

Council Assessment Report

SNPP No	2018SNH063
DA Number	MOD2018/268
Local Government Area	City of Ryde
Proposed Development	Modification to LDA 2015/0654 pursuant to S.4.55(2) to modify Building D to create private roof terraces for apartments D501 to D504 including construction of separate staircases enclosure, balustrade and privacy screens.
Street Address	723-731 Victoria Road, 10 Little Church Street & 3-7 St Annes Street, Ryde.
Applicant/owner	CD Architects/Kaloriziko P/L
Date of Lodgement	9 November 2018
Number of Submissions	One
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Original Consent determined by the then Sydney East Joint Regional Planning Panel as the Capital Investment Value Exceeded \$20M.
List of All Relevant s4.15(1)(a) Matters	<ul style="list-style-type: none"> • Environmental Planning and Assessment Act 1979; • State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development; • Ryde Local Environmental Plan 2014; and • City of Ryde Development Control Plan 2014.
List all documents submitted with this report for the panel's consideration	Attachment 1: Approved plans for LDA 2015/654, Mod 2018/0047 & Mod 2017/85.
Report prepared by	Sandra McCarry Senior Town Planner
Report date	February 2018

Summary of s4.15 matters	
Have all recommendations in relation to relevant s4.15C matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction	
Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed and relevant recommendations summarized, in the Executive Summary of the assessment report?	Yes
Clause 4.6 Exceptions to development standards	
If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been	N/A

attached to the assessment report?	
Special Infrastructure Contributions	No
Does the DA require Special Infrastructure Contributions conditions (S7.24)?	
Conditions	No – recommended for refusal.
Have draft conditions been provided to the applicant for comment?	

1. **EXECUTIVE SUMMARY**

Consent is sought to modify Local Development Application No. 2015/0654 under the provisions of Section 4.55(2) to provide private courtyards on the roof of Building D for apartments D501, D502, D503 & D504 with separate staircase access/enclosures to the courtyards and 1.6m high privacy screens around each of the courtyards.

On 5 December 2018, the applicant was advised that the proposed modifications would not be supported by Council and was given the opportunity to amend the proposal to a singular entry point for a communal open space. The applicant has advised that they do not wish to amend the proposal.

The application was placed on public notification from 21 November 2018 to 5 December 2018 as well as advertised in the Northern District Times. During this time, one submission was received objecting to the proposal if the amendments were over the height control.

The proposed modifications will increase the overall height of Building D and will be over the maximum 20m height control by between 1.1m to 1.98m, a variation of between 5.25 to 9.9%.

The modifications have been considered against the relevant environmental planning instruments - SEPP 65, RLEP 2014 and DCP 2014 and are not satisfactory in relation to the requirements of SEPP 65, RLEP (height and heritage objectives) and DCP controls.

The amended development is considered to be substantially the same development as that previously considered and approved by the then Sydney East Joint Regional Planning Panel.

Consequently this report concludes that the amended development proposal is unsound in terms of design and relationship to surrounding sites and is recommended for refusal.

2. **BACKGROUND**

- **LDA 2015/0654.** The originally approved development was determined by the former Sydney East Joint Regional Planning Panel as the estimated Capital Investment Value was over \$20m.

It was approved as a Deferred Commencement on 20 October 2016 for demolition of the existing buildings and construction of a mixed use development containing a total of 105 residential units & 269m² of commercial floor space.

The Deferred Commencement Condition required Root Mapping Investigations to be undertaken to determine the level of impact the development will have on neighbouring trees. The Root Mapping Investigation was undertaken which confirmed that there would be no impact to the neighbouring trees. Accordingly, the applicant was advised on 25 October 2016 that the consent is operative.

- **Mod 2017/85** was approved by the Sydney North Planning Panel on 21 July 2017 for:
 - Revise the car parking and storage layout in the basement levels,
 - internal floor changes to accommodate increase commercial area,
 - changes to the units arrangements on each of the levels,
 - reduce the number of units from 105 to 100 and
 - changes to the roof top communal area on Level 3 of Building A.

Note: The modification originally proposed to reduce the size of the roof top communal open space in Buildings C & B and provide private roof courtyards on the roof of Buildings B, C & D. This was not supported by Council as it:

- Resulted in a reduction in communal open space and amenity to all of the residents in the development including a loss of outlook from the communal open space area.
- Will likely result in multiple structures being constructed to provide shade to each of the courtyards and likely be over the maximum height allowed.
- Access to the private open space for emergency services.

The applicant was advised of such and agreed to delete the proposed private courtyards on the roof of Buildings B, C & D with only minor changes to the communal open space.

- **Mod 2018/47** was approved by Council on 5 April 2018 for:
 - Commercial area increased northwards for additional 61.9m² of commercial floor space by relocating the tandem car spaces.
 - Commercial store room added and Commercial waste area relocated.
 - Basement car parking extended to the south corner.
 - Waste rooms revised and Bulky goods room relocated.

The above extension was within the building footprint which did not add to the bulk or scale of the building nor alter the total floor space ratio.

3. **APPLICATION DETAILS**

Applicant: CD Architects
Owner: Kaloriziko P/L
Estimated value of works: Original value: \$34,144,723.

Disclosures: No disclosures with respect to the Local Government and Planning Legislation Amendment (Political Donations) Act 2008 have been made by any persons.

4. SITE DESCRIPTION & CONTEXT

The subject site is located on the north eastern side of Victoria Road and is legally described as Lot 1 in DP 1241450. The site has a total area of 3,436m² and has three street frontages; Victoria Road, Little Church Street and St. Annes Street. The adjoining sites to the south east are residential flat buildings. St Anne's Church and cemetery are located on the north-western side of Little Church Street and located on the north-eastern side of St Annes Street are residential flat buildings.

Figure 1 below provides an aerial view of the site (outlined in red) and its context whilst photographs of the site and surrounds are provided at **Figures 2 to 4**.



