

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSNH-452
DA Number	LDA2023/0323
LGA	City of Ryde
Proposed Development	Construction of a mixed-use development comprising three residential flat buildings containing 194 apartments, a centre-based childcare facility, basement car parking, stormwater management works and landscape works
Street Address	691 to 695 Victoria Road, Ryde
Applicant	Chanine Design Pty Limited
Owner	AMHA Properties Pty Limited
Disclosures	No disclosures with respect to the <i>Local Government and Planning Legislation Amendment (Political Donations) Act 2008</i> have been made by any persons.
Date of DA lodgement	15 December 2023
Total number of unique Submissions	12 unique submissions received
Recommendation	Refusal
Regional Development Criteria SEPP (Planning Systems) 2021	<ul style="list-style-type: none"> • General development over \$30 million. • Development that is subject to 10 or more unique submissions by way of objection. • Development that contravenes a development standard by more than 10%.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Environmental Planning and Assessment Act 1979; • Environmental Planning and Assessment Regulation 2021; • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004; • State Environmental Planning Policy (Planning Systems) 2021; • State Environmental Planning Policy (Resilience and Hazards) 2021; • State Environmental Planning Policy (Transport and Infrastructure) 2021; • State Environmental Planning Policy (Housing) 2021; • Ryde Local Environmental Plan 2014; • Ryde Development Control Plan 2014; and • Section 7.11 Contribution Plan.
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Attachment 1: Architectural Plans. • Attachment 2: Apartment Design Guide Table of Compliance • Attachment 3: SEPP & Guideline Tables of Compliance • Attachment 4: Clause 4.6 Request (Height of Buildings) • Attachment 5: Clause 4.6 Request (Floor Space Ratio) • Attachment 6: RDCP Part 3.2 Table of Compliance • Attachment 7: Reasons for Refusal.
Clause 4.6 requests	<ul style="list-style-type: none"> • Clause 4.3 – Height of Buildings (39.5% variation) • Clause 4.4 – Floor Space Ratio (42.9% variation)

Summary of key submission issues	<ul style="list-style-type: none"> • Overdevelopment. • Lot isolation. • Impact on existing infrastructure. • Construction related impacts. • Traffic and parking impact. • Impact upon neighbouring residential amenity. • Impact of the proposed childcare centre. • Inconsistent with the character of the area. • No consultation about the development. • Suitability of the development. • Structural impact. • Stormwater runoff.
Report prepared by	Tony Collier – Senior Town Planner
Report date	20 June 2024

Summary of s4.15 matters	
Have all recommendations in relation to relevant s4.15 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 matter been listed, and relevant recommendations summarised, 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 attached to the assessment report?	Yes
Special Infrastructure Contributions	
Does the DA require Special Infrastructure Contributions conditions (s7.24)?	No
Conditions	
Have draft conditions been provided to the applicant for comment?	No (Refusal)

1. EXECUTIVE SUMMARY

This report provides an assessment of a development application for construction of a mixed-use development comprising three residential flat buildings, a centre-based childcare centre, basement car parking and landscape works.

The application was submitted on 15 December 2023. On 29 February 2024, the applicant filed the Class 1 Appeal with the NSW Land and Environment Court for the deemed refusal of the application (LEC 202478801).

On 8 April 2024 the Statement of Facts and Contentions was filed at the NSW Land and Environment Court after being referred to the Sydney North Planning Panel.

The matter is scheduled to be heard at a s.34 conciliation conference on 9 September 2024.

The Proposal

This application proposes a mixed-use development comprising three residential towers accommodating 194 apartments, a centre-based childcare centre (120 children and 17 staff), carparking within 3 basement levels to accommodate 269 vehicles and associated stormwater works and landscaping.

The architectural plans are at **Attachment 1** of this report.

Compliance

The development fails to achieve compliance with the following planning instruments and controls:

State Environmental Planning Policy (Housing) 2021

Design Principles

The application was referred to Council's Urban Design Review Panel (UDRP) on 14 March 2024. The development is not supported by the UDRP which raises issue with the following Design Principles:

- Principle 1 - Context and Neighbourhood Character.
- Principle 2 - Built Form and Scale.
- Principle 3 - Density.
- Principle 4 - Sustainability.
- Principle 5 – Landscape.
- Principle 6 - Amenity.
- Principle 7 - Safety.
- Principle 9 - Aesthetics.

Apartment Design Guide (ADG)

The development is found to be inconsistent and/or not compliant with the following design guidance:

- 2F – Building Separation.
- 3A – Site Analysis.
- 3F – Visual Privacy.
- 4D – Apartment Size and Layout.
- 4M – Facades.
- 4V – Water Management and Conservation.
- 4W – Waste Management.

The table of compliance for the ADG is at **Attachment 2** of this report.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Design Quality Principles (Part 2 of the Child Care Planning Guideline):

- Principle 2 – Built Form.
- Principle 4 – Sustainability.
- Principle 6 – Amenity.

Matters for Consideration (Part 3 of the Child Care Planning Guideline)

- Clause 3.1 – Site Selection and Location:
 - Sub-clause C1.
 - Sub-clause C2.
 - Sub-clause C4.
- Clause 3.5 – Visual and Acoustic Privacy:
 - Sub-clause C19.
- Clause 3.6 – Noise and Air Pollution:
 - Sub-clause C26.
 - Sub-clause C27.

The table of compliance for the SEPP Guidelines and Matters for Consideration are at **Attachment 3** of this report.

Ryde Local Environmental Plan 2014

The development is found to be inconsistent and/or not compliant with the following provisions:

- Clause 4.3 – Height of Buildings.
- Clause 4.3A – Exceptions to Height of Buildings.
- Clause 4.4 – Floor Space Ratio.
- Clause 4.4A – Exceptions to Floor Space Ratio.
- Clause 4.6 – Exceptions to Development Standards (Height of Buildings).
- Clause 4.6 – Exceptions to Development Standards (Floor Space Ratio).

The Clause 4.6 requests for variations to Clause 4.3 and Clause 4.4 are at **Attachments 4 and 5** of this report.

Ryde Development Control Plan 2014 (RDCP)

The development is found to be inconsistent and/or not compliant with the following controls:

Part 3.2 – Child Care Centres

- Clause 1.7 – Child Care Design.
- Clause 2.1.1 – Preferred Locations.
- Clause 2.1.2 – Environmental Risks/Hazards.
- Clause 3.1 – All Child Care Centres.
- Clause 4.2 – Acoustic Privacy – For Adjoining Residents.
- Clause 4.3 – Visual Privacy – For Children of the Centre.

- Clause 5.2 – On-Site Manoeuvrability.
- Clause 5.3 – Impact on Traffic Flow.
- Clause 5.4 – Pedestrian Safety.
- Clause 6.1 – General Landscape Design Requirements.
- Clause 6.2 – Play Spaces.
- Clause 7.0 – Miscellaneous Controls – Centre Facilities.

Part 4.4 – Ryde Town Centre

- Clause 8.6.3(b) – Length of Buildings.
- Clause 8.6.3(g) – Tree Retention.

Part 7.2 – Waste Minimisation and Management

Part 8.2 – Stormwater and Floodplain Management

- Clause 2.0 – Stormwater Drainage.
- Water Sensitive Urban Design.

The table of compliance for Part 3.2 of the RDCP is at **Attachment 6** of this report.

Public Exhibition and Submissions

From 10 January 2024 to 24 January 2024 the application was advertised and notified.

A total of 12 individual submissions were received. The concerns raised in the submissions are summarised as:

- Overdevelopment.
- Lot isolation.
- Impact on existing infrastructure.
- Construction related impacts.
- Traffic and parking impact.
- Impact upon neighbouring residential amenity.
- Impact of the proposed childcare centre.
- Inconsistent with the character of the area.
- No consultation about the development.
- Suitability of the development.
- Structural impact.
- Stormwater runoff.

Referral Comments

External Referrals

The application was referred to the following external departments who do not support the proposal:

- Transport for NSW (Concurrence).

Concurrence not provided due to insufficient information.

Internal Referrals

The application was referred to the following internal departments who do not support the proposal:

- Heritage.
- City Works (Drainage, Public Domain, Traffic, and Waste).
- Landscape.
- Development Engineering.

Recommendation

After consideration of the development against Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act) and the relevant statutory and policy provisions, the proposal is not considered to be suitable for the site and is not considered to be in the public interest.

Assessment of the application against the relevant planning framework and consideration of various design matters by Council's technical departments has identified fundamental issues of concern which warrant the refusal of the application.

Consequently, this report recommends that consent of this application be refused in accordance with reasons for refusal provided in **Attachment 7** of this report.

2. SITE DESCRIPTION



Figure 1 – Aerial photograph of the site and surrounding area.

The subject site is located on the corner of Blaxland Road and Victoria Road, with an unformed section of Princes Street providing access and car parking. The site is located on the northern side of Victoria Road and the southern side of Blaxland Road.

The site is irregular in shape and proportion and is prominently located at a gateway to the Ryde Town Centre to the north west along Blaxland Road.

The site has three frontages, measuring 101.39m to Victoria Road, 86.99m to Blackland Road and 47.01m to Princes Street. The site has a total area of 6,296.8m².

The site is currently occupied by car dealerships and is characterised by part one/part two storey showrooms buildings, and extensive hardstand area.

Vegetation is located in pockets at various locations along the street-facing perimeter of the site which contain a number of substantial and mature trees.

The site slopes generally in a south to north direction between 1.0m and 4.0m with a diagonal crossfall of 6.1m from the south-eastern corner to the north-western corner. The site is characterised by variable height retaining wall structures and driveway ramps to respond to the variable ground levels across the site.

A Sydney Water sewer line is located through the centre of the site and extends in an east-west direction.

The site is located within the vicinity of several heritage items of Local significance as listed under Schedule 5 of the Ryde Local Environmental Plan 2014, which are:

- Item no. 13 identified as Ryde Park (gazebo), located at 30 Argyle Avenue.
- Item no. 14 identified as Ebenezer Church, located at 142 Blaxland Road.
- Item no. 19 identified as Fountain, located at corner Blaxland and Victoria Road (see **Figure 12** below).
- Item no. 148 identified as Dalton House (hospital), located at 642-648 Victoria Road.

Figure 2 below shows the location of local heritage items in proximity to the site.

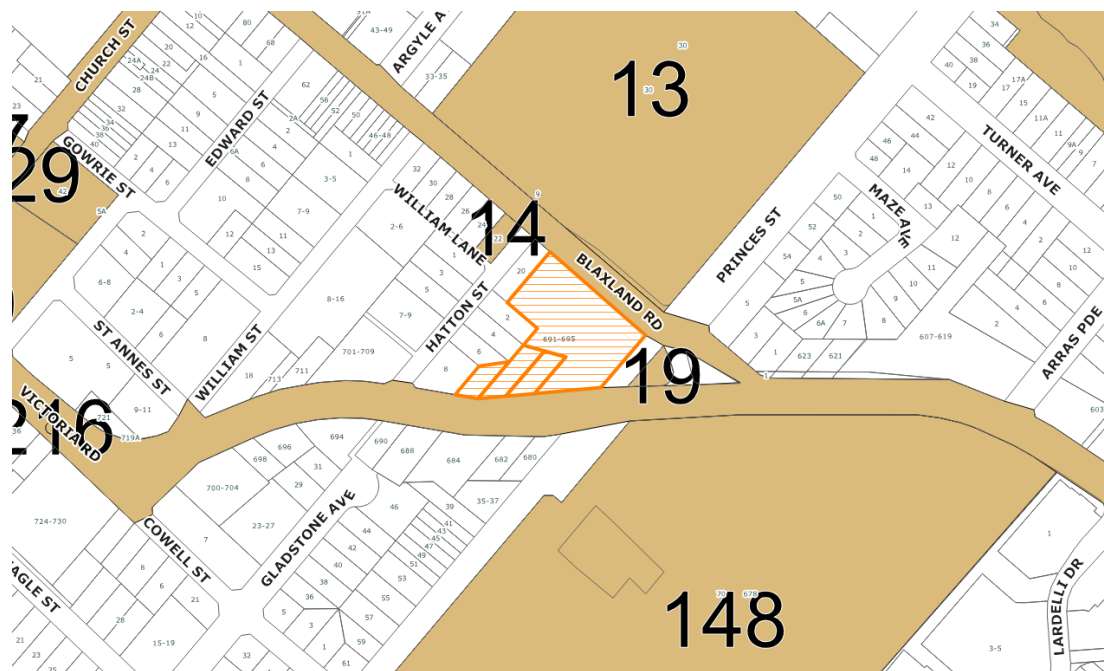


Figure 2 – Local Heritage Items.

