

5 SEPTEMBER 2018

NOTICE OF MEETING

You are advised of the following meeting:

THURSDAY 13 SEPTEMBER 2018.

City of Ryde Local Planning Panel Meeting No. 5/18

Council Chambers, Level 1A, 1 Pope Street, Ryde - 5.00pm

English

If you do not understand this letter, please come to the 1 Pope Street, Ryde (within Top Ryde Shopping Centre), Ryde, to discuss it with Council Staff who will arrange an interpreter service. Or you may ring the Translating & Interpreting Service on 131 450 to ask an interpreter to contact you. Council's phone number is 9952 8222. Council office hours are 8:30am to 5:00pm, Monday to Friday.

Arabic

إذا لم تفهم محتوى هذه الرسالة، يرجى الحضور إلى Ryde، 1 Pope Street (في Top Ryde Shopping Centre)، Ryde، لمناقشتها مع موظفي المجلس الذين سوف يرتبون للاستعانة بمترجم شفهي. أو قد يمكنك الاتصال بخدمة الترجمة التحريرية والشفهية على الرقم 131 450 لتتطلب من المترجم الاتصال بك. رقم هاتف المجلس هو 9952 8222. ساعات عمل المجلس هي 8:30 صباحاً حتى 5:00 مساءً، من الاثنين إلى الجمعة.

Armenian

Եթե դուք չեք հասկանում սույն նամակի բովանդակությունը, խնդրում ենք այցելել 1 Pope Street, Ryde (որը գտնվում է Top Ryde Shopping Centre-ի մեջ), Ryde, քննարկելու այն Քաղաքային Խորհրդի անձնակազմի հետ, ովքեր ձեզ համար կապահովեն թարգմանչական ծառայություն: Կամ կարող եք զանգահարել Թարգմանչական Ծառայություն 131 450 հեռախոսահամարով և խնդրել, որ թարգմանիչը ձեզ զանգահարի: Խորհրդի հեռախոսահամարն է 9952 8222: Խորհրդի աշխատանքային ժամերն են առավոտյան ժամը 8:30-ից մինչև երեկոյան ժամը 5:00, երկուշաբթիից մինչև ուրբաթ:

Chinese

如果你不明白这封信的内容，敬请前往1 Pope Street, Ryde（位于Top Ryde Shopping Centre内），向市政府工作人员咨询，他们会为您安排口译服务。此外，您也可以拨打131 450联络翻译和口译服务，要求口译员与您联系。市政府电话号码为9952 8222。市政府办公时间为周一至周五上午8:30至下午5:00。

Farsi

لطفاً اگر نمی توانید مندرجات این نامه را درک کنید، به نشانی 1 Pope Street، Ryde (در Top Ryde Shopping Centre) مراجعه کنید تا با استفاده از یک مترجم در این باره با یکی از کارکنان شورای شهر گفتگو کنید. یا آنکه می توانید با خدمات ترجمه کتبی و شفاهی به شماره 131 450 تماس گرفته و بخواهید که به یک مترجم ارتباط داده شوید. شماره تماس شورای شهر 9952 8222 و ساعات کاری آن از 8:30 صبح تا 5:00 بعد از ظهر روزهای دوشنبه تا جمعه است.

Italian

Se avete difficoltà a comprendere questa lettera, venite in 1 Pope Street, Ryde (dentro al Top Ryde Shopping Centre), Ryde, per discutere con il personale del Comune che organizzerà un servizio di interpretariato. Potete anche contattare il Servizio di Traduzione e Interpretariato al 131 450 per chiedere a un interprete di contattarvi. Il numero di telefono del Comune è il 9952 8222. Gli orari di ufficio del Comune sono dalle 8.30 alle 17 dal lunedì al venerdì.

Korean

이 서신을 이해할 수 없을 경우, 1 Pope Street, Ryde (Top Ryde Shopping Centre 내)에 오셔서 통역사 서비스를 주선할 시의회 직원과 논의하십시오. 혹은 통번역서비스에 131 450으로 전화하셔서 통역사가 여러분에게 연락하도록 요청하십시오. 시의회의 전화번호는 9952 8222입니다. 시의회 사무실 업무시간은 월요일에서 금요일, 오전 8시 30분에서 오후 5시까지입니다.

Meeting Date: Thursday 13 September 2018
Location: Council Chambers, Level 1A, 1 Pope Street, Ryde
Time: 5.00pm

City of Ryde Local Planning Panel Meetings will be recorded on audio tape for minute-taking purposes as authorised by the Local Government Act 1993. City of Ryde Local Planning Panel Meetings will also be webcast.

