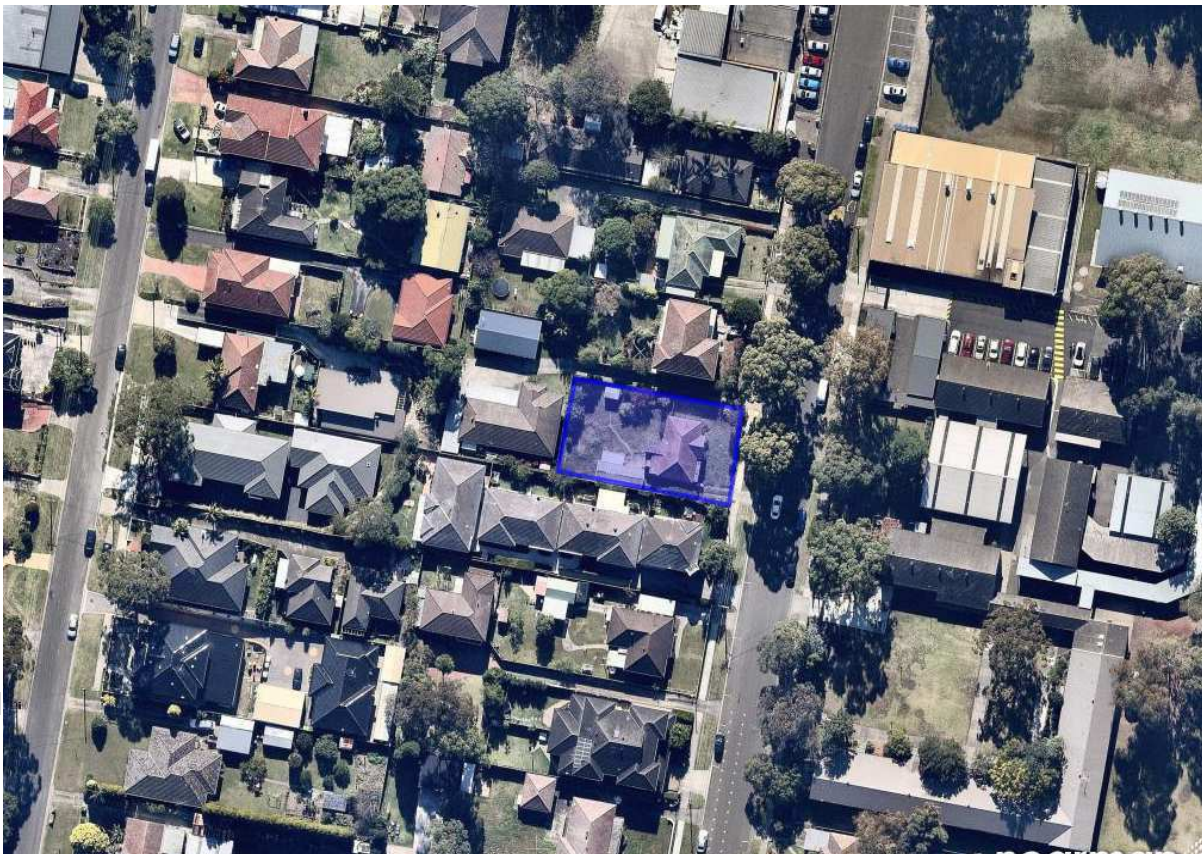


IHAP Report No	3	Development Application No	REV2016/0018
Site Address & Ward Locality	37 Ogilvy Street Oatley Peakhurst Ward		
Proposal	Section 82A Review of Determination of refusal of DA2015/0057 for the demolition of existing structures and construction of a detached dual occupancy with front fence		
Report Author/s	Senior Development Assessment Officer, Paula Bizimis		
Owners	A El-Kheir, U Alca, A Alca		
Applicant	R Moussawel		
Zoning	Zone R2 - Low Density Residential		
Date of Lodgment	12 July 2016		
Submissions	Three (3)		
Cost of Works	\$645,000.00		
Reason for Referral to IHAP	Section 82A Review of refusal by Council		

Recommendation	THAT Council uphold its original decision and refuse the application for the reasons included in the report.
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Site Plan



Executive Summary

1. On 4 May 2016 Council refused Development Application No DA2015/0057 for the demolition of existing structures and construction of a two (2) storey detached dual occupancy with front fence.
2. The current application seeks review of the refusal. No design changes have been undertaken to the development as part of this application from that previously considered.
3. The application has been assessed against the relevant Environmental Planning Instruments, Section 79C of the Environmental Planning and Assessment Act 1979 (as amended) and the relevant Development Control Plan. The development generally complies with the relevant requirements but results in significant privacy and shadow impacts on the adjoining developments.
4. The application was notified to fifteen (15) residents/owners in accordance with Council's requirements and three (3) submissions were received in reply. The issues raised in the submissions are detailed in the report.
5. It is recommended that Council uphold its original decision and refuse the application for the reasons included in the report.
6. The Section 82A Review must be determined by 4 November 2016.

