that no nuisance or danger to health, safety or the environment is created.
40. **Recycling wastes.** All wastes nominated for recycling or re-use must be segregated from other wastes and be transported to a place or facility where they will be recycled or re-used.
41. **Contaminated soil.** All potentially contaminated soil excavated from the site must be stockpiled in a secure area and be assessed and classified in accordance with the *Environmental Guidelines: Assessment, Classification & Management of Liquid & Non-Liquid Wastes* (EPA, 1999) before being transported from the site.
42. **Transportation of wastes.** All demolition and construction wastes must be transported in an environmentally safe manner to a facility or place that can lawfully be used as a waste facility for those wastes. Copies of the disposal dockets must be kept by the applicant for at least 3 years and be submitted to Council on request.
43. **Asbestos wastes.** All asbestos wastes, including used asbestos-cement sheeting (ie. fibro), must be disposed of at a landfill facility licensed by the New South Wales Environment Protection Authority to receive asbestos waste.

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.

44. **Section 94 Contribution.** A monetary contribution for the services in Column A and for the amount in Column B shall be made to Council prior to the issue of any **Construction Certificate**:

A – Contribution Type	B – Contribution Amount
Community & Cultural Facilities	\$157,758.19
Open Space & Recreation Facilities	\$364,433.93
Civic & Urban Improvements	\$139,415.56
Roads & Traffic Management Facilities	\$21,264.70
Cycleways	\$11,879.58
Stormwater Management Facilities	\$39,590.95
Plan Administration	\$3,200.19
The total contribution is	\$737,543.11

These are contributions under the provisions of Section 94 of the Environmental Planning and Assessment Act, 1979 as specified in Section 94 Development Contributions Plan 2007 (2010 Amendment) adopted by City of Ryde on 16 March 2011.

The above amounts are current at the date of this consent, and are subject to **quarterly** adjustment for inflation on the basis of the contribution rates that are applicable at time of payment. Such adjustment for inflation is by reference to the Consumer Price Index published by the Australian Bureau of Statistics (Catalogue No 5206.0) – and may result in contribution amounts that differ from those shown above.

A copy of the Section 94 Development Contributions Plan may be inspected at the Ryde Planning and Business Centre, 1 Pope Street Ryde (corner Pope and Devlin Streets, within Top Ryde City Shopping Centre) or on Council's website <http://www.ryde.nsw.gov.au>.

45. **Damage security.** 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 (category: other buildings with delivery of bricks or concrete or machine excavation).
46. **Payment of fees.** The following fees must be paid to Council in accordance with Council's Management Plan:
- (a) Infrastructure Restoration and Administration Fee
 - (b) Enforcement Levy
47. **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**.

48. **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.
49. **Disabled Access & Adaptable Units:** Disabled access is to be provided within the development in accordance with the recommendations contained in the Access Review Report prepared by Mark Relf (Accessibility Solutions (NSW) Pty Ltd) dated 20th October 2011. Details indicating compliance with the AS1428 & AS4299, Building Code of Australia and the recommendations contained in the above Report are to be submitted to the Principal Certifying Authority (PCA) prior to the Construction Certificate being issued.
50. **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. A copy of the survey is to be submitted to the PCA (*and Council, if Council is not the PCA*).
51. **Reflectivity.** Roofing and other external materials must be of low glare and reflectivity. Details of the approved finished external surface materials, including colours and texture must be provided to the Principal Certifying Authority.
52. **Bicycle & Motorbike parking.** Sufficient area shall be designated for bicycle parking on the site within the lower ground level (the entrance level) in accordance with the following:
 - (a) Secure bicycle parking racks and manoeuvring area must be provided for at least eleven bicycles.
 - (b) The bicycle parking area must be highly visible, adequately lit and easily accessible by residents and customers.
 - (c) Bicycle parking and access must be designed so as to ensure potential conflicts with vehicles are minimised.
 - (d) Provision for motorbike parking on the site must also be provided.

Bicycle parking must be designed in accordance with AS2890.3 Parking Facilities- Bicycle Parking Facilities and the NSW bicycle guidelines. Details are to be submitted on the **Construction Certificate**.
53. **Lighting.** 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 are to include certification from an appropriately qualified person that there will be no offensive glare onto adjoining residents.
54. **BASIX Commitments.** The development must comply with all commitments listed in BASIX Certificate numbered 385935M, dated 12 October 2011. The fittings, fixtures and materials installed in association

with the retail tenancy (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**.

55. **Car parking.** Disabled parking must be provided for both residential and retail activities on the site. At least 108 car parking spaces are to be provided on the site including 73 residential parking spaces, 22 retail parking spaces, 13 visitor parking spaces and six *accessible* spaces, evenly distributed over all designated parking levels. Details are to be submitted on the Construction Certificate plans.
56. **Access to resident parking.** Access to residential parking should be restricted to residents and their visitors only. Details demonstrating compliance are to be submitted on the Construction Certificate plans.
57. **Services & Substation:** All service infrastructure/utilities including electrical substations, fire hydrants, gas meters and the like shall be located within the building envelope. Where this is not possible and subject to Council approval such infrastructure shall be located on the subject site and appropriately screened from view. Details of all service infrastructure/utilities are to be approved prior to issue of the Construction Certificate.
58. **Garbage Room Exhaust:** The garbage room exhaust must be designed so that it is suitably screened from view. Satisfactory screening device must be used and integrated with the architectural feature of the building. Details of all service infrastructure/utilities are to be approved prior to issue of the Construction Certificate.
59. **Tree Removal:** Adjoining owners consent must be obtained prior to the removal of the tree located on the adjoining site.
60. **Underground Gas Pipeline:** All excavation (including pot-holing by hand) should be performed in accordance with 'Work Near Underground Assets Guidelines' published in 2007 by the Work Cover Authority.
61. **Soil Depths:** Minimum soil depth of 800mm must be provided in all planter beds provided throughout the development
62. **Operable Windows:** Windows to the units must be operable where necessary to allow adequate cross ventilation and improved amenity.
63. **Delete tree adjacent to fire door:** The tree planting in front of the fire door is to be deleted so that the area is kept clear.
64. **Seating:** Adequate seating, shading structures and BBQ facility must be provided within the communal open space area. Details to be provided in the plans submitted for Construction Certificate.

65. **Storage Facility:** All residential units must be provided with sufficient secure storage facility (other than the kitchen cupboard areas at a rate of storage facilities at the following rates:
- studio apartments 6m³
 - one-bedroom apartments 6m³
 - two-bedroom apartments 8m³
 - three bedroom apartments 10m³
- Storage facility must be lockable and allocated to individual units.
The allocated storage facility must be shown on the strata plans.
66. **Remediation of land:** The land must be remediated to the extent necessary for the proposed use and a copy of the site validation report must be submitted to Council for consideration. The site validation report must comply with the *Guidelines for Consultants Reporting on Contaminated Sites* (EPA, 1997) and demonstrate that the site is suitable for the proposed use.
- No Construction Certificate is to be issued for any building work on the land until Council has confirmed in writing that it is satisfied that the land is suitable for the proposed use, without the need for further remediation.**
67. **Remediation Work:** All remediation work must be carried out in accordance with:
- (a) *State Environmental Planning Policy No. 55 - Remediation of Land*;
 - (b) any relevant guidelines published under the *Contaminated Land Management Act 1997*; and
 - (c) any council policy or development control plan relating to the remediation of land.
68. **Site Audit:** If requested by Council, a site audit statement and a site audit summary report from an accredited site auditor under the *Contaminated Land Management Act 1997* must be submitted to Council verifying the information contained in the site validation report.
69. **Grease Trap:** A grease trap must be installed if required by Sydney Water Corporation. The grease trap must be located outside the building or in a dedicated grease trap room and be readily accessible for servicing. Access through areas where exposed food is handled or stored or food contact equipment or packaging materials are handled or stored is not permitted.
70. **Grease Trap Room:** The grease trap room must be constructed in accordance with the following requirements:
- (a) The floor, walls and ceiling must be constructed of solid materials finished to a smooth even impervious surface free of any cracks, holes or other openings that may allow the escape of odours.

- (b) The room must be fitted with an air-tight (eg. coolroom type) door.
 - (c) The room must be provided with an approved system of mechanical exhaust ventilation.
 - (d) The room must be provided with intrinsically safe artificial lighting.
 - (e) A hose tap with a backflow prevention device must be provided in or adjacent to the room to facilitate cleaning.
71. **Grease Trap Pump:** A fixed pump out line must be provided in accordance with the requirements of Sydney Water Corporation to facilitate servicing of the grease trap.
72. **Garbage and Recycling Room:** A garbage and recycling room must be provided in an approved location in the basement carpark of the residential flat building. The garbage and recycling rooms must be constructed in accordance with the following requirements:
- (a) The room must be of adequate dimensions to accommodate all waste containers, and any compaction equipment installed, and allow easy access to the containers and equipment for users and servicing purposes;
 - (b) The floor must be constructed of concrete finished to a smooth even surface, coved to a 25mm radius at the intersections with the walls and any exposed plinths, and graded to a floor waste connected to the sewerage system;
 - (c) The floor waste must be provided with a fixed screen in accordance with the requirements of Sydney Water Corporation;
 - (d) The walls must be constructed of brick, concrete blocks or similar solid material cement rendered to a smooth even surface and painted with a light coloured washable paint;
 - (e) The ceiling must be constructed of a rigid, smooth-faced, non-absorbent material and painted with a light coloured washable paint;
 - (f) The doors must be of adequate dimensions to allow easy access for servicing purposes and must be finished on the internal face with a smooth-faced impervious material;
 - (g) Any fixed equipment must be located clear of the walls and supported on a concrete plinth at least 75mm high or non-corrosive metal legs at least 150mm high;
 - (h) The room must be provided with adequate natural ventilation direct to the outside air or an approved system of mechanical ventilation;
 - (i) The room must be provided with adequate artificial lighting; and
 - (j) a hose with a trigger nozzle must be provided in or adjacent to the room to facilitate cleaning.

Details to be submitted on the Construction Certificate plans which ensure compliance with this requirement.

73. **Storage of Discarded Items:** A separate room or caged area with minimum 5m² floor area must be provided in the basement carpark of the residential flat building for the storage of bulky discarded items such as furniture and white goods. Details are to be submitted on the plan submitted for Construction Certificate.
74. **Kitchen Exhaust:** Adequate provision must be made for the installation of kitchen exhaust systems to the proposed retail premises.
75. **Mechanical Ventilation:** Details of all proposed mechanical ventilation systems, and alterations to any existing systems, must be submitted to Council or an accredited private certifier 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;
 - (b) A site survey plan showing the location of all proposed air intakes exhaust outlets and cooling towers, and any existing cooling towers, air intakes, exhaust outlets and natural ventilation openings in the vicinity; and
 - (c) A certificate from a professional mechanical services engineer certifying that the mechanical ventilation systems will comply with the *Building Code of Australia* and setting out the basis on which the certificate is given and the extent to which the certifier has relied upon relevant specifications, rules, codes of practice or other publications
76. **Air Handling:** All air-handling and water systems regulated under the *Public Health Act 1991* must be installed, operated and maintained in accordance with the requirements of the *Public Health (Microbial Control) Regulation 2000*.
77. **Water Cooling System:** All water-cooling and warm-water systems regulated under the *Public Health Act 1991* must be registered with Council within one (1) month of installation.
78. **Road Noise:** The residential flat building(s) must be designed and constructed so that road traffic noise levels inside the building(s) comply with the satisfactory design sound levels recommended in Australian/New Zealand Standard AS/NZS 2107: 2000 *Acoustics – Recommended design sound levels and reverberation times for building interiors*, when the windows and doors are closed.

79. **Noise Attenuation Measures:** The recommendations contained under Section 6 of the Acoustic Report prepared by West & Associates Pty Ltd (Document No. 11183 Issue A dated 21 September 2011 must be incorporated in the Construction Certificate drawing prior to its approval.
80. **Boundary Levels.** The levels of the street alignment shall be obtained from Council. These levels shall be incorporated into the design of the internal driveway, car parking areas, landscaping and stormwater drainage plans and must be obtained prior to the issue of the construction certificate.
81. **Road Anchors:** Where road anchors are proposed to support the proposed development excavation, detailed structural plans indicating the number of anchors are proposed are to be submitted to Council and road anchor fees are to be paid to Council in accordance with Council's Management Plan.
82. **Hoarding Fees.** Where hoarding are proposed, fees in accordance with Council's Management Plan are to be paid to Council prior to the issue of the Construction Certificate for the erection of a protective hoarding along the street frontage of the property. The fee is based on Council, schedule of fees and charges and is for a period of 6 months. If the time of use of Council's footpath varies from this an adjustment of the fee will be made on completion of the works.
83. **Dilapidation Report.** To determine the extent of restoration works that may be required, the applicant shall submit to Council a pre and post construction dilapidation report on the status of existing public infrastructures in the vicinity of the proposed development. The report is to include photographic records, description and location of any existing observable defects of the following infrastructure and others where applicable:
 - (a) Road Pavment
 - (b) Kerb and gutter.
 - (c) Constructed footpath.
 - (d) Drainage pits.
 - (e) Traffic signs.
 - (f) Any other relevant infrastructure.

These reports shall be submitted to Council development engineer, prior to the issue of the Construction and Occupation Certificate. The report shall be used by Council as Roads Authority under the Roads Act to assess whether restoration works are required prior to the issue of the Occupation Certificate. All restoration works deemed necessary by Council's development engineer are to be completed to Council satisfaction prior to the issue of Occupation Certificate

84. **Excavation.** To ensure the proposed site excavation will not impact on the adjoining property structures foundations and services.