Figures 3 to 12 below provide a walk-around view of the site.



Figure 3 – View west from Victoria Road.



Figure 4 – View east from Victoria Road.



Figure 5 – View north along Princes Street.



Figure 6 – View south along Princes Street.



Figure 7 – View west along Blaxland Road.



Figure 8 – View south from Blaxland Road.



Figure 9 – View east along Blaxland Road.



Figure 10 – View north along Hatton Street.



Figure 11 – View at rear of 2 Hatton Street.



Figure 12 – Local Heritage Item (Fountain).

3. THE PROPOSAL

The application seeks consent for:

Mixed Use Development

The proposal involves construction of three separate residential flat buildings on site which are described as follows:

- Building A
An apartment building of 7 storeys with roof top communal open space. The building contains 72 units with a mix of one, two and three bedrooms.
- Building B
An apartment building of 6 to 8 storeys with roof top communal open space. The building contains 65 units with a mix of one, two and three bedrooms.
- Building C
An apartment building of 7 storeys with roof top communal open space. The building contains 57 units with a mix of one, two and three bedrooms.

Childcare Centre

A centre-based childcare facility located at levels 2 and 3 of Building C.

The centre-based childcare facility is proposed to operate between 6.00am and 6.00pm Monday to Friday only and will accommodate a total of 120 children and 17 staff.

Excavation and Basement Parking

The proposal includes the construction of a consolidated basement for the subject site, with access from a private driveway on the north-western boundary of the site that connects to Blaxland Road.

The basement is over 2 to 3 levels with a total of 269 parking spaces. The allocation of the parking spaces includes 24 spaces assigned to the centre-based childcare facility.

The proposal is also for a new vehicle crossing and driveway off Blaxland Road, stormwater drainage works, landscaping works and tree removal.

Figure 13 below shows the site layout and proximity of neighbouring flat buildings.

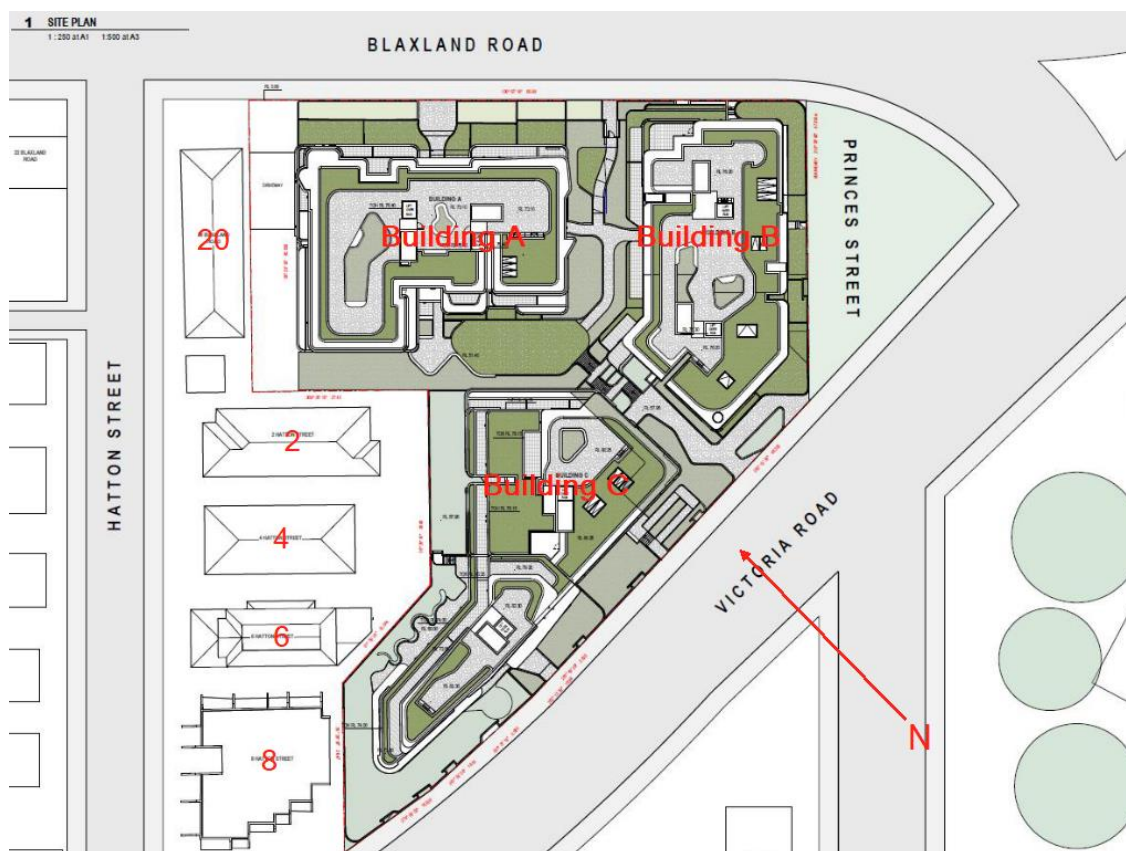


Figure 13 – Site layout.

Figure 14 below shows a perspective of the development looking towards the south-east.



Figure 14 – Perspective of the development (noting street numbers of surrounding buildings).

Figure 15 below shows a perspective of the development looking towards the north-west.



Figure 15 – North-facing perspective of the development from Victoria Road (Buildings B and C).

4. BACKGROUND

On 15 December 2023 the application was lodged for the construction of a mixed-use development comprising three residential flat buildings containing 194 apartments, a centre-based childcare facility, basement car parking, stormwater management works and landscape works.

The application was not the subject of a pre-lodgement meeting.

On 21 February 2024, a letter was sent to the applicant identifying the following preliminary issues:

- Addressing the correct provision of Chapter 4 of the Housing SEPP (instead of the repealed SEPP 65).
- Bonus height and floor space ratio provisions incorrectly applied under RLEP 2014.
- Revised gross floor area calculations.
- Comments from Transport for NSW (not supported).
- Comments from the Traffic Section of Council's City Works Department (not supported).
- Comments from the Public Domain Section of Council's City Works Department (not supported).
- Comments from the Waste Section of Council's City Works Department (not supported).

On 29 February 2024, the applicant filed the Class 1 Appeal with the NSW Land and Environment Court for the deemed refusal of the application.

Application Timeline

The following provides a timeline of key events for this application:

Date	Event
15/12/2023	Application lodged
10/01/2024 – 24/01/2024	Notification
10/01/2024	Referrals (Internal) to: <ul style="list-style-type: none"> • Heritage • Environmental Health • City Works <ul style="list-style-type: none"> ○ Drainage ○ Public Domain ○ Traffic ○ Waste • Landscape Architect • Development Engineer Referrals (External) to: <ul style="list-style-type: none"> • Transport for NSW • Ausgrid
10/01/2024	Request for Further Information (RFI) #1 from City Works: <ul style="list-style-type: none"> • Traffic (not supported) • Public Domain (not supported) • Waste (not supported)
18/01/2024	Notification (additional properties)
30/01/2024	RFI from Transport for NSW (not supported)
30/01/2024	Response from Ausgrid (supported)
21/02/2024	RFI #2 to the applicant raising issues regarding: <ul style="list-style-type: none"> • SEPP Housing • The 'laneway' does not enable bonus FSR and height under RLEP. • Clause 4.6 (FSR) • Comments from: <ul style="list-style-type: none"> ○ Transport for NSW ○ CW Traffic ○ CW Public Domain

Date	Event
	○ CW Waste
29/02/2024	Class 1 Appeal filed
14/03/2024	Urban Design Review Panel held
08/04/2024	Statement of Facts and Contentions filed

Note: RFI refers to Request for Further Information.

7. PLANNING ASSESSMENT

The following planning instruments, policies and controls are relevant to the development and have been considered in this assessment:

- Environmental Planning and Assessment Act 1979.
- Environmental Planning and Assessment Regulation 2021.
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- State Environmental Planning Policy (Planning Systems) 2021.
- State Environmental Planning Policy (Resilience and Hazards) 2021.
- State Environmental Planning Policy (Transport and Infrastructure) 2021.
- State Environmental Planning Policy (Housing) 2021.
- Ryde Local Environmental Plan 2014.
- Ryde Development Control Plan 2014; and
- Section 7.11 Contribution Plan.

7.1 Environmental Planning and Assessment Act 1979

All relevant matters for consideration under Section 4.15 have been addressed in the assessment of this application.

7.2 Environmental Planning and Assessment Regulation 2021

This application does not satisfy the provisions of Clause 29 of Division 1 under Part 3 of the Regulation as it is not accompanied by the necessary documentation for development seeking consent for the development.

Clause 29 of the Regulation requires the following documentation to be submitted:

- A Design Statement from a qualified designer.
- An explanation of the design in terms of the Design Quality Principles set out in Part 2 of *State Environmental Planning Policy (Housing) 2021* and the objectives in Parts 3 and 4 of the *Apartment Design Guide*.
- A BASIX Certificate.

The Design Statement includes a letter from the qualified designer which states:

“The proposed development addresses the design objectives in the State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development and also addresses each of the objectives of Parts 3 and 4 of the Apartment Design Guide (ADG)”.

Noting that *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development* was repealed on 14 December 2023 and that the application was lodged with Council on 15 December 2023, the Statement does not reference the applicable instrument.

It is also noted that the Statement does not provide any explanation as to the design objectives in either the *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* or the *State Environmental Planning Policy (Housing) 2021*.

Furthermore, the Statement does not address any of the objectives of Parts 3 and 4 of the Apartment Design Guide.

This matter forms a reason for the refusal of the application.

7.3 State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 – Vegetation in Non-Rural Areas

The aims of this Chapter are:

- a) *to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and*
- b) *to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.*

This chapter applies to the Ryde local government area on land within the MU1 Mixed use zone and provides approval pathways for the removal of vegetation in non-rural areas and matters for consideration in the assessment of applications to remove vegetation.

The application is accompanied by an Arboricultural Impact Assessment and Tree Management Plan (dated 28 November 2023). The Report recommends the removal of 5 trees and states that no roosting or habitat hollows were observed in trees/shrubs proposed to be removed. The report recommends replacement planting of these trees upon completion.

The trees recommended for removal are:

Tree Number	Species	Height and Health
3	Cocos palm <i>Syagrus romanzoffiana</i>	7.0m/Good
4	Cocos palm <i>Syagrus romanzoffiana</i>	7.0m/Good
11	Tallowwood <i>Eucalyptus microcorys</i>	18.0m/Good
16	Tallowwood <i>Eucalyptus microcorys</i>	18.0m/Good
17	Tallowwood <i>Eucalyptus microcorys</i>	17.0m/Good

Figure 16 below shows the location of the above trees.



Figure 16 – Location of trees proposed for removal.

Council’s Landscape Architect has reviewed the Arboricultural Impact Assessment and Tree Management Plan and notes that no calculations have been provided to support the claimed retention of Trees 12, 13 and 14 due to the anticipated encroachment of the development into the tree protection zone (TPZ).

This is included as a reason to refuse the application due to insufficient information.

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

The application is accompanied by a Multi-Dwelling BASIX Certificate (Certificate No. 1378115M dated 30 November 2023).