Figure 1: Aerial photo of the site.

The site is within the vicinity of items of heritage significance listed under Schedule 5 of Ryde LEP 2014:

- i. 'Former Court House' 42 Church Street, Ryde (Item No.129)
- ii. 'St Anne's Ryde Anglican Church' 46 Church Street, Ryde (Item No.130)
- iii. 'Great North Road' Victoria Road, Gladesville (Item No.154)
- iv. 'Northern Suburbs Ocean Outfall Sewer' (State Heritage Register listed)



Figure 2: 721 Victoria Road – a part 4/part 5 storey residential flat building located at the corner of St Annes Street and Victoria Road, adjacent to the southern eastern boundary of the subject site.



Figure 3: 9-11 St Annes Street – a 3 storey residential flat building.



Figure 4: St Anne's Church – taken from the internal road.

5. PROPOSAL

The approved development comprises of four attached building pods in a U shaped configuration with a central common open space area between Buildings A & D, as shown in **Figure 5** below.

Building A is a three storey building, located on the north western corner of the site with frontages to St Annes and Little Church Street.

Building B is 6 storeys, located on the south western corner with frontages to Victoria Road and Little Church Street.

Building C is located on the south eastern section of the site facing Victoria Road and is 5 storeys.

Building D is located on the north east corner facing St Annes Street and is 6 storeys in height.

Communal open space is located on the roof area of Buildings B & C to capture the views to the City and over Homebush.



Figure 5: Location of the proposed buildings and number of storeys of each building.

Modifications are now sought to change the roof area of Building D to provide four private rooftop courtyards for apartments D501, D502, D503 & D504.

Access to the roof top courtyards will be from an internal staircase to a metal and glass framed enclosure above.

It is also proposed to provide 1.6m high privacy screens between each of the private courtyards and a 1m high glass balustrade setback from the edge of the roof to the perimeter of the courtyards, as illustrated in **Figures 6 & 7** below.

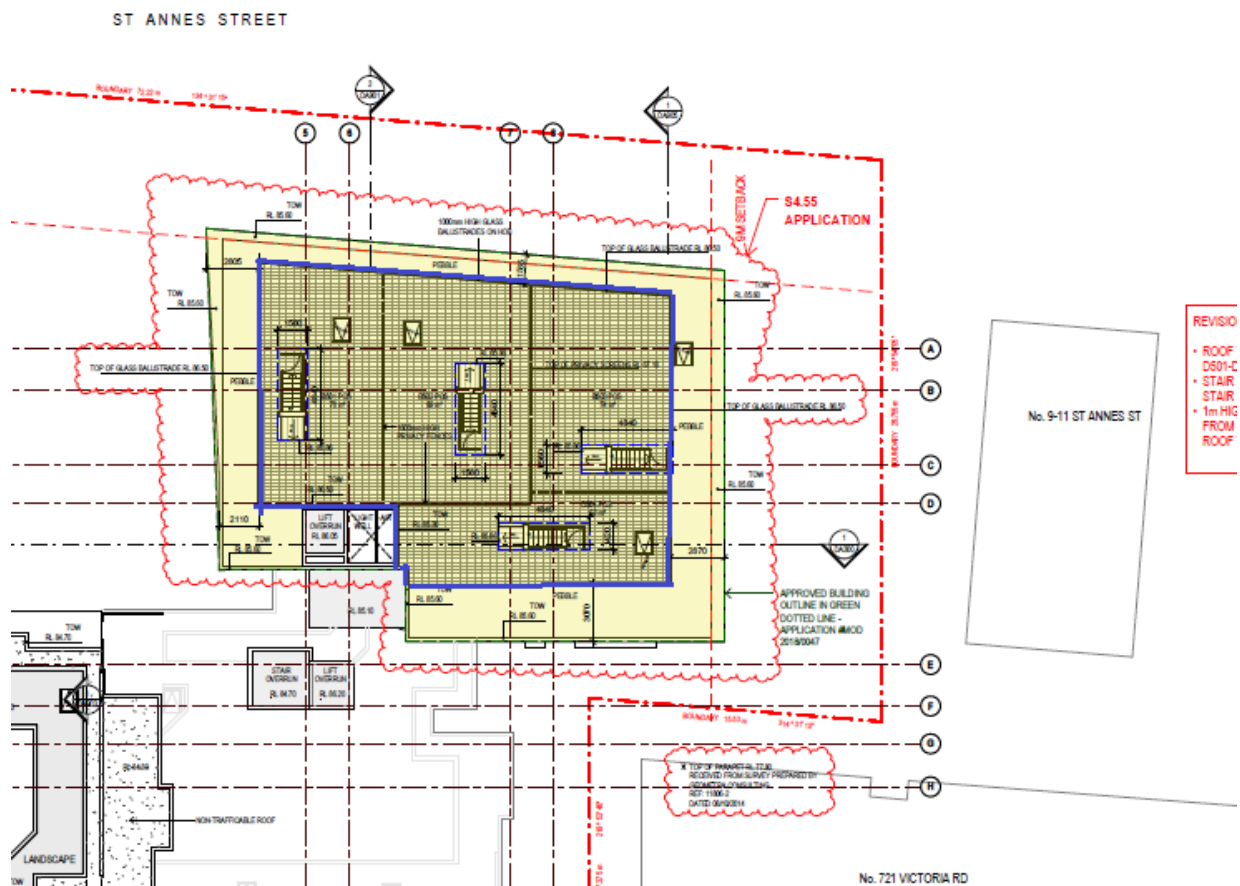
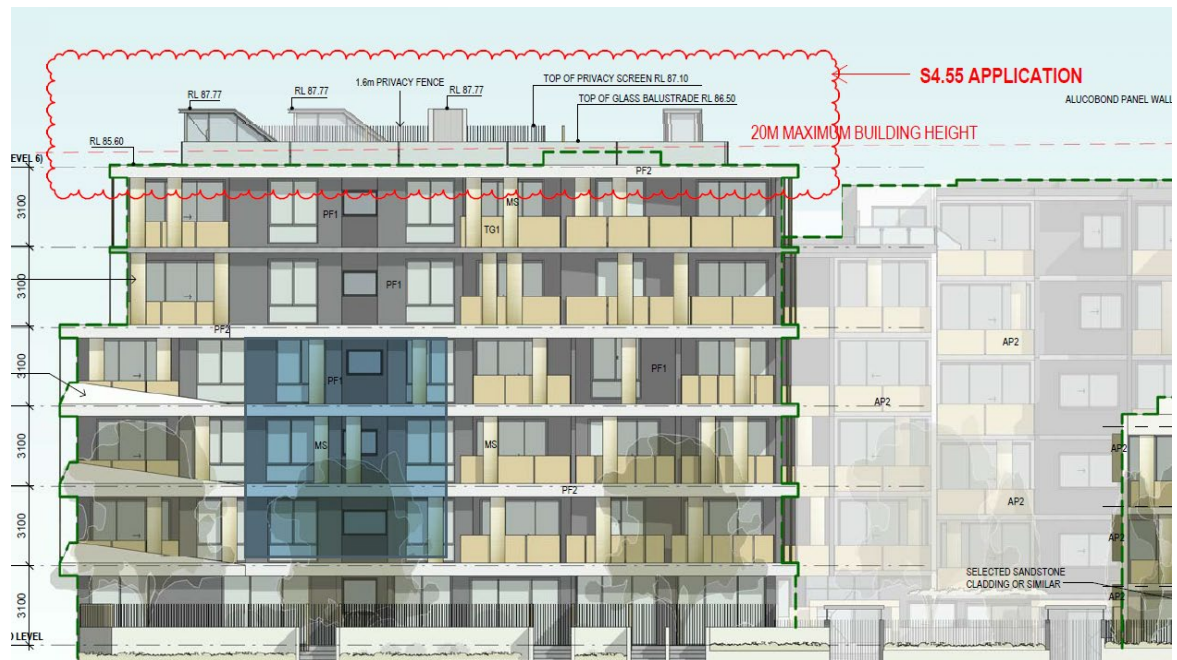


