

## ATTACHMENTS FOR: AGENDA NO. 5/19 COUNCIL MEETING

**Meeting Date:** Tuesday 28 May 2019  
**Location:** Council Chambers, Level 1A, 1 Pope Street, Ryde  
**Time:** 7.00pm

### ATTACHMENTS FOR COUNCIL MEETING

<b>Item</b>		<b>Page</b>
<b>12</b>	<b>YUHU VOLUNTARY PLANNING AGREEMENT INCORPORATING EASTWOOD PLAZA UPGRADE, 5 AFFORDABLE HOUSING APARTMENTS AND PUBLIC DOMAIN UPGRADES - POST EXHIBITION REPORT</b>	
	Attachment 1 2017SNH013 - Assessment Report.....	1
	Attachment 2 DRAFT - Yuhu Voluntary Planning Agreement.....	83
	Attachment 3 DRAFT - Yuhu Voluntary Planning Agreement Explanatory Note .....	149
	Attachment 4 Indicative Functional Brief - Exhibition Copy.....	153
	Attachment 5 2017SNH013 - Record of Deferral - 25 October 2018....	159
	Attachment 6 Part of VPA Schedule 5 - 3010499 - 1 - Amended Landscape Drawingsv1 - Current - A3.....	163
	Attachment 7 Part of VPA Schedule 5 - Eastwood Design 600 - A3.....	175
	Attachment 8 Part of VPA Schedule 5 - Eastwood Structure 600 - A3 .....	176
	Attachment 9 VPA Schedule 12 - Novation Deed - Eastwood FINAL - 24 January 2019.....	177
	Attachment 10 Eastwood Plaza Upgrade - Public Exhibition Feedback.....	186

## SYDNEY NORTH PLANNING PANEL

<b>Panel Ref No</b>	2017SNH013
<b>DA Number</b>	LDA 2016/0378
<b>Local Government Area</b>	City of Ryde
<b>Proposed Development</b>	<p>Demolition and construction of a mixed use development comprising 7 buildings accommodating retail, commercial and residential uses. The development will contain:</p> <ul style="list-style-type: none"> <li>• 11,449.4m<sup>2</sup> of retail space;</li> <li>• 3,629.6m<sup>2</sup> of commercial space (including office, gym and medical centre)</li> <li>• 409 residential apartments consisting of 97 x 1 bedroom, 249 x 2 bedroom &amp; 63 x 3 bedroom apartments.</li> <li>• 4 levels of basement car parking accommodating 1,035 vehicles.</li> <li>• Building heights ranging from 6 to 13 storeys.</li> <li>• Two open air through-site pedestrian links between Rowe and Rutledge Streets, and</li> <li>• Landscaping works within the site.</li> </ul>
<b>Street Address</b>	152-190 Rowe Street and 3-5 Rutledge Street, Eastwood
<b>Applicant/Owner</b>	<p>Applicant: Yuhu Property (Australia) Pty Ltd  Owner: Yuhu Property (Australia) Pty Ltd</p>
<b>Number of Submissions</b>	<p>Notification:  Round 1: 5 submissions received  Round 2: 12 submission received  Round 3: 7 submissions received</p>
<b>Recommendation</b>	Deferred commencement approval
<b>Regional Development Criteria (Schedule 7 of SEPP (State and Regional Development 2011))</b>	<p>General Development over \$30 Million</p> <p>\$20 million (being the CIV applicable for applications lodged but not determined prior to 1 March 2018 under clause 23 transitional provisions of this SEPP).</p>
<b>List of All Relevant s4.15(1)(a) Matters</b>	<ul style="list-style-type: none"> <li>• Environmental Planning Instruments</li> <li>• Environmental Planning and Assessment Regulation 2000;</li> <li>• Environmental Planning and Assessment Act 1979;</li> <li>• State Environmental Planning Policy (State and Regional Development) 2011;</li> <li>• State Environmental Planning Policy No. 55 – Remediation of Land;</li> <li>• State Environmental Planning Policy (Building Sustainability Index: BASIX);</li> <li>• State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development;</li> <li>• State Environmental Planning Policy</li> </ul>

	<p>(Infrastructure) 2007;</p> <ul style="list-style-type: none"> <li>• Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005;</li> </ul> <p>Development Control Plans</p> <ul style="list-style-type: none"> <li>• Ryde Local Environmental Plan 2014;</li> <li>• City of Ryde Development Control Plan 2014; and</li> <li>• Section 94 Development Contributions Plan 2007:</li> </ul> <p>Planning Agreements</p> <p>A Voluntary Planning Agreement has been submitted with the application.</p>
<b>List all documents submitted with this report for the panel's consideration</b>	<ol style="list-style-type: none"> <li>1. Conditions of consent</li> <li>2. Political donations and gifts disclosure statement</li> <li>3. Clause 4.6 variation request to Clause 4.3 Height of Buildings standard.</li> </ol>
<b>Report by</b>	Alison Davidson - Planning Ingenuity, Consultant Planners
<b>Report date</b>	28 September 2018

#### **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 particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

#### **Clause 4.6 Exceptions to development standards**

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes**

#### **Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **Not Applicable**

#### **Conditions**

Have draft conditions been provided to the applicant for comment? **Yes – agrees to conditions**

## Assessment Report and Recommendation

### 1. EXECUTIVE SUMMARY

The following report is an assessment of a development application for the construction of a mixed use development at 152-190 Rowe Street and 3-5 Rutledge Street, Eastwood.

The proposed development (as amended) involves demolition and construction of a mixed use development comprising 7 buildings accommodating retail, commercial and residential uses. The development will contain:

- 11,449.4m<sup>2</sup> of retail space;
- 3,629.6m<sup>2</sup> of commercial space (including office, gym and medical centre)
- 409 residential apartments consisting of 97 x 1 bedroom, 249 x 2 bedroom & 63 x 3 bedroom apartments.
- 4 levels of basement car parking accommodating 1,035 vehicles.
- Building heights ranging from 6 to 13 storeys.
- Construction of a bridge link between two residential buildings.
- Two open air through-site pedestrian links between Rowe and Rutledge Streets, and
- Landscaping works within the site.

The applicant has offered to enter into a Voluntary Planning Agreement with Council for the following works:

- Rowe Street Mall upgrade works;
- Provision of 5x1 bedroom affordable housing apartments;
- Works in kind in surrounding streets (other than Rowe Street Mall).

The application was placed on public notification on three (3) occasions and received a total of 24 submissions.

First notification period from 14 June 2016 to 26 October 2016, Council received 5 submissions.

Second notification from 10 May 2017 to 10 June 2017, Council received 12 submission.

Third notification period from 4 July 2018 to 18 July 2018, Council received 7 submissions.

The submissions raised various concerns including:

<b>Table 1: Submissions</b>			
<b>Concern</b>	<b>Round 1</b>	<b>Round 2</b>	<b>Round 3</b>
Insufficient provision of commercial and oversupply of residential	✓	✓	✓
Request for specific end users and amenities	✓	✓	



Request for provision of car share parking and additional bicycle parking	✓	✓	
Need for inclusion of bike lanes on West Parade and Rowe Street	✓	✓	
Provide wayfinding signage to link development to public transport hubs, bike networks, heritage walks and local amenities.	✓	✓	
Adverse traffic impacts (access, parking, congestion, safety)	✓	✓	✓
Flood impacts on basement carpark	✓	✓	✓
Excessive Height	✓	✓	✓
Impact on local schools to accommodate extra residents	✓	✓	✓
Insufficient parking	✓	✓	✓
Overdevelopment		✓	✓
Construction will generate air pollution, health concerns	✓	✓	✓
Impact on adjoining commercial premises		✓	✓
DA seeks work on other property without owners consent (demolition of ramp)	✓	✓	✓
Reduced traffic safety and limiting access to other properties	✓	✓	✓
Development should be staged to enable business transition		✓	
Reduction in retail and office, excess in food related uses – lack of diversity		✓	
VPA should include replacement of paving		✓	
Insufficient infrastructure to accommodate population increase		✓	
Inappropriate change to area character, social impacts			✓
Reduced amenity – light and overshadowing			✓
Support for application			✓

The development has been assessed in respect of the relevant planning instruments and the application is non-compliant with the following:

- Minor variation to building depth, separation, solar access, and first floor ceiling height provisions under the Apartment Design Guide (ADG);
- Variation to Height of Buildings control under provisions of RLEP2014 (variation requested pursuant to Clause 4.6);
- Variation to 3m street setback (required above 9.5m) and to colonnade/awning height to The Street which exceeds 4.5m under RDCP2014.

Clause 7 of SEPP 55 Remediation of Land requires the consent authority to consider if the land is contaminated and if it is contaminated, is it suitable for the proposed development. A preliminary Environmental Site Assessment has been submitted with the development application and this report has concluded that the site would be suitable for the proposed development subject to appropriate conditions of consent.

Following an assessment of the development application, it is considered that these non-compliances are acceptable on planning grounds. Consideration of various design matters by Council's technical departments has not identified any fundamental issues of concern with the proposal. Consequently this report concludes that the proposal is acceptable in terms of its design, function and relationship with its neighbours.

This report recommends that consent be granted to this application in accordance with conditions provided in **Attachment 1**. These conditions have been reviewed by the applicant who has agreed with all of the conditions.

## **2. APPLICATION DETAILS**

**Name of applicant:** Yuhu Property (Australia) Pty Ltd

**Owner of site:** Yuhu Property (Australia) Pty Ltd

**Estimated value of works:** \$276, 753, 423.00

**Disclosures:** A disclosure with respect to the Local Government and Planning Legislation Amendment (Political Donations) Act 2008 have been made by the applicant. A copy of the information has been attached. (See attachment 2).

## **3. SITE DESCRIPTION**

The subject site is located on the corner of Rowe and Rutledge Streets, known as Nos. 152-190 Rowe Street and 3-5 Rutledge Street, Eastwood. The site has a total area of approximately 12,755m<sup>2</sup> and comprises 20 lots.

The site is currently occupied by a retail shopping centre known as Eastwood Shopping Centre, consisting of approximately 12,500m<sup>2</sup> of retail space and 2,400m<sup>2</sup> of commercial space. Buildings currently existing at the site range in height between 1 to 8 storeys with taller buildings fronting Rowe Street Mall. Also existing at the site is a Masonic Temple fronting Rowe Street.

Existing parking available at the site includes a total of 426 spaces (289 publicly available) within a multi-level shopping centre car parking accessed from Rutledge Street. **Figures 1 and 2** below provide an aerial view of the site (outlined in red) and its context, whilst photographs of the site and surrounds are provided at **Figures 3 to 8**.



Figure 1: Aerial photo of the site



Figure 2: Site and surrounds





Figure 3: Looking east along Rowe Street Mall



Figure 4: Looking south-west from West Parade



Figure 5: Looking west towards Rowe Street Mall from West Parade



Figure 6: Looking north from Rutledge Street to ramp accessed from Trelawney





Figure 7: Looking north-east from Rutledge Street to site



Photo 8. Rutledge Street. The development at 7-9 Rutledge Street is visible adjacent to the site.

**4. SITE CONTEXT**

The site is located at the southern side of the Eastwood Town Centre as identified under the City of Ryde DCP 2014, within the Eastwood Village Precinct.

To the north of the site is the Rowe Street Pedestrian Mall including retail, medical and commercial uses. The northern side of Rowe Street is characterised by low 1-2 storey shop frontages. Further north again is Eastwood Park including sporting fields and playgrounds.

To the east of the site, beyond West Parade is the railway line servicing Eastwood Railway Station (approximately 300m from the site). Further east are more commercial uses including Aldi and Eastwood Police Station.

To the south of the site across Rutledge Street is low density residential development and a child care centre. Further south, development is essentially characterised by low density residential uses within the suburb of Denistone.

To the immediate west of the site is an adjoining parcel known as 7-9 Rutledge Street. This parcel is the subject of development consent for a Staged Development for mixed used development (LDA2011/0612). Further west, across Trelawney Street, is Eastwood Public School which extends to Shaftsbury Road (west) and Rowe Street (north).

## **5. PROPOSAL**

The scope of works for which consent is sought comprises demolition of existing site improvements and construction of a mixed use development comprising 7 buildings accommodating retail, commercial and residential uses. The development will contain:

- 11,449.4m<sup>2</sup> of retail space;
- 3,629.6m<sup>2</sup> of commercial space (including office, gym and medical centre)
- 409 residential apartments consisting of 97 x 1 bedroom, 249 x 2 bedroom & 63 x 3 bedroom apartments.
- 4 levels of basement car parking accommodating 1,035 vehicles.
- Building heights ranging from 6 to 13 storeys.
- Two open air through-site pedestrian links between Rowe and Rutledge Streets, and
- Landscaping works within the site.

As detailed above, the development proposes the erection of 7 buildings. The location of these buildings is demonstrated in Figure 9.

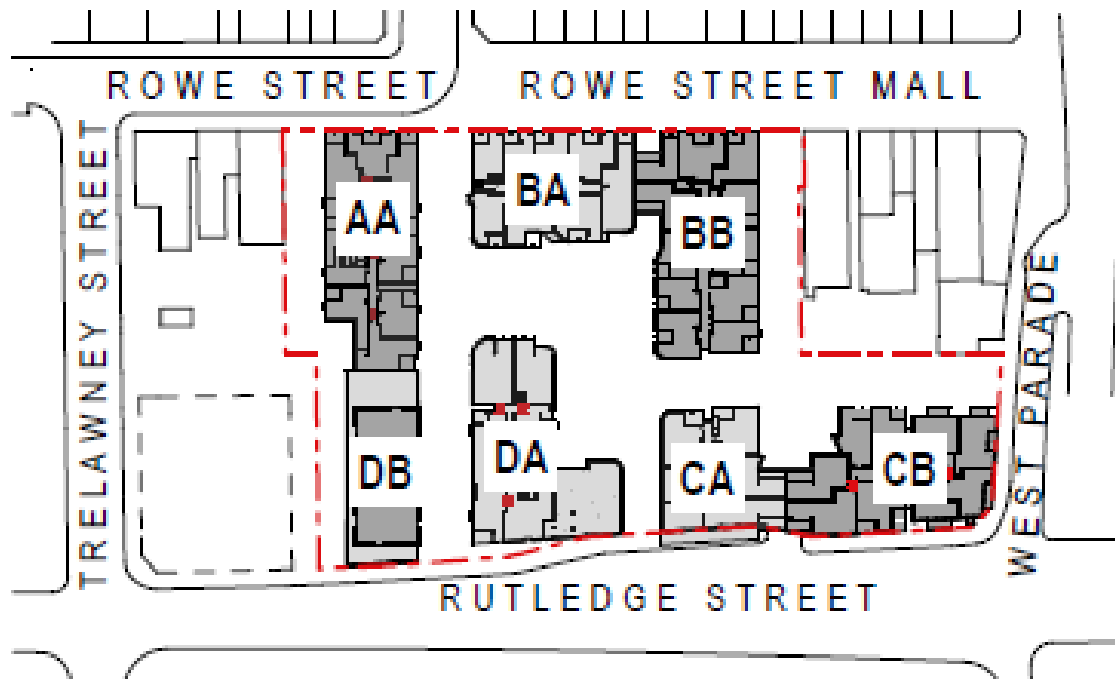


Figure 9 Site Plan showing the location of the proposed buildings.

A Voluntary Planning Agreement (VPA) has been endorsed by resolution of Council on 27 February 2018 to provide significant upgrades to Rowe Street Mall and works in kind in surrounding streets to create an enhanced public domain surrounding the site and the dedication of 5 x 1 bedroom units to Council for affordable rental housing for essential workers.

The plans that form the basis of this assessment report are referenced as **dated 1 June 2018**.

The development proposes 11,449m<sup>2</sup> of retail space which will be located on the lower ground floor, ground floor and part of level 1, the uses will include:

- Lower ground floor – a major supermarket and a number of fresh food and speciality retail fronting an internal pedestrian street known as ‘The Street’ which provides connection from Rowe Street through to Rutledge Street.
- Ground floor – individual shop fronts directly accessible from Rowe Street, Internal to the site it is proposed to include a mini major supermarket, kiosk spaces and a number of fast and slow food tenancies located around a central market hall area. Speciality shops are proposed adjacent to ‘The Street’.
- Level – Level 1 has direct access to Rutledge Street. Retail tenancies will include a mini major Yum Cha, a medical centre and pharmacy. A gym is proposed on the south eastern corner of the site, which will front both Rutledge Street and West Parade.

The hours of operation are detailed below:

Proposed Use	Days of week	Operating Hours
Supermarket	Monday to Sunday	6.00am to midnight



Retail premises (shops, restaurants)	Monday to Sunday	6.00am to midnight
Medical Centre	Monday to Sunday	7.00am to 9.00pm
Gymnasium	Monday to Sunday	24 hours

Commercial suites will be located on 4 levels of the building located in the south western corner of the site. The ground floor of the commercial floor space will have access directly from Rutledge Street.

3 vehicular access points are provided to the basement carpark. This includes:

- Rutledge Street – left in / left out vehicle entry point is consolidated towards the eastern end of the site. This access accommodates a deceleration lane along the street frontage.
- Trelawney Street – The existing in and out vehicle access remains in the same location but has been reconfigured to allow safe vehicle movements and separation of two way traffic.
- West Parade – The two existing access points have been reconsolidated to provide one entry / exit point with a left in, right out onto West Parade for loading dock access only.

Photomontages of the proposed development internal and external to the site are provided below in **Figures 10, 11 and 12.**



**Figure 10: Photomontage of proposed development**



**Figure 11: Photomontage of proposed development**



**Figure 12: Photomontage of proposed development**

## 6. **BACKGROUND**

The subject development application was lodged on 1 September 2016.

The application was notified on three (3) occasions. The first round was from 14 September 2016 to 26 October 2016, with 5 submissions being received during this period. The second round was from 10 May 2017 to 10 June 2017, with 12 submissions received (including 1 in support). The third round was from 4 July 2018 to 18 July 2018 with 7 submissions being received including 1 in support.

An UDRP meeting took place on 27 September 2017. A number of issues were raised by the Panel, primarily in regard to:

- Extent of level change in stair flights;
- A wider link should be pursued. 19m to align and extend the Avenue is a better proportion in relation to the vertical scale of adjacent building and level change between Rowe and Rutledge Streets. Would provide safer public realm and accommodate awnings for weather protection.
- The link should be open to the sky for its full length and bridging between buildings DB and DA should be removed.
- Resolution of sightlines and weather protection need to be resolved.
- Concern with safety and security of the through site links and the functionality of the market garden after retail hours.
- Preference for a more flexible-use public space located on Rowe Street that functions equally as a town square.
- Co-locating the new space with the existing mall would benefit new retail activities on the site.
- Rowe Street building would better fit within the context if it included a strong 2 storey datum, expressed in the façade.
- Inconsistent consideration of how the proposed building form will transition along Rutledge Street.
- Further design resolution required to demonstrate quantum development is a positive built form and open space outcome for site.
- It is reasonable to expect the proposal will achieve the minimum targets established by the ADG.
- The achievement of cross ventilation at internal corners and using angled windows is questioned.
- The Panel is unconvinced with the publically accessible open space in the hanging garden above the market square – limited access and segregated from active retail areas, potential safety concerns.
- If market space below hanging garden is relocated, that space could house retail facilities and the hanging garden level could serve as central COS, available to residents and guests (not public).
- Amenity concerns include:
  - Internal corners,
  - units under bridging levels between Buildings DA and DB
  - Deep narrow balconies
  - Excessive deep notches to the corridor in Building CB
  - Outlook of units at Level 1 facing market relies on landscaping.

A letter dated 25 January 2017 was sent to the applicant seeking a response to the Panel comments and further information and/or revised plans in respect of the following matters:

- Further justification for building height non-compliance;
- Inconsistent “hanging garden design” between Architectural and Landscape Plans;
- Additional supporting documentation required to demonstrate or confirm compliance with ADG in relation to:
  - Building depth;
  - Communal open space;
  - Visual privacy;
  - Solar access;
  - Ceiling heights;
  - Apartment layout; and
  - Storage.
- Inconsistency with allocation/provision of car parking;
- Additional information to address Eastwood Town Centre DCP in relation to:
  - Private open space; and
  - Setbacks to both Rowe and Rutledge Streets.
- Request for Public Arts Plan;
- Response to referral comments in relation to:
  - RMS;
  - Drainage & Development Engineering;
  - Traffic;
  - Public Domain upgrades;
  - Waste Management provisions;
  - Health – contamination;
  - Landscape treatment; and
  - Input on NSW Police comments.

Amended plans, **dated 22 March 2017** prepared by HDR Rice Daubney and additional information was submitted to Council on 19 April 2017.

The key amendments to the architectural plans included:

- Amendments to the Rowe Street Mall elevation – reinforcement of the 2 storey façade element and integration with the adjoining buildings on Rowe Street Mall, including introduction of a steel ‘portal’ to create a double height perception at street level, and the use of different materials and finishes to break the building into fine grain shop fronts (refer to comparison of Revision 1 and 2 in **Figures 13 and 14**).

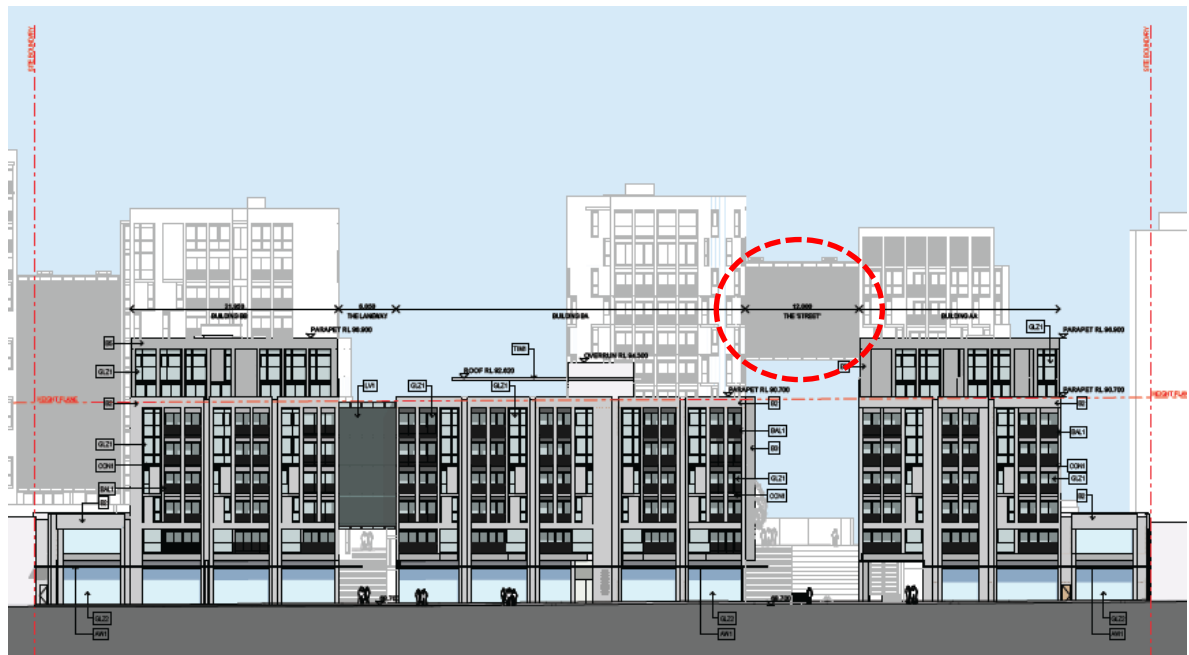


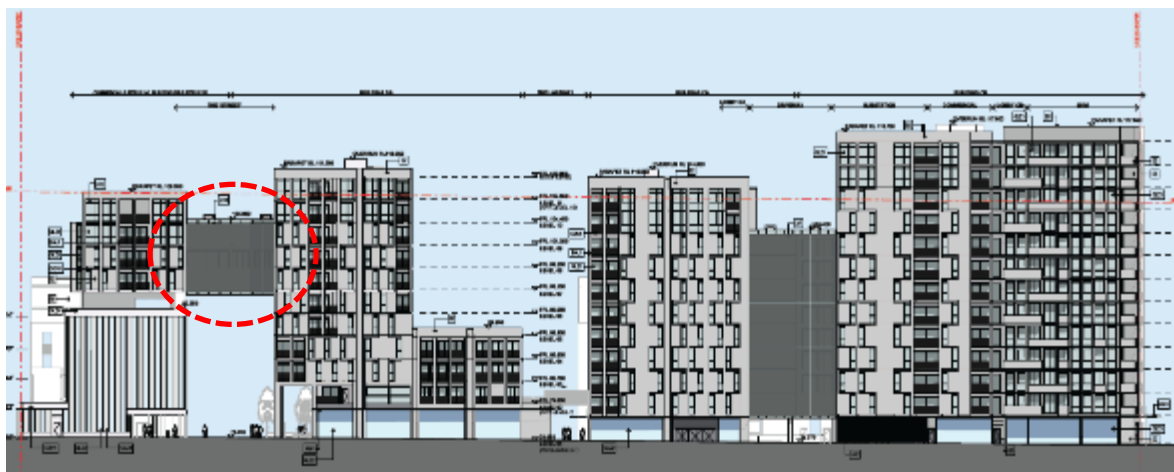
Figure 13 Rowe Street Elevation (Plan 1501, Revision 1)



Figure 14 Rowe Street Elevation (Plan 1501, Revision 2)

- Amendments to Rutledge Street elevation – removal of bridge link, reduction in building height (at link between Buildings CA and CB) and reinforcing the 5 level street wall façade of the buildings to avoid ‘sheer’ building wall (refer to comparison of Revision 1 and 2 in **Figures 15 and 16**).





**Figure 85 Rutledge Street Elevation (Plan 1502, Revision 1)**



**Figure 96 Rutledge Street Elevation (Plan 1502, Revision 2)**

The amended plans also incorporated the following improvements:

- Additional screening measures within the “hanging garden” to ensure privacy to Level 1 units;
- Improved safety through deletion of public access to the “hanging garden”, passive surveillance opportunities and the use of glazes awnings to enable clear and unobstructed sightlines;
- A Public Art Strategy Plan, identifying art opportunities within Rowe Street Mall, a gateway artwork to buildings fronting Rowe Street Mall, laneway art, and a green gallery sculpture and planting along the site link.

On 17 May 2017, the amended plans were considered by the UDRP and it was concluded that the Panel generally supported the revised scheme on the following basis:

- The link has been reconfigured to be open to the sky for its full length and the bridging between buildings DB and DA has been removed in line with the Panel recommendation.
- In light of incorporated design modifications, the Panel can support the narrower 12m link.

- The building now introduces a strong 2 storey retail datum, expressed in the façade.
- The Panel supports the design refinements evident, including:
  - Elimination of the bridging floors between buildings DA and DB
  - Reduction in height of bridging floors between CA and CB to 6 storeys
  - Establishment of datum that continues a 5 storey datum at buildings DA and DB.
- The Panel notes the provision of additional rooftop communal open space (COS) on Building AA, ensuring all residents have direct access to areas of COS.
- The proponent has introduced a design strategy that introduces a diversity of brick types and other facades materials.

On 14 June 2017, further amendments resulting in revised plans, **dated 26 May 2017** were submitted. The amendments addressed some minor outstanding concerns raised with the Applicant at the UDRP meeting on 17 May 2017 in relation to resolving the screening treatment to the communal open space above the market hall and its interface with the adjacent units.

Also on 14 June 2017, a briefing session on the development application was presented to the Sydney North Planning Panel.

On 27 February 2018, a Voluntary Planning Agreement was endorsed by Council. The VPA provides upgrades to Rowe Street Mall and surrounding streets to enhance the public domain surrounding the subject site and dedication of 5 x 1 bedroom units to Council for allocation as affordable housing for essential workers in the local community.

On 12 March 2018, a meeting was held between Council and the Applicant to discuss the last remaining issues, primarily the significant matter of vehicular access and traffic safety. Also discussed at this meeting were façade changes to incorporate bay window elements to increase duration of direct sun to glazing on the eastern and western elevations, presented as amended plans, **dated 2 March 2018**.

On 26 March 2018, as a result of unresolved traffic and access, additional traffic modelling was provided to Council and RMS. Input was provided by Council's Independent Traffic Consultant on matters of Road Safety and liaison between Council, RMS and the Applicant resulted in a final meeting to discuss any implications of the alternate site access which included a deceleration lane and resulting increased building setbacks to Rutledge Street.

On 21 June 2018, final amended plans, **dated 1 June 2018** were submitted to Council and all unresolved matters have now been addressed including the granting of RMS concurrence. These plans form the subject of this assessment.

Changes contained within the final plans under assessment include:

- Reduction in the overall number of residential units from 443 to 409;
- Altered apartment mix to provide 24% 1 bed, 61% 2 bed and 15% 3 bed;
- Alteration to the vehicular access to the site from Rutledge Street to include a deceleration lane required by RMS;

- Reduction in the number of car spaces and changes to the basement level parking layouts; and
- Alteration to the building forms fronting Rutledge Street and in the centre of the site to accommodate the deceleration lane.

## **7. APPLICABLE PLANNING CONTROLS**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- Statement Environmental Planning Policy (State & Regional Development) 2011;
- State Environmental Planning Policy No. 55 – Remediation of Land;
- State Environmental Planning Policy (Building Sustainability Index: BASIX);
- State Environmental Planning Policy (Infrastructure) 2007;
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005;
- State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development;
- Ryde Local Environmental Plan 2014; and
- City of Ryde Development Control Plan 2014.

## **8. PLANNING ASSESSMENT**

### **8.1 Environmental Planning and Assessment Act 1979**

#### *Section 4.15 Evaluation*

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

#### *Section 7.4F Planning Agreements*

As part of the development application, the applicant has offered by letter to enter into a VPA with Council. The VPA will require the applicant to provide public benefits as summarised below:

- Rowe Street Mall Upgrade Works - \$5,060,587
  - 5 x 1 bedroom affordable housing apartments - \$3,900,000
  - Works in kind in surrounding street (other than Rowe Street Mall) - \$4,225,091.
- Council at its meeting held on 27 February 2018 accepted the letter of the applicant to enter into a VPA in relation to the Development Application.



It is intended to impose a deferred commencement condition which would require the applicant to enter into a VPA for the delivery of the public benefits as identified within the letter of offer.

## **8.2 Environmental Planning and Assessment Regulation**

This application satisfies Clause 50(1)(a) of the Regulation as it is accompanied by the nominated documentation for development seeking consent for a mixed use development, including:

- A design verification 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 No 65 - Design Quality of Residential Apartment Development; and
- Relevant drawings and montage.

## **8.3 State Environmental Planning Policy (State and Regional Development) 2011**

The Sydney Planning Panel (SPP) is the consent authority for all development with a capital investment value (CIV) of over \$20 million (being the CIV applicable for applications lodged but not determined prior to 1 March 2018 under clause 23 transitional provisions of this SEPP). As the DA has a CIV of \$276,753,423. Council is responsible for the assessment of the DA and determination of the application is to be made by the SPP.

## **8.4 State Environmental Planning Policy No 55 – Remediation of Land**

The requirements of State Planning Policy No. 55 – Remediation of Land apply to the subject site. In accordance with Clause 7 of SEPP 55, the consent authority must consider if the land is contaminated and, if so, whether is it suitable, or can be made suitable, for the proposed use.

A preliminary environmental site assessment was prepared by Environmental Investigation Services (EIS) (RefE30595KMrpt). A review of the site's history indicates that the site has been used primarily for commercial purposes since at least 1943. The report found potential sources of contamination to be:

- Fill material;
- Fuel storage facilities;
- Hazardous building materials;
- Historical commercial / industrial activity; and
- Nearby former contaminated service station.

The report concludes that the historical land use and potential sources of contamination identified would not preclude the proposed development and

recommended that (1) a preliminary intrusive investigation be undertaken to assess soil and ground water contamination conditions and (2) A hazardous building materials survey be undertaken prior to demolition.

Council's Environmental Health officer is comfortable that the site will be excavated to bedrock, effectively removing any contamination. Furthermore, the site can be made suitable for the proposed development based on the Stage 1 contamination testing, however a Stage 2 assessment has been requested in order to enable more detailed investigation that is not possible until the existing development on the site is demolished. That work will inform the specific measures required for remediation and site validation. Appropriate conditions of consent have been imposed. (See condition numbers 116 to 120).

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

The development is identified under the Environmental Planning and Assessment Regulation 2000 as a BASIX Affected Building. As such, a BASIX Certificate (739803M\_04, dated 18 June 2018) has been prepared for the development which provides the development with a satisfactory target rating.

Appropriate conditions will be imposed requiring compliance with the BASIX commitments detailed within the Certificate. (See condition numbers 5, 115 and 181).

### **8.6 State Environmental Planning Policy (Infrastructure) 2007**

The Infrastructure SEPP applies to the subject site given the development is classified as a 'Traffic Generating Development' pursuant to Schedule 3 of the SEPP due to the development having access to classified road or to a road that connects to classified road (if access within 90m of connection, measured along alignment of connecting road) comprising more than:

- 75 dwellings for residential use;
- 2,500m<sup>2</sup> of commercial floor space;
- 50 parking spaces; and
- more than 500m<sup>2</sup> of shops.

Accordingly, the development application was referred to Roads and Maritime (RMS) and concurrence was granted on 9 July 2018.

**Table 2** below contains the provisions of the Infrastructure SEPP applicable to this DA:

<b>Table 2: Infrastructure SEPP</b>		
<b>Provision</b>	<b>Comments</b>	<b>Comply?</b>

<b>Table 2: Infrastructure SEPP</b>		
<b>Provision</b>	<b>Comments</b>	<b>Comply?</b>
<p><b>Clause 104 Traffic generating development</b></p> <ul style="list-style-type: none"> <li>• Before determining a DA for which this clause applies the consent authority must: <ul style="list-style-type: none"> <li>– Take into consideration any submission that the RTA provides in response to that notice within 21 days after the notice was given (unless before the 21 days have passed, the RTA advises that it will not be making a submission),</li> <li>– The accessibility of the site concerned, and</li> <li>– Take into consideration any potential traffic safety, road congestion or parking implications of the development.</li> </ul> </li> </ul>	<p>RMS has raised no objection to the proposal subject to conditions (See conditions numbers 25, 127, 141, 142 and 220)</p> <p>Suitable site access and movement is provided.</p> <p>Required parking is provided and no traffic safety or congestion issues anticipated as a result of provision of deceleration lane.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
<p><b>Clause 87 Impact of Rail Noise or Vibration on Non Rail Development</b></p> <ul style="list-style-type: none"> <li>• The consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LA<sub>eq</sub> levels are not exceeded: <ul style="list-style-type: none"> <li>- In any bedroom in the residential accommodation – 35dB(A) at any time between 10.00pm and 7.00am</li> <li>- Anywhere else in the residential accommodation – 40dB(A) at any time.</li> </ul> </li> </ul>	<p>The development application was accompanied by an acoustic report. This report has confirmed that the development will achieve the required noise levels. A condition of consent has been included to ensure that the development complies with this report. See condition number 121.</p>	<p>Yes</p>
<p><b>Clause 45 Determination of development applications – other development</b></p> <ul style="list-style-type: none"> <li>• Before determining a development application the consent authority must give written notice to the electricity supply authority for the area and take into consideration any comments received within 21 days.</li> </ul>	<p>The development application was referred to Ausgrid on 15 September 2016. No response has been received.</p>	<p>Yes</p>

### **8.7 Deemed State Environmental Planning Policy Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

Deemed SEPP Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005, applies to the whole of the Ryde local government area. The aims of the Plan are to establish a balance between promoting a prosperous working harbour, maintaining a healthy and sustainable waterway environment and promoting recreational access to the foreshore and waterways by establishing planning principles and controls for the catchment as a whole.

As the site is not located on the foreshore or adjacent to the waterway, with the exception of the objective of improved water quality, the objectives of the planning instrument are not applicable to the proposed development.

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

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

- Urban Design Review Panel;
- The 9 SEPP 65 Design Quality Principles; and
- Apartment Design Guide.


#### **8.8.1 Urban Design Review Panel**

As detailed in Section 6, the original scheme and amended schemes were considered by the UDRP on 27 September 2016 and 17 May 2017. The final comments provided indicated general support by the Panel in light of the design changes and improvements incorporated into the final scheme, in response to earlier Panel comments.

#### *SEPP 65 Design Quality Principles*

There are nine design quality principles identified within SEPP 65. The following table provides an assessment of the proposed residential flat building (RFB) against the nine design principles of the SEPP.

<b>Table 3: SEPP Design Quality Principles</b>	
<b>Planning Principle</b>	<b>Comment</b>
<p><b>Context and Neighbourhood Character</b></p> <p>Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic and environmental conditions.</p> <p>Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</p> <p>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</p>	<p>The site occupies the majority of one of the larger blocks in the town centre. A key aspect of the scheme is the extension of The Avenue, through the site to provide a direct pedestrian connection between Rowe and Rutledge Streets. The extension is referred to as The Street and at ground level is 12m in width. Also proposed is a parallel pedestrian lane to the east through the site which also connects these streets, referred to as The Laneway which is 6m in width.</p> <p>The through site link represents a positive change to the town centre pedestrian network and enhances and connects the public domain.</p> <p>In relation to the through site link/shopping centre access, the view corridor through the site is open to the sky for its full length (following amended design and Panel advice), and it will assist in integrating the desirable through site link space into the town centre</p>

	<p>and reduce perceived bulk and scale of the proposal.</p> <p>The secondary link to the east of the market provides improved permeability through the site and to the central market and retail precinct with a suitable scale and alignment.</p> <p>A hierarchy of spaces is formed through the site links, and within these links sits the market hall (central retail space) and hanging garden above (residential open space). Each of these spaces offer a role in the context of the site and their connection to the broader locality through landscaping and built form.</p> <p>Figure 17 shows the location of these spaces.</p>  <p><b>Figure 17. Location of the Mall, the Street and the Laneway.</b></p>
<p><b>Built Form and Scale</b>          Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</p> <p>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</p>	<p><b>Rowe Street</b>          Rowe Street is the main retail street and public realm focus of Eastwood Town Centre and is characterised by 2 storey, fine grain shopfronts. The proposed 6 storey street edge has been modified to balance a strongly articulated vertical rhythm with regular ground floor shopfronts defining the street interface. The building design now introduces a strong 2 storey retail datum, expressed in the façade, which is supported by the Panel. (See Figure 13).</p> <p><b>Rutledge Street</b>          Rutledge Street is the boundary between the town centre and the R2 residential zone to the south. The proposal includes 11 and 13 storey buildings built to the southern boundary, with sheer walls to the full height proposed.</p> <p>The Panel supports the following design refinements evident in the latest scheme:</p> <ul style="list-style-type: none"> <li>• Elimination of the bridging floors between buildings DA and DB.</li> <li>• Reduction in height of bridging floors between CA and CB to 6 storeys.</li> <li>• Establishment of a datum that continues a 5 storey datum at buildings DB or DA.</li> </ul>
<p><b>Density</b>          Good design has a density appropriate for a site and its context, in terms of the number of units or residents.</p>	<p>There is no FSR applicable on the site. Consequently, the primary control influencing the density of development is established through</p>

<p>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.</p>	<p>building height. The Panel initially raised some issues with the height non-compliance as the proposal is already testing established limits for density, such as bridge link elements and a narrower-than-anticipated through site link.</p> <p>The Panel's view is that the development in its revised form achieves a maximum supportable density relative to the permitted building heights.</p> <p>The proposal includes 409 units across seven buildings of varying heights. The proposal generally meets the ADG requirements, offering acceptable levels of privacy, solar access, ventilation, and diversity.</p>
<p><b>Sustainability</b></p> <p>Good design involves design features that provide positive environmental and social outcomes.</p> <p>Good sustainable design includes use of natural cross breezes 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.</p>	<p>The applicant has provided BASIX Certificate No (739803M_04, dated 18 June 2018)] which indicates that the residential component of the buildings will meet the energy and water use targets set by the BASIX SEPP.</p> <p>A Waste Management Plan for the demolition of the existing buildings has been submitted and is considered acceptable by Council's Waste Officer.</p> <p>The design has also ensured the development will comply with the passive solar design principles and cross ventilation as provided in the Apartment Design Guide.</p> <p>The Panel questioned the achievement of cross ventilation at internal corners alongside 'notches' and using angled windows. In light of this the Applicant engaged a sustainability expert (ARUP, dated 28 August 2018) to review the application.</p> <p>The peer review concluded that the south L Shaped apartments and single aspect apartments alongside notches do not achieve ADG compliance for natural cross ventilation. Notwithstanding the final revised cross ventilation achieved across the development is 60% (216/361 units up to Level 9) and therefore complies.</p>
<p><b>Landscape</b></p> <p>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.</p> <p>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.</p> <p>Good landscape design optimises useability, privacy and opportunities for social interaction,</p>	<p>The amended plans now limit access to the hanging garden to residents only, which is supported by the Panel. Through design changes recommended by the Panel, privacy between dwellings and the hanging garden have been adequately resolved through adjustable/operable screening on the dwelling balconies which enables privacy to be controlled by residents. Figure 18 shows the location of the hanging garden.</p>

<p>equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.</p>	 <p><b>Figure 18. Location of the hanging garden on level 26.</b></p> <p>The development provides a variety of landscape contributions :</p> <ul style="list-style-type: none"> <li>• Upgrade of adjacent streets;</li> <li>• The Street (through site link between Rowe and Rutledge Streets)</li> <li>• The hanging garden (resident COS); and</li> <li>• Private and communal open spaces.</li> </ul> <p>The landscaping of the communal open spaces as well as other design features such as seating, swimming pool and rooftop gardens will ensure that these spaces provide useable an protected recreational and passive areas for future residents.</p> <p>Each unit is also provided with ADG compliant private balcony areas sufficient for recreational use and amenity benefit.</p>
<p><b>Amenity</b>                  Good design positively influences internal amenity for residents and external amenity for 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.</p>	<p>Adequate internal amenity can be achieved within dwellings and communal open spaces. All residents are afforded direct access to areas of communal open space from respective buildings.</p> <p>The development complies with the controls and/or objectives contained in the Apartment Design Guide in respect to apartment sizes, access to sunlight, ventilation, acoustic privacy, storage layout and access requirements.</p>
<p><b>Safety</b>                  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 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.</p>	<p>The development is consistent with the CPTED principles as follows:</p> <ul style="list-style-type: none"> <li>• The entrance to each apartment building will be clearly legible and well lit.</li> <li>• Appropriate signage to be provided to the buildings' entrance with appropriate lighting.</li> <li>• Lighting, both internal and external, will be provided in accordance with Australian Standards.</li> </ul> <p>The proposal was referred to NSW Police who has reviewed the proposal and provided support for the</p>

	<p>proposal subject to conditions (See Condition numbers 169 to 172).</p> <p>The NSW Police referral also recommended that the sale of alcohol should be prohibited from the commercial/retail premises.</p> <p>This request is not considered appropriate and has not been included. The applicant provided a response seeking to not have a blanket prohibition on the sale of alcohol enforced as a condition of consent. Noting that any liquor premises will be subject to the usual licensing process to ensure the responsible sale and service of alcohol.</p> <p>As submitted by the applicant, it is agreed that the sale of liquor from a licensed premises will not detract from the quality of the development or area. The sale of alcohol is a standard offering and even expectation from customers and would be an unreasonable burden placed on the applicant.</p> <p>The request and this response was provided as a new referral to NSW Police, however no further comment have been provided.</p>
<p><b>Housing Diversity and Social Interaction</b>          Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.          Well-designed 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.</p>	<p>The proposed development provides a mix of 1, 2 and 3 bedroom apartments (represented as 24%, 61% and 15% respectively).</p> <p>As endorsed by Council (through VPA agreement), 5 x 1 bedroom units will be dedicated to Council for affordable rental housing.</p> <p>The proposal provides 49 accessible units across the development which represents 12% of the total 409 units.</p> <p>The development provides a variety of communal spaces for residents to interact and socialise. In addition, the residential lobbies are located along active street frontages including the proposed Street and Laneway links to encourage social interaction appropriate with the sites context within a town centre.</p>
<p><b>Architectural Expression</b>          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 buildings responds to the existing or future local context, particularly desirable elements and rhythms of the streetscape.</p>	<p>The Panel notes the revised architectural expression of the buildings and a number of requested modifications including reinforcement of the 2 storey façade element along Rowe Street through 2 storey base, finer grain shop fronts, and architectural treatments such as different brick tones, landscaping, metallic architectural materials, and an art wall.</p> <p>The significant design change as supported by the Panel is the deletion of the bridge crossing The Street which previously linked 3 levels of Buildings DA and DB and reducing the height of the link between Buildings CA and CB to 6 storeys (from 8).</p> <p>The Rutledge Street elevation has been provided with a 5m datum line to Buildings DA, DB, CA and CB through materiality. This provides the commercial</p>



	<p>Building DB with improved scale relationship with the Level 5 podium elements along Rutledge Street.</p> <p>The conclusion of the Panel was that the proposal is much improved as a consequence of incorporating the above design changes into the scheme and the inclusion of the design strategy that introduces a diversity of brick types and other facade materials.</p>
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### 8.8.2 Apartment Design Guide

The SEPP requires consideration of the "Apartment Design Guide" (ADG) which supports the 9 design quality principles by giving greater detail as to how those principles might be achieved. **Table 4** below provides an assessment of the proposal against the matters in the ADG:

<b>Table 4: SEPP NO. 65 Apartment Design Guide - Compliance Table</b>		
<b>DESIGN CRITERIA</b>	<b>PROPOSAL</b>	<b>COMPLIES</b>
<b>Part 2: Development Controls</b>		
<p><b>Building Depth</b> Use a range of appropriate maximum apartment depths of 12-18m from glass line to glass line</p>	<p>Building:</p> <p>AA – 10m to 21m BA – 20m to 23m, BB – 9m, and 16m, to 21m CA – 8.5m to 21m CB – 18m to 22.5m DA – 12m to 18m DB – 14m</p>	<b>No Refer to discussion</b>
<p><b>Building Separation</b> Minimum separation distances for buildings are:</p> <p><u>Up to 4 storeys:</u></p> <ul style="list-style-type: none"> <li>• 12m (Habitable)</li> <li>• 9m (habitable/non-habitable)</li> <li>• 6m (non-habitable)</li> </ul> <p><u>5-8 Storeys</u></p> <ul style="list-style-type: none"> <li>• 18m (Habitable)</li> <li>• 12 (habitable/non-habitable)</li> <li>• 9m (non-habitable)</li> </ul>	<p><u><i>NB – Rowe Street commences at Ground Floor, Rutledge at Level 1</i></u></p> <p><u>Up to 4 storeys</u></p> <p>12m+ except for: L1, L2, L3 – 10.5m-12 between AA and BA L1, L2, L3– 6m between BA and BB (blank wall) L2, L3 – 9m between CA and DA (blank wall) L4 (Rutledge) – 9m between CA and DA</p> <p><u>5-8 storeys</u></p> <p>18m+ except for: L4 (Rowe), L5 – 6m between BA and BB (Blank wall) L5 – 10.5m-12m between AA and BA L5 - 11-12m between DA and AA L6, L7 – 11-12m between DA and DB (blank wall) L5, L6, L7 – 12m between BB and CA  L8 (Rutledge) – 11m between DA and DB (blank wall)</p>	<p><b>No*</b> Yes</p> <p>Yes <b>No*</b></p> <p>Yes</p> <p><b>No*</b> <b>No*</b> Yes</p> <p><b>No*</b></p> <p>Yes</p>

<p><u>9+ storeys</u></p> <ul style="list-style-type: none"> <li>• 24m (Habitable)</li> <li>• 18m(habitable/non-habitable)</li> <li>• 12m (non-habitable)</li> </ul> <p><u>No separation is required between blank walls.</u></p>	<p>L5, L6, L7 – 11-16.5m between CB and CA (blank wall) L8 (Rutledge)– 11m between CB and CA</p> <p><u>9+ storeys</u> L9 – 11m between DA and DB (blank wall) L9, L10, L11 – 23m between CA and DA (blank wall) L8 (Rowe &amp; Rutledge) – 12m between BB and CA (Blank wall) L9, L10, L11 – 11m between CB and CA</p>	<p>Yes</p> <p><b>No*</b></p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p><b>No*</b></p> <p><b>*Refer to discussion below</b></p>
<b>Part 3 Siting the development Design criteria/guidance</b>		
<u>Communal and Public Open Space</u>		
<p>Communal open space has a minimum area equal to 25% of the site.</p> <p>Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)</p>	<p>The proposal provides 3,244.26m<sup>2</sup> of communal open space which equates to a total of 25.4% of the site area.</p> <p>52.12% of open space receives &gt;2hours sunlight.</p>	<p>Yes</p> <p>Yes</p>
<u>Deep Soil Zones</u>		
<p>Deep soil zones are to meet the following minimum requirements:</p> <p>Site area greater than 1,500m<sup>2</sup> = 7%</p>	<p>900m<sup>2</sup> which equates to 7.17% deep soil area</p>	<p>Yes</p>

<p><u>Visual Privacy</u></p> <p>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <ul style="list-style-type: none"> <li>• Up to 12m (4 storeys) 6m (habitable) / 3m (non-habitable)</li> <li>• Up to 25m (5-8 storeys) 9m (Habitable) / 4.5m (non-habitable)</li> <li>• Over 25m (9+ storeys) 12m (Habitable) / 6m (non-habitable)</li> </ul>	<p>Internal to site: refer to 2C Building Separation</p> <p>External to site:</p> <p>Minimum 9m separation to adjoining buildings at up to 8 storeys;</p> <p>A 9m setback is provided from Building AA to the western boundary. Currently, the building at this property (fronting Rowe Street) is 2 storeys in height. Building AA contributes greater than 50% of the separation requirement.</p> <p>A 6m setback is provided from Building DB to the western boundary. Building DB contributes 50% of the separation requirement.</p> <p>A 9m setback is provided from Building CB to the eastern boundary. Currently, the building at this property (fronting Rowe Street Mall) is 2 storeys in height. Building CB contributes greater than 50% of the separation requirement.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
<p><u>Car parking</u></p> <p>For development in the following locations:</p> <ul style="list-style-type: none"> <li>• on sites that are within 800 metres of a railway station; or</li> <li>• within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre,</li> </ul> <p>the minimum parking for residents and visitors to be as per RMS Guide to Traffic Generating Developments, or Council's car parking requirement, whichever is less.</p>	<p>Addressed under DCP Compliance.</p>	<p>N/A</p>
<p><b>Solar Access and Daylight</b></p> <p>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas</p> <p>No more than 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.</p>	<p>72.1% receive in excess of 2 hours of sunlight to living room windows and private open space areas during mid-winter.</p> <p>(As confirmed by Steve King Report, dated 28.6.17)</p> <p>15.2% (62 units of 409) (As confirmed by Steve King Report, dated 28.6.17)</p>	<p>Yes</p> <p><b>No Refer to discussion</b></p>
<p><b>Natural Ventilation</b></p>		

<p>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed</p>	<p>60% (as confirmed by ARUP, dated 28.8.18)</p>	<p>Yes</p>
<p><b>Ceiling Height</b></p> <p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <ul style="list-style-type: none"> <li>Habitable Rooms – 2.7m</li> <li>Non-habitable rooms – 2.4m</li> <li>If located in a mixed use area - 3.3m for ground and first floor to promote future flexibility</li> </ul>	<p>All habitable rooms have minimum 2.7m ceiling heights. Non-habitable rooms contain ceiling heights that are at least 2.4m Ground floor 4m to 5m (Rutledge and Rowe Street) First floor building height is 2.7m</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p><b>No</b></p> <p><b>Refer to discussion</b></p>
<p><b>Apartment Layout</b></p> <p>Apartments are required to have the following minimum internal areas:</p> <ul style="list-style-type: none"> <li>Studio - 35m<sup>2</sup></li> <li>1 Bedroom - 50m<sup>2</sup></li> <li>2 Bedroom - 70m<sup>2</sup></li> <li>3 Bedroom - 90m<sup>2</sup></li> </ul> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms</p> <p>Master bedrooms have a minimum area of 10m<sup>2</sup> and other bedrooms 9m<sup>2</sup> (excluding wardrobe space)</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> <li>3.6m for studio and 1 bedroom</li> </ul>	<p>All units comply with minimum unit sizes. (Confirm by unit schedule DA 1906)</p> <p>All units comply with the exception of: Unit AA0603 – 2B + 2Bath : 74.2 Unit AA0704 – 2B + 2Bath: 74.2; and Unit AA0801 – 2B + 2Bath: 74.1</p> <p>The above represents very minor departure from the requirement of 75m<sup>2</sup> for additional bathroom. This represents less than 1% of units and the variation of unit size is also minimal being less than 1%.</p> <p>Complies</p> <p>Minimum 10m<sup>2</sup> or 9m<sup>2</sup> (excluding wardrobe)</p> <p>Minimum 3m.</p>	<p>Yes</p> <p><b>On merit</b></p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

apartments • 4m for 2 and 3 bedroom apartments	Minimum 3.6m or 4m.	
<b>Private Open Space</b> All apartments are required to have primary balconies as follows: • Studio - 4m <sup>2</sup> • 1 Bedroom - 8m <sup>2</sup> (Minimum depth of 2m) • 2 Bedroom - 10m <sup>2</sup> (Minimum depth of 2m) • 3 Bedroom - 12m <sup>2</sup> (Minimum depth of 2.4m)	All units comply with minimum private open space area.  (Confirmed by POS schedule DA 1906)	Yes
<b>Common Circulation Space</b> The maximum number of apartments off a circulation core on a single level is 8.  <i>Guidance Note: 8 or Max. 12</i>  For buildings of 10 storeys and over the maximum number of apartments sharing a single lift is 40.	6 to 11 apartments per circulation core, refer below.  Complies with guidance note  2 lifts per circulation core  Except Building DB which services 12 units only).	-  Yes  Yes
<b>Storage</b> In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: • Studio - 4m <sup>2</sup> • 1 Bedroom - 6m <sup>2</sup> • 2 Bedroom - 8m <sup>2</sup> • 3 Bedroom - 10m <sup>2</sup>  At least 50% of the required storage is to be located within the apartment	Compliant storage is provided within each unit and within the basement levels.  (Confirmed by storage schedule DA 1908)  Storage is provided within each unit and the basement levels. At least 50% of required storage is located within apartments.  (Confirmed by storage schedule DA1908)	Yes   Yes

As indicated by the above ADG table, the proposed development does not meet the design criteria relating to building depth, building separation, solar access, and first floor ceiling height.