The Certificate identifies that the development will achieve the following:

Requirement	Target Score	Proposed
Water	40	50
Thermal Performance	Pass	Pass
Energy	60	64
Materials	Target (N/A)	-100

7.5 State Environmental Planning Policy (Planning Systems) 2021

As the proposed development has a Capital Investment Value of \$88,429,572.00 (excluding GST) is classified as Regionally Significant Development and is required to be determined by the Sydney North Planning Panel (SNPP).

7.6 State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Section 4.6(1) of the SEPP requires that a consent authority must not consent to the carrying out of any development on land unless:

- a) It has considered whether the land is contaminated, and*
- b) If the land is contaminated, it is satisfied that the land is suitable in its contaminated state for the purpose for which the development is proposed to be carried out, and*
- c) If the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

In response to the above requirements, the applicant has submitted a *Stage 2 Detailed Site Investigation* prepared by CEC Geotechnical dated 28 November 2023.

The Investigation concludes that the site can be made suitable for the proposed mixed use development subject to standard conditions related to the removal of soil off-site, and an unexpected finds protocol being followed during the excavation phase.

7.7 State Environmental Planning Policy (Housing) 2021

State Environmental Planning Policy (Housing) 2021 (SEPP (Housing)) commenced on 26 November 2021.

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) was repealed on 14 December 2023.

On 14 December 2023, Chapter 4 of SEPP (Housing) was gazetted. Chapter 4 ('Design of Residential Apartment Development') includes the provisions of the repealed SEPP 65 in addition to non-discretionary development standards.

Section 144 of SEPP (Housing) states:

- (3) This chapter applies to development only if:*
 - (a) the development consists of:*
 - (i) the erection of a new building, or*
 - (ii) the substantial redevelopment or substantial refurbishment of an existing building, or*
 - (iii) the conversion of an existing building, and*
 - (b) the building is at least 3 storeys, not including underground car parking storeys, and*
 - (c) the building contains at least 4 dwellings.*

Section 145(2) requires:

- (2) Before determining the development application, the consent authority must refer the application to the design review panel for the local government area in which*

the development will be carried out for advice on the quality of the design of the development.

Section 147(1) requires:

- (1) *Development consent must not be granted to residential apartment development, and a development consent for residential apartment development must not be modified, unless the consent authority has considered the following:*
 - (a) *the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9.*
 - (b) *the Apartment Design Guide.*
 - (c) *any advice received from a design review panel within 14 days after the consent authority referred the development application or modification application to the panel.*

The application was referred to the Ryde Urban Design Review Panel on 14 March 2024 for advice. The UDRP have provided their advice against the design principles for residential apartment development as contained under Schedule 9 of SEPP (Housing) as follows:

Principle 1: Context and Neighbourhood Character

"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.

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. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change".

UDRP Comments

"The ≈6,300sqm subject property occupies ≈65% of ≈9,550sqm block bound by Hatton Street, Blaxland Road, Princes Street and Victoria Road.

There is a line of walk-up residential flat buildings to the west of the development on Hatton Street. It appears the submitted design will cause one site (20 Blaxland Road) to become an isolated site. This is a three-storey walk-up with a level of street facing garages, considered to be of an overall poor urban character. Its long-term retention will impact the future character of the overall block, and so the impact of the development application (in isolating this site from future development) is not supported by the Panel.

The positioning of the childcare on the portion of the site adjoining Victoria Road is not supported. Assuming childcare is a supportable use anywhere on this site (the adjacency to a major arterial road may prevent this), the Panel strongly recommends relocating it to Blaxland Street where it would sit opposite a public park (as a

complementary use) and be positioned on the same street as the vehicular access to its parking/drop-off. It would also satisfy the active frontage requirement for Blaxland Road.

The Ryde Development Control Plan 2014 (RDCP) requires an active use at this end of Blaxland Road, and to the frontage of Princes Street. The RDCP suggests that the existing road on Princes Street will be closed, and a triangular park created. The active edges can provide complementary uses to the park opposite and adjacent. The proposal ignores the adopted strategy for the site without justification.

A kiosk substation is identified within the landscaped setback of Blaxland Road, a street with an active frontage requirement in the Apartment Design Guide (ADG). The Panel recommends this be moved inboard of the building footprint as a chamber substation, and positioned on one of the bounding streets that does not have an active frontage requirement.

A long driveway along the side boundary is characterised as a “Public Laneway” on drawings, which the Panel understands is done to trigger incentive provisions in the Ryde Local Environmental Plan 2014 (RLEP). This vehicular route is considered by the Panel to have been designed as a private driveway in both function and character:

- The driveway is a short dead-end route with no circulation benefit beyond accessing the site’s basement and loading zone.*
- It is drawn as a 7m-wide two-way drive aisle with none of the design features of a public road reserve. It has no landscaping, footpaths or kerbs and the built form is shown at a zero setback to it.*
- Access to the basement parking immediately abuts perpendicular to the driveway with a 1:8 transition before a steep 1:4 gradient speed ramp. This would not be acceptable if it were exiting onto a public laneway with no footpaths; the Panel would instead expect a 6m long section of 1:20 ramp abutting the reserve for reasons of pedestrian safety.*
- Service truck swept paths are shown with a hammerhead turn involving driving underneath the residential building and then reversing back into the driveway. This would not be acceptable if it were a public laneway.*

It is the Panel’s view that the driveway should therefore not be characterised as a public laneway”.

Principle 2: Built Form and Scale

"Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

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.

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”.

UDRP Comments

"The Panel's concerns with the proposal's Built Form and Scale are largely related to its responses to surrounding Context as well as concerns related to resident Amenity, both of which are described under those headings.

We note also that Building C appears awkward in its proportions and building alignment, with the form apparently driven solely by offsets from the property boundaries. This portion of the site is recommended for significant reconsideration.

The arrangement of the buildings on the site does not create pleasant or well-proportioned spaces between the buildings that provide useful communal areas.

The western setback is set at 10m in the DCP. The setback provided is 6-7m, including the 'public laneway'/driveway. The reduced setback and provision of the open driveway reduces provision for landscaping along the boundary and increases the impact of the proposal's-built form on the adjacent residential flat buildings".

Principle 3: Density

"Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment".

UDRP Comments

"Many of the Panel's concerns with the proposal's Density are related to the use of a potentially unavailable incentive FSR provision (refer to Context) and the poor levels of resident amenity (refer to Amenity).

The Panel also notes that most of the communal open space has been located on rooftops, requiring a Clause 4.6 height variation beyond the potentially unavailable Height of Buildings provision (refer to Context). It is the view of the Panel that this is being driven by the overdevelopment of the site, with built form largely driven by below minimum offsets from boundaries and minimal building separation that leaves few appropriate areas for communal open spaces.

A central courtyard is a 'leftover' space between separations, with poor amenity and poor connections to the numerous level changes across the site. It is Panel's view that the compromised communal open space directly related to the amount of density positioned on the site within the heights indicated".

Principle 4: Sustainability

"Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity

and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs.

Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation".

UDRP Comments

No sustainability measures have been identified by the applicant beyond ADG-directed natural cross-ventilation and BASIX compliance. The Panel notes apartments relied upon for cross-ventilation compliance exceed the 18m minimum depth that can be considered naturally ventilated, and so should not be counted.

The Panel encourages all proposals to adopt best practice sustainability targets and encourages environmental performance in excess of the minimum statutory requirements.

Principle 5: Landscape

"Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, coordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long-term management".

UDRP Comments

The design shows the removal of two large Tallowood trees. These mature, healthy trees are subject to tree protection orders, and have been nominated by the consulting arborist as having the equal highest retention value of any trees on site. It appears their removal can be avoided by straightening the line of excavation. Given these trees have high visual significance within the street character of Blaxland Road and Ryde Park, their removal is not supported by the Panel.

A large amount of the deep soil on site is indicated as being located within the childcare's play space, and there appears to be a mismatch between that notation and the landscape plan for the child care.

The landscape plan also does not identify any landscape or treatments to the driveway, further indicating the lack of a design intent to match the "Public Laneway" annotation.

Principle 6: Amenity

"Good design positively influences internal and external amenity for residents and neighbours.

Achieving good amenity contributes to positive living environments and resident well-being.

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".

UDRP Comments

Building separation has not been fully examined as there are a number of missing dimension lines, as well as incorrect dimensions (such as building separation being measured from glass-line, rather than the balconies in front). However, it is clear that at numerous points the building separation is below ADG guidance. This includes building-to-building separation within the site, building-to-boundary separation from side boundaries, and building-to-building separation with neighbouring buildings. As well as exacerbating the over-sized bulk and scale (as described previously), this creates privacy and acoustic amenity concerns. The Panel recommends separations be increased to align with ADG guidance.

The dense apartment floor plates result in compromises to the amenity including bedrooms within limited outlook, dining and kitchen areas with limited daylight, slots at ends of corridors that are too narrow to provide appropriate ventilation and daylight.

The narrow gaps between tall buildings are likely to create a poor amenity environment between the buildings resulting from increased wind speeds. Increased separation provided by the ADG design criteria would reduce the wind tunnel effect.

Narrow corridors at intersections are also unlikely to comply with circulation space required by AS1428.1.

There does not appear to be sufficient space for services within the floor plans – there is an absence of services cupboards. Similarly, although the Apartment Schedule suggests storage volumes in apartments meet the design criteria, the amount of storage shown on the drawings appears to be significantly less.

The childcare layout requires significantly more consideration. The residential footprint appears to have established the spatial strategy for the child care, to the detriment of the child care design. There are no internal links between most rooms, and accessing the southernmost play group appears to require walking multiple outdoor play spaces with a mid-route level change. Outdoor play spaces fill all the boundary setbacks and so are split across opposite sides of the building. One street-side play space is also split by the access to an intermediate residential lobby.

Play spaces should be consolidated off each room for ease of observation and be designed such that pairs of room groups can be occasionally combined. They should also be positioned away from or otherwise sheltered from shared boundaries with neighbouring residential properties, for the benefit of both. Areas that are difficult to observe should be avoided, particularly where they are along boundaries with public streets and/or shared property boundaries.

The Panel also questions whether the 3.1m floor to floor heights nominated will be sufficient to enable 2.7m ceiling heights to habitable rooms, particularly when floor plate plans don't 'stack' and bedrooms are located below bathrooms.

Principle 7: Safety

"Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose.

Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well-lit and visible areas that are easily maintained and appropriate to the location and purpose".

UDRP Comments

As noted, the Panel has concerns with the design of the childcare (refer to Amenity) which includes safety considerations.

There are also safety considerations for the public laneway that has minimal passive surveillance.

More generally, the redevelopment of the car dealership into a residential development is expected to increase passive surveillance of the public domain and so improve area safety.

Principle 8: Housing Diversity and Social Interaction

"Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents".

No comments have been provided by the UDRP regarding Principle 8.

Principle 9: Aesthetics

"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."

The visual appearance of well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape".

UDRP Comments

Due to the Panel's foundational concerns with the project's design, aesthetic considerations were not extensively studied. The Panel notes that there are parts where the resolution of the very tight planning has compromised the composition of the elevations.

The Panel also encourages a simplification of the building elevations and recommends exploring a style and material differentiation between each of the three buildings to help reduce the overall scale of the development.