Figure 7: Plan view of roof area of Building B with the area to be used as private open space outlined in blue.

6. **APPLICABLE PLANNING CONTROLS**

The following planning policies and controls are of relevance to the development:

- Environmental Planning and Assessment Act 1979;
- State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development;
- Ryde Local Environmental Plan 2014; and
- City of Ryde Development Control Plan 2014.

7. **PLANNING ASSESSMENT**

7.1 **Environmental Planning and Assessment Act, 1979**

The provisions of Section 4.55(2) of the Environmental Planning and Assessment Act, 1979 allow a consent authority to modify the consent where the application meets the following criteria: -

- (a) The development to which the consent as modified relates is substantially the same development.
- (b) Any concurrence authority has been consulted and has not objected.
- (c) The application has been notified in accordance with the regulations.
- (d) Submissions made during the prescribed notification period have been considered.

Under s4.55 (2) (a) Council must be satisfied that the development as modified is substantially the same as was approved in the original consent. In arriving at this determination there should be no consideration of the merits of the proposal but rather a straight before and after comparison. If it is determined to be substantially the same then the proposed modifications need to be assessed on their merits having regard to submissions received and any relevant Council planning controls.

The **current approval** provides for demolition of existing buildings, amalgamation of the lots and construction of a mixed use development containing a total of 100 residential units and 269m² of commercial floor space (as modified).

The **proposed modifications** relate to:

- minor internal alterations to facilitate internal staircases for roof top access
- construction of 4 x staircases enclosures on the roof top of Building D and
- erection of privacy screens and balustrades.

The proposed modifications are considered to be consistent with the originally approved development application. This conclusion is reached as the proposed modifications retain the intent of the originally approved development, with the use and number of units remaining unaltered. The bulk and scale of Buildings A, B & C are not changed with only the building height of Building D proposed to be altered. The application can be considered on its merits.

Section 4.55(2) (b) is not relevant to the current application, as concurrence was not required for the original approval.

The proposal meets the requirements of 4.55(2) (c) and 4.55(2) (d) listed above. The proposal was notified and one submission was received which has been taken into consideration.

7.2. State Environmental Planning Policy 65 - Design Quality of Residential Apartment Development

This Policy aims to improve the design quality of a residential apartment development. This proposal has been assessed against the following matters relevant to SEPP 65 for consideration:

- The SEPP 65 Design Quality Principles; and
- The NSW Apartment Design Guide (ADG) guidelines.

The principles and ADG guidelines have been considered as part of this assessment.

Design Quality Principles

The Principles under this Policy aim to incorporate the provisions of SEPP 65 with the design guidance of the ADG. They provide Design Quality Principles for the merit based assessment of a proposal and aid the achievement of good design.

The following table provides an assessment of the proposal against the applicable Design Quality Principles:

Design Quality Principle	Comment
Context and neighbourhood character	
<p>Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.</p> <p>Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</p> <p>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</p>	<p>The proposed modifications will be inconsistent with the desired future character for the precinct as identified in Part 4.4 of DCP 2014 – Ryde Town Centre.</p> <p>The subject site is within the vicinity of a heritage listed building (St Anne's Church) The use of the rooftop area for private courtyards areas will create pressure on this space for further future installation of covered awnings and canopies which will cumulatively result in the appearance of an extra storey, which will be visible in the backdrop to St Annes Church. Council's Heritage Officer has advised that this would visually detract from its setting.</p> <p>In addition, the appearance of an extra storey is not in keeping with the character of the area.</p>