Report Detail

BACKGROUND

1. On 4 May 2016 Council refused Development Application No DA2015/0057 for the demolition of existing structures and construction of a two (2) storey detached dual occupancy with front fence. The reason for refusal was:
 1. *The application be refused due to deficiencies in solar access and privacy controls.*

DESCRIPTION OF THE PROPOSAL

2. The application is a Section 82A Review of Determination of the refusal of Development Application No DA2015/0057 for the demolition of existing structures and construction of a detached dual occupancy and front fence. No design changes have been undertaken to the development from that previously considered. In detail the proposed development includes:

Ground floor

The ground floor of each dwelling will contain a single garage with car space in front, entry/guest area, study, bathroom, laundry, storage, dining/lounge/kitchen area and stairs to the first floor. An alfresco area is located at the rear of each dwelling which has a BBQ area and is accessible from the dining/lounge/kitchen area.

First floor

The first floor will contain a master bedroom with ensuite and walk-in-robe, three (3) bedrooms, bathroom, rumpus area, and stairs to the ground floor. A balcony is located on the rear elevation of each dwelling with access off bedrooms 1 and 2 of Dwelling 1 and bedroom 2 of Dwelling 2. A balcony is located on the front elevation of each dwelling with access off the master bedroom.

Front fence

A front fence is proposed on the front boundary of the site with a maximum height of 1m and constructed of rendered and painted masonry.

HISTORY

3. 22 Feb 15 Development Application No DA2015/0057 is lodged
16 Mar 15 Notification letter posted advising neighbours of a notification period from 18 March to 1 April 2015
26 Mar 15 Additional notification letter posted advising neighbours of an extended notification period until 17 April 2015
21 Oct 15 Application deferred at Council meeting for a site inspection
4 Nov 15 Application considered by Council and it was resolved:
“THAT the application be re-designed to comply with the minimum solar access requirements in accordance with Council's DCP”
12 Apr 16 Amended plans and information submitted
19 Apr 16 Amended plans and shadow diagrams submitted
4 May 16 The application is presented to the Council with a recommendation for approval. The application is refused by Council.
1 Jul 16 A Class 1 Appeal is lodged in the NSW Land and Environment Court against Council's refusal of the application (Appeal No 195732 of 2016)
12 Jul 16 Section 82A Review of Determination (the subject application REV2016/0018) was lodged.

DESCRIPTION OF THE SITE AND LOCALITY

4. The site is a rectangular shaped site with a frontage of 20.115m to Ogilvy Street and an area of 733.5sqm. The site is located on the western side of the street. Existing on the site is a single dwelling house with a detached single garage and shed located in the rear yard. A Sydney Water sewer line traverses the site from north to south to the rear of the existing dwelling.

The site has a slight 420mm fall to the rear measured along an east-west axis taken through the centre of the site. There are two (2) trees located on the site and a street tree located at the front of the site on the public nature strip.

Adjoining the site to the north is an access driveway servicing the rear western neighbour, which comprises a single dwelling. To the north of this driveway is a two (2) storey dwelling house. The southern neighbour comprises a multiple dwelling development comprising a townhouse at the front of the site and three (3) villas to the rear. The northern courtyards of 1/39 Ogilvy Street and 2/39 Ogilvy Street directly adjoin the southern boundary of the site.

On the opposite side of Ogilvy Street is Peakhurst West Public School. The area surrounding the subject site is characterised by one (1) and two (2) storey residential developments.

COMPLIANCE AND ASSESSMENT

SECTION 82A OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

5. Section 82A(4) states that Council may review a determination if:

“(a) it has notified the request for review in accordance with the regulations, if the regulations so require, or a development control plan if the council has made a development control plan that requires the notification or advertising of requests for the review of its determinations.”

Comment: The request for review was notified in accordance with Development Control Plan No 1.

“(b) it has considered any submissions made concerning the request for review.”

Comment: The application was notified in accordance with Council’s requirements and three (3) submissions were received in response. The issues raised in the submissions are detailed in the report under the heading “*Referrals, Submissions and the Public Interest*”.

“(c) *in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development as amended is substantially the same development as the development described in the original application.*”

Comment: The proposal has not been amended from the original application. The proposed development is considered to be substantially the same development as that described in the original application being a detached dual occupancy with front fence.

The development has been inspected and assessed under the relevant Section 79C(1) "Matters for Consideration" of the Environmental Planning and Assessment Act 1979.

Environmental Planning Instruments

HURSTVILLE LOCAL ENVIRONMENTAL PLAN 2012

6. The subject site is zoned R2 – Low Density Residential under the Hurstville Local Environmental Plan 2012 and the proposed development is permissible in the zone with the consent of Council. The relevant clauses of the Local Environmental Plan which apply to the proposed development are detailed below.