Summary of Issues Raised by the Panel

The current proposal is not supported by the Panel for the following reasons:

- The design labels an access route into the site as a "public laneway" for the purposes of triggering incentive RLEP provisions. It is the Panel's view that this route has been designed as a private driveway in both function and character and should not be characterised as a public laneway. If a laneway was to be included, it should be more centrally where the redevelopment of the Hatten Street properties could utilise the lanes.*
- The design creates an isolated ≈13x45 corner site that will negatively affect the future character of the larger block.*
- Building separations are below ADG guidance in several locations without obvious justification or mitigation. It is the Panel's view that greater compliance would result in improved amenity for residents within the development and of neighbouring properties.*
- The design positions much of the child care centre's outdoor play space next to the arterial Victoria Road. Without presuming child care is an approvable or appropriate use anywhere on this site, it is the Panel's view that child care would be more appropriately positioned on Blaxland Street where it would face onto a public park, be away from the traffic of the arterial road, and share a street address with its parking access.*
- The location of the childcare centre has significant impact on the amenity of the adjacent residential dwellings and will impact any likely redevelopment of the site – because of the elevated position and the proximity to the boundary.*

- *It is also the Panel's view that child care would be a more appropriate ground floor frontage on Blaxland Road, where there is a DCP active frontage provision, than the partially below street level residential frontages currently shown in the application.*
- *There appear to be numerous operational issues with the design for the child care, partially described in the 'Amenity' section of this report.*
- *The design shows the removal of two large Tallowood trees. These mature, healthy trees are subject to tree protection orders, and have been nominated by the consulting arborist as having the equal highest retention value of any trees on site. It appears their removal can be avoided by straightening the line of excavation. Given these trees have high visual significance within the street character of Blaxland Road and Ryde Park, their removal is not supported by the Panel.*

The Panel suggests that:

- *Design investigations be undertaken into the proposal's impact on the current or future redevelopment of 20 Blaxland Road.*
- *Built form remain within base Floor Space Ratio and Height of Buildings development controls, without use of the incentive provisions, unless a public laneway can be sensibly incorporated into the design.*
- *Building footprints be reduced by increasing separations to ADG guidance and by an alternative laneway arrangement (if pursued).*
- *If child care is an approvable use, it should be relocated to Blaxland Road and significantly redesigned.*
- *All mature trees along Blaxland Road be retained.*

The issues raised above are included as reasons to refuse the application.

Apartment Design Guide (ADG)

Section 147(1)(b) of SEPP (Housing) requires consideration of the development against the relevant controls of the ADG. The following table provides an assessment of consistency against the criteria contained within Parts 3 and 4 the ADG.

The assessment (under **Attachment 2**) identifies the following issues which are included as reasons to refuse the application:

- 2F – Building Separation.
- 3A – Site Analysis.
- 3F – Visual Privacy.
- 4D – Apartment Size and Layout.
- 4M – Facades.
- 4V – Water Management and Conservation.
- 4W – Waste Management.

The non-consistent/non-compliant issues raised above are included as reasons to refuse the application.

Section 148 - Non-Discretionary Development Standards for Residential Apartment Development

The objective of Section 148 in Chapter 4 *Design of residential apartment development* of SEPP Housing is to identify development standards for particular matters relating to residential apartment development that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

The following table provides an assessment against the provisions of the non-discretionary development standards.

Standard	Comment	Compliance										
a) The car parking for the building must be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide.	<p>Part 3J of the ADG states:</p> <p><i>For development that is within 800m of a railway station or light rail stop in the Sydney Metropolitan Area - the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</i></p> <p>The <i>Guide to Traffic Generating Developments</i> require mixed use development to provide the same amount of parking as prescribed by the RDCP.</p> <p>Clause 9.3 of the RDCP requires the development to provide between 205.8 - 269 off-street parking spaces. The development proposes 268 spaces which complies.</p>	Yes										
b) The internal area for each apartment must be equal to, or greater than, the recommended minimum internal area for the apartment type specified in Part 4D of the Apartment Design Guide.	<p>The ADG prescribes the following apartment areas:</p> <table><tr><th>Apartment Type</th><th>Area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 Bedroom</td><td>50m²</td></tr><tr><td>2 Bedroom</td><td>70m²</td></tr><tr><td>3 Bedroom</td><td>90m²</td></tr></table> <p>The development includes the following apartment areas:</p> <ul style="list-style-type: none">• Studio: Nil proposed.• 1 Bedroom: 50m² to 71m².• 2 Bedroom: 75m² to 92m².• 3 Bedroom: 102m² to 103m².	Apartment Type	Area	Studio	35m ²	1 Bedroom	50m ²	2 Bedroom	70m ²	3 Bedroom	90m ²	Yes
Apartment Type	Area											
Studio	35m ²											
1 Bedroom	50m ²											
2 Bedroom	70m ²											
3 Bedroom	90m ²											
c) The ceiling heights for the building must be equal to, or greater than, the recommended minimum ceiling heights specified in	<p>The ADG prescribes the following ceiling heights:</p> <table><tr><th>Use</th><th>Height</th></tr><tr><td>Habitable Rooms</td><td>2.7m</td></tr><tr><td>Non-Habitable Rooms</td><td>2.4m</td></tr></table>	Use	Height	Habitable Rooms	2.7m	Non-Habitable Rooms	2.4m	Yes				
Use	Height											
Habitable Rooms	2.7m											
Non-Habitable Rooms	2.4m											

Standard	Comment		Compliance
Part 4C of the Apartment Design Guide.	Ground Floor Mixed Use	3.3m	
	<p>The development includes the following ceiling heights:</p> <ul style="list-style-type: none"> Habitable Rooms: 2.8m. No-Habitable Rooms: 2.8m. Ground Floor Mixed Use: 3.4m. 		

7.8 State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2 - Infrastructure

Section 2.122 – Traffic Generating Development

This section applies to new premises of the relevant size or capacity which means “*in relation to development on a site that has direct vehicular or pedestrian access to any road-the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3*”.

Schedule 3 of the SEPP requires that the following applicable developments are referred to Transport for NSW (TfNSW) as Traffic Generating Development:

Column 1	Column 2	Column 3
Purpose of Development	Size or Capacity Site with access to any road	Size or Capacity Site with access to classified road or to a road that connects to classified road if access is within 90m of connection, measured along alignment of connecting road
Residential Accommodation	300 or more dwellings	75 or more dwellings
Any Other Purpose	200 or more motor vehicles per hour	50 or more motor vehicles per hour

Victoria Road is classified as a State road. As the site is located within 90m of connection to the road, Column 3 applies.

With respect to the relevant size and capacity of the development, the proposal includes:

- 194 dwellings.
- 84 to 96 vehicles per hour (childcare centre).

Accordingly, the application was referred to TfNSW for comment as traffic generating development. TfNSW has reviewed the submitted documentation and has refused to issue its concurrence due to insufficient information being provided.

Section 2.120 - Impact of road noise or vibration on non-road development

This section applies to development for any of the following purposes that is on land in or adjacent to the road corridor or any other road with an annual average daily traffic volume of more than 20,000 vehicles.

Development adjacent to such road corridors are required to be designed to respond to the following internal noise maximum criteria:

Room	Time Period	Internal Noise Level
Bedroom	10.00pm to 7.00am	35dB(A)
Other Habitable Rooms	24 Hours	40dB(A)

Traffic Volume Map 12A (as published by TfNSW) classifies Victoria Road as carrying more than 20,000 Annual Average Daily Traffic (AADT). Therefore, it is a mandatory requirement to consider the application against the noise provisions of Clause 2.120.

The application is accompanied by a Traffic Noise Assessment (dated 29 November 2023) which include a section (Part 4.2) on traffic noise assessment criteria. The report includes recommendations to respond to external noise intrusion which satisfies this section.

Chapter 3 – Educational Establishments and Child Care Facilities

Section 3.23 of the SEPP requires the consent authority take into consideration any applicable provisions of the *Child Care Planning Guideline* before determining the application for a centre-based child care facility.

The proposed centre-based child care facility has been assessed against the matters for consideration under Section 3.23, including the applicable provisions of the *Child Care Planning Guideline*. The assessment is contained under **Attachment 4** to this report.

The assessment (under **Attachment 3**) identifies the following issues or non-compliances which are included as reasons to refuse the application:

Design Quality Principles (Part 2 of the Child Care Planning Guideline):

- Principle 2 – Built Form.
- Principle 4 – Sustainability.
- Principle 6 – Amenity.

Matters for Consideration (Part 3 of the Child Care Planning Guideline)

- Clause 3.1 – Site Selection and Location:
 - Sub-clause C1.
 - Sub-clause C2.
 - Sub-clause C4.
- Clause 3.5 – Visual and Acoustic Privacy:
 - Sub-clause C19.

- Clause 3.6 – Noise and Air Pollution:
 - Sub-clause C26.
 - Sub-clause C27.

7.9 Ryde Local Environmental Plan 2014 (RLEP)

The following is an assessment of the proposed development against the applicable provisions from the RLEP.

Clause 2.2 – Zoning

The land is zoned MU1 Mixed Use under the RLEP.

Mixed use development means a building or place comprising 2 or more different land uses.

- Residential Flat Buildings – Permitted with consent (innominate use).
- Centre-based child care facilities – Permitted with consent.

Clause 2.3 – Zone Objectives

The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone. The objectives for the MU1 Mixed Use are as follows:

- *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *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 in the Macquarie Park corridor.*

The development, as proposed does not satisfy the objectives of the zone as it does not minimise conflict between land uses within this zone and land uses within adjoining zones.

Part 4 – Principal Development Standards

The site is subject to the provisions of Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio Development Standards.

Standard	Permitted	Proposed	Variation
Principal Development Standards			
4.3 Building Height	18.5m	24.2m to 25.8m*	+7.3m (39.5%)
4.4 Floor Space Ratio Site Area: 6,296.8m ²	1.8:1 11,334.24m ²	2.57:1 16,207m ²	+0.77:1 +4,872.8m ² (42.9%)
Incentive Provisions (see discussion after this table)			
4.3A Building Height Area F	21.5m	24.2m to 25.8m*	+4.3m (20%)
4.4A Floor Space Ratio Area I	2.5:1 15,742m ²	2.57:1 16,207m ²	+0.07:1 +465m ² (2.95%)

* Includes Lift Overruns as per the RLEP Dictionary.

Clauses 4.3A Exceptions to Height of Buildings and Clause 4.4A Exceptions to Floor Space Ratio

Clauses 4.3A and 4.4A are incentive clauses which enable additional building height and floor space ratio as follows:

Clause 4.3A – Exceptions to Height of Buildings (Area F)

The site is located within Area F which allows for an additional height of 3.0m *if “the lot on which the building is sited has an area of at least 900m² and the development is a mixed use development and provides laneway access that is **not** a private driveway or private laneway.”*

Clause 4.4A – Exceptions to Floor Space Ratio (Area I)

The site is located within Area I which allows for an additional FSR of 0.7:1 if *“the lot on which the building is sited has an area of at least 900m² and the development is a mixed use development and provides laneway access that is **not** a private driveway or private laneway.*

The development proposes a vehicle accessway at the north-western side of the site as shown marked up in red in **Figure 17** below.

As shown below, the proposed vehicle accessway terminates at the south-western (rear) boundary and provides sole vehicle access to the basement car park and loading dock. The vehicle accessway does not provide any separate pedestrian access nor facilitate any activation along the accessway. In this respect, the vehicle accessway is described as a private driveway only and not a public laneway.

With respect to the provision of a public laneway; Clause 8.3.1 Future Character of Part 4.4 of the Ryde Development Control Plan 2014 does not require this site to accommodate a laneway.

Therefore, as the driveway is not considered to be a public laneway the development cannot benefit from the incentive provisions of Clauses 4.3A and 4.4A and the development standards contained under Clauses 4.3 and 4.4 apply.