Design Quality Principle	Comment
Built form and scale	
<p>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</p> <p>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</p>	<p>The modifications will alter the approved height of Building D and will be above the maximum 20m height control permitted under the RLEP 2014.</p> <p>Cumulatively all the changes will have the appearance of an extra storey, making the building a de facto 7 storey building, which will add to the visual bulk and not in keeping with the surrounds which are 3 to 6 storeys.</p>
Amenity	
<p>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well-being.</p> <p>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.</p>	<p>Whilst the proposed modification will increase the provision of private open space, this is only for four apartments.</p> <p>The development complies with the communal open space and private open space provisions required under the SEPP. The apartments all have balconies complying with the minimum balcony size.</p> <p>The modifications will result in increased building height which is considered to have an adverse impact to the adjoining heritage site and set an unwanted precedent.</p>
Aesthetics	
<p>Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.</p> <p>The visual appearance of a well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</p>	<p>The appearance of an "additional storey" of fencing and stairwell enclosures is not in keeping with a well-designed building. In addition, the structures will be visible in the backdrop to St Annes Church which does not fit in with the future local context for the immediate surround.</p>

Apartment Design Guides

The SEPP also requires the Council to take into consideration the requirements of the Apartment Design Guide. The following matters are considered relevant to the Section 4.55 application.

	Comments	Comply
Part 2C Building Height	The proposed modification will result in Building D being over the	No

	Comments	Comply												
	maximum 20m height control for multiple areas of the roof.													
Part 3D Communal and public open space Communal opens space has a minimum area equal to 25% of the site. Developments to achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (min winter).	Mod 2017/85 provided a total of 30% of the site area as common open space. Buildings A & C have communal open space located on the roof of the buildings. The proposed modifications to convert the roof area of Building D to private open space area is for four apartments only, not communal open space for the whole of the building.	Yes												
Part 3F Visual Privacy Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows: <table border="1" data-bbox="209 1075 703 1485"> <thead> <tr> <th>Bld Height</th><th>Habitable room/balconies</th><th>Non hab rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys).</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9 + storeys).</td><td>12m</td><td>6m</td></tr> </tbody> </table>	Bld Height	Habitable room/balconies	Non hab rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys).	9m	4.5m	Over 25m (9 + storeys).	12m	6m	The building separations between the 4 buildings on site have not been altered. The roof top terraces will be setback from the perimeter of the building – <ul style="list-style-type: none"> • 1.5m from the northern elevation facing St Annes Street, • 2.1 to 2.8m from the western elevation • 3m from the south western elevation and • 2.87m from the eastern elevation. No overlooking concerns are raised from the roof top terraces as the proposal has setback the terraces from the perimeter of the building with a minimum separation of 15m separation from the roof top communal open space of Building B. Overlooking to adjoining properties is not an issue. The adjoining property to the south (721 Victoria Road) is a part 4/part 5 storey residential flat building and is lower than the subject building. A 9m separation is provided between the edge of the proposed courtyard and 721 Victoria's northern elevation. Accordingly, due to the height difference and the separation distance, overlooking into 721	Yes
Bld Height	Habitable room/balconies	Non hab rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys).	9m	4.5m												
Over 25m (9 + storeys).	12m	6m												

	Comments	Comply															
	<p>Victoria's Road rear windows is not an issue, as illustrated in Figure 8 below.</p> <p>The separation between the proposed courtyards and the adjoining property to the east (9-11 St Annes Street) is 15m. 9-11 St Annes Street is a 3 storey residential flat building. The adjoining building is significantly lower and due to the separation, over looking into St Annes' side windows will be minimal.</p>																
<p>4E Private Open Space and balconies Apartments must provide appropriately sized private open space and balconies to enhance residential amenity.</p> <p>Design criteria 1.All apartments are required to have primary balconies as follows:</p> <table border="1"> <thead> <tr> <th>Dwelling type</th><th>Minimum area</th><th>Min.depth</th></tr> </thead> <tbody> <tr> <td>Studio apartments</td><td>4m²</td><td>N/A</td></tr> <tr> <td>1 bedroom</td><td>8m²</td><td>2m</td></tr> <tr> <td>2 bedroom</td><td>10m²</td><td>2m</td></tr> <tr> <td>3+ bedroom</td><td>12m²</td><td>2.4m</td></tr> </tbody> </table>	Dwelling type	Minimum area	Min.depth	Studio apartments	4m ²	N/A	1 bedroom	8m ²	2m	2 bedroom	10m ²	2m	3+ bedroom	12m ²	2.4m	<p>The apartment balconies comply with the minimum area requirement.</p> <p>The proposed modifications will result in Apartments D501 to D504 having additional private open space of between 62m² to 89m²</p>	Yes
Dwelling type	Minimum area	Min.depth															
Studio apartments	4m ²	N/A															
1 bedroom	8m ²	2m															
2 bedroom	10m ²	2m															
3+ bedroom	12m ²	2.4m															