Clause	Standard	Assessment Under HLEP 2012	Complies
1.2 – Aims of the Plan	In accordance with Clause 1.2 (2)	The development is consistent with the aims of the plan	Yes
1.4 - Definitions	“Dual occupancy”	The proposed development is defined as a dual occupancy	Yes
2.3 - Zone objectives and Land Use Table	Meets objectives of R2 Zone Development must be permissible with consent	Development does not meet objectives of the zone Is permissible development with consent	No (1)
2.7 - Demolition	Demolition is permissible with consent	Demolition is proposed with this application	Yes
4.1A – Minimum lot size for dual occupancies and multi dwelling housing	Dual occupancy – 630sqm if land identified as “G” on lot size map; 1000sqm if land identified as “K” on lot size map	Land is identified as “G” on the lot size map which requires 630sqm of site area. Dual occupancy = 733.5sqm.	Yes
4.1B – Exception to minimum sizes for dual occupancies	Subdivision may be granted if there is a dual occupancy and after the subdivision there will only be 1 dwelling per lot	Subdivision is not proposed with this application	N/A
4.3 – Height of Buildings	9m as identified on Height of Buildings Map	< 9m	Yes

4.4 – Floor Space Ratio	0.6:1 as identified on Floor Space Ratio Map	0.59:1	Yes
4.5 – Calculation of floor space ratio and site area	FSR and site area calculated in accordance with Cl.4.5	In accordance with Cl. 4.5	Yes
5.9 – Preservation of Trees or Vegetation	Trees to be removed are specified in DCP No.1	Two (2) trees on the site are to be removed. Council’s Tree Management Officer has raised no objection to their removal subject to replacing planting being provided.	Yes
6.7 – Essential Services	<p>The following services that are essential for the development shall be available or that adequate arrangements must be made available when required:</p> <p>-Supply of water, electricity and disposal and management of sewerage</p> <p>-Stormwater drainage or on-site conservation</p> <p>-Suitable vehicular access</p>	<p>Adequate facilities for the supply of water and for the removal of sewage available to this land</p> <p>Stormwater can drain to the street.</p> <p>Two (2) new driveway crossings from Ogilvy Street proposed (standard conditions for the submission of separate vehicular crossing applications and driveway design)</p>	Yes

(1) Objectives of the zone

7. The objectives of the R2 Low Density Residential Zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage development of sites for a range of housing types, where such development does not compromise the amenity of the surrounding area, or the natural or cultural heritage of the area.*
- *To ensure that a high level of residential amenity is achieved and maintained.*
- *To encourage greater visual amenity through maintaining and enhancing landscaping as a major element in the residential environment.*
- *To provide for a range of home business activities where such activities are not likely to adversely affect the surrounding residential amenity.*

It is considered that the proposed development is not consistent with the objectives of the R2 Low Density Residential Zone for the following reasons:

- The proposed development will compromise the amenity of adjoining properties in

that the proposed balconies on the first floor rear elevation allow for direct viewing of the private open space areas of adjoining developments in particular the rear yards of 35 Ogilvy Street, 35A Ogilvy Street, and villa 3/39 Ogilvy Street. The first floor balcony on the front elevation of proposed Dwelling 2 will also have view of the private open space area of townhouse 1/39 Ogilvy Street which directly adjoins the front setback area of the proposed development. In addition to this, the balconies proposed to the first floor rear elevation result in reciprocal overlooking of the proposed private open space area of each dwelling within the proposed dual occupancy development. Privacy screens have been fitted to three (3) of the four (4) side elevations of the rear balconies however they are not considered to be effective in mitigating privacy impacts as view to adjoining private open space areas can still be gained from the majority of the balcony.

- Each of the dwellings in the dual occupancy development has a laundry door on the side elevation and an alfresco area on the rear elevation. These areas allow for additional overlooking of adjoining developments and the private open space area of the dwellings within the development due to their finished floor level being above the existing ground level by up to 773mm. This compromises the amenity of adjoining developments and the dwellings within the development.
- The proposed development will result in overshadowing to the majority of the private open space area and dining room and kitchen windows of the townhouse at 1/39 Ogilvy Street and the private open space area of the villa at 2/39 Ogilvy Street for most of the day between 9am and 3pm on 21 June. There is an area of landscaped open space to the front of the townhouse that receives sun however this is not considered to be the principle private open space area but rather the front setback area between the dwelling and Ogilvy Street. The shadow diagrams submitted with the application show a “covered” awning to approximately a third of the private open space area of 2/39 Ogilvy Street however, the roof of the awning comprises adjustable louvres that open to receive sun. Therefore this awning does not compromise the sunlight received to this area.

STATE ENVIRONMENTAL PLANNING INSTRUMENTS

8. Compliance with the relevant state environmental planning policies is detailed and discussed in the table below.

State Environmental Planning Policy	Complies
Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment	Yes
State Environmental Planning Policy 55 – Remediation of Land	Yes
State Environmental Planning Policy (Building Sustainability Index BASIX) 2004	Yes

Draft Environmental Planning Instruments

9. No draft environmental planning instruments affect the proposed development.

Any other matters prescribed by the Regulations

10. The Regulations prescribe the following matters for consideration for development in the Hurstville Council area:

Demolition

Safety standards for demolition and compliance with AS 2601 - 2001 apply to the demolition of any buildings affected by the proposal.