Each of these issues is discussed further below.

### Building Depth

Part 2E of the ADG seeks a range of appropriate maximum apartment depths of 12-18m from glass line to glass line. The proposed development provides a range of building depths across the 7 buildings (AA, BA, BB, CA, CB, DA and DB), as follows:

- AA – 10m to 21m
- BA – 20m to 23m,
- BB – 9m, and 16m, to 21m
- CA – 8.5m to 21m
- CB – 18m to 22.5m
- DA – 12m to 18m
- DB – 14m

The location of the buildings are demonstrated below:

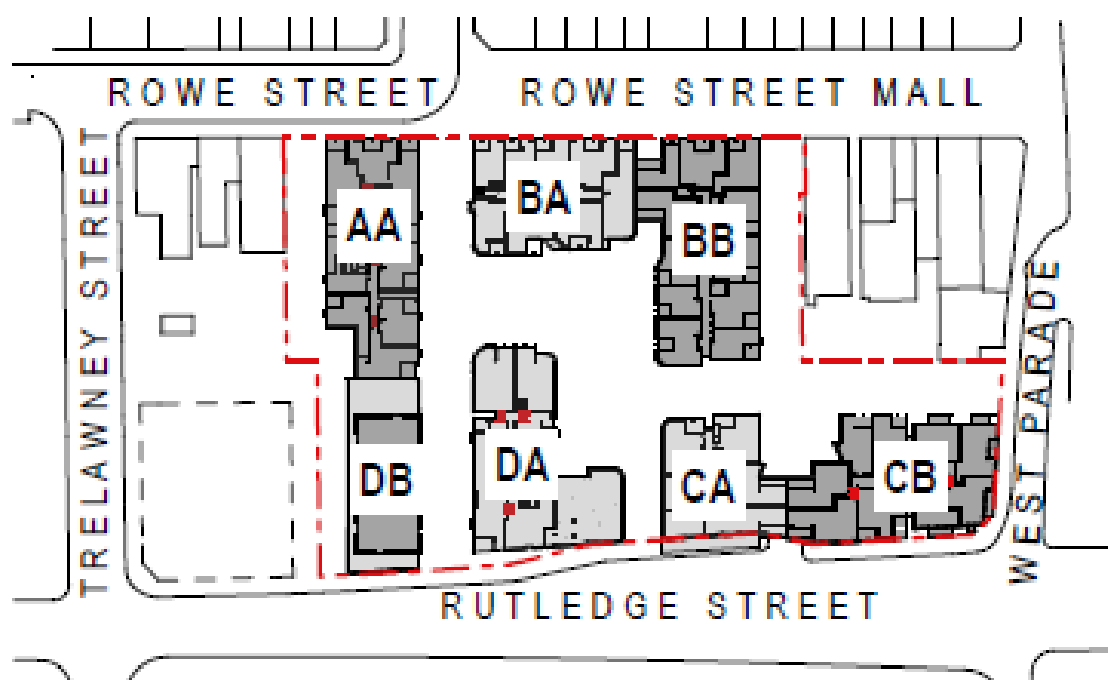


Figure 19. Site Plan showing the location of the proposed buildings.

Notwithstanding the numeric departure to the ADG recommended building depths, the residential units perform well with respect to solar access, natural light and ventilation to habitable rooms due to the optimisation of the floor plan where the centre of the floor plate, being the area where the light and ventilation supply could be poor, are occupied by double loaded common corridors, vertical circulation and ancillary rooms for the common area and for units.

There is no significant bulk perceived from the proposed deeper buildings due to the articulated facades and breaks in mass provided by the through site linkages between Rowe and Rutledge Streets. Accordingly, the proposed building depths are acceptable for both building performance and presentation.

### Building Separation

Part 2F of the ADG requires the following separation between buildings:

<b>Building height</b>	<b>Separation Distance</b>
Up to 4 storeys	6-12m
Up to 8 storeys	9-18m
9 storeys and above	12-24m

It is noted that no separation is required between blank walls. It is also noted that the Rowe Street Elevation commences at ground level and due to the changes in levels between Rowe Street and Rutledge Street, the Rutledge Street frontage commences at Level 1. Therefore, these levels differences have been accounted for in consideration with the separation controls which refer to storeys.

In term of the proposed development, up to 4 storeys adjacent buildings internal to the site comply or provide a blank wall with the exception of:

- L1, L2, L3 – 10.5m-12 between AA and BA

This represents a minor non-compliance which results in the provision of a bay window to achieve solar compliance. The openings face north/south on Building AA with a blank wall opposing Building BA as such there are no direct privacy impacts.

- L4 (Rutledge frontage) – 9m between CA and DA

This represents a minor non-compliance which results in the provision of a bay window to achieve solar compliance. The openings face north/south on Building CA with a blank wall opposing Building DA as such there are no direct privacy impacts.

At the height of 5-8 storeys, adjacent buildings internal to the site comply or provide a blank wall with the exception of:

- L5 – 10.5m-12m between AA and BA

The predominant setback is 12m with a reduction resulting from bay window (AA) and an angled window (BA). With the combination of north/south openings to the bay windows, the angled opening and offsetting of windows in addition to a privacy screen (refer to Condition 1(e)) required to dining window of Unit BA0507 or AA0504, the privacy relationship is considered to be acceptable.

- L5 - 12m between DA and AA (windows oppose balcony – highlight opening required to Unit DA505)

The lounge room opening to Unit DA505 is setback 12m from the balcony edge of Unit AA507. As these are opposing openings, a Condition will be required for the provision of a highlight opening to the lounge room window to Unit DA505 (refer to Condition 1(e)).

- L5, L6, L7 – 12m between BB and CA (windows oppose balcony – highlight opening required to Units BB503, BB603 and BB703)

The southern bedroom windows to Units BB503, BB603 and BB703 are setback 12m to dining room of CA505, C605 and CA705. As these are opposing openings a Condition will be required for the provision of a highlight opening to the bedroom windows within BB (refer to Condition 1(e)).

- L8 (Rutledge frontage)– 11m between CB and CA

The 3 bedrooms within Unit CB806 does not show any windows. The absence of windows are contrary to Part 4D of the ADG and will be required by condition of consent (refer to Condition 1(f)). To assist with the reduced separation with the habitable windows to Building CA at Levels 8 the required openings will need to be a highlight windows.

At the height of 9+ storeys, adjacent buildings internal to the site comply or provide a blank wall.

Subject to the conditions referred above, the proposed development is considered to provide suitable internal building separation.

#### Solar access

Part 4A permits a maximum of 15% of apartments in a building to receive no direct solar access between 9am and 3pm in mid-winter.

The proposed results in 62 units not receiving direct solar access between the requisite hours which equates to 15.2%. These figures are confirmed by Solar Access Analysis prepared by Steve King (report dated June 2017). The 0.8% exceedance represents 2 additional units which is considered acceptable. The applicant's position, that the site is a north-south site with a large expanse of building facing south to Rutledge Street, combined with the lower height limits provided to the north is accepted. As stated in the Solar Report, *this exceedance is largely due to a more or less irreducible shading of otherwise favorably oriented apartments on lower levels and in my view is a predicable outcome of the heights and density of the development. In my considered opinion, and extremely successful review and redesign process has resulted in what is effectively a fully complying amended design.*

The non-compliance is also accepted given the development performs well (generally) and in terms of solar access being provided at midwinter for greater than two hours to 72.1% of the residential units which exceeds the minimum ADG requirement.

#### Ground Floor Ceiling Height

Part 4C seeks a ceiling height of 3.3m (if located in mixed use areas) for ground and first floor of buildings to promote future flexibility of use.

The development proposes street front activation with retail and commercial uses to all streets interfacing with the site with the exception of the nominal areas taken by driveways required for services and publicly accessible areas within the ground floor levels fronting streets.



The buildings generally have a height above that required by the ADG. For example 5.5m is provided to the Rowe Street frontage. Due to the topographic conditions, the Rutledge Street and West Parade frontages varies from 5m to 4m floor ceiling height, with an average height above the minimum ADG design criteria. The retail areas vary from speciality and kiosks to mini-major and major supermarkets and provide a considerable level of adaptability for a variety of retail and commercial uses. Most of the residential buildings are sitting on top of two levels of retail with a height of 5.5m and are designed to provide a reasonable level of privacy and security.

The applicant's position is reasonable and it is accepted that the residential strata will make it very difficult to combine residential and commercial premises sharing common vertical circulation, lift lobby, main building entry, and common area at the residential level like common corridors and recycle rooms. As such, the first floor level is proposed to remain with the minimum 2.7 metres for residential units, as adaptation for non-residential uses is considered impractical and unlikely.

### Apartment sizes

3 of the two bedroom and two bathroom apartments do not comply with the minimum apartment size of 75m<sup>2</sup>. These apartments have an area of 74.1m<sup>2</sup> and 74.2m<sup>2</sup>. The variations are numerically small with a variation of approximately 1% from the minimum size. Also, this non-compliance on the affects 3 of the 409 apartments. This represents less than 1% of the number of apartments. In these circumstances, the variation is considered to be acceptable.

## **8.9 Ryde Local Environmental Plan 2014**

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

### **Clause 2.3 Zone Objectives and Land Use Table**

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

The proposal constitutes a mixed use development comprising residential and commercial uses. The proposed development is permissible as "*commercial premises*", "*medical centres*" and "*shop top housing*" is permissible in the zone and "*residential flat building*" is not listed as a prohibited form of development in the B4 zone.

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 B4 zone are as follows:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

- To ensure employment and educational activities within the Macquarie University campus are integrated with other businesses and activities.
- To promote strong links between Macquarie University and research institutions and businesses within the Macquarie Park corridor.

The subject site forms part of the Eastwood Town Centre precinct under the Ryde DCP 2014. The proposal generally meets the objectives of the B4 zone by providing a suitable mix of retail floor space and residential units. The site is located with close proximity public transport, public open space and community services.

**Clause 4.3 Height of Buildings**

The height of a building on the subject land is not to exceed the maximum height of 21.5m along Rowe Street and 33.5m along Rutledge Street.



**Figure 20: LEP Height of Buildings Map. R1 – 21.5m and U4 – 33.5m.**

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

The proposed development includes 7 buildings incorporating the following maximum building heights:

Table 5: Building Heights					
Location	Building	HOB (m)	Proposed Storeys	Proposed height	Difference (m)
Rutledge Street	CA	33.5	11	35.9m to 38.3m	+2.4 to 4.8
	CB	33.5	13	42.4m to 44.4m	+8.9 to +10.9
	DA	21.5	11	36.85m to 39.65m	+15.35 to +18.15
		33.5			+3.35 to +6.15
	DB	33.5	10	33.85m to 35.8m	+0.35 to +2.30
Rowe Street	AA	21.5	Part 6 Part 9	21.2 to 31.9	-0.3 to +10.4
	BA	21.5	6	20.35 to 21.95	-1.15 to +0.45

	BA	21.5	Part 6 Part 9	21.4m to 32.31	-0.10 to +10.81
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Figure19 below provides a blanket diagram to demonstrate a building massing comparison to the height of building standards and demonstrates proposed variations in storeys and metres.

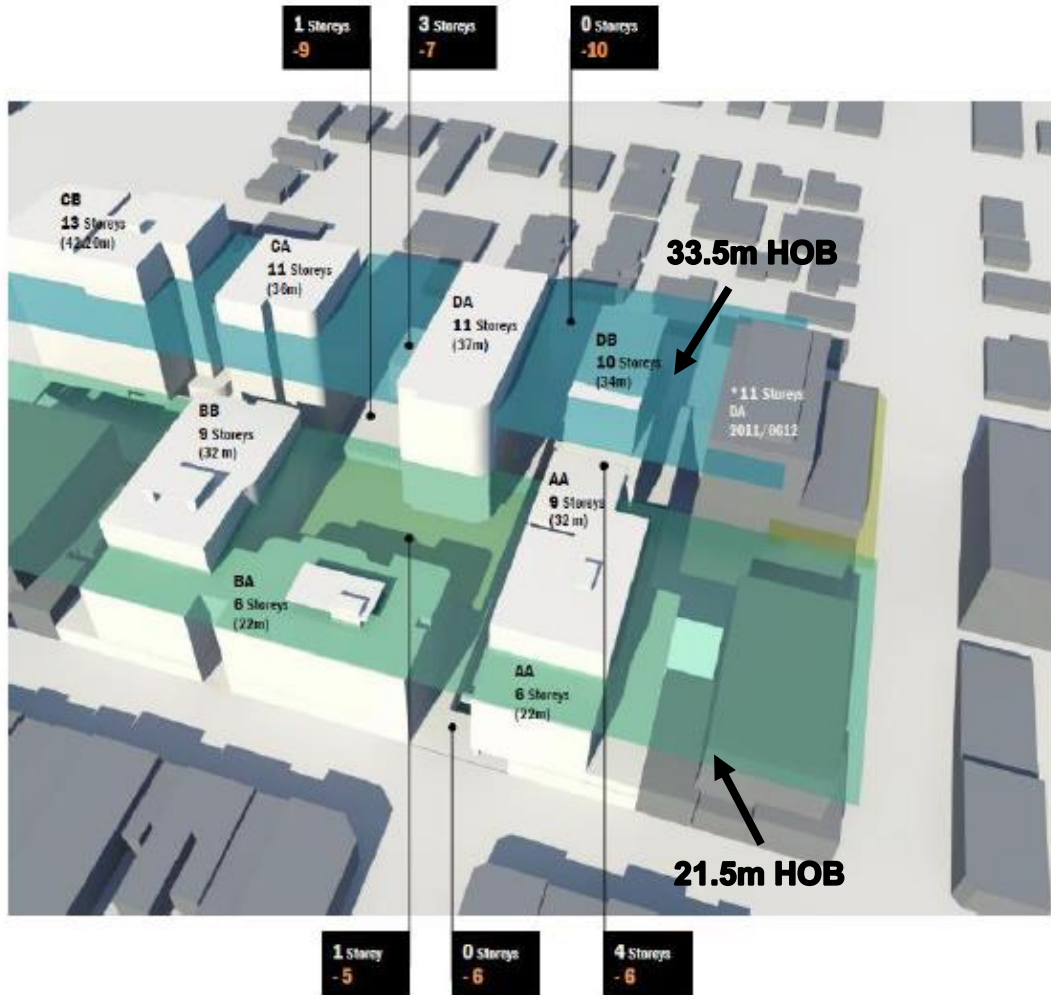


Figure 21 Building height comparison with HOB. The blue represents the 33.5m LEP maximum building height and the green the 21.5m LEP maximum building height.

Figure 22 to 26 shows sections through each of the buildings and the breach to building height.

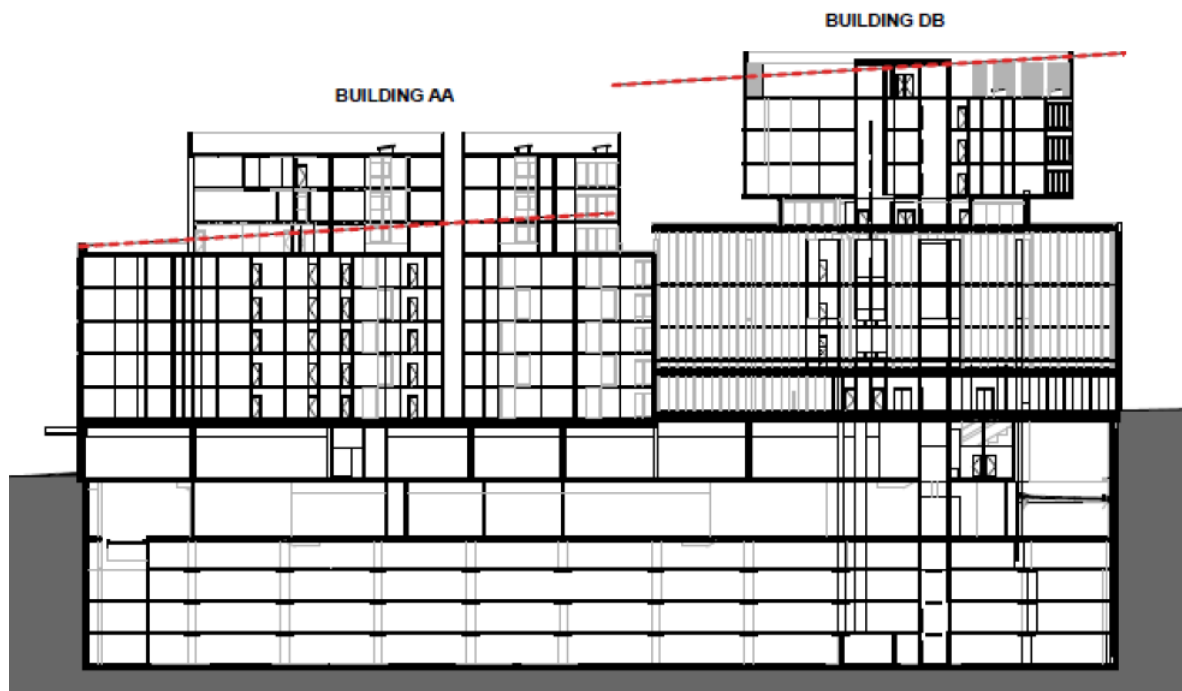


Figure 22 Section through Building AA and DB showing the height variation. The red line represents the applicable height control.

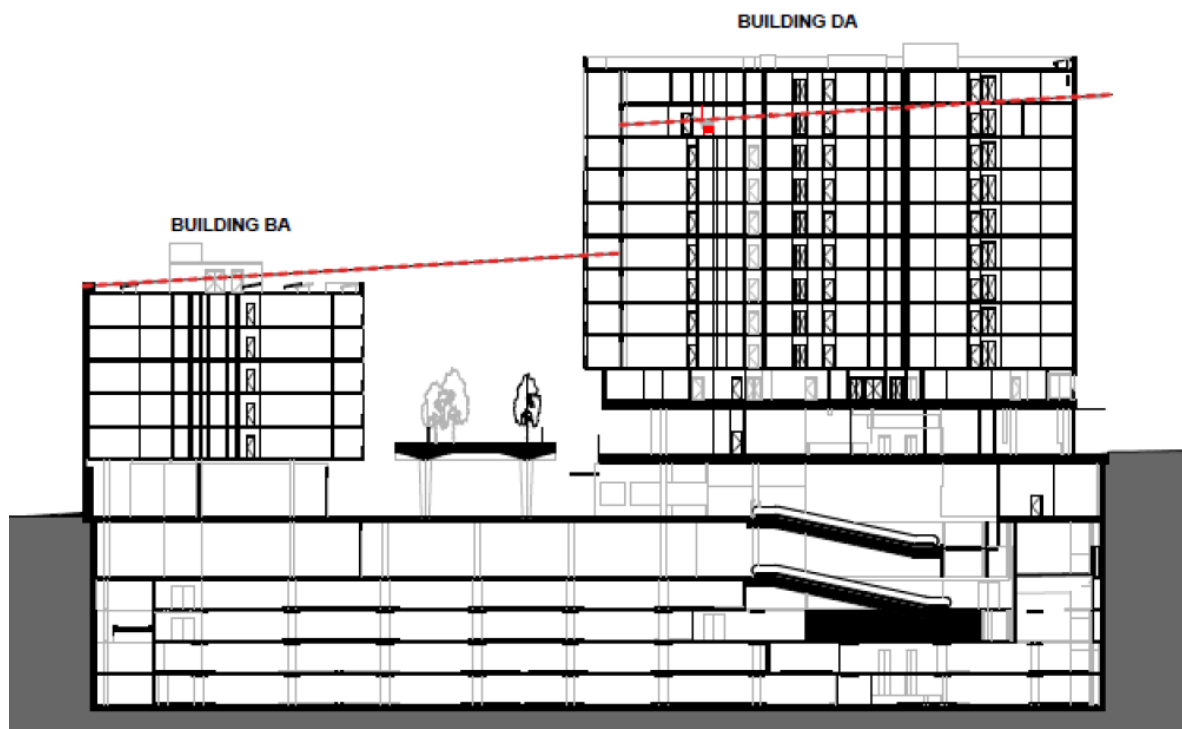


Figure 23. Section through Buildings BA and DA showing the height variation. The red line represents the applicable height control.

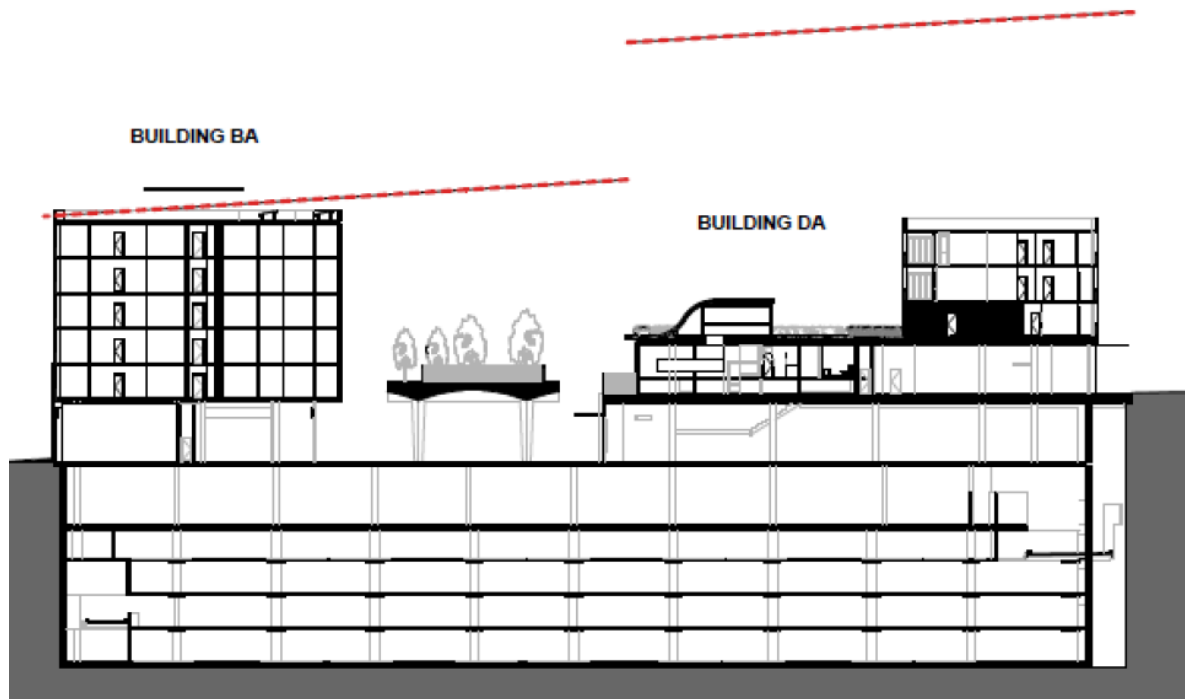


Figure 24 Section through Buildings BA and DA showing the height variation. The red line represents the applicable height control.

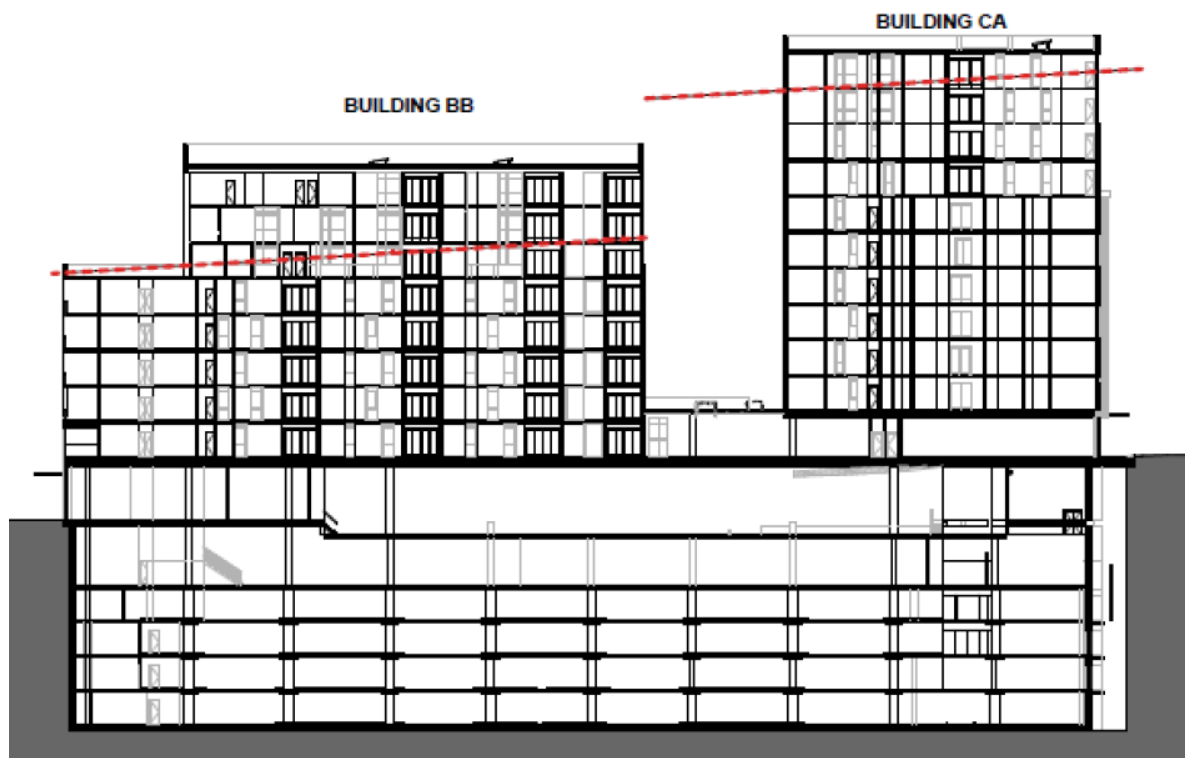
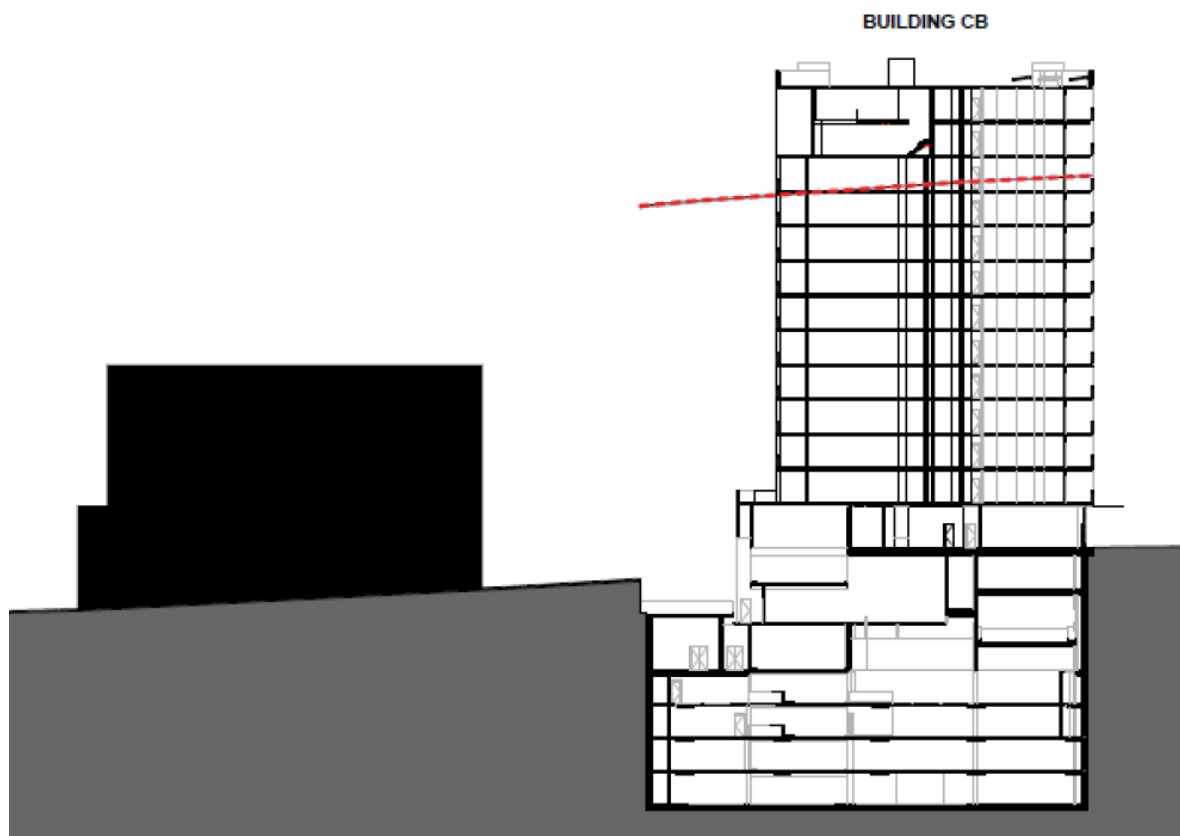


Figure 25. Section through Buildings BB and CA showing the height variation. The red line represents the applicable height control.



**Figure 26. Section through Building CB showing the height variation. The red line represents the applicable height control.**

The applicant has provided a Clause 4.6 Variation Statement which in summary states:

- *The proposal includes additional building height above that permitted in carefully considered appropriate locations across the site. The proposed variation is a deliberate strategy to bring about a superior urban design outcome for the Eastwood Town Centre.*
- *The additional building height at specific locations across the site is offset by the lower buildings and in some cases, absence of built form that as envisaged by the LEP controls and introduction of open spaces and through site linkages, which are accessible to the public creating public benefits,*
- *The proposal represents a better urban design outcome than a compliant scheme as it provides greater areas of public space in the form of site links and plaza spaces and space between buildings to allow views into the site*
- *The proposed built form and height is consistent with the desired future character of the Eastwood Town Centre,*
- *Variations do not result in unreasonable adverse amenity impacts;*
- *The non-compliance does not hinder the development's ability to satisfy the objectives of the B4 Mixed Use zone.*

The assessment against the applicant's request to vary the LEP height control is provided under Clause 4.6 (Exceptions to Development Standards) below.

### **Clause 4.6 Exceptions to Development Standards**

Clause 4.6 of LEP 2014 allows exceptions to development standards. 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 that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

The consent authority must be satisfied that the applicant's written request has satisfied the above criteria and that the proposed development will be in the public interest and it is consistent with the zone objectives as well as the objectives of the particular development standard. In addition, consent cannot be granted unless the concurrence of the Director-General has been obtained. These matters are discussed below.

### **1. Written request provided by the applicant.**

The applicant has provided a revised written request seeking to justify the variation to the development standard based on the amended plans. A copy of the request is attached to this report as **Attachment 2**.

### **2. Whether compliance with the development standard would be unreasonable or unnecessary in the circumstances of the case.**

The applicant's written request has demonstrated that compliance with the development standard would be unreasonable and unnecessary as the development complies with the objectives of the standard. The written request has also considered the environmental planning grounds that are particular to the circumstances of the proposed development. In part the applicant's submission is as follows:

- *The proposal achieves the objectives of the development standard as provided in clause 4.3 of the LEP as the proposal does not result in unreasonable impacts on adjacent land in terms of view loss, overshadowing, building bulk impacts, and loss of privacy.*
- *The proposed variation to the maximum height of buildings development standard does not hinder the proposals ability to achieve the objectives of either the B4 Mixed Use zone or those objectives set out in the Eastwood Town Centre DCP at Section 1.2. In particular, the proposal will contribute to the revitalisation of the Town Centre through provision of a mix of land uses to service the needs of the catchment within a high quality redevelopment of well-considered build form and open space areas that respond to the surrounding character of the area.*
- *The proposal directly aligns with the Future Character Statement for Eastwood Town Centre set out at Section 2.2.2 of the DCP. Specifically, the proposal provides a high level of aesthetic amenity at street level though key pedestrian*



*links and active frontages, provides safe, attractive and convenient public spaces, a vibrant and viable contribution to the retail and commercial offering of the centre, provides robust and attractive passive recreation spaces, and will result in a well balanced mix of complementary land uses that can serve the surrounding residential population.*

- *An alternate design that complies with the height of building standards has been prepared, which has regard to the relevant planning controls in terms of compliance with the HOB standards and SEPP 65.*
- *The alternate design demonstrates that more floor space could be achieved on the site and comply with the HOB development standards, although it will not deliver the better environmental planning outcomes that are achieved with the approval of the proposed development, being the publicly accessible through site linkages and plaza;*
- *The proposal includes additional building height above that permitted in carefully considered appropriate locations across the site. The proposed variation is a deliberate strategy to bring about a superior urban design outcome for the Eastwood Town Centre.*
- *This request seeks to support a better environmental planning outcome than a proposal that strictly complies with the height of building standards. The proposal seeks to distribute buildings with good separation and introduce new publicly accessible ways through the site that are generally open to the sky. The proposed building footprints do not utilise the full site or entire height envelopes.*

The submitted Clause 4.6 Variation Statement provides satisfactory arguments to depart from the maximum building height control and sufficient justification is provided by the applicant to demonstrate that strict compliance with the development standard would be unreasonable and unnecessary in the circumstances of the case.

It is worth noting that Council have in the past approved height increase to LDA2011/0612 for the adjoining site to the south west (No. 7-9 Rutledge Street) for a mixed use development. The site straddled two HOB standard bands, 33.5m and 18.5m and Council supported the proposed development that included variations to both HOB standards applying to the site, as follows:

Allotment	HOB Standard	proposed height	Approved variations to HOB Standards
Western Lot	18.5m	41.30m	22.8m over (123% variation)
Eastern Lot	30.5m (RLEP 2010) 33.5m (RLEP 2014)	38.06m	7.5m over the maximum under LEP2010 (24.6% variation) 4.56m over the maximum under LEP2014 (13.6% variation)

Note: The above figures have comes from the reports to Council in respect to LDA2011/0612.



### **3. There are sufficient environmental planning grounds to justify contravening the development standard.**

The applicant has addressed the environmental grounds to justify the non-compliance as follows:

*There are sufficient environmental planning grounds to justify the contravening development. These include:*

- *A superior outcome for the community with a preferred built form arrangement that aligns with the vision for the strategic importance of the Eastwood Shopping Centre site. This is achieved by introducing new pedestrian linkages, which will enhance pedestrian connectivity between Rowe Street and Rutledge Street.*
- *This report and the accompanying shadow analysis demonstrates that any impacts associated with the proposed development are acceptable, particularly since there are no significant solar access impacts on neighbouring properties or the public domain as a result of the height variation.*
- *The additional building height at specific locations across the site is offset by the lower buildings and in some cases, absence of built form that was envisaged in the LEP controls and introduction of open space and through site linkages, which are accessible to the public creating public benefits.*
- *The variation does not result in unreasonable adverse amenity impacts on adjacent land.*
- *The variation does not diminish the development potential of adjacent land.*
- *Despite the additional building height, the scale of development is considered appropriate given the significance of the site as supporting the continued growth of the Eastwood Town Centre.*
- *The proposed development has been designed to contribute to local housing needs, availability and affordability.*
- *The proposal replaces the existing commercial office building, with a new commercial office building, that is better integrated with the overall mix of uses. The location of the new office space fronting Rutledge Street, allows for improved activation of Rowe Street with high quality retail tenancies.*

The above justification is considered to provide sufficient environmental planning grounds to justify contravening the development standard to the degree proposed. The location of the proposed variation would not result in unreasonable adverse amenity impacts for adjoining development and the specific site attributes (orientation and location) allowing an acceptable variation to the prescribed height for the site.

The applicant has indicated the shortcomings of alternate (compliant) scheme that would result in a far less superior development that would not integrate and connect with the town centre and miss opportunities for creating a hierarchy of spaces and a unique mixed use development across the largest land holding in the town centre.

Were the subject site to be redeveloped in increments (ie. not as a large consolidation as proposed), the opportunities for provision of generous publicly accessible spaces and through-site links would be eroded and the overall built form would not have the same opportunity for variation in built form and distribution of massing so as to deliver the significant public benefits of the current scheme. Whilst the 2014 master plan has not been translated into a change to the current planning controls, it is acknowledged that this master plans also saw the benefits in additional height being allowed in the town centre.

As such is it accepted that the variation of the maximum building height and redistribution of building mass as proposed with a hierarchy of taller and shorter building forms across the 7 buildings and primary and secondary linkages between Rowe and Rutledge Street results in a superior planning outcome in terms of a better streetscape (to both frontages), better internal and external amenity, and significant public domain contribution compared to a compliant form without detrimental impacts. Furthermore, a detailed solar analysis identified that the proposed scheme provides meaningful solar gain opportunities to properties to the south of the site as a result of the siting and variety in tower heights. These benefits are far greater than the impacts that would present from a strictly compliant scheme. These are considered to be sound environmental planning grounds.

**4. The development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.**

The subject site forms part of the Eastwood Town Centre precinct under the Ryde DCP 2014. The proposal generally meets the objectives of the B4 zone by providing a suitable mix of retail floor space and residential units. The site is located with close proximity public transport, public open space and community services and contributes positively to the town centre through permeability and a mixture of residential and commercial offerings.

The proposal is not inconsistent or incompatible with the ability to achieve the objectives relating to the promotion of links between the Macquarie University campus, which is 4 kilometres from the site, and the research institutions and businesses located within the Macquarie Park corridor.

The objectives of the height clause in LEP 2014 are as follows:

- (a) to ensure that street frontages of development are in proportion with and in keeping with the character of nearby development,*

**Comment:** The site has frontage to both Rowe Street to the north and Rutledge Street to the south.

Rowe Street is characterised by 1-2 storey traditional shop fronts, and the 8-10 storey existing shopping centre and commercial office tower on the subject site. The proposal seeks to transition building heights by providing matching low scale buildings at either end of the site's Rowe Street frontage to transition between the existing streetscape and the proposed new built form.

The higher development within the centre of the site emphasises the presence of the shopping centre and clearly identifies the town centre. Although new buildings toward the centre of the Rowe Street frontage will be higher than the traditional shopfronts, reference to the existing street wall will be demonstrated within the development through upper level setbacks, the use of matching and complementary materials and building articulation and modulation (refer to Figure 14 earlier in report).

It is noted that the building heights on Rowe Street are generally in keeping with the maximum building heights prescribed by the LEP on this section of the site (21.5m) with the portions above being setback.

The Rutledge Street frontage is currently utilised for car parking, back of house activities and vehicle access. The street façade on the northern side of Rutledge Street is dominated by the presence of blank walls, open car parking structures and vehicle access. In this respect, the character of this street frontage is undefined and the redevelopment of the site presents an opportunity to create a new proportion and character for Rutledge Street.

The more recently approved 11 storey development on the south western corner of the block, at the intersection of Rutledge Street and Shaftsbury Road also provides context for the integration of any new built form proposed on the subject site.

Lower scale properties on the southern side of Rutledge Street are well separated from the site. The proposed additional building height above that specified in the LEP, in this case 2.5 storeys, will not be readily discernible given the scale of buildings permitted by the LEP on the northern side of Rutledge Street, at 33.5m. Further, the large separation distances afforded to the residential properties on the southern side will ensure the built form does not dominate the streetscape.

The proposal has sought to define this frontage and create a streetscape representative of a key site within the town centre which identifies the scale and importance of the function of the site and its contribution to Eastwood. The proposal includes a range of building heights 10 – 13 storeys in height which have been designed to respond to the width of Rutledge Street and ensure a robust built form presence at this interface. The buildings on this frontage are broken up horizontally across the length of Rutledge Street to create modulation in the streetscape and provide views into the site, otherwise not afforded currently.

*(b) to minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area,*

**Comment:** The applicant has provided shadow diagrams for 9.00am, 12noon and 3.00pm in midwinter. Also provided are comparative diagrams to demonstrate the difference of the proposal with a height compliant proposal.

The diagrams show solar gains made by alternate distribution of building mass and the contribution to solar gain provided to properties south of Rutledge Street between 9am and 3pm as a result of the through site links and deletion of bridging between buildings. These are demonstrated in light of the shadow extent from LEP maximum heights.





Figure 27: Shadow diagrams showing shadow extent, LEP maximum and solar gains through alternate design

The submitted diagrams demonstrate that notwithstanding the height variation, acceptable overshadowing will occur in midwinter with respect to the properties on the southern side of Rutledge Street. That is, a more skillful design results in the greatest shadow length beyond the LEP maximum height to occur from building CB at the corner of Rutledge Street and West Parade at 3pm which will extend over West Parade and the Railway lines. The solar gain will avail good and notable additional solar access at midday for southern properties fronting Rutledge Street including the pre-school. These gains as clearly demonstrated above in Figure 27 (Plans 8009(1) and 8010(1) are considered to provide more benefit than the impact of the shadows from the additional height. As demonstrated above, the additional height above the LEP maximum (illustrated by dashed line) will occur at 9am, impacting 2 properties at the centre of the street block which as a whole and contemplating available shadow by noon are acceptable. These impacts are discussed in further detail below under DCP Compliance discussion.

It is also noted that the proposed development will not result in any notable solar impacts for southern properties during Equinox or Summer Solstice.