The applicant shall submit to the Principal Certifying Authority for approval a geotechnical report prepared and certified by a chartered practicing geotechnical/structural engineer addressing, but not be limited to the following items:-

- a) *The likely impacts of the proposed excavations will have on structures and services of adjoining properties & Roadway*
- b) *Detail what measures are to be taken to protect the structures and services of adjoining properties from structural damage and undermining during construction*
- c) *A copy of the report including geotechnical/structural engineer certification should be submitted to Council.*

The above matters shall be completed prior to the issue of the construction certificate.

All recommendations of the Geotechnical Engineer are to be carried out during the course of the excavation. The applicant must give at least seven (7) days notice to the owner and occupiers of the adjoining allotments before excavation works commence.

85. **Driveway Grades.** The maximum grade of all internal driveways and vehicular ramps etc shall comply with relevant section of AS 2890.1 & AS2890.2 where applicable. Detailed engineering plans including engineering certification indicating compliance with this condition are to be submitted with the Construction Certificate application.
86. **Car Parking.** All internal driveways, vehicle turning areas, grades, parking space dimensions, headroom clearance etc shall be designed to comply with relevant sections of Australian Standards AS 2890 where applicable and shall incorporate but not be limited to the following additional requirement.
 - a. Internal signposting and line marking plan shall be provided to in accordance with relevant Australian Standard for the PCA approval.
 - b. All loading and unloading must take place within the confines of the loading dock for at least a medium rigid vehicle MRV.

Detailed engineering plans including engineering certification confirming compliance with this condition is to be submitted with the Construction Certificate application.

87. **Traffic Management.** Traffic management plans must be prepared and procedures must be in place and practised during the construction period to ensure safety and minimise construction traffic conflict on adjoining pedestrian and vehicular traffic movement. These procedures and systems must be in accordance with AS 1742.3 1985 and the RTA's Manual – "Traffic Control at Work Sites" where applicable.

Accordingly, a detailed plan of traffic management prepared by a traffic engineer including certification indicating compliance are to be submitted with the Construction Certificate application.

88. **Stormwater Runoff.** Stormwater runoff from site shall be collected and piped to Council's underground drainage system via an On-site detention (OSD) system designed in accordance with the City of Ryde, Development Control Plan 2010: - Part 8.2; Stormwater Management. The design shall incorporate but not be limited to *the following*:

- a. All gutters, down pipes and pipeline conveying runoff to the OSD tank(s) are required to be designed for a 1 in 100 year storm.
- b. The design shall ensure back water flow will not occur or influence the functioning of the outlet pipe from the OSD tank for all storm events and durations, including preventing the ingress of overland flows into the OSD tank.
- c. Discharge from the site shall be limited to a single point discharge at maximum of 30l/s to the street kerb and gutter. Should this is exceeded, the discharge shall be to the nearest Council's underground drainage system, in which case extension of Council's existing drainage system may be required to facilitate this solution. Where extension of Council's existing stormwater line is required detailed engineering plans shall be submitted to and approved by Council with payment of all applicable fees in accordance with Council's management plan, prior to written approval being given by Council.

Accordingly, detailed amended engineering plans including certification from a chartered civil engineer with NPER registration with Engineers Australia indicating compliance with this condition are to be submitted for approval with the Construction Certificate application.

89. **Erosion and Sediment Control Plan.** An *Erosion and Sediment Control Plan (ESCP)* shall be prepared by a suitably qualified consultant in accordance with the guidelines set out in the manual "*Managing Urban Stormwater, Soils and Construction*" prepared by the Department of Housing. These devices shall be maintained during the construction works and replaced where considered necessary.

The following details are to be included in drawings accompanying the *Erosion and Sediment Control Plan*

- a) Existing and final contours
- b) The location of all earthworks, including roads, areas of cut and fill
- c) Location of all impervious areas
- d) **Location and design criteria of erosion and sediment control structures,**
- e) Location and description of existing vegetation
- f) Site access point/s and means of limiting material leaving the site
- g) Location of proposed vegetated buffer strips
- h) Location of critical areas (drainage lines, water bodies and unstable slopes)

- i) Location of stockpiles
- j) Means of diversion of uncontaminated upper catchment around disturbed areas
- k) Procedures for maintenance of erosion and sediment controls
- l) Details for any staging of works
- m) Details and procedures for dust control.

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.

90. Site Sign

- (a) A sign must be erected in a prominent position on site:
 - (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.

91. Sediment and Erosion Control. The applicant shall install appropriate sediment control devices in accordance with an approved plan **prior** to any earthworks being carried out on the site. These devices shall be maintained during the construction period and replaced where considered necessary. Suitable erosion control management procedures shall be practiced. This condition is imposed in order to protect downstream properties, Council's drainage system and natural watercourses from sediment build-up transferred by stormwater runoff from the site.

92. Compliance Certificate. A Compliance Certificate must be obtained confirming that the constructed erosion and sediment control measures comply with the construction plan and the City of Ryde, Development Control Plan 2006: - Part 8.1; Construction Activities.

93. Vehicle Footpath Crossings. Concrete footpath crossings shall be constructed at all locations where vehicles cross the footpath, to protect it from damage resulting from the vehicle traffic. The location, design and construction shall conform to the requirements. Crossings are to be constructed in plain reinforced concrete and finished levels shall conform with property alignment levels issued by Council's Public Works Division. Kerbs shall not be returned to the alignment line. Bridge and pipe crossings will not be permitted.

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.

94. **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*.
95. **Noise and Vibration.** The construction of the development and preparation of the site, including operation of vehicles, must be conducted so as to avoid unreasonable noise or vibration and not cause interference to adjoining or nearby occupations.
96. **Noise and Vibration.** The L₁₀ 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.
97. **Survey of footings and 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.
98. **Sediment, soil and dust.** No sediment, dust, soil or similar material shall leave the site during construction work.
99. **CCTV Surveillance** cameras must be installed in and around the property to maximise surveillance opportunities. CCTV should be used throughout the retail complex and communal areas such as lobbies, lifts etc, and paying particular attention to the internal area of the shopping centre especially entry and exit points. CCIV should also be used around the loading dock area and car park entry and exit points. CCIV should be placed on the external area of the building capturing the area outside the retail stores along Trelawney Street and also capturing the area along Rutledge Street. Digital technology should be used to record images from the cameras. Installed surveillance equipment needs to be able to zoom in on a person without loss of focus. Management must ensure that the requirements of the Surveillance and Privacy Act are adhered to.
100. **Landscape maintenance plan must be prepared for the site.** Landscaping close to the building should be regularly maintained to ensure branches cannot act as a natural ladder to gain access to higher

parts of the building and trimmed to ensure concealment opportunities are eliminated.

101. **Lighting** shall be provided to all common areas including the car parking levels as well as the stairs and access to and including the public outdoor courtyard, communal gardens and the bin storage rooms. Such lighting to be automatically controlled by time clocks, and where appropriate, sensors to provide an energy efficient and controlled environment for residents.
102. **Signage.** Signage must be provided at entry/exit points and throughout the development to assist users and warn intruders that they will be prosecuted.
Warning: these premises are under constant surveillance.
Warning: trespassers will be prosecuted.
103. **Security Signs:** Signs should be erected in the car parks and near entry and exit points which details security measures and reminds people to lock their vehicles and remove valuables from their vehicles.
104. **Graffiti:** All surfaces on the street frontages that are not glass should use graffiti resistant paints and/or other surfaces that discourage graffiti.
105. **Intercom Facility:** The entry to the car park should have a ticket/boom gate system. Intercom facilities should be incorporated into these entry/exit points to enable residents to communicate and identify with people prior to admitting them to the development.
106. **Access control to residential lifts:** Access should be restricted to residents only to the lifts and stairs leading to the apartments.
107. **Installation of Locksets:**
 - (a) The main entry/exit points for this development should be fitted with single cylinder locksets (Australia and New Zealand Standards - Locksets), which comply with the Building Code of Australia.
 - (b) An auxiliary lock set should also be incorporated into the design of each of the entry/exit points to enable emergency services to access the development particularly in emergency situations.
 - (c) Fire exit doors to the development should also be fitted with single cylinder locksets (Australia and New Zealand Standard - Lock Sets) to restrict unauthorized access to the development.
 - (d) The main entry/exit doors to individual units should also be fitted with single cylinder locksets (Australia and New Zealand Standard - Lock Sets) to restrict unauthorized access to the unit.
 - (e) The balcony doors to individual units should also be fitted with single cylinder locksets (Australia and New Zealand Standard - Lock Sets) to restrict unauthorized access to the unit.
 - (f) The windows to individual units should also be fitted with key operated locksets (Australia and New Zealand Standard - Lock Sets) to restrict unauthorized access to the unit.

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.

108. **Basix commitments.** The submission of documentary evidence of compliance with all commitments listed in BASIX Certificate referred to in this Development Consent.
109. **Public domain.** All landscaping & public domain improvement works required to be carried out under condition 7 are to be completed.
110. **Consolidation.** All land titles within the site must be consolidated into one allotment. Documentary evidence of such consolidation shall be submitted prior to the issue of any Occupation Certificate under the Environmental Planning and Assessment Act 1979.
111. **Disabled access.** Access for disabled people shall be provided in the building or portion of the building in accordance with the applicable standards and the requirements set out in AS 1428.1. Documentary evidence is to be and certification obtained from a suitable qualified person confirming that the development meets these requirements is to be provided prior to the issue of any Occupation Certificate.
112. **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 the Interim/Final 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.

113. **Sewer Connection:** All sanitary fixtures must be connected to the sewerage system by gravity flow and documentary evidence of compliance must be submitted to the Principal Certifying Authority before the issue of an **Occupation Certificate**.
114. **Sydney Water.** 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 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.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Interim/Final Occupation Certificate.

115. **Design Verification:** Prior to an Occupation Certificate being issued to authorise a person to commence occupation or use of a residential flat building, the Principal Certifying Authority (PCA) is to be provided with design verification from a qualified designer. The statement must include verification from the qualified designer that the residential flat development achieves the design quality of the development as shown on plans and specifications in respect of any Construction Certificate issued, having regard to the design quality principles set out in Part 2 of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development. This condition is imposed in accordance with Clause 154A of the Environmental Planning and Assessment Regulation 2000.
116. **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.

117. **Disused Gutter Crossing.** All disused gutter and footpath crossings where occur shall be removed and the kerb and footpath reinstated to the satisfaction of Council.
118. **Parking Management Plan:** An external (on-street) parking management plan to be prepared by and submitted to Council's for the Local Traffic Committee approval prior to the issue of OC.
119. **Compliance Certificates – Engineering.** Compliance Certificates should be obtained for the following (If Council is appointed the Principal Certifying Authority [PCA] then the appropriate inspection fee is to be paid to Council) and **submitted to the PCA:**
- Confirming that all vehicular footway and gutter (layback) crossings are constructed in accordance with the construction plan requirements and Ryde City Council's *Environmental Standards Development Criteria - 1999*.
 - Confirming that the driveway is constructed in accordance with the construction plan requirements and Ryde City Council's *Environmental Standards Development Criteria - 1999*.
 - Confirming that the constructed internal car park and associated drainage complies with AS 2890, the construction plan requirements and Ryde City Council's *Environmental Standards Development Criteria - 1999*.
 - Confirming that the site drainage system servicing the development complies with the construction plan requirements and the City of Ryde, Development Control Plan 2010: - Part 8.2; Stormwater Management.
 - Confirming that the connection of the site drainage system to the trunk drainage system where applicable complies with Section 4.7 of *AS 3500.3 - 1990* (National Plumbing and Drainage Code).
 - Confirming that after completion of all construction work and landscaping, all areas adjacent the site, the site drainage system (including the on-site detention system), and the trunk drainage system immediately downstream of the subject site (next pit), have been cleaned of all sand, silt, old formwork, and other debris.
 - From Council confirming that all external works have been completed to Council's satisfaction.
120. **On-Site Stormwater Detention System - Marker Plate.** Each on-site detention system basin shall be indicated on the site by fixing a marker plate. This plate is to be of minimum size: 100mm x 75mm and is to be made from non-corrosive metal or 4mm thick laminated plastic. It is to be fixed in a prominent position to the nearest concrete or permanent surface or access grate. The wording on the marker plate is described in the City of Ryde, Development Control Plan 2006: - Part 8.2; Stormwater Management. An approved plate may be purchased from Council's Customer Service Centre on presentation of a completed City of Ryde OSD certification form.

121. **Work-as-Executed Plan.** A Work-as-Executed plan signed by a Registered Surveyor clearly showing the surveyor's name and the date, the stormwater drainage, including the on-site stormwater detention system if one has been constructed and finished ground levels **is to be submitted to the Principal Certifying Authority (PCA)** and to Ryde City Council if Council is not the nominated PCA. If there are proposed interallotment drainage easements on the subject property, **a Certificate from a Registered Surveyor is to be submitted to the PCA** certifying that the subject drainage line/s and pits servicing those lines lie wholly within the proposed easements.
122. **Positive Covenant, OSD.** The creation of a Positive Covenant under Section 88 of the Conveyancing Act 1919, burdening the property with the requirement to maintain the stormwater detention system on the property. The terms of the instruments are to be generally in accordance with the Council's draft terms of Section 88E instrument for Maintenance of Stormwater Detention Systems and to the satisfaction of Council.

PRIOR TO SUBDIVISION CERTIFICATE

The following conditions in this Part of the consent apply to the Subdivision component of the development.