Development Control Plans

11. The provisions of the Hurstville Development Control Plan No 1 (DCP1) apply to the proposed development as follows.

DEVELOPMENT CONTROL PLAN NO 1 – LGA WIDE - SECTION 3.1 CAR PARKING

Section 3.1	Standard	Proposed	Complies
Car spaces per dwelling	2 spaces	2 spaces, one in a single garage and one in front	Yes

DEVELOPMENT CONTROL PLAN NO 1 – LGA WIDE - SECTION 3.4 CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

Section 3.4	Standard	Proposed	Complies
Fencing	Allows natural surveillance to street	The front fence proposed allows surveillance to the front of the site and the road	Yes
Blind Corners	To be avoided	No blind corners evident	Yes
Communal Areas	Provide opportunities for natural surveillance	Private open space areas are visible from the dining and lounge rooms and bedrooms	Yes
Entrances	Clearly visible and not confusing	Entrance to each dwelling is visible	Yes
Site and building layout	-Provide surveillance opportunities -Building addresses street -Habitable rooms are directed towards the front of the building -Garages are not dominant -Offset windows	The proposed development has been appropriately sited in relation to crime prevention principles	Yes
Landscaping	-Avoid dense medium height shrubs -Allow spacing for low growing dense vegetation -Low ground cover or high canopy trees around car-parks and pathways -Vegetation used as a barrier for unauthorised access	Landscape plan prepared by a qualified landscape architect is required as a condition of any consent granted	Yes, subject to condition of consent
Lighting	-Diffused/movement sensitive lighting provided externally -Access/egress points illuminated -No light-spill towards neighbours -Hiding places illuminated -Lighting is energy efficient	These requirements can be conditions of any consent granted	Yes

Building Identification	-Clearly numbered buildings -Entrances numbered -Unit numbers provided at entry	House number requirement can be a condition of any consent granted	Yes
Security	Provide an appropriate level of security for each dwelling and communal areas	Appropriate level of security provided for the dwellings	Yes
Ownership	Use of fencing, landscaping, colour and finishes to imply ownership	Ownership implied	Yes

DEVELOPMENT CONTROL PLAN NO 1 – LGA WIDE – SECTION 3.2 SUBDIVISION

12. The subject site is of sufficient size and dimensions to permit the subdivision of an approved dual occupancy development once an Occupation Certificate is issued. As such, subdivision will not form part of this application.

DEVELOPMENT CONTROL PLAN NO 1 – LGA WIDE - SECTION 3.5 ENERGY EFFICIENCY

13. A BASIX Certificate has been submitted with the application. The Certificate shows that the proposed development can achieve the target scores required.

In terms of solar access the proposed development will result in overshadowing to the private open space area and windows of the adjoining developments. This is discussed in the report under *Section 4.2 Dual Occupancy Housing*.

DEVELOPMENT CONTROL PLAN NO 1 – LGA WIDE – SECTION 3.7 DRAINAGE AND ON-SITE DETENTION (OSD) REQUIREMENTS

14. The proposal can drain by gravity to the kerb and gutter in front of the site in accordance with this section of Development Control Plan No 1.

DEVELOPMENT CONTROL PLAN NO 1 - LGA WIDE – SECTION 3.8 FENCES ADJACENT TO PUBLIC ROADS

15. The proposed front fence has a height of 1m and is constructed of solid material. The fence allows for viewing to the street and the front setback area and is consistent with the objectives of Development Control Plan No 1.

DEVELOPMENT CONTROL PLAN NO 1 – LGA WIDE - SECTION 3.9 WASTE MANAGEMENT

16. Waste management information has been submitted with the application which is in accordance with the objectives of Development Control Plan No 1.

DEVELOPMENT CONTROL PLAN NO 1 – LGA WIDE – SECTION 3.11 PRESERVATION OF TREES AND VEGETATION

17. Existing on the site is a Paperbark tree and a Maple tree which are to be removed to accommodate the proposed development. Council's Tree Management Officer has raised no objection to the removal subject to replacement planting being provided as a condition of any consent granted.

DEVELOPMENT CONTROL PLAN NO 1 – LGA WIDE - SECTION 4.2 DUAL OCCUPANCY HOUSING

Section 4.2	Standard	Proposal	Complies
4.2.3.3 Allotment Size	630sqm	733.5sqm	Yes
Frontage	20m for detached side by side on standard lots	20.115m	Yes
4.2.2.4 Height	9m for two storey	< 9m for both dwellings	Yes
Excavation	600mm	Minimal excavation if any (less than 600mm)	Yes
Wall Height	6.8m for two storey	6.62m maximum	Yes
Floor to ceiling heights	2.7m – 3.6m	2.7m – 2.8m	Yes
Maximum storeys	2	2	Yes
Flat roof maximum parapet height	450mm	Pitched roof proposed	N/A
4.2.3.5 Front Setbacks	5.5m	5.5m	Yes
Side	1200mm for all side setbacks including new internal boundary	903mm - 1202mm	The side setback to part of the south elevation of the garage and balcony above to Dwelling 2 is setback 903mm. Although it relates to a small portion of the setback there is no apparent justification for this setback when the remaining setback is 1202mm. This should be amended to achieve compliance.
Eaves	750mm or 450mm minimum non-combustible	900mm minimum setback	Yes
Rear	7m ground floor 9m first floor	8.856m 13.346m	Yes Yes
4.2.4 Floor Space Ratio	As per Hurstville LEP 2012 (0.6:1)	0.59:1	Yes

