

RYDE CITY COUNCIL

FSR CALCULATION  
136-140 VICTORIA ROAD  
1-3 WHARF ROAD  
GLADESVILLE

MEMORANDUM OF ADVICE

Ryde City Council  
General Counsel  
Locked Bag 2069  
North Ryde  
NSW 1670

Attention: Mr Bruce McCann

RYDE CITY COUNCIL

FLOOR SPACE RATIO CALCULATION  
136-140 VICTORIA ROAD AND 1-3 WHARF ROAD  
GLADESVILLE

MEMORANDUM OF ADVICE

**Instructions**

1. My instructing solicitor is General Counsel for Ryde City Council. My advice is sought as to the proper interpretation of clause 4.5 of Ryde Local Environmental Plan (Gladesville Town Centre and Victoria Road Corridor) 2010 (the LEP) for the purposes of the determination of two development applications for land at 136-140 Victoria Road and 1-3 Wharf Road, Gladesville (the land).
2. My instructing solicitor has received advice from solicitors engaged by the Council which conflicts with legal advice provided by the solicitors engaged by the applicants for development consent. My advice is now sought as to which advice is correct.
3. The detailed facts are set out in the letter of advice by Sparke Helmore dated 17 May 2012 and I need not repeat them here. In summary, the applicant proposes to construct mixed use developments on the land as well as underground parking and access ramps below a section of Wharf Road, Meriton Street and Pearson Lane (the roads). A survey plan with which I am briefed ascribes each area of road to be utilised for underground parking with a letter (A to J) and an identified surveyed area.
4. HWL Ebsworth, solicitors for the applicants, have advised that the area of the roads to be utilised for underground parking should be included in the calculation of site area for the purposes of calculating a floor space ratio (FSR) under the LEP.

## The FSR provisions under the LEP

5. Clause 4.5 of the LEP provides (relevantly) as follows:

### **4.5 Calculation of floor space ratio and site area**

#### **(1) Objectives**

*The objectives of this clause are as follows:*

*(a) to define **floor space ratio**,*

*(b) to set out rules for the calculation of the site area of development for the purpose of applying permitted floor space ratios, including rules to:*

*(i) prevent the inclusion in the site area of an area that has no significant development being carried out on it, and*

*(ii) prevent the inclusion in the site area of an area that has already been included as part of a site area to maximise floor space area in another building, and*

*(iii) require community land and public places to be dealt with separately.*

#### **(2) Definition of "floor space ratio"**

*The **floor space ratio** of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.*

#### **(3) Site area**

*In determining the site area of proposed development for the purpose of applying a floor space ratio, the **site area** is taken to be:*

*(a) if the proposed development is to be carried out on only one lot, the area of that lot, or*

*(b) if the proposed development is to be carried out on 2 or more lots, the area of any lot on which the development is proposed to be carried out that has at least one common boundary with another lot on which the development is being carried out.*

*In addition, subclauses (4)–(7) apply to the calculation of site area for the purposes of applying a floor space ratio to proposed development.*

#### **(4) Exclusions from site area**

*The following land must be excluded from the site area:*

*(a) land on which the proposed development is prohibited, whether under this Plan or any other law,*

*(b) community land or a public place (except as provided by subclause (7)).*

*...*

#### **(6) Only significant development to be included**

*The site area for proposed development must not include a lot additional to a lot or lots on which the development is being carried out unless the proposed development includes significant development on that additional lot.*

#### **(7) Certain public land to be separately considered**

*For the purpose of applying a floor space ratio to any proposed development on, above or below community land or a public place, the site area must only include an area that is on, above or below that community land or public place, and is occupied or physically affected by the proposed development, and may not include any other area on which the proposed development is to be carried out.*

....  
**(11) Definition**

*In this clause, **public place** has the same meaning as it has in the Local Government Act 1993.*

6. The Dictionary definition of public place in the *Local Government Act 1993* is as follows:

**public place** means:

- (a) a public reserve, public bathing reserve, public baths or public swimming pool, or
- (b) a public road, public bridge, public wharf or public road-ferry, or
- (c) a Crown reserve comprising land reserved for future public requirements, or
- (d) public land or Crown land that is not:
  - (i) a Crown reserve (other than a Crown reserve that is a public place because of paragraph (a), (b) or (c)), or
  - (ii) a common, or
  - (iii) land subject to the *Trustees of Schools of Arts Enabling Act 1902*, or
  - (iv) land that has been sold or leased or lawfully contracted to be sold or leased, or
  - (v) land that is declared by the regulations to be a public place for the purposes of this definition.

Plainly the roads are, by reason of being public roads, public places under the LEP.

7. Accordingly, while prima facie clause 4.5(4) requires public places such as the roads to be excluded from the site area calculation, this must be read subject to the provisions of sub-clause (7). The effect of sub-clause (7) is that the area of any public place that is to be physically occupied either by development on, below or above the public space is to be included in the site area, but only that part and not any other part of the public place that will not be physically occupied by the development.
8. Having regard to the facts as they are disclosed in the advice by Sparke Helmore at paragraphs 2.8-2.15, in my opinion the site area is to include all of those areas identified in the survey plan as to be built upon underground. Thus areas A-J inclusive are areas of public road which are to be used for underground parking and thus can be taken into account as site area for the purposes of calculating FSR.