All conditions in this Part of the consent must be complied with prior to the issue of a Subdivision Certificate.

123. **Final plan of subdivision.** The submission of a final plan of subdivision plus 3 copies suitable for endorsement by the Authorised Officer of Council.
124. **Final plan of subdivision – title details.** The final plan of subdivision shall contain detail all existing and/or proposed easements, positive covenants and restrictions of the use of land.
125. **Section 88B Instrument.** The submission of an Instrument under Section 88B of the Conveyancing Act 1919 plus 3 copies, creating Easements, Positive Covenants and Restrictions on Use. This Instrument shall nominate the City of Ryde as the authority empowered to release, vary or modify the terms of the Instrument.
126. **Occupation Certificate.** A final occupation certificate in relation to this development must be in force. A copy of the Occupation Certificate is to be submitted with the application for final subdivision certificate.
127. **Section 73 Certificate.** A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be submitted with the application for final subdivision certificate.

128. **Utility provider – compliance documents.** The submission of documentary evidence of compliance with the requirements (including financial costs) of any relevant utility provider (e.g. Energy Australia, Sydney Water, Telstra, RTA, Council etc).

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.

129. **Garbage Collection:** Where necessary, staff or contractors must be employed to take the waste containers from garbage and recycling room to the container emptying point for servicing and to return the containers to the garbage room after servicing.
130. **Gym to be used by residents only:** The use of the Gym within the building shall only be used by the residents living within the site.
131. **Indemnity:** Where it is necessary for waste collection vehicles to enter the property to service the waste containers, the property owner must indemnify Council and its contractor in writing against claims for damage to the driveways and manoeuvring areas.
132. **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*.
133. **Noise from Plant & Machinery:** The operation of any plant or machinery 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 the most affected noise sensitive location in the vicinity. 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.
134. **Hours of operation.** The use of the retail part of the development is restricted to the following hours of operation: 7.00am and 9pm Monday to Saturday and 8.00am to 8pm on Sunday.
- (b) That the Voluntary Planning Agreement also be approved and that the Group Manager Environment and Planning be delegated to finalise the Voluntary Planning Agreement with N & G Projects Pty Ltd in accordance with the submitted Voluntary Planning Agreement and the applicable

legal requirements under the *Environmental Planning and Assessment Act 1979* for a one-off monetary contribution of \$150,000.

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

AMENDMENT: (Moved by Councillors Campbell and O'Donnell)

- (a) That Local Development Application No. 2011/0611 at 3-5 Trelawney Street, Eastwood, being Lots A and B in DP 401296 be refused for the following reasons:
 - a. The proposed development is inconsistent with State Environmental Planning Policy No. 65 with respect to Context, Scale, Built Form, Density and Amenity and therefore does not represent a good design outcome, particularly in the following areas:
 - i. The development does not respect the desired future character of the area as the development extends well beyond the applicable building height and building envelope controls.
 - ii. The development does not respect the desired massing, topography and human scale initiatives.
 - iii. The development will not be stepped to appropriately relate to the existing or anticipated height of the building to the north and topography along Trelawney Street, nor will it appropriately address the site's corner location.
 - iv. The development does not provide adequate separation to the north and west boundaries and in this regard the built form will be forced to borrow amenity from adjoining properties.
 - b. The proposed development proposes significant non-compliances with the maximum 15.5m height standard for the site prescribed under Clause 4.3 – Height of Buildings of the Ryde LEP 2010 which has not been justified.
 - c. The proposed development application has not been adequately demonstrated by the applicant that the proposed height variance will be satisfactory with respect to Sub-clause 4(a) (ii) in that the development will be in the public interest because it will be consistent with the objectives of the height standard and the objectives of the land.
 - d. The design is such that it will not meet the objectives (a), (c), (d) and (e) for building height listed under Clause 4.3 – Height of Buildings of RLEP 2010 and objectives of the zone listed under the Land Use Table of RLEP 2010 with regard to '*creating an attractive environment for pedestrians*' and '*recognising topography and unique location in design*'. The proposed development will not meet Objective (b) of Clause 4.6 –

Exceptions to development standards. It will not achieve a better outcome for and from development.

- e. The proposed development does not meet the objectives (a) of Clause 6.5 – Eastwood Urban Village and West Ryde Urban Village with respect to *‘creating an attractive environment for pedestrians’* given the proposed height, scale and lack of regard to the human scale initiatives for height.
- f. The proposed development will not meet the following aims of the DLEP 2011 listed under Clause 1.2 - Objective: (2) (b) (ii) and (iii) and (2) (g) given the massing, height and scale relationship with adjoining development and existing character.
- g. The proposed development does not comply with the maximum permissible height of 15.5m prescribed under Clause 4.3 – Height of Buildings of the DLEP 2011.
- h. The proposed development does not achieve objectives (a), (b), (c) and (d) for building height listed under Clause 4.3 – Height of Buildings of the DLEP 2011.
- i. The proposed development application has not adequately justified that the proposed height variance will be satisfactory with respect to Sub-clause 4(a) (ii) in that the development will be in the public interest because it will be consistent with the objectives of the height standard.
- j. The proposed development will not meet Objective (b) of Clause 4.6 – Exceptions to development standards as it will not achieve a better outcome for and from development.
- k. The proposed development seeks significant variation to the applicable Ryde DCP 2010 controls, particularly in relation to the envisaged urban form. The degree of variation has resulted in an excessive design that is inconsistent with the object of the envelope and corner treatment controls. The development does not achieve a design outcome that is sought by Council’s controls nor reflect the future character for the Eastwood Shopping Village.
- l. Insufficient information has been submitted to verify compliance with the RFDC requirement that private open spaces for at least 70 % of apartments in a development should receive a minimum of 2 hours direct sunlight between 9 am and 3 pm in mid winter.
- m. The proposed development is not considered to be in the public interest, particularly as it will set an inappropriate precedent for dispensing with Council’s development standards without appropriate justification and given the significant departures to the Ryde LEP 2010 maximum height standards and the Ryde DCP

2010.

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

On being put to the Meeting, the voting on the Amendment was three (3) votes For and six (6) votes Against. The Amendment was LOST.

Record of Voting:

For the Amendment: Councillors Campbell, Perram and O'Donnell

Against the Amendment: The Mayor, Councillor Etmekdjian and Councillors Maggio, Petch, Pickering, Tagg and Yedelian OAM

FURTHER AMENDMENT: (Moved by Councillors Pickering and Perram)

That this matter be deferred to allow the Group Manager – Environment and Planning to negotiate this development application with particular regard to addressing the following:

- (a) an increase in the voluntary planning agreement;
- (b) the non-compliances as outlined in the officer's report; and
- (c) meeting the needs of both the developer and community with regards to amenity

On being put to the Meeting, the voting on the Amendment was three (3) votes For and six (6) votes Against. The Further Amendment was LOST.

Record of Voting:

For the Amendment: The Mayor, Councillor Etmekdjian and Councillors Perram and Pickering

Against the Amendment: Councillors Campbell, Maggio, O'Donnell, Petch, Tagg and Yedelian OAM

RECOMMITTAL OF ITEM 3(2) – 3-5 Trelawney Street, Eastwood

RESOLUTION: (Moved by Councillors Perram and Campbell)

That Item 3(2) – 3-5 Trelawney Street, Eastwood (LDA2011/0611) be recommitted.

Record of Voting:

For the Motion: The Mayor, Councillor Etmekdjian and Councillors Campbell, O'Donnell, Perram and Pickering

Against the Motion: Councillors Maggio, Petch, Tagg and Yedelian OAM

MOTION: (Moved by Councillors Pickering and Perram)

That this matter be deferred to allow the Group Manager – Environment and Planning to negotiate this development application with particular regard to addressing the following:

- (a) an increase in the voluntary planning agreement;
- (b) the non-compliances as outlined in the officer's report; and
- (c) meeting the needs of both the developer and community with regards to amenity.

AMENDMENT: (Moved by Councillors Yedelian OAM and Tagg)

- (a) That Local Development Application No. 2011/0611 at 3-5 Trelawney Street, Eastwood, being Lots A and B in DP 401296 be approved subject to the following conditions:

DEFERRED COMMENCEMENT CONSENT CONDITIONS

Part 1 – Deferred Commencement Conditions

The following are the Deferred Commencement condition(s) imposed pursuant to Section 80(3) of the Environmental Planning & Assessment Act 1979.

This consent shall not become operative until the proposal demonstrates satisfactory compliance with the following items to the satisfaction of Council's Group Manager Environment & Planning and that the applicant is advised in writing:

- (a) That the applicant shall submit a revised Voluntary Planning Agreement to Council to address the concerns raised by Council staff in relation to Clause 23.2 of the VPA. The wordings of the VPA and the Explanatory Notes must be revised to comply with the *Environmental Planning and Assessment Act 1979*.
- (b) That the monetary offer in the voluntary planning agreement be increased and the voluntary planning agreement be negotiated to the satisfaction of Council.

This information is to be submitted to Council within six months from the date of determination or the Consent will have lapsed, in accordance with the *Environmental Planning & Assessment Act, 1979*.

GENERAL

The following conditions of consent included in this Part identify the requirements, terms and limitations imposed on this development.

1. **Approved Plans.** 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:

Plan Numbers:	Document Description	Date	Issue
DA-01	Colour Scheme – Photomontage	-	A
DA-04	Demolition Plan	6/10/2011	A
DA-07	Site Plan	21/10/2011	A
DA-08	Basement	12/04/2012	A
DA-09	Lower Ground Floor (as amended by levels shown on DA-47 Issue B)	10/05/2012	C
DA-10	Ground Floor (as amended by levels shown on DA-47 Issue B)	10/05/2012	C
DA-11	Level 1	7/11/2011	A
DA-12	Levels 2 to 4 (floor layout)	7/11/2011	A
DA-13	Level 5	7/11/2011	A
DA-14	Roof Plan	7/11/2011	A
DA-15	Elevations North & South	12/04/2012	A
DA-16	Elevations – East & West	12/04/2012	A
DA-17	Section A	21/10/2011	A
DA-18	Section B	21/10/2011	A
DA-26	Open Space & Deep Soil	7/11/2011	A
DA-28	Materials Finishes Board	21/10/2011	A
DA-38	Storage Areas & as amended by condition below	12/04/2012	N/A
DA-47	Flood & Floor Levels and Access	17/05/2012	B
11_023 L00	Landscape Plan (by Habitation)	11/07/2011	B
11_023 L01	Landscape Plan - Ground level	02/11/2011	C
11_023 L02	Landscape Plan – Level One	02/11/2011	C
11_023 L03	Landscape Plan – Level Five	06/09/2011	C
385935M	BASIX Certificate	12 October 2011	-
	Waste Management Plan		

Access Report	Prepared by Mark Relf	20 October 2011	-
Doc No.11183 Job No. 2172/4	Acoustic Report by West & Associates Pty Ltd	21 September 2011	A

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

- (a) **Adaptable Units:** Unit numbers G01, 111, 112, 211, 212, 311 and 312 are to be designed as adaptable units. Each of these units is to be allocated an *accessible* parking bay.
- (b) **Awning:** The height of the street awning shall not be less than 3 metres or greater than 4.5 metres measured from the finished pavement level of the footpath. Such awning must:
 - i) Be set back from the face of the kerb by 0.6m;
 - ii) Have cut-outs of 1m wide by 1m deep to accommodate street trees, where the frontage is proposed to accommodate street trees in relation to proposed public domain improvement works;
 - iii) Be weather sealed to the face of the building to which they are attached and to the adjoining awnings;
 - iv) Have a height clearance as stated above or consistent with adjacent awnings; and
 - v) Maintain sufficient clearances from any overhead electricity or telecommunications installations.
 - vi) The street awning should continue the full length of the street and must not be glazed.
- (c) **Accessible Ramps:** *Accessible* ramps must be provided at the entrance to all retail tenancies from the Trelawney Street frontage. The ramp must be wholly within the site and not encroach on Council's footpath.

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

2. **Voluntary Planning Agreement:** The Voluntary Planning Agreement between City of Ryde and N & G Projects Pty Ltd that is subject of this Development Consent must be registered on the title of Lots A & B in DP401296 prior to the issue of any **Construction Certificate**.
3. **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.

4. **Excavation Works.** 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. **Advertising Signs:** 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".

6. **Security Grill:** This consent does not authorise the erection of any security grilles or barriers on the shopfront. Separate approval must be obtained for any such works.

7. **Public Domain Works:** The applicant or the owner shall at their own expense carry out the following public domain improvement works on the road reserve fronting the subject site prior to the issue of any Occupation Certificate:
 - (a) **Footpath Paving:** Public Footpaths in Trelawney Street and Rutledge Street are to be paved with clay pavers in accordance with the Public Domain Technical Manual Section 3 – Eastwood. The clay paving must comply with the Eastwood section of Council's Public Domain Technical Manual. Details must be submitted for Council's approval prior to issue of any Construction Certificate.
 - (b) **Under grounding of overhead powerlines:** Overhead mains in Trelawney Street shall be placed underground, and Multifunction Poles with new street lighting provided along the Trelawney Street frontage. An Electrical Design for dismantling the existing network and installing the new network shall be prepared and submitted to Council and Ausgrid for approval prior to commencement of work. Such utility modifications will be carried out to the satisfaction of the responsible authority (e.g.AUSGRID/ Energy Australia) and cost borne by the applicant.
 - (c) **Multifunction Light Poles:** The multifunction light poles along Trelawney Street frontage shall be erected within the road reserve adjacent to the premises at locations approved by Council. All costs are to be borne by the applicant.
 - (d) **Street Trees Rutledge Street:** The street trees in Rutledge Street are to be *Angophora floribunda* (Rough Barked Apple) planted at approximately 7m intervals.
 - (e) **Street Trees on Trelawney Street:** The street trees in Trelawney Street road reserve are to be *Acer negundo* planted at approximately 7m intervals.