The presentation of the development from both Rowe and Rutledge Streets are a suitable mix of residential and commercial uses, a mix supported by the UDRP. The redevelopment of the site for mixed use development of the nature proposed will improve the appearance of the site on Rutledge Street and provide connection from Rutledge Street to the town centre.

*(c) to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure,*

**Comment:** The proposal does not require consolidation of allotments. The proposal will provide a mix of commercial and residential uses at the site which is located adjacent to existing public transport infrastructure including Eastwood Train Station (200m east) and a major road corridor with a high level of bus services to the City and other key areas. No issues arise in relation to consistency with this objective being achieved.

*(d) to minimise the impact of development on the amenity of surrounding properties,*

**Comment:** The applicant has demonstrated that the development has been informed by a detailed site context analysis and design impact assessment. Through plan amendments guided by Council and the UDRP, the final proposal represents a site design that has identified, on balance, an appropriate development response to the site and immediate locality. The proposal performs well in respect of the ADG separation requirements and is compatible with the surrounding town centre context, including future development of 7-9 Rutledge Street and existing lower scale buildings.

The tallest proposed Building (CB) is well separated from residential land uses and the increased height will not have significant additional impacts on solar access for properties on the southern side of Rutledge Street. The location of the additional building height benefits from the non-sensitive train line to the east and will allow for the realisation of a marker building to identify the Eastwood Shopping centre site.

Additional upper level setbacks and building modulation ensure the visual bulk, privacy, overshadowing and view impacts are further mitigated. Again, the gaps in the proposed buildings at the site create both through site linkages for the locality and also benefits through open spaces within the development, solar access gains (of greater benefit than a compliant scheme without building corridors), and an orderly distribution of building mass.

The proposal will also contribute to an improved and revitalised public realm surrounding the site and created within the site for public benefit.

*(e) to emphasise road frontages along road corridors.*

**Comment:** The site also has frontages to Rowe Street, West Parade and Rutledge Street. The proposed development is considered to result in a built form that suitably emphasises the road frontages and achieves an appropriate and sympathetic bulk and scale appropriate to the hierarchy of streets. In particular, the existing development at the site turns its back on Rutledge Street with unsightly blank walls and car park balustrades. The proposal will provide a deceleration lane into the site from Rutledge Street, open and connect the site with Rutledge Street to connect the southern side of the street with the existing mall through the site links that provide gaps in the buildings and an interesting town centre scaled development viewed from the road corridor.

In accordance with the above, the development recognises and adequately address each of the objectives of Clause 4.3. Accordingly, the proposal meets the objectives of the height control and is in the public interest.

## **5. Concurrence of the Director General.**

As the height variation exceeds 10% it is not possible to assume the concurrence of the Director-General. Concurrence can now only be assumed if the consent authority has first considered the following issues:

- *Whether contravention of the development standard raises any matter of significance for state or regional environmental planning.*

There are no matters of significance for state or regional environmental planning as a consequence of the variation.

- *The public benefit of maintaining the development standard.*

The applicant has provided the following in respect of this issue:

*The proposed development achieves the objectives of the HOB development standards and B4 Mixed Use Zone objectives despite the numerical non-compliances. This report has established there is a lack of significant adverse environmental impacts and the environmental benefits that arise from the proposed arrangement of buildings on the site, and introduction of new publicly accessible pedestrian linkages and a plaza that arise from not complying with the standard.*

*As articulated in the description of the urban design principles employed for the proposed development, overall, the distribution of built form on the site will enhance the Eastwood Town centre, when compared to, options considered to maintain an enclosed shopping centre in a podium with residential towers above.*

*Accordingly, there can be no quantifiable or perceived public benefit in maintaining the standard.*

The above commentary by the applicant is supported.

The other consideration is whether there are any other matters which are required to be taken into consideration before granting consent. In the opinion of Council's Officers there are not considered to be any other matters that are required to be taken into consideration.

### **Planning Assessment**

The applicant has demonstrated satisfactorily that the development complies with the objectives of the Building Height standard and the objectives of the B4 zoning. It is agreed that the proposed development is in the public interest because the objectives of the control are met and the variation does not result in any significant adverse impacts and therefore strict compliance with the Height of Buildings standard would be unreasonable and unnecessary.

In this instance, there is sufficient environmental planning grounds to justify contravening the development standard. It is accepted that the public interest is better served through support of alternate distribution of building heights across the site and that the proposed scheme results in a development appropriate to the town centre that no longer turns its back on Rutledge Street and connects the south to the north (Rowe Street Mall) in a meaningful and integrated way. The 13 storey building (CB) at the corner of Rutledge Street and West Parade provides a marker to the town centre in light of its gateway location through a hierarchy of building heights. As such some flexibility is considered suitable in this particular instance.



The proposed height breach will not have an adverse impact on surrounding residential development and the distribution of building mass across the site with focus at the corner achieves a suitable built form for the locality, recognised as a better outcome than a compliant scheme. The applicant has provided sufficient argument and environmental planning grounds in this instance to justify contravening the development standard and significant additional impacts have not been identified. In consideration of Clause 4.6(3), it is provided that it is considered both unreasonable and unnecessary to enforce strict compliance when the scheme provides an acceptable (and improved) alternative and does not result in any adverse or unreasonable additional impacts. Secondly, there are sufficient environmental planning grounds to support the variation due to the measureable benefits in the redistribution of building mass as proposed. The proposed scheme delivers a hierarchy of taller and shorter building forms across the 7 buildings and linkages between Rowe and Rutledge Street resulting in a superior planning outcome in terms of a better streetscape, better internal and external amenity, and significant public domain contributions.

The variation to the Height of Buildings standard is supported in planning terms.

### Other LEP provisions

The table below (**Table 6**) considers other provisions relevant to the evaluation of this proposal:

<b>Table 6: RLEP 2014 Provisions</b>	
<b>Provision</b>	<b>Comment</b>
<b>Clause 5.1 Relevant acquisition authority</b>	No part of the site is mapped as being reserved for acquisition for public purposes.
<b>Clause 5.10 Heritage conservation</b>	<p>The site is not identified as being listed as a heritage item or within a heritage conservation area. The Eastwood Masonic Temple (previously known as Item No. 106) at the site was removed from the former heritage schedule of the Ryde LEP 2010, superseded by the Ryde LEP 2014 and is therefore not protected by the existing LEP heritage provisions.</p> <p>The site is located in the vicinity of a heritage listed item located at Nos. 119, 123 and 136 Rowe Street. This item (No. 105) is of local significance under Schedule 5 of the LEP.</p> <p>A Heritage Impact Statement prepared by Extent Heritage was submitted with the DA in relation to the adjoining Heritage Item Summer Hayes and the broader heritage values of the Eastwood Area. A series of protective and mitigation measures have been provided to protect the heritage aspects of the site and surrounds during all stages of development. These recommendations will be reflected in Conditions of Consent in addition to those provided by Councils Heritage Advisor (see Condition No. 24, 62 and 63).</p> <p>Council's Heritage Advisor has reviewed the proposal in light of the adjacent heritage item and former Item No. 106 at the</p>

<b>Table 6: RLEP 2014 Provisions</b>	
<b>Provision</b>	<b>Comment</b>
	site and concluded that the development is considered suitable as it will not result in any material affectation to significant heritage fabric and the heritage items (Summer Hayes) will continue to feature as prominent 'bookends' to Rowe Street and will retain their setting and character, evidencing the earlier two-storey scale of commercial buildings in Rowe Street.
<b>Clause 6.2 Acid Sulfate Soils</b>	The site is not identified as containing acid sulfate soils under the LEP Maps.
<b>Clause 6.2 Earthworks</b>	<p>The proposed development includes excavation for a basement car park. A sediment and erosion control plan has been submitted. The application was supported with a Geotechnical Report prepared by Jeffrey and Kataouskas.</p> <p>The application has been reviewed by Council's Structural Engineer and found that the Geotechnical report was adequate for conceptual design of foundations and retentions systems. However, before final design works are carried out a more comprehensive report will be required. This will be reflected in a Condition of Consent. (See Condition numbers 72).</p>
<b>Clause 6.4 Stormwater management</b>	<p>Sufficient information has been provided to determine suitability of the proposed stormwater management for the site in relation to Clause 6.4.</p> <p>The application has been reviewed by Council's Drainage Engineer and found to be satisfactory subject to conditions (See Condition numbers 18, 19, 99, 107, 160, 184, 185 and 187).</p>
<b>Clause 6.6 Environmental sustainability</b>	<p>This clause applies as the site area exceeds 1,500m<sup>2</sup> and is located in a business zone. Sufficient information has been provided to determine suitability of the proposed stormwater management for the site in relation to Clause 6.6.</p> <p>The application has been reviewed by Council's Drainage Engineer and found to be satisfactory subject to conditions (See Condition numbers 18, 19, 99, 107, 160, 184, 185 and 187).</p>

### **8.10 City of Ryde DCP 2014**

The following sections of DCP 2014 are of relevance, being:

- Part 4.1 – Eastwood Town Centre
- Part 7.1 - Energy Smart, Water Wise
- Part 7.2 - Waste Minimisation and Management
- Part 8.1 - Construction Activities
- Part 8.2 - Stormwater Management
- Part 8.3 - Driveways

- Part 9.2 - Access for People with Disabilities
- Part 9.3 - Car Parking

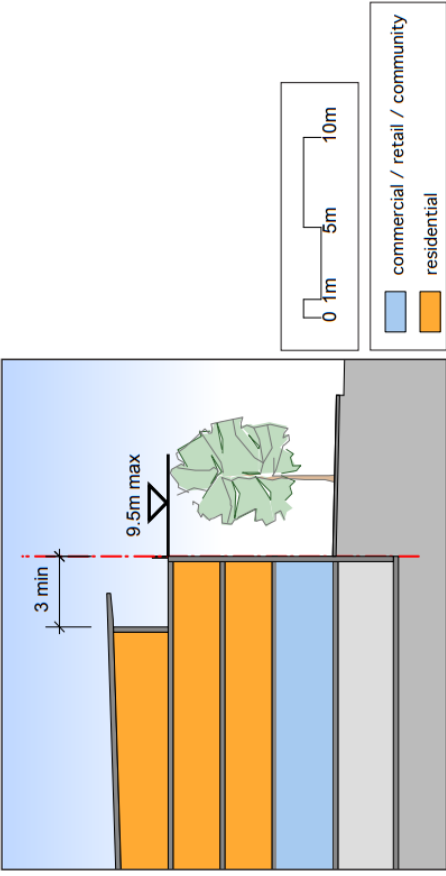
With regard to Parts 7.1 to 9.2, noting the advice received from the various technical departments within Council and the consideration of issues previously in this report, sufficient information has been provided to carry out a thorough assessment of these matters and suitable conditions have been included in the consent where required. Parts 4.1 and 9.3 are considered below.

#### ***Part 4.1 – Eastwood Town Centre***

Part 4.1 of DCP 2014 is the primary section of the DCP applicable to development within the Eastwood Town Centre. The relevant provisions of the DCP are outlined in **Table 7** below:

<b>Table 7: DCP Provisions</b>		
<b>Control</b>	<b>Comment</b>	<b>Compliance</b>
<b>3.0 DEVELOPMENT CONTROLS – EASTWOOD Urban VILLAGE PRECINCT</b>		
<b>3.1 Mixed Use</b>		
a. Active public uses, such as restaurants, cafes, community facilities, entries to business premises and retail should be located at street level.	Variety of active public uses are provided at ground level including restaurants, takeaway, retail – accessed from Rowe Street. In addition, a gym, medical centre, pharmacy, restaurant uses are located at ground level – accessed from Rutledge Street.	Yes
b. Public and commercial uses should be accommodated in the level/s immediately above street level. Such uses may include professional offices, medical suites, leisure uses such as gymnasia, cinemas, theatres, places of worship and meeting rooms. Residential dwellings that include home offices may also be accommodated on this level.	No commercial units are proposed at ground level to Rowe Street frontage. Two (2) commercial units are proposed at ground level, accessed from Rutledge Street. These commercial suites will provide a small frontage to Rutledge Street. The primary ground level presence to Rutledge Street is public in nature with a though link, parking, landscape terrace, a central park and connection with Rowe Street.	Yes
c. Residential land uses are discouraged at the street level within the Eastwood Urban Village Precinct. Residential development may be provided at upper levels.	Residential uses are proposed to upper levels not street level.	Yes
d. Buildings are to be designed to overlook public and communal streets and other public areas to provide casual surveillance.	Suitable degree of casual surveillance proposed from buildings above to public spaces.	Yes
e. Private living spaces and communal or public spaces should be clearly identified and	Public/private spaces are	Yes


<p>defined.</p> <p>f. Sufficient lighting is to be provided to all pedestrian ways, building entries, driveways and car parks to ensure a high level of safety and security for residents</p> <p>g. Pedestrian and communal areas to be well lit and designed to minimise opportunities for concealment.</p> <p>h. Pedestrian entry to the residential component of mixed use developments should be separated from entry to other land uses in the building/s.</p> <p>i. The use of outdoor restaurant seating whether on private or public land is a favoured land use in the urban village. Applicants should refer to Council's Footpath Activity Policy and Outdoor Dining Policy.</p>	<p>clearly defined, however restricted access to hanging garden (for residents only) is unclear. This will be confirmed by a condition of consent. (refer to Condition 64)</p> <p>By condition (refer to condition 67 and 85).</p> <p>Per above</p> <p>Separate residential lobbies are provided.</p> <p>Potential for outdoor seating along Rowe Street adjacent to proposed "slow food" premises.</p>	<p>(Condition)</p> <p>Condition</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
<b><u>3.2- Flooding &amp; Stormwater Management</u></b>		
<p>a. A stormwater inundation impact assessment and stormwater management strategy is to be submitted for all developments to the satisfaction of Council.</p> <p>b. Floor levels within any new development should be a minimum of 300mm above the calculated flood level for the 100 year ARI event.</p> <p>c. Developments should comply with Part 8.2 Stormwater Management and Part 8.6 Floodplain Management of this DCP for flood controls for Eastwood/Terry's Creek Flood Plain.</p> <p>d. Where development is considered to constitute minor modifications or does not intensify the use of the property. A stormwater impact assessment or stormwater management plan may not be required.</p>	<p>Stormwater management measures and water quality treatment measures have been integrated into the stormwater management system.</p> <p>The submitted Stormwater Drainage Concept plan has been reviewed by Council's Senior Coordinator Development Engineering Services and found to be satisfactory subject to conditions.</p> <p>Per above.</p> <p>Not applicable – major works.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>NA</p>
<b><u>3.3 Architectural Characteristics</u></b>		
<b><u>3.3.1 Setbacks</u></b>		
<p>a. Buildings must comply with the maximum</p>	<p>The proposed development</p>	<p>Refer to LEP</p>


<p>height limit shown on the Height of Buildings Map under Ryde Local Environmental Plan 2014.</p>	<p>exceeds applicable LEP height limit. Clause 4.6 variation Statement accompanies application.</p>	<p>Compliance table &amp; Cl. 4.6 Assessment</p>
<p>b. Setbacks at the upper levels shall be provided. Parapets, fronting retail/pedestrian priority streets (see Section 3.5) should reflect existing predominant parapet lines.</p>	<p>Rowe Street (priority street – per DCP, Section 3.5) – setback to upper level provided (10m at level 6). Reinforcement of the 2 storey façade element and integration with the adjoining buildings on Rowe Street Mall. Including introduction of a steel portal to create a double height perception at street level and the use of different materials and finishes to break the building into fine grain shop fronts</p>	<p>Yes</p>
 <p>Figure 4.1.02 Building Height Setback</p>	<p>Rutledge Street – NA as it is not an identified “priority street”. In any case, and reinforcing the 5 level street wall façade of the buildings Rowe Street – 9.5m parapet to the eastern and westernmost portions of buildings to reflect adjoining built form scale. Remainder (majority) of frontage is built to street alignment to Level 6 (21m), with setbacks beyond this height.</p>	<p>Yes</p>
<p>c. New buildings are to have street frontages built predominantly to the street alignment (front boundary) for up to 9.5 m measured from the street level.</p>	<p>Rutledge Street – Built to street alignment with openings providing 2x through site links – 24m and 5m in width, and driveway opening – 11.5m wide. Building scale ranges from 15m-42m across the frontage to Rutledge Street.</p>	<p>On merit</p>
<p>d. Buildings may be constructed to the side and rear boundaries for up to 9.5m from</p>	<p>Results in suitable street presentation through articulation and façade treatment.</p> <p>Rowe Street – constructed to side boundary to 9.5m then setback from side boundaries 10m (east) and 9m (west).</p> <p>Rutledge Street – To the east – NA as site fronts West Parade (not a side boundary) and building is sited on the street alignment which forms a suitable continuation of building alignment wrapping</p>	<p>Yes</p>

<p>street level.</p> <p>e. Buildings (including balconies) must be setback a minimum of 3m from all boundaries above 9.5 m from street level.</p> <p>f. Buildings may be setback from the street alignment where:</p> <ul style="list-style-type: none"> <li>i. The site is adjacent to a freestanding heritage building. In this case the setback of the new building from the street alignment should match the setback of the heritage building;</li> <li>ii. The new development contributes an appropriate public space at the street frontage.</li> </ul>	<p>around from Rutledge Street. This alignment is maintained to parapet height.</p> <p>To the west – a nil setback is provided to 4m, then a setback of 6m is provided Remaining Levels (7, 8, 9) above are predominantly 9m with minor encroachments (angled fin window, stair ).</p> <p>North (Rowe Street) – nil setback to 21m.</p> <p>East – Nil setback to parapet height – 42m</p> <p>South (Rutledge Street) – Nil setback to 17m.</p> <p>West – Nil setback to 4m, then 6m setback provided.</p> <p>Not applicable as buildings proposed to street alignment to all frontages.</p>	<p>Yes</p> <p><b>No (Refer below)</b></p> <p><b>No (Refer below)</b></p> <p><b>No (Refer below)</b></p> <p>NA</p>
<p><b>3.3.2 Urban Design/Exterior Finishes</b></p> <p>a. Building exteriors are to be designed to avoid extensive expanses of blank glass or solid wall.</p> <p>b. Balconies and terraces should be provided, particularly where buildings overlook public spaces.</p> <p>c. The siting and configuration of buildings should take into account the impact on surrounding development and public spaces in terms of amenity, shadowing and visual privacy. In this regard at least 2 hours of sunlight access must be maintained in public spaces in Rowe Street.</p>	<p>Suitable materials and finishes proposed and no excess blank glazing/solid walls.</p> <p>Provided and achieve suitable passive surveillance to public areas.</p> <p>These matters have been addressed through the report. The development represents a suitable design response.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>

<p>d. The tops of buildings are to be designed so that they:</p> <p>i. Integrate with the design of the building and conceal plant and equipment; and</p> <p>ii. Promote a visually distinctive and interesting skyline.</p>	<p>Varied skyline with variety of building heights and concealed plant and equipment.</p>	<p>Yes</p>
<p><b>3.3.3 Corner Allotments</b> The design of buildings on corner allotments must address the following:</p> <p>i. The height of adjacent buildings</p> <p>ii. Ensure that the building turns the corner;</p> <p>iii. The incorporation of distinctive architectural features to enhance the streetscape, for example clocks, flag poles, public spaces, etc;</p> <p>iv. Giving the corner a splayed, concave, convex or square recess treatment such that it signifies the intersection; and</p> <p>v. Design incorporating the removal of clutter such as power poles and advertising signage from around intersections.</p>	<p>Site located on the corner of Rutledge Street and West Parade. Proposed building CB is located at this corner on the street alignment for the full height of the building to the parapet height of 42m.</p> <p>This achieves suitable street address within prominent street corner.</p> <p>Panel comments:</p> <p><i>A taller corner at Rutledge Street and West Parade reinforces its location within the town centre and is generally supported subject to the façade design refinements noted above and relayed to the proponent previously.</i></p> <p>The Panel strongly supports the undergrounding of the powerlines along Rutledge Street. If the powerlines are retained a setback along this frontage may be required as was the case in the previous DA approval. (Refer to condition 85)</p>	<p>Yes</p> <p>By Condition</p>
<p><b>3.4 Access &amp; Parking</b> <b>3.4.1 Parking design and location</b></p> <p>a. The creation of additional on-street car parking is encouraged. Opportunities to amplify on-street car parking through reconfiguration of car spaces (i.e. angled parking) should be explored with Council.</p> <p>b. Car parking should be located below ground level. Where this is not practicable (e.g. due to flood impacts) parking must not be visible from the street.</p> <p>c. In order to minimise vehicular conflict between residents' delivery and customer vehicles, car parking associated with residential uses should be separated from parking for other land uses.</p>	<p>Not applicable – all parking below ground level within basement.</p> <p>All parking is located within basement.</p> <ul style="list-style-type: none"> <li>• Existing Loading dock accessed from West Street maintained;</li> <li>• Vehicular access/egress from new opening off Rutledge Street (with right turn ingress) to all basement Levels;</li> </ul>	<p>NA</p> <p>Yes</p> <p>Yes</p>



	<ul style="list-style-type: none"> <li>• Vehicular access / egress from Trelawney Street;</li> <li>• B1 and B2 – retail parking;</li> <li>• B3 residential and commercial;</li> <li>• B4 – residential</li> </ul> <p>The proposal is supported by Council Traffic Engineer as discussed below.</p>	
<p><b>3.4.2 Location of Vehicles Access &amp; Footpath crossings</b></p> <p>a. New vehicle access points are restricted in retail/pedestrian priority streets. Where practicable, vehicle access is to be from lanes and minor streets rather than major pedestrian streets or major arterial roads such as Rutledge Street, First Avenue, or Blaxland Road.</p> <p>b. Service vehicle access is to be combined with parking access and limited to a maximum of one access point per building.</p>	<p>No vehicular access is proposed on Rowe Street (priority street).</p> <p>The existing vehicle access point off Rutledge Street is maintained (shifted further east – with right turn ingress to site, consistent with previous approval at the site. The existing vehicle access point off Trelawney Street will be modified to at grade access/egress. The overall access to basement parking, ingress/egress is consolidated across the development site. Service access and loading dock is maintained off West Street for the development.</p> <p>The proposal is for 7 buildings across the development site with 2 entry/exist points and 1 additional service entry / egress point, as supported by RMS and Council's traffic engineer.</p>	<p>Yes</p> <p>Yes</p>
<p><b>3.5 Pedestrian Amenity</b>  <b>3.5.1 Street frontage Activities</b></p>  <p>Retail/pedestrian streets</p> <p>a. Provide ground level active uses on the Retail/Pedestrian Priority Streets (refer to Figure 4.1.04)</p>	<p>Rowe Street is identified as a priority retail/pedestrian street.</p>	<p>Yes</p>

<p>b. Active uses contribute to personal safety in the public domain and comprise:</p> <ul style="list-style-type: none"> <li>i. Community and civic facilities.</li> <li>ii. Recreation and leisure facilities.</li> <li>iii. Shops.</li> <li>iv. Commercial premises</li> <li>v. Residential uses, particularly entries and foyers. However, these should not occupy more than 20% of the total length of each street frontage.</li> </ul> <p>c. Where required, active uses must comprise the street frontage for a depth of at least 10m.</p> <p>d. Vehicle access points may be permitted where active frontage is required if there are no practicable alternatives.</p> <p>e. Blank roller- shutter type doors are not permitted on ground level shop fronts.</p> <p>f. Serviced apartments hotels and motels shall not have apartments at the ground level. Locate retail, restaurants and / or other active uses at the ground level.</p>	<p>Active street frontage provided along Rowe Street at ground level including restaurants, takeaway, retail – accessed from Rowe Street. In addition, a gym, medical centre, pharmacy and restaurant uses are located at ground level – accessed from Rutledge Street. Through site link between Rutledge and Rowe Street also encourage active uses and permeability.</p> <p>Rowe Street – active frontage extends greater than 10m in depth for the whole site frontage (excluding pedestrian links). The pedestrian links enable continuation of active uses between Rowe and Rutledge Streets.</p> <p>No vehicle access points proposed along Rowe Street.</p> <p>None proposed – confirmed by condition. (Condition 7)</p> <p>Proposal does not include serviced apartments, hotels or motels.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>NA</p>
<p><b>3.5.2 Circulation</b></p> <p>a. Where circulation is provided through a site or within a building serving to connect 2 points, the thoroughfare should function as a shortcut, be continuous and level with pedestrian streets / areas and incorporate adjoining active retail and / or commercial edges.</p>  <p>Figure 4.1.05 Circulation Strategy</p>	<p>Through link provided at 2 points across the site linking Rowe Street and Rutledge Street. Given the difference in levels of each street (Rowe at RL 68.7 and Rutledge at RL 74.2, the western pedestrian thoroughfare (“the street”) is 12m in width and provides pedestrian access to a “retail street” level which provides a level walkway to Rowe Street and provides adjoining active retail edges.</p> <p>Additional pedestrian access (via escalator or stairs) is provided to the Lower Ground Level retail street at RL 63.2 with access up to Rowe Street.</p> <p>The eastern through link (“the laneway”) is narrower at</p>	<p>Yes</p> <p>-</p> <p>-</p>

<p>b. Entry and exit points for vehicles are to be designed in a manner that reinforces the Circulation Strategy.</p>	<p>6m in width and provides a direct link between Rowe and Rutledge Streets, however is not accessible as it comprises a stair case.</p> <p>The proposed access/egress points for the overall development will not contravene the circulation strategy or high level permeability of the site.</p>	<p>Yes</p>
<p><b>3.5.3 Public Domain Finishes</b></p> <p>a. Developments which entail the provision of new public spaces (e.g. streets, footpaths, walkways and the like) will need to incorporate new paving and street furniture that is at the developers cost and in accordance with the Ryde Public Domain Technical Manual.</p>	<p>Enforced through condition of consent. (Condition 85 and 86)</p>	<p>By Condition</p>
<p><b>Landscaping &amp; trees</b></p> <p>a. Development proposals, incorporating landscaped elements, are to be accompanied by a landscape plan. Where the development comprises mixed uses or is 2 or more storeys the landscape plan should be prepared by a qualified landscape architect.</p> <p>b. Where appropriate, developments should incorporate landscaping into the upper levels to soften the building form and to contribute to privacy and amenity.</p> <p>c. Ground level entries should be well lit and not obstructed by planting in a way that reduces the actual or perceived personal safety and security of centre residents or pedestrians.</p> <p>d. Street trees shall be provided in accordance with the Ryde Public Domain Technical Manual and shall be provided at the developers' cost in conjunction with any new building work involving additional floor space.</p> <p>e. Street trees at the time of planting shall have a minimum container size of 200 litres, and a minimum height of 3.5m, subject to species availability.</p> <p>f. Where a proposal involves redevelopment of a site with a frontage of at least 40m to a public road, the developer shall arrange for electricity and telecommunications utilities to be undergrounded along the entire length of</p>	<p>Accompanying landscape plan has been prepared by a qualified landscape architect.</p> <p>Upper level landscaping proposed within public "hanging garden" and communal open space area and also Level 6 Communal Open space areas.</p> <p>Ground level entries are not obscured by landscaping to the extent that would create safety issues.</p> <p>(Refer to condition 85)</p> <p>As above.</p> <p>Both Rowe and Rutledge Streets exceed 40m in width. (Refer to condition 85)</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>By Condition</p> <p>By Condition</p> <p>By Condition</p>

all street frontages. Such utility modifications will be carried out to the satisfaction of the responsible authority (e.g. Energy Australia).		
<p><b>3.5.5 Awnings &amp; Weather Protection</b></p> <p>a. Buildings with frontage to any street must incorporate an awning or other form of weather protection along that boundary.</p> <p>b. The pavement level of a covered walkway shall be at the same level as the footpath to which it is adjacent.</p> <p>c. The height of a colonnade, awning or covered way shall not be less than 3 metres or greater than 4.5 metres measured to the soffit.</p> <p>d. The width of a colonnade, awning or covered way shall not be less than 3 metres.</p> <p>e. Any new awnings should:</p> <ol style="list-style-type: none"> <li>i. Be continuous for the entire length of the site frontage;</li> <li>ii. Be set back from the face of the kerb by 0.6m;</li> <li>iii. Have cut-outs of 1m wide by 1m deep to accommodate street trees, where the frontage is proposed to accommodate a street tree in accordance with the master plan or any public domain improvement plan;</li> <li>iv. Be weather sealed to the face of the building to which they are attached and to the adjoining awnings;</li> <li>v. Have a height clearance above the footpath level of at least 3m or a height consistent with adjacent awnings; and</li> <li>vi. Maintain sufficient clearances from any overhead electricity or telecommunications installations.</li> </ol>	<p>Awnings are provided along both Rowe and Rutledge Street frontages.</p> <p>Pavement is at grade to both Rowe and Rutledge Streets.</p> <p>The height of the colonnade to “the street” is 24.5m.</p> <p>The width of the colonnade is 6m.</p> <p>Proposed awnings are consistent with the design requirements.</p>	<p>Yes</p> <p>Yes</p> <p><b>No (Refer below)</b></p> <p>Yes</p> <p>Yes</p>
<p><b>3.6 Signage</b></p> <p>a. Signage shall relate to the use of the building on which it appears.</p> <p>b. Architectural features of the building shall be considered in the design of the advertising sign or structure. Signs shall not obscure decorative forms or mouldings and should observe reasonable separation distance from the lines of windows, doors, parapets, etc.</p> <p>c. Signs should be of a size and proportion which complement the scale of the existing façade, as well as surrounding buildings and signs. Care should be taken in the design, size and positioning of signs above awning</p>	<p>Signage details do not form part of this development application. Applicant has indicated that retail tenants are yet to be confirmed and therefore signage will form part of a separate development applicant.</p> <p>Subject to future application.</p>	<p>NA</p> <p>-</p>

<p>level.</p> <p>d. Signage must comply with the following restrictions and dimensional requirements:</p> <p>i. Under-Awning Signs Should not exceed</p> <p style="padding-left: 20px;">a. One per five (5) metres of street frontage; and</p> <p style="padding-left: 20px;">b. 2.4 metres in length and 0.3 metres in height.</p> <p>ii. Flush Wall Signs Should not exceed a maximum of five (5) square metres.</p> <p>iii. Clearance All signs should maintain a minimum clearance of 2.6 metres above footpaths or above any pedestrian areas.</p> <p>iv. Multiple use of Properties A co-ordinated approach to the sign development on the site should be used by utilising composite signs</p> <p>v. Prohibited Signs</p> <ol style="list-style-type: none"> <li>1. Flashing and moving signs;</li> <li>2. Signs other than identification, business and directional signs;</li> <li>3. Signs that would adversely affect traffic movement or safety or would interfere with the amenity of the neighbourhood;</li> <li>4. Signs attached to and above awnings;</li> <li>5. Illuminated signs on fascia of awnings;</li> <li>6. Signs not permanently fixed to the site or which obstruct the footpaths or pedestrian area;</li> <li>7. Pylon signs;</li> <li>8. Roof signs; and</li> <li>9. Blimps or airborne signs.</li> </ol>	<p>As above.</p> <p>As above</p> <p>As above.</p> <p>As above.</p> <p>The subject application will facilitate potential signage zones for future retailers to provide integrated and suitable signage for key tenants.</p> <p>Assessment of future applications for signage will apply this provision.</p>	<p>-</p> <p>-</p> <p>-</p> <p>-</p> <p>Yes</p> <p>-</p>
<p><b><u>3.7 Environmental Management</u></b>  <b><u>3.7.1 Sunlight</u></b></p> <p>a. Major public spaces should receive a minimum of 50% sunlight on the ground plane for at least 2 hours between 10am and 2pm on June 21.</p> <p>b. In new residential developments, windows to north-facing living areas should receive at least 3 hours of sunlight between 9am and</p>	<p>The Rowe Street Pedestrian Mall is located directly north of the site and will therefore maintain solar access without any impact from the proposed development.</p> <p>The shadow diagrams demonstrate that solar impacts occur over Rutledge Street, West Parade and the railway line.</p> <p>Addressed under ADG compliance review above.</p>	<p>Yes</p> <p>On merit &amp; supported by</p>

<p>5pm on June 21 over a portion of their surface.</p> <p>North facing windows to living areas of neighbouring dwellings should not have sunlight reduced to less than the above 3 hours.</p> <p>c. All development proposals of 2 storeys or more are to be accompanied by shadow diagrams that are to be submitted with the local development application.</p>	<p>Adjacent development to the south across Rutledge Street – refer to discussion below.</p> <p>Adjoining properties to the west will received 3 hours solar access between 9am and 3pm in mid-winter – with very limited impact from 12 noon onwards.</p> <p>Submitted with application, in addition to solar study elevations, and a Solar Analysis Report prepared by Steve King, dated June 2017.</p>	<p>Solar Report</p> <p>On merit (Refer below)</p> <p>Yes</p> <p>Yes</p>
<p><b>3.7.2 Wind Standards</b></p> <p>a. Building design is to minimise adverse wind effects on recreation facilities, on open terraces within developments and on the public domain.</p>	<p>A Pedestrian Wind Environment Study has been prepared by Windtech which provides an assessment of the impact of the proposal against the wind environment within and surrounding the site.</p> <p>The Study concludes that treatments are required for certain locations to achieve the desired criteria for pedestrian comfort and safety. The report provides recommendations for in-principle ameliorative treatments.</p> <p>These recommendations will form Conditions of consent.</p> <p>(Refer to Condition 69)</p>	<p>By Condition</p>
<p><b>3.7.3 Energy Efficiency of Buildings</b></p> <p>a. New buildings should be designed to ensure that energy usage is minimised.</p>	<p>An Energy Efficiency Statement prepared by ARUP was provided with development application. The Statement confirms that the development complies with the NCC Section J energy efficiency requirements. Also the residential component of work complies with the BASIX requirements for Class 2 apartments.</p>	<p>Yes</p>
<p><b>3.7.4 Vibration &amp; Noise Mitigation</b></p> <p>a. In respect of proposals for new residential buildings:</p>	<p>Acoustic Assessment provided with development application.</p>	<p>Yes</p>

<p>i. the building plan, walls, windows, doors and roof are to be designed and detailed to reduce intrusive noise levels.</p> <p>ii. balconies and other external building elements are located, designed and treated to minimise infiltration and reflection of noise onto the façade.</p> <p>iii. dwellings are to be constructed in accordance with: - Australian Standard 367 1-1989: Acoustics – Road Traffic Noise Intrusion, Building Siting and Construction; and - Australian Standard 367 1-1987: Acoustics – Recommended Design Sound Levels and Reverberation Times for Building Interiors. - Environmental Criteria for Road Traffic Noise (EPA, 1999).</p> <p>b. In respect of developments proposed within 100m of the railway line, the following document should be used as a guideline for incorporating measures to mitigate noise and vibration:</p> <p>i. Rail Related Noise and Vibration: Issues to Consider in Local Environmental Planning – Development Applications and Building Applications (State Rail Publication, 1995).</p>	<p>Key noise attenuations measures are identified and these recommendations will form part of any consent conditions.</p> <p>The site is located within 100m southwest of Eastwood of the railway line. As such the development will be conditioned to ensure it complies with this requirement.</p>	<p>Yes</p>
<p><b>3.7.5 Reflectivity</b></p> <p>a. The use of highly reflective glass is discouraged.</p> <p>b. New buildings and façades should not result in uncomfortable glare that causes discomfort or threatens safety of pedestrians or drivers.</p> <p>c. Visible light reflectivity from building materials used on the façades of new buildings should not exceed 18%.</p>	<p>Solar light reflectivity analysis has been prepared by Windtech Consultants. The report provides an analysis of the potential solar glare from the proposed development and identifies any possible adverse reflected glare conditions affecting motorists, train drivers, pedestrians and occupants of neighbouring buildings. The report provides recommendations to avoid such impacts in terms of nominating specific glazing treatment to certain windows.</p> <p>These recommendations will form conditions of consent.</p> <p>(Refer to Condition 70)</p>	<p>By Condition</p>
<p><b>3.7.6 External Lighting of Buildings</b></p> <p>a. Any external lighting of buildings is to be considered with regard to:</p> <p>i. The integration of external light fixtures with the architecture of the building (for example, highlighting external features of the building);</p>	<p>To comply with AS in lighting and Section J.</p> <p>Amenity impacts on lighting</p>	



<ul style="list-style-type: none"> <li>ii. The contribution of the visual effects of external lighting to the character of the building, surrounds and skyline;</li> <li>iii. The energy efficiency of the external lighting system; and</li> <li>iv. The amenity of residents on the locality.</li> </ul>	<p>to be managed by a centre plan.</p>	
<b>PART 9.3 PARKING CONTROLS</b>		
<b>CONTROL</b>	<b>COMMENT</b>	<b>COMPLIANCE</b>
<b>2.0 Parking Required in respect of specific uses</b>		
<p><b>Residential</b></p> <p>High Density (Residential Flat Buildings)</p> <ul style="list-style-type: none"> <li>• 0.6 to 1 space / one bedroom dwelling (97) = 58.2-97</li> <li>• 0.9 to 1.2 spaces / two bedroom dwelling (249) = 224.1-298.8</li> <li>• 1.4 to 1.6 spaces / three bedroom dwelling (63) = 88.2-100.8</li> </ul> <p><u>Resident spaces required:</u> <u>370.5-496.6 (371-497)</u></p> <ul style="list-style-type: none"> <li>• 1 visitor space / 5 dwellings (409)</li> </ul> <p><u>Visitor spaces required = 81.8 (82)</u></p> <p><b><u>TOTAL RESIDENTIAL = 455-579</u></b></p>	<p>Resident: 451 (83 accessible)</p> <p>Visitor: 47 (2 accessible) – balance accommodated on retail parking levels.</p> <p>498 residential spaces</p>	<p>Yes</p> <p><b>On merit (refer below)</b></p> <p>Yes</p>

<p><b>Non-residential</b></p> <p>Medical Centre (RMS rate)</p> <ul style="list-style-type: none"> <li>• 4 spaces per 100sqm (686.8sqm)</li> </ul> <p><u>Medical centre requirement: 28 spaces</u></p> <p>Office and Business Premises</p> <ul style="list-style-type: none"> <li>• 1 space / 40 m<sup>2</sup> GFA (2,596.8sqm)</li> </ul> <p><u>Commercial requirement: 65 spaces</u></p> <p>Recreation Facilities (indoor) / Gymnasium:</p> <ul style="list-style-type: none"> <li>• 1 – 1.5 spaces / 20 m<sup>2</sup> GFA (346sqm)</li> </ul> <p><u>Gym requirement: 18-26</u></p> <p>Retail Premises and Industrial Retail Outlet</p> <ul style="list-style-type: none"> <li>• 1 space / 25 m<sup>2</sup> GFA</li> </ul> <p>Restaurant / Function Centre</p> <ul style="list-style-type: none"> <li>• 1 space / 25 m<sup>2</sup> on all land zoned for Business activities</li> </ul> <p>(11449.4sqm)</p> <p><u>Retail / food requirement: 458</u></p> <p><b><u>TOTAL BUSINESS PARKING: 569-577</u></b></p> <p><b><u>OVERALL TOTAL REQUIRED: 1,024-1,156</u></b></p>	<p>537 business spaces</p> <p>1,035 total spaces Conditions on minimum provisions provided (Refer to Condition 245)</p>	<p>Yes</p>
<p><b>Bicycles</b></p> <p>To be provided at rate of 10% of required parking:</p> <ul style="list-style-type: none"> <li>• Resident (37)</li> <li>• Commercial (57)</li> </ul>	<p>23</p>	<p><b>No</b> (Refer to Condition 245)</p>

### **Discussion on DCP Controls**

#### **Part 3 Eastwood Urban Village Precinct**

##### **3.3.1 Setbacks**

Sub-clause (e) requires buildings (including balconies) to be setback a minimum of 3m from all boundaries above 9.5 m from street level.

**Comment:** The proposal complies with the aims of the setback control to Rowe Street. In this case, the upper three levels of Buildings AA and BB are setback in excess of the required 3m to provide a recessive building form that will not impact on the pedestrian scale of Rowe Street.

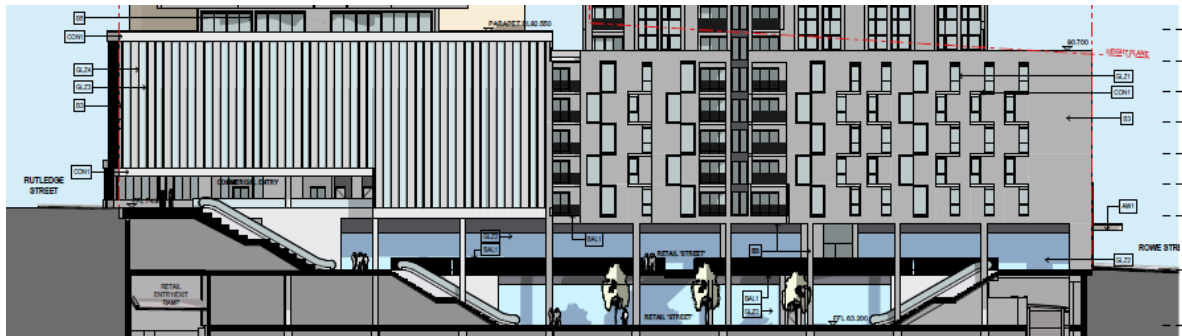
The setbacks of the buildings with a frontage to Rutledge Street vary from the DCP 3m setback above 9.5m height. The proposed alignment of building to Rutledge Street enhances this frontage through building articulation and modulation, breaks and separation of the building forms, the additional setback for the slip lane/deceleration lane and the activation of this frontage.

Building CB is built to the corner of Rutledge Street and West parade to strongly define this key street corner and a prominent approach to Eastwood Town Centre from the east.

**3.5.5 Awnings and weather protection**

Sub-clause (c) requires the height of a colonnade, awning or covered way not be less than 3 metres or greater than 4.5 metres measured to the soffit.

**Comment:** The height of the colonnade to “the street” exceeds 4.5m in height (at 24.5m) however is partly enclosed by the ground level walkway and bridged building component joining Building AA and BA. As such it is considered that acceptable weather protection is available despite the colonnade exceeding the permitted height.



**Figure 28. Internal section showing the layout of the Street.**

In addition, the width of the through link is considered appropriate in that it presents as a continuation and appropriate scale to The Avenue to the north and facilitates good pedestrian circulation.

**3.7.1 Sunlight**

Sub-clause (b) requires north facing windows to living areas of neighbouring dwellings should not have sunlight reduced to less than 3 hours between 9am and 5pm on June 21.

There are several properties to the south across Rutledge Street and side streets Trelawney and West Parade with north facing windows facing the development. These are identified in Figure 28 below.

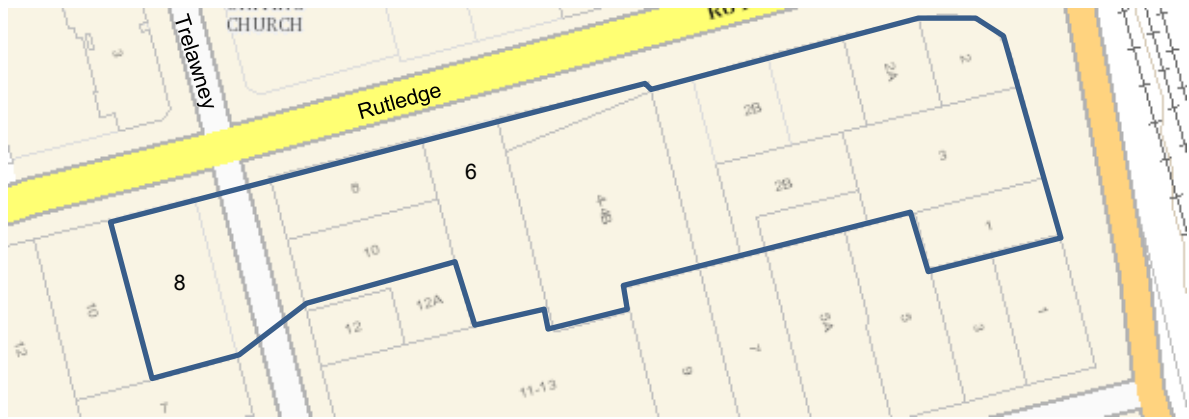
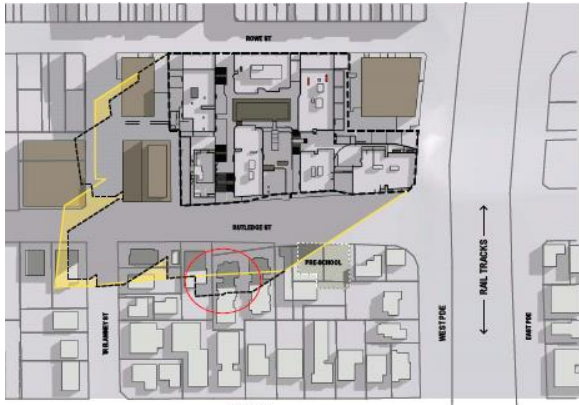


Figure 29 Properties receiving shadow impacts from the proposed development (outlined in blue)

As demonstrated from the submitted shadow diagrams, the following impacts will occur as a result of the proposed development.

Table 8: Solar Impacted properties south of site		
Property (street)	Impact to northern windows from development  (Refer to Figure 27 of this report for solar diagrams or Plan DA 8009(1), DA 8010(1))	Compliance
8 Rutledge	No impact after 11am-5pm	Yes
8 Trelawney	No impact after 12noon-5pm Solar gain to rear yard at 12 noon	Yes
10 Trelawney	Majority of northern elevation with solar gain at 9am. No impact after 12noon-5pm	Yes
6 Rutledge	Increased height extends deeper into site at 9am, however existing self-shadow from boundary fence occurs and majority of rear yard not impacted.  	Yes
	<p>Figure 30 additional 9am shadow to No. 6 and 4 (circled red) No impact from 2pm-5pm (additional solar gain at 12noon)</p>	

4 Rutledge (villas – 2 buildings with central driveway)	Increased height extends deeper into site at 9am (refer to Figure 29 above), this will fall over central driveway, eastern and southern modulated elevations that appear to contain courtyards. However, existing self-shadow from boundary fence and building occurs.  Very minor increase in shadow to western villa (no greater than extent of self-shadow) at 12 noon.  Generous solar gain to eastern villa at 12 noon (likely 2 hours).  At 3pm, less shadow from development compared with LEP height maximum, however villa development in shadow from building to west of subject site.  NB – solar gains provided to properties further west.	<b>No</b>
2B Rutledge (pre-school)	Solar access at 9am, solar gain at 12 noon to centre of site, then in shadow with limited solar gain at 3pm.  NB No additional shadow impacts from increased height. Existing shadow impact from trees on site.	Yes
2A Rutledge	Solar access at 9am-11noon	Yes
2 Rutledge	Solar access at 9am-12noon	Yes
3 West	Solar access at 9am-12noon	Yes
1 West	Solar access at 9am-12noon	Yes
5 Clanalpine	Solar access at 9am-12noon	Yes
5A Clanalpine	Solar access at 9am-12noon	Yes

As identified in the table above, No. 4 Rutledge Street will not receive solar access for 3 hours between 9am and 5pm on June 21 (this will impact on 2 villas at the front of the single storey multi-unit development), however the remaining properties will achieve a suitable level of compliance. The shadow diagrams submitted with the application (and reproduced at Figure 27 of this report) demonstrate that the increased building height does not create the noted non-compliance and that a fully compliant scheme would also result in the non-compliance. The proposed development provides benefits in availing further solar gains through an alternate distribution of building mass to create meaningful solar access gains for a number of properties, particularly in the middle of the day.

Notwithstanding the above stated non-compliance, the proposed development is considered to provide a better solar distribution and the resulting impacts are reasonably anticipated for properties located due south of a mixed use development within the B4 zone.