9. Sparke Helmore appear to have come to a different view by distinguishing between areas of public places that are to be used as "public plaza" after the completion of the development and places that are to be used as public roads after the completion of the development. In my opinion, this is an irrelevant distinction. Clause 4.5 does not draw any such distinction. All public places, whether they be used for roads or otherwise are treated the same for the purposes of clause 4.5.
10. My opinion is fortified to some extent by the Department of Planning Practice Note for interpretation of height and FSR under the Standard Instrument. The Practice Note makes it clear that public land that is to be developed is to be included in the FSR calculation. However, it suggests that the FSR for the public land is to be "calculated separately". This begs the question of how the FSR is to be calculated for this development.
11. According to the Practice Note a separate FSR is to be derived for each separate parcel comprising the development site. Thus a separate site area and FSR is to be derived for each of 1-3 Wharf Road, 136-140 Victoria Road and the public land. I do not agree that this is necessarily the proper interpretation of clause 4.5.
12. On one view, the effect of sub-clause 4.5(3)(b) is that each lot that has a common boundary with another lot to be developed can be included in the site area. Although there is no common boundary between 136-140 Victoria Road and 1-3 Wharf Road, there is a common boundary between the roads and each parcel. Thus, the site comprises the parts of the roads to be developed and both private parcels for the purposes of the FSR calculation.
13. Alternatively, given that there are two DA's it may be necessary to allocate the parts of the roads sharing a common boundary with each parcel to the site area for each to derive two separate site areas. In so doing, it would be necessary to avoid double counting. Thus, the parts of Wharf Road to be developed must be allocated to one or other parcel, or perhaps split in the manner shown on the survey.

14. The final sentence in sub-clause (3) makes clear that sub-clauses (4)-(7) apply to the calculation of site area. Thus, the LEP requires only one calculation to be performed for site area, not separate calculations. There is nothing in sub-clause (7) that requires a "separate" calculation for the road and the sites in the manner suggested by the Department. While the heading says "separately considered", this is not the same as "separately calculated". In any event, headings to provisions of an instrument are not taken to be part of an instrument (s 35(2) *Interpretation Act 1987*).
15. While a purposive approach to construction of an instrument that would promote the underlying object is to be preferred over one that would not (s 33 *Interpretation Act*), and an objective in clause 4.5(1) includes (b)(ii), to "*require community land and public spaces to be dealt with separately*", it is not apparent to me that the construction I have advanced above would not promote the object. The words "*dealt with separately*" in the objective should not be construed to mean the same thing as calculated separately. It would be consistent with the words in the objective to treat the word "separately" as meaning, in effect, distinctly. This objective is fulfilled by sub-clause (7) not by requiring a separate site area calculation, but by requiring the component of the site area which is public land to be treated distinctly from private land. This is achieved by not including the whole of the public land in the site area calculation whereas for private land the whole of the land whether built upon or not is included in the site area, subject to sub-clause (6).
16. In any event, the Department's approach would pose a difficulty here because there is no FSR control for the roads. This means there could be unlimited development on the roads.
17. Alternatively, the clause could be construed to mean that an FSR has to be derived for 136-140 Victoria Road comprising one site, 1-3 Wharf Road comprising another and the roads comprising a third site. In this scenario the maximum FSR would be 3:1 on each privately owned part, but unlimited on the public roads.

18. In my opinion the first approach is the preferred approach. That is, the site area is to be derived in accordance with sub-clauses (3) to (7) inclusive. Reading those clauses together derives a site area comprising the whole of the private land together with those parts of the roads that are to be developed.
19. It follows, therefore, that I agree with HWL Ebsworth, do not agree with Sparke Helmore and do not agree with the Department Practice Note.
20. There is a further reason to agree with HWL Ebsworth, quite apart from the technical construction of the LEP provision itself. As I understand the structure of the arrangements between the Council and the developer, it is proposed that ownership in those parts of the roads that are to be developed will pass from the Council to the developer after consent is granted to the development. Only after completion of the development will the roads return to public ownership. The effect of this arrangement is that once the roads are sold to the developer the land will cease to be a public place and, thus, clause 4.5(4) will not operate to exclude or require the distinct treatment of that land.

### **Conclusion**

21. In my opinion, all of the areas proposed to be used for underground parking, namely areas A-J inclusive, may be counted as site area for the purposes of calculating site the FSR for the development.
22. The calculation for site area for each DA should include the whole of the relevant parcel the subject of the DA as well as those parts of areas A-J that share a common boundary with each parcel. Together these areas are the site for the purposes of site area and the FSR calculation. There does not need to be a separate FSR calculation made for the roads.