<p>4.2.5.1 Presentation to the street</p>	<ul style="list-style-type: none"> -Windows to street -Attached may not be mirror-reverse -Design to have two of: <ul style="list-style-type: none"> -Entry feature -Window feature -Balcony/window box -Architectural element to break façade -Open veranda -Bay windows -Pergola/similar features above garage doors -Entrance clearly visible from street -Garage recess 300mm -Maximum recommended roof pitch 35° -Dormers where used maximum 1.5m wide and lower than roof ridge 	<p>Development complies with these requirements</p>	<p>Yes</p>
<p>4.2.5.3 Balconies</p>	<p>2m maximum depth for rear balconies 1.8m maximum height for privacy screens</p>	<p>2m 1.8m</p>	<p>Yes</p>
<p>4.2.5.4 Materials and Finishes</p>	<ul style="list-style-type: none"> -To compliment surrounding development -Minimise high contrasting colour schemes -Fire rating of BCA to be achieved 	<p>Materials and finishes are acceptable</p>	<p>Yes</p>
<p>4.2.5.5 Views</p>	<ul style="list-style-type: none"> -Windows to provide views of private open space and approaches to dwelling -Minimise view loss to surrounding properties -Flat rooves may be used to protect views 	<p>Appropriate</p>	<p>Yes</p>

4.2.6 Landscaped Area	<ul style="list-style-type: none"> -Driveway and pathway is the only paving permitted in the front yard -20% of site to be landscaped with 2m minimum width -Landscape Plan to be provided -Landscape work to be completed prior to occupation -Protection of the root zone of trees to be retained is to be considered 	<p>Yes</p> <p>20.17%</p> <p>Landscape plan prepared by qualified landscaped architect required but can form a condition of consent.</p>	No for visual privacy (1)
Private Open Space	<ul style="list-style-type: none"> -At ground level Minimum dimensions 4m x 5m -Accessible from living area -Maximise visual privacy and acoustic amenity to occupants and neighbours -Maximise solar access 	<p>The development is consistent with these requirements except in that the proposed alfresco area to the rear of each dwelling will result in privacy impacts to the adjoining courtyard (within the development) and adjoining developments due to the floor level being up to 773mm above ground level.</p>	
Fences	<ul style="list-style-type: none"> -Front fence to be no higher than 1m -Side or rear fence to be no higher than 1.8m 	<ul style="list-style-type: none"> -Front fence is 1m high -Side and rear fence not specified but can form condition of any consent granted. 	

<p>4.2.7 Vehicular Access and Parking</p>	<p>-1 garage and 1 driveway space per dwelling -Garage setback 5.5m and recessed a minimum 300mm into façade -Entry and exit onto State roads/battle-axe to be in a forward direction -Driveway width 3m minimum -Driveways setback from side boundary by 1.5m minimum -Crossing at least 6m from intersection</p>	<p>Development complies with these requirements</p>	<p>Yes</p>
<p>4.2.8 Cut and Fill</p>	<p>Fill maximum 600mm Fill only within building footprint</p>	<p>Plans do not specifically show fill to the site but rather piers above ground level to support ground floor slab. Plans show ground levels around buildings to remain as existing.</p>	<p>Acceptable but any consent granted should contain appropriate condition of consent restricting fill to maximum 600mm.</p>
<p>4.2.9 Visual Privacy and Acoustic Amenity</p>	<p>-Balconies and main windows directed towards front and rear -Windows of habitable rooms to be offset by 1m from the window of the neighbouring dwelling or screened or provided with 1.5m bottom sill heights -Privacy screens to be provided to rear balconies at no higher than 1.8m -Driveways and A/C units to be sited away from adjoining neighbours</p>	<p>Windows on first floor contain high sill or translucent glazing which do not result in privacy impacts. The privacy impacts are created from the proposed first floor balconies and the laundry doors located on the side elevations.</p>	<p>No (1)</p>

4.2.10 Solar Design, Water and Energy Efficiency	-Must comply with BASIX -Cross ventilation to be provided -All rooms to have a window -Shadow diagrams for 2 storey proposals. 3 hours solar access during midwinter solstice to be provided to subject and neighbouring dwellings	Development complies with these requirements, but solar access to adjoining developments is affected by proposed development.	No (2)
4.2.11 Site Facilities	-3m x 1m garbage storage -6m ³ storage -Mailbox -Outdoor Clothes line	Sufficient area is provided for these site facilities	Yes
4.2.12 Stormwater Drainage	Drainage by gravity Alternatives: 1.Easement 2.Charged and gravity 3.OSD and infiltration	Development can drain by gravity to Ogilvy Street	Yes
4.2.14 Building Envelope Graphics	As per diagrams	Yes	Yes

Stormwater Assessment	
Existing Stormwater System	Gravity to street
Proposed Stormwater System	Gravity to street
Stormwater objectives for development type met?	Yes
Slope to rear (measured centreline of site)	Yes
Gravity to street (from property boundary to street kerb)?	Yes
Discharge into same catchment?	Yes
Easement required?	No

(1) Visual privacy

18. As discussed in the report above, the proposed development will compromise the amenity of adjoining developments as the proposed balconies on the first floor rear elevation allow for direct viewing of the private open space areas of the rear yards of 35 Ogilvy Street, 35A Ogilvy Street, and villa 3/39 Ogilvy Street. They also allow viewing of the private open space area of the proposed dwellings within the dual occupancy development.

The first floor balcony on the front elevation of proposed Dwelling 2 will also have view of the private open space area of the townhouse at 1/39 Ogilvy Street which directly adjoins the front setback area of the proposed development.