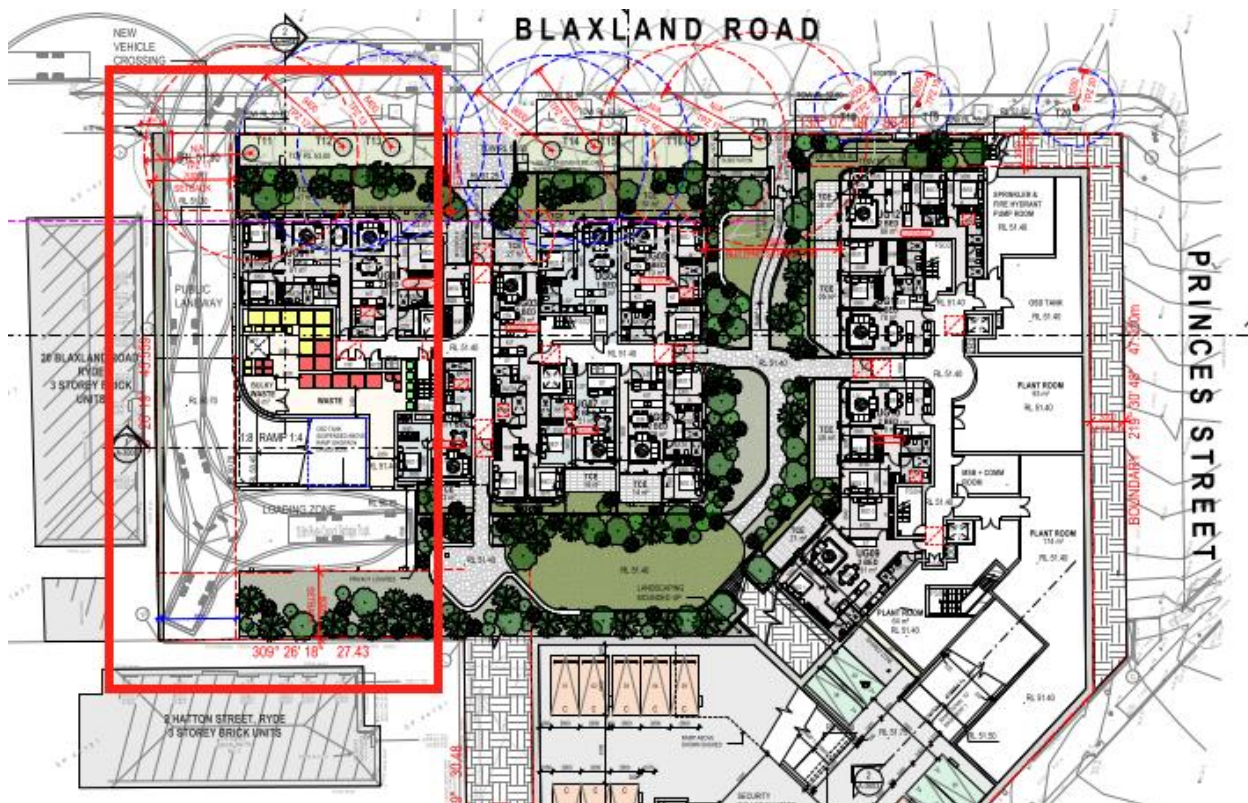


Figure 17 – Location of the proposed vehicle accessway.

Clause 4.6 – Exceptions to Development Standards

The following discussion responds to the respective variations sought by the applicant via individual written requests for Clause 4.3 (Height of Buildings) and Clause 4.4 (Floor Space Ratio).

Clause 4.3 – Height of Buildings

The site is subject to Clause 4.3 Height of Buildings and Clause 4.3A Exceptions to Height of Buildings (where the specifications are met).

As can be seen in the table above, the development breaches the permitted building height pursuant to Clause 4.3 (the principal development standard) by 7.3m (i.e. 39.5%).

The application is accompanied by a request to vary the development standard (see **Attachment 4**).

The request notes:

The site is identified by Ryde LEP 2014 as having a mapped height of 18.5m and then Clause 4.3A (1) identified a further 3m height where by the proposal is a mixed use development on a lot at least 900sqm and a development with a new laneway - which is the case with this scheme.

Therefore, the maximum height permitted is 21.5m to the development.

The request specifically relies upon the incentive provisions of Clause 4.3A based on the assertion that the driveway is described as a public laneway.

The public laneway described by the applicant is considered to be a private driveway and therefore does not enable the development to benefit from the bonus building height as contained under Clause 4.3A.

Therefore, the request to vary the development standard is considered to be erroneous and cannot be considered to satisfactorily address the provisions of Clause 4.6 in each respect.

This has been included as a reason to refuse the application.

Notwithstanding, the request is considered against the provisions of Clause 4.6 as follows:

The following assessment of the variation to Clause 4.3 Height of Buildings development standard, has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 – Exceptions to development standards

1) *The objectives of this clause are as follows:*

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development.*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment

Clause 4.3 Height of Buildings development standard is not expressly excluded from the operation of this clause.

3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Clause 4.6(3) - Justification) assessment

Clause 4.6(3) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard and has adequately addressed the matters required to be demonstrated.

There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

- a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and***

Comment

In assessing whether compliance is with the development standard is unreasonable or unnecessary it is required to consider the matter before the objectives of both the development standard and the zone.

Objectives of the Development Standard

The objectives of Clause 4.3 (Height of Buildings) are:

- 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.*

Objectives of the Zone

The objectives of the MU1 – Mixed Use zone are:

- To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- 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 in the Macquarie Park corridor.*

In responding to the above objectives, the written request broadly states:

“The current development proposal remains consistent with the objectives of the clause and is a more appropriate outcome on the site because of the following:

- *The development proposal is consistent with the intent of the maximum height control and will provide an attractive series of 7 storey building that addresses the site’s frontage to Victoria Road and Blaxland Road and provides a streetscape that is in proportion and in character with nearby development given the observed forms of development in the locality and the location of the breach is located centrally to the building and is not visually prominent from the public domain or adjoining properties.*
- *The non-compliance is minor in nature with the majority of the building being compliant with the building height control and only a small portion of the building encroaches upon the prescribed height control and as such its impact to the streetscape is negligible as it will be visually unnoticeable when viewed from the street level, noting that the structures to the COS are recessive and the location of the additional massing is not highly visible from the public domain and the breach largely arises from the lift-override and fire stair and then balustrading to the COS area.*
- *The proposed height is consistent with the desired future character being 7 storey residential flat buildings in this part of the Ryde Town Centre Precinct.*
- *The departure of the height control is a result of providing communal open space for the residents and improve amenity and not a result of increasing yield for the scheme because the elements over the height standard are relates to the COS and associated access elements including the lift and there is limited habitable space above the height limit.*
- *The departure will not unreasonably impact on the solar access of adjoining properties or the public areas in the vicinity of the site particularly noting that the southern portion of the building complies with the height control.*
- *Due to the minor nature of the variation, it will not have any adverse amenity impacts. In this regard it is noted:*
 - *The variation will have no adverse impact on the physical bulk, height or scale of the development, noting the small-scale nature and location of the point encroachment.*
 - *The variation will not lead to a significant reduction in solar penetration on site or to adjoining properties nor will it lead to any unacceptable sunlight loss or overshadowing.*
 - *The proposed variation will not lead to view loss or interrupt views to and from the site.*
 - *The proposed variation will not lead to a reduction in privacy afforded to existing residents or future residents of the proposal.*

- *The proposal has been designed to ensure that privacy impacts are mitigated and that the proposal will not obstruct existing view corridors.*
- *The proposed variation is minor in nature with the majority of the buildings being compliant with the building height control and the variation is also due to the extensive undulation of the site and to provide residential amenity. The extent of non-compliance will also not be a visually prominent element in the streetscape.*
- *The proposal provides an appropriate building form that is consistent with the desired future character of the locality and is reflective of the objectives for the zone and locality generally- noting the uneven topography is the key driver of the height variation rather than a desired to achieve greater yield on the site.*
- *The additional height does not generate any additional amenity impacts given the location of the breeches and the surrounding site context.*
- *The proposal has been designed to ensure that privacy impacts are mitigated against and that the proposal will not obstruct existing view corridors.*
- *Given the sites orientation, and the minor height departure the additional height will not have any additional adverse overshadowing impacts on nearby developments that incorporate residential components.*
- *The development proposal is consistent with the intent of the maximum height control and has a bulk and scale that is not discernible from a development that complies with the control.*
- *The proposal has been designed to ensure that privacy impacts are mitigated that the proposal will not obstruct existing view corridors with appropriate setbacks provided to promote view sharing opportunities.*
- *The non-compliance to the height control has no unacceptable impact on the setting of any items of environmental heritage or view corridors.*
- *The proposal will sit comfortably in the streetscape relative to the desired future character of the locality; and*
- *The development will not exceed the infrastructure capability of the locality”.*

Comment

The above statements include a number of claims which do not adequately demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case for the following reasons:

- *The proposed building height is consistent with the intent of the maximum height control.*

Comment

The intent of the maximum height control is found in the objectives of the development standard which, in part, relevantly seek to:

- *Ensure that street frontages of development are in proportion with and in keeping with the character of nearby development.*
- *Minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area.*
- *Encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure.*
- *Minimise the impact of development on the amenity of surrounding properties.*

Comment

The development breaches both the permitted height of buildings pursuant to Clause 4.3 (the principal development standard) by 7.3m (i.e. 39.5%) and the incentivised building height pursuant to Clause 4.3A (the incentive building height) by 4.3m (i.e. 20%).

Despite the exceedance including rooftop elements (lift overruns/plant rooms and the like) the exceedance of 7.3m above the principal development standard of 18.5m adds to the overall bulk and scale of the development by an additional 2.4 storeys of which two (2) storeys would comprise additional residential floor levels around the full edge of the 3 buildings.

Notwithstanding the exceedance to the principal development standard, the development also includes a breach to the incentive building height by up to 4.3m which adds an additional 1.4 storeys above that permitted (subject to satisfying particular criteria).

This additional building bulk and scale across three street-facing façade elements introduces a massing which is not consistent with the objectives of the development standard in that it does not ensure that street frontages of development are in proportion with and in keeping with the character of nearby development, noting that Top Ryde Shopping Centre is located approximately 350m to the north-west and is separated from that centre by residential and commercial development of a three-storey scale.

Furthermore, by virtue of its height and resultant bulk and scale, the development does not minimise overshadowing nor is it generally compatible with or improve the appearance of the area.

There is concern that the development would isolate the existing residential property at the corner of Blaxland Road and Hatton Street (20 Blaxland Road) and the application has not demonstrated that sufficient action has been taken to acquire that property or demonstrate that that property could be developed to its full potential into the future to a standard permitted by the applicable controls.

Lastly, the development by virtue of its height, massing and building placement, does not minimise the impact of development on the amenity of surrounding residential properties along Hatton Street. This is demonstrated through the building separation requirements of the ADG which results in inadequate building separation and privacy while exacerbating visual impact.

Therefore, the proposed building height is not considered to be consistent with the intent of the maximum height control and does not satisfy the objectives of the zone, in that it does not minimise conflict between land uses within this zone and land uses within adjoining zones.

- *The development will provide an attractive series of 7 storey buildings that addresses the site's frontage to Victoria Road and Blaxland Road and provides a streetscape that is in proportion and in character with nearby development.*

Comment

As noted earlier, the proposed building height exacerbates the bulk and scale of the development by adding between 1.4 to 2.4 storeys across the entire three street-facing facades. This increase in building mass is above that anticipated by the development standard.

The design of the development as being "attractive" is subjective and is not considered to be an appropriate descriptor to demonstrate whether the development standard is unreasonable or unnecessary in the circumstances of the case. It is considered that, while the development "*addresses the site frontage to Victoria Road and Blaxland Road*", it does not do so satisfactorily. This is due to the afore-mentioned building mass which is exacerbated by the excessive building heights proposed throughout the three buildings. This, together with the minimal building separations between the three proposed buildings and the irregular shape of the site, results in a congested massing of over height buildings which dominate the street-corner and are collectively not in proportion and/or character with nearby development.

- *The non-compliance is minor in nature with the majority of the building being compliant with the building height control and only a small portion of the building encroaches upon the prescribed height control and as such its impact to the streetscape is negligible as it will be visually unnoticeable when viewed from the street level.*

Comment

The non-compliances detailed throughout this assessment are not considered to be minor in nature and nor is the majority of the building compliant. In its consideration, the statement relies only upon the provision of Clause 4.3A (i.e. 21.5m height) and not the provision of the principal development standard (i.e. 18.5m) which is selective and not the correct approach.

As discussed previously, the impact of the development (by virtue of the increased building height and subsequent massing) would have a considerable and negative impact upon the streetscape, particularly given its highly visible location as a prominent gateway site.