Part 9.3 Parking Controls2.0 Parking Required for specific uses

The parking requirements for residential and commercial uses are detailed in the above table.

Resident Requirements	Minimum 371 Maximum 497
Resident Visitor	82

Detailed parking analysis of the various uses, proposed areas and parking allocation has been undertaken and the parking provisions have been reviewed by Councils Development Engineer, providing the following comments:

- The allocation of resident spaces (451) is 46 spaces below the maximum permitted and therefore not unreasonable.
- The resident visitor parking is allocated on 47 spaces on basement Level 3, implying that the remaining 36 spaces will be accommodated in the retail parking levels. There is merit in this as the visitor parking demand typically evening periods on the Friday and Saturday nights do not clearly overlap the retail parking demand (weekday afternoons and Thursdays evening) and are certainly clear of the peak commercial parking periods (weekday business hours). Accordingly the arrangements accepted.
- The allocation of commercial spaces is noted to be comprised on 15 spaces on Basement Level 3 (assumed to staff) and, like visitor parking, it would appear the remainder of spaces are to be accommodated on the combined retail / commercial parking level of basement level 3. Council's DCP does not require differentiation between staff and customer parking. Despite this, the level of parking allocated to staff is modest. It is acknowledged that with a mixed use application, parking is typically unallocated (given it is difficult to enforce such an arrangement) and therefore the proposed pool of parking would suffice.
- The reduction in car parking for the retail and commercial

A condition of consent will be imposed to nominate the minimum parking required for residents, visitor, retail, commercial and staff (Refer to Condition 237). Also, a condition will require additional resident parking and provision of public bicycle parking is made available at a rate of 10% of the minimum required parking (ie. 37 resident bike storage and 57 public bike storage). (Refer to Condition 237).

**8.11 Section 7.11 Development Contributions Plan 2007 (Amendment 2010)**

Development Contributions Plan – 2007 (2010 Amendment) allows Council to impose a monetary contribution on developments that will contribute to increased demand for services as a result of increased development density / floor area. The contributions that are payable with respect to the increased floor area are based on the following figures relating to Ryde.

<b>Table 9: Section 7.11 Contributions</b>		
<b>Contribution Plan</b>	<b>Contributions</b>	<b>Total</b>
Community and Cultural Facilities	\$1,121,584.22	
Open Space and Recreation Facilities	\$2,827,894.80	
Civic and Urban Improvements	-	
Roads and Traffic Management Facilities	\$116,328.53	
Cycleways	\$78,277.83	
Stormwater Management Facilities	\$239,930.74	
Plan Administration	\$21,094.81	
<b>Grand Total</b>		<b>\$4,405,110.92</b>

Notes:

- The June 2018 rates have been applied to the development.
- In accordance with the VPA, a credit has been given for the civic and urban improvements. The VPA also proposes 5 affordable units which will be dedicated to Council. Section 7.11 contributions have not been charged for these dwellings.

Condition 73 requiring the payment of a Section 94 contribution has been included in the recommendation of this report which will further be indexed at the time of payment if not paid in the same quarter. This condition has required the Section 7.11 Contribution to be paid prior to the issue of any Construction Certificate for the buildings.

## **9. LIKELY IMPACTS OF THE DEVELOPMENT**

Most of the impacts associated with the proposed development have already been addressed in the report. The matters related to traffic have been resolved through provision of suitable access arrangements including Rutledge Street vehicular access and West Parade access being restricted to a loading dock only.

From a traffic perspective, it has been concluded that the proposed access arrangements provide the least impact on the operation of intersections along Rutledge Street and RMS have provided its concurrence to the proposal. The adjustment of signal phasing/timing will be governed under RMS jurisdiction.

Having been reviewed by Council's UDRP, earlier iterations of the development have been improved through detailed design progression and response to likely impacts raised by the Panel which now present a far superior scheme and one that performs well in relation to the design guidance under the ADG. The outcome is



one that will provide a high level of amenity to future residential occupants. Solar access has been assessed in detail with the earlier scheme having been reviewed by Solar Consultant, Steve King and the final design being informed by solar analysis and improved solar compliance. Furthermore, the cross-ventilation performance of the development has been reviewed and confirmed by Building Sustainability Consultant, Tim Elgood. As a result of a sound review process it was confirmed that the proposal meets the requisite number of apartments having genuine cross-ventilation.

Whilst the development proposes a form that results in a taller building height across the site, and one which exceeds the maximum LEP height, the likely impacts of additional height have been assessed throughout this report, including in the assessment and analysis of the submitted Clause 4.6 variation request. In essence, the additional height is supported as the outcome does not introduce unreasonable additional impacts and there are genuine benefits identified from the proposed redistribution of building mass across the proposed 7 buildings which incorporate a through site link and laneway, extend and link the public domain, create a gateway development for the Town Centre and introduce meaningful solar gains to properties south of the site.

Construction, traffic and environmental management matters will be governed through conditions of consent to ensure that likely impacts from the construction phases of the development can be mitigated and managed in the best possible manner with least possible destruction to the surrounding business and residential uses.

In conclusion, the likely impact of the proposed development will be a positive contribution and public benefit to the Eastwood Centre providing much needed street address to Rutledge Street, revitalization, permeability and strengthening of the town centre.

## **10. SUITABILITY OF THE SITE FOR THE DEVELOPMENT**

The proposed development is considered suitable for the subject site with respect to the B4 – Mixed Use zoning under RLEP 2014 and the associated planning controls.

The proposal will revitalise the existing shopping centre and inject a vibrancy appropriate to a town centre through providing connections, creative public spaces and a variety residential and business opportunities that will further contribute to the mixed use zone. The scale and form of the development is entirely suitable for the site and the design response is one that been derived from a robust analysis of the site, its constraints and opportunities. Whilst not strictly meeting the height limitations prescribed for the site, through extensive consultation with Council, the UDRP and RMS both at pre-lodgement and DA stages the final scheme has

developed and responded to provide a positive and suitable design approach for the site and locality.

## 11. THE PUBLIC INTEREST

The development is considered to be in the public interest as it is reasonably consistent with the relevant planning controls and allows the redevelopment of the site as anticipated by relevant controls. Subject to conditions, assessment of this application has not identified any significant compliance issues, unresolved matters or amenity impacts for adjoining development.

## 12. REFERRALS

The following table (**Table 10**) provides a summary of internal and external referrals undertaken for this application:

<b>Table 10: Referrals</b>	
<b>Internal</b>	
<b>Heritage Advisor</b>	No objection has been raised to the development subject to appropriate conditions of consent. (See condition numbers 24, 62 and 63).
<b>Environmental Health Officer</b>	No objection has been raised to the development subject to appropriate conditions of consent. (See condition numbers 16, 30 to 52, 108 to 117, 165 to 170, 214 to 223, 229 to 236).
<b>Development Engineer</b>	No objection has been raised to the development subject to appropriate conditions of consent. (See condition numbers 14, 15, 20 to 23, 97 to 103, 106, 176 to 182).
<b>Public Works (Drainage) CWI</b>	No objection has been raised to the development subject to appropriate conditions of consent. (See condition numbers 18, 19).
<b>Public Works (Traffic) CW</b>	No objection has been raised to the development subject to appropriate conditions of consent. (See condition numbers 60, 61, 104, 150).  A Traffic Modelling Independent Peer Review, dated 3.8.17 was carried out by Bitzios Consulting. This review assisted Council's Traffic Engineers in determining the adequacy of the modelling provided by the applicant prior to final consideration and comment.
<b>Public Works (Public Domain) CW</b>	No objection has been raised to the

	development subject to appropriate conditions of consent. (See condition numbers 84 to 91, 158, 183 to 195).
<b>Public Works (Waste) CW</b>	No objection has been raised to the development subject to appropriate conditions of consent. (See condition numbers 105, 123, 206 to 208).
<b>Structural Engineer (Cardno)</b>	No objection has been raised to the development subject to appropriate conditions of consent. (See condition numbers 72).
<b>Public Art</b>	No objection has been raised to the development subject to appropriate conditions of consent. (See condition numbers 71 and 240).
<b>Landscape Architect (CPS Planning)</b>	No objection has been raised to the development subject to appropriate conditions of consent. (See condition numbers 64 to 68).
<b>VPA</b>	<p>VPA offer has been endorsed by resolution of Council on 27 February 2018 to provide significant upgrade to Rowe Street Mall to create an enhanced public domain surrounding the site and the dedication of 5 x 1 bedroom units to Council for affordable rental housing for essential workers.</p> <p>No objection has been raised to the development subject to appropriate conditions of consent. (See condition numbers 2, 172).</p>
<b>External</b>	
<b>Roads and Maritime Services (RMS)</b>	<p>Concurrence granted on 9 July 2018.</p> <p>No objection has been raised to the development subject to appropriate conditions of consent. (See condition numbers 25, 119, 133, 134, 212).</p>
<b>Sydney Trains</b>	No objection has been raised to the development subject to appropriate conditions of consent. (See condition numbers 26 to 29, 120 to 122, 135 to 137).
<b>Water NSW</b>	No objection. Dewatering approval for the site not required as ground water will unlikely be encountered during excavation.
<b>NSW Police (Ryde LAC)</b>	No objection has been raised to the development subject to appropriate conditions of consent. (See condition numbers 161 to 164).

	<p>In addition, it was requested in referral advice that the sale of alcohol be prohibited from the commercial / retail premises.</p> <p>This request is not considered appropriate and has not been included. The applicant provided a response seeking to no have a blanket prohibition on the sale of alcohol enforced as a condition of consent. Noting that any liquor premises will be subject to the usual licensing process to ensure the responsible sale and service of alcohol.</p> <p>As provided by the applicant, it is agreed that the sale of liquor from a licensed premises will not detract from the quality of the development or area. The sale of alcohol is a standard offering and even expectation form customers and would be an unreasonable burden placed on the applicant.</p> <p>The request and this response was provided as a new referral to NSW Police, however no further comment have been provided.</p>
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### **13. PUBLIC NOTIFICATION AND SUBMISSIONS**

The proposed development was originally notified and advertised in accordance with Development Control Plan 2014 – Part 2.1, Notification of Development Applications. The application was advertised on 14 September 2016 to 26 October 2016 in the *Northern District Times*. Following revised plans, the second round notification of the proposal was from 10 May 2017 to 10 June 2017. Following further revised plans, the third round notification of the proposed was from 4 July 2018 to 18 July 2018.

During the first notification round, 5 submission were received. During the second round, 12 submissions were received, and during the third round 7 submissions were received. The issues raised in the submissions included the following:

#### **Round 1 – Submissions (14 September 2016-26 October 2016)**

#### **Round 2 - Submissions (10 May 2017 to 10 June 2017)**

**Issue 1:** *There will be significant flooding ramifications if a 4 level basement car parking is located at the site.*

**Comment:** The proposed development is supported by Council’s Drainage Engineer and suitable conditions of consent will be imposed, including geotechnical monitoring, site dewatering plan and OSD.

**Issue 2:** *Insufficient provision of retail space and excessive residential provision.*

**Comment:** The proposed development provides a suitable mix of retail, commercial, community and residential accommodation across the site, including the provision of a gym, medical centre and office space.

**Issue 3:** *Opposition to apartments in retail and commercial zone.*

**Comment:** Residential accommodation is both permitted and desired within the B4 Mixed use zone, close to public transport and services.

**Issue 4:** *The proposed 443 apartments constitute overdevelopment, will cause strain on existing infrastructure, and change the character of the area.*

**Comment:** The final scheme has now been reduced to 409 apartments. The residential provision within the development is suitable for the B4 zone and State and local controls include provisions commensurate with the scale of a development to ensure existing infrastructure is capable of absorbing new development or additional provisions are delivered / facilitated by the development.

The application has been through a rigorous assessment and consideration by RMS and the final scheme is one that has RMS concurrence. The proposal includes compliant parking and waste provisions, and all services have been endorsed by Council through a referral review process. Conditions of consent are imposed to ensure all checks and balances are undertaken to enable appropriate delivery of the development within the locality.

**Issue 5:** *13-storey buildings in this location are unacceptable.*

**Comment:** The proposed building height is discussed throughout this report and found to be acceptable for the town centre locality.

**Issue 6:** *Local schools cannot cope with more students.*

**Comment:** This is a matter for infrastructure planning and is a matter beyond the scope of assessment for this individual DA.

**Issue 7:** *Direct impact on 196-198 Rowe Street, including difficulty entering and exiting property due to increased traffic, impact during construction.*

**Comment:** This matter has been raised with the applicant. The following condition will be imposed (consistent with Condition No. 2 of Development Consent 2007/936 (previous consent at the subject site):

1. Revised ramp access from Trelawney Street
  - a. *Prior to issue of the relevant Construction Certificate, detailed architectural plans are to be submitted to, and approved by Council prior to the issue of a relevant Construction Certificate, which provide for a revised ramp design from Trelawney Street and incorporates the retention of the existing access to 196-198 Rowe Street, Eastwood.*
  - b. *Notwithstanding condition 1(a), the applicant may obtain a written consent to demolish and modify the ramped access from Trelawney Street from the*

*neighbouring property owners. If the written consent(s) are obtained, the applicant shall submit those written consent(s) to Council for prior to issue of a relevant Construction Certificate.*

Refer to Condition 1(a).

**Issue 8:** *Traffic Safety resulting from more cars using ramp on Trelawnley Street exit.*

**Comment:** Traffic safety has been reviewed and supported by Councils Traffic and Development Engineers and well as RMS who have provided concurrence with respect to access from Trelawney Street, Rutledge Street and West Parade.

**Issue 9:** *The development does not provide adequate number of car spaces.*

**Comment:** The proposal complies with required parking provisions under the DCP and has been supported following review and analysis by Councils Traffic Engineer. Conditions of consent are imposed to ensure minimum provisions and allocation. (Refer to Condition 237).

**Issue 10:** *Recommendation provided to require at least one food outlet as fresh fruit and vegetable outlet.*

**Comment:** The occupation of individual tenancies is driven by market demand and cannot be enforced by Council. The proposal does indicate occupation for “fresh food”.

**Issue 11:** *Need to provide access to drinking water fountains in communal open space, as well as provision for shared edible gardens.*

**Comment:** The proposal provides sufficient communal open space provisions in accordance with the ADG.

**Issue 12:** *More specific response on car-sharing required.*

**Comment:** The provision of parking has been assessed by Council’s Traffic Engineer and found to be acceptable. DCP car share provisions are not applicable to the site.

**Issue 13:** *Additional bike parking should be provided for retail customers and these should be located separate from storage units.*

**Comment:** The provision of 23 bicycle spaces by the development is not suitable. A condition of consent will be imposed to require 10% of required parking. This will require 37 resident spaces and a further 57 spaces for public bike storage. (Refer to Condition 237).

**Issue 14:** *Provision of bike lanes on West Parade and Rowe Street.*

**Comment:** This is outside the scope of the DA.

**Issue 15:** *Development should incorporate way-finding for pedestrians and cyclists.*

**Comment:** The proposed development is considered to greatly enhance the permeability of the locality through provision of a through site link and lane that will connect Rutledge Street to the plaza. The public spaces provide clear and direct movement for pedestrians through the site. Signage and lighting will further contribute to ease of movement.

**Issue 16:** *The development should provide room for specialty shops.*

**Comment:** The commercial mix is supported and therefore considered to be suitable provision for a variety of specialty shops in combination with fresh food and other business opportunities.

**Issue 17:** *The proposal should provide more community facilities and commercial spaces to provide job opportunities rather than private spaces within the heart of the town centre. Residential uses should be located elsewhere.*

**Comment:** The subject site is privately owned land. The town centre is a mixed use zone which encourages a mix of residential, business and community uses close to facilities and public transport. The proposed development is entirely consistent with the zone objectives offering a good mix of uses and employment generation.

The development also provides a significant offering of public domain provisions and upgrade including a through site link, laneway and a variety of communal spaces that will positively contribute to the town centre.

**Issue 18:** *The developer should upgrade pavement in Rowe Street Mall as part of VPA.*

**Comment:** The Mall upgrade design is subject to a VPA. Furthermore, as imposed by conditions of consent, the development is subject to the standards and requirements of the City of Ryde Development Control Plan DCP 2014 Part 4.1 Eastwood Town Centre, Section 3.0 Eastwood Urban Village Precinct, and the City of Ryde Public Domain Technical Manual (PDTM) Section 3 – Eastwood.

For uniformity the footpath pavement along Rutledge Street and West Parade may need to be the same as for the approval requirements for 7-9 Rutledge Street and 3-5 Trelawney Street, this will require asphalt with granite strips and banding. It is expected the footpath pavement along Rowe Street to be upgraded to full width granite pavers.

**Issue 20:** *The proposed development will result in traffic gridlock. Eastwood already suffers from traffic congestion.*

**Comment:** The application was subject to a rigorous traffic impact assessment process, has been reviewed and found satisfactory by Councils Traffic Engineer, and concurrence has been provided by RMS.

**Issue 21:** *Health issues associated with demolition.*



**Comment:** Demolition will be subject to standard conditions of consent in accordance with POEO Act 1997.

**Issue 22:** *Need to stage development to allow businesses to remain open during construction.*

**Comment:** The application does not seek staging of construction and this is not something that Council have the power to enforce. Construction and traffic management requirements enforced through consent conditions will assist.

**Issue 23:** *The development will contribute to cumulative impacts of other development in the area.*

**Comment:** Each development is subject to development controls under state and local plans that anticipate and guide future development within a specific zone. Those controls are derived from strategic planning processes that identify the development capacity for a locality. Increased density and building height is anticipated under Council's controls for the site and surrounding locality being within a B4 Mixed use and town centre zone. The proposed development responds to the strategic vision for Eastwood and has been assessed on its own merits and ability to manage and accommodate increased density.

**Issue 24:** *Support provided for the development. Eastwood is well overdue for redevelopment.*

**Comment:** Noted.

### **Round 3 - Submissions (4 July 2018 to 18 July 2018)**

**Issue 26:** *Numerous traffic concerns and questions relating to: congestion, trucks accessing loading dock, traffic delays, traffic flow, interrupted, traffic safety concerns, request traffic lights and pedestrian crossing, insufficient parking, insufficient infrastructure.*

**Comment:** Discussed above.

**Issue 27:** *Matters regarding Trelawney Street as raised in Round 1 and 2 notification, including demolition of ramp and potential flooding to No. 196-198.*

**Comment:** Recommended conditions relating to ramp is discussed above.

**Issue 28:** *Health issues associated with demolition.*

**Comment:** Discussed above.

**Issue 29:** *Request confirmation that there will be no change to the bus only right hand turn lane from Rutledge Street onto the slip way on West Parade (travelling east) as this will dramatically increase traffic on West Parade.*

**Comment:** This arrangement will remain unchanged. Further, no car access is available from West Parade (commercial vehicle access only) which was a requirement of RMS prior to issuing concurrence.

**Issue 30:** *There will be significant flooding ramifications if a 4 level basement car parking is located at the site.*

**Comment:** Addressed above.

**Issue 31:** *The proposed 443 apartments constitute overdevelopment, and will cause strain on existing infrastructure.*

**Comment:** Addressed above.

**Issue 32:** *13-storey buildings in this location are unacceptable.*

**Comment:** Addressed above.

**Issue 33:** *Local schools cannot cope with more students.*

**Comment:** Addressed above.

**Issue 34:** *Concerns are raised in terms of the wind tunnel effects and overshadowing to southern properties along Rutledge Street including low income earners and the pre-school.*

**Comment:** Each of these matters have been discussed in detailed within this report. Conditions of consent will include recommendations provided by the submitted Wind Environment Study to best manage any anticipate wind tunnel impacts. Solar access is considered acceptable and analysis has been provided in terms of the LEP permitted height impact versus the solar gains achieved from the design of the proposed development which incorporates a variety of building heights and building breaks to facilitate a better planning outcome in terms of solar impacts to the south. Notably, this includes increased solar access to the pre-school in the middle of the day.

## **14. CONCLUSION**

This report considers an application for demolition of all buildings and structures on the site and construction of a mixed use development proposing 7 buildings (incorporating residential, retail and commercial uses and a pedestrian link at 152-190 Rowe Street and 3-5 Rutledge Street, Eastwood

The development generally complies with the design criteria in respect to the ADG with the exception minor variation to building depth, separation, solar access, and first floor ceiling height provisions that are suitably justified.

The proposed building height variation is supported pursuant to the submitted Cause 4.6 variation and the reduced street frontage setback above 9.5 is suitable in light of the site context and building treatment.

The proposed development, notwithstanding greater heights than anticipated by the controls is considered to provide a positive contribution to the Eastwood Centre through revitalisation of the centre, upgrade to the public realm, provision of a variety of housing choices, recreation, commercial and retail opportunities.

The proposed development is compatible with the objectives and vision for the Eastwood Town Centre which seeks to establish a mix uses, a safe, active and vibrant main street retail precinct with good pedestrian amenity and a sense of community.

The development is recommended for approval subject to appropriate conditions of consent provided in Attachment 1 of this report.

## **15. RECOMMENDATION**

Pursuant to Section 4.16 of the Environmental Planning and Assessment Act, 1979, the following is recommended:

- A. That the Sydney North Planning Panel grant consent to development application LDA2016/0378 at 152-190 Rowe Street and 3-5 Rutledge Street, Eastwood, subject to the recommended Conditions of Consent in Attachment 1 of this report.
- B. That those persons making a submission be advised of the decision.
- C. That RMS be advised of the decision.

### **Report prepared by:**

Alison Davidson  
Planning Ingenuity Pty Ltd  
Independent Planning Consultant

### **Report approved by:**

Sandra Bailey  
Manager Development Assessment

Liz Coad  
Director City Planning and Environment

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**Council of the City of Ryde**

ABN 81 621 292 610

and

**Yuhu Property (Australia) Pty Ltd**

ABN 68 163 794 296

# **Planning Agreement**

*Environmental Planning and Assessment Act 1979*

152-186 Rowe Street, Eastwood, New South Wales

3-5 Rutledge Street, Eastwood, New South Wales

# Planning Agreement

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## Contents

<b>1</b>	<b>Definitions and interpretation</b>	<b>1</b>
	1.1 Definitions	1
	1.2 Interpretations	9
<b>2</b>	<b>Planning Agreement</b>	<b>10</b>
	2.1 Condition Precedent	10
	2.2 Planning agreement under the EP&A Act	10
	2.3 Application of the Planning Agreement	10
<b>3</b>	<b>Development Contributions</b>	<b>10</b>
	3.1 Payment or Delivery of Contributions – Works and Land	10
<b>4</b>	<b>Monetary Contribution</b>	<b>11</b>
	4.1 Application of section 7.24 of the EP&A Act	11
	4.2 Application of section 7.11 of the EP&A Act	11
	4.3 Application of section 7.12 of the EP&A Act	11
	4.4 Monetary Contribution	11
<b>5</b>	<b>Contribution Works</b>	<b>12</b>
	5.1 Contribution Works	12
	5.2 Apartments	12
<b>6</b>	<b>Caveat</b>	<b>13</b>
	6.1 Caveatable Interest	13
	6.2 Caveat Prior to Registration	13
<b>7</b>	<b>Registration of this Deed</b>	<b>14</b>
	7.1 Land ownership	14
	7.2 Registration on title	14
<b>8</b>	<b>Release and Discharge</b>	<b>14</b>
<b>9</b>	<b>Breaches to be rectified</b>	<b>14</b>
	9.1 Council to give notice	14
	9.2 Schedule 6 applies	15
<b>10</b>	<b>Additional Security</b>	<b>15</b>
<b>11</b>	<b>Assignment and other dealings</b>	<b>15</b>
<b>12</b>	<b>Review of Deed</b>	<b>15</b>
<b>13</b>	<b>Dispute resolution</b>	<b>15</b>
<b>14</b>	<b>Overdue payments</b>	<b>15</b>
	14.1 Interest on overdue money	15
	14.2 Compounding	15
	14.3 Interest on liability merged in judgment or order	15
<b>15</b>	<b>GST</b>	<b>16</b>
	15.1 Interpretation	16

15.2	Consideration GST exclusive	16
15.3	GST not payable on Contributions	16
15.4	Additional amount of GST payable	16
15.5	No merger	16
<b>16</b>	<b>Explanatory Note</b>	<b>16</b>
<b>17</b>	<b>Notices</b>	<b>17</b>
17.1	Form	17
17.2	Change of address	17
17.3	Receipt	17
17.4	Receipt - next Business Day	17
<b>18</b>	<b>Schedules and Annexures to this Deed</b>	<b>17</b>
<b>19</b>	<b>General provisions</b>	<b>18</b>
<b>20</b>	<b>Obligations under this Planning Agreement</b>	<b>18</b>
20.1	Legal Challenge	18
20.2	Parties to meet	18
20.3	Legal advice	18
20.4	Confidential	18
20.5	Development may continue	19
20.6	Termination	19
20.7	Invalid Approval	19
20.8	Indemnity	19
20.9	Public safety	19
20.10	No merger	19
	<b>Schedule 1 – Requirements set out in section 7.4 of the EP&amp;A Act</b>	<b>20</b>
	<b>Schedule 2 - Description of the Land and the Development</b>	<b>22</b>
	<b>Schedule 3 - Contributions Schedule</b>	<b>24</b>
	<b>Schedule 4 - Contribution Works Procedures</b>	<b>28</b>
<b>1</b>	<b>Authority requirements</b>	<b>28</b>
1.1	Construe	28
1.2	Responsibility for Approvals	28
1.3	Compliance with Approvals	28
<b>2</b>	<b>Costs</b>	<b>28</b>
<b>3</b>	<b>Project management and contractor engagement</b>	<b>28</b>
3.1	Management	28
3.2	Contractor engagement	29
<b>4</b>	<b>Design development and approval</b>	<b>29</b>
4.1	Concept design	29
4.2	Detailed Design	29
4.3	Good faith	30
<b>5</b>	<b>Conduct of the Contribution Works</b>	<b>30</b>
5.1	Communication	30

5.2	Standard of Contribution Works	30
5.3	Access and Damage	30
<b>6</b>	<b>Inspection</b>	<b>31</b>
6.1	Inspection schedule	31
6.2	Inspection process	31
<b>7</b>	<b>Completion</b>	<b>33</b>
7.1	Practical Completion	33
7.2	Delivery of documents	33
7.3	Assignment of warranties	33
<b>8</b>	<b>Defects liability</b>	<b>34</b>
8.1	Obligation to rectify	34
8.2	Rectification complete	34
8.3	Rectifications costs	35
8.4	Security for defects liability	35
<b>9</b>	<b>Risk and insurance</b>	<b>36</b>
9.1	Risk	36
9.2	Indemnities	36
9.3	Insurance	36
<b>10</b>	<b>Intellectual Property Rights</b>	<b>36</b>
<b>11</b>	<b>Contamination risk</b>	<b>36</b>
11.1	Responsibility	36
11.2	Certification	37
	<b>Schedule 5 - Contribution Works Concept Plans</b>	<b>38</b>
	<b>Schedule 6 - Notification and rectification of breach</b>	<b>39</b>
	<b>Schedule 7 - Dispute Resolution</b>	<b>42</b>
	<b>Schedule 8 – Deed Registration</b>	<b>46</b>
	<b>Schedule 9 - Release and Discharge Terms</b>	<b>47</b>
	<b>Schedule 10 - Security</b>	<b>48</b>
	<b>Schedule 11 - Assignment and Dealing</b>	<b>53</b>
	<b>Schedule 12 - Pro-forma Novation Deed</b>	<b>55</b>
	<b>Schedule 13 - General Provisions</b>	<b>56</b>
	<b>Schedule 14 - Costs</b>	<b>60</b>
	<b>Schedule 15 - Apartment Finishes Schedule</b>	<b>1</b>
	<b>Signing page</b>	<b>1</b>



# Planning Agreement

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## Date

## Parties

Council of the City of Ryde ABN 81 621 292 610 of Level 1, 3 Richardson Place, North Ryde, New South Wales (**Council**)

Yuhu Property (Australia) Pty Limited ABN 68 163 794 296 of Level 15, 201 Miller Street, North Sydney, New South Wales (**Owner**)

## Recitals

- A The Owner is the registered proprietor of the Land.
- B The Owner is the applicant under the Development Application lodged with the Council (known as LDA2016/0378) for Development Consent to carry out the Development on the Land.
- C The Owner has offered to make Contributions in connection with the carrying out of the Development if the Council grants the Development Consent.
- D The Owner has agreed to provide the Contributions on the terms and conditions set out in this Deed.

The parties agree

## 1 Definitions and interpretation

### 1.1 Definitions

The following words have these meanings in this Deed unless the contrary intention appears:

**Adjustment Date** means each 30 June every year after the date of this Deed.

**Apartments** mean the 1 bedroom residential apartments comprising part of the Development to be dedicated or transferred to Council in accordance with clause 5.2.

**Apartment Contribution Number** means 5 Apartments.

**Apartment Works Defects Security** means the Security for the Apartment Works (set out in the Security Schedule).

**Apartment Finishes Schedule** means the schedule of finishes for the Apartments contained in Schedule 15.

**Apartment Works** means that part of the Contribution Works relevant to the detailed design for Construction Certificate purposes, construction and delivery of the Apartments pursuant to this Deed.

**Appeal** means an appeal (including an application for any kind of leave to appeal) in a Court of competent jurisdiction against the decision of a lower court.

**Appeal Notice** means:

- (a) in proceedings in the Court of Appeal:
  - (i) an application for leave to Appeal;
  - (ii) a notice of intention to Appeal; or
  - (iii) if a valid notice of intention to Appeal has been lodged, a notice of appeal;and
- (b) in proceedings in the High Court, an application for Special Leave to Appeal.

**Application** means an application for any Approval.

**Approval** means any approvals, consents, certificates, permits, endorsements, licences, conditions, permissions or requirements (and any modifications or variations to them) which may be required by Law for the commencement and carrying out of the Contributions Works or the Development generally and includes a Development Consent or other approval under the EP&A Act (or modification of that approval).

**Authority** means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes an accredited certifier accredited under the *Building Professionals Act 2005* (NSW).

**Bank Bill Rate** means:

- (a) the average bid rate for Bills having a tenor of 90 days as displayed on the 'BBSY' page of the Reuters Monitor System on the day the relevant payment is due (**Due Date**); or
- (b) if the average bid rate is not displayed by 10:30 am on the Due Date or if it is displayed but there is an obvious error in that rate:
  - (i) the rate the Council calculates as the average of the bid rates quoted at approximately 10:30 am on that day by each of five or more institutions chosen by the Council which provide rates for display on the 'BBSY' page of the Reuters Monitor System for Bills of a 90 day tenor which are accepted by that institution (after excluding the highest and the lowest, or in the case of equality, one of the highest and one of the lowest bid rates); or
  - (ii) where the Council is unable to calculate a rate under paragraph (a) because it is unable to obtain the necessary number of quotes, the rate set by the Council in good faith at approximately 10:30 am on that day, having regard, to the extent possible, to the rates otherwise bid for Bills of a 90 day tenor at or around that time, and
- (c) The rate calculated or set must be expressed as a percentage rate per annum and be rounded up to the nearest fourth decimal place; and

- (d) The Council may calculate a rate under paragraph (a) or (b) before 11:00 am on the Due Date, but if the average bid rate appears on the 'BBSY' page by 11:00 am and there is no obvious error in it, the 'BBSY' page rate applies as the **Bank Bill Rate** under this Deed despite any calculation by the Council under paragraph (b).

**Bank Guarantee** means an irrevocable and unconditional undertaking without any expiry or end date (unless none of the listed trading banks are able to provide an unlimited expiry in which case a minimum expiry of 5 years) in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

- (a) one of the following trading banks:
- (i) Australia and New Zealand Banking Group Limited,
  - (ii) Commonwealth Bank of Australia,
  - (iii) Macquarie Bank Limited,
  - (iv) National Australia Bank Limited,
  - (v) St George Bank Limited,
  - (vi) Westpac Banking Corporation,
  - (vii) Bank of China (Australia) Limited, or
- (b) any other financial institution approved by the Council in its absolute discretion.

**Bills** means a bill of exchange as defined in the *Bills of Exchange Act 1909* (Cth), but does not include a cheque.

**Bond** means a documentary performance bond which must be denominated in Australian dollars and be an unconditional undertaking with all the following requirements. It must:

- (a) be signed and issued by an Australian Prudential Regulation Authority [APRA] regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia;
- (b) have at all times an investment grade security rating from an industry recognised rating agency of at least:
- (i) BBB + [Standard & Poors and Fitch]; or
  - (ii) Baa 1 [Moody's]; or
  - (iii) bbb [Bests].
  - (iv) Be issued on behalf of the Owner;
  - (v) Have no expiry or end date;
  - (vi) Have the beneficiary as the Council;
  - (vii) Be irrevocable;

- 
- (c) state either individually, or in total with other lodged compliant forms of Guarantees, the relevant minimum amount required to be lodged as security; and
  - (d) state the purpose of the deposit required in accordance with this Planning Agreement.

**Builder** means any entity contracted under the Construction Contract to carry out the Contribution Works or any part of them.

**Building** means a building proposed to be constructed on the Land.

**Business Day** means any day except for Saturday or Sunday or a day which is a public holiday in Sydney.

**Cash Deposit** has the same meaning as given to that term in clause 1.6 of Schedule 10.

**Cash Deposit Account** has the same meaning as given to that term in clause 1.6 of Schedule 10.

**Certificate of Practical Completion** means the certificate in writing confirming that the Contribution Works or any part of them have been completed to Council's satisfaction and issued under clause 7.1 of Schedule 4.

**Claim** means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this Deed.

**Compliance Certificate** means a certificate referred to in section 6.4 of the EP&A Act.

**Consent Authority** means, in relation to an Application, the Authority having the function to determine the Application.

**Construction Certificate** means a certificate issued under section 6.4 of the EP&A Act.

**Construction Contract** means the contract to carry out the Contribution Works (whether or not that is a contract for the Contribution Works only or forms part of a contract for the building of other components of the Development).

**Construction Cost** means the Costs of and directly attributable to the construction of the Contribution Works including:

- (a) preparation of detailed design and construction drawings for the Contribution Works;
- (b) cost of materials used or installed (as the case may be) as part of the Contribution Works; and
- (c) labour, equipment hire and other Costs directly associated with the excavation, , and construction of the Contribution Works.

**Construction Terms** means the terms set out in Schedule 4.

**Contributions** means all of the public benefits described in the Contributions Schedule that must be provided under this Deed including (without limitation):

- 
- (a) the dedication or transfer to the Council (free of any Encumbrance and Cost except for Permitted Encumbrances) of the Contribution Land;
  - (b) the conduct of the Contribution Works; and
  - (c) payment of the Monetary Contribution.

**Contribution Land** means the land identified in Part 1 of Schedule 3 that must be dedicated or transferred (as the case may be) to the Council pursuant to this Deed (being the Apartments).

**Contributions Schedule** means Schedule 3.

**Contribution Value** means in relation to each item specified in the Contributions Schedule the amount agreed between the Parties and stated in column 4 of the Parts 1 and 2 of Schedule 3 for that Item.

**Contribution Works** means each of the works described in Part 2 of Schedule 3 that must be undertaken by the Owner pursuant to this Deed being:

- (a) the Apartment Works; and
- (b) the Public Domain Works.

**Contribution Works Concept Plans** means plans, drawing, specification and other documents contained or referred to in that describe the Contribution Works, copies of which are contained or referred to in Schedule 5.

**Costs** include all reasonable costs, charges and expenses, including those incurred in connection with advisers.

**Court** means the New South Wales Land and Environment Court or any other court of competent jurisdiction.

**CPI** means the Sydney Consumer Price Index (All Groups) published by the Australian Bureau of Statistics, or if that index no longer exists, any similar index which the Council determines in its sole discretion.

**Deed** means this document and includes all annexures, exhibits and Schedules to it.

**Defects Liability Period** means:

- (a) in respect of the Public Domain Works the period of 12 months from the date on which the Certificate of Practical Completion is issued for the Public Domain Works; and
- (b) in respect of the Apartment Works, the period of 12 months from the date on which freehold title in the Apartments is transferred or dedicated to the Council.

**Defects Securities** means each of the Apartment Works Defects Security and the Public Domain Works Defects Security (or any one of them as the context may require).

**Detailed Design** means the final specifications and finishes for the Contribution Works, prepared in accordance with clause 4.2 of Schedule 4 and will include the design of those

Contribution Works, the location for those Contribution Works and the installation specifications for those Contribution Works.

**Development** means the development described in clause 2 of Schedule 2

**Development Application** has the same meaning as in the EP&A Act and for the purposes of this Deed is development application filed with Council and identified as application LDA 2016 / 0378.

**Development Consent** means each 'Development Consent' as that term is defined in the EP&A Act or an approval under Part 4 of the EP&A Act in respect of the Development Application and includes any Modification granted with respect to a Development Consent.

**Encumbrance**, in relation to any land, means any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention;
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off;
- (c) right that a person (other than the owner) has to remove something from land (known as a *profit à prendre*), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or
- (d) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

or any agreement to create any of them or allow them to exist, in respect of that land. For the avoidance of doubt, the land in this definition does not include common property where the land is a strata unit.

**Enforcement Security** means the Security for the purpose described in clause 1.1 of Schedule 10.

**EP&A Act** means the *Environmental Planning and Assessment Act 1979* (NSW).

**EP&A Regulation** means the *Environmental Planning and Assessment Regulation 2000* (NSW).

**Explanatory Note** means the explanatory note relating to this Deed (being that required by clause 25E of the EP&A Regulation and exhibit A to this Deed).

**GFA** has the meaning given to the term *gross floor area* in the Ryde Local Environmental Plan 2014.

**GST** has the meaning it has in the GST Act.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Insurer** means an insurer that is licensed by the Australian Prudential Regulatory Authority (APRA) to operate in Australia or has an investment grade rating from an industry recognised rating agency such as Moodies, Standard & Poors or Bests.

**Interest Rate** in relation to interest payable on any payment due under this Deed means the rate which is the Bank Bill Rate plus a margin of 2% per annum.

**Item** means the object of a Contribution specified in Column 1 of the tables in Schedule 3.

**Land** means the land described in clause 1 of Schedule 2 or any subsequent Subdivision of that land.

**Law** means:

- (a) the common law including principles of equity; and
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an Authority.

**Legal Costs** means reasonable legal costs and expenses on a full indemnity basis or solicitor and own client basis, whichever is the higher.

**Legal Challenge** means proceedings in a Court in which a declaration that a Development Consent or Approval in relation to the Development is invalid, and includes, but is not limited to, any proceedings in which such a declaration is sought which are heard on remitter from another Court following an Appeal.

**Modification** means a 'modification' of a Development Consent within the meaning of section 4.55 of the EP&A Act.

**Monetary Contribution** means the monetary contribution payable by the Owner under clause 4.4 that is calculated and adjusted in accordance with Part 3 of Schedule 3.

**Monetary Contribution Security** means the Security for the Monetary Contribution (set out in the Security Schedule).

**Occupation Certificate** means a certificate referred to in section 6.4 of the EP&A Act and which may be interim or final as provided for in section 6.4 of the EP&A Act.

**Party** means a party to this Deed, and **Parties** means both of them.

**Permitted Encumbrance** means each of:

- (a) easements benefitting statutory authorities or required by an Authority, encroachment, restrictions on use, positive covenants and other rights or interests authorised or necessitated by Approvals and environmental management requirements;
- (b) strata management statements or by-laws that Council acting reasonably considers do not unreasonably interfere with the intended use of the Apartments as residential housing; and
- (c) any of the following:
  - (i) an Encumbrance (other than a mortgage, charge, pledge, lien, security interest, title retention, contractual right of set-off, or any other security agreement or arrangement in favour of any person); and
  - (ii) such other agreement or arrangement,



the Council (acting reasonably) agrees in writing are permitted encumbrances;

- (d) any Encumbrance that does not prevent the future use of the relevant land for the public purpose for which it is to be dedicated under this Deed, unless the Encumbrance is a charge arising as a result of unpaid taxes or charge.

**Planning Agreement** means this Deed.

**Public Domain Works** means that part of the Contribution Works relevant to the design, construction and delivery of improvements to the public domain in the vicinity of the Land described in the Contribution Works Concept Plans.

**Public Domain Works Security** means the Security for the Public Domain Works (set out in the Security Schedule).

**Public Domain Works Defects Security** means the Security for the rectification of defects in the Public Domain Works pursuant to clause 8 of Schedule 4 (being number 2 in the Security Schedule).

**Real Property Act** means the *Real Property Act 1900*.

**Register** means the Torrens title register maintained under the Real Property Act.

**Security** means each security set out in the Security Schedule (or any one of them as the context may require), each of which may either comprise a Bond or Bank Guarantee.

**Security Amount** means the amount of each Security stated in the Security Schedule (subject to indexation in accordance with clause 1.2 of Schedule 10).

**Security Schedule** means the matrix of Securities set out in Schedule 10.

**Schedule** means a schedule to this Deed.

**Standard Requirement** means a requirement in order to comply with the Building Code of Australia, any applicable Australian Standard required by a governmental entity or any other applicable requirement of an Authority under an Approval.

**Subdivision** has the meaning given to 'subdivision of land' in section 6.2 of the EP&A Act and Subdivide has a similar meaning.

**Subdivision Certificate** has the same meaning as in the EP&A Act.

**Superintendent** means the superintendent appointed under any Construction Contract.

**Suspension Period** means the period of time from and including the date on which a document initiating a Legal Challenge has been served on the Council and the Owner and ending on:

- (a) subject to paragraphs (b) and (c), the date on which:
  - (i) the Legal Challenge is discontinued;
  - (ii) final orders (apart from any orders as to costs) are made in the Legal Challenge; or

- (iii) for any other reason, the Legal Challenge no longer includes an application for a declaration that the Development Consent or Approval for the Development is invalid;

whichever is the earlier;

- (b) subject to paragraph (c), if an Appeal Notice is filed and served in connection with final orders in the Legal Challenge or an Appeal from the Legal Challenge (apart from any orders as to costs), the date on which:
  - (i) the Appeal is discontinued;
  - (ii) final orders (apart from any orders as to costs) are made in the Appeal; or
  - (iii) for any other reason, the Appeal no longer includes an appeal in respect of a Court decision regarding the validity of the Development Consent whichever is earlier,

unless the orders in the Appeal require the Legal Challenge to be remitted to another Court in relation to the validity of the Development Consent or Approval for the Development, in which case paragraph (a) re-applies; or

- (c) the date which is 15 Business Days after the date on which the period of time allowed for filing an Appeal Notice described in paragraph (b) has expired, if no valid Appeal Notice has been filed and served by that first-mentioned date.

For the avoidance of doubt, the Suspension Period continues if paragraph (b) applies.

**Taxes** means taxes, levies, imposts, deductions, charges and duties (including stamp and transaction duties), excluding GST (which is dealt with at clause 15), together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, net income of a person.

## 1.2 Interpretations

In this Deed:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) *person* includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a Party includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (d) a reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re enactments, replacements and substitutions;

- 
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
  - (g) a reference to a Party, clause, schedule, exhibit, attachment or annexure is a reference to a Party, clause, Schedule, exhibit, attachment or annexure to or of this Deed, and a reference to this Deed includes all Schedules, exhibits, attachments and annexures to it;
  - (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
  - (i) 'includes' in any form is not a word of limitation;
  - (j) a reference to '\$' or 'dollar' is to Australian currency;
  - (k) no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this Deed; and
  - (l) any capitalised term used, but not defined in this Deed, will have the meaning ascribed to it under, and by virtue of, the EP&A Act.

## **2 Planning Agreement**

### **2.1 Condition Precedent**

This Deed commences on the execution of this Deed by all Parties.

### **2.2 Planning agreement under the EP&A Act**

This Deed constitutes a planning agreement within the meaning of section 7.4 of the EP&A Act.

### **2.3 Application of the Planning Agreement**

This Deed applies to:

- (a) the Land; and
- (b) the Development.

## **3 Development Contributions**

### **3.1 Payment or Delivery of Contributions – Works and Land**

- (a) The Parties agree that the Owner must (at its Cost and risk):
  - (i) undertake the Contribution Works in accordance with Schedule 3 and Schedule 4; and
  - (ii) dedicate or transfer (as the case may be) the Contribution Land to Council in accordance with Schedule 3 and Schedule 5.

- (b) The Parties agree that the provision of the Contribution Works and the dedication of the Contribution Land will serve the public purposes set out in Column 2 in the Tables to Schedule 3.

## **4 Monetary Contribution**

### **4.1 Application of section 7.24 of the EP&A Act**

This Deed does not exclude the application of section 7.24 of the EP&A Act to the Development.

### **4.2 Application of section 7.11 of the EP&A Act**

This Deed excludes the application of section 7.11 of the EP&A Act to the Development.

### **4.3 Application of section 7.12 of the EP&A Act**

This Deed excludes the application of section 7.12 of the EP&A Act to the Development.

### **4.4 Monetary Contribution**

- (a) The Owner must pay the Monetary Contribution to the Council.
- (b) The Parties acknowledge that table 3 of the Contribution Schedule sets out the calculation of the Monetary Contribution.
- (c) Council must provide the Owner with an invoice or similar notice of monetary contributions payable within 10 Business Days of being requested to do so in respect of the Monetary Contribution.
- (d) The Owner must pay the Monetary Contribution to the Council no later than the date of the first Construction Certificate for the Development.
- (e) The Monetary Contribution must be paid by way of bank cheque in favour of the Council or by deposit by means of electronic funds transfer into an account specified by the Council.
- (f) The Monetary Contribution will be taken to have been made when the Council notifies the Owner in writing that the bank cheque has been received and cleared funds or electronic funds have been deposited in the Council's bank account.
- (g) The Parties acknowledge and agree that the Monetary Contribution will be applied by the Council for the benefit of the community towards any public purpose as it thinks fit.

## 5 Contribution Works

### 5.1 Contribution Works

- (a) The Owner must carry out the Contribution Works in accordance with this Deed, including the Construction Terms and any Development Consent granted for the Contribution Works.
- (b) The Contribution Works (or any part of them) required under this Deed will be taken to have been completed for the purposes of this Deed when a Certificate of Practical Completion has been issued for the Contribution Works or relevant part of them.
- (c) The Parties agree and acknowledge that the Contribution Works serve the public purposes specified for each of the Contribution Works in the Contributions Schedule.

### 5.2 Apartments

- (a) Subject to this clause, the Parties agree that the Contributions to be provided by the Owner pursuant to this Deed include the vesting of freehold ownership to Council (by way of transfer) of a number of residential apartments in the Development equal to the Apartment Contribution Number:
  - (i) comprising 1 bedroom in each Apartment.
  - (ii) must include at least 0.6 car parking spaces for each of the Apartments and rounded up if it is not an even number; and
  - (iii) must include the fixtures, fittings and finishes set out in the Apartments Finishes Schedule.
- (b) Prior to the issue of an Occupation Certificate for the Development or any part of the Development, or in any event prior to the occupation of any part of the Development, the Owner must, at no cost to Council construct, finish and fit out the Apartments as part of the Development, in accordance with the Development Consent, the Construction Terms and the Apartment Finishes Schedule and the Detailed Design approved by the Parties under Schedule 4.
- (c) Within 15 Business Days after:
  - (i) the issue of an Occupation Certificate in respect of the Apartments; or
  - (ii) the registration of a strata plan for any part of the Development that includes the Apartments,

whichever occurs later, the Owner must transfer freehold title to the Apartments to the Council (and Council must promptly do all things necessary to accept the transfer) so that immediately on transfer, the Council will have an estate in fee simple in possession, free of any Encumbrance (except a Permitted Encumbrance), except as may be permitted by this Deed

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- (d) The obligations under this clause 5.2 will be taken to have been fulfilled for the purposes of this Deed when the transfer of the Apartments to the Council is shown on the Register.
  - (e) The Parties acknowledge and agree that the Apartments are to be constructed, finished and ownership vested in the Council (by way of transfer) under this Deed for the purposes of the provision of affordable housing and the Council may at its absolute discretion engage an approved community housing provider for the ongoing management of the Apartments.
  - (f) The Owner must, in accordance with the provisions of the Construction Terms, ensure that, on transfer of the Apartments, the Council will have the benefit of any defects liability warranty given by a Builder for the Development and the Apartments, together with any other warranties and guarantees in accordance with clause 7.3 of Schedule 4.
  - (g) Despite clause 5.2(b), the Owner reserves the right to change any finish or item specified in the Apartment Finishes Schedule provided that:
    - (i) the replacement item or finish is of at least equivalent quality to that finish or item originally specified in the Apartment Finishes Schedule; AND
    - (ii) the prior consent of the Council is obtained in relation to the proposed change.