12 September 2012



A. M. Pickles  
Chambers





# URBAN DESIGN REVIEW PANEL & PRELODGE M E N T A D V I C E

**PROPERTY:** 1-3 Wharf Road, Gladesville

**MEETING DATE:** 16 August 2012

**TIME:** 10:30am

**PRELODGE M E N T No:** PRL2012/29

**DEVELOPMENT:** Mixed use development

**ATTENDANCE:**

**Urban Design Review Panel:**

John Wilson,	City of Ryde Council
Gabrielle Morrish,	External Panel Member
Deena Ridenour,	External Panel Member

**Council:**

Vince Galletto,	Team Leader BADAS
Sandra Baily,	Team Leader Major Developments
Morgan Ngyuen	Senior Development Engineer
Catharine Noble	Client Advisor

**Proponents:**

Hilda Cheong	Windesea
Eugene Marchese	Marchese Partners
Paolo Salotto	Marchese Partners
Julie Bindon	JBA Planning
Ross Nettle	Transport & Traffic Planning Associates

## NOTES FOR PROPONENTS

The purpose of the Prelodgement Panel and Urban Design Review Panel is to enable you to discuss your proposal with Council officers. Council officers will endeavour to provide information which will enable you to identify issues that must be addressed in any application.

However, the onus remains on the applicant to ensure that all relevant controls and issues are considered prior to the submission of the application. In addition, the quality of the officers' advice will depend on the information you are able to provide at the meeting.

The Prelodgement Panel and Urban Design Review Panel advice does NOT constitute a formal assessment of your proposal and at no time should comments of the officers be taken as a guarantee of approval of your proposal.

## Description of Proposal

The proposal involves the redevelopment 1-3 Wharf Road, Gladesville. The proposal is a part 7 and part 8 storey mixed use development that includes retail uses on the ground floor with loading dock and drive way access at the rear of the site and residential units above. The proposal involves variation to the Key Site Diagram provided by Part 4.6 Gladesville Town Centre and Victoria Road Corridor of Development Control Plan 2010.

The proposal is independent of, but closely tied to the redevelopment of 136-140 Victoria Road and 2-10 Wharf Road, Gladesville. The two proposals will result in the permanent closure of Wharf Road and the creation of public plaza area and laneway.

## Site

The subject site is generally triangular in shape and is bounded by Meriton Street to the west, Wharf Road to the northeast and residential properties to the south. The existing clock tower located on the traffic island at the intersection of Wharf Road, Meriton Street and Victoria Road is a Local Heritage Item. The site is zoned B4 Mixed Use under the *Ryde Local Environmental Plan (Gladesville Town Centre and Victoria Road Corridor) 2010*.

## Urban Design Review Panel Comments

Council's Urban Design Review Panel (UDRP) at its meeting held on 16 August, 2012 reviewed the proposal and made the following comments :

### ***"1-3 Wharf Road, Gladesville***

*This is the third time the Panel has reviewed a development proposal for this site by the proponent. In the two previous meetings, the proposal was jointly presented with the adjacent site at 136-140 Victoria Road. The two sites are identified within Council's DCP as a key site, shaping a new public plaza along the alignment of Wharf Road.*

*The Panel understands that 136-140 Victoria Road is likely to come to the Panel in the near future. The Panel is concerned with the lack of coordination between the two development proposals and the implementation of the plaza which extends across both development proposals' land.*

### **Building Envelope**

*Council's DCP includes site specific envelopes for both development sites and the plaza. The proposed development breaches the building envelope control on all frontages and in height. While the proposed building has been reduced from the previous panel meeting including widening the laneway and reducing the height by a storey, the Panel remains concerned about the following:*

- **Height** – *The Panel understands that Council has agreed that a 7 storey building height would be acceptable on the site. However due to the sloping site, the southern portion of the building becomes 8 storeys. The Panel is concerned with the impact of the additional height on the properties to the south. The southern boundary is also a boundary between land use and height zones and is the most sensitive part of the site in relation to neighbouring impacts. Previous Panel advice recommended 6 storeys along the laneway. The Panel recommends setting the top level back to meet the height control and to provide a clear transition to the south. This would also provide an opportunity to lower the communal open space so that lift access is within the height plane.*