- *The departure of the height control is a result of providing communal open space for the residents and improve amenity and not a result of increasing yield.*

Comment

It is not agreed that the departure of the height control is a result of providing communal open space.

- *The development has been designed to ensure that privacy impacts are mitigated.*

Comment

The development has been considered against the requirements of the ADG where it was identified that the proposal does not include adequate building separations to satisfactorily address visual privacy.

Given the above, it is considered that the applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by clause 4.6(3)(a).

b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 *at* [26]. The adjectival phrase "environmental planning" is not defined but would refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in s 1.3 of the EP&A Act.'

The Section 1.3 Objects of the EP&A Act read as follows:

- a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources.*
- b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment.*
- c) to promote the orderly and economic use and development of land.*
- d) to promote the delivery and maintenance of affordable housing.*
- e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats.*
- f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage).*
- g) to promote good design and amenity of the built environment.*
- h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*
- i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State.*
- j) to provide increased opportunity for community participation in environmental planning and assessment.*

In demonstrating sufficient environmental planning grounds, the applicant's written request states:

- *“The form and presentation of the development maintains an appropriate visual relationship to adjoining properties and does not present a bulk and scale from the street or adjoining properties that is detrimental to the existing and desired future character of the area.*
- *The building is compatible with the desired future character of the area in terms of the building presentation to the street, the materials, and the relationship to surrounding properties.*
- *The design and provision of the communal rooftop terrace that necessitates balustrading, lift cores and fire stairs which protrudes beyond the permitted height plane. The proposal as designed seeks to maximise amenity for future occupants via the provision of this communal rooftop open space area. Proposed rooftop structures i.e. lift overrun, lobby, seating, bbq facilities are directly correlated to the design, function and intended use of the rooftop communal open space area which forms an integral part of the proposed development. The structures service the rooftop communal open space area which has been provided to benefit the future occupants of the site. The non-compliance relates to features of the property which will significantly improve the amenity of the occupants and the primary breach is from the shade structure over the COS- noting its removal would substantially reduce the height breach but also substantially reduce the design merit of the COS and amenity for the users of the space.*
- *The departure to the height standard furthers the objects of the Environmental Planning and Assessment Act 1979 as set out below:*
 - *To promote the orderly and economic use and development of land.*
 - *To promote good design and amenity of the built environment through the provision of the rooftop common open space area”.*

Comment

As discussed earlier in this section, the form and presentation of the development is not considered to maintain an appropriate visual relationship to adjoining properties (noting that the only adjoining properties largely comprise 3-storey walk-up flat buildings). It is also considered that the development does not present a bulk and scale from the street or adjoining properties that is beneficial to the existing and desired future character of the area.

The development is not considered to be compatible with the desired future character of the area in terms of the building presentation to the street and its relationship to surrounding properties.

The provision of roof-top communal open space is not considered to be sufficient environmental planning ground to support the proposal as this could be designed into a compliant development.

Given the above considerations, the proposed height breach and the resultant development, together with its commensurate impact upon neighbouring residential land is not regarded to constitute an orderly and economic use of the land.

The applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by clause 4.6(3)(b).

The applicant's written request has not demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore not satisfying the objectives of Section 1.3(c) and (g).

Therefore, Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3).

Clause 4.4 – Floor Space Ratio

The site is subject to Clause 4.4 Floor Space Ratio and Clause 4.4A Exceptions to Floor Space Ratio (where the specifications are met).

The development breaches the permitted floor space ratio pursuant to Clause 4.4 (the principal development standard) by 4,872.8m² (i.e. 42.9%).

The application is accompanied by a request to vary the development standard (see **Attachment 5**).

Like the request to vary Clause 4.3, the request specifically relies upon the incentive provisions of Clause 4.4A based on the assertion that the driveway is described as a public laneway.

The public laneway described by the applicant is considered to be a private driveway and therefore does not enable the development to benefit from the bonus building height as contained under Clause 4.4A.

Therefore, the request to vary the development standard is considered to be erroneous and cannot be considered to satisfactorily address the provisions of Clause 4.6 in each respect.

This has been included as a reason to refuse the application.

Notwithstanding, the request is considered against the provisions of Clause 4.6 as follows:

The following assessment of the variation to Clause 4.3 - Height of Buildings development standard, has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 – Exceptions to development standards

1) *The objectives of this clause are as follows:*

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development.*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment

The Clause 4.4 – Floor Space Ratio development standard is not expressly excluded from the operation of this clause.

3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Clause 4.6(3) - Justification) assessment

Clause 4.6(3) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard and has adequately addressed the matters required to be demonstrated.

There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

- a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.***

Comment

In assessing whether compliance is with the development standard is unreasonable or unnecessary it is required to consider the matter before the objectives of both the development standard and the zone.

Objectives of the Development Standard

The objectives of Clause 4.4 Floor Space Ratio are:

a) To provide effective control over the bulk of future development.

In response to the above objective, the applicant's written request states:

"The proposed development exhibits a suitable bulk and scale on the site despite the numerical departure noting the extent of departure is minor to the extent that the bulk of a compliant built form as compared to this built form is indistinguishable and the built form response is suitable in terms of the bulk of the development".

Comment

The bulk and scale of the development is considered to be excessive when viewed from both inside and outside the site. The extent of the departure to the principal development standard is not considered to be minor as the extent of a compliant built form would be considerably less than that proposed.

b) To allow appropriate levels of development for specific areas.

In response to the above objective, the applicant's written request states:

"The extent of development across the sites is appropriate, notwithstanding the numerical departure. This is because the extent of the breach is minor and there are no discernible impacts arising from the breach to the standard.

The intensity of the use arising from the proposed GFA must also be considered in relation to this objective and in that regard the traffic impacts are considered to be acceptable as set out in the traffic report. In addition, the amenity impacts of noise and other privacy impacts are avoided given the design of the development.

Comment

The extent of the breach, when considered against the principal development standard, is considerable and results in significant impacts to both the private and public domains which surround the site, as well as creating detrimental impact within the development through an overly development and congested built form.

The traffic impact deriving from the increased density and intensification of use has been considered by external (Transport for NSW) and internal experts who each agree that the information provided with the proposal is insufficient in enabling concurrence and support.

c) In relation to land identified as a Centre on the Centres Map - to consolidate development and encourage sustainable development patterns around key public transport infrastructure.

In response to the above objective, the applicant's written request states:

"The development site is mapped on the Centres Map and the objective is relevant and the proposal aligns with this objective to consolidate development and encourage sustainable development patterns around key public infrastructure- being high frequency bus routes".

Comment

Although the site is serviced by frequent transport routes, the development does not seek to consolidate development. This is evident by the exclusion of 20 Blaxland Road which, as a result of this development, would be isolated and excluded from consolidation and unlikely to be capable of an appropriate level of development in future.

Objectives of the Zone

The applicant's written request does not respond to the objectives of the zone.

Given the above, it is considered that the applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by clause 4.6(3)(a).

b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 *at* [26]. The adjectival phrase "environmental planning" is not defined but would refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in s 1.3 of the EP&A Act.'

Section 1.3 Objects of the EP&A Act reads as follows:

- a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources.*
- b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment.*
- c) to promote the orderly and economic use and development of land.*
- d) to promote the delivery and maintenance of affordable housing.*
- e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats.*
- f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage).*
- g) to promote good design and amenity of the built environment.*
- h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*
- i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State.*

- j) *to provide increased opportunity for community participation in environmental planning and assessment.*

In demonstrating sufficient environmental planning grounds, the applicant's written request states:

"The below points demonstrate suitable environmental planning grounds exist to justify contravening the FSR development standard and further demonstrates that the FSR departure does not give rise to any environmental impacts, and therefore the proposal is an appropriate design response for the subject site:

- *At the outset the variation is minor to the extent that a compliant built form is not discernibly different to a non-compliant built form.*
- *The breach facilitates additional housing in proximity to Ryde Town Centre and public transport.*
- *This design approach and breach of the FSR enables a suitable design outcome on the site and is consistent with the following Objects of the EP&A Act:*
 - (c) to promote the orderly and economic use and development of land.*
 - (g) to promote good design and amenity of the built environment.*
- *The departure to the FSR standard also does not generate any adverse amenity impacts to adjoining properties with regard to visual privacy or overshadowing given the lot orientation and careful design of the development".*

Comment

Form and presentation of the development maintains an appropriate visual relationship to adjoining properties and does not present a bulk and scale from the street or adjoining properties that is detrimental to the existing and desired future character of the area.

As discussed earlier in this section, the form and presentation of the development is not considered to maintain an appropriate visual relationship to adjoining properties (noting that the only adjoining properties largely comprise 3-storey walk-up flat buildings). It is also considered that the development does not present a bulk and scale from the street or adjoining properties that is beneficial to the existing and desired future character of the area.

The development is not considered to be compatible with the desired future character of the area in terms of the building presentation to the street and its relationship to surrounding properties.

The provision of roof-top communal open space is not considered to be sufficient environmental planning ground to support the proposal as this could be designed into a compliant development.

Given the above considerations, the proposed height breach and the resultant development, together with its commensurate impact upon neighbouring residential land is not regarded to constitute an orderly and economic use of the land.

The applicant's written request has adequately demonstrated that there are not sufficient environmental planning grounds to justify contravening the development standard as required by clause 4.6(3)(b).

The applicant's written request has not demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore not satisfying the Objectives of Section 1.3(c) and (g).

Therefore, Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3).

Conclusion to Clause 4.6 Considerations

The written submissions from the applicant have not adequately demonstrated that the contravention of the Height of Buildings and Floor Space Ratio development standards prescribed by Clause 4.3 and Clause 4.4 of the RLEP is justified pursuant to the relevant matters for consideration prescribed by Clause 4.6.

The applicant's Clause 4.6 written requests to vary these development standards are not acceptable as the proposal does not satisfy the objectives of the zone and the respective development standard; is not consistent with the scale anticipated on this site and will not read favourably in the context of the current and future development of neighbouring sites. Strict compliance with this development standard is therefore considered to be reasonable or necessary in the circumstances of this specific proposal; and there are not sufficient environmental planning grounds demonstrated by the applicant to justify contravening this development standard.

Council is not satisfied that the proposal is in the public interest.

Clause 5.10 - Heritage Conservation

Under this Clause, the Consent Authority must consider the effect of the proposed development on the heritage significance of the item or area concerned.

The site is located approximately 26m to the north-west of Heritage Item No. 19 under Schedule 5 of the Ryde LEP 2014, identified as a 'Fountain' (circa 1897). The fountain is located within the triangular portion of Council owned land at the intersection of Victoria Road and Blaxland Road.

Figure 18 below shows the heritage item which is notable primarily for the facial silhouette of the head of Queen Victoria in the carved curvature of the base.



Figure 18 – Local Heritage Item No. 19 (the subject property boundary is aligned with the building facade in the background).

The application is accompanied by a Heritage Impact Statement dated 29 November 2023 which notes that:

The proposed development will not have a detrimental visual or physical impact any proximate heritage listed items. Visual impacts on heritage items are negated owing to the distance between the subject site and the heritage items, except the adjacent Road. There are no recognised visual impacts on the road as it is already characterised by substantial flanking development of mixed character and typology.

It is noted that this item has been relocated to various areas in the Ryde LGA over time and that the item itself has been modified to remove a gas lamp which extended from the top of the fountain structure. The base around the fountain is also not original.

Council's Heritage Officer has reviewed the proposal and raises concern with respect to the impact of the development upon the heritage item although no recommendation is provided beyond suggesting that the design of the development (in particular the eastern façade) could be improved to be more responsive to the heritage item.

The eastern elevation is separated from Benson Park by 13m (being the width of Princes Street which separates the two) and from the fountain by Benson Park by 26m. The development, although dominant in its current form, will not have any adverse visual impact upon either feature due to the physical separation and the proposed plantings which are proposed within the eastern setback of the site.