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2 RYDE LOCAL PLANNING PANEL CONTROL AND DIRECTION OF DEVELOPMENT APPEALS

Report prepared by: Manager - Development Assessment

Report approved by: Director - City Planning and Environment

File Number: GRP/09/6/12/1 - BP18/845

1. REPORT SUMMARY

This report considers the implications of Section 8.15(4) of the Environmental Planning and Assessment Act which provides that:

“(4) If the determination or decision appealed against under this Division was made by a Sydney district or regional planning panel or a local planning panel, the Council for the area concerned is to be the respondent to the appeal but is subject to the control and direction of the panel in connection with the conduct of the appeal. The council is to give notice of the appeal to the panel.”

This means that for any appeal lodged in respect to an application that has been determined by the Ryde Local Planning Panel or would be required to be determined by the Panel, Council must refer the appeal to the Panel for directions and instructions throughout the appeal process. This situation will result in delays in establishing the position of Council within the time frames that are set by the Land and Environment Court as well as preventing Council from entering into meaningful mediation as required by the Land and Environment Court rules.

To address this issue, the report is recommending that the Panel delegate their functions with regard to the control and direction of all appeals against determinations (or deemed determinations) of the Ryde Local Planning Panel to Council staff.

2. CONTROL AND DIRECTION OF DEVELOPMENT APPEALS

Prior to 1 March 2018, the elected Council or staff acted as, and exercised functions of the consent authority in most development decisions in their local government area. Since 1 March 2018, The Ryde Local Planning Panel has replaced these functions for many types of development.

Applicants still have a right of appeal to the NSW Land and Environment Court in respect of a decision made by the consent authority which includes decisions made by the Ryde Local Planning Panel. An Applicant may also lodge a “deemed refusal” appeal to the Court if the development application is not determined within 40 days.

Section 8.15(4) of the Environmental Planning and Assessment Act states:

ITEM 1 (continued)

“(4) If the determination or decision appealed against under this Division was made by a Sydney district or regional planning panel or a local planning panel, the Council for the area concerned is to be the respondent to the appeal but is subject to the control and direction of the panel in connection with the conduct of the appeal. The council is to give notice of the appeal to the panel.”

This effective means that if Council received an appeal in respect to a DA that has been determined by the LPP or receives a deemed refusal appeal for a DA that was required to be determined by the LPP, that appeal will be subject to the control and direction of the Ryde Local Planning Panel. Such an appeal would be required to be reported to, and instructions obtained from the Panel.

This process would be difficult to introduce given that the Panel members differ from each scheduled meeting as well as the process resulting in significant delays in regard of the time frames set by the Court in respect to the running of the appeal. It would also be potentially contrary to the Court’s requirement as identified in paragraph 47 Practice Note – Class 1 Development Appeals with states:

“The parties are to participate, in good faith, in the conciliation conference (see S34(1A) of the Land and Environment Court Act 1979), including preparing to be able to fully and meaningfully participate, having authority or the ready means of obtaining authority to reach agreement and genuinely endeavoring to reach agreement at the conciliation conference.”

Prior to 1 March 2018, Council staff had the delegation to conduct the appeals with regular updates being reported to the elected Council.

The appropriate way to resolve this inconsistency is for the Ryde Local Planning Panel to delegate its functions of control and direction of development appeals in respect to development for which the Local Planning Panel exercises the functions of the Council as consent authority to appropriate staff. Section 2.20(8) of the Environmental Planning and Assessment Act allows Local Planning Panels to delegate any of their functions to the General Manager or other staff of Council. This section states:

“(8) A local planning panel may delegate any function of the panel under this or any other Act (other than this power of delegations) to the general manager or other staff of the council. Section 381 of the Local Government Act 1993 does not apply to any such delegation.”

Such a delegation does not require a resolution of the Council under Section 381 of the Local Government Act 1993.

Depending on the nature of the appeal different officers are required to give instructions. To cover all circumstances it is recommended that the following Council Officers be granted the delegation to determine any appeals:

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1. The General Manager
2. The General Counsel
3. The Director City Planning and Environment
4. The Manager Development Assessment
5. The Manager Environmental Health and Building
6. The Manager Urban Strategy.

To ensure that the Panel are kept up to date of the progress of any appeals received in respect of matters that are determined by the Panel, it is recommended that a table be sent to the Panel electronically and updated when a new appeal is received or there has been significant progress in respect of an appeal.