- **Setback to south** – The proposal includes a 7m setback at ground level and up to 4.5m in height with a reduced setback of 4.5m for the building above. As this is the most sensitive part of the site, the Panel supports the 8m setback from the southern boundary for levels 2 to 7 to maximize separation with the property to the south. The 8m separation also supports the transition between zones. This is consistent with previous recommendations from the Panel and with Council's DCP. The panel is aware that the applicant is discussing a variation to this control with council. Whilst not recommended the Panel considers that in the case of a variance to the setback control a minimum 6m setback from the southern boundary be maintained for levels 2 to 7 to maximize separation with the property to the south. Compliance with the height control is assumed.
- **Plaza** – The ground floor is setback 7m from the eastern boundary at plaza level, which contributes 7m of the 15m width for the plaza required in the DCP. Above ground level the building projects 2 meters over the plaza. The DCP requires a 15m wide plaza open to the sky. The Panel interprets this as 15m minimum for the full height of the building. This site should provide half the width of the plaza. More certainty is needed that both sites together will result in the required 15m width.
- **Meriton Street** – The proposal is built to the boundary along Meriton Street at ground level, however projects beyond the boundary 500m for the length of the building above ground. Building projections over the footpath are typically used for articulation, where a proportion of building elements project not the whole façade. The Panel's preference is for the building to align with the footpath with some balconies above projecting past the street alignment.
- **Northern building alignment** – The proposal encroaches beyond the DCP building envelope toward Victoria Road by approximately 5m. The Panel considers this encroachment to be acceptable when combined with the 15m minimum wide plaza.
- **Building separation to east** – Without plans for the adjacent development proposal at 136-140 Victoria Road, it is difficult to assess whether the future separation is adequate. Therefore on its own, the proposal should achieve 50% of the separation distances required in the Residential Flat Design Code within the site boundary.

### **Plaza**

While the plaza has been redesigned from the last Panel meeting and new landscape architect's engaged, the design remains a concern of the Panel. The landscape architect was not present at the meeting to enable an informed discussion of the design intent and of opportunities for its refinement.

A design statement is included in the landscape plans. The consolidated area of planting along the slip lane and its relationship to the clock tower is supported. The Panel also appreciates the consideration of safety and children in the design of this interface.

For the remainder of the plaza it is not clear how the design statement is realized in the physical design proposal in relation to:

- **Use** – The space is intended to be used for both small gatherings and larger consolidated uses such as markets as well as include space for outdoor dining. The arrangement of planters, trees and benches is distributed roughly evenly across the space and it is not evident how these different uses are accommodated. A plan should demonstrate how the plan can be used for different uses, for example

*if markets how would the layout of stalls relate to seating and planters.*

- **Stairs** – *The Panel support the widening and simplification of the stairs. The Panel questions the need for a balustrade at the kerb and recommends using a wider footpath with no balustrade.*
- **View to the clock tower** - *While the location of trees are aligned either side of the axis to the clock tower, the height of the trees (limited in size by their contained planting) and the 2.3m level change between Wharf Road and the plaza are likely to block any view along Wharf Street. An axial view from within the plaza to the clock tower is not likely to be effective within the depth of space and other ways of framing should be considered.*
- **Shade and sun and wind** – *The design statement does not adequately address the quality of the space and its climate. It is important that this space provide a pleasant refuge away from Victoria Road at different times of the year.*
- **Enclosure** – *The use of vertical elements is intended to provide a sense of enclosure. It is not evident in the plan what spaces are being defined or enclosed or how the distribution of elements reinforces this.*
- **Tree planting** – *The trees are in 1m deep planters. Trees in containers are not likely to achieve their potential canopy and lifespan. This will affect both the design outcome and the long term success of the space. Trees within the plaza should be larger and have deep soil. Trim Place further down Victoria Road is a good precedent demonstrating how a few large trees can make a place more desirable and useful. The underground parking extends beneath the plaza half way between both properties and compromises opportunities for deep soil. The triangular shape of the car park plan results in underutilized spaces under the plaza (see hatched areas on Level Mezzanine drawing) which could be used for deep soil. More accurate sections are needed through the plaza to show how the underground structure relates to the plaza and how improved soil depths and planting areas could be provided. Section A-A does not match the plans.*
- **Public art** – *A platform for public art is provided. Public art is most successful when it is integrated into the design rather than added at a later date. It is recommended that an artist be engaged at the design phase*
- **Lighting** – *Adequate lighting for nighttime use and safety needs to be addressed.*
- **Services** – *The provision of irrigation, drainage and electricity (for markets or other uses) is needed. Who supplies these and how does this relate to future ownership? Because of the multiple ownership of the plaza, this needs to be coordinated and resolved early in the design phase.*

*The planner for the proponent proposed that both development proponents meet with Council to agree design principle for the plaza. This would give all parties more certainty. The Panel supports this suggestion. The Gladesville DCP specifies that the key site include: a public place that is 15m open to the sky and 500m<sup>2</sup>; clear unobstructed pathways and open spaces; and generous planting to make a green pocket that contributes to the character of Victoria Road; and is green backdrop to the clock tower. While the public domain plan provides typical materials and elements for the town centre, key elements for this space are not defined. The key elements and their quantities should be agreed with Council. The value of works for the plaza needs to be agreed with both*

parties and Council to ensure the best long term best design for this much needed open space within Gladesville. The panel is concerned the current design represents a minimal budget.

The Panel understands the space will be privately owned and therefore managed by the strata bodies for both 1-3 Wharf Road and 136-140 Victoria Road. A public right of way will be provided through the plaza linking Victoria Road and Wharf Road. It is not clear how the plaza will be delivered between the two development applications and how long term management with two strata bodies will be resolved. This is important for the design of the plaza and will inform the choice of materials, planting choices, servicing and maintenance.