It is noted that the eastern elevation includes apartments which face towards the park and fountain which provides passive surveillance.

How the development responds to the park and fountain as a better neighbour will be explored throughout the appeal process.

Given the distance from the fountain it is agreed that the development is unlikely to have any determinantal physical or visual impact upon Local Heritage Item 19.

Clause 6.1 - Acid Sulfate Soils

The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.

Under the RLEP 2014, the Acid Sulfate Soils Map establishes five classes of acid sulfate land (classes 1 to 5), Class 1 being most severe, and Class 5 being least severely affected.

Development consent is required (and thus a soil management plan is required) if a site is in class 5 acid sulfate soil and works are within 500m of adjacent Class 1 to 4 and land which are likely to lower the water table below 1 metre AHD on adjacent Class 1, 2, 3 or 4 land.

Council's Acid Sulfate Soils Map identifies the site as not being located within a classified acid sulfate soils area and is located between 570m and 950m from Class 1 land.

Therefore, with respect to acid sulfate affected land, the development will not disturb, expose or drain acid sulfate soils and cause environmental damage.

Clause 6.2 - Earthworks

The extent and siting of excavation is to have regard to the following:

- a) *The likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development.*
- b) *The effect of the development on the likely future use or redevelopment of the land*
- c) *The quality of the fill or the soil to be excavated, or both.*
- d) *The effect of the development on the existing and likely amenity of adjoining properties.*
- e) *The source of any fill material and the destination of any excavated material.*
- f) *The likelihood of disturbing relics.*
- g) *The proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area.*
- h) *Any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

The proposal involves the total bulk excavation of approximately 2,200m³ (3,740 tonnes) of soil to be removed from the site to accommodate the basement car parking. The excavated soil is to be taken to a soil recycling facility for processing and re-use.

Although not lodged as Integrated Development, the report notes that groundwater was detected at 3 bore locations at depths of between RL 46.570 and RL 49.450. These depths are above the lowest basement depth (RL 45.200). The report recommends that *“further groundwater well installation and monitoring will be required to assess the groundwater levels at the bulk excavation level”*.

The proposal is acceptable with regards to Clause 6.2 of the RLEP 2014 for the following reasons:

- It is considered that excavation would result in short-term disruption to local amenity during the construction phase.
- The proposed excavation works are supported by technical engineering reports which include specific recommendations to mitigate impact.
- The excavation works will intersect the water table and thus require dewatering. The application was not lodged as Integrated Development but would require appropriate approvals to be gained separately from WaterNSW.
- The maintenance of amenity on the surrounding neighbourhood and structural integrity of any existing and supporting structures during the excavation and construction phase of the development would normally be the subject of conditions which may include, but are not limited to, requirement for compilation of dilapidation reports, vibration monitoring, geotechnical certification and monitoring, and dust mitigation controls.

Clause 6.6 - Environmental Sustainability

The objective of this clause is to ensure that development on land in an employment or mixed-use zone embraces principles of quality urban design and is consistent with principles of best practice environmentally sensitive design.

This clause states that consent must not be granted to development on land in a business or industrial zone exceeding 1,500m² in GFA unless the consent authority is satisfied that development has had regard to the following prescribed environmental outcomes:

- a) Water demand reduction, including water efficiency, water recycling and minimisation of potable water usage.*
- b) Energy demand reduction, including energy generation, use of renewable energy and reduced reliance on mains power.*
- c) Indoor environmental quality, including daylight provision, glare control, increased outside air rates, thermal comfort,*
- d) A reduction in new materials consumption and use of sustainable materials, including recycled content in concrete, sustainable timber and PVC minimisation,*
- e) Emissions reduction, including reduced flow to sewer and light pollution,*
- f) Transport initiatives to reduce car dependence such as providing cycle facilities, car share and small vehicle parking spaces,*
- g) Land use and ecology, including reduced topsoil removal and contaminated land reclamation.*

The application is accompanied by a BASIX Certificate (Certificate No. 1378115M dated 30 November 2023) which confirms that the development will meet the NSW government's requirements for sustainability and address, in part, points (a) to (d) above.

The application does not provide any documentation to respond to Points (e) and (f).

The application is also accompanied by a Waste Management Plan which details the removal of topsoil and contaminated land which satisfies, in part, point (g).

The above issues are included as a reason to refuse the application as insufficient information.

8. DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

There are no draft instruments relevant to this site or proposed development.

9. DEVELOPMENT CONTROL PLANS

9.1 Ryde Development Control Plan 2014 (RDCP)

The following sections of RDCP 2014 are relevant to the proposed development:

- Part 3.2 – Child Care Centres.
- 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 9.2 – Access for People with Disabilities.
- Part 9.3 – Parking Controls.

Part 3.2 – Child Care Centres

The application has been considered against the provisions of Part 3.2 (Child Care Centres) where the development has been found to be non-compliant/inconsistent with the following controls:

- Clause 2.1.1 – Preferred Locations.
- Clause 2.1.2 – Environmental Risks/Hazards.
- Clause 3.1 – All Child Care Centres.
- Clause 4.2 – Acoustic Privacy – For Adjoining Residents.
- Clause 4.3 – Visual Privacy – For Children of the Centre.
- Clause 5.2 – On-Site Manoeuvrability.
- Clause 5.3 – Impact on Traffic Flow.
- Clause 5.4 – Pedestrian Safety.
- Clause 6.1 – General Landscape Design Requirements.
- Clause 6.2 – Play Spaces.
- Clause 7.0 – Miscellaneous Controls – Centre Facilities.

The assessment table relating to Part 3.2 is at **Attachment 6** of this report.

Part 4.4 – Ryde Town Centre

The following provides an assessment of the development against the provisions of Part 4.4 Ryde Town Centre of the RDCP.

Clause 3.3 – Active Frontage

Clause 3.3 requires that the Blaxland Road frontage comprise an active frontage along the entire length of the boundary (including 20 Blaxland Road), the intent being to enhance personal safety and security within the Ryde Town Centre.

Control 3.3(b)(v) stipulates that active uses contribute to personal safety in the public domain and comprise residential uses, particularly entries and foyers. However, these should not occupy more than 20% of the total length of each street frontage.

The development includes residential uses at the ground floor along the frontage of Blaxland Road. Two primary pedestrian entries are located between Buildings A and B and Building B and C which have a combined width of 4.2m (at the actual foyer entrance). The residential component has a width of 52.9m. Combined, the overall residential and foyer width is 57.1m. This equates to 65% of the site frontage to Blaxland Road.

Although not compliant with the numerical control, the provision of residential and entrance activity at the street level does satisfy the objective of the control in its provision of passive surveillance and does engage the development with the street as an active frontage, particularly given that the property is a gateway site which affords additional engagement and interaction.

This is therefore considered to be acceptable.

Clause 3.4 – Awnings and Entry Canopies

Clause 3.4 requires that continuous awnings are provided along the Blaxland Road frontage.

Figure 19 below shows the nominated locations of awnings (in red) within the town centre as detailed in Drawing 4.4.03 of the RDCP.



Figure 19 – Active Frontage and Awnings Control Drawing (Drawing 4.4.03).

The proposed plans indicate that no awnings or entry canopies are proposed along the Blaxland Road frontage of the development. Instead, it is noted that the Blaxland Road frontage is given to landscaping along the entire frontage.

Given the relative distance and comparative isolation of the site to the town centre (i.e. Top Ryde), and noting that Clause 8.6.3 of the RDCP requires a front setback of 3.0m and 7.0m along Blaxland Road, it is considered that although a continuous awning would be able to be accommodated at this length of road frontage; that it would not be of benefit to the Town Centre; nor would it encourage the high level of passive surveillance as described in Clause 3.3 above.

This is therefore considered to be acceptable.

Clause 4.1 – Building Height

Objective 5 of Clause 4.1 seeks to enhance the existing streetscape and ensure appropriate development scale in predominantly residential and heritage precincts.

Clause 4.1(a) requires that development must comply with the maximum heights described in the RLEP - Height of Buildings Map (see earlier comments under Principal Development Standards of the RLEP section of this report).

Clause 4.1(b) includes setbacks of 7.0m (in dashed green) and Nil (in blue) to guide the height of development abutting the front property boundary as detailed in Drawing 4.4.05 of the RDCP.



Figure 20 – Street Edge Height Control Drawing for Ryde Town Centre Drawing (Drawing 4.4.05).

The development provides a front setback of 7.0m in accordance with the green dashed line but provides a setback of Nil to 3.0m at the blue line (the 3.0m setback is at the Blaxland Road frontage).

The proposed setback is considered to be acceptable, particular when considered against the Setbacks and Build-to Lines Control Drawing (Drawing 4.4.07) and the Indicative Plan – Commercial Edge East Drawing (Drawing 4.4.39) of the RDCP which requires buildings

to be setback 3.0m and 7.0m along the Princes Street and Blaxland Road frontages respectively as shown in **Figure 21** below. It is noted that the development complies with Drawing 4.4.39.



Figure 21 – Indicative Plan – Commercial Edge East Drawing (Drawing 4.4.39).

Clause 8.6 – Commercial Edge Precincts

The site is located within Precinct 8 (Commercial Edge East) of the Ryde Town Centre.

The Commercial Edge Precincts are gateways to the Ryde Town Centre and negotiate a change from residential development to a vibrant urban environment. The commercial edge precincts are characterised by a mix of existing residential flats, commercial and entertainment activities and are located on important public transport and arterial road corridors.

The objectives of a Commercial Edge Precinct are:

1. *To create an appropriate transition between the Ryde Town Centre and adjoining residential areas.*
2. *To encourage appropriate development on the arterial roads including Devlin Street, Church Street and Victoria Road.*
3. *To create a vibrant, active and safe pedestrian environment.*
4. *To encourage development that responds to the heritage significance of items in the centre including Ryde Public School, St Anne's and former Wesleyan Churches, Ryde Park, and the Queen Victoria Diamond Jubilee Fountain.*
5. *To encourage quality design and gateway development.*

The development is considered to offend the above Objectives in that, by virtue of bulk and scale, it does not provide an appropriate transition between the Ryde Town Centre and adjoining residential areas; it introduces a sensitive land use (the child care centre) immediately adjacent to Victoria Road; and that the development is not regarded to be of a design which is considered to be of a quality representative of its gateway location.

Clause 8.6.3 - Future Character

The future character statement for Precinct 8 states:

“The Commercial Edge East is centred on the busy intersection of Blaxland Road and Victoria Road. It negotiates a transition between the busy shopping precincts, arterial roads, quiet residential streets and heritage listed Ryde Park. Ryde Park supports residential amenity for the whole for the town centre.

The Commercial Edge East will be a gateway to the Ryde Town Centre and an anchor for Blaxland Road - Ryde’s main street. Development will be designed to enhance views to and from Ryde Park and to promote pedestrian safety and activity.

Under the provisions of Ryde Local Environmental Plan 2014 the precinct includes both Mixed Use and Enterprise Corridor Land Use Zones. In order to protect and enhance the commercial character and employment opportunities of the precinct, residential development is permitted in the Enterprise Corridor, but only as part of a mixed development”.

The form and presentation of the development is not considered to maintain an appropriate visual relationship to adjoining properties (noting that the only adjoining properties largely comprise 3-storey walk-up flat buildings).

It is also considered that the development does not present a bulk and scale from the street or adjoining properties that is beneficial to the existing and desired future character of the area.

The development is not considered to be compatible with the desired future character of the area in terms of the building presentation to the street and its relationship to surrounding properties.