Full engineering details, including plans, sections, finished levels and schedule of materials and finishes complying with the Public Domain Technical Manual must be submitted to Council and approval obtained prior to the issue of any **Construction Certificate**.

8. **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.
9. **Hoardings.**
 - (a) A hoarding or fence must be erected between the work site and any adjoining public place.
 - (b) An awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
 - (c) Any hoarding, fence or awning erected pursuant this consent is to be removed when the work has been completed.
10. **Public place kept lit:** 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.
11. **Construction within site boundaries.** The development must be constructed wholly within the boundaries of the premises. No portion of the proposed structures shall encroach onto the adjoining properties including any other public, private or land owned by the Roads and Maritime Services. Gates must be installed so they do not open onto any footpath.
12. **No obstruction to the public way.** The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances, without prior approval from Council.
13. **Works on public road.** Compliance with the requirements (including financial costs) of any relevant utility provider (e.g. Energy Australia, Sydney Water, Telstra, RTA, Council etc) in relation to any connections, works, repairs, relocation, replacements and/or adjustments to public infrastructure or services affected by the development.
14. **Works in public road.** 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.
15. **Design and Construction Standards.** All engineering plans and work shall be carried out in accordance with the requirements as outlined within Council's publication *Environmental Standards Development Criteria* and relevant Development Control Plans except as amended by other conditions.

16. **Service Alterations.** All mains, services, poles, etc., which require alteration shall be altered at the applicant's expense.
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.
18. **Road Opening Permit.** The applicant shall apply for a road-opening permit where works are proposed to be constructed within the public road reserve, e.g. where connections to public utility services (e.g. telephone, electricity, sewer, water or gas) are required within the road reserve. No work shall be carried out on the road reserve without this permit being paid and a copy kept on the site.
19. **Waste Disposal** To facilitate waste disposal from the site, the site Building Manager shall co-ordinates with the Council and the Waste Collection Contractor to ensure that the loading dock area is accessible at the relevant times.
20. **Parking Management Plan:** An external (on-street) parking management plan to be prepared by the proponent (to Council's satisfaction which requires approval via the Ryde Local Traffic Committee prior to the issue of any Occupation Certificate. An internal signposting and line marking plan shall be provided for Council's approval.
21. **Vehicle Entry:** All vehicles must enter and leave the property in a forward direction from the basement car park.
22. **Construction Traffic Management:** The Applicant must submit a Construction Traffic Management Plan to Council prior to the issue of Construction Certificate.
23. **Queuing Space:** A minimum of 3 queuing spaces should be provided for more than 100 cars at a car park with control point at entrances as per AS2890.1 – 2004 Clause 3.4. Details are to be submitted on the Construction Certificate plans which ensure compliance.
24. **No Stopping Signs:** Full time "No Stopping" restrictions are to be maintained on Rutledge Street and Trelawney Street frontages of the development site.
25. **Design and Geotech Reports:** The developer is to submit detailed design drawings and geotechnical reports relating to the excavation of the site and support structures to RMS for assessment. The developer is to meet the full cost of the assessment by the RMS. The Report would need to address the following key issues:

- (a) The impact of excavation/ rock anchors on the stability of Rutledge Street and detailing how the carriageway would be monitored for settlement.
- (b) The impact of the excavation on the structural stability of Rutledge Street.

The report and any enquiries should be forwarded to:
Project Engineer, External Works
Sydney Asset Management
Roads and maritime Services
P O Box 973 Parramatta CBD 2124

Telephone: 8848 2114
Fax: 8849 2766

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) days notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

26. **Existing Driveways:** The redundant driveways along Rutledge Street shall be removed and replaced with kerb and gutter to match existing.

The design and construction of the gutter crossing on Rutledge Street shall be in accordance with RMS's requirement. Details of these requirements should be obtained from RMS's Project Services Manager, Traffic Projects Section, Parramatta (Telephone 8849 2496).

Detailed design plans of the proposed gutter crossing are to be submitted to RMS for approval prior to the commencement of any road works.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant/ developer prior to the release of the approved road design plans by the RMS.

27. **Hydraulic Calculations:** Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to RMS for approval, prior to the commencement of any works.

Details should be forwarded to:
The Sydney Asset management
Roads and maritime Services
PO Box 973 Parramatta CBD 2124

A plan checking fee will be payable and a performance bond may be required before RMS's approval is issued. With regards to the Civil Works requirement please contact the RMS's Project Engineer on phone 8849 2114 or fax 8849 2766.

28. **Additional Sightlines:** Vegetation and proposed landscaping/ fencing must not hinder sight lines to and from the proposed access driveways to pedestrians and cyclists.
29. **Layout of parking and circulation:** The layout of the proposed car parking areas associated with the subject development (including driveways, grades, sight distance requirements, and parking bay dimensions) should be in accordance with AS2890.1 – 2004, AS2890-2002 for heavy vehicles and to Council satisfaction.
30. **Turning areas to be kept clear:** The proposed turning areas within the subject site are to be kept clear of any obstacles, including parked cars, at all times.
31. **Work Zone:** All construction vehicles and activities are to be contained wholly within the site. As no work zone permits will be permitted by RMS on Rutledge Street.

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.

32. **Demolition work.** All demolition work must be carried out in accordance with Australian Standard AS 2601-1991 *The Demolition of Structures*.
33. **Notification of works to Council.** The applicant must notify Council of the following particulars in writing at least seven (7) days before demolition work commences:
 - (a) the name, address, telephone contact details and licence number of the person responsible for carrying out the work; and
 - (b) the date the work is due to commence and the expected completion date.
34. **Notification of works to adjoining property owners.** At least seven (7) days before demolition work commences the applicant must notify the occupiers of all neighbouring premises of the date the work is due to commence by placing a written notice in the letter box of each premises.
35. **Asbestos materials.** All work involving asbestos products and materials, including asbestos-cement sheeting (ie. fibro), must be carried out in accordance with the guidelines for asbestos work published by WorkCover New South Wales.

36. **Hours of work.** All demolition and construction work must be restricted to between the hours of 7.00am and 7.00pm Mondays to Fridays and 8.00am and 4.00pm on Saturdays. No work is to be carried out on Sundays or public holidays.
37. **Noise.** Noise must be minimised by the selection of appropriate methods and equipment and the use of screening or barriers where practical.
38. **Noise monitoring.** Noise monitoring must be carried out by a qualified acoustics consultant if complaints are received, or if directed by Council, and any control measures recommended by the acoustical consultant must be implemented during the work.
39. **Removal of wastes.** All demolition and construction wastes must be stored in an environmentally acceptable manner and be removed from the site at such intervals as may be necessary to ensure that no nuisance or danger to health, safety or the environment is created.
40. **Recycling wastes.** All wastes nominated for recycling or re-use must be segregated from other wastes and be transported to a place or facility where they will be recycled or re-used.
41. **Contaminated soil.** All potentially contaminated soil excavated from the site must be stockpiled in a secure area and be assessed and classified in accordance with the *Environmental Guidelines: Assessment, Classification & Management of Liquid & Non-Liquid Wastes* (EPA, 1999) before being transported from the site.
42. **Transportation of wastes.** All demolition and construction wastes must be transported in an environmentally safe manner to a facility or place that can lawfully be used as a waste facility for those wastes. Copies of the disposal dockets must be kept by the applicant for at least 3 years and be submitted to Council on request.
43. **Asbestos wastes.** All asbestos wastes, including used asbestos-cement sheeting (ie. fibro), must be disposed of at a landfill facility licensed by the New South Wales Environment Protection Authority to receive asbestos waste.

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.

44. **Section 94 Contribution.** A monetary contribution for the services in Column A and for the amount in Column B shall be made to Council prior to the issue of any **Construction Certificate**:

A – Contribution Type	B – Contribution Amount
Community & Cultural Facilities	\$157,758.19
Open Space & Recreation Facilities	\$364,433.93
Civic & Urban Improvements	\$139,415.56
Roads & Traffic Management Facilities	\$21,264.70
Cycleways	\$11,879.58
Stormwater Management Facilities	\$39,590.95
Plan Administration	\$3,200.19
The total contribution is	\$737,543.11

These are contributions under the provisions of Section 94 of the Environmental Planning and Assessment Act, 1979 as specified in Section 94 Development Contributions Plan 2007 (2010 Amendment) adopted by City of Ryde on 16 March 2011.

The above amounts are current at the date of this consent, and are subject to **quarterly** adjustment for inflation on the basis of the contribution rates that are applicable at time of payment. Such adjustment for inflation is by reference to the Consumer Price Index published by the Australian Bureau of Statistics (Catalogue No 5206.0) – and may result in contribution amounts that differ from those shown above.

A copy of the Section 94 Development Contributions Plan may be inspected at the Ryde Planning and Business Centre, 1 Pope Street Ryde (corner Pope and Devlin Streets, within Top Ryde City Shopping Centre) or on Council's website <http://www.ryde.nsw.gov.au>.

45. **Damage security.** 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 (category: other buildings with delivery of bricks or concrete or machine excavation).
46. **Payment of fees.** The following fees must be paid to Council in accordance with Council's Management Plan:

- (a) Infrastructure Restoration and Administration Fee
 - (b) Enforcement Levy
47. **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**.
48. **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.
49. **Disabled Access & Adaptable Units:** Disabled access is to be provided within the development in accordance with the recommendations contained in the Access Review Report prepared by Mark Relf (Accessibility Solutions (NSW) Pty Ltd) dated 20th October 2011. Details indicating compliance with the AS1428 & AS4299, Building Code of Australia and the recommendations contained in the above Report are to be submitted to the Principal Certifying Authority (PCA) prior to the Construction Certificate being issued.
50. **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. A copy of the survey is to be submitted to the PCA (*and Council, if Council is not the PCA*).
51. **Reflectivity.** Roofing and other external materials must be of low glare and reflectivity. Details of the approved finished external surface materials, including colours and texture must be provided to the Principal Certifying Authority.
52. **Bicycle & Motorbike parking.** Sufficient area shall be designated for bicycle parking on the site within the lower ground level (the entrance level) in accordance with the following:
- (a) Secure bicycle parking racks and manoeuvring area must be provided for at least eleven bicycles.
 - (b) The bicycle parking area must be highly visible, adequately lit and easily accessible by residents and customers.
 - (c) Bicycle parking and access must be designed so as to ensure potential conflicts with vehicles are minimised.
 - (d) Provision for motorbike parking on the site must also be provided.

Bicycle parking must be designed in accordance with AS2890.3 Parking Facilities- Bicycle Parking Facilities and the NSW bicycle guidelines. Details are to be submitted on the **Construction Certificate**.

53. **Lighting.** 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 are to include certification from an appropriately qualified person that there will be no offensive glare onto adjoining residents.
54. **BASIX Commitments.** The development must comply with all commitments listed in BASIX Certificate numbered 385935M, dated 12 October 2011. The fittings, fixtures and materials installed in association with the retail tenancy (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**.
55. **Car parking.** Disabled parking must be provided for both residential and retail activities on the site. At least 108 car parking spaces are to be provided on the site including 73 residential parking spaces, 22 retail parking spaces, 13 visitor parking spaces and six *accessible* spaces, evenly distributed over all designated parking levels. Details are to be submitted on the Construction Certificate plans.
56. **Access to resident parking.** Access to residential parking should be restricted to residents and their visitors only. Details demonstrating compliance are to be submitted on the Construction Certificate plans.
57. **Services & Substation:** All service infrastructure/utilities including electrical substations, fire hydrants, gas meters and the like shall be located within the building envelope. Where this is not possible and subject to Council approval such infrastructure shall be located on the subject site and appropriately screened from view. Details of all service infrastructure/utilities are to be approved prior to issue of the Construction Certificate.
58. **Garbage Room Exhaust:** The garbage room exhaust must be designed so that it is suitably screened from view. Satisfactory screening device must be used and integrated with the architectural feature of the building. Details of all service infrastructure/utilities are to be approved prior to issue of the Construction Certificate.
59. **Tree Removal:** Adjoining owners consent must be obtained prior to the removal of the tree located on the adjoining site.
60. **Underground Gas Pipeline:** All excavation (including pot-holing by hand) should be performed in accordance with 'Work Near Underground Assets Guidelines' published in 2007 by the Work Cover Authority.
61. **Soil Depths:** Minimum soil depth of 800mm must be provided in all planter beds provided throughout the development

62. **Operable Windows:** Windows to the units must be operable where necessary to allow adequate cross ventilation and improved amenity.
63. **Delete tree adjacent to fire door:** The tree planting in front of the fire door is to be deleted so that the area is kept clear.
64. **Seating:** Adequate seating, shading structures and BBQ facility must be provided within the communal open space area. Details to be provided in the plans submitted for Construction Certificate.
65. **Storage Facility:** All residential units must be provided with sufficient secure storage facility (other than the kitchen cupboard areas at a rate of storage facilities at the following rates:
- studio apartments 6m³
 - one-bedroom apartments 6m³
 - two-bedroom apartments 8m³
 - three bedroom apartments 10m³
- Storage facility must be lockable and allocated to individual units.
The allocated storage facility must be shown on the strata plans.
66. **Remediation of land:** The land must be remediated to the extent necessary for the proposed use and a copy of the site validation report must be submitted to Council for consideration. The site validation report must comply with the *Guidelines for Consultants Reporting on Contaminated Sites* (EPA, 1997) and demonstrate that the site is suitable for the proposed use.
- No Construction Certificate is to be issued for any building work on the land until Council has confirmed in writing that it is satisfied that the land is suitable for the proposed use, without the need for further remediation.**
67. **Remediation Work:** All remediation work must be carried out in accordance with:
- (a) *State Environmental Planning Policy No. 55 - Remediation of Land*;
 - (b) any relevant guidelines published under the *Contaminated Land Management Act 1997*; and
 - (c) any council policy or development control plan relating to the remediation of land.
68. **Site Audit:** If requested by Council, a site audit statement and a site audit summary report from an accredited site auditor under the *Contaminated Land Management Act 1997* must be submitted to Council verifying the information contained in the site validation report.
69. **Grease Trap:** A grease trap must be installed if required by Sydney Water Corporation. The grease trap must be located outside the building or in a dedicated grease trap room and be readily accessible for servicing.