### **Ground Floor**

Council's DCP requires active edges along Meriton Street, Victoria Road and the new plaza. The revised plan results in less retail space at ground level. The shape of the retail tenancies are triangular and do not support useful commercial layouts. The northern half of the ground floor should be dedicated to retail uses to maximize activation and create more viable tenancies. This would also provide more flexibility for tenancy break-up and leasing.

The residential entry along Meriton Street is elevated above the street with a proposed external lift. The entry lobby would be improved by providing a street level entry and lobby and by managing level changes internally. A ramp could be provided internally and the lift avoided. A further improvement could be extending the lobby through to the plaza to further activate the plaza and provide a level entry. This would eliminate the need for internal ramps. It would also assist in dividing the retail portion of the floor plan from the residential.

The southern end of the Meriton Street elevation is dominated by a high blank wall. The Panel recommends that individual entries to ground level units from the street be provided. This would increase activity along the street and promote greater safety through surveillance.

In the drawings it is not clear how ground floor units are expressed on the elevation as this level is overshadowed by the projection of the building above. The 3D renderings do not clearly show these units either. The Panel is concerned that these units have poor amenity with limited solar access, compromised daylight access and poor outlook. Adjusting the setbacks and building alignment as recommended in the Building Envelope section will assist in improving these units. Views of the 3D model showing street level views of these units and their revised design should be provided.

Awnings should be provided around the building. The awning at the northern end of the building should be reviewed.

An accessible toilet is located at bottom of the stairs. This should be relocated to plaza level in proximity to the retail uses.

### **Residential**

The new floor plans include a high percentage of inboard bedrooms without windows. The panel does not support inboard bedrooms and notes that these do not comply with the Residential Flat Design Code and some even lack 'borrowed light' and do not comply with the BCA. The Panel considers rooms large enough to be a bedroom a bedroom not a study. The previous plans provided better amenity. The change is a result of trying to fit the same unit mix within a smaller footprint. The previous design included 6 two bedroom units and 3 one bedroom units per floor. The reduced footprint includes the same mix although some 2 bedroom units are labelled 1 bedroom units as inboard rooms were not

*counted by the proponent.*

*Many apartments have long internal corridors. When combined with close to minimum unit sizes and trapezoid shaped rooms, this results in poor room dimensions which are difficult to furnish.*

*Cross ventilated units require dual aspect. Single aspect units such as 2.01 and 2.02 do not achieve effective cross ventilation.*

*The Panel recommends that floor plans and unit layout be revised to delete inboard rooms and to improve the usefulness of rooms and the amenity of units. This is likely to result in a change of unit mix and/or a reduction in unit numbers per floor.*

*Lobbies and internal corridors should have natural light and ventilation.*

*It is not clear how much daylight access is achieved for each unit. The windows shown in elevation do not match the window in plan. The Panel recommends revising drawing to align the elevation and plan. Daylight access should be shown in plan and meet SEPP 65 requirements.*

### **Communal Open Space**

*The Panel supports the location and design of the communal open space. The series of spaces for different groups, BBQ facilities, and the definition of rooms with planting is successful. The Panel is concerned with the additional height of the building resulting from the lift and stair access to the roof and the extent of the awning. The impact of these elements could be reduced by limiting the lift access to one and reshaping the extent of the awning. TVs shown in the communal open space may result in acoustic impacts on neighbours and should be deleted.*

***The Panel does not support the current design."***

**Given the above comments made by Council's UDRP, it is strongly recommended that the proposal be amended to reflect the issues raised by the panel.**

## **Summary of Discussions in the Prelodgement Meeting**

Further to the Urban Design Review Panel comments above, the main issues that arose during discussions at the prelodgement meetings that took place directly after the UDRP, were:

- **Building Height**
- **Floor space ratio**
- **Building Design**
- **Part 4.6 of DCP2010 – Gladesville Town Centre and Victoria Road Corridor**
- **SEPP 65 (additional comments/advice)**
- **Traffic**
- **Public Domain**
- **Waste Management**
- **Crime Prevention Through Environmental Design**
- **Stormwater**
- **Heritage**
- **Draft VPA**

## **Building Height**

The subject site is affected by height limits applied under the Ryde Local Environmental

Plan 2010 (RLEP 2010) of **22m and a uniform storey limit of 6 storeys** applied under *Part 4.6 Gladesville Town Centre and Victoria Road Corridor of Development Control Plan 2010* (DCP 2010).

The maximum height of the proposal is 27.1m which is due to the lift over runs. Due to the slope of the land the northern elevation complies but the southern elevation exceeds the height control at 23.8m. At this point the development is 8 storeys.

This breach fails to provide an adequate transition with the adjoining development which is 3 storeys being zoned R4 with a maximum height of 11.5m. The rear portion of the proposed building should be stepped so that a maximum of 7 storeys is retained. This will help to achieve an appropriate transition as well as ensuring that the height control of 22 metres is not exceeded.

It is suggested that the lift structure be reduced to a single lift to access the roof. Concerns are also raised with the proposed awning structure on the roof. It adds to the visual appearance of the roof and exacerbates the non-compliance with the height control.