Clause 8.6.3 – Controls (Precinct 8)

The application has been assessed against the controls of the Precinct as follows:

Control	Proposed	Compliance
a) Provide modulation of the façade to reduce the mass and scale of buildings. (A) = Building A (B) = Building B (C) = Building C	Setbacks <u>Blaxland Road</u> Required: 3.0m & 7.0m Proposed: <ul style="list-style-type: none">• Basement Level 2 – Nil to 7.82m• Basement Level 1 – Nil to 7.82m• Ground Floor Level – (B) 3.0m to 7.0m• Level 1 – (B) 3.0m to (A) 7.0m• Level 2 – (B) 3.0m to (A) 7.0m• Level 3 – (B) 3.0m to (A) 7.0m & 9.0m• Level 4 – (B) 3.0m to (A) 7.0m & 9.0m• Level 5 – (B) 3.0m to (A) 7.0m & 9.0m• Level 6 – (B) 3.0m to (A) 7.0m & 9.0m• Level 7 – (B) 3.0m	 Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes

Control	Proposed	Compliance
2-18 Blaxland Road. A setback of at least 7 m along Blaxland Road is required to retain the existing trees. An Arborist report must be provided to outline how the health of the trees will be protected during construction and in the long term. The building setback may be increased to ensure the long-term health of the eucalypt trees. Refer to section 4.2 Setbacks and Build-to Lines Figure 4.4.07		
h) The Princes Street road closure and Benson Place should be upgraded as part of future development of 2-18 Blaxland Road. A public domain upgrade should be sympathetic to the heritage significance of the Queen Victoria Diamond Jubilee Fountain.	The site is not at 2-18 Blaxland Road.	N/A
i) Provide pedestrian footbridges over Victoria Road in accordance with the Public Domain Control Drawing linking to residential areas within the Ryde Town Centre catchment. Pedestrian over bridges shall demonstrate design excellence and be to the satisfaction of the Roads & Maritime Services and Council, and have the following attributes: <ul style="list-style-type: none"> i. A footway not less than 3 m clear wide; ii. Safety barriers; iii. Natural ventilation and natural light; iv. Surveillance opportunities and clear sightlines from one end to the other; v. Lighting in accordance with Australian Standard AS/NZS1158.3.1:1999: Road lighting – Pedestrian area (Category P) lighting – Performance and installation design requirements; vi. Demonstrate design excellence and contribute to the identity of Ryde Town Centre; vii. Include public art and opportunities for community information signage; and viii. Accessibility for all (however, ramps are not preferred). 	<p>The development does not propose a pedestrian footbridge.</p> <p>Note: Figure 4.4.02 (page 13 of the RDCP) does not indicate a pedestrian footbridge at or near the site.</p>	N/A

Control	Proposed	Compliance
j) Advertising may be permitted on the footbridge provided that it: i. Is integrated in the overall design; ii. Contributes positively to the identity of Ryde Town Centre and does not detract from the civic qualities of the Town Centre; iii. Targets road users and is not visible from nearby residential areas and from the wider view catchment; and iv. Does not include flashing illuminated signage.	The development does not impact upon the footbridge.	N/A
k) Traffic management solutions must be provided to the satisfaction of Council to enable appropriate transitions to occur between the Ryde Town Centre and the adjoining residential areas. Traffic management works may be necessary.	Traffic management during construction would be subject to conditions.	Capable of complying.
l) The rear landlocked portion of 607-619 Victoria Road, located at the rear of properties fronting Arras Parade and Maze Avenue is to be landscaped and free of dwellings.	The site does not include the rear landlocked portion of 607-619 Victoria Road	N/A
m) The interface areas between low scale residential development and Precinct 8 are to be landscaped and treated to preserve the amenity of neighbouring development.	The interface between the subject site and neighbouring residential property is not considered to be adequate in preserving the amenity of neighbouring development.	No

The issues identified above are included within the reasons for refusal.

Part 7.2 - Waste Minimisation and Management

Part 7.2 (Waste Minimisation and Management) includes the following relevant section:

- Clause 2.7 - Residential Flat Buildings of 4 storeys or more.

Council's Waste Management Officer has reviewed the application and has identified matters which require amendment.

The issues raised by Council's Waste Management Officer are included within the reasons for refusal.

Part 8.2 – Stormwater and Floodplain Management

Part 8.2 (Stormwater and Floodplain Management) includes the following relevant sections:

- 2.0 – Stormwater Drainage.
- 3.0 – Water Sensitive Urban Design (WSUD).
- 4.0 – Flooding and Overland Flow.

Council's Development Engineer has reviewed the application and raises the following issues against each of the above sections:

- *The proposed stormwater management system is unsatisfactory in that the surface drainage system and particular stormwater components lack provision for a failure mode, which would consequently result in flooding property damage.*
- *All onsite detention and Water Sensitive Urban Design (WSUD) components lack safe and readily available access for the purpose of maintenance.*
- *The development footprint and levels prevent a suitable drainage easement to be established servicing the properties of 2, 4 & 6 Hatton Street, thereby sterilising any significant development on those sites.*
- *The development documentation has not validated the adequacy of the onsite detention system components in regard to the design parameters (sufficient storage volume) or level of compliance with Council's DCP requirements for such systems.*
- *The proposed volume of the sump storage in the stormwater systems pump-sump component does not comply with the DCP Part 8.2 (Stormwater and Floodplain Management).*

The issues raised by Council's Development Engineer are included within the reasons for refusal.

Part 9.3 – Parking Controls

Use	Rate	Required	Proposed	Compliance
Residential				
1 Bedroom (64)	0.6-1/dwelling	38.4 - 64	64	Yes
2 Bedroom (116)	0.9-1.2/dwelling	104.4 - 139.2	118	Yes
3 Bedroom (14)	1.4-1.6/dwelling	19.6 - 22.4	23	No (+0.6)
Total Residential		162.4 – 225.6	205	Yes
Visitors (194 dwellings)	1/10 dwellings (max)	19.4 (20)	39	No (+19)
Child Care				
120 Children	1/8 children	15	15	Yes
18 Staff	1/2 staff	9	9	Yes
Total		205.8 - 269	268	Yes

9.2 Section 7.11 - Development Contributions Plan 2020

Council's Section 7.11 Development Contributions Plan 2020, effective 1 July 2020 requires a contribution for the provision of various additional services required as a result of increased development density.

If approved, the 7.11 contribution will be applied within the consent.

9.3 Housing Productivity Contribution

When a consent authority receives a development application via the NSW Planning Portal, the consent authority is required to input relevant information where a *Housing and Productivity Contribution* (HPC) is applicable. The HPC applicability will be based on location and development criteria outlined in the Ministerial Order.

From 1 October 2023, consent authorities are required to finalise the HPC prior to determining a development application.

If approved, the HPC contribution will be applied within the consent.

10. LIKELY IMPACTS OF THE DEVELOPMENT

The environmental impacts of the proposed development on the natural and built environment are addressed under the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), and within the various sections of this report which consider applicable planning instruments and controls.

It has been found that the development would not have a detrimental impact on any ecological communities or flora or fauna species of national conservation significance. However, it is considered that the development would have a significant impact upon the surrounding built environment.

The proposed development is likely have a detrimental social impact in the locality given the visual and physical impacts upon amenity to both internal and external residential properties due to the bulk and scale of the development, the provision of the outdoor play areas of the proposed child care centre within the side setback areas abutting proposed Building C and 2, 4 & 6 Hatton Street, and the inadequate building separations which would result in a loss of visual and acoustic privacy.

The proposed development will likely have a detrimental economic impact on the locality given that insufficient information has been submitted which demonstrates that the neighbouring residential properties at 2, 4 & 6 Hatton Street and 20 Blaxland Road can be developed to a standard permitted and anticipated by applicable planning instruments.

The application has not sufficiently demonstrated that the site is suitable for the development as proposed.

11. REFERRAL RESPONSES

External Referrals

Transport for NSW

Concurrence not provided due to insufficient information.

This has been included within the reasons for refusal.

Internal Referrals

Heritage

Council's Heritage Officer does not raise any objection to the proposal and provides the following comments:

"The proposal would have no adverse impact on heritage items in the vicinity of the property, in a town centre location and noting the types of heritage items. However, the proposal could be a better heritage-neighbour to the QV Fountain/ Benson Park to the east of the property, which is a gateway location. The new building will dominate the fountain and park, which will detract from the heritage item. The new building will bring more people into the proximity of the QV Fountain/ Benson Park and being a better heritage-neighbour could be addressed by an improved eastern elevation that provides passive surveillance of the park".

The matter of the improved eastern elevation is contained in the reasons for refusal as noted by the UDRP generally.

The eastern elevation is separated from Benson Park by 13m (being the width of Princes Street which separates the two) and from the fountain by and Benson Park by 26m. The development, although dominant in its current form, will not have any adverse visual impact upon either feature due to the physical separation and the proposed plantings which are proposed within the eastern setback of the site.

It is noted that the eastern elevation, as proposed, does include apartments which face towards the park and fountain and therefore do provide passive surveillance.

How the development responds to the park and fountain as a better neighbour will be explored throughout the appeal process.

This matter has not been included as a reason for refusal.

Development Engineering

Council's Development Engineer does not support the proposal and has provided contentions which are included as reasons for refusal.

Landscape

Council's Landscape Architect does not support the proposal and has provided contentions which are included as reasons for refusal.

City Works (Drainage, Public Domain, Traffic, and Waste)

Council's City Works department does not support the proposal and has provided contentions which are included as reasons for refusal.

12. PUBLIC NOTIFICATION AND SUBMISSIONS

The application was publicly exhibited between 10 January 2024 and 24 January 2024. Notification letters were sent to local properties in accordance with Council's Community Participation Plan.

As a result of the notification, 12 submissions were received which raise the following issues:

- Overdevelopment.
- Lot isolation.
- Impact on existing infrastructure.
- Construction related impacts.
- Traffic and Parking Impact.
- Impact upon neighbouring residential amenity.
- Impact of the proposed childcare centre.
- Inconsistent with the character of the area
- No consultation about the development.
- Suitability of the development.
- Stormwater runoff.

The issues raised in the submissions demonstrate adverse impacts as a result of this development and warrant the refusal of the application. Therefore, the proposal is not in the public interest.

13. CONCLUSION

After consideration of the development against section 4.15 of the Environmental Planning and Assessment Act 1979 and the relevant statutory and policy provisions, the development (as proposed) is not considered to be suitable for the site and is not considered to be in the public interest.

The application does not sensitively respond to the strategic intentions of Council's RLEP 2014 and to Council's RDCP 2014 that have been adopted to establish intended planning outcomes for the locality generally and to the Ryde Town Centre specifically.

The proposal is not consistent with the objectives of the MU1 Mixed Use zone.

The proposed building heights, gross floor area/floor space ratio and the physical siting of buildings across the site does not allow for the development of a mixed residential/commercial use in an orderly and coordinated manner.

Therefore, it is recommended that the application be refused for the following summarised reasons:

- That concurrence has not been granted by Transport for NSW as insufficient information has been provided to enable assessment.
- That the applicant's Clause 4.6 written requests to vary the height of buildings development standard in Clause 4.3 and the floor space ratio development standard in Clause 4.4 of *Ryde Local Environmental Plan 2014* are not acceptable

as the requests are incorrectly founded, the variations sought are excessive, that the proposal does not satisfy the objectives of the zone and the respective development standards, have not demonstrated that compliance with these development standards are reasonable or necessary in the circumstances of this specific proposal, and have not provided sufficient environmental planning grounds to justify contravening these development standards.

- That the issues raised in the submissions demonstrate adverse impacts as a result of this development and warrant the refusal of the application.
- That the proposed development will create unreasonable environmental, social and economic impacts to adjoining development on private and public land.
- Incorrect and insufficient information has been submitted and the environmental, social and economic impacts of the proposed development are such that the site is not suitable for the development in its current form.
- The development is not considered to be in the public interest.

14. RECOMMENDATION

- A. That the Sydney North Planning Panel refuse to grant consent to Local Development Application No. LDA2023/0323 for the construction of a mixed-use development comprising three residential flat buildings containing 194 apartments, a centre-based childcare facility, basement car parking, stormwater management works and landscape works at 691 to 695 Victoria Road, Ryde for the reasons included in **Attachment 7** of this report.
- B. That Transport for NSW be advised of the decision.
- C. That those persons who provided a submission be notified of the decision.