3. RECOMMENDATION:

- A. That pursuant to Section 2.20(8) of the Environmental Planning and Assessment Act, the Ryde Local Planning Panel delegate its functions with regard to the control and direction of all development appeals against determinations (or deemed determinations) of the Local Planning Panel as identified in Section 8.15(4) of the Environmental Planning and Assessment Act to the following Council Officers in the context of Council's current delegations concerning such appeals in the Land and Environment Court:
- a. The General Manager
 - b. The General Counsel
 - c. The Director City Planning and Environment
 - d. The Manager Development Assessment
 - e. The Manager Environmental Health and Building
 - f. The Manager Urban Strategy

ATTACHMENTS

There are no attachments for this report.

Report Prepared By:

Sandra Bailey
Manager - Development Assessment

Report Approved By:

Liz Coad
Director - City Planning and Environment

3 CHANGES TO THE CODE OF CONDUCT

Report prepared by: Manager - Development Assessment

Report approved by: Director - City Planning and Environment

File Number: COR2017/221 - BP18/899

1. REPORT

The Minister for Planning has recently amended the Code of Conduct for Local Planning Panel members. The main changes to the Code of Conduct are in Part 4 and include the following:

- A new Section 4.4 has been added which refers to situations that are considered to represent a conflict of interest for panel members.
- A new Section 4.10 has been added which requires all panel members to sign a declaration of interest in relation to each matter on the agenda before or at the beginning of each meeting.

Attached to this report is a copy of the new Code of Conduct as well as a copy of a new form that will be provided to each panel member in respect of the declaration of interest prior to the meeting. The declaration of interest form will be required to be completed prior to the meeting and the declarations and any management measures put in place are required to be published on the Council's website. The Department of Planning and Environment are of the view that this new measure will provide a clear and transparent record of declarations to the community and it is expected to increase the integrity and independence of the panels.

The Department of Planning and Environment have also introduced a new pathway for complaints to be made about local planning panels. The Department's IHAP webpage and the Department's complaint management page have been updated to provide information on the process, including an email address and telephone number that stakeholders can use to make complaints.

When a complaint is made the Department's Customer Service and Complaints Management team will register the complaint and then direct the complaint to the relevant council for resolution. Any code of conduct complaint should be dealt with under the Code of Conduct for Local Planning Panel Members and all other complaints will be dealt with under Council's routine complaint management process. If the complainant is not satisfied with the way Council has handled the matter, the Department can be asked to review it.

Any comments or complaints in relation to the government's policies or procedures that govern the operations of the local planning panels will be managed by the Department. If allegations of corrupt conduct, misconduct or serious waste of

ITEM 2 (continued)

resources are made, the complainant will be encouraged to approach the ICAC or NSW Ombudsman directly and the Department will arrange a referral where required.

12. Recommendation

That the Panel members acknowledge receipt of the revised Code of Conduct for Local Planning Members.

ATTACHMENTS

- 1 Code of Conduct for Local Planning Panel Members
- 2 Declaration of Interest

Report Prepared By:

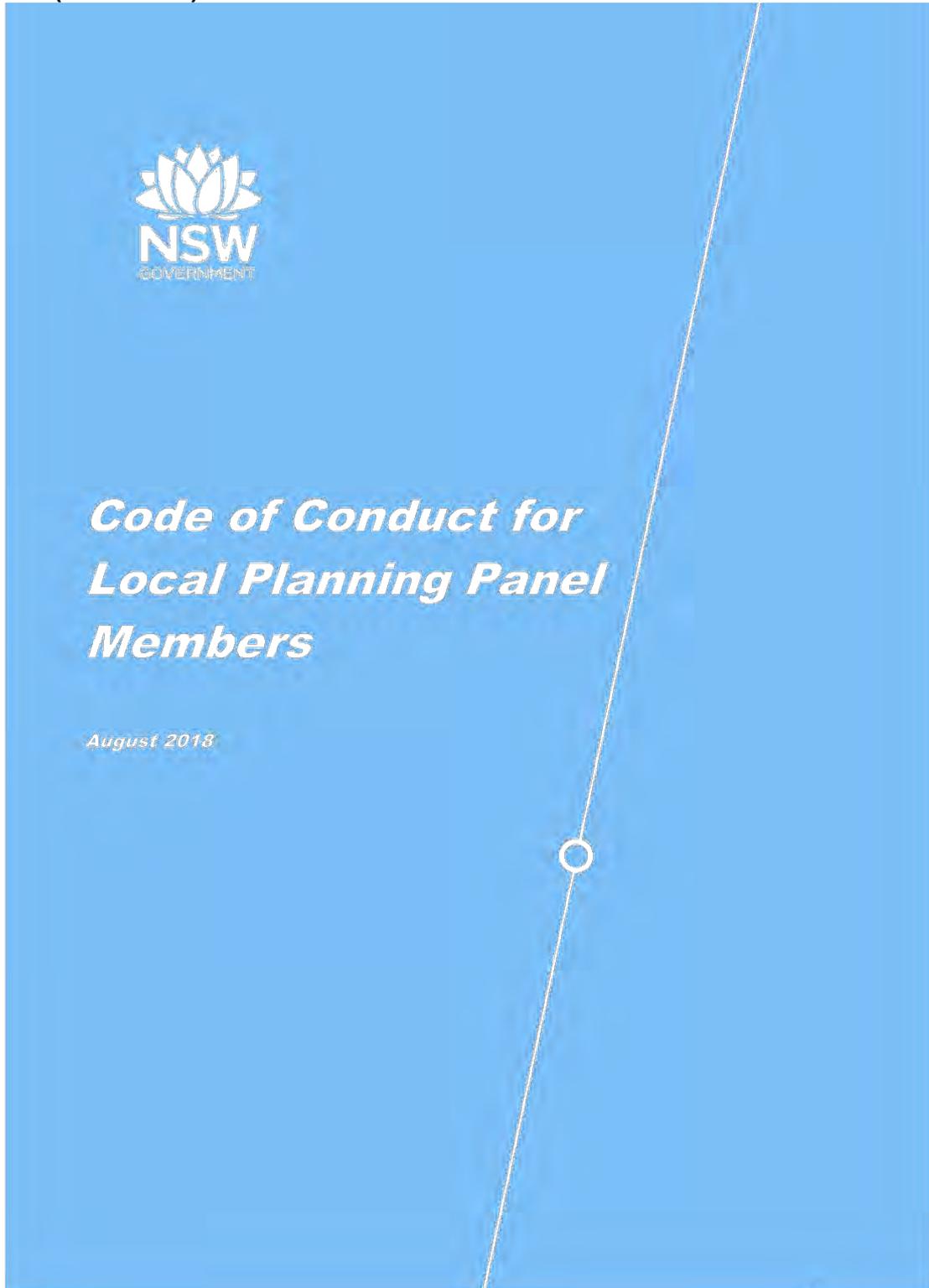
Sandra Bailey
Manager - Development Assessment

Report Approved By:

Liz Coad
Director - City Planning and Environment

ITEM 2 (continued)

ATTACHMENT 1



ITEM 2 (continued)

ATTACHMENT 1

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ATTACHMENT 1

Part 1 – Introduction

This code of conduct has been approved by the Minister for Planning (the Minister) for members of Local Planning Panels (panels) under clause 28 of Schedule 2 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

This code is based on the *Model Code of Conduct for Local Councils in NSW* where it would apply to panel members.

Panels are independent panels appointed by councils. Their main functions are to determine development applications and to provide advice on planning proposals. Panels are not subject to the direction or control of the council, except on matters relating to procedures of the panel or the time within which it is to deal with a matter (unless these directions are inconsistent with a direction of the Minister). Panels are subject to any directions made by the Minister under section 9.1 of the EP&A Act.

Failure by a panel member to comply with this code is the responsibility of councils to address. In cases of serious breaches council has the option to remove a panel member from office (clause 16 of schedule 2 of the EP&A Act).



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Part 2 – Definitions

In the Code the following definitions apply:

EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
LG Act	<i>Local Government Act 1993</i>
code	means the Code of Conduct for Local Planning Panels
conflict of interest	a conflict of interest exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty
councillor	any person elected or appointed to civic office, including the mayor
conduct	includes acts and omissions
Panel	Local Planning Panel
Panel Member	member of a local planning panel, including the chair, independent expert members, community representatives and alternates
personal information	information or an opinion about a person whose identity is apparent, or can be ascertained from the information or opinion



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Part 3 – General Conduct Obligations

General conduct

- 3.1 You must not conduct yourself in carrying out your functions in a manner that:
- a) is likely to bring the council, the panel or other council officials into disrepute
 - b) is contrary to statutory requirements or the council's administrative requirements or applicable policies
 - c) is improper or unethical
 - d) is an abuse of power
 - e) causes, comprises or involves intimidation or verbal abuse
 - f) involves the misuse of your position to obtain a personal benefit
 - g) constitutes harassment or bullying behaviour under this code, or is improperly discriminatory.
- 3.2 You must act lawfully and honestly, and exercise a reasonable degree of care and diligence in carrying out your functions under the EP&A Act, LG ACT, or any other Act.
- 3.3 You should attend all meetings of the panels, which require your attendance, as far as possible, and allow necessary time to prepare for meetings. Where possible you should provide a three-day notice for non-attendance.