Privacy screens have been fitted to three (3) of the four (4) side elevations of the rear balconies however they are not considered to be effective in mitigating privacy

impacts as view to adjoining private open space areas can still be gained from the majority of the balcony.

Each of the dwellings in the dual occupancy development has a laundry door on the side elevation and an alfresco area on the rear elevation. These areas allow for additional overlooking of adjoining developments and the private open space area of the dwellings within the development due to their finished floor level being above the existing ground level by up to 773mm. It is noted that no privacy screens have been provided to the alfresco areas.

(2) Solar Design

19. In terms of solar access, Development Control Plan No 1 states that:

“New dual occupancy dwellings must not unreasonably obscure sunlight to the windows of habitable rooms, solar collectors or rear yards of adjoining properties. Design should allow at least three hours of sunlight between 9am and 3pm midwinter (21 June) to adjoining private open space.”

The proposed development will result in overshadowing of adjoining developments, in particular the townhouse at 1/39 Ogilvy Street and the villa at 2/39 Ogilvy Street.

In relation to the townhouse, the proposed development will result in overshadowing to the majority of the principal private open space area and dining room and kitchen windows for most of the day between 9am and 3pm on 21 June. There is an area of landscaped open space to the front of the townhouse that receives sun however this is not considered to be the principal private open space area but rather the front setback area between the dwelling and Ogilvy Street.

In relation to the villa the majority of the private open space will be overshadowed for most of the day with less than 50% of the area receiving sunlight by 3pm. The plans show that there is an awning located in approximately a third of the private open space area and the shadow diagrams submitted with the application identify the awning as “covered” however, the roof of the awning comprises adjustable louvres that open to receive sun. Therefore this awning does not compromise the sunlight received to this area.

To determine if the solar access to the townhouse and villa is acceptable an assessment has been undertaken against the Planning Principle relating to solar access.

The current Planning Principle on solar access adopted by the NSW Land and Environment Court requires the following to be taken into consideration in accessing the adequacy of solar access. This is to be applied where guidelines dealing with the hours of sunlight on a window or open space leave open the question what proportion of the window or open space should be in sunlight, and whether the sunlight should be measured at floor, table or a standing person’s eye level. The assessment of the adequacy of solar access should be undertaken with the following principles in mind, where relevant:

“The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.”

20. Comment: The subject site is zoned R2 Low Density Residential as are the sites adjoining the subject site. The expectation relating to density and solar access would be the same

or these sites. The courtyards of the proposed dwellings receive at least three (3) hours solar access to the majority of the private open space area in accordance with the requirements of Development Control Plan No 1 however, this is not being achieved for the adjoining developments. The subject site has an east west orientation and this has to be considered in the assessment of the solar access. Due to their orientation, east west sites inevitably result in sites being more vulnerable in terms of overshadowing. It is unlikely that minimum three (3) hours solar access could be achieved for adjoining sites however, the proposed development has to demonstrate that efforts have been made to achieve the best possible outcome. This has not been demonstrated with the proposed development. This is discussed further below.

“The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.”

21. Comment: In relation to the townhouse, the proposed development will result in overshadowing to the majority of the principal private open space and dining room and kitchen windows for most of the day between 9am and 3pm on 21 June.

When comparing the solar access currently being received by the townhouse between 9am and 3pm on 21 June and what is proposed there is a significant decline in solar access. The shadow diagrams show that currently only a small portion of the private open space is being overshadowed, whereas this will increase to the majority of the private open space area.

There is an area of landscaped open space to the front of the townhouse that receives sun however this is not considered to be the principal private open space area but rather the front setback area between the dwelling and Ogilvy Street. Notwithstanding this, the majority of this “strip” will be in shadow from 12noon onwards. It is not reasonable to expect that this “strip” at the front of the townhouse be considered as the principal private open space in place of the actual area that adjoins the dining room and kitchen and is directly accessible from the dining room.

In terms of the dining room and kitchen windows these windows will generally be in shadow for the majority of the day except for the dining room window (sliding door) which will receive sunlight between 9am and 10am. The lounge room has three (3) windows on the east elevation however these windows are long and narrow and perform an architectural feature to the façade of the townhouse rather than provide the light source to the room. The sunlight to the dining room and kitchen windows will significantly decline from the current situation where entire window received sunlight.

In relation to the villa, the majority of the private open space area will be overshadowed for most of 21 June with less than 50% of the area receiving sunlight by 3pm. This is significantly less than that currently received which is sunlight to the majority of the private open space from 10am onwards.

“Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal’s design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.”

22. Comment: The development has been designed to address the numerical requirements of Development Control Plan No 1 but does not consider to adequately address shadow impact on surrounding developments. The applicant has not submitted an alternative design or building envelope study that can show whether an alternative design will achieve a better outcome for solar access to adjoining developments. When

considering the proposed development there are several options that could have been investigated by the applicant for Dwelling 2 (the proposed dwelling affecting the adjoining developments) that could achieve a better outcome. These include:

- Providing a smaller footprint to the first floor. This can be achieved by deleting the rumpus room and reducing the number of bedrooms. The proposed walk-in-robe to the master bedroom has similar dimensions to bedroom 3 and can also be reduced.
- The floor to ceiling heights for Dwelling 2 can be lowered without compromising the amenity of the dwelling. For example, the ground floor has a floor to ceiling height of 2.7m and the first floor has 2.8m. The underside of the ceiling to the slab above has a depth of 500mm. Generally, the slab and services can be provided within 300mm. These amendments would assist the development having a lower height than that proposed.
- The proposed development can be designed as an attached dual occupancy with a greater side setback provided to the southern boundary which would increase the spatial separation and subsequent overshadowing to the adjoining developments.