Access through areas where exposed food is handled or stored or food contact equipment or packaging materials are handled or stored is not permitted.

70. **Grease Trap Room:** The grease trap room must be constructed in accordance with the following requirements:
- (a) The floor, walls and ceiling must be constructed of solid materials finished to a smooth even impervious surface free of any cracks, holes or other openings that may allow the escape of odours.
 - (b) The room must be fitted with an air-tight (eg. coolroom type) door.
 - (c) The room must be provided with an approved system of mechanical exhaust ventilation.
 - (d) The room must be provided with intrinsically safe artificial lighting.
 - (e) A hose tap with a backflow prevention device must be provided in or adjacent to the room to facilitate cleaning.
71. **Grease Trap Pump:** A fixed pump out line must be provided in accordance with the requirements of Sydney Water Corporation to facilitate servicing of the grease trap.
72. **Garbage and Recycling Room:** A garbage and recycling room must be provided in an approved location in the basement carpark of the residential flat building. The garbage and recycling rooms must be constructed in accordance with the following requirements:
- (a) The room must be of adequate dimensions to accommodate all waste containers, and any compaction equipment installed, and allow easy access to the containers and equipment for users and servicing purposes;
 - (b) The floor must be constructed of concrete finished to a smooth even surface, coved to a 25mm radius at the intersections with the walls and any exposed plinths, and graded to a floor waste connected to the sewerage system;
 - (c) The floor waste must be provided with a fixed screen in accordance with the requirements of Sydney Water Corporation;
 - (d) The walls must be constructed of brick, concrete blocks or similar solid material cement rendered to a smooth even surface and painted with a light coloured washable paint;
 - (e) The ceiling must be constructed of a rigid, smooth-faced, non-absorbent material and painted with a light coloured washable paint;
 - (f) The doors must be of adequate dimensions to allow easy access for servicing purposes and must be finished on the internal face with a smooth-faced impervious material;
 - (g) Any fixed equipment must be located clear of the walls and supported on a concrete plinth at least 75mm high or non-corrosive

metal legs at least 150mm high;

- (h) The room must be provided with adequate natural ventilation direct to the outside air or an approved system of mechanical ventilation;
- (i) The room must be provided with adequate artificial lighting; and
- (j) a hose with a trigger nozzle must be provided in or adjacent to the room to facilitate cleaning.

Details to be submitted on the Construction Certificate plans which ensure compliance with this requirement.

73. **Storage of Discarded Items:** A separate room or caged area with minimum 5m² floor area must be provided in the basement carpark of the residential flat building for the storage of bulky discarded items such as furniture and white goods. Details are to be submitted on the plan submitted for Construction Certificate.
74. **Kitchen Exhaust:** Adequate provision must be made for the installation of kitchen exhaust systems to the proposed retail premises.
75. **Mechanical Ventilation:** Details of all proposed mechanical ventilation systems, and alterations to any existing systems, must be submitted to Council or an accredited private certifier 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;
 - (b) A site survey plan showing the location of all proposed air intakes exhaust outlets and cooling towers, and any existing cooling towers, air intakes, exhaust outlets and natural ventilation openings in the vicinity; and
 - (c) A certificate from a professional mechanical services engineer certifying that the mechanical ventilation systems will comply with the *Building Code of Australia* and setting out the basis on which the certificate is given and the extent to which the certifier has relied upon relevant specifications, rules, codes of practice or other publications
76. **Air Handling:** All air-handling and water systems regulated under the *Public Health Act 1991* must be installed, operated and maintained in accordance with the requirements of the *Public Health (Microbial Control) Regulation 2000*.
77. **Water Cooling System:** All water-cooling and warm-water systems regulated under the *Public Health Act 1991* must be registered with Council within one (1) month of installation.
78. **Road Noise:** The residential flat building(s) must be designed and constructed so that road traffic noise levels inside the building(s) comply

with the satisfactory design sound levels recommended in Australian/New Zealand Standard AS/NZS 2107: 2000 *Acoustics – Recommended design sound levels and reverberation times for building interiors*, when the windows and doors are closed.

79. **Noise Attenuation Measures:** The recommendations contained under Section 6 of the Acoustic Report prepared by West & Associates Pty Ltd (Document No. 11183 Issue A dated 21 September 2011 must be incorporated in the Construction Certificate drawing prior to its approval.
80. **Boundary Levels.** The levels of the street alignment shall be obtained from Council. These levels shall be incorporated into the design of the internal driveway, car parking areas, landscaping and stormwater drainage plans and must be obtained prior to the issue of the construction certificate.
81. **Road Anchors:** Where road anchors are proposed to support the proposed development excavation, detailed structural plans indicating the number of anchors are proposed are to be submitted to Council and road anchor fees are to be paid to Council in accordance with Council's Management Plan.
82. **Hoarding Fees.** Where hoarding are proposed, fees in accordance with Council's Management Plan are to be paid to Council prior to the issue of the Construction Certificate for the erection of a protective hoarding along the street frontage of the property. The fee is based on Council, schedule of fees and charges and is for a period of 6 months. If the time of use of Council's footpath varies from this an adjustment of the fee will be made on completion of the works.
83. **Dilapidation Report.** To determine the extent of restoration works that may be required, the applicant shall submit to Council a pre and post construction dilapidation report on the status of existing public infrastructures in the vicinity of the proposed development. The report is to include photographic records, description and location of any existing observable defects of the following infrastructure and others where applicable:
 - (a) Road Pavment
 - (b) Kerb and gutter.
 - (c) Constructed footpath.
 - (d) Drainage pits.
 - (e) Traffic signs.
 - (f) Any other relevant infrastructure.

These reports shall be submitted to Council development engineer, prior to the issue of the Construction and Occupation Certificate. The report shall be used by Council as Roads Authority under the Roads Act to assess whether restoration works are required prior to the issue of the Occupation Certificate. All restoration works deemed necessary by Council's development engineer are to be completed to Council satisfaction prior to the issue of Occupation Certificate

84. **Excavation.** To ensure the proposed site excavation will not impact on the adjoining property structures foundations and services.

The applicant shall submit to the Principal Certifying Authority for approval a geotechnical report prepared and certified by a chartered practicing geotechnical/structural engineer addressing, but not be limited to the following items:-

- a) *The likely impacts of the proposed excavations will have on structures and services of adjoining properties & Roadway*
- b) *Detail what measures are to be taken to protect the structures and services of adjoining properties from structural damage and undermining during construction*
- c) *A copy of the report including geotechnical/structural engineer certification should be submitted to Council.*

The above matters shall be completed prior to the issue of the construction certificate.

All recommendations of the Geotechnical Engineer are to be carried out during the course of the excavation. The applicant must give at least seven (7) days notice to the owner and occupiers of the adjoining allotments before excavation works commence.

85. **Driveway Grades.** The maximum grade of all internal driveways and vehicular ramps etc shall comply with relevant section of AS 2890.1 & AS2890.2 where applicable. Detailed engineering plans including engineering certification indicating compliance with this condition are to be submitted with the Construction Certificate application.
86. **Car Parking.** All internal driveways, vehicle turning areas, grades, parking space dimensions, headroom clearance etc shall be designed to comply with relevant sections of Australian Standards AS 2890 where applicable and shall incorporate but not be limited to the following additional requirement.
- a. Internal signposting and line marking plan shall be provided to in accordance with relevant Australian Standard for the PCA approval.
 - b. All loading and unloading must take place within the confines of the loading dock for at least a medium rigid vehicle MRV.

Detailed engineering plans including engineering certification confirming compliance with this condition is to be submitted with the Construction Certificate application.

87. **Traffic Management.** Traffic management plans must be prepared and procedures must be in place and practised during the construction period to ensure safety and minimise construction traffic conflict on adjoining pedestrian and vehicular traffic movement. These procedures and systems

must be in accordance with AS 1742.3 1985 and the RTA's Manual – "Traffic Control at Work Sites" where applicable.

Accordingly, a detailed plan of traffic management prepared by a traffic engineer including certification indicating compliance are to be submitted with the Construction Certificate application.

88. **Stormwater Runoff.** Stormwater runoff from site shall be collected and piped to Council's underground drainage system via an On-site detention (OSD) system designed in accordance with the City of Ryde, Development Control Plan 2010: - Part 8.2; Stormwater Management. The design shall incorporate but not be limited to *the following*:

- a. All gutters, down pipes and pipeline conveying runoff to the OSD tank(s) are required to be designed for a 1 in 100 year storm.
- b. The design shall ensure back water flow will not occur or influence the functioning of the outlet pipe from the OSD tank for all storm events and durations, including preventing the ingress of overland flows into the OSD tank.
- c. Discharge from the site shall be limited to a single point discharge at maximum of 30l/s to the street kerb and gutter. Should this is exceeded, the discharge shall be to the nearest Council's underground drainage system, in which case extension of Council's existing drainage system may be required to facilitate this solution. Where extension of Council's existing stormwater line is required detailed engineering plans shall be submitted to and approved by Council with payment of all applicable fees in accordance with Council's management plan, prior to written approval being given by Council.

Accordingly, detailed amended engineering plans including certification from a chartered civil engineer with NPER registration with Engineers Australia indicating compliance with this condition are to be submitted for approval with the Construction Certificate application.

89. **Erosion and Sediment Control Plan.** An *Erosion and Sediment Control Plan (ESCP)* shall be prepared by a suitably qualified consultant in accordance with the guidelines set out in the manual "*Managing Urban Stormwater, Soils and Construction*" prepared by the Department of Housing. These devices shall be maintained during the construction works and replaced where considered necessary.

The following details are to be included in drawings accompanying the *Erosion and Sediment Control Plan*

- a) Existing and final contours
- b) The location of all earthworks, including roads, areas of cut and fill
- c) Location of all impervious areas
- d) **Location and design criteria of erosion and sediment control structures,**
- e) Location and description of existing vegetation

- f) Site access point/s and means of limiting material leaving the site
- g) Location of proposed vegetated buffer strips
- h) Location of critical areas (drainage lines, water bodies and unstable slopes)
- i) Location of stockpiles
- j) Means of diversion of uncontaminated upper catchment around disturbed areas
- k) Procedures for maintenance of erosion and sediment controls
- l) Details for any staging of works
- m) Details and procedures for dust control.

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.

90. Site Sign

- (a) A sign must be erected in a prominent position on site:
 - (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.

91. Sediment and Erosion Control. The applicant shall install appropriate sediment control devices in accordance with an approved plan **prior** to any earthworks being carried out on the site. These devices shall be maintained during the construction period and replaced where considered necessary. Suitable erosion control management procedures shall be practiced. This condition is imposed in order to protect downstream properties, Council's drainage system and natural watercourses from sediment build-up transferred by stormwater runoff from the site.

92. Compliance Certificate. A Compliance Certificate must be obtained confirming that the constructed erosion and sediment control measures comply with the construction plan and the City of Ryde, Development Control Plan 2006: - Part 8.1; Construction Activities.

93. Vehicle Footpath Crossings. Concrete footpath crossings shall be constructed at all locations where vehicles cross the footpath, to protect it from damage resulting from the vehicle traffic. The location, design and construction shall conform to the requirements. Crossings are to be

constructed in plain reinforced concrete and finished levels shall conform with property alignment levels issued by Council's Public Works Division. Kerbs shall not be returned to the alignment line. Bridge and pipe crossings will not be permitted.

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.

94. **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*.
95. **Noise and Vibration.** The construction of the development and preparation of the site, including operation of vehicles, must be conducted so as to avoid unreasonable noise or vibration and not cause interference to adjoining or nearby occupations.
96. **Noise and Vibration.** The L_{10} 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.
97. **Survey of footings and 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.
98. **Sediment, soil and dust.** No sediment, dust, soil or similar material shall leave the site during construction work.
99. **CCTV Surveillance** cameras must be installed in and around the property to maximise surveillance opportunities. CCTV should be used throughout the retail complex and communal areas such as lobbies, lifts etc, and paying particular attention to the internal area of the shopping centre especially entry and exit points. CCIV should also be used around the loading dock area and car park entry and exit points. CCIV should be placed on the external area of the building capturing the area outside the retail stores along Trelawney Street and also capturing the area along Rutledge Street. Digital technology should be used to record images from the cameras. Installed surveillance equipment needs to be able to zoom in on a person without loss of focus. Management must ensure that the requirements of the Surveillance and Privacy Act are adhered to.