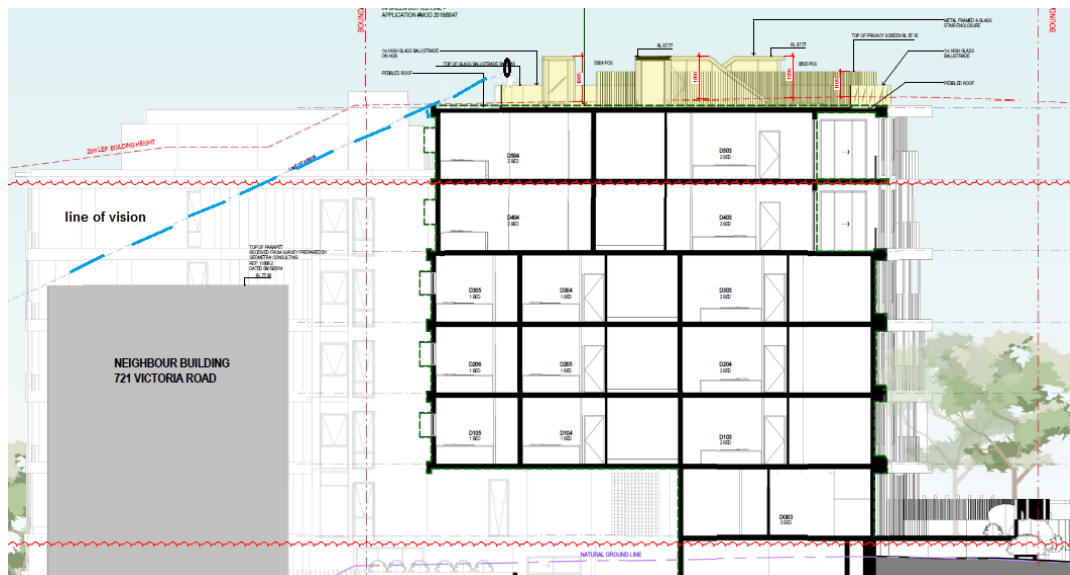


Figure 8: Line of vision from the courtyard area to the adjoining south western property – 721 Victoria Road.

7.3 Ryde Local Environmental Plan 2014

The following is an assessment of the proposed development against the applicable provisions from the Ryde Local Environmental Plan 2014.

Zone

The land is zoned B4 Mixed Use under Ryde LEP 2014.

The development as modified is a permissible form of development.

Objectives of the zone

The objectives for the B4 zone are as follows:

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

The proposed modifications are able to meet the objectives of the B4 zone as the proposal does not change the use which provides for a mix of retail and residential on a site that is located within close proximity to public transport, public open space and community services.

Clause 4.3 Height of Buildings

Clause 4.3(2) states that the height of a building on this site is not to exceed the maximum height shown on the Height of Buildings Map. The map specifies the maximum height for any building on the site as 14m.

Building height is defined in this planning instrument as meaning: *the vertical distance between ground level (existing) at any point to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

The maximum height allowed for the site is 14m however Clause 4.3(A) permits an additional 6m height if:

"The lot on which the building is sited has an area of at least 900 square metres and the proposed development is a mixed use development and provides laneway access."

The site has an area greater than 900m² and proposes a mixed use development and the driveway is legally defined as a laneway. The site satisfies the provisions for the additional height which results in a maximum height of 20m rather than 14m.

The original application approved a maximum height of 22.3m for Building B, which is located on the south western corner of the site with a frontage to Victoria Road and Little Church Street, as detailed in **Figure 9** below.



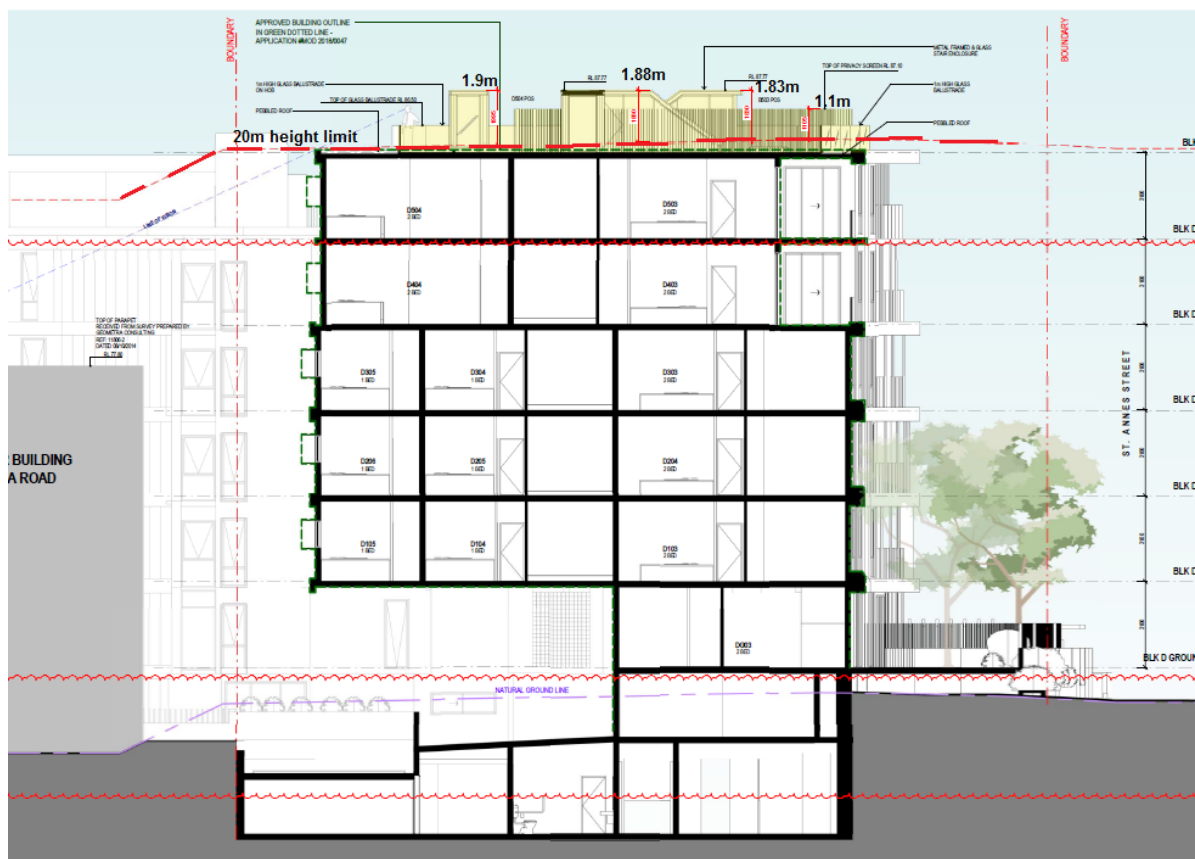
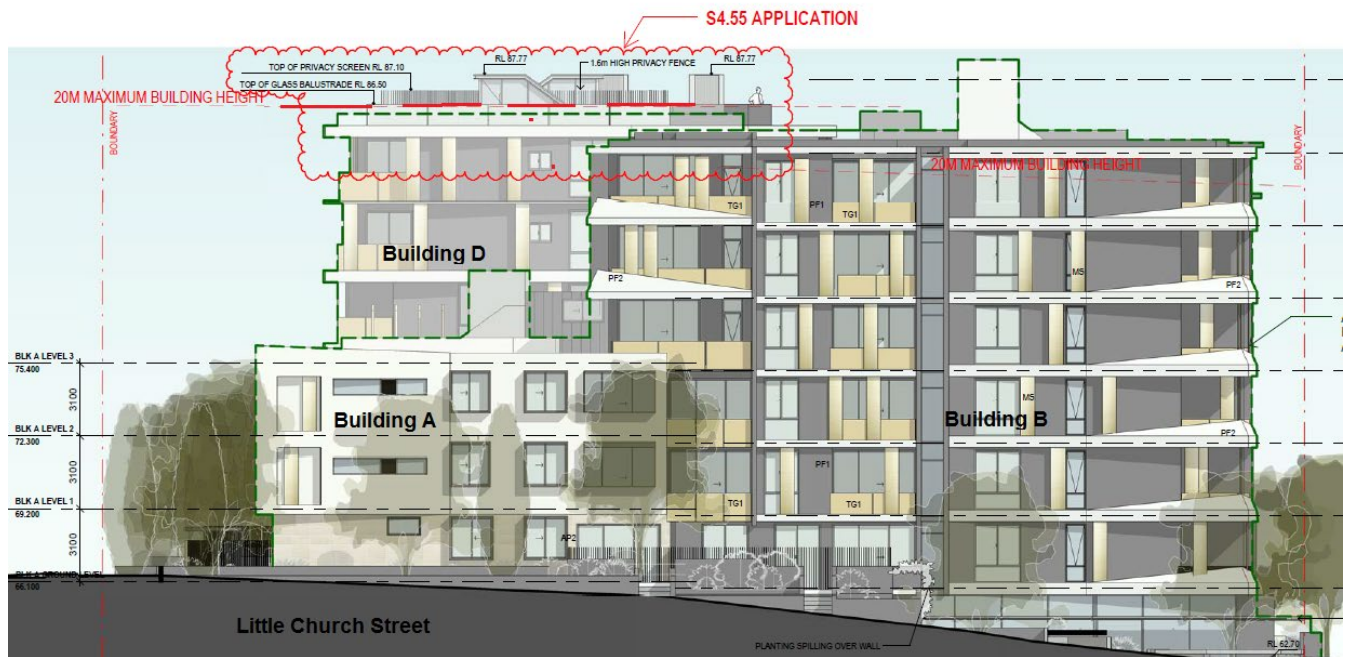
Figure 9: Extent of height breach for Building B.