“For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest portions of the glazed area.”

23. Comment: The shadow diagrams show that the dining room window (sliding door) and kitchen window of the adjoining townhouse will be in shadow for most of the day between 9am and 3pm on 21 June. There will be some sunlight received however the information submitted with the application does not show where the sunlight falls within the dwelling. As such a full assessment against this principle cannot be undertaken.

“For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space. The amount of sunlight on private open space should ordinarily be measured at ground level but regard should be had to the size of the space as, in a smaller private open space, sunlight falling on seated residents may be adequate.”

24. Comment: The amount of sunlight received by the adjoining developments has been discussed above.

“Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.”

25. Comment: The shadow cast by the existing fence has been taken into consideration and is noted on the shadow diagrams. The shadow of the proposed development exceeds that of the fence.

“In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.”

26. Comment: As previously stated the subject site is zoned R2 Low Density Residential which is the same as the zone of adjoining sites. The proposed development will replace a dwelling that has been on the site for decades and the proposed development is indicative of new development. Notwithstanding this, it is considered that the applicant has not investigated any alternatives in the design of the development that would likely result in better solar access to adjoining developments. Rather, the applicant has relied on the development achieving the numerical requirements to demonstrate that the development is acceptable.

Having taken into consideration the above planning principle established by the NSW Land and Environment Court relating to solar access, the proposed overshadowing to the adjoining developments is not considered to be acceptable.

Impacts

Natural Environment

27. The proposal is unlikely to result in any unreasonable impact on the natural environment. Two (2) trees are proposed to be removed from the site however no objection has been raised to their removal by Council's Tree Management Officer subject to their replacement. The existing street tree located at the front of the site is to be retained.

Built Environment

28. The proposed development complies with the relevant numerical requirements but results in significant impacts on adjoining developments in terms of solar access and privacy to adjoining developments and the private open space area of the dwellings within the proposed development. As such it is considered that the proposed development is not consistent with the expectations of the planning controls as it does not achieve acceptable outcomes in relation to solar access and privacy.

Social Impact

29. The proposed development is considered to result in an adverse social impact in that the amenity of adjoining developments is compromised in relation to privacy and solar access.

Economic Impact

30. The proposal is unlikely to result in an adverse economic impact.

Suitability of the Site

31. The subject site has no impediments that preclude it from being developed however any development of the site is to demonstrate that design options have been explored which achieve the best possible outcome for adjoining developments. In particular, the subject site has an east west orientation which makes adjoining sites vulnerable to overshadowing. This has to be considered in the design of the development and may result in the development not achieving the maximum floor space ratio or design where these site circumstances do not apply.

REFERRALS, SUBMISSIONS AND THE PUBLIC INTEREST

Resident

32. The application was notified to fifteen (15) residents/owners in accordance with Council's requirements and three (3) submissions were received in reply. The issues raised in the submissions are as follows.

Solar Access

33. The proposed development will result in a total loss of winter sunlight which does not comply with Section 4.2.10 of Development Control Plan No 1 and the Hurstville Local

Environmental Plan with regards to the objectives of Clause 4.3 - Height of Buildings. The overshadowing does not comply with the planning principle relating to sunlight.

Comment: The proposed development will overshadow the private open space area and windows of the adjoining developments as discussed in the report above. It is considered that the applicant has not investigated any alternative design options that would likely result in better solar access for adjoining developments. Due to the adverse shadow impacts on adjoining developments the proposed development cannot be supported.

BASIX

34. The proposed development does not comply with the BASIX solar access guidelines which require private open space, living areas and windows to the north to allow sufficient space from adjoining buildings for solar access.

Comment: A BASIX certificate has been submitted with the application which shows that the proposed development can achieve the target scores. The living areas of the proposed dwellings face west which is to the rear of the site and the most practical and appropriate location for living areas within the dwelling. Although they are not orientated to the north they still receive sunlight from the kitchen window on the north elevation and the majority of the private open space area to the rear of the dwellings receives more than 3 hours sunlight during winter. The proposed development is considered to achieve appropriate energy efficiency.

Visual amenity and privacy

35. The proposed development will block uninterrupted views of the sky and tree canopy. There will be significant privacy impact on the kitchen and living room of adjoining developments.

Comment: The proposed development will result in privacy impacts from the first floor balconies on the rear elevation of both dwellings and the front elevation of Dwelling 2 as discussed in the report above. The privacy impacts also apply to the private open space area of the dwellings within the development.

In terms of view loss, the adjoining developments do not have views that are considered to be "iconic" as identified in the Planning Principle relating to view loss, but rather are views of the sky and the surrounding area. As such any loss of view attributed to the proposed development is not considered to be significant.

Non compliance with DCP1

36. The proposed development does not comply with various requirements of Development Control Plan No 1 relating to dual occupancies including the objectives for building height, setbacks, views, visual and acoustic privacy, and solar access.