100. **Landscape maintenance plan must be prepared for the site.**
Landscaping close to the building should be regularly maintained to ensure branches cannot act as a natural ladder to gain access to higher parts of the building and trimmed to ensure concealment opportunities are eliminated.
101. **Lighting** shall be provided to all common areas including the car parking levels as well as the stairs and access to and including the public outdoor courtyard, communal gardens and the bin storage rooms. Such lighting to be automatically controlled by time clocks, and where appropriate, sensors to provide an energy efficient and controlled environment for residents.
102. **Signage.** Signage must be provided at entry/exit points and throughout the development to assist users and warn intruders that they will be prosecuted.
Warning: these premises are under constant surveillance.
Warning: trespassers will be prosecuted.
103. **Security Signs:** Signs should be erected in the car parks and near entry and exit points which details security measures and reminds people to lock their vehicles and remove valuables from their vehicles.
104. **Graffiti:** All surfaces on the street frontages that are not glass should use graffiti resistant paints and/or other surfaces that discourage graffiti.
105. **Intercom Facility:** The entry to the car park should have a ticket/boom gate system. Intercom facilities should be incorporated into these entry/exit points to enable residents to communicate and identify with people prior to admitting them to the development.
106. **Access control to residential lifts:** Access should be restricted to residents only to the lifts and stairs leading to the apartments.
107. **Installation of Locksets:**
 - (a) The main entry/exit points for this development should be fitted with single cylinder locksets (Australia and New Zealand Standards - Locksets), which comply with the Building Code of Australia.
 - (b) An auxiliary lock set should also be incorporated into the design of each of the entry/exit points to enable emergency services to access the development particularly in emergency situations.
 - (c) Fire exit doors to the development should also be fitted with single cylinder locksets (Australia and New Zealand Standard - Lock Sets) to restrict unauthorized access to the development.
 - (d) The main entry/exit doors to individual units should also be fitted with single cylinder locksets (Australia and New Zealand Standard - Lock Sets) to restrict unauthorized access to the unit.
 - (e) The balcony doors to individual units should also be fitted with single cylinder locksets (Australia and New Zealand Standard -

- Lock Sets) to restrict unauthorized access to the unit.
- (f) The windows to individual units should also be fitted with key operated locksets (Australia and New Zealand Standard - Lock Sets) to restrict unauthorized access to the unit.

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.

108. **Basix commitments.** The submission of documentary evidence of compliance with all commitments listed in BASIX Certificate referred to in this Development Consent.
109. **Public domain.** All landscaping & public domain improvement works required to be carried out under condition 7 are to be completed.
110. **Consolidation.** All land titles within the site must be consolidated into one allotment. Documentary evidence of such consolidation shall be submitted prior to the issue of any Occupation Certificate under the Environmental Planning and Assessment Act 1979.
111. **Disabled access.** Access for disabled people shall be provided in the building or portion of the building in accordance with the applicable standards and the requirements set out in AS 1428.1. Documentary evidence is to be and certification obtained from a suitable qualified person confirming that the development meets these requirements is to be provided prior to the issue of any Occupation Certificate.
112. **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 the Interim/Final 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.

113. **Sewer Connection:** All sanitary fixtures must be connected to the sewerage system by gravity flow and documentary evidence of compliance must be submitted to the Principal Certifying Authority before the issue of an **Occupation Certificate**.

114. **Sydney Water.** 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 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.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Interim/Final Occupation Certificate.

115. **Design Verification:** Prior to an Occupation Certificate being issued to authorise a person to commence occupation or use of a residential flat building, the Principal Certifying Authority (PCA) is to be provided with design verification from a qualified designer. The statement must include verification from the qualified designer that the residential flat development achieves the design quality of the development as shown on plans and specifications in respect of any Construction Certificate issued, having regard to the design quality principles set out in Part 2 of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development. This condition is imposed in accordance with Clause 154A of the Environmental Planning and Assessment Regulation 2000.

116. **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.

117. **Disused Gutter Crossing.** All disused gutter and footpath crossings where occur shall be removed and the kerb and footpath reinstated to the satisfaction of Council.
118. **Parking Management Plan:** An external (on-street) parking management plan to be prepared by and submitted to Council's for the Local Traffic Committee approval prior to the issue of OC.
119. **Compliance Certificates – Engineering.** Compliance Certificates should be obtained for the following (If Council is appointed the Principal Certifying Authority [PCA] then the appropriate inspection fee is to be paid to Council) and **submitted to the PCA:**
- Confirming that all vehicular footway and gutter (layback) crossings are constructed in accordance with the construction plan requirements and Ryde City Council's *Environmental Standards Development Criteria - 1999*.
 - Confirming that the driveway is constructed in accordance with the construction plan requirements and Ryde City Council's *Environmental Standards Development Criteria - 1999*.
 - Confirming that the constructed internal car park and associated drainage complies with AS 2890, the construction plan requirements and Ryde City Council's *Environmental Standards Development Criteria - 1999*.
 - Confirming that the site drainage system servicing the development complies with the construction plan requirements and the City of Ryde, Development Control Plan 2010: - Part 8.2; Stormwater Management.
 - Confirming that the connection of the site drainage system to the trunk drainage system where applicable complies with Section 4.7 of *AS 3500.3 - 1990* (National Plumbing and Drainage Code).
 - Confirming that after completion of all construction work and landscaping, all areas adjacent the site, the site drainage system (including the on-site detention system), and the trunk drainage system immediately downstream of the subject site (next pit), have been cleaned of all sand, silt, old formwork, and other debris.
 - From Council confirming that all external works have been completed to Council's satisfaction.
120. **On-Site Stormwater Detention System - Marker Plate.** Each on-site detention system basin shall be indicated on the site by fixing a marker plate. This plate is to be of minimum size: 100mm x 75mm and is to be made from non-corrosive metal or 4mm thick laminated plastic. It is to be fixed in a prominent position to the nearest concrete or permanent surface or access grate. The wording on the marker plate is described in the City of Ryde, Development Control Plan 2006: - Part 8.2; Stormwater Management. An approved plate may be purchased from Council's Customer Service Centre on presentation of a completed City of Ryde OSD certification form.

121. **Work-as-Executed Plan.** A Work-as-Executed plan signed by a Registered Surveyor clearly showing the surveyor's name and the date, the stormwater drainage, including the on-site stormwater detention system if one has been constructed and finished ground levels **is to be submitted to the Principal Certifying Authority (PCA)** and to Ryde City Council if Council is not the nominated PCA. If there are proposed interallotment drainage easements on the subject property, **a Certificate from a Registered Surveyor is to be submitted to the PCA** certifying that the subject drainage line/s and pits servicing those lines lie wholly within the proposed easements.
122. **Positive Covenant, OSD.** The creation of a Positive Covenant under Section 88 of the Conveyancing Act 1919, burdening the property with the requirement to maintain the stormwater detention system on the property. The terms of the instruments are to be generally in accordance with the Council's draft terms of Section 88E instrument for Maintenance of Stormwater Detention Systems and to the satisfaction of Council.

PRIOR TO SUBDIVISION CERTIFICATE

The following conditions in this Part of the consent apply to the Subdivision component of the development.

All conditions in this Part of the consent must be complied with prior to the issue of a Subdivision Certificate.

123. **Final plan of subdivision.** The submission of a final plan of subdivision plus 3 copies suitable for endorsement by the Authorised Officer of Council.
124. **Final plan of subdivision – title details.** The final plan of subdivision shall contain detail all existing and/or proposed easements, positive covenants and restrictions of the use of land.
125. **Section 88B Instrument.** The submission of an Instrument under Section 88B of the Conveyancing Act 1919 plus 3 copies, creating Easements, Positive Covenants and Restrictions on Use. This Instrument shall nominate the City of Ryde as the authority empowered to release, vary or modify the terms of the Instrument.
126. **Occupation Certificate.** A final occupation certificate in relation to this development must be in force. A copy of the Occupation Certificate is to be submitted with the application for final subdivision certificate.
127. **Section 73 Certificate.** A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be submitted with the application for final subdivision certificate.

128. **Utility provider – compliance documents.** The submission of documentary evidence of compliance with the requirements (including financial costs) of any relevant utility provider (e.g. Energy Australia, Sydney Water, Telstra, RTA, Council etc).

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.

129. **Garbage Collection:** Where necessary, staff or contractors must be employed to take the waste containers from garbage and recycling room to the container emptying point for servicing and to return the containers to the garbage room after servicing.
130. **Gym to be used by residents only:** The use of the Gym within the building shall only be used by the residents living within the site.
131. **Indemnity:** Where it is necessary for waste collection vehicles to enter the property to service the waste containers, the property owner must indemnify Council and its contractor in writing against claims for damage to the driveways and manoeuvring areas.
132. **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*.
133. **Noise from Plant & Machinery:** The operation of any plant or machinery 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 the most affected noise sensitive location in the vicinity. 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.
134. **Hours of operation.** The use of the retail part of the development is restricted to the following hours of operation: 7.00am and 9pm Monday to Saturday and 8.00am to 8pm on Sunday.
- (b) That the Voluntary Planning Agreement also be approved and that the Group Manager Environment and Planning be delegated to finalise the Voluntary Planning Agreement with N & G Projects Pty Ltd in accordance

with the submitted Voluntary Planning Agreement and the applicable legal requirements under the *Environmental Planning and Assessment Act 1979* for a one-off monetary contribution of \$150,000.

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

On being put to the Meeting, the voting on the Amendment was four (4) votes For and five (5) votes Against. The Amendment was LOST. The Motion was then put and CARRIED.

Record of Voting:

For the Amendment: Councillors Maggio, Petch, Tagg and Yedelian OAM

Against the Amendment: The Mayor, Councillor Etmekdjian and Councillors Campbell, O'Donnell, Perram and Pickering

RESOLUTION: (Moved by Councillors Pickering and Perram)

That this matter be deferred to allow the Group Manager – Environment and Planning to negotiate this development application with particular regard to addressing the following:

- (a) an increase in the voluntary planning agreement;
- (b) the non-compliances as outlined in the officer's report; and
- (c) meeting the needs of both the developer and community with regards to amenity.

Record of Voting:

For the Motion: The Mayor, Councillor Etmekdjian and Councillors Campbell, Perram, Petch and Pickering

Against the Motion: Councillors Maggio, O'Donnell, Tagg and Yedelian OAM

3 7-9 RUTLEDGE STREET, EASTWOOD. LOT 23 DP 4231, LOT 24 DP 653568. Construction and strata subdivision of a mixed use building with 6 retail / commercial tenancies, 79 units and associated basement parking for 155 cars. LDA2011/0612

Note: A Memorandum from the Group Manager – Environment and Planning dated 2 August 2012 was tabled in relation to this Item and a copy is ON FILE.

MOTION: (Moved by Councillors Pickering and Petch)

That this matter be deferred to allow the Group Manager – Environment and Planning to negotiate this development application with particular regard to addressing the following:

- (a) an increase in the voluntary planning agreement;
- (b) the non-compliances as outlined in the officer's report; and
- (c) meeting the needs of both the developer and community with regards to amenity.

AMENDMENT: (Moved by Councillors Campbell and O'Donnell)

- (a) That Local Development Application No. 2011/0612 at 7-9 Rutledge Street, Eastwood, being Lot 23 DP 4231 and Lot 24 DP 653568 be refused for the following reasons:
 - a. The proposed development is inconsistent with State Environmental Planning Policy No. 65 with respect to Context, Scale, Built Form, Density and Solar Access and therefore does not represent a good design outcome particularly in the following key areas:
 - i. The development does not respect the desired future character of the area as the development clearly extends well beyond the applicable building height and building envelope controls.
 - ii. The development does not respect the desired massing and human scale initiatives. It will not be stepped to appropriately address the sites corner location.
 - iii. The proposed layout and building depth will limit solar access and cross ventilation opportunities and not achieve compliance with the minimum requirements of the RFDC.
 - b. The proposed development proposes significant non-compliances with the maximum height standards for the site prescribed under Clause 4.3 – Height of Buildings of RLEP 2010, which has not been justified.
 - c. The design is such that it will not meet the objectives (a), (c), (d) and (e) for building height listed under Clause 4.3 – Height of Buildings of RLEP 2010 and objectives of the zone listed under the Land Use Table of RLEP 2010 with regard to '*creating an attractive environment for pedestrians*' and '*recognising unique location in design*'.
 - d. The applicant has not adequately demonstrated in the proposed development application, that the proposed height variance will be satisfactory with respect to Sub-clause 4(a)(ii), that the development will be in the public interest because it will be consistent with the objectives of the height standard and the objectives of the zone of the land.
 - e. The proposed development will not meet Objective (b) of Clause 4.6 – Exceptions to development standards of RLEP 2010. It will not achieve a better outcome.

- f. The proposed development does not meet the objectives (a) of Clause 6.5 – Eastwood Urban Village and West Ryde Urban Village of RLEP 2010 with respect to *creating an attractive environment for pedestrians* given the proposed height, scale and lack of regard to the human scale initiatives for height.
 - g. The proposed development does not comply with the maximum permissible height of 18.5m and 33.5m prescribed under Clause 4.3 – Height of Buildings of the DLEP 2011.
 - h. The proposed development does not achieve objectives (a), (b), (c) and (d) for building height listed under Clause 4.3 – Height of Buildings of the DRLEP 2011.
 - i. The proposed development will not meet Objective (b) of Clause 4.6 – Exceptions to development standards of DLEP 2011 as it will not achieve a better outcome.
 - j. The proposed development seeks significant variation to the applicable RDCP 2010 controls, particularly in relation to the envisaged urban form. The degree of variation has resulted in an excessive design that is inconsistent with the object of the envelope and corner treatment controls. The proposed development does not achieve a design outcome that is sought by Council's controls nor reflect the future character for the Eastwood Shopping Village.
 - k. Insufficient information has been submitted to verify compliance with the RFDC requirement in that the private open spaces for at least 70% of apartments in a development should receive a minimum of 2 hours direct sunlight between 9am and 3pm in mid winter.
 - l. Insufficient information has been submitted to verify that the insufficient building separation to the east will maintain compliance with the approved Eastwood Shopping Centre Development with the following solar access requirement of the RFDC:
 - 'living rooms and private open spaces of at least 70% of the units in the development will achieve a minimum of 2 hours solar access between 9am and 3pm in mid winter '.*
 - m. The proposed development is not considered to be in the public interest as it will set an inappropriate precedent for overdevelopment with significant departures from the Ryde LEP 2010 maximum height standards and the Ryde DCP 2010.
- (b) That the persons who made submissions be advised of Council's decision.