## Floor Space Ratio

Council agrees with legal advice that the community land as public place is included in the site area. However, the legal advice provided by the proponent only answers the question as to whether this land can be included in the site area. It did not consider how the floor space is to be calculated in respect of this land.

One of the objectives of **Clause 4.5 Calculation of floor space ratio and site area** is:

- (b) *to set out rules for the calculation of the site area of development for the purpose of applying permitted floor space ratios, including rules to:*
  - (iii) *require community land and public places to be dealt with separately.*

**Subclause 7** states:

*For the purpose of applying a floor space ratio to any proposed development on, above or below community land or a public place, the site area must only include an area that is on, above or below that community land or public place, and is occupied or physically affected by the proposed development, and may not include any other area on which the proposed development is to be carried out.*

In other words the public land is included as site area but it must be calculated separately. This is also confirmed with the LEP Practice Note (PN 08-001) prepared by the Department of Planning. Based on the above the FSR would be:

	Site Area	FSR Control	Proposed GFA	Proposed FSR	Non-compliance
Privately owned land	625m <sup>2</sup>	3.5:1	3,337m <sup>2</sup>	5.34:1	1.84:1
Public place land	705m <sup>2</sup>	Uncontrolled	880m <sup>2</sup>	1.25:1	

Although the public place land is uncontrolled in terms of the FSR the DCP specifies controls for this site in terms of the building envelope diagram. Any alternative envelope must still meet specific and amenity requirements.

The FSR as proposed will not be supported by Council's officers. The exceedance in FSR results in excessive massing of the building, adverse streetscape impacts and excessive bulk and scale.

As part of this prelodgement meeting it is intended to advise you of what encroachments Council officers considers to be appropriate. This combined with the reduction of the floor in respect to height will ensure that the above FSR calculation is reduced, however it is acknowledged that there will be a breach in the FSR for the private land.

Any variation to the FSR should be supported by a Voluntary Planning Agreement. Discussion occurred during the prelodgement that this method of calculating the FSR was incorrect. As such the applicant is to provide Council with a copy of their legal advice that addresses this issue.

## **Building Design**

Council officers are not willing to support the encroachments in general. The following encroachments would, however, be accepted:

**New laneway** – there is a need to maintain separation and an appropriate transition with the neighbouring property. To achieve this, the upper floor needs to be stepped down so that the building does not exceed 7 storeys. Further a 6m separation distance from the rear boundary needs to be provided. This would permit an encroachment of 2m into the lane but a minimum height of 4.5m needs to be maintained.

No balconies or any other part of the building should encroach upon the 6m setback.

**Meriton Street** – The building line is to follow the boundary i.e. approx 3.6 metres but Council may allow some 0.5m projections for balconies . **There was a discussion that Council had previously agreed to a 2.6 m setback to Meriton Street as advised by Adrian Melo. It was agreed that Council's officers would investigate this further and advise. Subsequent investigations have revealed that the correspondence in question is an email dated 20 June 2011. This issue was revisited in a formal prelodgement meeting dated 3 August 2011 where it was advised that a setback of 3.6 m would be required.**

**Council confirm that a setback of 3.6 metres would be required along Meriton Street. The building should not cantilever over the footpath with the exceptions of some balconies that project no more than 500mm over the footpath.**

**Nose** – This area should be a gathering point, a civic space, a natural point of congregation. A 3.5m width for the footpath needs to be retained. The encroachment above this should be the same as for Meriton Street.

### **Plaza:**

- The width of 15.2m at ground level is acceptable.
- First floor and above at 13.24m is acceptable but that part of the building which further projects into this area needs to be deleted. It is noted that this is not consistent with the advice as provided by the UDRP, however this was the subject of further meeting and discussions with Council on the 28 August where it was further confirmed that such setback would be supported provided that it can be demonstrated that the design of the building meets all the appropriate parameters and objectives with minimal adverse impacts.
- Details of any awnings need to be provided.



- A right of way or easement – a stratum lot dedication – is proposed over the Plaza so that it remains public but with ongoing maintenance the responsibility of the owners.
- The stairs leading into the Plaza should not be stock standard but treated in such a way as to add interest and provide landings that can be utilised for social or retail activities.

## **Part 4.6 of DCP2010 – Gladesville Town Centre and Victoria Road Corridor**

### **Issues:**

1. Active street frontages required along Meriton Street and Wharf Road. Proposed retail space along Wharf Road is unlikely to be able to support a retail outlet due to its narrow width. This will affect the viability of the Plaza. The retail space will need to be increased so that it extends further in Meriton Street and that it achieves an acceptable depth for the space which adjoins the plaza. The DCP requires a minimum depth of 10 metres.
2. The development proposes to amend the key site diagram to increase the number of storeys and allow for encroachments beyond the original lot boundaries. The encroachments/setbacks as proposed are considered excessive and will result in adverse impacts on the streetscape and local area. The issue of acceptable encroachments has already been discussed in this advice. As previously advised, the height of the rear of the building needs to be reduced to ensure compliance with 7 storeys.
3. Concerns have been raised in regard to the detailing of the plaza by Council's UDRP as well as Landscape Architect. It is agreed that it would be more appropriate to arrange a separate meeting with the landscapers to discuss the requirements of the plaza.  
**Note : This has been scheduled for 28<sup>th</sup> August 2012.**
4. Car parking – The development significantly exceeds the amount permitted for parking. The oversupply of car parking will have an adverse impact in terms of traffic generation. The amount of car parking should be amended to ensure compliance.