Council supported the variation to Building B, as the variation occurs in relation to part of the upper habitable level and the roof top open space on Building B, including its associated access facilities.

The habitable portion that is above the height limit is due to the variation in the ground levels across the site, resulting in an uneven RL's per building pod. Furthermore, Building A (located behind Building B) was maximised at three storeys to remove any impact on the nearby Heritage Item (St Anne's) resulting in the need to replace some of the permissible floor space elsewhere on the site.

The proposal relocated the bulk of the buildings near the corner of Little Church Street and Victoria Road away from the heritage item and adjoining residential properties. Plus the lift overrun was located in the middle of the building and provided access to the communal open space for all the residents of the building. The variation was supported by Council's Heritage Officer.

The proposed modification to provide 4 x private courtyards on the roof top of Building D will result in a height non compliance to Building D by 1.1m to 1.98m a variation of between 5.25 to 9.9%, as detailed in **Figures 10 & 11** below.



The above variation for the height (which is a development standard) would normally require a Clause 4.6 variation to justify the additional departure. However,

the proposal is submitted under Section 4.55 (modification of consent) and a Clause 4.6 variation objection is not required.

The relevant judgment (*North Sydney Council v Michael Standley & Associates Pty Ltd* [1998] NSWSC 163) states that section 4.55 is a "free-standing provision", meaning that a modification application may be approved notwithstanding the development would be in breach of a development standard were it the subject of an original development application".

However Section 4.55(3) still requires Council to take into consideration matters referred to in Section 4.15, which includes the provision of any environmental planning instrument. The merit of the departure is discussed below.

Council supported the original Clause 4.6 variation to allow for the variation to Building B for the reasons stated above. However in this instance, the proposed variation to Building D is not supported.

As stated above the subject site is within the vicinity of several heritage items and in the original assessment of the proposal, Council's Heritage Officer, at the time advised:

"A higher degree of sensitivity surrounds the design treatment of any built form in the north western corner of the subject site, particularly given the close proximity and visual relationship with St Anne's Church. In this location, the proposed building (Building A) adopts a maximum building height of three storeys, and has an acceptable built form relationship to St Anne's, being of a scale and height that will not visually dominate nor detract from the significance and prominence of St Anne's.

In fact, this component of the building almost reads as a separate building in the sense that it is differentiated from the remainder of the building through a palette of materials that provides for a harmonious relationship with St Anne's through the use of sandstone cladding.

The proposed built form increases in height and the overall number of storeys as it moves away from St Anne's in both an easterly and southerly direction. The silhouette of the easternmost portion of the building is considered acceptable. With respect to the built form fronting Little Church Street, the photomontages depict that this portion of the proposed building will be highly visible from many vantage points and angles when viewed from Church Street over and through the St Anne's site.