On being put to the Meeting, the voting on the Amendment was three (3) votes For and six (6) votes Against. The Amendment was LOST. The Motion was then put and CARRIED.

Record of Voting:

For the Amendment: Councillors Campbell, O'Donnell and Perram

Against the Amendment: The Mayor, Councillor Etmekdjian and Councillors Maggio, Petch, Pickering, Tagg and Yedelian OAM

RESOLUTION: (Moved by Councillors Pickering and Petch)

That this matter be deferred to allow the Group Manager – Environment and Planning to negotiate this development application with particular regard to addressing the following:

- (a) an increase in the voluntary planning agreement;
- (b) the non-compliances as outlined in the officer's report; and
- (c) meeting the needs of both the developer and community with regards to amenity.

Record of Voting:

For the Motion: The Mayor, Councillor Etmekdjian and Councillors Maggio, Perram, Petch, Pickering, Tagg and Yedelian OAM

Against the Motion: Councillors Campbell and O'Donnell

4 REPORT OF THE WORKS AND COMMUNITY COMMITTEE MEETING 9/12 held on 17 July 2012

RESOLUTION: (Moved by Councillors Perram and Petch)

That Council determine Items 2, 3 and 5 of the Works and Community Committee report, noting that Items 1 and 4 were dealt with by the Committee within its delegated powers.

Record of Voting:

For the Motion: The Mayor, Councillor Etmekdjian and Councillors Campbell, Maggio, O'Donnell, Perram, Petch, Pickering and Yedelian OAM

Against the Motion: Councillor Tagg

2 CHURCH STREET UPGRADE – Revised Concept Plan

RESOLUTION: (Moved by Councillors Perram and Petch)

- (a) That Council endorse the Revised Concept Plan for Church Street, Top Ryde (**ATTACHMENT 2**) to the Report.
- (b) That Council endorse the public art concepts for Church Street, Top Ryde (**ATTACHMENT 3**) to the Report.

Record of Voting:

For the Motion: The Mayor, Councillor Etmekdjian and Councillors Campbell, Maggio, O'Donnell, Perram, Petch, Pickering and Yedelian OAM

Against the Motion: Councillor Tagg

3 HERITAGE ADVISORY COMMITTEE – RYDE WHARF

RESOLUTION: (Moved by Councillors Perram and Petch)

- (a) That, at this time, Council does not expend any Council resources to upgrade the Ryde Wharf at Shepherds Bay.
- (b) That Council write to the appropriate Minister and the Roads and Maritime Services seeking them to undertake the works to upgrade Ryde Wharf at Shepherds Bay and that the response be reported back to the Works and Community Committee Meeting.
- (c) That the Maritime section of the RMS be invited to give a presentation on the upgrading of the Ryde Wharf to the Works and Community Committee.

Record of Voting:

For the Motion: The Mayor, Councillor Etmekdjian and Councillors Campbell, Maggio, O'Donnell, Perram, Petch, Pickering and Tagg

Against the Motion: Councillor Yedelian OAM

5 WOLFE ROAD NEIGHBOURHOOD FORUM UPDATE

RESOLUTION: (Moved by Councillors Perram and Petch)

- (a) That Council note the information provided in the records from the Wolfe Road Reserve Neighbourhood Forum.
- (b) That Council proceed with the implementation of the actions as identified by the Neighbourhood Forum in the agreed action plan, with the addition of Council requesting an independent surveyor to demarcate and peg at two metre intervals all property boundaries of the Wolfe Road Reserve.

- (c) That Council thank the residents who attended the Forum for their participation and keep them informed as the implementation proceeds.
- (d) That Council request a further report be submitted to Councils Works and Community Committee on the outcome of the 7-part test for the changes to the Reserve, the proposed location of the delineation fence and Council's management plan for the Wolfe Road Reserve.

Record of Voting:

For the Motion: The Mayor, Councillor Etmekdjian and Councillors Campbell, O'Donnell, Perram, Petch, Tagg and Yedelian OAM

Against the Motion: Councillors Maggio and Pickering

5 INVESTMENT REPORT - June 2012

RESOLUTION: (Moved by Councillors Petch and Perram)

That Council endorse the report of the Chief Financial Officer dated 9 July 2012 on Investment Report – June 2012.

Record of Voting:

For the Motion: The Mayor, Councillor Etmekdjian and Councillors Campbell, Maggio, O'Donnell, Perram, Petch, Pickering and Yedelian OAM

Against the Motion: Councillor Tagg

6 DRAFT RYDE LEP 2011 - SUBMISSIONS

Note: This Item was considered earlier in the Meeting as detailed in these Minutes.

7 DRAFT DEVELOPMENT CONTROL PLAN 2011 PART 3.3 – DWELLING HOUSES AND DUAL OCCUPANCIES

Note: This Item was considered earlier in the Meeting as detailed in these Minutes.

8 INTEGRATED OPEN SPACE PLAN – FOR ADOPTION

Note: This Item was considered earlier in the Meeting as detailed in these Minutes.

9 FLOOD MODELLING FEES & CHARGES

RESOLUTION: (Moved by Councillors O'Donnell and Campbell)

- (a) That the fees for the purchase of Council's DRAINS model, in the amount of \$2,200 and that the fee for the purchase of Council's TUFlow model in the amount of \$4,950 be adopted.
- (b) That Council include the above fees in the Fees & Charges for 2012/2013.

Record of Voting:

For the Motion: The Mayor, Councillor Etmekdjian and Councillors Campbell, Maggio, O'Donnell, Perram, Petch, Pickering and Yedelian OAM

Against the Motion: Councillor Tagg

10 SHRIMPTONS CREEK PLAN OF MANAGEMENT AND AUTHORISATION OF PROPOSED LEASE ARRANGEMENTS FOR THE RYDE COMMUNITY AND SPORTS CENTRE

RESOLUTION: (Moved by Councillors Pickering and O'Donnell)

- (a) That Council place the draft Shrimptons Creek Plan of Management on Public Exhibition in accordance with the Local Government Act 1993 for a period of 6 weeks.
- (b) That Council undertake public notice of the lease of the Ryde Community and Sports Centre in accordance with Section 47a of the Local Government Act 1993.
- (c) That a report be brought back to Council with the results of the public exhibition recommending further action.

Record of Voting:

For the Motion: Unanimous

11 UPDATE ON MANAGEMENT AND OPERATION OF RYDE COMMUNITY AND SPORTS CENTRE

RESOLUTION: (Moved by Councillors Petch and Maggio)

- a) That Council amend the Shrimpton's Creek Plan of Management to expressly authorise the lease to the YMCA of Sydney for the Ryde Indoor Community and Sports Centre for a period of 3 years with a 2-year option at Council's discretion.

- (b) That, should there be no objection received by Council on the lease proposal, the General Manager be given delegated authority to sign the lease and other relevant documents.

Record of Voting:

For the Motion: Unanimous

12 ESTABLISHMENT OF A PANEL OF PREFERRED PROVIDERS TO PROVIDE LEARNING AND DEVELOPMENT SERVICES TO THE CITY OF RYDE

RESOLUTION: (Moved by Councillors Campbell and Maggio)

That this report be deferred for consideration following the 2012 Local Government Election.

Record of Voting:

For the Motion: Unanimous

13 RFT 08/12 – FOR THE PROVISION OF CATERING SERVICES TO THE CITY OF RYDE

Note: This Item was considered earlier in the Meeting as detailed in these Minutes.

14 REQUEST FOR TENDER – COR-RFT-01/12 – Cleaning Services to City of Ryde Council Buildings

Note: This Item was considered earlier in the Meeting as detailed in these Minutes.

15 LIVVI'S PLACE PLAYGROUND, YAMBLE RESERVE – TENDER EVALUATION AND CONSTRUCTION PLANNING

Note: This Item was considered earlier in the Meeting as detailed in these Minutes.

16 REPORTS DUE TO COUNCIL

RESOLUTION: (Moved by Councillors Yedelian OAM and Petch)

That the report on Outstanding Council Reports be endorsed.

Record of Voting:

For the Motion: Unanimous

17 MACQUARIE UNIVERSITY - DRAFT DEVELOPMENT AGREEMENT

RESOLUTION: (Moved by Councillors Yedelian OAM and Petch)

That this report be deferred for consideration following the 2012 Local Government Election.

Record of Voting:

For the Motion: Unanimous

PRECIS OF CORRESPONDENCE FOR CONSIDERATION

1 NOTICE OF MOTION - Public Domain Areas - West Ryde

RESOLUTION: (Moved by Councillors Petch and Perram)

(a) That the correspondence be received and noted.

(b) That the following be included with the Notice of Motion as part (d):

(d) That the level of all public domain works at completion and the time of opening the facility be provided in writing.

Record of Voting:

For the Motion: Unanimous

2 MACQUARIE PARK TASKFORCE

RESOLUTION: (Moved by Councillors Petch and Maggio)

That the correspondence be received and noted.

Record of Voting:

For the Motion: Unanimous

3 SEPTEMBER 2012 LOCAL GOVERNMENT ELECTIONS - CARETAKER PROVISIONS

RESOLUTION: (Moved by Councillors Campbell and Petch)

That the correspondence be received and noted.

Record of Voting:

For the Motion: Unanimous

4 SEPTEMBER 2012 LOCAL GOVERNMENT ELECTIONS - USE OF COUNCIL RESOURCES AND ELECTORAL MATERIAL

RESOLUTION: (Moved by Councillors Maggio and Petch)

That the correspondence be received and noted.

Record of Voting:

For the Motion: Unanimous

NOTICES OF RESCISSION

1 NOTICE OF RESCISSION: DEFERRED REPORT: DRAFT PART 3.4 MULTI DWELLING HOUSING DCP AND BANKSTOWN CITY COUNCIL BOARDING HOUSE CASES - Councillor Nicole Campbell, Councillor Gabrielle O'Donnell, ~~Councillor Ivan Petch~~

Note: Councillor Petch gave notice that he wished to remove his name from the Notice of Rescission.

MOTION: (Moved by Councillors Campbell and O'Donnell)

That Council rescind the previous resolution in relation to ITEM 13 (c) and (d) – DEFERRED REPORT: DRAFT PART 3.4 MULTI DWELLING HOUSING DCP AND BANKSTOWN CITY COUNCIL BOARDING HOUSE CASES, passed at the Extraordinary Council Meeting held on 17 July 2012, namely:-

- (c) *That Council's DCP 2011 - Part 3.4 Multi Dwelling Housing not include reference to the permissible use of boarding houses in R2/Low Density suburbs until changes are made to the LEP that reflects the zoning definition similar to that in place at Bankstown City Council.*
- (d) *That Council amend its LEP to reflect the zoning that articulates boarding houses as a 'prohibited land use' in the residential R2(a) land use zone.*

On being put to the Meeting, the voting on the Motion was two (2) votes For and seven (7) votes Against. The Motion was LOST.

Record of Voting:

For the Motion: Councillors Campbell and O'Donnell

Against the Motion: The Mayor, Councillor Etmekdjian and Councillors Maggio, Perram, Petch, Pickering, Tagg and Yedelian OAM

2 NOTICE OF RESCISSION: COMPLETION OF BUSINESS - COUNCIL RESOLUTION TO CONDUCT AN EXTRAORDINARY COUNCIL MEETING AT 7.00PM ON 24 JULY 2012 - Councillor Bill Pickering, Councillor Roy Maggio, Councillor Gabrielle O'Donnell

RESOLUTION: (Moved by Councillors Campbell and Maggio)

That Council rescind the previous resolution in relation to the Completion of Business – Council Resolution to conduct an Extraordinary Council Meeting at 7.00pm on 24 July 2012, passed at the Extraordinary Council Meeting held on 17 July 2012, namely:

That all remaining Items of Business be considered at an Extraordinary Meeting of Council to be held on 24 July 2012, commencing at 7.00pm.

On being put to the Meeting, the voting on the Motion was eight (8) votes For and one (1) vote Against. The matter was then AT LARGE.

Record of Voting:

For the Motion: The Mayor, Councillor Etmekdjian and Councillors Campbell, Maggio, O'Donnell, Perram, Petch, Pickering and Tagg

Against the Motion: Councillor Yedelian OAM

RESOLUTION: (Moved by councillors Campbell and Maggio)

That all remaining Items of Business from the Extraordinary Council Meeting on 17 July 2012 be considered at an Extraordinary Meeting of Council to be held on 21 August 2012, commencing at 7.30pm.

Record of Voting:

For the Motion: The Mayor, Councillor Etmekdjian and Councillors Campbell, Maggio, O'Donnell, Perram, Pickering and Yedelian OAM

Against the Motion: Councillors Petch and Tagg

18 ADVICE ON COURT ACTIONS

RESOLUTION: (Moved by Councillors Maggio and Petch)

That the report of the General Counsel be received.