## **State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development.**

Many issues have already been raised and commented to in respect to SEPP 65 by the UDRP as well as in the assessment for LDA 2011/0622. Your attention is further drawn to the following additional matters :

1. External spaces (balconies) do not meet the requirements
2. Any forthcoming application must achieve a minimum solar (daylight ) access of 3 hours as per the requirements of the RFDC. The submitted site summary indicates that the assessment undertaken by the proponent is based upon 2 hour solar access. During the meeting the proponents advised that this was a typing error and that the proposal achieves the required 3 hours on sunlight.

**Compliance with this requirement must be detailed in any forthcoming development application.**

## **Traffic & Access**

With respect to the new laneway, any driveway entrance needs to be located a minimum 6m from the tangent of Meriton Street. Also need a greater splay at the corner of 2.5m x 2.5m for sight line.

The loading dock arrangements proposed was discussed at length as it was considered unsatisfactory in terms of its location and pedestrian safety. Given the relatively small retail space provided to the development an alternative was discussed to providing the loading dock facilities within the ground floor car parking which could accommodate a small rigid truck. A further alternative was also discussed having regards to providing a layback/truck parking area within the laneway.

Any Traffic Study is to address the type of intersection treatment that is appropriate at the intersection of the new laneway, Wharf Road and Pearson Lane.

## **Public Domain**

The proponents were advised that the public domain areas adjoining the development would need to comply with the requirements of the Public Domain Manual. This should include but not be limited to pavers, street trees and replacing power poles with smart poles.

In addition to the above, the proponents were advised to contact Energy Australia to determine whether a substation is required to be provided as part of the development. Should this be required it is to be incorporated into the proposed development and must not be located within the public domain areas.

It is noted that a chair lift is shown at the rear stairs to the plaza, in this regard access for people with disabilities from and around the plaza, new laneway and all public domain areas is to be fully considered and an access report is to be submitted with any development application from an appropriately qualified and experienced access consultant providing full details on how this issue is addressed (in compliance with all relevant standards and best practice) within the development.

It is noted that a further meeting has been organised for 28 August 2012 to discuss requirements for the plaza.

**Full details of all public domain works including street trees lighting etc is to be provided with the submission of any development application for the proposal.**

## **Waste Management**

Although this item was not discussed at the meeting due to time constraints, Council's Waste Coordinator Jude Colechin has reviewed the proposal and does not support the proposed location of the waste collection area. Also, no easy access to waste storage area for residents located on the eastern core has been provided.

The proposed number and size of bins for the residential units are inadequate. The following waste management is recommended:

- o ***2 x 1100L residential waste bins provided with collections occurring on Monday, Wednesday and Friday;***

- o **20 x 240L recycling bins collected weekly.**

Ideally the residential units would be provided with a garbage chute to facilitate easy garbage disposal. The access from the lifts to the bin area needs to be safe for pedestrians.

The clean up room is inadequately located. The locations of the bin area and clean up room need to be reversed. The proposed loading dock is not large enough for a garbage truck to enter. The 1100l bins will need to be wheeled out and emptied from the laneway. If the bins are to be emptied from the loading dock the roof height needs to be a minimum of 3.7m for a rear loader truck. As the side arm recycle truck requires 4.5m recycling will need to be picked up in the laneway

In addition to the above a storage area for hard waste must be provided within the development. This area is to provide storage to residents for large bulky waste such as fridges, sofas, etc. It must be provided to achieve compliance with the requirements of Part 7.2 Waste Minimisation and Management of DCP 2010.

Council's Waste Co-ordinator, Jude Colechin, can be contacted on 9952 8269 to discuss the waste requirements.

## **Crime Prevention Through Environmental Design**

The proposed development contains in excess of 20 units and as such, must be accompanied by a formal CPTED Assessment as per the requirements of the RFDC.

## **Stormwater**

No stormwater plans have been provided however, Council's Senior Development Engineer has reviewed the proposal and identified that the site must provide Onsite stormwater detention. If the discharge of the OSD system exceeds 30litres per second, it will need to be piped into the nearest underground stormwater system.

In this respect the proponents are advised that it may be relatively more cost feasible to provide a larger OSD system than to provide stormwater drainage to the nearest underground system.

The proponents advised that stormwater will be split so as to flow into 2 catchments. Council's Senior Development Engineer advised that this split is acceptable and therefore no flood study would be required.