Comment: An assessment of the proposed development's compliance with the requirements of Development Control Plan No 1 has been undertaken in the report above. The development generally complies with the numerical requirements of Development Control Plan No 1 but results in adverse privacy and shadow impacts on adjoining developments. It is considered that this has not been adequately considered by the applicant in the design of the development.

Amended plans

37. The plans have been previously amended but do not achieve compliance for overshadowing, BASIX guidelines, privacy impacts, and resulting in three (3) homes with good solar access being replaced with little or no solar access.

Comment: There were amendments made to the design of the development as part of

the original development application. The plans submitted with this application are the same as those previously considered and refused by Council.

Incorrect information

38. The information submitted with the application is incorrect and has contradictory statements about compliance with solar access, provision for exemptions for east west sites, privacy impacts, does not specifically address the planning principle for sunlight, and traffic congestion.

Comment: The applicant has submitted information to accompany the application which supports the proposed development. It is the opinion of the applicant that the application complies with the relevant requirements and should be supported.

Sewerage concern

39. The subject site has issues with sewerage and it is not referenced in this application.

Comment: A sewer main line traverses the site. Any consent granted is subject to conditions of consent requiring the applicant to consult with Sydney Water in relation to the location of the building works adjacent to their infrastructure and the capacity of the infrastructure to handle this additional development.

Streetscape

40. Does the proposed modern development fit in with the general streetscape of the street?

Comment: The proposed development is permissible in the zone and has a built form typical of new dual occupancy developments. The subject site is not within a conservation area and as such there is no specific streetscape or architectural criteria affecting the site. Notwithstanding this, the proposed development has been assessed against the relevant requirements and although has an acceptable streetscape presence, is not supported due to the adverse shadow and privacy impacts resulting from its design.

Parking/on-street parking

41. There are existing parking issues in Ogilvy Street. There should be more onsite parking provided.

Comment: The proposed development provides two (2) car spaces onsite for each dwelling in accordance with the requirements of Development Control Plan No 1.

Landscaped open space

42. The development has little garden area and landscaping when compared to the overbearing structure proposed.

Comment: The proposed development complies with the landscaped open space requirement of Development Control Plan No 1 which requires that at least 20% of the site be landscaped area (deep soil).

Council Referrals

Team Leader Subdivision and Development

43. Council's Team Leader Subdivision and Development has previously commented on the proposed development and has raised no objection subject to conditions of consent being attached to any consent granted.

Tree Management Officer

44. Council's Tree Management Officer has advised that the two (2) trees located on the site can be removed subject to their replacement with appropriate species. Further, the street

tree located at the front of the site can be removed due to the driveway crossing potentially effecting the tree root zone. The tree trunk is located 3m from the driveway and may not be effected by the driveway. This can be further assessed as part of any driveway levels and specifications obtained in the future. It is considered that the street tree should be retained as part of this application.

External Referrals

45. No external referrals were required for the proposed development.

CONCLUSION

46. The application seeks review of the refusal of Development Application No DA2015/0057 for the demolition of existing structures and construction of a detached dual occupancy with front fence.

The application has been assessed against the relevant requirements and does not meet the objectives of the R2 Low Density Residential zone and the requirements of Hurstville Development Control Plan No 1 in that it results in significant privacy impacts and shadow impacts to adjoining developments. It is also considered that the applicant has not investigated alternative designs that would result in a better solar access outcome to adjoining developments.

Three (3) submissions were received in response to notification of the application. The issues raised in the submissions are discussed in the report and found to be valid in relation to privacy and shadow impacts on adjoining developments.

Having regard to the matters of consideration under Section 79C of the Environmental Planning and Assessment Act 1979, the proposal is considered unsatisfactory for the reasons stated in this report and is recommended for refusal.

DETERMINATION

47. Pursuant to the provisions of Section 82A of the Environmental Planning and Assessment Act, as amended, the determination of Development Application No DA2015/0057 refused on 4 May 2016 for the demolition of existing structures and construction of a two storey detached dual occupancy with front fence on Lot 5 DP 230613 and known as 37 Ogilvy Street Oatley be upheld and the application known as REV2016/0018 for the demolition of existing structures and construction of a two storey detached dual occupancy with front fence be refused for the following reasons:

1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the objectives of the R2 Low Density Residential Zone of the Hurstville Local Environmental Plan 2012.
2. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the following clauses of Hurstville Development Control Plan No 1 – LGA Wide:
 - Section 3.5 – Energy Efficiency
 - Section 4.2 – Dual Occupancy Housing
 - Section 4.2.9 – Visual Privacy and Acoustic Amenity
 - Section 4.2.10 – Solar Design, Water and Energy Efficiency
3. Pursuant to Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development will result in unreasonable privacy impacts on the amenity of adjoining properties.

4. Pursuant to Section 79C(1)(b) and (e) of the Environmental Planning and Assessment Act 1979, the proposed development will result in unreasonable solar access impacts on the amenity of adjoining properties and is inconsistent with the planning principle established by the NSW Land and Environment Court for solar access.
5. Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not considered to be in the public interest as it is inconsistent with the provisions of the relevant controls and is likely to set an undesirable precedent with respect to privacy and solar access impacts on similar sites in the locality, when considering the non compliances.