It is important to not only consider the views from Victoria Road to St Anne's but also views and vistas which are achieved through the site from Church Street towards the subject site and how the proposed development sits as a backdrop to the heritage item. St Anne's Church is also one of the most iconic buildings in Ryde and demands a highly sensitive approach to development within the visual curtilage and setting so that any new built form provides a backdrop that

has a regressive scale and form and does not visually detract from the significance and prominence of St Anne's.

In this regard, it is necessary that the new development allows for the silhouette and form of St Anne's to still be the prominent built element in the immediate surrounding landscape, whereby there must be a transition in scale and form. When viewed from Church Street, the proposed six storey component of the building will be visible and reads as a de-facto addition to the rear of St Anne's, picking up a similar building plane to the finished height of the Church building."

With regards to the proposed modifications, Council Heritage Officer has made the following comments:

"The proposed roof top terrace area will be accessed by stairs from each of the four apartments benefiting from the space. The use of the rooftop area will necessitate material changes to the building to accommodate four separate stair overruns and a perimeter balustrade.

Cumulatively, the changes have the appearance of an additional storey, which is at odds with the parent development consent, approved on the basis of having achieved a reduction in the building height from what had initially been proposed. Because the proposed rooftop terrace is to be shared between four apartments, each apartment has its own separate covered stair access to the rooftop, which further exacerbates the visual bulk and silhouette of the building.

The use of the rooftop of Building D for private open space creates pressure on this space for the further future installation of covered awnings and canopies and furniture that will be visible in the backdrop to St Annes Church and would visually detract from its setting.

Consequently, the proposed modifications are not supported as it is important that the building retains its approved building height which was considered the absolute maximum to ensure the visual setting and backdrop to the heritage-listed St Annes Church was not adversely impacted or compromised."

Accordingly, the proposed variation in height will have an adverse visual impact on the adjacent heritage item.

In addition, the objectives of the height clause in LEP 2014 are as follows:

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

The proposed modifications will have an adverse impact to St Annes Church at 42-44 Church Street, as discussed above.

It should also be noted that the development has already been uplifted in height from 14m to 20m and any plant rooms or lift over runs should be below the 20m height control.

This proposal is for four private courtyards with a 4.8m x 1.56m and height of 2.1m stairwell enclosure each, 1.6m high privacy fences around each of the courtyards and perimeter fencing all above the 20m height control. No shading structures are shown to be provided however it is reasonable to assume that shade structures will be erected for each of the courtyards. Therefore the cumulative effect of the four private courtyards and their ancillary structures will have the appearance of an extra storey, resulting in a 7 storey building. This is not in keeping with the character of nearby developments. Within the subject site the other three buildings are 3 to 6 storeys with adjacent properties - 721 Victoria Road being part 4/part 5 storeys and 9-11 St Annes Street 3 storeys.

The applicant has argued that *“the four stair wells providing access to the rooftop terraces in plan view equated to 0.7% of the entire roof area, which is a very minor portion of the roof.”* This is not supported by Council, as when viewed from St Anne Church, the eastern elevation will have a total length of 17.2m of area (this includes the outer glass balustrade around the perimeter of the courtyards) above the 20m height control, equating to 78% of the eastern elevation and appearance of an additional storey.

In addition, the proposal for four individual stairwells and privacy fencing all above the height control will set an undesirable precedent which will undermine the objectives of the height control. Accordingly the proposed modifications cannot be supported by Council.

Clause 4.4 Floor Space Ratio

The maximum FSR allowed for the site is 2.5:1. The site has an approved FSR of 2.48:1 (8531m²) and the proposed modifications will not alter the approved FSR.

Clause 5.10 Heritage conservation

The subject site is located in proximity to the following items:

- i. Former Court House' 42 Church Street, Ryde (Item No.129)
- ii. St Anne's Ryde Anglican Church' 46 Church Street, Ryde (Item No.130)
- iii. Great North Road' Victoria Road, Gladesville (Item No.154)
- iv. Northern Suburbs Ocean Outfall Sewer' (State Heritage Register listed)

The development is not supported as it will impact on St Anne's Church, as discussed above.

7.5 Any proposed instrument (Draft LEP, Planning Proposal).

None applicable.

7.6 City of Ryde Development Control Plan 2014

The following sections of Ryde DCP 2014 were assessed under the original development application:

- Part 4.4 – Ryde Town Centre
- Part 7.1 - Energy Smart, Water Wise
- Part 7.2 - Waste Minimisation and Management
- Part 8.1 - Construction Activities
- Part 8.2 - Stormwater Management
- Part 8.3 - Driveways
- Part 9.2 - Access for People with Disabilities
- Part 9.3 - Car Parking

Only those Parts affected by the proposed modification are assessed below.

Part 4.4 – Ryde Town Centre

Part 4.4 of DCP 2014 is the primary DCP applicable to development within the Ryde Town Centre. The relevant provisions with regard to the proposed modifications are outlined in the Table below:

Control	Comment	Compliance
4.0 Architecture and Urban Form		
4.1 Building Height a. Buildings must comply with the maximum heights described in Ryde LEP 2014 - Height of Buildings Map.	Approved - Max. 22.3m (Building B) – approved in original application. It is proposed to increase the height of Building D by additional 1.1m to 1.98m above the 20m maximum. See discussion above under Clause 4.3 Height of Building.	No
5.0 Heritage		
5.3 The Setting a. New development in the vicinity of a heritage item is to be compatible with the visual character of the heritage item and its significant context or setting. b. If the site of a heritage item is amalgamated, the original lot structure shall be discernible in all new development and the visual curtilage retained.	The site is in the vicinity of several heritage items. Council's Heritage Officer has advised: <i>"The 4.55 will exacerbates the visual bulk and silhouette of the building against the backdrop to St Anne's Church and would visually detract from its setting."</i>	No