Fairness and equity

- 3.4 You must consider issues consistently, promptly and fairly. You must deal with matters in accordance with established procedures, in a non-discriminatory manner.
- 3.5 You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case. You must not take irrelevant matters or circumstances into consideration when making decisions.
- 3.6 An act or omission in good faith, whether or not it involves error, will not constitute a breach of clause 3.4 or 3.5.

Harassment and discrimination

- 3.7 You must not harass or improperly discriminate against others, and you must not support anyone who harasses or improperly discriminates against others. This includes, but is not limited to, harassment or discrimination on the grounds of sex, pregnancy, age, race, marital status, disability, sexuality, political or other affiliation. It also includes discrimination against those who are carers, those who identify as transgender persons, and those who have infectious diseases.
- 3.8 For the purposes of this code, "harassment" is any form of behaviour towards a person that is:
- a) not wanted by the person
 - b) offends, humiliates or intimidates the person, and
 - c) creates a hostile environment.



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Bullying

- 3.9 You must not engage in bullying behaviour.
- 3.10 For the purposes of this code, "bullying behaviour" is any behaviour in which:
- a) a person or a group of people repeatedly behaves unreasonably and
 - b) the behaviour creates a risk to health and safety.
- 3.11 Bullying behaviour may involve, but is not limited to, any of the following types of behaviour:
- a) aggressive or intimidating conduct
 - b) belittling or humiliating comments
 - c) spreading malicious rumours
 - d) teasing, practical jokes or 'initiation ceremonies'
 - e) exclusion from work-related events
 - f) unreasonable work expectations, including too much or too little work, or work below or beyond a worker's skill level
 - g) displaying offensive material
 - h) pressure to behave in an inappropriate manner.
- 3.12 Reasonable management action carried out in a reasonable manner does not constitute bullying behaviour for the purposes of this code. Examples of reasonable management action may include, but are not limited to:
- a) performance management processes
 - b) disciplinary action for misconduct
 - c) informing a worker about unsatisfactory work performance or inappropriate work behaviour
 - d) directing a worker to perform duties in keeping with their job
 - e) maintaining reasonable workplace goals and standards.

Work health and safety

- 3.13 You have statutory duties under the *Work Health and Safety Act 2011* (WH&S Act). You must comply with your duties under the WH&S Act and your responsibilities under any policies or procedures adopted by the council to ensure workplace health and safety. Specifically, you must:
- a) take reasonable care for your own health and safety
 - b) take reasonable care that your acts or omissions do not adversely affect the health and safety of other persons
 - c) comply, so far as you are reasonably able, with any reasonable instruction that is given to ensure compliance with the WH&S Act and any policies or procedures adopted by the council, or panel to ensure workplace health and safety



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- d) cooperate with any reasonable policy or procedure of the council, or panel relating to workplace health or safety that you have been notified of
- e) report accidents, incidents and near misses to the panel chair and take part in any incident investigations.

Land use planning, development assessment and other regulatory functions

- 3.14 You must ensure that land use planning, development assessment and other regulatory decisions are properly made, and that all parties are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the exercise of land use planning, development assessment and other regulatory functions.
- 3.15 In exercising land use planning, development assessment and other regulatory functions, you must ensure that no action, statement or communication between yourself and others conveys any suggestion of willingness to improperly provide concessions or preferential or unduly unfavourable treatment.
- 3.16 You must not approach an applicant or proponent, a consultant representing an applicant or a proponent or an objector.
- 3.17 If you are approached by an applicant or proponent, their consultant or an objector, you must not discuss any application which is either before the panel or will come before the panel at some future time, except during a panel meeting where the application forms part of the agenda and the applicant or proponent, their consultant or an objector has a right to be heard by the panel.
- 3.18 You must disclose in writing to the panel chair any efforts made to lobby you by any persons, including councillors, property developers or real estate agents.
- 3.19 The chair must report these disclosures to the council's general manager. If the approach has been made by the general manager the chair must report these disclosures to the Office of Local Government.
- 3.20 If you are the chair of the panel and you have been approached, then you must disclose this to the general manager. If the approach has been made by the general manager you must report this disclosures to the Office of Local Government.

Note: Reporting of these disclosures must be included in the regular activity reports provided by the council to the Department of Planning and Environment (Planning Panels Secretariat).

Obligations in relation to meetings

- 3.21 You must comply with rulings by the panel chair at panel meetings, or site inspections.
- 3.22 You must not harass the panel chair, council officials or any members of the public present during panel meetings or other proceedings of the council.
- 3.23 You must not engage in conduct that disrupts panel meetings, or that would otherwise be inconsistent with the orderly conduct of meetings.