## **6 Caveat**

### **6.1 Caveatable Interest**

The Owner acknowledges and agrees that when this Deed is executed the Council is deemed to have acquired, and the Owner is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the Real Property Act and consequently the Council has a sufficient interest in the Land in respect of which to lodge a caveat notifying that interest in the relevant folio of the Register.

### **6.2 Caveat Prior to Registration**

The Owner acknowledges and agrees that:

- (a) Subject to clause 7, the Council may lodge a caveat on the Land to protect its rights under this Deed and the Owner will not object to the Council lodging a caveat in the relevant folio of the Register for the Land nor (subject to the provisions of this clause 6) will it seek to remove any caveat lodged by the Council.
- (b) If Council lodges a caveat in accordance with this clause 6, then the Council will:
  - (i) do all things reasonably required to ensure that the caveat does not prevent or delay either the registration of this Deed or any dealing in the Land which is not inconsistent with this Deed, provided the Owner is not in breach of any obligations under this Deed; and
  - (ii) provide consent as caveator to any proposed registration of a mortgage where the mortgagee has agreed to be bound by the provisions of this

Deed if it enters into possession of the Land. Council will provide such written consent within 5 Business Days of being given a signed document from the mortgagee; and

- (iii) provide consent as caveator to any proposed registration of a lease within 10 Business Days of being requested by the Owner.
- (c) The Council (as the caveator) will provide such other consent the Owner may reasonably require to enable this Deed or any dealing in the Land to be registered in accordance with this clause 6.2.
- (d) The Council will promptly, following registration of this Deed, do all things reasonably necessary to remove the caveat from the relevant folio of the Register for the Land.

## 7 Registration of this Deed

### 7.1 Land ownership

The Owner represents and warrants that it is the legal and beneficial owner of the Land as at the date of this Deed

### 7.2 Registration on title

The Owner agrees to promptly do all things that are necessary for Council to procure the registration of this Deed in the relevant folio of the Register for the Land in accordance with section 7.6 of the EP&A Act and Schedule 8.

## 8 Release and Discharge

The Council agrees to release and discharge this Deed (including consent to withdrawal of its registration on the title of the Land) and remove any caveat lodged by the Council pursuant to clause 6 on the release and discharge terms contained in clause 6 and Schedule 9 to this Deed.

## 9 Breaches to be rectified

### 9.1 Council to give notice

If the Council considers that the Owner (**defaulting party**) have defaulted in the performance of any of their obligations under this Deed, then the Council may give written notice to the defaulting party which:

- (a) identifies the nature of the breach; and
- (b) provides at least 20 Business Days (except in the case of an emergency or where there is an issue of public safety where less time may be specified) within which the defaulting party must rectify that breach and what action must be taken to rectify that breach or such longer period as is reasonable in the circumstances.

## **9.2 Schedule 6 applies**

If the Council gives a written notice under clause 9.1 then the provisions of Schedule 6 will apply.

## **10 Additional Security**

The Owner has agreed to provide security to the Council for performance of its obligations under this Deed on the terms and conditions of Schedule 10.

## **11 Assignment and other dealings**

The Parties agree that provisions of Schedule 11 applies in relation to any proposed assignment or dealing in relation to the Land (or any part of it) or of a Party's interest in this Deed.

## **12 Review of Deed**

The Parties may agree to review this Deed. Any review or modification will be conducted in the circumstances and in the manner determined by the Parties.

## **13 Dispute resolution**

The Parties agree that any disputes under or in relation to this Deed will be resolved in accordance with the procedures set out in Schedule 7.

## **14 Overdue payments**

### **14.1 Interest on overdue money**

The Owner agrees to pay interest to the Council on any amount payable by it under this Deed from when it becomes due for payment, during the period that it remains unpaid, on demand or at times determined by the Council, calculated on daily balances. The rate to be applied to each daily balance is the Interest Rate.

### **14.2 Compounding**

Interest not paid when due for payment may be capitalised by the Council at intervals which the Council determines from time to time or, if no determination is made, then on the first day of each month. Interest is payable on capitalised interest at the rate and in the manner referred to in this clause 14.

### **14.3 Interest on liability merged in judgment or order**

- (a) If a liability under this Deed becomes merged in a judgment or order, then the Owner agrees to pay interest to the Council on the amount of that liability as an



independent obligation. This interest accrues from the date the liability becomes due for payment both before and after the judgment or order until it is paid, at a rate that is the higher of the rate payable under the judgment or order and the rate referred to in this clause 14.

- (b) For the avoidance of doubt, if a liability under this Deed becomes merged in a judgment or order then the Owner will only be required to pay either interest payable under the judgment or order or interest calculated under this clause 14 but not both.

## **15 GST**

### **15.1 Interpretation**

- (a) Except where the context suggests otherwise, terms used in this clause 15 have the meanings given to those terms by the GST Act.
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 15.
- (c) A reference to something done (including a supply made) by a Party includes a reference to something done by any entity through which that Party acts.

### **15.2 Consideration GST exclusive**

Unless otherwise expressly stated, all sums payable or consideration to be provided under this Deed is exclusive of GST.

### **15.3 GST not payable on Contributions**

The Parties agree, in accordance with Class Ruling CR 2013/13 published by the Commissioner, that Contributions required to be made under this Deed are exempt from GST.

### **15.4 Additional amount of GST payable**

If GST is imposed on any supply made under or in accordance with this Deed, the Owner must pay the GST or pay to Council an additional amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.

### **15.5 No merger**

This clause will not merge on completion or termination of this Deed.

## **16 Explanatory Note**

The Explanatory Note must not be used to assist in construing this Deed.

## 17 Notices

### 17.1 Form

Any notice, consent, information, application or request that must or may be given or made to a Party under this Deed is only given or made if it is in writing and delivered or posted to that Party at its address set out below or faxed to that Party at its fax number set out below:

#### **Council**

Name: Council of the City of Ryde  
Address: Level 1  
3 Richardson Place  
North Ryde NSW 2113  
Fax: 9952 8222

For the attention of: General Manager

#### **Owner**

Name: Yuhu Property (Australia) Pty Ltd  
Address: Level 15/201 Miller Street  
North Sydney NSW  
Fax: 8668 7356

### 17.2 Change of address

If a Party gives another Party 3 Business Days' notice of a change of its address or fax number, any notice, consent, information, application, or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

### 17.3 Receipt

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered, when it is left at the relevant address;
- (b) if it is sent by post, 2 Business Days after it is posted; and
- (c) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

### 17.4 Receipt - next Business Day

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

## 18 Schedules and Annexures to this Deed

The Parties agree:

- (a) that all the Schedules and Annexures form part of this Deed; and
- (b) to comply with the provisions of those Schedules and Annexures.

## **19 General provisions**

The Parties agree that the miscellaneous and general provisions set out in Schedule 13 to this Deed apply.

## **20 Obligations under this Planning Agreement**

### **20.1 Legal Challenge**

Subject to clauses 20.5 to 20.9, where a Legal Challenge is commenced the parties' obligations under this Deed are immediately suspended and the Owner shall not have any obligation to make any Contributions under this Deed until the expiration of the Suspension Period or where clause 20.5 applies.

### **20.2 Parties to meet**

Subject to clause 20.3, where any Legal Challenge is commenced or where the Court declares or orders any Approval to be invalid or any of them, the Parties agree to:

- (a) meet, no later than 5 Business Days after the date of service of commencement of the Legal Challenge and after any declaration or order that Approval is invalid, to discuss in good faith:
  - (i) the suspension of the parties rights and obligations under this Deed; and
  - (ii) their intentions in relation to that declaration or order, including, without limitation, any intention to Appeal that declaration; and
- (b) consult regularly with the other in relation to any Appeal and must respond within a reasonable period to each other's questions, queries and enquiries and generally keep each other informed regarding the progress of any such Appeal.

### **20.3 Legal advice**

The Parties will not be required to meet or consult pursuant to clause 20.2 in circumstances where any of the Parties receives legal advice that it should not so meet or consult with the other Party in connection with any such declaration or Appeal.

### **20.4 Confidential**

The Parties agree that any discussions held between the Parties under this clause 20 are confidential and that a common interest between them exists for the purposes of legal professional privilege in connection with those discussions.

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**20.5 Development may continue**

Notwithstanding clause 20.1, the Owner may elect at its Cost and risk to proceed with the Development, in which circumstances, clause 20.1 will not apply and the Owner must continue to comply with all obligations under this Deed.

**20.6 Termination**

If this Deed is terminated as the result of any Legal Challenge the parties will meet in accordance with clause 20.2 to discuss any matters that may need to be addressed as a result of the commencement of the Contribution Works.

**20.7 Invalid Approval**

If any Approval is declared invalid, the parties will meet in accordance with clause 20.2 of this Deed to discuss their respective rights and obligations under this Deed as a consequence of that determination.

**20.8 Indemnity**

If the Owner elects to proceed with the Development notwithstanding the commencement of any Legal Challenge, then the Owner is liable for and indemnifies Council against all liability, loss, Costs and expenses (including Legal Costs) arising from or incurred in connection with the Owner proceeding with the Development despite the Legal Challenge.

**20.9 Public safety**

The parties agree that if this clause 20 applies and there is a suspension of the parties' obligations under this Deed, any Contribution Works that have been commenced, but not completed, will be left in a state that is safe to the public before those Contribution Works cease notwithstanding the commencement of any Suspension Period.

**20.10 No merger**

This clause 20 will not merge on completion or termination of this Deed.

# Planning Agreement

## Schedule 1 – Requirements set out in section 7.4 of the EP&A Act

The Parties acknowledge and agree that the table set out below summarises how the Planning Agreement complies with the requirements set out in section 7.34 of the EP&A Act.

Requirement under the EP&A Act	This Planning Agreement
<b>Planning instrument and/or development application - (Section 7.4)</b> The Owner has:	
(a) sought a change to an environmental planning instrument.	(a) No.
(b) made, or proposes to make, a Development Application.	(b) Yes.
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) No.
<b>Description of land to which this Deed applies - (Section 7.4)</b>	The Land known as 152-186 Rowe Street and 3-5 Rutledge Street, Eastwood, NSW.
<b>Description of change to the environmental planning instrument or the development to which this Deed applies - (Section 7.4)</b> Describe:	
(a) the proposed change to the environmental planning instrument to which this Deed applies; and	(a) This does not apply.
(b) the development to which this Deed applies.	(b) The description of the Development is set out in Schedule 2.
<b>The scope, timing and manner of delivery of contribution required by this planning agreement - (Section 7.4)</b>	There are provisions relating to scope, delivery and manner of delivery of contributions required by the Deed in (without limitation) clause 3 and Schedule 3 of this Deed.
<b>Applicability of Section 7.11 of the EP&amp;A Act - (Section 7.4)</b>	The application of section 7.11 of the EP&A Act is excluded in respect of the Development.
<b>Applicability of Section 7.12 of the EP&amp;A Act</b>	The application of section 7.12 of the EP&A Act

Requirement under the EP&A Act	This Planning Agreement
- (Section 7.4)	is excluded in respect of the Development.
<b>Applicability of Section 7.24 of the EP&amp;A Act</b> - (Section 7.4)	The application of section 7. 24 of the EP&A Act is not excluded in respect of the Development.
<b>Consideration of benefits under this Deed if section 7.11 applies</b> - (Section 7.4)  Are the benefits under this Deed to be taken into consideration if Section 7.11 of the EP&A Act is not excluded?	The benefits under this Deed are not be taken into account because section 7.11 is excluded.
<b>Mechanism for Dispute resolution</b> - (Section 7.4)  This Deed provides a mechanism for the resolution of disputes under the agreement?	The mechanism for despite resolution is contained in clause 13 and Schedule 7 of this Deed.
<b>Enforcement of this Deed</b> (Section 7.4) and section 7.6)  This Deed provides for enforcement by a suitable means in the event of a breach.	There are provisions for enforcement by suitable means by or through (without limitation) clauses 5, 6, 7, 8, 9, 10 and 11 and Schedules 4, 5, 6, 8, 10 and 11 of this Deed.
<b>Registration of this Deed</b>  The Parties agree that this Deed will be registered	Yes.
<b>No obligation to grant consent or exercise functions</b> - (Section 7.4)  The Parties acknowledge that this Deed does not impose an obligation on a planning authority to grant a Development Consent, or to exercise any function under the EP&A Act in relation to a change to an environmental planning instrument.	This is addressed in clause 1.8 of Schedule 13.

# Planning Agreement

## Schedule 2 - Description of the Land and the Development

### 1 Title

ADDRESS	LOT/ DP	ADDRESS	LOT/ DP
152-160 Rowe Street	Lots 1, 2 and 3, DP 1082714  Lots 1 and 2, DP 15579  Lot 1, DP 315919  Lot 1, DP 583398  Lot A, DP 342118	178-180 Rowe Street	Lot 1, DP 173607  Lot 7, DP 656027  Lot A, DP 317789
168 Rowe Street	Lot 2, DP 583398	186 Rowe Street	Lot 8, DP 1098697

ADDRESS	LOT/ DP	ADDRESS	LOT/ DP
170 Rowe Street	Lot 1, DP 105344	188 Rowe Street	Lot 1, DP 331280
172-176 Rowe Street	Lots 1 and 2, DP 211809	190 Rowe Street	Lot 201, DP 1134152
		3-5 Rutledge Street	Lot A, DP 374497  Lot Pt25, DP 4231

### 2 Development

Development means:

- (a) Demolition of all buildings and associated structure across on the Land;
- (b) Construction of seven (7) buildings on the Land accommodating the following land uses:
  - (i) Retail and commercial uses at Lower Ground and Ground Levels, including a major supermarket, mini-major supermarket, specialty retail, fresh food, slow and fast food, kiosks, pharmacy, medical centre, gymnasium and commercial office space.
  - (ii) Shop top housing: 409 residential apartments across the upper levels of all buildings.
  - (iii) Four (4) levels of commercial office space (including ground level) within a buildings.

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- (iv) Four levels of basement car parking and loading to service all activities on the site;
  - (v) Two (2) new open air through site pedestrian links between Rowe Street and Rutledge Street and a publicly accessible market hall, supported by active frontages, outdoor seating and pedestrian amenities and public domain works on Rowe St Mall.
  - (vi) New vehicle access arrangements for residents, visitors, retail patrons and service vehicles; and
  - (vii) Landscape works on the Land;
- (c) Site preparation works including demolition, remediation and rehabilitation and bulk earth works on the Land, and

all in accordance with the Development Consent resulting from the determination of the Development Application.



# Planning Agreement

## Schedule 3 - Contributions Schedule

### Contributions Tables

#### Part 1 – Contribution Land

Column 1 – Item	Column 2 – Public Purpose	Column 3 – Manner and Extent	Column 4 – Contribution Value	Column 5 - Date Contribution Land is to be transferred
1 Apartments	Key worker housing	The Owner must cause freehold title (under a strata scheme) to the Apartments being transferred to the Council at no cost in accordance with clause 5. The Apartments must be designed and constructed in accordance with Schedule 4 and generally in the location shown in the Contribution Works Concept Plans.	\$3,900,000	Within 15 Business Days after:  (b) the issue of an Occupation Certificate in respect of the Apartments; or  (c) the registration of a strata plan for any part of the Development that includes the Apartments,  whichever occurs later.

#### Part 2 – Contribution Works

Column 1 – Item	Column 2 – Public Purpose	Column 3 – Manner and Extent	Column 4 – Contribution Value	Column 5 - Date Contribution Works are to be reach Practical Complete
1 Apartment Works	Key worker housing	The Owner to design, construct and fit out of the Apartments in accordance with clause 5 and generally in the location shown in the Contribution Works Concept Plans.	Included in the Contribution Value stated in table 1 above for the Apartments.	Prior to the transfer of the Apartments to Council in accordance with this Deed.

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Column 1 – Item	Column 2 – Public Purpose	Column 3 – Manner and Extent	Column 4 – Contribution Value	Column 5 - Date Contribution Works are to be reach Practical Complete
2 Public Domain Works	Community and open space	The Owner must design and construct the Public Domain Works in accordance with Schedule 4 and generally in the location shown in the Contribution Works Concept Plans.	\$9,285,678	No later than the date of the first Occupation Certificate issued pursuant to the Development Consent.

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## Part 3 – Monetary Contribution

### 1 Calculation

The Monetary Contribution is the amount calculated in accordance with the following formula (subject to adjustment under clause 2 of this part 3 of Schedule 3):

$$\mathbf{MC = DC - OC}$$

where:

**MC** is the Monetary Contribution as at the date of this Deed

**DC** is the development contribution payable under section 7.11 of the EP&A Act in respect of the Development that would otherwise be stated or referred to in the Development Consent that authorises the Development if it were not for this Deed.

**OC** is the whole of the development contribution payable in respect of Civic and Urban Improvements under section 7.11 of the EP&A Act that Council has agreed in this Deed to offset under this Deed.

Below is a worked example for this calculation current as at the date of this Deed:

$$\mathbf{\$4,432,171.59 (MC) = \$5,356,522.38 (DC) - \$923,507 (OC)}$$

### 2 Adjustment

The Parties acknowledge and agree that the Monetary Contribution is adjusted in accordance with the following formula (so that it is indexed because it is payable after the date of this Deed):

				<b>CPI as at the payment date</b>  -----  <b>CPI as at the date of this Deed</b>
<b>Adjusted MC =</b>	<b>MC</b>	<b>X</b>		

where:

**Adjusted MC** is the adjusted amount of the Monetary Contribution payable as at the payment date.

**MC** is the amount of the Monetary Contribution calculated under clause 1 of this part 3 of Schedule 3.

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**CPI** has the meaning given to that term in clause 1.1.

### **3 Timing**

The Monetary Contribution must be paid to the Council prior to the issue of the first Construction Certificate for any stage of the Development, as the case maybe.

# Planning Agreement

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## Schedule 4 - Contribution Works Procedures

### 1 Authority requirements

#### 1.1 Construe

These Construction Terms must be read and construed subject to:

- (a) any requirements or conditions of any Development Consent;
- (b) the requirements of and conditions imposed by all relevant Authorities and all Laws relating to the Development and the construction of the Development.

#### 1.2 Responsibility for Approvals

The Owner must (at its Cost) obtain all Approvals necessary to satisfy its obligations under this Deed and necessary to carry out the Contribution Works.

#### 1.3 Compliance with Approvals

The Owner must ensure that the Contribution Works carried out under this Deed are undertaken:

- (a) in accordance with the relevant Development Consent for the Contribution Works and all Approvals and the requirements of all Laws, including without limitation, work health and safety legislation; and
- (b) in a good and workmanlike manner and so that they are diligently progressed until completion;

and it is acknowledged that to the extent that there is any inconsistency between this Deed and any Approval the terms of the Approval shall prevail.

### 2 Costs

All Costs of the Contribution Works must be borne by the Owner.

### 3 Project management and contractor engagement

#### 3.1 Management

The Owner will be responsible for managing the Contribution Works.

### **3.2 Contractor engagement**

The Owner must ensure that any contractor it engages to carry out the Contribution Works agrees to:

- (a) carry out the Owner's obligations in these Construction Terms as part of any Construction Contract; and
- (b) request a Council representative to be present at each on-site meeting attended by the Superintendent and give a reasonable opportunity for the Council representative to be present at the meeting for Public Domain Works as required by Council.

## **4 Design development and approval**

### **4.1 Concept design**

- (a) The Council and the Owner have worked in consultation with each other to prepare and agree the Contribution Works Concept Plans.
- (b) The Council and the Owner agree that the Contribution Works Concept Plans will be the basis for the Detailed Design.

### **4.2 Detailed Design**

- (a) The Owner must provide a copy of the draft Detailed Design for the Public Domain Works to the Council for its approval prior to the issue of the Construction Certificate that relates to the Public Domain Works.
- (b) No later than 20 Business Days of receiving the Detailed Design for the Public Domain Works, the Council must give the Owner a notice:
  - (i) setting out suggested amendments (acting reasonably) to the Detailed Design; or
  - (ii) advising that the Detailed Design is acceptable.
- (c) The Council and the Owner must work in consultation with each other to prepare and agree the Detailed Design for the Public Domain Works and must both act reasonably and with due expedition in their consultations with each other.
- (d) If the Detailed Design for the Public Domain Works is not completed and agreed within 20 Business Days of the Council providing its suggested amendments in accordance with clause 4.2(b) of this Schedule 4, to avoid possible delays to the issue of a Construction Certificate, the Council will, in its sole discretion, be entitled to decide on any outstanding or undecided matter or item relating to the Public Domain Works, provided that any decision made by Council under this clause:
  - (i) is consistent with the obligation to provide the Contributions under this Deed;
  - (ii) is consistent with the Development Consent;

- (iii) does not materially and adversely affect the Development; and
- (iv) is reasonable.
- (e) Any acceptance by the Council of the Detailed Design under this clause 4.2 of this Schedule 4 is not to be taken as approval of or to any Construction Certificate for the Contribution Works or any part of them.

#### **4.3 Good faith**

The Parties must act promptly and in good faith to consult in relation to the Detailed Design.

## **5 Conduct of the Contribution Works**

### **5.1 Communication**

The Owner must:

- (a) keep the Council reasonably informed of progress of the Contribution Works; and
- (b) provide to the Council such information about the Contribution Works as the Council reasonably requests.

### **5.2 Standard of Contribution Works**

- (a) Unless otherwise provided, the Owner must, and must cause the Builder to, use suitable new materials and proper and tradesman like workmanship when carrying out the Contribution Works.
- (b) The qualitative standard of the design and finishes for the Construction Works must be no less than those described in the following documents:
  - (i) any relevant Standard Requirements;
  - (ii) any relevant design standards or guidelines and any other requirements or policies applied by the Council from time to time in assessing the adequacy of any works or improvements proposed for the public domain or to be accessible to the public in accordance with this Deed;
  - (iii) the specification and finishes contained in the Contribution Works Concept Plans.
- (c) The Owner will obtain any relevant standards (including design standards), specifications, or guidelines and any other requirements or policies referred to in clause 5.2(b)(ii) of this Schedule 4 from the Council if the Council fails to deliver them to the Owner.

### **5.3 Access and Damage**

- (a) The Council permits the Owner to access and use any land it owns or has possession of that is necessary for the owner to carry out the Contribution Works.

- 
- (b) The Owner is to ensure to the fullest extent reasonably practicable that, in performing its obligations under this Deed:
- (i) all necessary measures are taken to protect people and property;
  - (ii) unnecessary interference with the passage of people and vehicles is avoided; and
  - (iii) nuisances and unreasonable noise and disturbances are prevented.
- (c) Without limiting clause 5.3(a) of this Schedule 4, the Owner is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority or as reasonably necessary to comply with its obligations under this Deed.

## 6 Inspection

### 6.1 Inspection schedule

- (a) On completion of the Detailed Design, the Council will provide a schedule of inspections to be undertaken by Council of the Public Domain Works which has been prepared as a result of consultation with the Owner (**Inspection Schedule**) to occur at specified stages of the construction of the Public Domain Works (**Inspection Stage**).
- ~~(b)~~ If the Council does not provide the Inspection Schedule, the Owner must request the Inspection Schedule from the Council prior to the Public Domain Works commencing.

### 6.2 Inspection process

- (a) No less than 5 Business Days prior to reaching an Inspection Stage as set out in the Inspection Schedule, the Owner must notify the Council of the proposed inspection date (**Inspection Date**).
- (b) On the Inspection Date, or other agreed date, the Owner must ensure that any employees, contractors, agents or representatives of the Council have access to and may enter the Land to inspect the Contribution Works.
- (c) In addition to carrying out inspections in accordance with the Inspection Schedule, the Council may enter the Land or any part of the Land on which the Public Domain Works are located to inspect the progress of the Public Domain Works, subject to:
- (i) the terms of the Construction Contract (save for any clause of the Construction Contract which prevents the Council from accessing the Land);
  - (ii) giving reasonable notice to the Owner;
  - (iii) complying with all reasonable directions of the Owner; and



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- (iv) being accompanied by the Owner or a nominee, or as otherwise agreed.
- (d) The Council may, acting reasonably, within 5 Business Days of carrying out an inspection (either under clause 6.2(b) or(c) of this Schedule 4), notify the Owner of any defect or non-compliance in the Contribution Works and direct the Owner to carry out work to rectify that defect or non-compliance within a reasonable period of time. Such work may include, but is not limited to:
- (i) removal of defective or non-complying material;
  - (ii) demolishing defective or non-complying work;
  - (iii) reconstructing, replacing or correcting any defective or non-complying work; and
  - (iv) not delivering any defective or non-complying material to the site of the Contribution Works.
- (e) If the Owner is issued a direction to carry out further work under clause 6.2(d) of this Schedule 4, the Owner must, at its cost, rectify the defect or non-compliance specified in the Notice within the time period specified in the notice, provided that it is reasonable having regard to the nature of the works. If the Parties cannot agree on the defect or rectification or the timing for rectification, the dispute shall be resolved adopting the procedures relating to expert evaluation under Schedule 7.
- (f) If the Owner fails to comply with a direction to carry out work given under clause 6.2(d) of this Schedule 4 (and where there is a dispute, a direction confirmed by a binding expert evaluation under Schedule 7), the Council will be entitled to refuse to accept that the Contribution Works (or the relevant part of the Contribution Works) meet the Council's standards and specifications and may refuse to issue a Certificate of Practical Completion, until the required Contribution Works have been completed to the Council's satisfaction, acting reasonably.
- (g) For the avoidance of doubt, any acceptance by the Council that the Owner has rectified a defect or non-compliance identified in a notice issued under clause 6.2(d) of this Schedule 4 does not constitute:
- (i) acceptance by the Council that the Contribution Works comply with all Approvals and Laws; or
  - (ii) an Approval by the Council in respect of the Contribution Works; or
  - (iii) an agreement or acknowledgment by the Council that the Contribution Works or the relevant part of the Contribution Works are complete and may be delivered to the Council in accordance with this Deed. However, it does not entitle Council to raise a defect or non-compliance at completion that is contrary to any direction issued by Council.

## **7 Completion**

### **7.1 Practical Completion**

- (a) When the Owner considers that the Contribution Works, or any part of them, are complete, the Owner must send a notice to the Council accompanied by complete works as executed plans, any relevant certificates or consents of any public utility authority and a request for written certification from the Council that the Contribution Works or relevant part of them are complete.
- (b) Within 10 Business Days of receipt of the notice under clause 7.1(a) of this Schedule 4, the Council will carry out an inspection of the Contribution Works or relevant part of them and will, acting reasonably, within a further 10 Business Days or other period of time as agreed between the Parties, either:
  - (i) provide written certification to the Owner that the Contribution Works or relevant part of them have been completed; or
  - (ii) notify the Owner of any additional information required or matters which must be addressed by the Owner prior to the certification being issued.
- (c) If the Owner is required to provide additional information or address any matters under clause 7.1(b)(ii) of this Schedule 4, the Owner will:
  - (i) provide that information to the Council or address those matters within 10 Business Days of receiving the notice or within a reasonable period of time and make a further request under clause 7.1(a) of this Schedule 4 for written certification that the Works have been completed; or
  - (ii) Notify a dispute which shall be resolved adopting the procedures relating to expert evaluation under Schedule 7.
- (d) Practical completion will be achieved in relation to the Contribution Works or any relevant part of them when a Certificate of Practical Completion has been issued for those works by Council. Council agrees it will issue a Certificate of Practical Completion if an expert determination is made in accordance with Schedule 7 that determines Council's notice under clause 7.1(b)(ii) is not acceptable.

### **7.2 Delivery of documents**

The Owner must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Contribution Works or any relevant part of them, provide the Council with a tour of the Land.

### **7.3 Assignment of warranties**

- (a) The Owner must assign (as beneficial owner) or cause to be assigned to the Council the benefit of any warranties and guarantees obtained by the Owner and the Builder (and capable of assignment) with respect to any material or goods incorporated in or forming part of the Contribution Works.

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- (b) To the extent that any such warranties or guarantees cannot be assigned, the Owner must at the request of the Council do anything reasonably required by the Council to enforce such warranties or guarantees for the benefit of the Council.

## 8 Defects liability

### 8.1 Obligation to rectify

- (a) During the Defects Liability Period, the Council (acting reasonably) may give to the Owner a notice (**Rectification Notice**) in writing that identifies a defect in the Contribution Works and specifies:
- (i) action required to be undertaken by the Owner to rectify that defect (**Rectification Works**); and
  - (ii) the date on which the defect must be rectified (**Rectification Date**).
- (b) The Owner must:
- (i) comply with the Rectification Notice by:
    - (A) procuring the performance of the Rectification Works by the Rectification Date, or such other date as agreed between the Parties;
    - (B) keeping the Council reasonably informed of the action to be taken to rectify the defect; and
    - (C) carrying out the Rectification Works; or
  - (ii) notify a dispute which is to be resolved by expert evaluation under Schedule 7.
- (c) The Council must give the Owner and its contractors any access required to carry out the Rectification Works.

### 8.2 Rectification complete

- (a) When the Owner considers that the Rectification Works are complete, the Owner must notify the Council and provide documentation, plans or invoices which establish that the Rectification Works were carried out.
- (b) The Council may inspect the Rectification Works within 10 Business Days of receiving a notice from the Owner under clause 8.2(a) of this Schedule 4 and, acting reasonably:
- (i) issue a further Rectification Notice if it is not reasonably satisfied that the Rectification Works are complete; or
  - (ii) notify the Owner in writing that it is satisfied the Rectification Works are complete.

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### 8.3 Rectifications costs

- (a) The Owner must meet all costs of and incidental to rectification of defects under this clause 8 of this Schedule 4.
- (b) If the Owner fails to comply with a Rectification Notice or fails to notify a dispute under this clause or that dispute is resolved against the Owner, then the Council may do such things or take such action as is necessary to carry out the Rectification Works, including accessing and occupying any part of the Land without further notice to the Owner, and may:
  - (i) call upon any Security provided to the Council under clause 8.4 of this Schedule 4 to meet its costs of carrying out Rectification Works; and
  - (ii) recover as a debt due to the Council by the Owner in a court of competent jurisdiction, any difference between the amount of the security deposit and the costs incurred by the Council in carrying out Rectification Works.

### 8.4 Security for defects liability

- (a) The Owner must deliver to Council each Defects Security:
  - (i) at the time stated in clause 1.9 of Schedule 10 for the relevant Defects Security; and
  - (ii) in the relevant Security Amount.
- (b) The Owner advises and the Council acknowledges its awareness that the Securities may be supplied by the Builder and form a part of the security held by the Owner from the Builder under the terms of the Construction Contract, provided that:
  - (i) any Bond or Bank Guarantee provided by the Builder benefits the Council and satisfies the requirements of this Deed; and
  - (ii) the Owner procures an agreement from the Builder that the Council will be entitled to call on any Security provided by the Builder, in accordance with the terms of this Deed and the terms of any Construction Contract.
- (c) Within 10 Business Days after the Defects Liability Period for a particular item of Contribution Works has expired Council must (if it has not called on it) return the Security referred to in clause 8.4(a) of this Schedule 4 for that item of Contribution Works (or any remaining balance of it) to the Owner.
- (d) Notwithstanding clause 8.4(c) of this Schedule 4, if during the Defects Liability Period for a particular item of Contribution Works, the Council issues a Rectification Notice and the Rectification Notice is not complied with, then the Council need not deliver the balance of any Defects Security provided to it in respect of that item of Contribution Works until that defect has been rectified.
- (e) The Council must deliver the balance of any Defects Security to the Owner in accordance with Schedule 10.

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## **9 Risk and insurance**

### **9.1 Risk**

The Owner undertakes the Contribution Works entirely at its own risk.

### **9.2 Indemnities**

The Owner indemnifies the Council, its employees, officers and agents from and against all Claims in connection with the carrying out by the Owner of the Public Domain Works on Council land except to the extent such Claim arises either directly or indirectly as a result of the Council or its employees, officers, agents, contractors or workmen's negligence, default, act or omission.

### **9.3 Insurance**

- (a) Prior to the commencement of the Contribution Works or any part of them, the Owner must ensure the Builder effects and the Owner must produce evidence to the Council of the following insurances issued by an insurer approved by the Council (acting reasonably) in a form approved by the Council (acting reasonably):
  - (i) construction works insurance for the value of the Contribution Works;
  - (ii) public risk insurance for at least \$20 million;
  - (iii) workers compensation insurance as required by Law.
- (b) The Owner must provide evidence of currency of insurance required by clause 9.3(a) of this Schedule 4 upon request by the Council, acting reasonably, throughout the term of this Deed.

## **10 Intellectual Property Rights**

The Council acknowledges that the Owner or its contractors hold all rights to copyright and any intellectual property which may exist in the Contribution Works. To the extent the Owner have or receive intellectual property rights for the Contribution Works, the Owner shall assign those intellectual property rights to Council or permit use thereof.

## **11 Contamination risk**

### **11.1 Responsibility**

- (a) The Owner acknowledges and agrees that:
  - (i) it is responsible for the management of any contamination present upon or under the land on which Apartment Works are to be carried out;
  - (ii) it is responsible for the management of any contamination present upon or under the land on which the Public Domain Works are to be carried out;  
and

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- (iii) at its Cost, it will do all things necessary to the manage any contamination present upon or under the land on which the Public Domain Works are to be carried out so as to make the Public Domain Works suitable for use;  
and
  - (b) The Parties agree to conduct negotiations in good faith in order to reach agreement on what action is to be taken if contamination is identified on or in the land on which the Public Domain Works are to be carried out.
  - (c) Council agrees to disclose all information within its knowledge in relation to the contamination status of the land owned by Council which is reasonably necessary for the Owner to protect its workers undertaking the Public Domain Works.

## **11.2 Certification**

Prior to the dedication or transfer of the Apartments to Council, the Owner must provide to Council's reasonable satisfaction, certification by a qualified person, that the land on which the Apartments are located is suitable in light of any existing contamination for the proposed use.

# Planning Agreement

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## Schedule 5 - Contribution Works Concept Plans

# Planning Agreement

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## Schedule 6 - Notification and rectification of breach

### 1 Notice of breach

#### 1.1 Response to Notice

- (a) Promptly upon receipt of a notice under clause 9, the defaulting party must either:
- (i) rectify the breach identified in that notice within the time period specified in that notice; or
  - (ii) notify the Council in writing that it does not agree that the breach identified in that notice has occurred, and refer the matter for dispute resolution in accordance with clause 13 and Schedule 7.
- (b) In the absence of a manifest error on the face of the notice, nothing in clause 1.1(a)(ii) of this Schedule 6 will constrain or limit the Council's rights of recourse under this Deed.

#### 1.2 Rights of the Council after Giving Notice

- (a) If:
- (i) the defaulting party does not take either of the actions outlined in clause 1.1(a) of this Schedule 6; or
  - (ii) any dispute notified by the defaulting party is resolved in favour of the Council,

then the Council may take any or all of the actions available to it under this Deed including:

- (i) taking any action under clause 2.1 of this Schedule 6;
- (ii) calling on the Securities in accordance with Schedule 10;
- (iii) issuing a notice to the defaulting party which:
  - (A) identifies the nature of the breach; and
  - (B) specifies that the breach must be rectified by the Owner within a reasonable period of time which must not be less than 20 Business Days (except in the case of an emergency or where there is an issue of public safety where less time may be specified) of the Council's notice,

and the provisions of clauses 1.1 and 1.2 of this Schedule 6 will apply in respect of that notice (with the necessary changes having been made) and if the defaulting party does not take either of the actions outlined in



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clause 1.1(a) of this Schedule 6 then the Council may have recourse against the Owner in relation to the breach.

- (b) The rights of the Council under this Deed, and any action taken by it as referred to in this clause 1.2 of this Schedule 6 or otherwise, are without derogation from the other rights and remedies available to the Council under this Deed, at law and in equity in relation to any default of the defaulting party.

## **2 Council may rectify breach**

### **2.1 Council may perform obligations**

- (a) This clause 2 of this Schedule 6 applies only if the Council has first complied with clause 1 of this Schedule 6.
- (b) Before exercising its rights under the remainder of this clause 2.1 of this Schedule 6, the Council will give not less than 20 Business Days' (except in the case of an emergency or where there is an issue of public safety where less time may be specified) written notice to the defaulting party of its intention to exercise those rights.
- (c) The Council may (but is not obliged to):
- (i) perform the defaulting party's obligations where the defaulting party fails to:
    - (A) rectify the breach identified in the notice referred to in clause 9 within the time period specified in that notice; or
    - (B) notify the Council in writing that it does not agree that the breach identified in the notice referred to in clause 9 has occurred and refer the matter for dispute resolution in accordance with clause 13 and Schedule 7;
  - (ii) rectify any breach of this Deed;
  - (iii) carry out other works that are necessary to be carried out; and
  - (iv) otherwise do anything which the defaulting party should have done under this Deed.
- (d) Without limiting clause 2.1 of this Schedule 6 the defaulting party agrees that the Council, its employees, agents and contractors, may enter onto the Land and do whatever is necessary to remedy the breach, in the absolute discretion of the Council, subject to compliance with the reasonable directions of the defaulting party relating to work, health and safety and compliance with all Laws and mitigating its loss.
- (e) The defaulting party indemnifies and will keep the Council indemnified from and against all claims, actions, demands, losses, damages, Costs and Legal Costs (**Claim**) incurred by the Council or for which the Council may become liable in the exercise or purported exercise of the rights of the Council under this clause 2.1 of this Schedule 6, except in the event that such Claim is caused by or contributed to by the negligence of the Council or where the Council has exercised its rights in

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breach of this Deed, and may call on any relevant Security provided to it under Schedule 10 to satisfy any such Claim.

# Planning Agreement

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## Schedule 7 - Dispute Resolution

### 1 Dispute Resolution

#### 1.1 Not commence

A Party must not commence any court proceedings relating to a dispute unless it complies with the provisions of this Schedule 7.

#### 1.2 Written notice of dispute

A Party claiming that a dispute has arisen under or in relation to this Deed must give written notice to the other Party specifying the nature of the dispute.

#### 1.3 Attempt to resolve

On receipt of notice under clause 1.2 of this Schedule 7, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

#### 1.4 Mediation

If the Parties do not agree within 10 Business Days of receipt of notice under clause 1.3 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of NSW. The Parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

#### 1.5 Expert evaluation generally

- (a) If the Parties agree under clause 1.3 of this Schedule 7 that expert evaluation is the appropriate dispute resolution technique or clause 6.2, 7.1 or 8.1 of Schedule 4 require expert evaluation, expert evaluation must be carried out in accordance with this clause 1.5.
- (b) Where the Parties are not able to agree on an appropriate expert, the expert is to be appointed by the President of the appropriate institute or association.
- (c) If the Parties cannot agree on which institute or association is appropriate in the circumstances (within the same 10 Business Days), either Party may refer the selection of the institute or association to the President of the Bar Association of New South Wales to select the most appropriate institute or association.
- (d) The institutes or associations from which the expert may be appointed are:

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- (i) if an architect: the Royal Australian Institute of Architects, New South Wales Chapter;
  - (ii) if an engineer: Engineers Australia,
  - (iii) if a valuer: the Australian Property Institute Incorporated ARBN 007 505 866, New South Wales Division;
  - (iv) if an expert in decontamination: Engineers Australia - Environmental College
  - (v) if an expert in insurance: the Australian and New Zealand Institute of Insurance and Finance, New South Wales Branch;
  - (vi) if a real estate agent: the Real Estate Institute of New South Wales;
  - (vii) if a quantity surveyor: the Australian Institute of Quantity Surveyors, New South Wales Chapter;
  - (viii) if a barrister: the New South Wales Bar Association;
  - (ix) if an accountant: the Institute of Chartered Accountants, New South Wales Division;
  - (x) if a solicitor or mediator: the Law Society of New South Wales
- (e) If:
- (i) more than two types of experts are required to determine the dispute; or
  - (ii) the Parties agree to appoint a lead expert; or
  - (iii) the President of the Bar Association exercising his or her functions in accordance with clause 1.5(c) considers the appointment of a lead expert appropriate
- then the Parties must appoint a lead expert.
- (f) The lead expert must be a solicitor who has practised for not less than 15 years and who has not less than 5 years' experience in alternative dispute resolution. The lead expert must be agreed by the Parties and failing agreement will be appointed by the President of the Law Society of New South Wales.
- (g) If a lead expert is appointed the functions of that person are:
- (i) to determine the type of expert required to determine the dispute;
  - (ii) in the absence of agreement between the Parties as to the identity of the expert, to request the appropriate institute or association referred to in clause 1.5(b) ('Institutes and associations') to appoint an expert;
  - (iii) to determine the questions to be put to the expert and, if there is more than one expert, to co-ordinate and determine the timing of each expert determination;

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- (iv) if the dispute requires determination by an expert solicitor, to perform that function;
  - (v) if the expert determinations obtained are ambiguous, contradictory or in conflict, to determine the ambiguity, contradiction or conflict;
  - (vi) on receipt of the expert determinations to deliver to the Parties a final determination of the dispute;
  - (vii) to determine any question of procedure concerning the dispute resolution process.
- (h) The expert is to be engaged on his standard terms of engagement subject to any amendments required to ensure consistency with this clause.
  - (i) Both Parties may, within 20 Business Days of the date of appointment of the expert, make written submissions to the expert on the matter the subject of the dispute. If a Party makes a written submission to the expert, it must give a copy of the submission to the other Party at the same time as it gives the submission to the expert. Submissions must include all particulars upon which a Party seeks to rely in support of its position in relation to the dispute. The expert will determine the procedure for determining the dispute.
  - (j) When any dispute or difference referred to in this clause has been referred for determination, the Parties will each use their best endeavours to make available to the expert all facts and circumstances which the expert may require to settle or determine the dispute or difference and must ensure that their respective employees, agents and consultants are available to appear at any hearing or enquiry called for by the expert. The Parties record their agreement that the hearing be concluded within 20 Business Days, and the expert's decision given within 20 Business, of the date of appointment of the expert, and shall use their best endeavours to see that these time frames are met.
  - (k) The expert's decision is final and binding on the Parties. The cost of the expert's decision is to be borne by the Parties in the shares as the expert determines and in the absence of a determination equally between the Parties.
  - (l) The expert will also determine the amount of the costs and expenses of the reference of such dispute to him. In default of such decision, those costs and expenses will be borne by the Parties in equal shares.

## **1.6 Court proceedings**

If the dispute is not resolved within 60 Business Days after notice is given under clause 1.2 of this Schedule 7, then any Party which has complied with the provisions of this Schedule 7, may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

## **1.7 Not use information**

The Parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under the provisions of this Schedule 7, is to attempt to settle the dispute. No Party may use any information or documents obtained through any dispute resolution process undertaken under the provisions of this Schedule 7 for any purpose other than in an attempt to settle the dispute.

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**1.8 No prejudice**

The provisions of this Schedule 7 do not prejudice the right of a Party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this Deed.

**1.9 Costs**

- (a) The Costs of appointing a mediator under this Schedule 7, will be borne equally by the Parties
- (b) Each Party will be responsible for its own Legal Costs with respect to any dispute resolution process.

# Planning Agreement

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## Schedule 8 – Deed Registration

### 1 Deed registration

#### 1.1 Consents

The Owner will obtain all consents to the registration of this Deed on the relevant folio of the Register for the Land as are necessary and in particular the consent of any mortgagee or lessee.

#### 1.2 Mortgage

- (a) The Owner must produce to the Council together with this Deed for execution by the Council, a letter from the mortgagee (if any) and lessees of any registered lease on the Land (if any) consenting to the registration of this Deed accompanied by production information as evidence that the mortgagee (if any) has produced the Certificate of Title for the Land at Land and Property Information for the purpose of registration of the Deed and a bank cheque for the relevant registration fees.
- (b) If the Land is unencumbered by a mortgagee the Owner must produce the Certificate of Title for the Land at Land and Property Information and give a copy of the production slip to the Council.

#### 1.3 Council to lodge

Subject to clause 1.2 of this Schedule 8, the Council will lodge this Deed with Land and Property Information for registration on the relevant folio of the Register for the Land as soon as reasonably practicable, but in any event no later than 10 Business Days after receiving the documents referred to in clause 1.2 of this Schedule 8.

#### 1.4 Registration requisitions

The Owner must promptly comply with any requisitions that may be raised with regard to registration of the Deed in the relevant folio of the Register for the Land.

#### 1.5 Registration notification

The Council will notify the Owner of registration of the Deed and forward a copy of the registered instrument to them.

#### 1.6 Costs

The Owner must pay the Council's reasonable Costs of registering this Deed upon receipt of a notice from the Council as to the amount of those Costs.

# Planning Agreement

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## Schedule 9 - Release and Discharge Terms

### 1 Release and discharge terms

#### 1.1 Full release

Once the Council is satisfied that the Owner have complied with all of their obligations under this Deed at the Owner's request (and Cost), the Council must within 10 Business Days of being requested to do so by the Owner:

- (a) provide a full release and discharge of this Deed with respect to the whole of the Land and documentation (in registrable form) required to remove the notation of this Deed from the relevant folio of the Register for the Land; and
- (b) (should the Council not already have done so) sign such documentation as is necessary to remove any caveat lodged by the Council from the relevant folio of the Register for the Land.

#### 1.2 Partial release

Despite clause 1.1 of this Schedule 9, from time to time, the Owner may request and the Council is to provide a release and discharge of this Deed so that it may remove the notation of this Deed from the Register in respect of any part of the Land provided that:

- (a) all obligations under clause 3.1 of this Deed have been met;
- (b) the Owner has provided the Council with a Security in accordance with Schedule 10 for the purpose of, rectifying any defects in the Contribution Works or; monetary Contributions that are required under Schedule 3 of this Deed have been paid; and
- (c) the Owner is not otherwise in default of any of its obligations under this Deed (as determined by the Council (acting reasonably), at the time of the Owner's request, unless the Council waives the default.

#### 1.3 Outstanding obligations

For the avoidance of doubt, a release under clause 1.2 of this Schedule 9 does not operate as a release from any outstanding obligation under this Deed, and is intended only to allow removal of the notation of this Deed from the Register in respect of the relevant part of the Land.

#### 1.4 Surrender

The Parties agree that if the Owner surrenders the Development Consent for the Development without implementing the Development Consent by means of physical works on the Land pursuant to the Development Consent, then the Owner is released and discharged from the obligations under this Deed and Council will enable the withdrawal of any caveat on the Land and/or the registration of the Deed on the Land.