## **Heritage**

Following the pre-lodgement meeting, Council's Heritage Planner was consulted and advised that any forthcoming Development Application is to include a Heritage Impact Statement and montage regarding the proposal's impact upon adjacent heritage item including the Clock Tower. Council's Heritage Planner further provided the following advice:

- Heritage Impact Statement will also be required to address the encroachment into Wharf Road being less than the required 15m.
- Concerns are raised as to how the clock tower will be viewed from Victoria Road towards the development. A clear visual separation is desirable.
- Proposed planting around the clock tower appears acceptable but there should be

- no tall plantings at the entrance to the Plaza.
- The clock tower is the anchor point at the Victoria Road end of the proposed Plaza. It is suggested that the alternate end be provided with an anchor as well.
- A pedestrian crossing is needed at the end of the Plaza where the laneway crosses it.

## **Draft VPA**

The draft VPA was considered by an internal VPA committee the outcomes of which are contained in a letter signed by Dominic Johnson - Group Manager Environment and Planning which was handed over to the proponent at the meeting (copy is **attached** ). The draft VPA offer is the subject of a further meeting and discussions scheduled for 28 August 2012.

## **OUTCOMES**

- **Both the Urban Design Review and the Prelodgement penal have highlighted substantial areas of concerns with the proposal. The key areas of concern relate to the following :**
  - **Building Height**
  - **Building Separation**
  - **Building setbacks to Meriton Street and the rear lane**
  - **SEPP 65 issues including apartment layouts and amenity, balcony sizes, solar access, cross flow ventilation.**
  - **Public Domain Design (landscaping and deep soil planting)**
  - **Loading dock & driveway access to building**
  - **Waste collection facilities**
  - **Layout of retail space**
  - **Apartment entry foyer to Meriton Street**
  - **Roof design and lift overrun impacts**

In this regard, it is strongly recommended that the proponents review the design of the proposal and address the above areas of concern before the lodgement of a development application.

- Further your attention is drawn to the advice and comments provided by Council officers at the meeting of the 28 August 2012 convened at the request of the proponent to further discuss the Draft VPA as well as the Plaza landscape designs. Meeting Record Notes are attached to this advice for your information.

## **Submission Requirements**

As previously conveyed to you via email , 7 hard copies of all documentation must be provided and 2 electronic copies on disc. In particular, it should be noted that the following must be provided with any forthcoming development application:

- Statement of Environmental Effects addressing all applicable planning controls including:
    - *State Environmental Planning Policy No. 65 Design Quality of Residential Flat Development*
    - *Residential Flat Design Code*
    - *State Environmental Planning Policy No. 55 – Remediation of Land*
    - *Ryde Local Environmental Plan 2010*
    - *Draft Ryde Local Environmental Plan 2011*
    - *Development Control Plan 2010*
      - *Part 6.6 Blaxland Road (283-289) Ryde*
      - *Part 7.1 Energy Smart, Water Wise*
      - *Part 7.2 Waste Minimisation and Management*
      - *Part 8.2 Stormwater Management*
      - *Part 9.3 Car Parking*
    - *Draft Development Control Plan 2011*
  - Site Waste Minimisation and Management Plan
  - Photomontages showing the proposal and context of the site and surrounds.
  - Access Report
  - Acoustic Report
  - Arborist Report
  - BCA report
  - Detailed Cost Report
  - Floor Plans
  - Sections
  - Elevations
  - Survey
  - Notification Plans
  - Stormwater Plans
  - Landscape Plans
  - Heritage Impact Statement (this can be included as part of the SEE)
  - CPTED Assessment
  - Traffic Report
  - Energy Efficiency Report for the commercial tenancies. This must address Section 2.4 of *Part 7.1 Energy Smart, Water Wise* of DCP 2010.
  - BASIX Certificate
  - No Geotechnical report will be required.
- **Please refer to Council's website for more information on submission requirements for a Development Application. Please refer to this link for Council's Development Application package:**  
<http://www.ryde.nsw.gov.au/Documents/Forms/DA+Package.pdf>.
  - **Council has an accept-check-lobby process for all major development applications. This means that Council will review all applications before formal receipt and lodgement. This is to ensure that all applications received are complete and ready for assessment. This process is detailed within the attached information sheet.**

## **Applicable/Relevant Planning, building Controls and Policies**

*The following are a list of planning, building controls and policies that are applicable and relevant to the proposal:*

- *EP&A Act 1979 and related Regulations*
- *Ryde Local Environmental Plan 2010*
- *Development Control Plan 2010*
  - *Part 4.6 Gladesville Town Centre and Victoria Road Corridor*
  - *Part 7.1 Energy Smart, Water Wise*
  - *Part 7.2 Waste Minimisation and Management*
  - *Part 8.2 Stormwater Management*
  - *Part 9.3 Car Parking*
- *Draft Ryde Local Environmental Plan 2011*
- *Draft Development Control Plan 2011*
- *Building Code of Australia*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.*
- *State Environmental Planning Policy No. 65 Design Quality of Residential Flat Development*
- *Residential Flat Design Code*
- *State Environmental Planning Policy No. 55 – Remediation of Land*