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Part 4 – Conflicts of Interest

What is a conflict of interest

- 4.1 A conflict of interests includes:
- a) an 'actual' conflict of interests, which is where there is a direct conflict between your duties and responsibilities as a panel member and your private interests or other duties
 - b) a 'potential' conflict of interests, is where your duties and responsibilities as a panel member could conflict in the future with your private interest or other duties
 - c) a 'reasonably perceived' conflict of interests, is where a person could reasonably perceive that your private interests or other duties are likely to improperly influence the performance of your duties as a panel member, whether or not this is in fact the case
 - d) Private interests can be of two types: pecuniary or non-pecuniary.
- 4.2 Panel members must avoid or appropriately manage any conflicts of interests. The onus is on the individual panel member to identify a conflict of interests and take appropriate action.
- 4.3 Any conflicts of interests must be managed to uphold the probity of panel decision making. When considering whether or not a conflict of interests exists, panel members should consider how others would view their situation.
- 4.4 The following situations are considered to represent a conflict of interest for panel members (however this list is not exhaustive):
- a) members who have current or previous involvement in a specific project, or site, that is subject of a DA or a planning proposal that is subsequently reviewed by a panel, for example as a consultant.
 - b) Members, who are ex-councillors, where they have deliberated or voted on, or otherwise considered, a matter, and/or been present when such consideration is undertaken, in their previous role at council and that matter, or a related matter, subsequently comes before the panel. Matters which are considered to be related to a panel matter include, but are not limited to:
 - a planning proposal for the site
 - a voluntary planning agreement for the development or planning proposal
 - a Masterplan for the development or planning proposal
 - a Plan of Management for the development
 - property matters related to the site, including leases, licences, purchase of land, disposal of land and management of lands
 - legal matters related to the site, development or proposal
 - consideration on whether to make a submission to the panel on a DA
 - c) Members, who are ex-council staff, that have:
 - presented, or been present at a council meeting, that considered an assessment report that is to come before the panel, or a related matter as per section 3.19(b)
 - been directly or indirectly involved in the preparation of an assessment report that is to come before the panel
 - approved agenda items for reporting to council meetings, or have been a signatory to correspondence in relation to matters that may come before a panel.



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4.5

Management of conflicts

- 4.6 Where possible, the source of the conflict of interest should be removed. For example, by way of divestment of the interest/issue that is creating the conflict such as the sale of shares, or by severing the connection, for example resignation from a position in another organisation giving rise to the conflict, or ceasing to provide services.
- 4.7 The overriding principle for managing conflicts of interests is early and complete disclosure to the chair. The onus for this disclosure lies with individual panel members.
- 4.8 Where the panel chair considers that an actual, potential or reasonably perceived conflict of interests has not been disclosed or appropriately managed by a panel member, the conflict may be considered by the chair, and wider panel if considered necessary after hearing submissions from the panel member. The chair will make a decision as to how to manage the situation, which can include determining that the panel member should step aside from the panel for that matter, and record reasons for that decision. In making the decision, the chair is to have regard to upholding the reputation of the planning panel. If a panel member fails to step aside where requested their comments or vote is not to be considered in the determination of the matter.
- 4.9 When the conflict of interest arises as a result of an interest of the chair, an alternate chair or the panel is to assume the chair's leadership role in the management of the conflict process.
- 4.10 All panel members must sign a declaration of interest in relation to each matter on the agenda before or at the beginning of each meeting. These declarations and any management measures put in place are to be published on the relevant council's website as soon as practicable.

What is a pecuniary interest?

- 4.11 A pecuniary interest is an interest that you have in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to you or a person.
- 4.12 You have a pecuniary interest if the interest is:
- yours,
 - your spouse's, your de facto partner's or your relative's, or
 - your partner's or employer's, or is the interest of a company or other body of which you, or your nominee, your partner or your employer, is a member.
- 4.13 You do not have a pecuniary interest:
- if you are unaware of the relevant pecuniary interest of your spouse, de facto partner, relative, partner, employer or company or other body,
 - just because you are employed by a council, statutory body or employed by the Crown, or
 - just because you are a member of or a delegate of a council, company or other body that has a pecuniary interest in the matter, so long as you do not have any beneficial interest in shares of the company or body (clause 27, schedule 2 of the EP&A Act).



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4.14 For the purposes of this:

Your "relative" is any of the following:

- a) your parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
- b) your spouse's or de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
- c) the spouse or de facto partner of a person referred to in paragraphs (i) and (ii).