Control	Comment	Compliance
c. The natural topography and landscaped setting of the site of a heritage item is to be retained. d. Significant views and other visual links to and from a heritage item are to be preserved and enhanced.	See discussion earlier in the report.	
7.0 Residential Amenity		
7.1 Residential Private Open Space All communal garden, swimming pool and outdoor spaces should be designed to enhance the safety and security of residents: Above ground open space s. Provide at least one balcony, terrace or deck for each dwelling where direct access to ground level private open space is not available. t. Primary above ground open space is to be accessible from a family room, lounge, dining room or kitchen, and be north, east or west facing, in the form of balconies, courtyards, terraces, roof gardens and the like. u. The depth of the primary above ground open space is to be in the range of 2 – 4.0 m. The optimal depth is 2.4 – 3.0 m. v. Smaller secondary open spaces such as balconies off bedrooms are also encouraged. The depth of the secondary open space should be in the range of 0.9 – 1.5 m.	The approved development complies with the requirements for private open space. The proposed modifications will increase the private open space for 4 apartments only.	Yes
8.0 Precincts - Heritage		
All new development shall be compatible with the height, scale, built form, architectural character and curtilage of Heritage Items and Contributory Elements.	Council's Heritage Officer has advised that <i>"The proposed modifications are not supported as it is important that the building retains its approved building height which was considered the absolute maximum to ensure the visual setting and backdrop to the heritage-listed St Anne's Church was not adversely impacted or compromised"</i> .	No

8. SUITABILITY OF THE SITE FOR THE DEVELOPMENT

The proposed modifications are considered unsuitable for the subject site.

9. THE PUBLIC INTEREST

The amendments are not in the public interest as they are not consistent with the relevant planning controls, will impact on the nearby heritage property and will set an undesirable precedent thereby undermining the Height Control.

10. REFERRALS

Heritage Officer: 6 December 2018:

The subject site is located within the vicinity of St Anne's Church which is a listed item of local heritage significance. Council's Heritage Officer has made the following comments:

"The proposed modification seeks to introduce the functional use of the roof space of Building D for private open space, with the space exclusively for the use of apartments D501-D504.

The proposed roof top terrace area will be accessed by stairs from each of the four apartments benefiting from the space. The use of the rooftop area will necessitate material changes to the building to accommodate four separate stair overruns and a perimeter balustrade.

Cumulatively, the changes have the appearance of an additional storey, which is at odds with the parent development consent, approved on the basis of having achieved a reduction in the building height from what had initially been proposed. Because the proposed rooftop terrace is to be shared between four apartments, each apartment has its own separate covered stair access to the rooftop, which further exacerbates the visual bulk and silhouette of the building.

The use of the rooftop of Building D for private open space creates pressure on this space for the further future installation of covered awnings and canopies and furniture that will be visible in the backdrop to St Anne's Church and would visually detract from its setting.

Consequently, the proposed modifications are not supported as it is important that the building retains its approved building height which was considered the absolute maximum to ensure the visual setting and backdrop to the heritage-listed St Anne's Church was not adversely impacted or compromised.

Consideration may be given to the use of the rooftop terrace as communal open space, accessed via a singular entry point and having a reduced floor area to ensure that the balustrade is not visible from Little Church Street or at any view point within the St Anne's Church site. It would be reasonably

anticipated that conditions of consent would be imposed to then restrict the placement of fixed structures and shading devices on the rooftop area.”

The applicant was advised of the above on 5 December 2018 and given the opportunity to amend the proposal. The applicant did not wish to amend the application.

11. PUBLIC NOTIFICATION AND SUBMISSIONS

The proposed development was notified and advertised in accordance with Development Control Plan 2014 – Part 2.1, Notification of Development Applications. The Section 4.55 (2) application was advertised in the *Northern District Times* on 21 November 2018 and adjoining property owners notified with submission closing on 5 December 2018.

One submission was received advising that he has no objections subject to the amendments being within the maximum 20m height limit but do not support the proposal if it is above the 20m height control.

The amendments are over the height limit and are not supported by Council.

12. CONCLUSION

The proposal has been assessed in accordance with Section 4.55(2) and the heads of consideration listed in Section 4.15 of the Environmental Planning & Assessment Act 1979 and is considered to be unsatisfactory. The proposal exceeds the height control and will have an adverse impact to the visual setting and backdrop to St Anne's Church which is a listed item of local heritage significance.

The Section 4.55 (2) application is recommended for refusal for the following reasons:

1. The development does not comply with the requirements of the relevant planning instruments and is considered to have unacceptable merit based on planning grounds.
2. The development does not achieve the objectives of Clause 5.10 of the Ryde Local Plan 2014 in that it does not conserve the environmental heritage of the area.
3. The development is not considered to be in the public interest and will set an undesirable precedent.

13. RECOMMENDATION

That the Sydney North Planning Panel refuse MOD18/268 to provide private courtyards on the roof Building D for apartments D501, D502, D503 & D504 with separate staircase access/enclosures and 1.6m high privacy screens around each of the terraces, at 723-731 Victoria Road, 10 Little Church Street & 3-7 St Anne's Street, Ryde for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the development does not satisfy the Design Quality Principles of *State Environmental Planning Policy 65* nor achieve the objectives of Clauses 4.3 and 5.10 of the *Ryde Local Environmental Plan 2014*. The exceedance in height will not be in keeping with the future character or existing character of nearby development and will have an adverse impact to the visual setting and backdrop to the nearby heritage item.
2. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the development does not comply with the following clauses under the *Ryde Development Control Plan 2014* – Part 4.4 Ryde Town Centre:
 - Clause 4.1 (a) – Building Height.
 - Clause 5.3 (a) & (d) – The Setting.
 - Clause 8.5.1 (c) – Future Character.
3. Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, in that the development is not in the public interest because it fails to achieve the objectives and requirements of the applicable environmental planning instruments.

Report prepared by:

Sandra McCarry
Senior Town Planner

Report approved by:

Tony Collier
Senior Co-ordinator - Major Development

Sandra Bailey
Manager Development Assessment

Liz Coad
Director - City Planning and Environment.