# Planning Agreement

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## Schedule 10 - Security

### 1 Securities

#### 1.1 Owner to provide

- (a) Clauses 1.1 to 1.8 of this Schedule apply in relation to the Contributions.
- (b) The Owner must provide each Security to the Council (in the relevant Security Amount) on or before the times set out in the Security Schedule.
- (c) The Securities referred to in paragraph 1.1(b) of this clause, secure:
  - (i) in respect of the Public Domain Works, the performance by the Owner of its obligations under this Deed in respect of the Public Domain Works including causing the Public Domain Works achieve Practical Completion
  - (ii) in respect of the Public Domain Works Defects Security, the performance by the Owner of its obligations under this Deed to rectify Defects in the Public Domain Works;
  - (iii) in respect of the Apartment Works Defects Security, the performance by the Owner of its obligations under this Deed to rectify Defects in the Apartment Works; and
  - (iv) in respect of the Enforcement Security, the performance by the Owner of its obligations under this Deed pending delivery of the Public Domain Works Security.
- (d) The Parties agree that the Enforcement Security is security for Costs that Council may incur in the enforcement of this Deed pending delivery of the Public Domain Works Security. The Enforcement Security must be returned to the Owner when the Public Domain Security has been provided.

#### 1.2 Adjustment of Security Amounts

- (a) On each Adjustment Date each Security Amount is to be adjusted to the Revised Security Amount as determined in accordance with the following formula:

$$RBA = \frac{BA \times A}{B}$$

where:

**RBA** is the Revised Security Amount applicable from the relevant Adjustment Date;

**BA** is the Security Amount that is current on the relevant Adjustment Date;

**A** is the CPI published immediately before the relevant Adjustment Date;

**B** is the CPI published immediately before the date of this Deed and, in the case of subsequent adjustments, the immediately preceding Adjustment Date.

No increase or other change will be made to a Revised Security Amount where B is greater than A.

- (b) The Council must give the Owner written notice of each Revised Security Amount to apply from the relevant Adjustment Date in accordance with the terms of this Deed.
- (c) The Owner must give the Council replacement or further Securities so that the Council holds each Security for an amount equal to the revised Security Amounts no later than 15 Business Days after receipt of a notice given under paragraph 1.2(b) of this clause.

### 1.3 Expiry of Security

If, despite the requirements of this Deed, any Security provided by the Owner is expressed as expiring on a certain date, the Owner must provide the Council with a replacement Security 20 Business Days prior to the expiry of any Security.

### 1.4 Failure to replace expired Security

If the Owner fails to provide the Council with a replacement Security in accordance with clause 1.3 of this Schedule 10, the Council may call on the full amount of such Security after giving 10 Business Days prior written notice to the Owner.

### 1.5 No limitation of obligations

The provision of the Security does not:

- (a) relieve the Owner from any of its obligations under any other provision of this Deed; or
- (b) other than as expressly set out in this Deed, limit the right of the Council to recover from the Owner in full all money payable to the Council under this Deed, including without limitation, interest on any such amounts or damages or other losses incurred by the Council.

### 1.6 Cash deposit

- (a) If the Council makes demand under any Security pursuant to clause 1.4 of this Schedule 10, the Council must hold the full amount so paid to the Council as a cash deposit (**Cash Deposit**) in a separate account opened with any body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act, 1959* in the name of the Council and with beneficial ownership vesting at all times in the Council (**Cash Deposit Account**). The Cash Deposit will operate to secure the same obligations under this Deed that the relevant Security secured.
- (b) As beneficial owner of the Cash Deposit, the Council may, at any time and without notice to the Owner, withdraw money (including accrued interest) from the Cash Deposit Account and retain that money absolutely to satisfy or reimburse the Council for any liability, loss, cost, charge or expense incurred by the Council

because of failure by the Owner to comply with those of the Owner's obligations under this Deed that the relevant Security secured.

- (c) All Costs, charges, duties and Taxes payable in connection with the Cash Deposit Account or interest accruing on moneys credited to the Cash Deposit Account may be satisfied by the Council withdrawing money from the Cash Deposit Account and applying the money for that purpose.
- (d) If no moneys are, or may become, payable to the Council under this Deed in connection with the obligations under this Deed secured by the relevant Security and the Owner has satisfied all of its obligations under this Deed which were secured by the relevant Security, the Council must pay the balance of the Cash Deposit Account, less all Costs, charges, duties and Taxes payable in connection with such payment, to the Owner.
- (e) For the avoidance of doubt, the Owner has no right to require the Council to release the Cash Deposit until the Council is reasonably satisfied that no moneys are, or may become, payable to the Council under this Deed in relation to obligations secured by the relevant Security.

#### **1.7 Release of Cash Deposit and Security return**

- (a) The Council must release the Cash Deposit to the Owner if the Owner provides the Council with a replacement Security complying with the requirements of clause 1.3 of this Schedule 10.
- (b) No later than 20 Business Days after a request from the Owner, the Council will return the Enforcement Security if:
  - (i) the Public Domain Works Security has been provided;
  - (ii) there is no subsisting default by the Owner in respect of obligations to which the Enforcement Security relates as at the date of the request and at the due date for delivery (which has not been waived by the Council); and
  - (iii) there is no unresolved Dispute between the Parties being dealt with under the dispute resolution under Schedule 7 as at the date of the request and at the due date for delivery.
- (c) No later than 20 Business Days after a request from the Owner, the Council will return a Security (other than the Enforcement Security) if:
  - (i) in the case of the Public Domain Works Security:
    - (A) the Public Domain Works Defects Security has been provided;
    - (B) there is no subsisting default by the Owner in respect of obligations to which the Public Domain Works Security relates as at the date of the request and at the due date for delivery (which has not been waived by the Council); and
    - (C) there is no unresolved Dispute between the Parties being dealt with under the dispute resolution under Schedule 7 as at the date of the request and at the due date for delivery;

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- (ii) in the case of the Public Domain Works Defects Security:
    - (A) there is no subsisting default by the Owner in respect of obligations to which the Public Domain Works Defects Security relates as at the date of the request and at the due date for delivery (which has not been waived by the Council); and
    - (B) there is no unresolved Dispute between the Parties being dealt with under the dispute resolution under Schedule 7 as at the date of the request and at the due date for delivery;
  - (iii) in the case of the Apartment Works Defects Security:
    - (A) there is no subsisting default by the Owner in respect of obligations to which the Apartment Works Defects Security relates as at the date of the request and at the due date for delivery (which has not been waived by the Council); and
    - (B) there is no unresolved Dispute between the Parties being dealt with under the dispute resolution under Schedule 7 as at the date of the request and at the due date for delivery.

### **1.8 Claims under Securities**

- (a) The Owner agrees that the Council may after giving at least 10 Business Days prior written notice to the Owner make claims (in full or in part) under a Security provided by it, in the event that:
  - (i) the Owner breaches its obligations under this Deed pending delivery of the Public Domain Works Security;
  - (ii) the Owner breaches its obligation to carry out and complete any of the part of the Public Domain Works to which the Security relates in accordance with this Deed; or
  - (iii) the Owner breaches its obligation to rectify defects in or maintain any Contribution Works in accordance with Schedule 4;and provided:
  - (iv) a notice has been issued by Council requiring the Owner to remedy the breach in accordance with the requirements of Schedule 6; and
  - (v) there is no outstanding dispute to be resolved under Schedule 7 to which the relevant Security relates; and
  - (vi) the breach remains unremedied following the expiry of the rectification period specified in that notice; and
  - (vii) the claim relates to the non-performance of obligations secured by that Security.
- (b) The Council may retain and use any money it has obtained by making a claim under this clause in its discretion to compensate the Council for the Owner's breach of those obligations.

### 1.9 Security Schedule

The Parties agrees that the table below is the Security Schedule setting the Securities, their amount and when they are to be provided

<b>Number</b>	<b>Security</b>	<b>Security Amount</b>	<b>Date for delivery</b>
1	Public Domain Works Security	\$9,285,678.00	The Owner must deliver this Security to the Council on or before the date of the first Construction Certificate.
2	Public Domain Works Defects Security being 10% of Public Domain Works Security	\$928,567.80	The Owner must deliver this Security to the Council on or before the date of stated in Schedule 3 by which Practical Completion of the Public Domain Works must be achieved.
3	Apartment Works Defects Security being 10% of the agreed value of the apartments	\$390,000.00	The Owner must deliver this Security to the Council on or before the date of stated in Schedule 3 by which the freehold title in the Apartments must be transferred to the Council.
4.	Enforcement Security	\$300,000	The Owner must deliver this Security to the Council on or before the date of this Deed.

# Planning Agreement

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## Schedule 11 - Assignment and Dealing

### 1 Assignment and Dealing

#### 1.1 Dealing by the Owner

- (a) Unless the matters specified in this Schedule 11 are satisfied, the Owner is not to assign or novate to any person their rights or uncompleted obligations under this Deed.
- (b) Except in relation to a mortgage, the Owner must not assign or novate to any person its rights or uncompleted obligations under this Deed unless the prior written consent of Council is obtained. The Council must not unreasonably withhold its consent in circumstances where the following matters have been satisfied:
  - (i) the Owner has, at no cost to the Council, first procured the execution by the person to whom the Owner's rights or uncompleted obligations under this Deed are to be assigned or novated (**incoming party**), of a deed in favour of the Council in the form similar to Schedule 12, completed in a manner reasonably satisfactory to the Council. Such deed includes covenants that the incoming party:
    - (A) will perform the relevant obligations of the Owner under this Deed; and
    - (B) is bound by the terms and conditions of this Deed (relevant to the Owner) as if the incoming party had executed the Deed;
  - (ii) the Owner is not in breach of this Deed or the Council has waived a subsisting breach;
  - (iii) the Owner or incoming party provides to the satisfaction of Council (acting reasonably) a Bond and any other documents required under Schedule 10 to secure the outstanding obligations under this Deed;
  - (iv) the Owner or incoming party provides to the satisfaction of Council (acting reasonably) copies of insurances or any other documents required under this Deed for the carrying out of any outstanding Contribution Works.
- (c) Subject to compliance with this clause, the Owner may register a mortgage on some or all of the Land, and Council will consent to the registration of the mortgage, if the Owner supplies Council with a signed deed (on terms satisfactory to Council acting reasonably) whereby the mortgagee agrees to be bound by the terms of this Deed if it enters into possession of the land the subject of the registered mortgage.

#### 1.2 Dealing with the Land by the Owner

- (a) The Owner must not sell or transfer the whole or any part of the Land (and must procure that the whole or any part of the Land is not sold or transferred) unless before any such sale, transfer or disposal of any such part of the Land to another

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person (**transferee**) the Owner obtains the Council's prior written consent. The Council must not unreasonably withhold its consent in circumstances where the requirements specified in this Schedule 11 are satisfied.

- (b) This clause 1.2 of this Schedule 11 does not apply to the transfer of any part of the Land, in respect of which the Council has provided a release and discharge of this Deed in accordance with Schedule 9.
- (c) The Council acknowledges that before the date of this Deed the Owner may have entered into land sale contract for dwellings proposed as part of the Development. Despite anything else stated in this Deed:
  - (i) the consent of the Council under this Schedule 11 is not required for any such land sale contract entered into before the date of this Deed; and
  - (ii) nothing in this Deed prohibits the Owner undertaking marketing and sale of lots proposed as part of the Development.

### **1.3 Council's Costs**

The Owner or the Owner (as the case may be) must pay to the Council (or reimburse the Council on demand) for all the Costs and Legal Costs incurred by the Council in connection with any assignment or dealing proposed under clauses 1.1 or 1.2 of this Schedule 11.

### **1.4 Council's assignment of rights**

Council may assign its rights under this Deed to any successor in title.

### **1.5 Council to act promptly**

The Council must act promptly in dealing with any application made by the Owner or the Owner (as the case may be) in respect of any proposed assignment or dealing proposed under clauses 1.1 or 1.2 of this Schedule 11.

# Planning Agreement

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## Schedule 12 - Pro-forma Novation Deed



# Planning Agreement

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## Schedule 13 - General Provisions

### 1 General Provisions

#### 1.1 Approvals and Consent

Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party will not unreasonably withhold an approval or consent to be given under this Deed but may give its approval or consent subject to any conditions reasonably determined by that Party.

#### 1.2 Costs

- (a) Unless otherwise specified in this Deed, all reasonably and properly incurred Legal Costs relating to this Deed are to be borne by the Owner in the amount specified in Schedule 14 and are payable on demand.
- (b) Without limiting clause 1.2(a) of this Schedule 13, the Owner agrees to pay or reimburse the Council on demand for:
  - (i) reasonably and properly incurred Legal Costs of the Council in connection with:
    - (A) enforcing or preserving, or, enforce or preserve, rights under this Deed, including in connection with the Owner default;
    - (B) any waiver, variation, release or discharge of this Deed; and
  - (ii) Taxes and fees (including, without limitation, registration fees and stamp duty) and fines and penalties in respect of fees which may be payable or determined to be payable in connection with this Deed or a payment or receipt or any transaction contemplated by this Deed.

#### 1.3 Effect of terms and conditions in Schedules and Annexures

The Parties agree to comply with the terms and conditions contained in the Schedules and Annexures as if those terms and conditions were expressly set out in full in the operative parts of this Deed.

#### 1.4 Entire agreement

To the extent permitted by law, in relation to its subject matter only, this Deed:

- (a) embodies the entire understanding of the Parties, and constitutes the entire terms agreed by the Parties; and
- (b) supersedes any prior written or other agreement of the Parties.

#### 1.5 Further acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

## 1.6 Governing Law and jurisdiction

This Deed is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

## 1.7 Enforcement

- (a) This Deed may be enforced by any Party in any court of competent jurisdiction.
- (b) For the avoidance of doubt, nothing in this Deed prevents:
  - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates; and
  - (ii) an Authority or the Council from exercising any function under the EP&A Act or any other Law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

## 1.8 No fetter

Nothing in this Deed is to be construed as requiring an Authority (including the Council) to do anything that would cause it to be in breach of any of its obligations at Law, and without limitation:

- (a) nothing in this Deed is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty; and
- (b) nothing in this Deed imposes any obligation on an Authority to:
  - (i) grant any Development Consent; or
  - (ii) exercise any function or power under the EP&A Act in relation to a change, or a proposed change, in an environmental planning instrument.

## 1.9 Representations and warranties

- (a) Each Party individually represents and warrants that:
  - (i) it has power to enter into this Deed and comply with its obligations under the Deed;
  - (ii) this Deed does not contravene its constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject, or cause a limitation on its powers or the powers of its officers to be exceeded;
  - (iii) it has in full force and effect the authorisations necessary for it to enter into this Deed, to comply with its obligations and exercise its rights under this Deed and to allow this Deed to be enforced;
  - (iv) its obligations under this Deed are valid and binding and are enforceable against it in accordance with the terms of the Deed;

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- (v) it does not have immunity from the jurisdiction of a court or from legal process; and
  - (vi) it benefits by entering into this Deed to which it is a Party.
- (b) Each Party acknowledges that each other Party has entered into this Deed in reliance on the representations and warranties in this clause 1.9 of this Schedule 13.

#### **1.10 Severability**

- (a) If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- (b) If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

#### **1.11 Modification**

No modification of this Deed will be of any force or effect unless it is in writing and signed by the Parties as a Deed.

#### **1.12 Waiver**

- (a) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or a breach of obligation by, another Party.
- (b) A waiver by a Party is only effective if it is in writing.
- (c) A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

#### **1.13 Confidentiality**

The Parties agree that the terms of this Deed are not confidential and this Deed may be treated as a public Deed and exhibited or reported without restriction by any Party.

#### **1.14 Release and indemnity**

- (a) The Owner agrees that the obligation to provide the Contributions is at the risk of the Owner. The Owner releases the Council from any Claim, liability or loss arising from, and Costs and Legal Costs incurred in connection with, the Owner's obligation to provide the Contributions.
- (b) The Owner indemnifies the Council against all liabilities or loss arising from, and any Costs and Legal Costs incurred in connection with the Council enforcing the Owner's obligation to provide the Contributions in accordance with this Deed or the Council exercising the Council's rights under or by virtue of this Deed or both.

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- (c) The indemnity in paragraph 1.14(b) of this Schedule 13 is a continuing obligation, independent of the Owner's other obligations under this Deed and continues after this Deed ends.
  - (d) It is not necessary for a Party to incur expense or to make any payment before enforcing a right of indemnity conferred by this paragraph 1.14.
  - (e) A Party must pay on demand any amount it must pay under an indemnity in this clause 1.14 of this Schedule 13.

# Planning Agreement

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## Schedule 14 - Costs

The Owner is to pay Council's Legal Costs associated with the preparation and execution of this Deed.

# Planning Agreement

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## Schedule 15- Apartment Finishes Schedule

Each Apartment (including the car space and any storage forming part of it) must comply the following requirements:

- (a) The quality and standards of construction and finish of an Apartment (including the car space and any storage forming part of it) must the same as any other similar residential apartment dwellings in the Development.
- (b) All fixtures, fittings and inclusions in an Apartment (including the car space and any storage forming part of it) must be consistent with and of the same quality and standards as other residential apartment dwellings in the Development unless otherwise required to comply with Australian Standards 1428 and/or Australian Standard 4299, or as otherwise agreed between the Parties.
- (c) An Apartment (including the car space and any storage forming part of it) must comply with appropriate Australian Standards and the Building Code of Australia.
- (d) An Apartment must be equipped with the following minimum fittings unless otherwise agreed between the Parties:
  - (i) floor coverings to all rooms (tiled kitchens, bathrooms, laundries and hallways; and carpet in living, lounge and bedroom/s);
  - (ii) light fittings fit for purpose in each room;
  - (iii) electric clothes dryer;
  - (iv) telephone and television aerial points in the lounge and main bedroom;
  - (v) cable television fittings if provided in the Building;
  - (vi) allocation of car and storage spaces consistent with other units;
  - (vii) all sliding windows and sliding doors to have window furnishings and fly screens; ;
  - (viii) at least one balcony door is to have a fly screen,
  - (ix) provision of air conditioning to living area and bedroom/s; and
  - (x) security and/or intercom system.
- (e) There must be not less than 2 accessible Apartments (including their related car spaces and storage spaces) and they must comply with Australian Standard 1428 (AS1428). An accessible Apartment must include features in place to facilitate use by a person with a disability or progressive frailty.
- (f) Where specified provision of an adaptable Apartment including car spaces will comply with Australian Standard 4299 (AS4299). An adaptable Apartment must be designed in such a way that it can be modified easily in the future to become accessible to both occupants and visitors with disabilities or progressive frailties.

# Planning Agreement

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## Signing page

Executed as a deed

### Signature by Council

**Signed** for an on behalf of the **Council of the City of Ryde** by a duly authorised officer (who by their signature testifies that they are duly authorised to sign this instrument) in the presence of

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of the Authorised Officer

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Name of and position of the Authorised Officer

### Signature by the Owner

**Executed** by **Yuhu Property (Australia) Pty Limited** in accordance with section 127 of the *Corporations Act 2001*

\_\_\_\_\_  
Signature of Director / Secretary

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director / Secretary

\_\_\_\_\_  
Name of Director

## EXPLANATORY NOTE

### Planning Agreement

152- 190 Rowe Street, Eastwood, NSW

3-5 Rutledge Street, Eastwood NSW

#### 1 Introduction

The purpose of this Explanatory Note is to provide a summary to support the notification of a draft Planning Agreement (**Planning Agreement**) under section 7.4 of the *Environmental Planning and Assessment Act 1979 (Act)*, prepared in connection with Development Application LDA 2016/0378 (**Development Application**).

This Explanatory Note has been prepared jointly by the parties to the Planning Agreement as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000 (Regulation)*.

Contributions under sections 7.11 and 7.12 of the Act are excluded under the Planning Agreement.

In this Explanatory Note, capitalised terms have the meaning given to those terms in the Planning Agreement unless otherwise defined.

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

#### 2 Parties to the Planning Agreement

The parties to the Planning Agreement are:

- (a) Council of the City of Ryde ABN 81 621 292 610 (**Council**); and
- (a) Yuhu Property (Australia) Pty Ltd ABN 68 163 794 296 (**Owner**).

#### 3 Description of the Land

The Planning Agreement applies to:

- Lots 1, 2 and 3 in Deposited Plan 1082714, Lots 1 and 2 in Deposited Plan 15579, Lot 1 in Deposited Plan 315919, Lot 1 in Deposited Plan 583398 and Lot A in Deposited Plan 342118 and known as 152-160 Rowe Street, Eastwood NSW;
- Lot 2 in Deposited Plan 583398 and known as 168 Rowe Street, Eastwood NSW;
- Lot 1 in Deposited Plan 105344 and known as 170 Rowe Street, Eastwood NSW;
- Lots 1 and 2 in Deposited Plan 211809 and known as 172-176 Rowe Street, Eastwood NSW;
- Lot 1 in Deposited Plan 173607, Lot 7 in Deposited Plan 656027 and Lot A in Deposited Plan 317789 and known as 178-180 Rowe Street, Eastwood NSW;
- Lot 8 in Deposited Plan 1098697 and known as 186 Rowe Street, Eastwood NSW;



- Lot 1 in Deposited Plan 331280 and known as 188 Rowe Street, Eastwood NSW;
- Lot 201 in Deposited Plan 1134152 and known as 190 Rowe Street, Eastwood NSW;  
and
- Lot A in Deposited Plan 374497 and Lot Pt25 in Deposited Plan 4231 and known as  
3-5 Rutledge Street, Eastwood NSW,

(collectively, referred to as the **Land**).

#### **4 Description of the Proposed Development**

The Owner seeks to carry out the mixed use redevelopment on the Land in accordance with the Development Application that is being evaluated by Council, comprising:

- (a) mixed use development to enable a range of land uses, including:
  - (i) retail and commercial uses at Lower Ground and Ground Levels;
  - (ii) 409 residential apartments across the upper levels of all buildings;
  - (iii) four (4) levels of commercial office space retail tenancies;
  - (iv) four (4) levels of basement car parking and loading to service all activities on the site;
  - (v) two (2) new open air through site pedestrian links between Rowe Street and Rutledge Street and a publicly accessible market hall;
  - (vi) new vehicle access arrangements; and
  - (vii) Landscape works
- (b) site preparation works including demolition, remediation and rehabilitation and bulk earth works on the Land,

(described in this Explanatory Note as the **Development**).

#### **5 Summary of Objectives, Nature and Effect of the Planning Agreement**

The objective and nature of the Planning Agreement is to facilitate the delivery by the Owner of the Contributions comprising:

- (a) the dedication or transfer to the Council of 5 x 1 bedroom Apartments;
- (b) the carrying out of the Public Domain Works; and
- (c) the payment of a Monetary Contribution

(together, **Contributions**).

In order to secure the obligations of the Owner under the Planning Agreement, the terms of the Planning Agreement require the provision of security in the form of a Bond or Bank Guarantee for the amounts stipulated in the Planning Agreement.

Contributions under sections 7.11 and 7.12 of the Act are excluded under the Planning Agreement. Contributions under section 7.24 of the Act are not excluded.

## **6 Assessment of the merits of the Planning Agreement**

### **6.1 How the Planning Agreement promotes the public interest and one or more of the objects of the Act**

The Planning Agreement provides for the delivery of the Public Domain Works to meet the needs of the people who will live and work in, or visit the locality once the Development is complete. The provision of these items will promote the social and economic welfare of the community. In doing so, the Agreement promotes the following objects of the Act:

- (a) to promote the orderly and economic use and development of land (section 1.3(c)); and
- (b) to promote good design and amenity of the built environment (section 1.3(g)).

### **6.2 How the Planning Agreement promotes the objects of the Local Government Act 1993 (LG Act) and the elements of the Council's charter**

The Planning Agreement promotes the exercise by Council of its functions in accordance with the guiding principles set out in Chapter 3 of the LG Act because it will assist Council to provide services and facilities appropriate to the current and future needs of the local community and wider public.

The Council's strategic planning for Ryde envisions an attractive, vibrant and sustainable urban place which provides quality residential and commercial developments complimented with enhanced pedestrian, bike and road access.

In summary, the Planning Agreement promotes the Council's charter by ensuring the delivery of the public benefits under the Planning Agreement which in turn satisfy the following aspects of Council's charter under the LG Act:

- (a) Councils should carry out functions in a way that provides the best possible value for residents and ratepayers (section 8A(1)(b));
- (b) Councils should plan strategically for the provision of effective and efficient services and regulation to meet the diverse needs of the local community section 8A(1)(c); and
- (c) Council should work with others to secure the appropriate services for local community needs (section 8A(1)(g)).

### **6.3 The impact of the Planning Agreement on the public or any section of the public.**

The scope of the Planning Agreement will benefit the local and wider community as it will improve the amenity of the public domain by providing community facilities.

### **6.4 Whether the Planning Agreement conforms with Council's capital works program**

The scope of the Planning Agreement is consistent with Council's capital works program.

### **6.5 The planning purpose or purposes of the Planning Agreement**

The public purpose of the Planning Agreement is the provision of public amenities and public services. It will provide a public benefit in terms of improving pedestrian circulation in the vicinity of the Land and the provision of improved public facilities to service the Development

and the wider public. The Contributions to be delivered under the Planning Agreement will ensure that there is sufficient facilities and infrastructure for the Development, producing a good planning outcome from the Development of the Land. As it would be difficult to obtain these public benefits through other statutory means, the Planning Agreement is the most suitable means of achieving that purpose.

**6.6 Compliance of certain requirements prior to issue of construction, occupation or subdivision certificates**

The Contributions under the Planning Agreement must be provided in accordance with the timing provisions as set out in Schedule 3 of the Planning Agreement and which include requirements before the issue of construction certificates, occupation certificates and subdivision certificates. Details of the proposed timing for the delivery of the Contributions are set out in the Annexure to this Explanatory Note.



Lifestyle and opportunity @ your doorstep

## **Rowe Street Mall Upgrade Indicative Functional Brief**

Response to Landscape Concept Plan  
provided by McGregor Coxall  
(Plans dated 20 December 2017)

- Section A – Introduction
- Section B – Objectives
- Section C – Indicative Functional Brief
- Section D – Conclusion

## Section A - Introduction

The City of Ryde is located in Sydney's north-western suburbs 12 kilometres from the Sydney CBD. Set in scenic surrounds between the Parramatta River and Lane Cove River, we are connected to other parts of metropolitan Sydney via major road systems, rail, bus and ferry services and bounded by neighbouring local government council's.

In accordance with the Voluntary Planning Agreement between the City of Ryde (Council) and YUHU Group (Owner) in respect of the redevelopment of 152-186 Rowe Street, 3-5 Rutledge Street, Eastwood, (Eastwood Shopping Centre); the owner is to design, document and construct the upgrade of Rowe Street Mall in accordance with the Indicative Functional Brief provided below.

Rowe Street Mall is currently a well-used and popular public open space, which provides a variety of speciality stores, supermarkets and restaurants. In particular, the existing arbour located at the eastern end of the Mall with Wisteria canopy cover is a unique and highly recognisable element in the City of Ryde LGA and also the wider Sydney Metropolitan Area.

The space under the Wisteria canopy is popularly used for Tai Chi and dancing by large groups. In the period of August to November 2011, as part of the Eastwood Town Centre Master Plan Project, Council carried out public consultation with the local community. The consultation revealed that the community has the aspirations for improved seating, water feature, lighting, paving, colour palette and night-time activities in the Mall.

The purpose of this document is to provide an indicative functional brief to YUHU Group to help them develop a detailed proposal for the upgrades of Rowe Street Mall as part of the development of the Eastwood Shopping Centre site. This brief is to ensure adequate facilities and appropriate spaces are provided to accommodate the proposed uses. It is anticipated that further discussion and documentation of specifications would follow agreement upon the location and dimensions of the proposed spaces.

## Section B – Objectives

The design for the upgrades of the Rowe Street Mall as part of the VPA should meet the following objectives:

- To optimise the activation of street frontages and passive surveillance to the Mall.
- To minimise obstructions, reduce conflict and increase safety and priority for pedestrian movement.
- To create a flexible spatial layout that is capable of catering for a variety of activities.
- To maintain line of sight between key entry points and activity nodes.
- To protect significant existing elements or structures, such as the arbour.
- To improve universal accessibility and provide compliant grading where possible.
- To use high quality materials to maximise the visual amenity of the Mall.
- To use robust materials and fixture to minimise ongoing maintenance costs.
- To minimise disruption to retail and commercial premises that are not part of the Eastwood Shopping Centre redevelopment.
- To minimise disruption to community activities regularly undertaken in Eastwood Mall.

## Section C – Indicative Functional Brief

The following comments are provided with respect to each of the itemised requirements identified in the Indicative Functional Brief.

Requirement/Element as per Masterplan	Comment
General	<ul style="list-style-type: none"> <li>• Maintain clear circulation space (minimum 3m wide) along the northern and southern retail shopfronts.</li> <li>• Provide granite paving as per City of Ryde's Public Domain Technical Manual throughout the Mall, with individual unique pavers (e.g. red clay brick) to add visual interest and contextual reference.</li> <li>• Ensure suitable pavers and underlying foundations are used to accommodate the loads of vehicle or event staging, as per City of Ryde's Public Domain Technical Manual.</li> <li>• Ensure drainage provision complies with relevant Australian Standards, City of Ryde's DCP – Stormwater &amp; Floodplain Management, City of Ryde's Water Sensitive Urban Design Guidelines, and City of Ryde's Stormwater and Floodplain Management Technical Manual.</li> <li>• Provide a mix of permanent public seating and removable outdoor dining seating/umbrellas, as per City of Ryde's Public Domain Technical Manual.</li> <li>• Provide catenary lighting over the Mall.</li> <li>• Provide an uninterrupted continuation of awning along the Mall.</li> <li>• Integrate Wireless Access Points, banner arms and CCTV with new light poles.</li> <li>• Ensure unobstructed circulation is achievable for emergency vehicles.</li> <li>• All works are to have regard to or comply where necessary with the City of Ryde's Public Domain Technical Manual.</li> </ul>
West Entry	<ul style="list-style-type: none"> <li>• Ensure the area has sufficient clearance to accommodate maximum pedestrian movement in multiple directions.</li> </ul>

	<ul style="list-style-type: none"> <li>• Maintain clear line of sight and paths of travel to the proposed laneways of the development site.</li> </ul>
Regraded Area	<ul style="list-style-type: none"> <li>• Define the breakout spaces and terraces using paths of travel.</li> <li>• Provide adequate tables and seating for outdoor dining under new trees.</li> <li>• Provide deciduous tree planting to provide shade in the summer and allow for solar penetration in winter. Tree species are to be selected from City of Ryde's Public Domain Technical Manual.</li> <li>• Select trees species which will maintain a high level of visibility to the retail shopfronts at eye height.</li> <li>• Provide water feature of similar scale to the existing one, which is currently a popular element in the Mall.</li> <li>• The water feature is to be designed to cater for both passive and active interaction.</li> <li>• Ensure suitable public furniture is available to parent/guardian/carers adjacent to the water feature, to allow passive and interactive surveillance.</li> </ul>
/ Transition/Flex Space	<ul style="list-style-type: none"> <li>• Provide transition in grading between terraced areas and existing grades beneath the arbour.</li> <li>• Ensure the space is unobstructed and has minimum dimensions of approximately 20m x 20m in order to cater for a variety of event activities, market stalls and large vehicle turning.</li> <li>• Remove existing kiosk to create a flexible open space.</li> </ul>
Arbour	<ul style="list-style-type: none"> <li>• Retain the existing supporting structure of the arbour.</li> <li>• Protect the Wisteria that covers the arbour as per the Arboricultural Assessment Report</li> <li>• Provide opportunities for removable seating at the periphery of the arbour to maintain clear paths of travel.</li> <li>• Provide concave seating or facing seating to encourage social interactions; the currently proposed seating is in a convex arrangement only.</li> <li>• Provide back and arm rests to public seating in suitable locations.</li> <li>• Provide aesthetic lighting elements.</li> </ul>
Performance Area	<ul style="list-style-type: none"> <li>• Provide spectator area and a levelled performance stage at the eastern end of the Mall.</li> <li>• Integrate storage for event equipment with the stage.</li> </ul>
East Entry	<ul style="list-style-type: none"> <li>• Ensure the area has sufficient clearance to accommodate maximum pedestrian movement in multiple directions.</li> <li>• Push the existing kerb on the western side of West Parade out by a minimum of 5m to reduce the kerb-to-kerb distance of West Parade.</li> <li>• Realign the pedestrian crossing to match the main path of travel from the Mall to the Railway Station.</li> <li>• Allow for unobstructed vehicle access for event set up off West Parade.</li> </ul>



Should you have any questions please contact Dyalan Govender, Manager Urban Strategy on 9952 8188 or [dgovender@ryde.nsw.gov.au](mailto:dgovender@ryde.nsw.gov.au).

---



<b>DATE OF DETERMINATION</b>	Thursday 25 October 2018
<b>PANEL MEMBERS</b>	Peter Debnam (Chair), Sue Francis, Julie Savet Ward, Edwina Clifton, Bernard Purcell
<b>APOLOGIES</b>	John Roseth
<b>DECLARATIONS OF INTEREST</b>	Bernard Purcell stated that his wife works at URBIS as the National Manager for graphic design. She does not have any influence on built form design or project specifics. This does not exclude him from participating on the Panel.

Public meeting held at Ryde Council Chambers 1 Pope Street Ryde on 25 October 2018, opened at 10.38am and closed at 11.13am.

#### **MATTER DEFERRED**

2017SNH013 – Ryde – LDA2016/378 at 152-190 Rowe Street and 3-5 Rutledge Street, Eastwood (as described in Schedule 1)

#### **REASONS FOR DEFERRAL**

The Panel has considered the officers report and representations at the meeting and accepts the assessment of staff that the proposal merits approval.


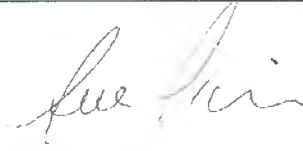



In relation to the Clause 4.6 variation in respect of height, the Panel considers there is sufficient environmental planning grounds to vary the height standard; noting that the variation allows for a reduced shadow impact relative to a complying envelope. In this respect the variation results in a better planning outcome and would be consistent with the objectives of the standard.

However, the Panel notes that the Voluntary Planning Agreement (VPA) has not been finalised and that it has not been exhibited. Further that Council wishes a broad public consultation process and does not intend to finalise this exhibition process until at least February 2019. In the circumstances, the Panel considers it inappropriate to approve the application with a deferred commencement condition.

The Panel also notes that the conditions of consent regarding the hanging garden should be amended to specify construction details (such as soil depth) and maintenance details to ensure success of the hanging garden.

The Panel therefore resolves to defer the application for the VPA to be resolved in respect to its terms between parties and advertised. The Panel requests a supplementary report be prepared by staff and submitted to the Panel not later than 1 June 2019 when the Panel will consider the matter by electronic means unless the Chair determines otherwise. The issue of the hanging gardens should be addressed in the supplementary report.

The decision to defer the matter was unanimous. The Panel adjourned during the meeting to deliberate on the matter and formulate a resolution.

PANEL MEMBERS	
 <b>Peter Debnam (Chair)</b>	 <b>Sue Francis</b>
 <b>Julie Savet Ward</b>	 <b>Edwina Clifton</b>
 <b>Bernard Purcell</b>	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2017SNH013 – Ryde – LDA2016/378
2	PROPOSED DEVELOPMENT	<p>Demolition and construction of a mixed-use development comprising 7 buildings accommodating retail, commercial and residential uses. The development will contain:</p> <ul style="list-style-type: none"> <li>• 11,449.4m<sup>2</sup> of retail space;</li> <li>• 3,629.6m<sup>2</sup> of commercial space (including office, gym and medical centre)</li> <li>• 409 residential apartments consisting of 97 x 1 bedroom, 249 x 2 bedroom &amp; 63 x 3 bedroom apartments.</li> <li>• 4 levels of basement car parking accommodating 1,035 vehicles.</li> <li>• Building heights ranging from 6 to 13 storeys.</li> <li>• Two open air through-site pedestrian links between Rowe and Rutledge Streets, and</li> <li>• Landscaping works within the site.</li> </ul>
3	STREET ADDRESS	152-190 Rowe Street and 3-5 Rutledge Street, Eastwood
4	APPLICANT/OWNER	Applicant: Yuhu Property (Australia) Pty Ltd Owner: Yuhu Property (Australia) Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General Development over \$20million and lodged prior 1 March 2018
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>• Environmental planning instruments: <ul style="list-style-type: none"> <li>○ State Environmental Planning Policy (State and Regional Development) 2011</li> <li>○ State Environmental Planning Policy (Building Sustainability index: BASIX)</li> <li>○ State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development</li> <li>○ State Environmental Planning Policy (Infrastructure) 2007</li> <li>○ Sydney Regional Environmental Plan (Sydney Harbour Catchment) (Deemed SEPP)</li> <li>○ Ryde Local Environmental Plan 2014</li> </ul> </li> <li>• Draft environmental planning instruments: Nil</li> <li>• Development control plans: <ul style="list-style-type: none"> <li>○ Ryde Development Control Plan 2014</li> </ul> </li> <li>• Planning agreements: Nil</li> <li>• Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil</li> <li>• Coastal zone management plan: Nil</li> <li>• The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>• The suitability of the site for the development</li> <li>• Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>• The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>• Council assessment report: 18 October 2018</li> <li>• Written submissions during public exhibition: 24</li> <li>• Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>○ Council assessment officer – Sandra Bailey, Allison Davidson, Liz Coad, Daniel Pearse</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>○ On behalf of the applicant – Murray Donaldson, Susan Pini, Andrew Johnson</li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>● Site inspection: 7 February 2018</li> <li>● Briefing: 14 June 2018</li> <li>● Final briefing to discuss council's recommendation, 25 October 2018, 10.15am. Attendees: <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Peter Debnam (Chair), Sue Francis, Julie Savet Ward, Edwina Clifton, Bernard Purcell</li> <li>○ <u>Council assessment staff</u>: Sandra Bailey, Liz Coad, Alison Davidson, Daniel Pearse</li> </ul> </li> </ul>
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report



LANDSCAPE ARCHITECTURE  
URBAN DESIGN  
ESD

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web: www.mgregorcoxall.com

---

PROJECT  
**EASTWOOD SHOPPING CENTRE**

---

ADDRESS  
**160 Rowe Street - Ryde NSW**

---

CLIENT  
**YUHU Properties**

---

CONSULTANTS  
(refer to the following consultants drawings for consultant work)

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PHASE  
**Development Application**

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ISSUE  
**Notes**

---

PROJECT NO.  
**0471SL**

---

DATE  
**04/06/18**

---

KEY MAP

CONTENTS



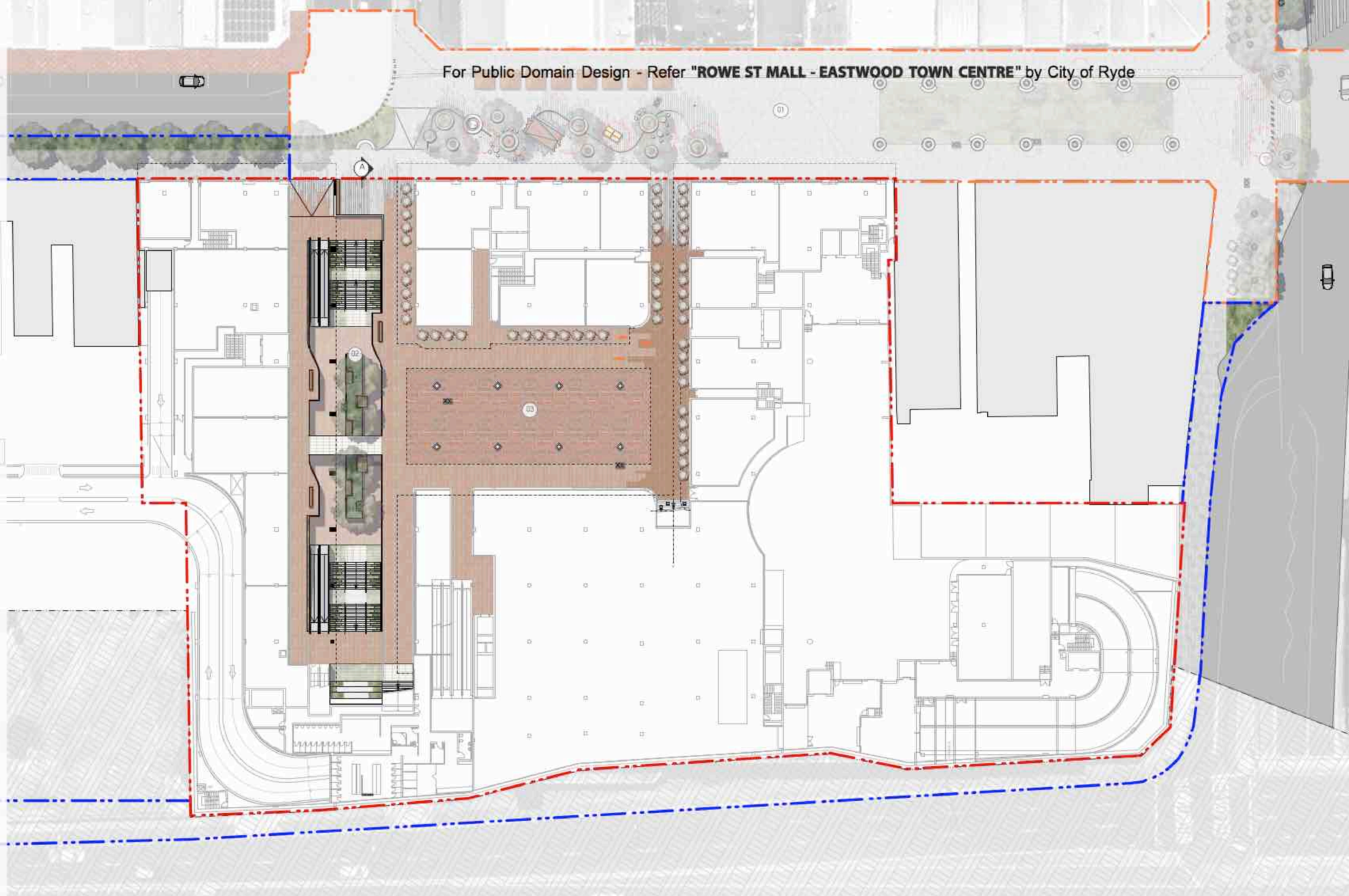
**Program**

- 01 Rowe Street Mall
- 02 The Green Spine
- 03 The Market Courtyard

**Legend**

- General**
- Site Boundary
  - VPA Offer
  - Section 94
  - Architecture Above
  - Stair
- Pavements & Edges**
- Granite Strip with Asphalt
  - Corten steel interpretive element
  - Corten steel Seating/Wall/level change
  - Granite stone sets
  - 600x300x60 Granite Paving
  - Clay Brick - Flemingsbone
  - Recycled Red Clay Brick Linear Paving
  - Recycled Red Clay Brick Diagonal Paving
  - Recycled Red Clay Brick Square Paving
  - Recycled Red Clay Brick English Bond Paving
  - New Red Clay Brick Linear Paving
  - New Red Clay Brick Small
  - Lightweight aluminum grating
  - Concrete
  - Painted Stair - Art Passageway
- Planting**
- Proposed Groundcover Lightweight aluminum grating  
6 plants / sqm (substock size)
  - Proposed Groundcover  
7 plants / sqm (substock size)
  - Proposed Groundcover  
Floral Feature Planting
- Walls + Edges**
- White Steel Balustrade -  
min 1m above Finish Level
- Trees**
- Proposed Native Trees -  
(Max 11 m high at mature age)
  - Existing Tree
  - Proposed Tree to be removed
- Furniture + Fittings**
- Bespoke Circular Tables, Seats & Lounging Pads
  - Bespoke at Grade Tree Grate and Planter
  - Bespoke Circular Planter Bench
  - Bespoke Circular Social Furniture: benches, seats
  - Flexible Outdoor Seating
  - Catenary Lighting
  - Interactive Water Feature
  - Water drain
  - Rubbish Bin
  - Ping Pong Table
  - Bike Rack
  - Fixed Bollard
  - Removable Bollard

For Public Domain Design - Refer "ROWE ST MALL - EASTWOOD TOWN CENTRE" by City of Ryde



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 www.mcgregorcoxall.com

**Client**  
 YUHU Properties

**Project Team**  
 RICE DAUBNEY

**Project Name**  
 EASTWOOD SHOPPING CENTRE

**Project No.**  
 0471SL

**Address**  
 160 Rowe Street - Ryde NSW

**Key Plan**

**Issue Log**

Rev	Revision Description	By / Checked	Date
D	DA RESPONSE	NB	31/3/17
E	PAVING UPDATE	NB	24/7
F	PAVING UPDATE	NB	6/4/17
G	AMENDED DA	KA	4/6/18

**Scale**  
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**Phase**  
 Development Application

**Sheet Title**  
 Ground Floor Concept Plan

**Sheet No.**  
 01

Rev  
**G**

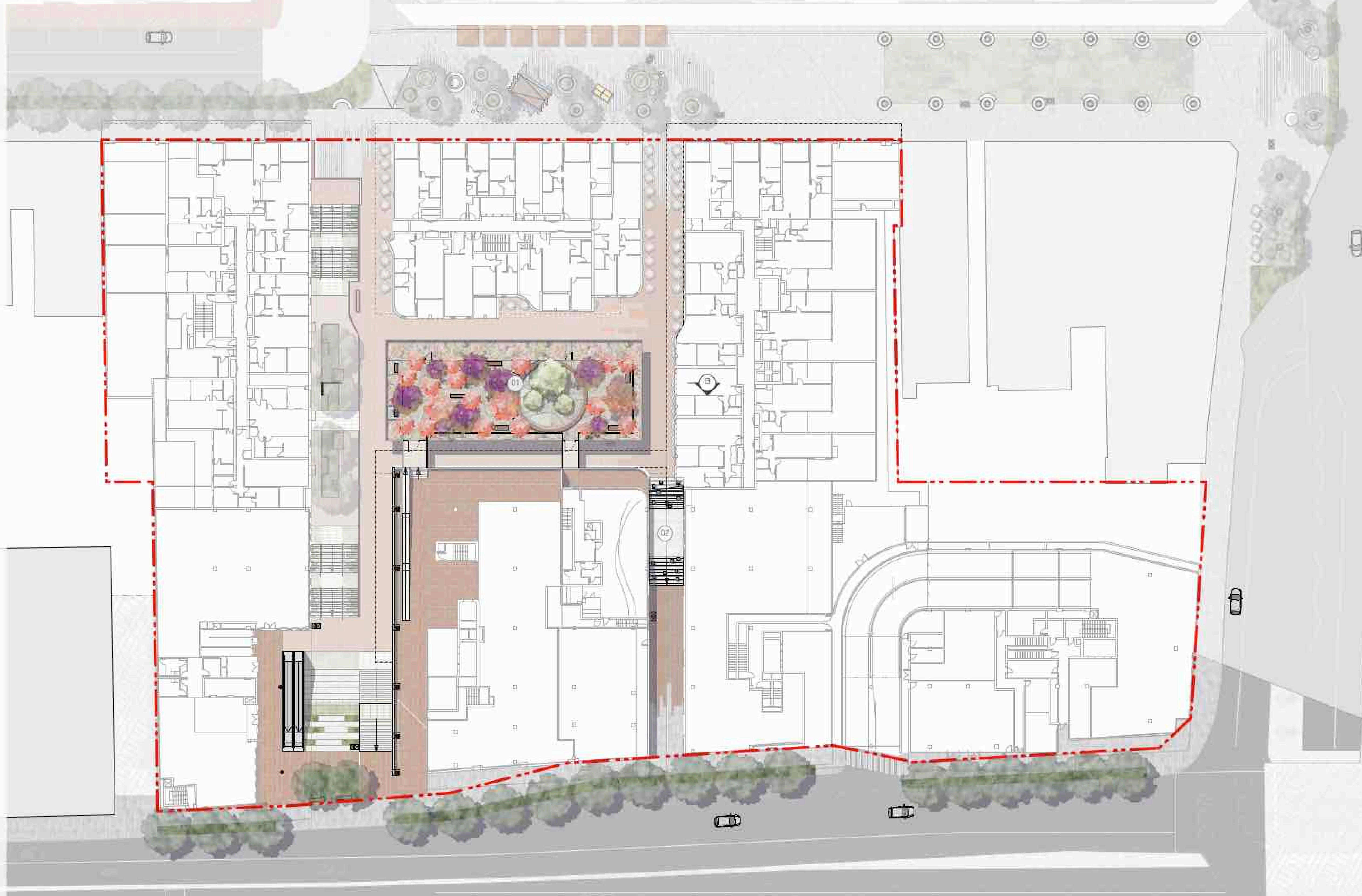
All dimensions are in millimetres unless otherwise noted.  
 Do not scale from this drawing.