Record of Voting:

For the Motion: Unanimous

PUBLIC PARTICIPATION ON ITEMS NOT LISTED ON THE AGENDA

Rose Marie Lavery addressed the meeting in relation to Items not Listed on the Agenda earlier in the Meeting as detailed in these Minutes.

NATIONAL ANTHEM

The National Anthem was sung at the conclusion of the meeting.

The meeting closed at 10.02pm on Tuesday, 14 August 2012.

CONFIRMED THIS 28TH DAY OF AUGUST 2012

Chairperson

JOHN GARNSEY QC
KYLE OLIVER

**IN THE MATTER OF
RYDE CITY COUNCILLORS PETCH, PERRAM, TAGG, LI,
BUTTERWORTH AND SAVESTRO-MARTIN**

AND

RYDE CITY COUNCIL MEETING PROCEDURES

MEMORANDUM OF ADVICE

AJL LEGAL
SOLICITORS
LEVEL 1, 43 BELGRAVE STREET
MANLY NSW 2095

JOHN GARNSEY QC
KYLE OLIVER

IN THE MATTER OF
RYDE CITY COUNCILLORS PETCH, PERRAM, TAGG, LI,
BUTTERWORTH AND SAVESTRO-MARTIN

AND

RYDE CITY COUNCIL MEETING PROCEDURES

MEMORANDUM OF ADVICE

1. Our instructing solicitor acts for Ryde City Councillors Petch, Perram, Tagg, Li, Butterworth and Savestro-Martin (the "**Councillors**").
2. We are instructed that:
 - 2.1. The Councillors anticipate that, at the meeting of the Council on 24 July 2012, a motion will be moved, without notice, to transact at the meeting business of which due notice has not been given.
 - 2.2. The motion that the Councillors anticipate will be so moved (the "**anticipated procedural motion**") is a motion that the Council immediately consider and vote upon a rescission motion of which notice was given at the extraordinary meeting of the Council held on 23 July 2012 (the "**proposed business**"), and that so much of the standing orders as would otherwise prevent that course, be suspended.
 - 2.3. The Councillors are apprehensive that the mayor, in the exercise, or purported exercise, of powers conferred by clause 241(3)(b) of the *Local Government (General) Regulation 2005* (the "**Regulation**"), may:
 - 2.3.1. refuse to permit the anticipated procedural motion to be debated and put; and/or

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2.3.2. if the anticipated procedural motion is passed, refuse to permit the proposed business to be transacted,

on the grounds that, in the mayor's opinion, the proposed business is not of great urgency

(the "anticipated rulings").

3. The **questions** on which we are briefed to advise are:

3.1. **Is a majority of the Councillors present at the meeting competent to pass a motion dissenting from either or both of the anticipated rulings?**

3.2. **If so, what are the procedural consequences in the event that a motion dissenting from either or both of the anticipated rulings is so carried?**

4. In our opinion:

4.1. **The first question should be answered: Yes, in respect of either and both of the anticipated rulings.**

4.2. The second question should be answered as follows:

4.2.1. **In the event that a majority of the councillors present pass a motion of dissent from the mayor's refusal to permit the anticipated procedural motion to be debated, clause 248(2) of the *Regulation* obliges the mayor to restore the anticipated procedural motion to the agenda of the meeting, to permit the mover of the motion to speak to it in accordance with clause 241(4) of the *Regulation*, and to put it to the vote.**

4.2.2. **In the event that a majority of the councillors present pass a motion of dissent from the mayor's refusal to permit the proposed business to be transacted in**

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accordance with a resolution of a majority of the Council carrying the anticipated procedural motion, clause 248(2) of the *Regulation* obliges the mayor to restore the proposed business to the agenda of the meeting (as amended pursuant to the anticipated procedural resolution) and to permit it to be transacted in accordance with the anticipated procedural resolution.

5. The reasons for our opinion may be stated as follows.
6. The conduct of meetings of the Council is governed by provisions of the *Regulation*: see s 360 of the *Local Government Act 1993* (the "**Act**"). The Council is empowered to adopt, and has adopted, a Code of Meeting Practice (the "**Code**") that supplements the applicable provisions of the *Regulation*, but the provisions of the *Code* are valid and binding only to the extent that they are not inconsistent with the *Regulation*: see s 360(2) of the *Act*.
7. It is a function of the mayor "to preside at meetings of the council": see *Local Government Act 1993* (the "**Act**") ss 226, 369(1). The mayor presides, however, as chairperson: see clause 236(1) of the *Regulation*. His right to preside is pre-emptive, but in the absence of the mayor and deputy mayor (if any), it is both competent and obligatory for the councillors present at a meeting of the Council to elect their chairperson from among their number: see s 369(2) of the *Act* and clause 236(1) of the *Regulation*.
8. The *Act* and *Regulation* confer on the mayor only two pre-emptive rights. They are:
 - 8.1. the right to preside; and
 - 8.2. the right, if presiding, to require that any lawful business that he proposes to put to the meeting, is included in the agenda at the time when the agenda is prepared by the general manager: see clause 240(1)(b) of the *Regulation*.

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9. When presiding at a meeting of the Council, the mayor has also, in his capacity as chairperson, certain procedural prerogatives. These are:
 - 9.1. the right to be heard in precedence to all other councillors: see *Regulation* clause 237; and
 - 9.2. the power, with or without the intervention of any other councillor, to call any councillor to order when, in his opinion, it is necessary to do so: see *Regulation* clause 255(1), (2).
10. The mayor's procedural prerogatives are not an incident of his office as mayor. They are equally conferred upon any councillor who presides as chairperson of a meeting of the Council, and are conferred only in the capacity as chairperson.
11. The chairperson of a meeting of the Council is first among equals. Neither the *Act*, nor the *Regulation*, confers upon the chairperson any greater right than any other councillor to move motions without due notice.
12. Nor does the *Act*, or the *Regulation*, confer upon the chairperson any power to withdraw from consideration any motion lawfully moved by another councillor, or to withdraw, in the face of a motion of dissent from such a course on the part of a majority of the councillors present, any lawful business that the Council has resolved to transact. To the contrary:
 - 12.1. "it is the duty of the chairperson ... to receive and put to the meeting any lawful motion that is brought before the meeting": *Regulation* clause 238(1); and
 - 12.2. the chairperson, before ruling on a question of order, "may invite the opinion of the council" and his or her ruling must be obeyed only "unless a motion dissenting from the ruling is passed": *Regulation* clause 255(3), (4).
13. Any councillor may, without notice, move a motion of dissent from the ruling of the chairperson on a point of order: see *Regulation* clause 248(1). Only the

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mover of the motion and the chairperson may speak to the motion before it is put: see *Regulation* clause 248(3). But, if dissent is moved, the chairperson **must** suspend the business before the meeting until the Council has determined the motion of dissent: see *Regulation* clause 248(2).

14. Clause 248(2) makes very clear that, if a motion of dissent from the chairperson's ruling on a point of order is passed, the will of the majority of Councillors present prevails over that of the chairperson in determining how the Council will proceed. The meeting must proceed as though the ruling dissented from had not been given. And furthermore:

"If, as a result of the ruling, any motion or business has been discharged as out of order, the chairperson must restore the motion or business to the agenda and proceed with it in due course".

15. Clause 239(1) of the *Regulation* permits a motion to alter the general order of business as fixed by the *Code*. The practice of the Council prescribed in section 1.4 of the *Code* is for any resolution to vary the general order of business to be made on a motion to suspend standing orders for that purpose after confirmation of the minutes of previous meetings.
16. Clause 241(3) of the *Regulation* expressly provides that a motion to have business transacted at a meeting, even though due notice of that business has not been given, is a motion that "can be moved without notice".
17. Therefore, a councillor who, after confirmation of the minutes of previous meetings, moves, without notice, a motion to bring forward business of which due notice has not been given, only does what is expressly permitted by the *Regulation*. Such a councillor therefore does not commit any "act of disorder" by moving such a motion at such a time: *cf* clause 256(1)(a) of the *Regulation*.
18. For this reason, any ruling by the mayor that the anticipated procedural motion were disorderly would be plainly erroneous. Any councillor would be entitled immediately to move dissent from that ruling pursuant to clause

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248(1) of the *Regulation*. It would then be the duty of the mayor, under clauses 248(2) and (3) of the *Regulation*:

- 18.1. immediately to allow the councillor moving the dissent motion to speak to the dissent motion;
 - 18.2. to speak in reply to the dissent motion, if he wished to do so; and
 - 18.3. to put the dissent motion.
19. If the dissent motion were carried, it would then be the duty of the mayor, pursuant to clauses 248(2) and 241(3) of the *Regulation*:
- 19.1. immediately to allow the mover of the anticipated procedural motion to move, and speak to, the anticipated procedural motion pursuant to clause 241(4) of the *Regulation*;
 - 19.2. to put the anticipated procedural motion; and
 - 19.3. if the anticipated procedural motion were carried, **then (and not before)** to rule, pursuant to clause 241(3)(b) of the *Regulation*, on the question whether the business proposed by the council to be transacted is of great urgency.
20. We note that the practice prescribed in paragraph (9) of section 2.2.1 of the *Code* purports to require a councillor who proposes to move a motion without notice to submit the proposed motion, *before moving it*, to the mayor's *prior* ruling as whether the *proposed motion* is urgent.
21. In our opinion, the practice prescribed in paragraph (9) of section 2.2.1 of the *Code* is inconsistent with:
- 21.1. the express right of any councillor to move pursuant to clause 241(3) of the *Regulation*, without any requirement for prior notice to, or approval of, the mayor or anyone else;
 - 21.2. the fact that clause 241(3)(b) of the *Regulation*, confers upon the chairperson a function of ruling on the urgency of business that the

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Council has resolved to be bring forward, and *not* a function of ruling on the urgency of a councillor's motion that the Council should so resolve; and

- 21.3. the requirement in clause 241(4) of the *Regulation* that only the mover of a motion pursuant to clause 241(3) of the *Regulation* may speak to that motion before it is put.

To the extent of their inconsistency with the above provisions of the *Regulation*, the provisions of the *Code* are contrary to law, invalid, and of no binding effect: see s 360(2) of the *Act*. They must consequently be disregarded, and the Council's lawful procedure determined by reference to the requirements of the *Regulation*.

22. Applying clause 241(3) and (4) of the *Regulation*, unless the mayor is the mover of a motion under s 241(3) to bring forward business of which due notice has not been given, the mayor is not entitled to speak to that motion before putting it to the vote of the Council.
23. If, however, a motion to bring forward business of which due notice has not been given is passed, the mayor must, in his capacity as chairperson of the meeting, then immediately rule on the question whether the business that the Council has resolved to bring forward is "of great urgency".
24. The chairperson's ruling on the question of urgency determines whether any motion or address to the Council in respect of the business that the Council has resolved to bring forward is, or is not, orderly: see clause 256(1)(c) of the *Regulation* (see section 8.2 of the *Code*). It is therefore a ruling on a question of order in respect of which the chairperson is entitled to invite the opinion of the council pursuant to clause 255(3) of the *Regulation*, before making a ruling (see section 8.1 of the *Code*).
25. For the same reason, the chairperson's ruling on the question of urgency is a "ruling of the chairperson on a point of order" within the meaning of clause 248(1) of the *Regulation*, and may be the subject of a dissent motion in accordance with clause 248(2) of the *Regulation*.

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26. We are instructed that the practice of the Council in relation to motions to bring forward business of which due notice has not been given has to date been premised on the assumptions:

26.1. that it is within the absolute discretion of the chairperson – at least if the chairperson is the mayor – to rule whether business proposed to be brought forward pursuant to such a motion is “of great urgency” within the meaning of clause 241(3)(b) of the *Regulation*; and

26.2. that it is consequently not competent for any councillor to move dissent in the mayor’s ruling as to urgency or otherwise, or for a majority of the councillors present to pass a motion of dissent in respect of that ruling.

(the “**current assumptions**”)

27. Clause (9) of the practice prescribed in section 2.2.1 of the *Code* is obviously consistent with the current assumptions and has presumably been drafted on the basis of the current assumptions.

28. In our opinion, however, for the reasons that we have set out in this advice, the current assumptions are not supported by the provisions of the *Act* or the *Regulation*. Indeed, they are inconsistent with those provisions.

29. Consequently, if a motion to have business, of which due notice has not been given, transacted at the meeting, is passed, and then the chairperson’s ruling as to its urgency under clause 241(3)(b) of the *Regulation* is dissented from by a further motion, under clause 248(2) of the *Regulation*, the chairperson must restore the business of the first motion to the meeting and must proceed with it.

30. We are fortified in this opinion by the consideration that the current assumptions are inconsistent with the principles of the general law. Under the general law, a ruling by the chairperson of a meeting on a point of order is final and conclusive only if the meeting is one that is empowered at any time to remove the chairperson and appoint another person in his or her place:

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see generally A D Lang, *Horsley's Meetings: Procedure, Law and Practice* (6th edition 2010) at page 112. Precisely because the mayor's right to preside at meetings of the Council is pre-emptive, a majority of councillors cannot, in response to objectionable procedural rulings, resolve to remove the mayor from the chair and appoint another councillor to preside in the mayor's place. That being so, a construction of the provisions of the *Regulation* that empowers a majority of the councillors present at a meeting to overrule any procedural ruling of the chairperson, is consistent with the general principles and policy of meeting procedure.

Dated 24 July 2012


John Garnsey QC


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