"de facto partner" has the same meaning as defined in section 21C of the *Interpretation Act 1987*.

4.15 If you have a pecuniary interest, you:

- a) must prepare and submit written returns of interests in accordance with clause 4.15, and
- b) must disclose pecuniary interests in accordance with clause 4.22.

4.16 You must as soon as practicable disclose in writing to the panel chair (or if you are the panel chair, to the general manager) the nature of any pecuniary interest you have in any panel matter with which the panel chair is dealing.

4.17 The panel chair, or the general manager must, on receiving a disclosure from a designated person, deal with the matter to which the disclosure relates or refer it to another person to deal with.

Disclosure of interests in written returns

4.18 You must make and lodge with the panel chair a return in the form set out in schedule 2 to this code, disclosing your interests as specified in schedule 1 to this code within one month or prior to your first panel meeting, whichever occurs earlier after:

- a) becoming a panel member, or
- b) 30 June of each year, and
- c) if you become aware of an interest you are required to disclose under schedule 1 that has not been previously disclosed in a return lodged under paragraphs (a) or (b).

4.19 You need not make and lodge a return under clause 4.15, paragraphs (a) and (b) if:

- a) you have made and lodged a return under that clause in the preceding 3 months, or
- b) you have ceased to be a panel member in the preceding 3 months.

4.20 You must not make and lodge a return that you know or ought reasonably to know is false or misleading in a material particular.

4.21 The panel chair must provide returns to the general manager who must keep a register of returns.

4.22 Returns required to be lodged with the panel chair under clause 4.15(a) and (b) must be tabled at the first meeting of the panel after the last day the return is required to be lodged.

4.23 Returns required to be lodged with the panel chair under clause 4.15(c) must be tabled at a panel meeting as soon as practicable after the return is lodged.



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- 4.24 The general manager must cause the information contained in returns made and lodged by panel members and the panel chair under clause 4.15, other than information disclosing the address of the panel member's principal place of residence, to be published on the website used by the panel as soon as practicable after the returns are lodged, and the information must be kept up to date.

Disclosure of pecuniary interests at meetings

- 4.25 If you have a pecuniary interest in any matter with which the panel is concerned, and you are present at a meeting of the panel at which the matter is being considered, you must disclose the nature of the interest to the meeting as soon as practicable.
- 4.26 You must not be present at, or in sight of, the meeting of the panel:
- a) at any time during which the matter is being considered or discussed by the panel, or
 - b) at any time during which the panel the matter, or making a recommendation on a planning proposal.
- 4.27 A disclosure made at a meeting of a panel must be recorded in the meeting record.
- 4.28 A general notice may be given to the panel chair in writing by a panel member to the effect that the panel member, or the member's spouse, de facto partner or relative, is:
- a) a member of, or in the employment of, a specified company or other body, or
 - b) a partner of, or in the employment of, a specified person.
- 4.29 Such a notice is, unless and until the notice is withdrawn, sufficient disclosure of the panel member's interest in a matter relating to the specified company, body or person that may be the subject of consideration by the panel after the date of the notice.
- 4.30 You do not breach clause 4.22 or 4.23 if you did not know, and could not reasonably be expected to have known, that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.



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Part 5 – Non-Pecuniary Conflicts of Interest

What is a non-pecuniary conflict of interest?

- 5.1 Non-pecuniary interests are private or personal interests you have that do not amount to a pecuniary interest as defined in clause 4.8 of this code. These commonly arise out of family or personal relationships, or out of involvement in sporting, social or other cultural groups and associations, and may include an interest of a financial nature.
- 5.2 A non-pecuniary conflict of interest exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty.
- 5.3 Non-pecuniary conflicts of interest must be identified and appropriately managed to uphold community confidence in the probity of the panel decision-making. The onus is on you to identify any non-pecuniary conflict of interest you may have in matters that you deal with, to disclose the interest fully and in writing, and to take appropriate action to manage the conflict in favour of your public duty.
- 5.4 When considering whether or not you have a non-pecuniary conflict of interest, it is always important to think about how others would view your situation.