**Program**

- 01 The Hanging Garden ( Residential Space )
- 02 The Art Passageway

**Legend**

- General**
- Site Boundaries
  - Architecture Above
  - Stair
- Pavements**
- New Red Clay Brick Linear Paving
  - New Red Clay Brick Small
  - Lightweight aluminum Grating
  - Concrete
  - Painted Concrete - Art Passageway
  - Crushed Brick Aggregate
- Planting**
- Proposed Groundcover Lightweight aluminum grating  
5 plants / 7 sqm (bushcock size)
  - Proposed Groundcover  
7 plants / 7 sqm (bushcock size)
  - Proposed Exotic Shrub Mix Groundcover  
7 bushes / 5 plants / 7 sqm (150 mm plant size)
  - Proposed White Shrub Mix  
Apothosa, Plumera, Tarela, epony  
5 plants / 7 sqm (150 mm plant size)
- Walls - Edges**
- White Steel Balustrade - 1.4m above Finish Level -  
1500 mm min from Edges  
6000 mm min from Surrounding Residential Buildings Edges
  - Glass Balustrade - Transparent - 1.4m above Finish Level  
6000 mm min from Surrounding Residential Buildings Edges
  - White Steel Gate - 2m high  
At Entrance to Residents section of Hanging Garden  
No continuation of fence above 1800mm Gate
  - White Steel Gate - 2m high
  - White Steel Gate - 1.4m high  
Same finish as balustrade  
Maintenance Access Only
  - Timber Fence  
1.4m from ends, growing to 2.5m at highest point in middle of curve  
Triplex battens 40mm thick, spaced 40mm apart  
6 m min from Surrounding Residential Buildings Edges
- Trees**
- Proposed Native Tree -  
(Max 11m high at mature age)
  - Proposed Exotic Floral Tree -  
(Max 8m high at mature age)  
Lagotisoma, Indica - Javanica
  - Proposed Exotic Floral White Tree -  
(Max 8m high at mature age)  
Bastard Tree
- Furniture - Fittings**
- Hardwood Timber bench
  - Hardwood Timber bench
  - Bespoke Seating Elements for positioning on steps
  - Steel Access Bridge
  - Rubbish Bin



**Issue Log**

Rev	Revision Description	By / Checked	Date
E	PAVING UPDATE	NB	3/4/17
F	PAVING UPDATE	NB	6/4/17
G	AMENDED DA	KA	4/6/18
H	AMENDED DA	KA	4/6/18

All dimensions are in millimetres unless otherwise noted.  
 Do not scale from this drawing.



**Program**

01 The Valley

**Legend**

**General**

-  Site Boundary
-  Architecture Above

**Pavements**

-  New Red Clay Brick Small Linear
-  New Red Clay Brick Small & Moss Path
-  Crushed Brick Aggregate
-  Timber Deck

**Planting**

-  Proposed Big Fern Shrub - 5 plants / sqm (150 mm plant size)

**Walls + Edges**

-  White Steel Balustrade - min 1000 mm above Finish Level
-  Concrete edge
-  Bi-fold Door

**Furniture + Fittings**

-  Timber bench
-  Barbecue
-  Outdoor seating
-  Umbrella
-  Outdoor Bean Bag
-  Outdoor Deckchair
-  Rubbish Bin



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**Client**  
 YUHU Properties

**Project Team**  
 RICE DAUBNEY

**Project Name**  
 EASTWOOD SHOPPING CENTRE

**Project No.**  
 0471SL

**Address**  
 160 Rowe Street - Ryde NSW


**Key Plan**

**Issue Log**

E	PAVING UPDATE	NR	3/4/17
F	PAVING UPDATE	NR	6/4/17
G	AMENDED DA	KA	4/6/18
H	AMENDED DA	KA	4/6/18

**Rev**   **Revision Description**   **By / Checked**   **Date**

**Scale**  
 1: 300 @ A1




**Phase**  
 Development Application

**Sheet Title**  
 Level 02 Concept Plan

**Sheet No.**  
 03

Rev  
**H**

**Program**

- 01 The Rooftop
- 02 The Communal Space

**Legend**

- General**
- Site Boundary
  - Architecture Above
- Pavements**
- Timber deck Paving
  - Crushed Brick Aggregate
  - Concrete edge
  - Concrete Paving
- Planting**
- Proposed Big Fern Shrub - 9 plants / 900mm plant size
  - Lawn
- Walls + Edges**
- White Steel Balustrade min 1000 mm above Finish Level + 1500 mm from edge
  - Concrete edge
  - Slid Door
  - Steel Column
- Furniture + Fittings**
- Timber bench
  - Deckchair
  - Barbecue
  - Outdoor seating
  - Umbrella
  - Ping pong table
  - Outdoor Bean Bag
  - Concrete Table + Benches
  - Concrete Table
  - Rubbish Bin



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 EASTWOOD SHOPPING CENTRE

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 0471SL

**Address**  
 160 Rowe Street - Ryde NSW

**Key Plan**

**Issue Log**

Rev	Revision Description	By / Checked	Date
E	PAVING UPDATE	NG	3/4/17
F	PAVING UPDATE	NB	6/4/17
G	AMENDED DA	KA	4/6/18
H	AMENDED DA	KA	4/6/18

**Scale**  
 1:300 @ A1



**Phase**  
 Development Application

**Sheet Title**  
 Level 06 Concept Plan

**Sheet No.**  
 04

Rev  
**H**



**Program**

**01 The Rooftop**

**Legend**

- General**
- Site Boundary
  - Architecture Above
- Pavements**
- Timber deck Paving
  - Crushed Brick Aggregate
  - Concrete edge
  - Concrete Paving
- Planting**
- Proposed Big Fern Shrub - 5 plants / 50mm, 150 mm plant size
  - Lawn
- Walls + Edges**
- White Steel Balustrade min 1000 mm above Finish Level + 1500 mm from edge
  - Concrete edge
  - Slid Door
  - Steel Column
- Furniture + Fittings**
- Timber bench
  - Deckchair
  - Barbecue
  - Outdoor seating
  - Umbrella
  - Ping pong table
  - Outdoor Bean Bag
  - Concrete Table + Benches
  - Concrete Table
  - Rubbish Bin



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**Address**  
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**Key Plan**

**Issue Log**

Rev	Revision Description	By / Checked	Date
E	PAVING UPDATE	NG	3/4/17
F	PAVING UPDATE	NB	6/4/17
G	AMENDED DA	KA	4/6/18
H	AMENDED DA	KA	4/6/18

**Scale**  
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**Phase**  
 Development Application

**Sheet Title**  
 Level 09 Concept Plan

**Sheet No.**  
 05

Rev  
**H**

All dimensions are in millimetres unless otherwise noted.  
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Plant Palette

Name	SPRING			SUMMER			AUTUMN			WINTER			Fauna/feature
	early	mid	late	early	mid	late	early	mid	late	early	mid	late	
<b>Tree</b>													
Angophora floribunda Rough-barked Apple													
Elaeocarpus humilis Smoothed leaved Gumtree													
Lagerstroemia indica Crape Myrtle													
Pinus calleryana 'Bradford' Blackshear Pine													
Tibouchina lepidota Tibouchina 'Astronaut'													
<b>Shrub</b>													
Bauera rubioides River Rose, Dog Rose, Wey Rose													
Cortesia reflexa Ribbon Bush													
Dampiera striata Blue Gums													
Platycodon formosus Mandarin Plant													
<b>Other</b>													
Lomandra longifolia 'Tanika' Spiny-headed Mat Rush													
Poa labillardieri Tussock Grass, River Tussock													
<b>Herb</b>													
Dichondra repens Kidney Weed													
Viola hederacens Hairy Violet, Fox-face Violet													

Plant Palette

Name	SPRING			SUMMER			AUTUMN			WINTER			Fauna/feature
	early	mid	late	early	mid	late	early	mid	late	early	mid	late	
<b>Ground Cover</b>													
Carex appressa Tall Sedge													
Dianella longifolia Blueberry Lily, Blue Fox Lily													
Imperata cylindrica Straw Grass													
<b>Fern</b>													
Asplenium australasicum Dick's Nest Fern													
Doodia aspera Paddy Noddy Fern													
<b>Climber</b>													
Cissampelos Kangaroo Vine, Water Vine													
Hardenbergia violacea Purple Wattle, Pink Wattle													
Hibbertia scandens Golden Cassia Flower, Snake Vine													
<b>Bromeliad-orchid</b>													
Alcantarea spp													
<b>Aquatic</b>													
Isoplepis nodosa (Fuchsia nodosa) ssp. Kiloby Oak-leaf, Isoplepis													
<b>Acer negundo</b> Sycamore, Ash-leaved Maple													

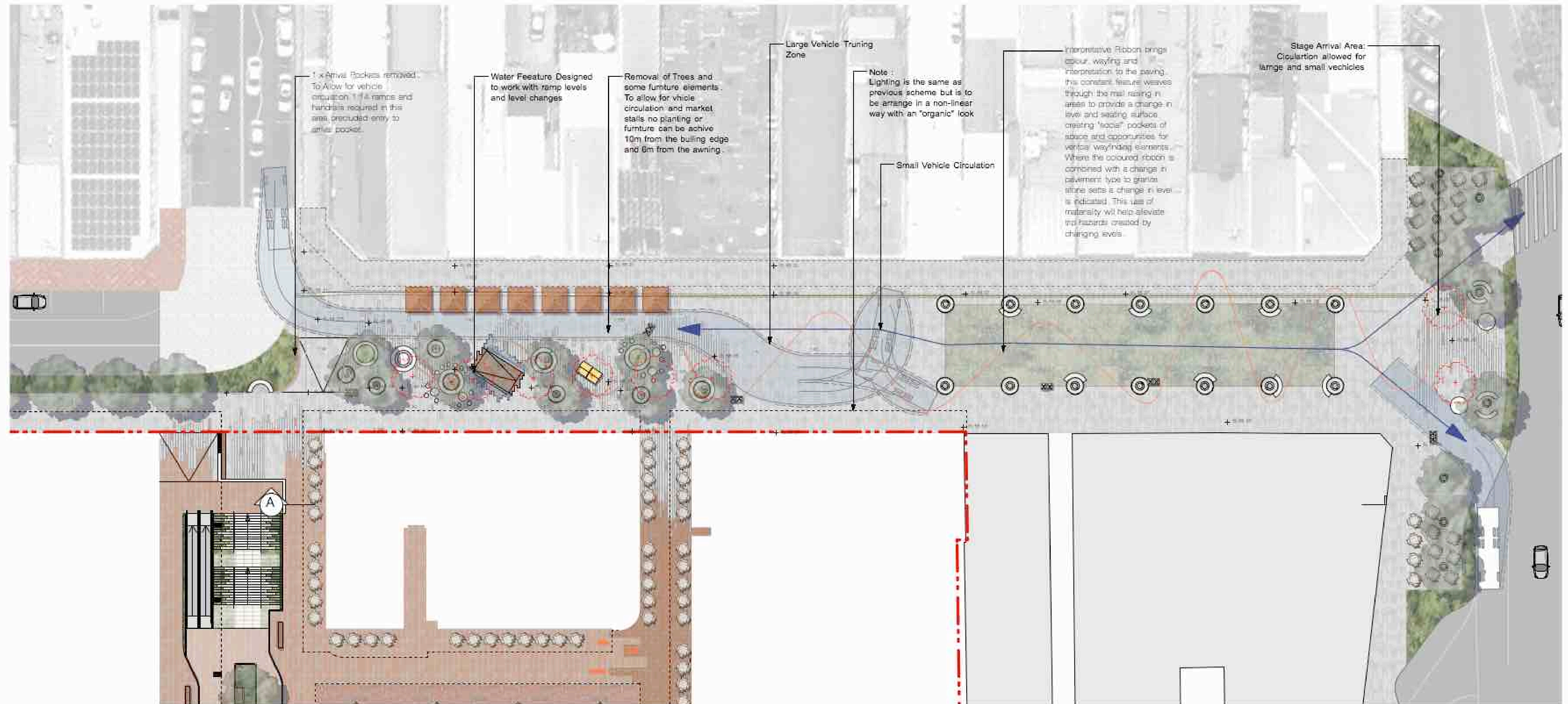
Legend

- Street Trees: Rowe Street
- Street Trees: Rutledge Street
- Hanging Garden Mix
- Roof Garden & Northern Terrace Stair Mix
- Lower Ground & Shaded Roof Terraces Mix
- Lower Ground Trees
- Lower Ground Climber
- Rain Garden Mix: Rowe Street
- Rain Garden Mix: Rutledge Street

WSUD initiatives

- Key Points:
- Reduction to the peak stormwater discharge flows out of the site by means of an OSD system;
  - Reduction to site runoff volume through rainwater harvesting and re-use;
  - Treatment of stormwater runoff prior to discharge into Council's stormwater drainage system; and
  - Reduction in potable water usage through the use of water saving taps, plumbing fixtures and rainwater re-use.
- McGregor Coxall will continue to develop and refine the integration of WSUD strategies in the public domain and rooftop garden this includes the following:
- Stormwater runoff from the roofs will be drained into rainwater tanks
  - The runoff from landscaped and vegetated garden rooftops will be drained into bio-retention systems for initial treatment before draining into the OSD tank. Flows discharging from the OSD will pass through a cartridge-type water treatment unit for further treatment before discharging to Council's road drainage system.
  - All OSD and basement pumpout systems will discharge to Rowe Street and West Parade, with 62% of the site's discharge being directed towards West Parade and virtually no runoff being directed to the Rowe Street Mall. This is a significant change from the current situation, where 54% of the site catchment drains to the Rowe Street Mall and only 13% of the site catchment drains to West Parade.
  - Rainwater tanks with first flush systems to collect runoff from roof areas for reuse and to irrigate landscaped areas, therefore reducing consumption of reticulated potable water.
  - Bio-retention will be added to rooftop gardens to reduce the number of Stormfilter units required.
  - Rain gardens along Rutledge Street and Rowe Street filter run off before it enter the council's system
  - There is potential to incorporate WSUD strategies to treat run-off from Rowe Street Mall.
- For more information please refer to Calibre Consulting's Stormwater Management Report





**Legend**

**General**

- Site Boundary
- Architecture Above
- Stair

**Pavements & Edges**

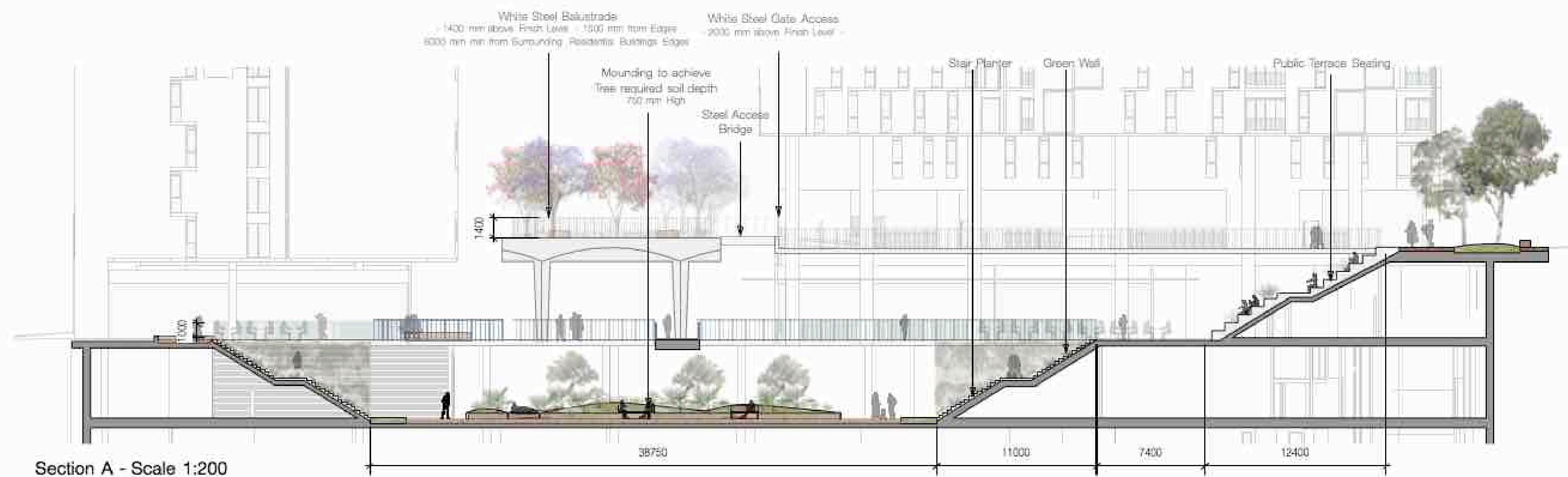
- Granite Strip with Asphalt
- Cortan steel interpretive element
- Cortan steel Seating/Wall/level change
- Granite stone setts
- 600x300x60 Granite Paving
- Clay Brick Herringbone
- Recycled Red Clay Brick Linear Paving
- Recycled Red Clay Brick Diagonal Paving
- Recycled Red Clay Brick Square Paving
- Recycled Red Clay Brick English Bond Paving
- New Red Clay Brick Linear Paving
- New Red Clay Brick Small
- Lightweight aluminum grating
- Concrete
- Painted Stair - Art Passageway

**Planting**

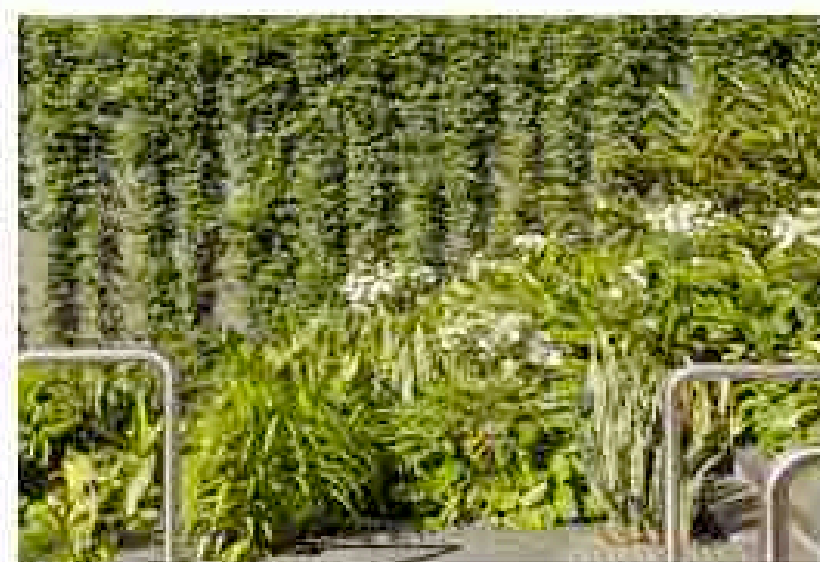
- Proposed Groundcover Lightweight aluminum grating  
3 plants / sqm (tubestock size)
- Proposed Groundcover  
7 plants / sqm (tubestock size)
- Proposed Groundcover Floral Feature Planting
- Walls + Edges**
- White Steel Balustrade - min 1m above Finish Level
- Trees**
- Proposed Native Tree - (Max 11 m high at mature age)
- Existing Tree
- Proposed Tree to be removed

**Furniture + Fittings**

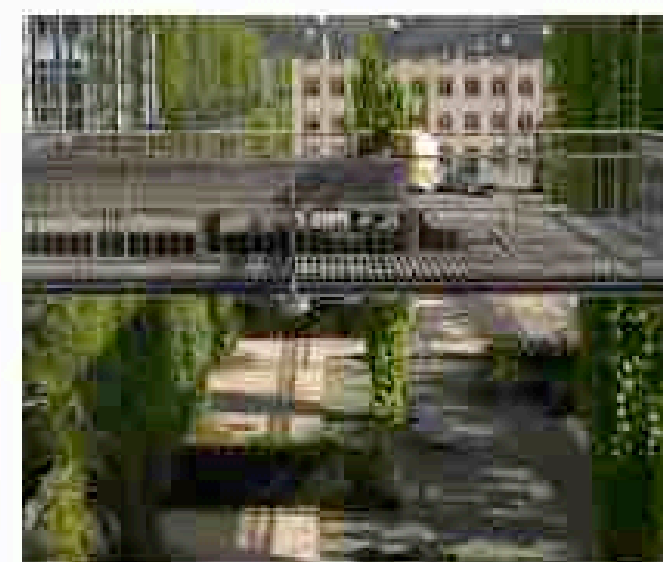
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- Bespoke at Grade Tree Grate and Planter
- Bespoke Circular Planter Bench
- Bespoke Circular Social Furniture: benches, seats
- Flexible Outdoor Seating
- Catenary Lighting
- Interactive Water Feature
- Water drain
- Rubbish Bin
- Ping Pong Table
- Bike Rack
- Fixed Bollard
- Removable Bollard



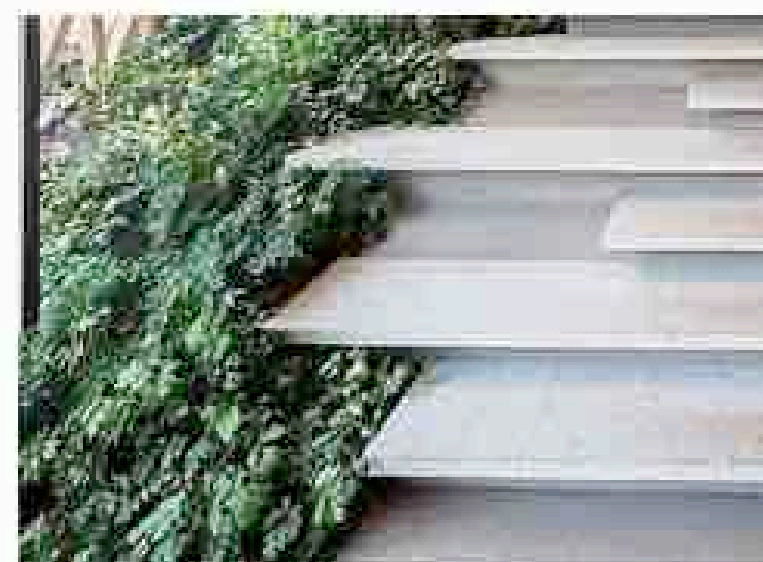
Green Wall



Bridge



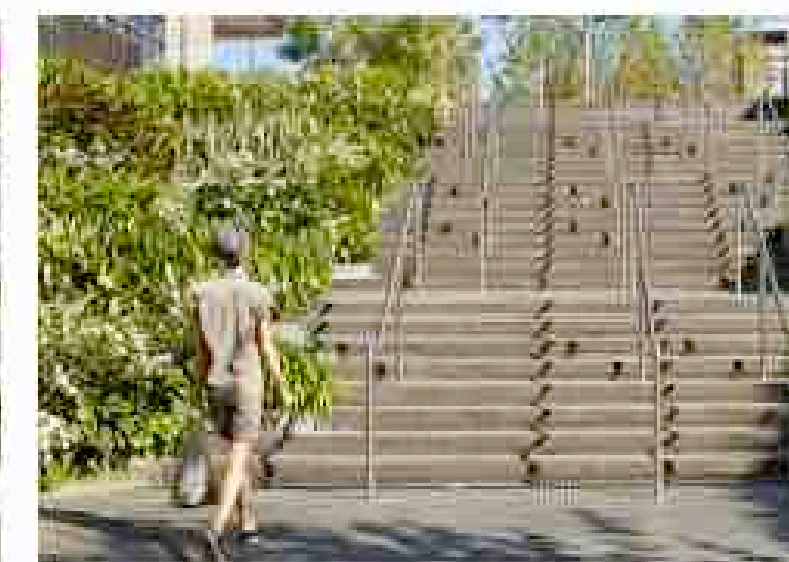
Concrete Stair



Planted Grate



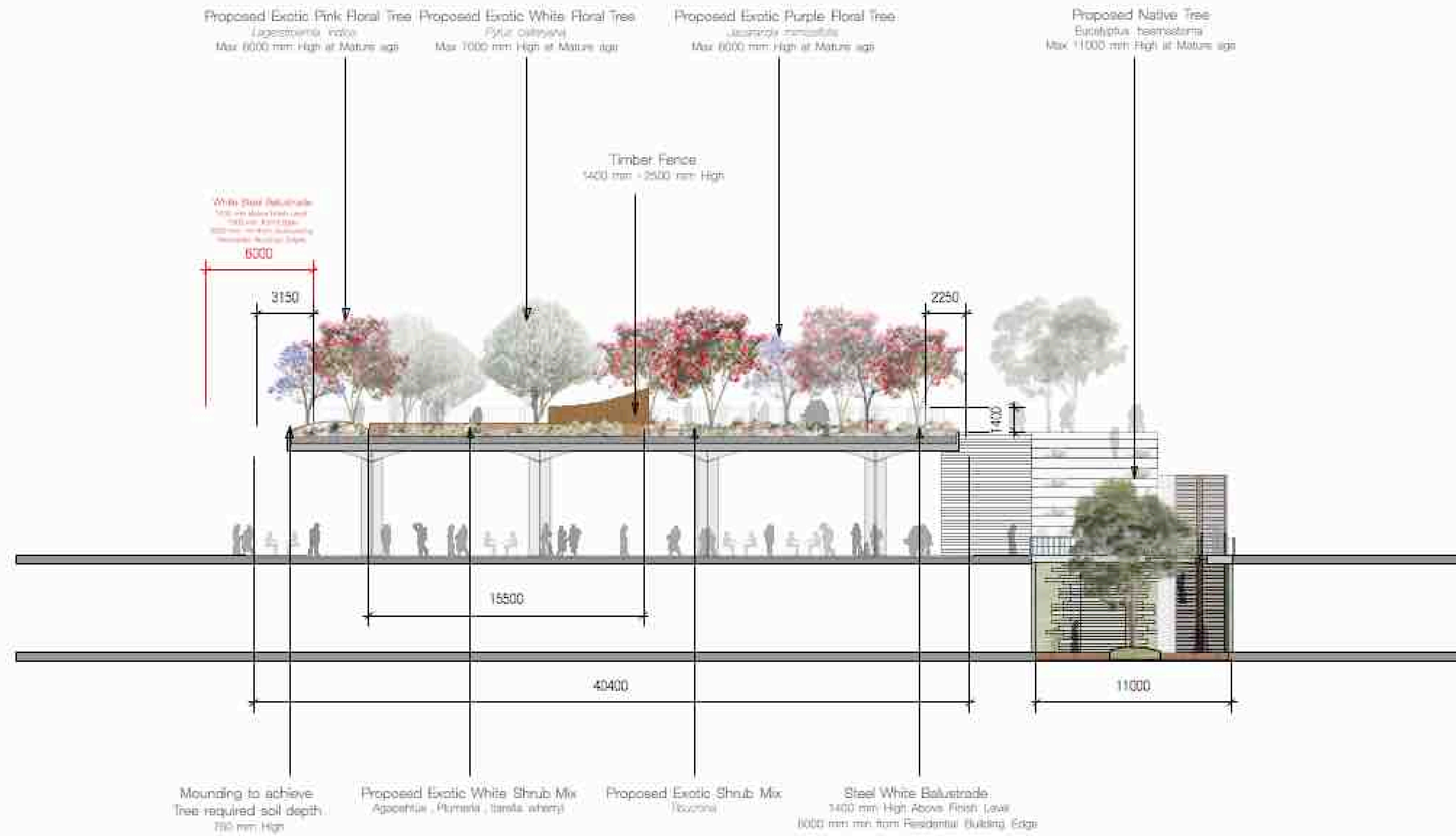
Stairs



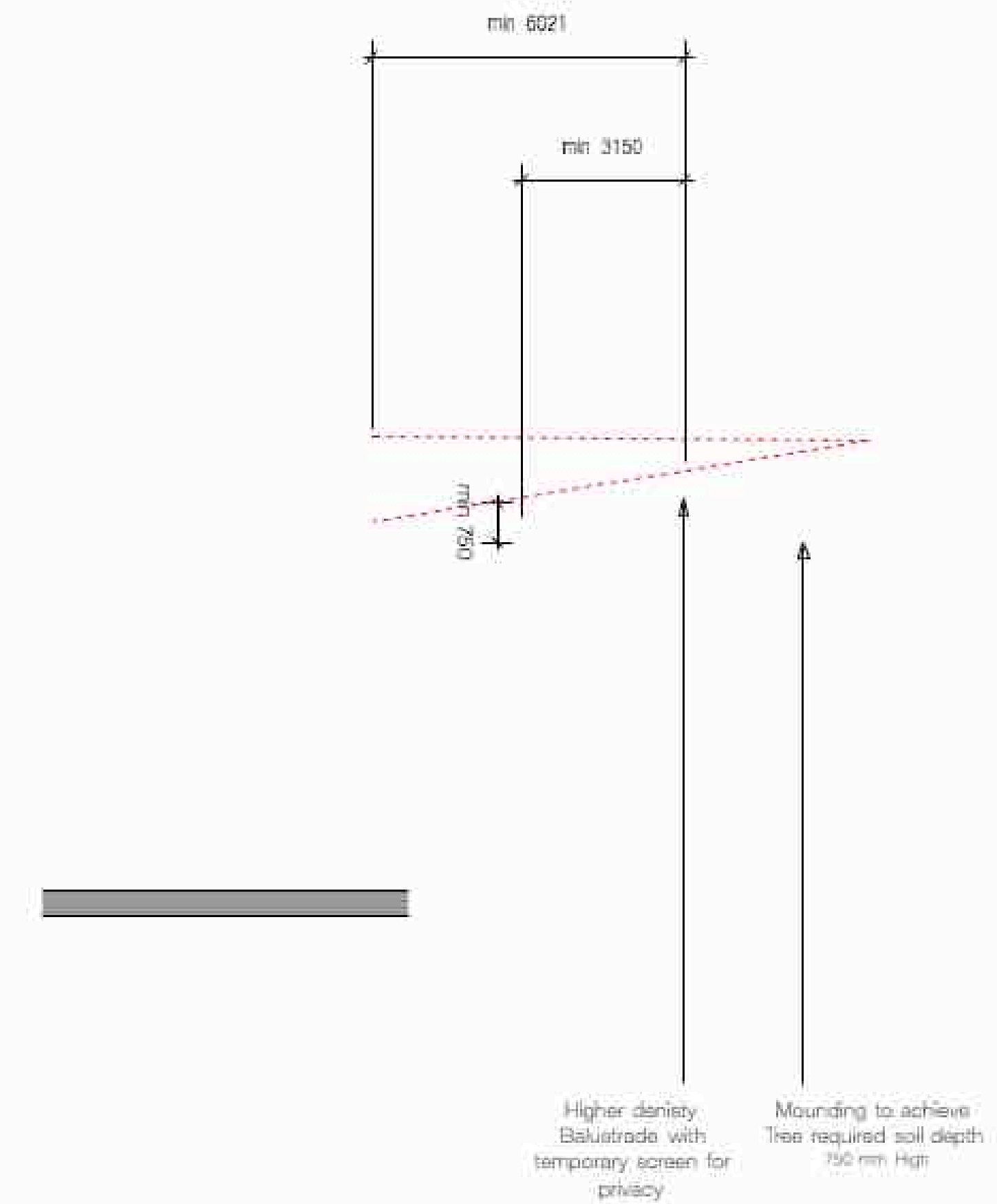
Garden Benches





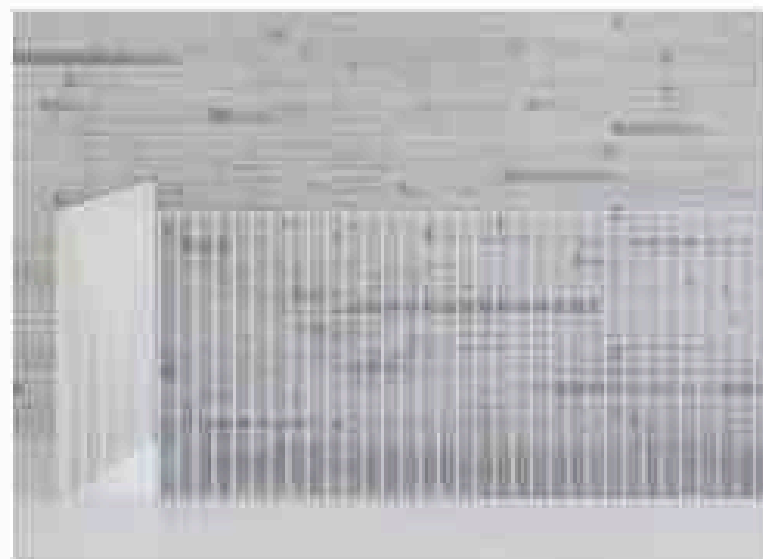


Section B - Scale 1:200

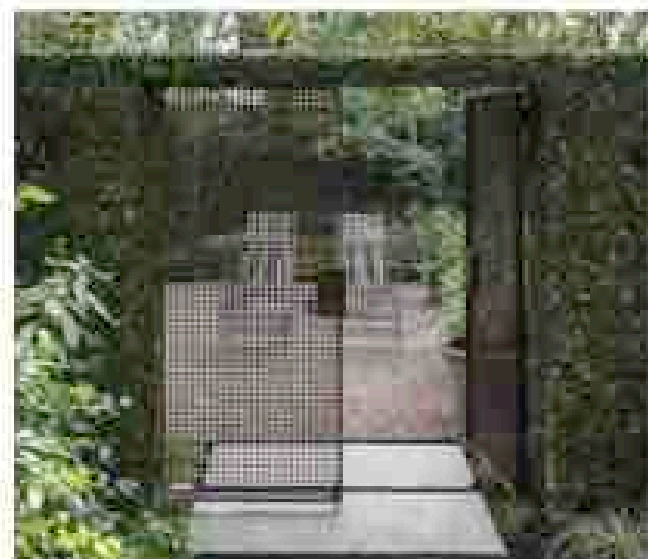


Privacy Diagram & Tree Depth

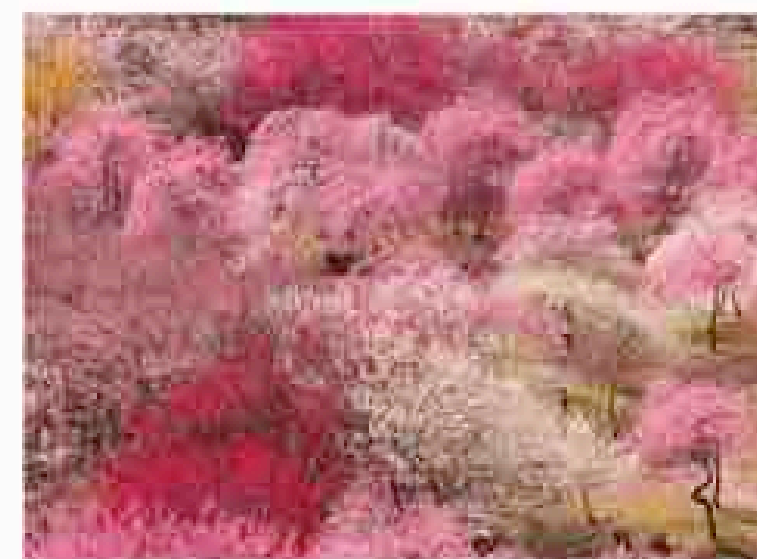
Steel White Balustrade



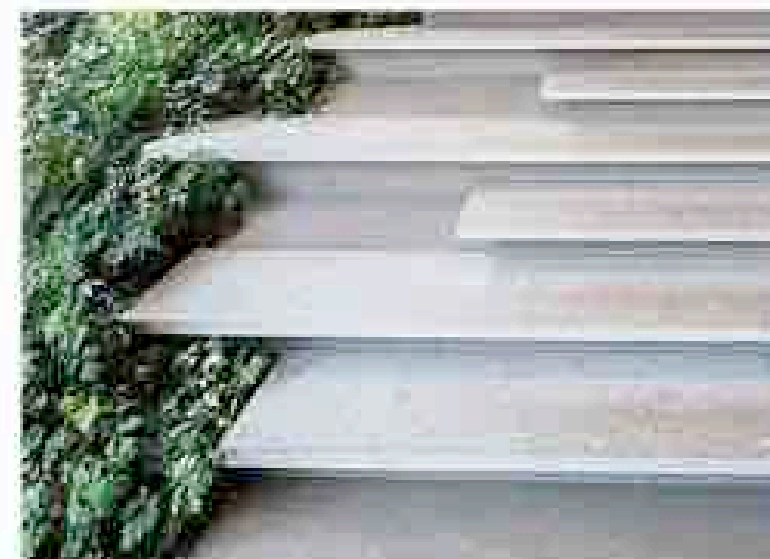
Access Gate for the Hanging Garden



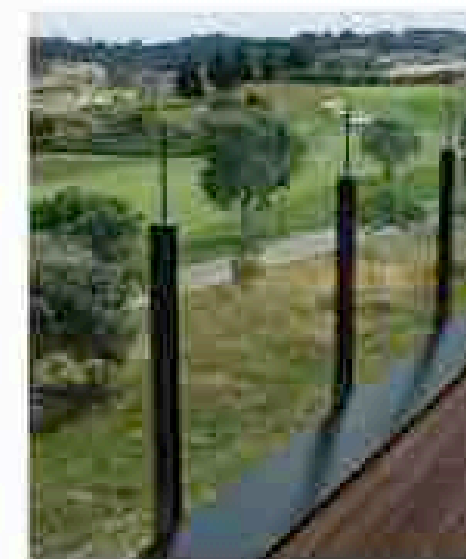
Exotic Flowering Trees



Concrete Stair



Glass Balustrade



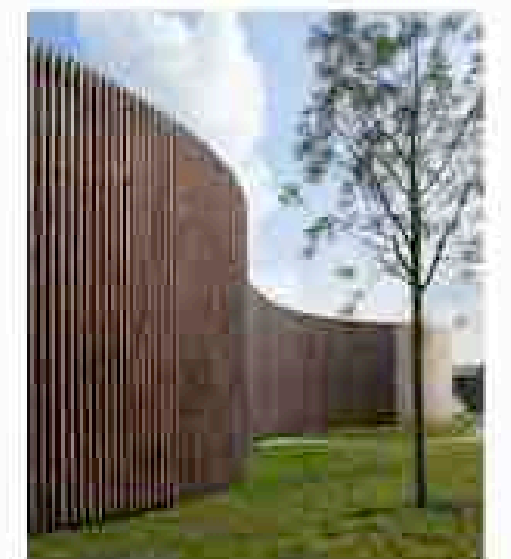
Stairs



Crushed Brick Aggregate Path

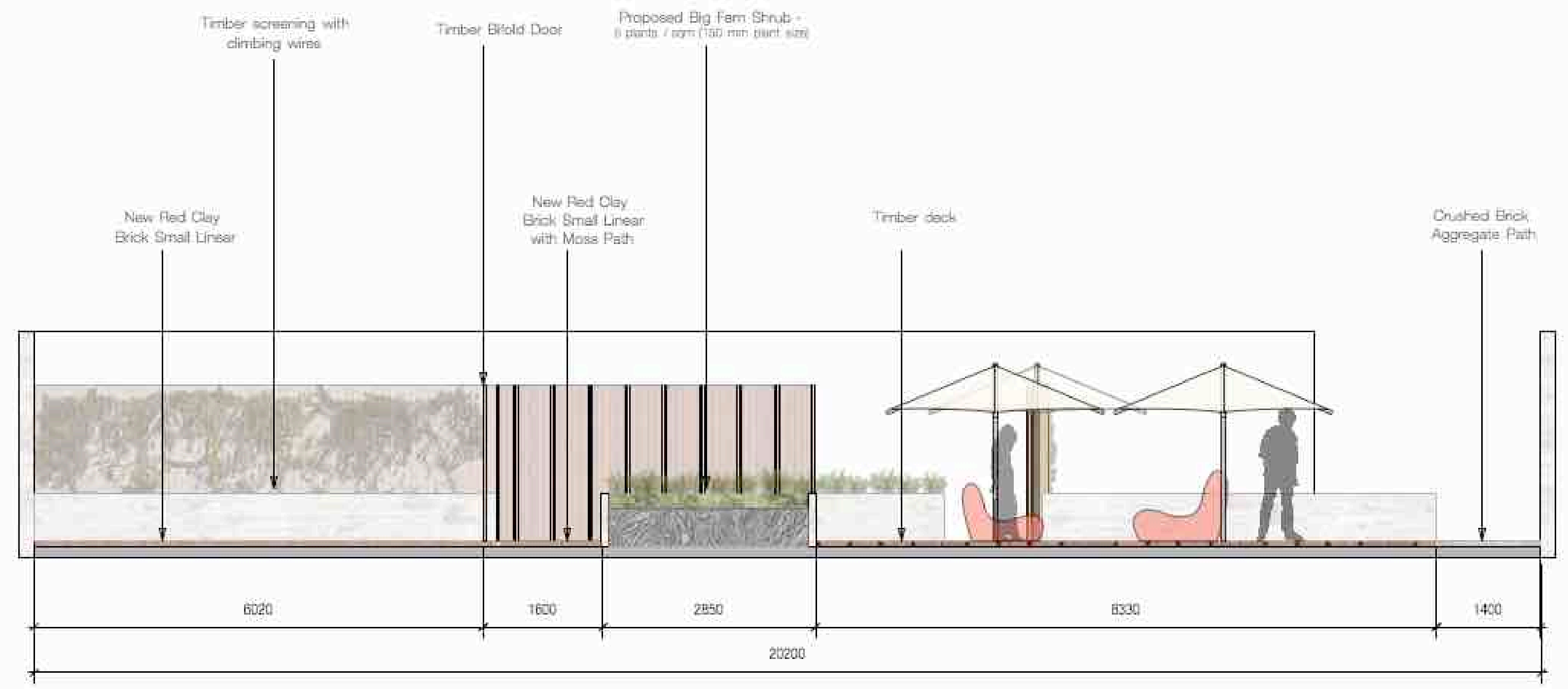


Timber Fence



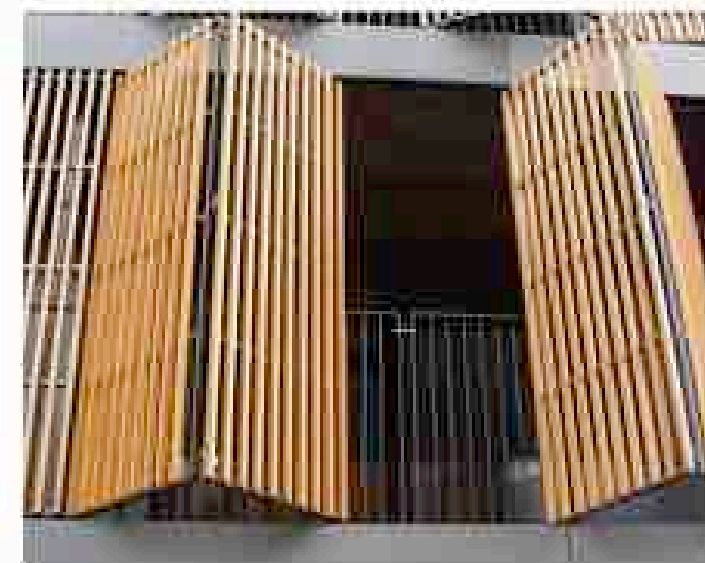


Section C - Scale 1:50

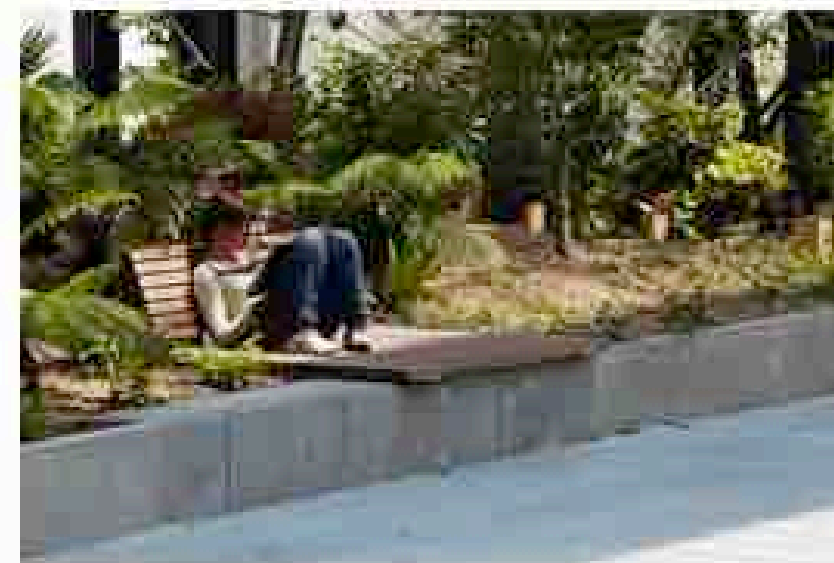


Section D - Scale 1:50

Bifold Timber Door



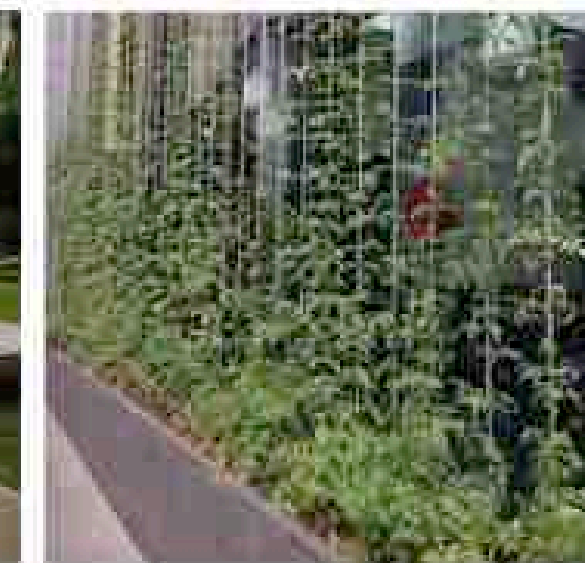
Timber Bench



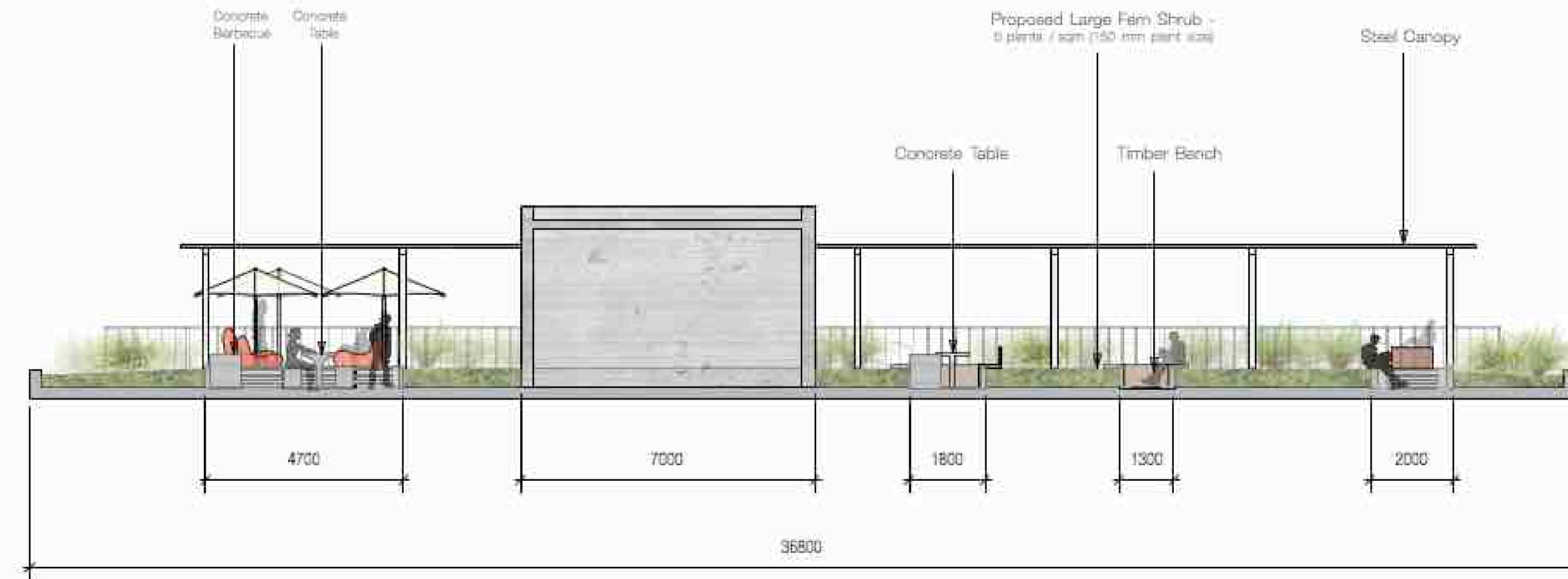
Timber benches



Climbing Wire







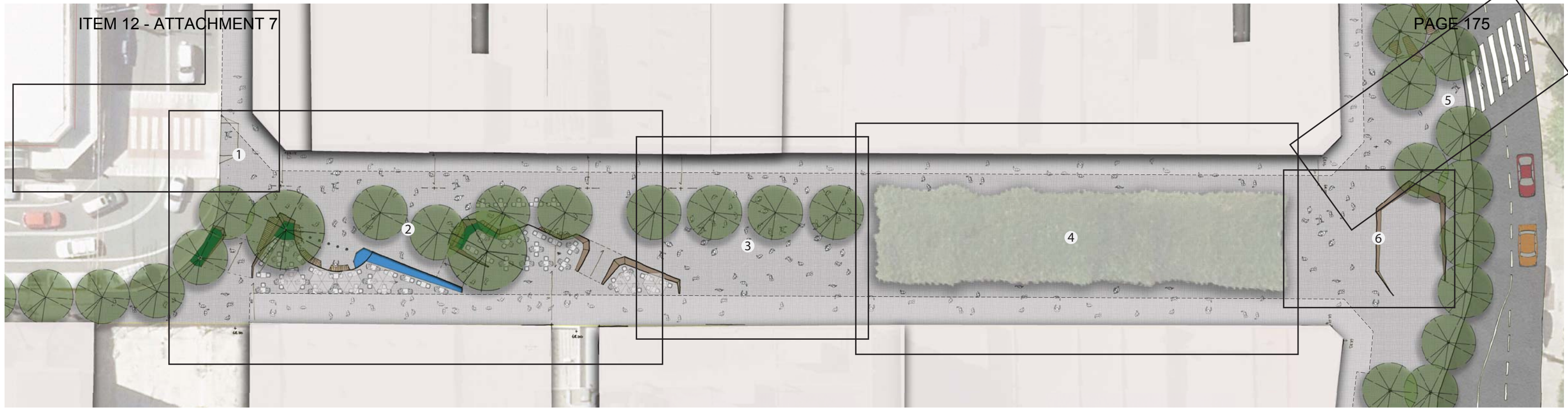
Section E - Scale 1:100



Section F - Scale 1:50







- 1 - West Entry**  
Clear area to accommodate maximum pedestrian movement in multiple directions. Minimal obstructions reduces conflict and increases pedestrian safety
- 2 - Regraded Area**  
Paths of travel define terraces and breakout spaces. Walls supporting terraces create opportunities for integrated seating and water feature.
- 3 - Transition /Flex Area**  
Flexible event space graded to transition between terraced areas and existing grades beneath arbour
- 4 - Arbour**  
Existing grades may be adjusted slightly pending advice from arbourists report. Select seating opportunities to the periphery to be developed to ensure paths of travel are maintained
- 5 - East Entry**  
Clear area to accommodate maximum pedestrian movement in multiple directions. Minimal obstructions reduces conflict and increases pedestrian safety. Kerb pushed out to reduce kerb to kerb distance. Pedestrian crossing realigned to match main path of travel
- 6 - Performance Area**  
Stage and spectator space that also acts as transition space. Bin storage area reallocated to bump in/out area



**Wall Treatment**  
Reference to the buttressed walls of the Eastwood Brick Pits.



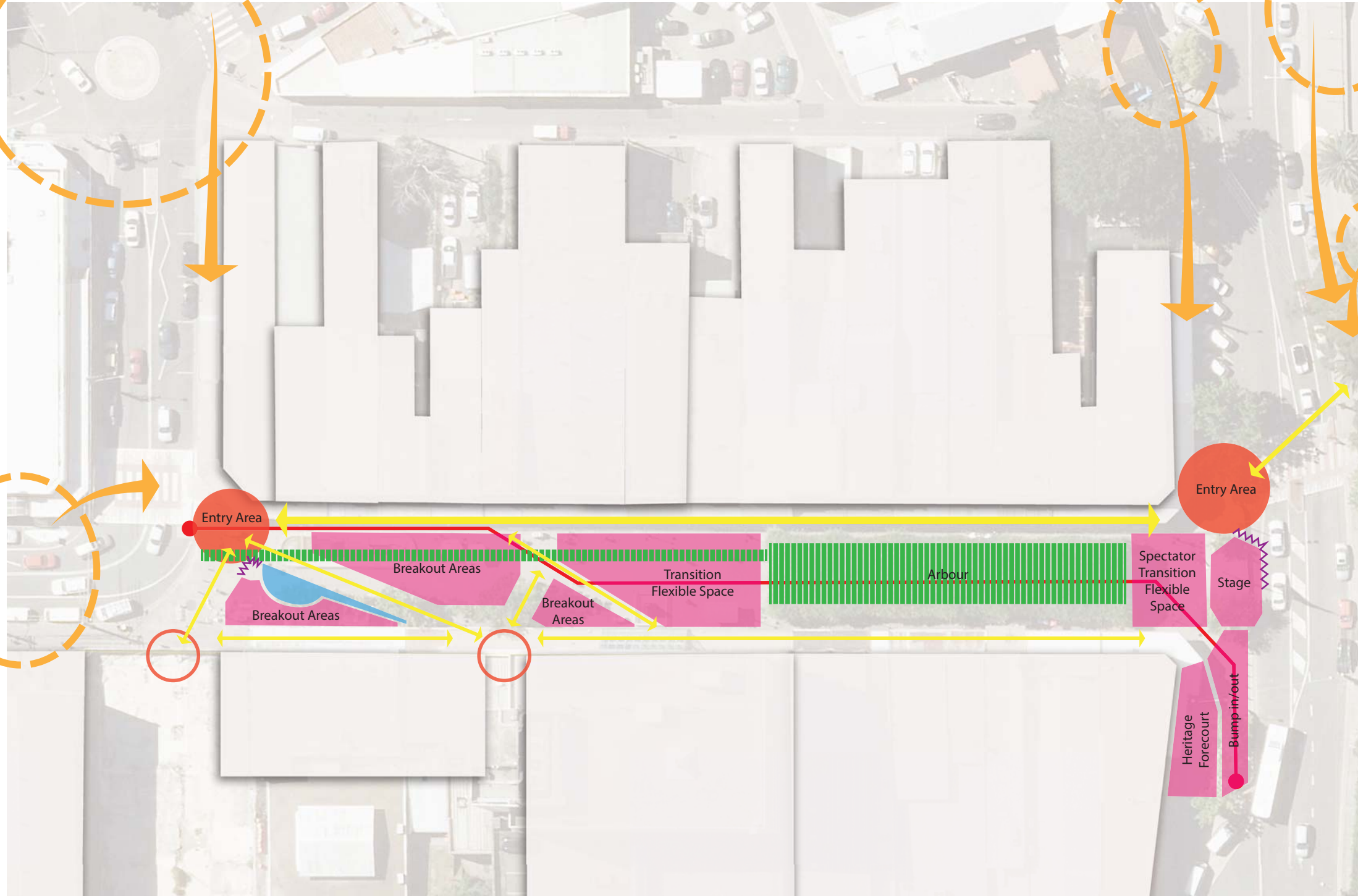
**Lighting**  
Aesthetic lighting such as water lighting, garden/tree under lighting, wall face lighting etc. Preference is for hidden light source to reduce eye strike for pedestrians.



**Water**  
Multiple elements to water feature to provide for different user groups.







- External Influences west
  - \_ Parking, shopping and residential precinct
  - \_ Entry at corner to maximise clear space - safety/reduce conflict/sense of arrival
- External Influences East
  - \_ Parking, shopping, train station and connection to Rowe St East via the underpasses
  - \_ Entry at corner to maximise clear space - safety/reduce conflict/sense of arrival
  - \_ Entry lines up with main path of travel
- Realignment of kerb and pedestrian crossing on Railway Parade
  - \_ Reduce kerb to kerb distance, increase safety
  - \_ Extended pavement area to create entry plaza
  - \_ Supports provision of performance stage with adjoining bump in/out
  - \_ Signage opportunity to backdrop/side of stage
  - \_ Creates opportunity to address forecourt of heritage building
- Circulation
  - \_ Main circulation along north side of mall
  - \_ Gathering space to front of stage - flexible space, change of movement, gathering area
  - \_ Arbour retained in similar format, minor adjustments to levels and provision of periphery seating
  - \_ New entry points create opportunity for cross connections
  - \_ Formalised paths of travel create areas of less movement suitable for Outdoor dining, socialising, water enjoyment
- Flex Space
  - \_ Area of transition
  - \_ Multiple use - events, displays, markets, outdoor dining, socialising
- Green spine
  - \_ Green connection to arbour with canopy that provides good shade cast to central area of mall
  - \_ Supported by additional significant trees on key alignments
- Egress
  - \_ Alignment of egress can be achieved from north-west through to south-east (via bump area)



# Novation Deed

Council of the City of Ryde

Yuhu Property (Australia) Pty Ltd

**Draft**

# Novation Deed

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## Contents

<b>1</b>	<b>Definitions and interpretation</b>	<b>1</b>
1.1	Definitions	1
1.2	References to certain general terms	1
1.3	Headings	2
<b>2</b>	<b>Novation</b>	<b>2</b>
2.1	Original Agreement	2
2.2	Performance by Transferee	2
2.3	Release of Guarantees	3
2.4	Liability before Effective Date	3
2.5	Indemnities	3
<b>3</b>	<b>Affirmation of the Original Agreement</b>	<b>3</b>
<b>4</b>	<b>GST</b>	<b>3</b>
4.1	Definitions and Interpretation	3
4.2	Passing-on provision	4
4.3	GST Invoice	4
4.4	Variation	4
<b>5</b>	<b>Representations and warranties</b>	<b>5</b>
<b>6</b>	<b>Stamp duty and costs</b>	<b>5</b>
<b>7</b>	<b>Further acts</b>	<b>5</b>
<b>8</b>	<b>Governing law</b>	<b>5</b>
<b>9</b>	<b>Counterparts</b>	<b>6</b>
	<b>Signing page</b>	<b>7</b>

# Novation Deed

## Date

## Parties

**Council of the City of Ryde** of ABN 81 621 292 610 of Level 1, 3 Richardson Place, North Ryde, New South Wales (**Council**)

**Yuhu Property (Australia) Pty Ltd** ABN 68 163 794 296 of Level 15, 201 Miller Street, North Sydney, New South Wales (**Landowner**)

**[# insert details of the new party #]** (**Transferee**)

## Recitals

- A Council and the Landowner are parties to the Original Agreement.
- B The Original Agreement relates to the whole of the Land.
- C The parties to this Deed have agreed to the novation of all of the Landowner(s) obligations under the Original Agreement to the Transferee.
- OR**
- D The parties to this Deed have agreed to the novation of the part of the Landowner's obligations under the Original Agreement that are relevant to the part of the Land to be transferred, to the Transferee.

This deed provides

## 1 Definitions and interpretation

### 1.1 Definitions

**Effective Date** means [insert].

**Land** has the meaning given to that term in the Original Agreement.

**Original Agreement** means the voluntary planning agreement dated [insert] and made between the Council and the Landowner.

**Required Obligations** means [insert - whole or part of the terms of the Original Agreement as is required to suit the circumstances].

### 1.2 References to certain general terms

In this deed unless the contrary intention appears:

- (a) a reference to this deed or another instrument includes any variation or replacement of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or

replacements of any of them;

- (c) the singular includes the plural and vice versa;
- (d) the word person includes a firm, body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (f) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them severally;
- (g) a reference to anything (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to anyone or more of them;
- (h) 'include' in any form when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar nature; and
- (i) capitalised terms which are used in this deed but are not otherwise defined have the meaning given to them in the Original Agreement.

### 1.3 Headings

Headings are inserted for convenience and do not affect the interpretation of this deed.

## 2 Novation

### 2.1 Original Agreement

Subject to clause 2.4 and with effect from the Effective Date:

- (a) the Transferee is substituted for the Landowner as a party to the Original Agreement insofar as the Original Agreement relates to the Required Obligations, and agrees to perform the Required Obligations;
- (b) the Transferee will be bound by the Original Agreement, and will be entitled to the benefit of the Original Agreement, as if the Transferee was a party to the Original Agreement instead of the Landowner insofar as the Original Agreement relates to the Required Obligations; and
- (c) the Landowner is released and discharged from all obligations and liabilities, and from all claims (whether for Costs, Legal Costs, damages, fees or otherwise), arising under the Original Agreement insofar as the Original Agreement relates to the Required Obligations.

### 2.2 Performance by Transferee

- (a) The Transferee must perform all of the Required Obligations under the Original Agreement required to be provided on and from the Effective Date, as if named as the Landowner including, but not limited to the delivery of all the Contributions to

Council.

- (b) On the Effective Date the Transferee must provide to Council one or more Bank Guarantees which meet the requirements of clause 1.9 and Schedule 10 of the Original Agreement in substitution for any Bank Guarantee or Bond provided by the Landowner under clause 9 of the Original Agreement.

## 2.3 Release of Guarantees

The parties expressly acknowledge and agree that:

- (a) Council will release any Bank Guarantee or Bond provided to Council by the Landowner under the provisions of the Original Agreement to the Landowner (or as the Landowner otherwise directs in writing) promptly and in any event within 14 days of the provision of replacement Bank Guarantee by the Transferee pursuant to clause 2.2(b) of this Deed; and
- (b) Nothing in this clause 2.3 will be read or construed as a waiver of any right held by Council relating to or arising from the performance of the Original Agreement by the Landowner before the date of this Deed.

## 2.4 Liability before Effective Date

Notwithstanding clause 2.1, the Landowner is not released, relieved or discharged from liability under the Original Agreement before the Effective Date, or any breach of any provision of the Original Agreement by the Landowner occurring before the Effective Date (to the extent that it is not remedied by the Effective Date) in so far as the Original Agreement relates to the Required Obligations.

## 2.5 Indemnities

On and from the Effective Date, the Transferee indemnifies the Landowner against all costs, expenses, liabilities, claims, loss or damages suffered or incurred by the Landowner in connection with:

- (c) the Original Agreement in so far as the Original Agreement relates to the Required Obligations; and
- (d) any failure by the Transferee to comply with its obligations under this deed.

## 3 Affirmation of the Original Agreement

The Original Agreement will be read and construed subject to this deed, and in all other respects the provisions of the Original Agreement are ratified and confirmed, and, subject to the variation and novation contained in this deed, the Original Agreement will continue in full force and effect.

## 4 GST

### 4.1 Definitions and Interpretation

In this clause 4:



- (a) words or expressions which are defined in the GST Law have the same meaning, except where the context suggests otherwise;
- (b) **GST Law** has the meaning given to that term in the A New Tax System (Goods and Services Tax Act) 1999 (Cth);
- (c) any part of a supply which is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) is treated as a separate supply;
- (d) references to GST payable and to input tax credit entitlement include GST payable by, and input tax credit entitlement of, the representative member for a GST group of which the entity is a member; and
- (e) references to something done (including a supply made) by a Party includes something done by any entity through which that Party acts.

All consideration for a supply made under or in connection with this Deed is exclusive of GST, unless specified to be GST inclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 4.

#### 4.2 Passing-on provision

If GST is payable in relation to a supply made under or in connection with this Deed, then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as any other consideration is to be first provided for that supply.

#### 4.3 GST Invoice

The Supplier must deliver a tax invoice to the Recipient of the supply no later than the time at which the Recipient is required to provide the consideration for the taxable supply.

#### 4.4 Variation

- (a) Where there is a variation to the consideration provided in relation to a taxable supply for which a GST Amount was paid under clause 4.2:
  - (i) the Supplier will recalculate the amount of the GST Amount properly payable and will provide a corresponding refund or credit to, or will be entitled to receive the amount of the variation of the GST Amount from, the Recipient. The amount paid, refunded or credited is taken to form part of the GST Amount should a subsequent adjustment event occur; and
  - (ii) where the variation is an adjustment event the Supplier must deliver an adjustment note to the Recipient as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (b) Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

## 5 Representations and warranties

- (a) Each Party individually represents and warrants that:
- (i) it has power to enter into this deed and comply with its obligations under the deed;
  - (ii) this deed does not contravene its constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject, or cause a limitation on its powers or the powers of its officers to be exceeded;
  - (iii) it has in full force and effect the authorisations necessary for it to enter into this deed, to comply with its obligations and exercise its rights under this deed and to allow this deed to be enforced;
  - (iv) its obligations under this deed are valid and binding and are enforceable against it in accordance with the terms of the deed;
  - (v) it does not have immunity from the jurisdiction of a court or from legal process; and
  - (vi) it benefits by entering into this deed to which it is a party.
- (b) Each party acknowledges that each other party has entered into this deed in reliance on the representations and warranties in this clause 5.

## 6 Stamp duty and costs

- (a) The Landowner is liable for Council's Legal Costs of and incidental to the negotiation, preparation and execution of this deed, and must reimburse Council for such Legal Costs promptly on demand.
- (b) The Transferee will pay all stamp duty arising directly or indirectly from this Deed.

## 7 Further acts

- (c) Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this deed.
- (d) This deed binds each party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.

## 8 Governing law

This deed is governed by the law in force in the place specified in the New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that place.

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## 9 Counterparts

This deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

**EXECUTED** as a deed.

Draft

# Novation Deed

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## Signing page

### Signature by Council

**Signed** for an on behalf of the **Council of the City of Ryde** by a duly authorised officer (who by their signature testifies that they are duly authorised to sign this instrument) in the presence of:

.....  
Signature of witness

.....  
Signature of the Authorised Officer

.....  
Name of witness  
*(please print)*

.....  
Name and position of the Authorised Officer  
*(please print)*

### Signature by the Landowner

**Executed by Yuhu Property (Australia) Pty Ltd ABN 68 163 794 296** in accordance with section 127 of the *Corporations Act 2001 (Cth)* by being signed by the following officers:

.....  
Signature of Director

.....  
Signature of director/company secretary

.....  
Name of director  
*(please print)*

.....  
Name of director/company secretary  
*(please print)*

### Signature by the Transferee





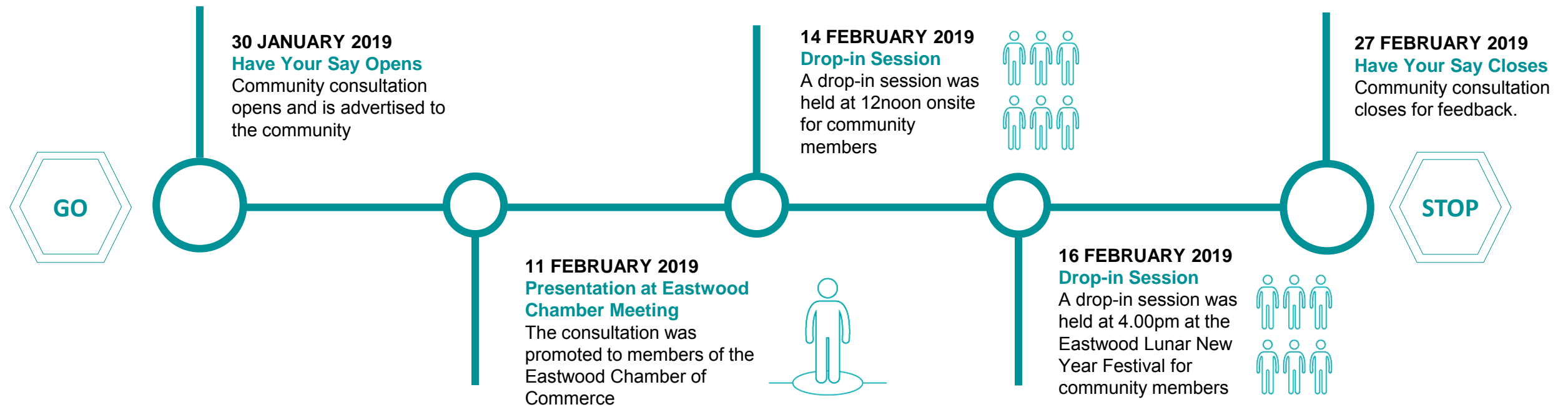
# EASTWOOD PLAZA UPGRADE

AS PART OF YUHU VOLUNTARY PLANNING AGREEMENT (VPA)

**PUBLIC EXHIBITION FEEDBACK**  
MARCH 2019

# EASTWOOD PLAZA UPGRADE

## Community Consultation Timeline & Methodology



Date	Tool	Stakeholders	Overview	Engagement
Wednesday 30 Jan 2019	Have Your Say Website	Website users	4 project webpages were created in English, Chinese Traditional, Chinese Simplified and Korean. All pages contained background information, concept plans, artist impressions, FAQs, survey, details of consultation events and project updates.	1,928 page views 1,376 unique visits
Wednesday 30 Jan 2019	Social Pin-point	Website users	4 interactive online maps were created in English, Chinese Traditional, Chinese Simplified and Korean. All maps enabled stakeholders to drop comment pins on the concept plan. This interactive map was promoted through flyers and on Council's Have Your Say page.	34 comments were received
Wednesday 30 Jan 2019	Door Knock	Businesses within Eastwood Plaza	Council staff door knocked to businesses bordering Eastwood Plaza with Chinese interpreter	Eastwood Plaza Businesses
Wednesday 30 Jan 2019	eNewsletter	Internal Stakeholders	An eNewsletter was sent to relevant internal stakeholders to notify them of the potential upgrade and the opportunity to give feedback.	18 eNewsletters distributed 17 unique opens
Wednesday 30 Jan 2019	Flyer	Residents and businesses within the City of Ryde suburb of Eastwood	A flyer containing language translations and QR codes was letterbox dropped to promote the project and consultation opportunities for surrounding local residents and businesses.	7271 flyers approximately



Date	Tool	Stakeholders	Overview	Engagement
Wednesday 30 Jan 2019	Signage	Eastwood Plaza users	Signage containing language translations and QR codes were placed within Eastwood Plaza to promote the project and consultation opportunities for all interested stakeholders.	5 x A0 signs within Eastwood Plaza
Wednesday 30 Jan 2019	Newspaper Ad Northern District Times	Newspaper readers	Newspaper advertisement provided opportunities to promote the project and consultation opportunities for all stakeholders.	38,000 total print readership
Friday 1 Feb 2019 – Tuesday 12 Feb 2019	Translated Newspaper Ads (Chinese & Korean)	Newspaper readers	Translated newspaper advertisements were published in the Chinese newspapers Sing Tao Daily, Vision China Times, Epoch Times and the Korean newspapers Han Ho Daily and the Sydney Korean Herald to promote the project and consultation opportunities for all stakeholders.	These ads were placed during editions that reached the most City of Ryde readers.
Tuesday 5 Feb 2019 – Wednesday 27 Feb 2019	Korean Facebook Advertisement	Korean Online Facebook Users	A translated advertisement was placed targeting Korean speaking Facebook users, all genders, within City of Ryde postcodes, that promoted the project and consultation opportunities for all stakeholders.	40 reactions, comments or shares
Wednesday 6 Feb 2019	Facebook Post (English)	Online Facebook Users	A post on our social media channel Facebook promoted the project and consultation opportunities for all stakeholders.	59 reactions, comments or shares
Thursday 7 Feb 2019	WeChat Ad	Online WeChat Users	WeChat is a multi-purpose Chinese messaging and social media app. Translated social media advertisements provided opportunities to promote the project and consultation opportunities for stakeholders within the Chinese community	Reach = 434,991 Article Views = 5,617 Article Shares = 98
Monday 11 Feb 2019	Eastwood Chamber of Commerce Presentation	Eastwood Chamber of Commerce members	Presentation by Council staff provided opportunity to promote the project to the business community and stakeholders	Approximately 20 members in attendance
Thursday 14 Feb 2019	Drop-in Session at 12noon-2:00pm Eastwood kiosk	All Stakeholders	A mid week casual drop-in session with Chinese and Korean interpreters allowed stakeholders to have one-on-one time with the project team to provide their thoughts and ideas on a printed map.	49 comments were received across both sessions
Saturday 16 Feb 2019	Drop-in Session at 4:00pm-9:00pm Eastwood Lunar New Year Festival Eastwood Oval)	All Stakeholders	At the Lunar New Year Festival the City of Ryde had a stall for the weekend casual drop-in session. The session had Chinese and Korean interpreters, which allowed stakeholders to have one-on-one time with the project team to provide their thoughts and ideas on a printed map.	49 comments were received across both sessions

**I like this element of the design**

*Keep as a no smoking area*  
**Open space**  
*General support*  
**Keep the harbour**  
*Seating*  
**Trees**  
**Water fountain**  
*More rubbish bins and collections*

**I would like to make a minor change to this element**

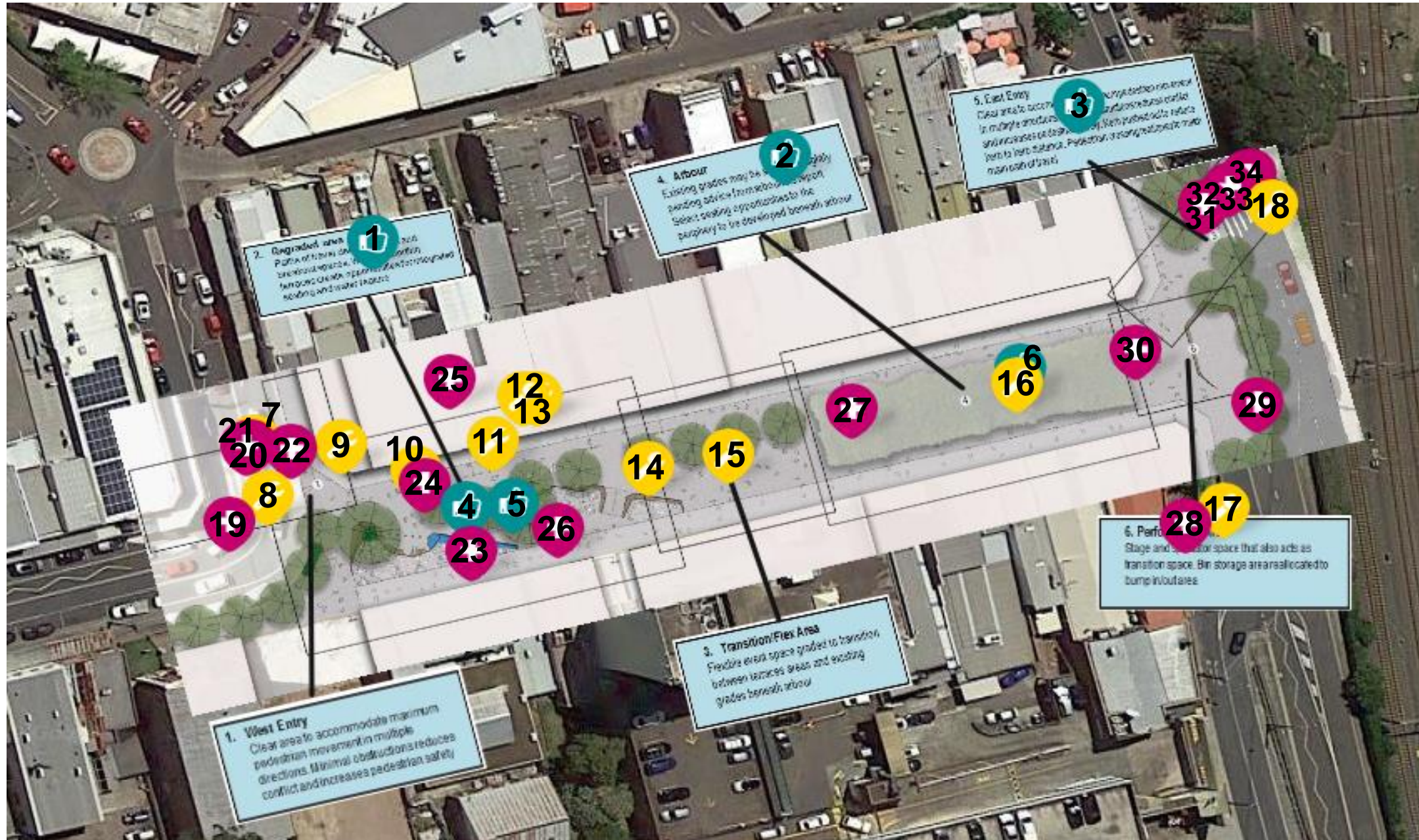
*Add pedestrian bridge/tunnel*  
**More seating** *Negative regarding Yahu*  
*Too many lights / too hot* **More open space**  
**Add lights to the harbour**  
**Keep existing water fountain**  
*No affordable housing* **More shade** *More social housing*  
*General support*  
**Traffic/pedestrian lights for safety and reduced congestion**  
*Arbour is restrictive* **Add more trees** *Parking during development*  
*Water fountain safety* **Stop/regulate development** *Alfresco dining*  
*Does not address traffic flow / congestion*

**I would like to add an element to the design**

*Add solar panels for lighting* *Outdated building*  
**Keep The Avenue open for traffic** *More shops*  
*More open space* **More parking** *VPA to prioritise other facilities too*  
*Add play equipment* **More shade** **More seating**  
*Move war memorial to Eastwood plaza* **Do not support** *Expand library, programs and activities*  
**Traffic/pedestrian lights for safety and reduced congestion** *Add CCTV*  
**Add pedestrian bridge/tunnel**  
*More social housing* **Add more trees** *Carpark signs in multiple languages*  
*Close to traffic*  
**Does not address traffic flow / congestion**  
*Keep flag post* *Greening initiatives / community green space* *Extend harbour*

Note: Size is representative of theme frequency







 **I like this element of the design**

1. Water feature is great. I loved the small fountain that used to be in the plaza  
**Likes: (0) | Dislikes (0)**
2. Love the seating in the plaza under the trees.  
**Likes: (1) | Dislikes (0)**
3. Definitely need clear access. I usually park on the other side of Eastwood because it's so congested on this side and never enough parking. So I need to get into the plaza easily.  
**Likes: (0) | Dislikes (0)**
4. A water feature is a great idea for families in the area. Consider a variety of stimulants if possible like reflecting pool, waterfall or jets. Incorporating greenery and seating around the area will ensure adults and kids alike will enjoy the area together  
**Likes: (7) | Dislikes (0)**
5. I like the cooling aspect here with the water feature and the trees providing shade. There needs to be space for pedestrians to pass through freely though.  
**Likes: (0) | Dislikes (0)**
6. I love the look of the arch way, adding fairy lights would improve the aesthetic and the darkness issues in the night time.  
**Likes: (5) | Dislikes (0)**

 **I would like to make a minor change to this element**

7. Installation of traffic lights at both ends of the plaza would improve greatly flow of traffic and safety of pedestrians.  
**Likes: (6) | Dislikes (0)**
8. I've heard that traffic lights cannot be installed in this area, because the ratio of cars to pedestrians does not meet the requirement. Is the clearing of the space to make it more pedestrian friendly an effort to persuade drivers to avoid this road?  
**Likes: (4) | Dislikes (1)**
9. People will avoid walking in this space during the daytime even if it was cleared, if there's no shade. It gets crowded at the doorsteps of these shops (on the current chemist warehouse side) because the shade is always there. It'd take more than a couple of trees.  
**Likes: (1) | Dislikes (0)**
10. Why not keep a part of the iconic eastwood fountain and/or build on/with it if we're going to have a water feature? Shows a living piece of history of the place.  
**Likes: (4) | Dislikes (1)**
11. Perhaps misters near the arbour would greatly reduce the heat in the summer months and encourage more visitors to sit and relax here.  
**Likes: (1) | Dislikes (0)**
12. The extent of the tree canopy should be increased at the western end of the plaza, as the late afternoon sun in shines directly along the plaza and is very intense in summer. The heat and glare currently makes the night markets uncomfortable on warm evenings.  
**Likes: (8) | Dislikes (0)**
13. While extension of the tree canopy at the western end of the plaza would be a great improvement on the current situation in the summer months, it would need to be substantial to have any meaningful impact, especially for al fresco dining in the Eastwood

centre redevelopment. Consideration should also be given for shade cloths in the centre of the plaza.

**Likes: (3) | Dislikes (0)**

14. The 'artist's impression' shows an extremely large number of overhead lights. In addition to the lighting features in the fountains and planting, and the existing overhead lights in the arbour, and the many lights in other places, aren't there a few too many lights? They will make everything hotter and too bright, and waste electricity.  
**Likes: (2) | Dislikes (0)**
15. This area can become quite quiet and dead at night and the lack of shades during the day always makes this an unbearable space to linger for any amount of time. Perhaps create opportunities for seasonal alfresco dining with umbrellas and foldable tables and seating that can bring make use of the space and create a sense of vibrancy to this area all times of the day.  
**Likes: (3) | Dislikes (0)**
16. I find the arbour a bit dark and restrictive closing in the space  
**Likes: (0) | Dislikes (5)**
17. If a performance stage is built I would like it to have provision made to store chairs for use by performers and the public. Ryde Band has 40 chairs which are currently stored in the back of The Eastwood Centre and have to be moved out each month when the Band plays in the Plaza.  
**Likes: (1) | Dislikes (0)**
18. Installation of a traffic light would greatly improve traffic flow and pedestrian safety particularly in the peak hour.  
**Likes: (10) | Dislikes (0)**

 **I would like to add an element to this design**

19. I suggest to consider closing this end to traffic. Drivers will no longer need to reach the current car park once the new one is built. Pedestrians will have much more security and safety moving around, and the mall could be extended westwards  
**Likes: (0) | Dislikes (0)**
20. Pedestrian lights and traffic lights are required to keep traffic flowing and pedestrians safe.  
**Likes: (6) | Dislikes (0)**
21. Traffic lights required to reduce risk to pedestrians, and to improve access for vehicles. Traffic jamming at the pedestrian crossing makes the area vulnerable to gridlocking.  
**Likes: (1) | Dislikes (0)**
22. You need to add traffic lights here. With the increase in residents (especially those living on top of the Plaza as proposed) you will get more people crossing. You have proposed "Clear area to accommodate maximum pedestrian movement in multiple directions. Minimal obstructions reduces conflict and increases pedestrian safety" in your design. The conflict is between people and cars, plain and simple. Traffic lights are the most effective way to keep pedestrians safe.  
**Likes: (8) | Dislikes (0)**
23. Need to increase green cover with planting of large trees (>20m) for cooling along with green roof and walls  
**Likes: (3) | Dislikes (0)**

24. This area is too open without much cover. Would it be possible to create an additional undercover area with retractable louvres or a nicely designed roofing structure (to match current arbour) which can provide additional covered seating and enable market /pop up stalls from time to time?  
**Likes: (0) | Dislikes (0)**
25. The pedestrian crossing should be signalled and this section of The Avenue not closed off to traffic, as per the recommendation in the traffic study.  
**Likes: (3) | Dislikes (2)**
26. The project is limited in scope and lack integration with parking and traffic issues. Greening initiatives should be enhanced and integrated with other community green space. A large percentage of the parking in the shopping centre should be for the community not just for apartments. 5 affordable units is far too small in proportion to the number of apartments proposed. Access to parking direct from first avenue is essential to minimise traffic in the centre.  
**Likes: (2) | Dislikes (0)**
27. CCTV should be included, with a wider view for all of Eastwood cbd  
**Likes: (4) | Dislikes (0)**
28. It would be good to improve the loading zones nearby to have better provision for drop-off / pick-up of equipment for users of the performance area.  
**Likes: (0) | Dislikes (0)**
29. Traffic flow and parking have not been addressed at all. This proposal will not make the changes required I. Eastwood.  
**Likes: (0) | Dislikes (0)**
30. To add to the Eastwood Plaza public space, I would suggest that the War Memorial at the corner of Hillview Road and Lake Side Road, be moved to the Eastwood plaza. The present site for the War Memorial is hidden away with no place for people to assemble on special occasions e.g. Anzac Day. The upgraded Eastwood Plaza could present as the Martin Place of the East. This is our chance to be creative with the special site.  
**Likes: (2) | Dislikes (0)**
31. Before any changes to the plaza, extend the tunnel under the railway to go under the West PDE and exit at the plaza. Eliminate existing pedestrian crossing, allowing a more free flowing traffic  
**Likes: (1) | Dislikes (1)**
32. You need to add traffic lights here. With the increase in residents (especially those living on top of the Plaza as proposed) you will get more people crossing. You have proposed "Clear area to accommodate maximum pedestrian movement in multiple directions. Minimal obstructions reduces conflict and increases pedestrian safety" in your design. The conflict is between people and cars, plain and simple. Traffic lights are the most effective way to keep pedestrians safe.  
**Likes: (1) | Dislikes (1)**
33. Pedestrian tunnel under road and rail to connect north and south Rowe Street. This would eliminate the conflict with traffic. Traffic lights would be a short term benefit, but would stop traffic flow as housing density increases.  
**Likes: (0) | Dislikes (1)**
34. Pedestrian lights and traffic lights are required to keep traffic flowing and pedestrians safe. Lights are also needed opposite the library.  
**Likes: (3) | Dislikes (1)**

*Note: The comment numbers relate to the numbers on the map, to show where the comment was pinned*

**1. West Entry**  
 Clear area to accommodate maximum pedestrian movement in multiple directions. Minimal obstructions reduces conflict and increases pedestrian safety.

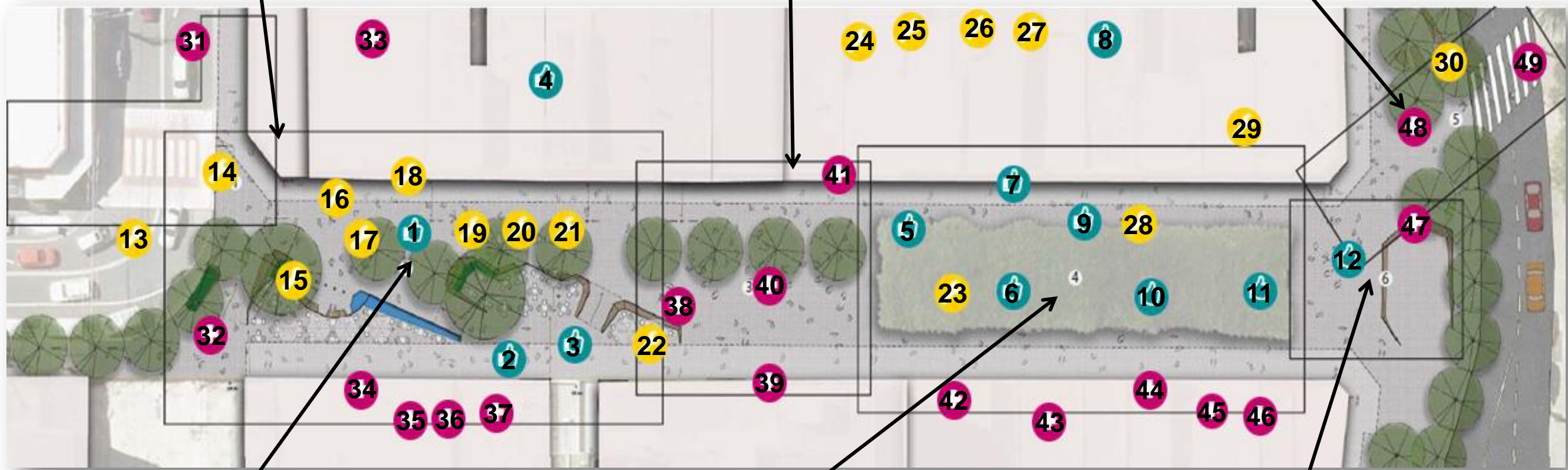
**3. Transition/Flex Area**  
 Flexible event space graded to transition between terrace areas and existing grades beneath arbour

**5. East Entry**  
 Clear area to accommodate maximum pedestrian movement in multiple directions. Minimal obstructions reduces conflict and increases pedestrian safety. Kerb pushed out to reduce kerb to kerb distance. Pedestrian crossing realigned to match main path of travel

**2. Regraded area**  
 Paths of travel define terraces and breakout spaces. Walls supporting terraces create opportunities for integrated seating and water feature

**4. Arbour**  
 Existing grades may be adjusted slightly pending advice from arborists report. Select seating opportunities to the periphery to be developed beneath arbour

**6. Performance area**  
 Stage and spectator space that also acts as transition space. Bin storage area reallocated to bump in/out area







**I like this element of the design**

1. The design looks tidy and appreciate the additional trees and flowers. Maintain no smoking area
2. Well overdue, will need more rubbish bins and more frequent collection
3. Like the modernisation of Eastwood Plaza
4. I agree with this plan
5. Maintaining the wisteria arbour. Looks like there are a lot of trees - please keep. Area is open
6. Make sure you retain the arbour, it needs to stay
7. Don't take away the archway/arbour
8. I support this plan
9. Wisteria and arbour to remain. Water feature to remain
10. Maintain current plant arch at all costs. This unique feature provides shade in summer and sunlight in winter
11. Keep the arbour, it adds character
12. Maintaining the wisteria arbour. Looks like there are a lot of trees - please keep. Area is open



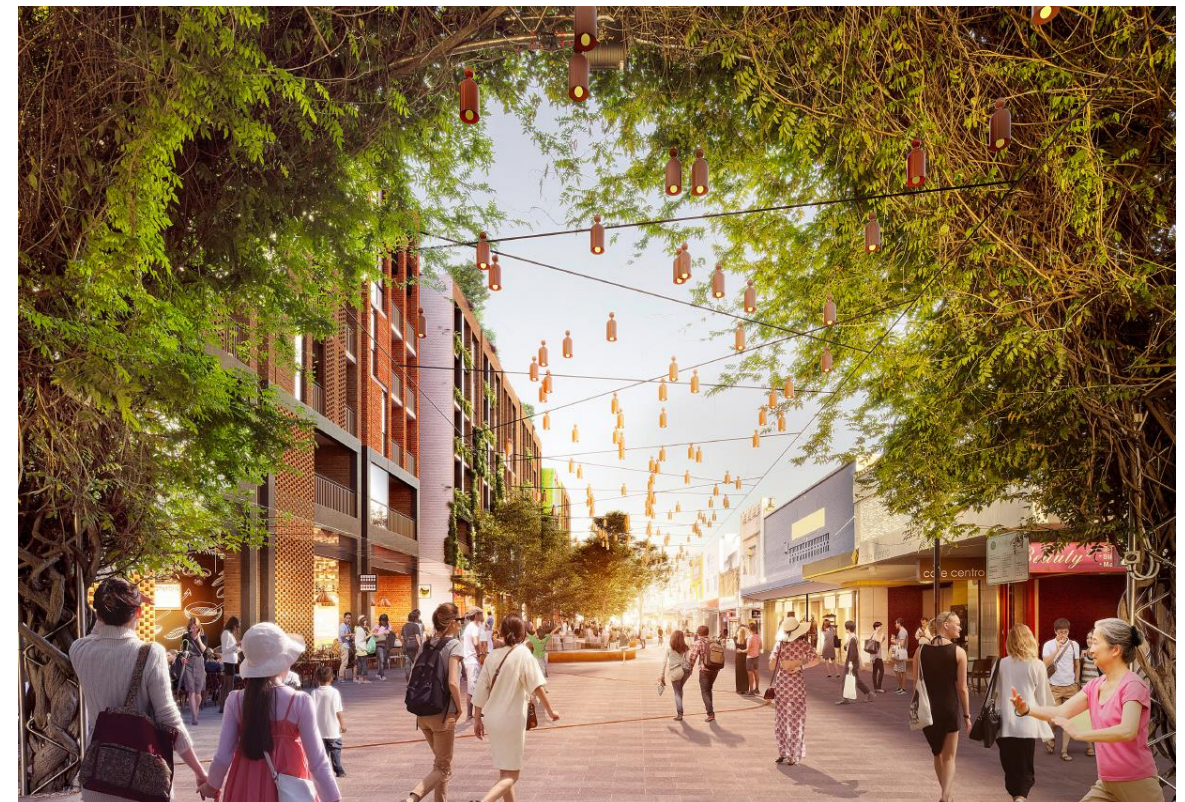
**I would like to make a minor change to this element**

13. Consider the traffic light between NAB and Bread shop in Rowe Street
14. Add a pedestrian bridge
15. I wish the Council/developers can keep the water feature, don't improve in safety especially for kids and add some more water play features for kids
16. Make sure the safety of the water fountain is a priority from both drawing and electrical hazards
17. Maintain existing location of the water fountain. It is important for the dragon to be able to keep its tradition of drinking from the fountain
18. I wish the Council/developers can keep the water feature, don't improve in safety especially for kids and add some more water play features for kids
19. I wish the development can be well planned. For example, make sure the car park be established before Yuhu demolish si that we can have certain amount of car park space during Yuhu Project
20. More spacious, neater and more green
21. Plant more trees at open area to make are green friendly. More seating benches for family and seniors
22. More trees
23. More light in the arbour to light it up at night
24. More social housing. 5 x 1 bed apartments for social is less than 1%. Needs more to be donated and better variety (2 x bed)
25. No affordable housing (public housing commission)
26. The idea is good but make sure the council regulates the developer(s)
27. Be alert of the Yuhu Group. The building material they use are full of toxic
28. All weather covered area. In winter can't use the area under the arbour as foliage disappears and rain comes through. Possibly add perspex
29. Larger plaza, the more space, the more people
30. It's a disgrace given that the development application has already been approved! NO MORE OVERDEVELOPMENT!



**I would like to add an element to this design**

31. Needs traffic light pedestrian crossing to improve traffic flow
32. More trees in plaza
33. Children's play equipment
34. More seating. An additional arbour for more coverage
35. More car park space, it's very difficult to find parking, once we have had a fine
36. More shops and better parking
37. Signs in the car park and needs to be in different languages to enable good understanding of traffic rules
38. More shade and family friendly landscape
39. This building is outdated and missing a modern look
40. Shade in this area
41. More space for outdoor dining
42. Against it! Price of grocery will increase. Affordable food and veggies will move out of Eastwood. What is the point of increasing the quality of living when 99% of use cannot afford it
43. I think it's a disgrace
44. Against this development
45. Solar panels for lighting
46. Just beyond the upgrade, could the VPA prioritise upgrade of Eastwood Oval play equipment, the Christian Community Aid Community Centre and the library, as well as an outdoor gym around Eastwood Park and Oval
47. Keep the flag post
48. Pedestrian tunnel to northern end of shops for better access
49. Overpass here



*Note: The comment numbers relate to the numbers on the map, to show where the comment was placed*