Managing non-pecuniary conflicts of interest

- 5.5 Where you have a non-pecuniary conflict of interest for the purposes of clause 5.2, you must disclose the relevant private interest fully and in writing as soon as practicable.
- 5.6 If a disclosure is made at a panel meeting, both the disclosure and the nature of the interest must be recorded in the meeting record. This disclosure constitutes disclosure in writing for the purposes of clause 5.5.
- 5.7 How you manage a non-pecuniary conflict of interest will depend on whether or not it is significant.
- 5.8 As a general rule, a non-pecuniary conflict of interest will be significant where it does not involve a pecuniary interest for the purposes of clause 4.8, but it involves:
 - a) a relationship between a panel member and another person that is particularly close, for example, a current or former spouse or de facto partner, a relative for the purposes of clause 4.11 or another person from the panel member's extended family that the panel member has a close personal relationship with, or another person living in the same household
 - b) other relationships that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship
 - c) an affiliation between the panel member and an organisation, sporting body, club, corporation or association that is particularly strong, including, but not limited to, active participation in its management or administration and other activities
 - d) a financial interest that is not a pecuniary interest for the purposes of clause 4.8
 - e) the conferral or loss of a personal benefit other than one conferred or lost as a member of the community or a broader class of people affected by a decision.



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- 5.9 If you have a significant non-pecuniary conflict of interest, you must manage it by managing the conflict of interest as if you had a pecuniary interest in the matter by complying with clause 4.15-4.17 and 4.22-23.
- 5.10 If you determine that you have a non-pecuniary conflict of interest in a matter that is not significant and does not require further action, when disclosing the interest, you must also explain why you consider that the non-pecuniary conflict of interest is not significant and does not require further action in the circumstances.

Note: Loss of quorum as a result of compliance with this Part

- 5.11 A quorum for a determination meeting of a panel is a majority of its members, including the chair, i.e. a total of three members.
- 5.12 In accordance with the operational procedures for panels a determination meeting is to be deferred if a quorum is not present.
- 5.13 These procedures also provide that where conflicts of interest are known before the meeting, alternate members will be used to ensure there is a quorum.
- 5.14 You must ensure that any employment or business, or other roles or activities you engage in will not:
- conflict with, impair or otherwise prevent the full exercise of your official duties
 - involve using confidential information or resources obtained through your work with the panel
 - require you to work while on panel duty
 - discredit or disadvantage the panel or the council
 - pose, due to fatigue, a risk to your health or safety, or to the health and safety of others.

Personal dealings with council to which you have been appointed as a panel member

- 5.15 You may have reason to deal with your council in your professional capacity (for example, acting as a consultant on behalf of a developer) or personal capacity (for example, as a ratepayer, recipient of a council service or applicant for a development consent granted by council). You must not expect or request preferential treatment in relation to any matter in which you have a private interest because of your position. You must avoid any action that could lead members of the public to believe that you are seeking preferential treatment.
- 5.16 You must undertake any professional or personal dealings you have with the council in a manner that is consistent with the way other members of the community deal with the council. In particular, you must not:
- access council information for professional or personal purposes
 - undertake professional or personal dealings with the council during work time, or
 - approach council staff in staff only areas to discuss your professional or personal dealings with the council.
- 5.17 You must also ensure that you disclose and appropriately manage any conflict of interest you may have in any matter in accordance with the requirements of this code.



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Part 6 – Personal Benefit

Gifts and benefits

- 6.1 You must avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to secure favourable treatment from you.
- 6.2 You must take all reasonable steps to ensure that your immediate family members do not receive gifts or benefits that give rise to the appearance of being an attempt to secure favourable treatment. Immediate family members include parents, spouses or de facto partners, children and siblings.

How are offers of gifts and benefits to be dealt with?

- 6.3 You must not:
- a) seek or accept a bribe or other improper inducement
 - b) seek gifts or benefits of any kind
 - c) accept any gift or benefit of any kind.
- 6.4 Where you are offered or receive a gift or benefit, you must disclose this promptly to the panel chair and the general manager in writing. If you are the chair of the panel you must make the disclosure to the general manger. The recipient and general manager must ensure that, at a minimum, the following details are recorded in the panel's gift register:
- a) whether the gift was accepted or refused
 - b) the nature of the gift
 - c) the estimated monetary value of the gift
 - d) the name of the person who offered the gift, and
 - e) the date on which the gift was offered or received.
- 6.5 Where you receive a gift or benefit of value that cannot reasonably be refused or returned, the gift or benefit must be surrendered to the general manager.

Improper and undue influence

- 6.6 You must not use your position to influence other panel members or council officials in the performance of their public or professional duties to obtain a private benefit for yourself or for somebody else.
- 6.7 You must not take advantage (or seek to take advantage) of your status or position, or of functions you perform, in order to obtain a private benefit for yourself or for any other person or body.



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ATTACHMENT 1

Part 7 – Relationships and Interactions

Interactions with councillors and council staff

- 7.1 You may only approach and liaise with council staff nominated by the general manager to assist the panel to obtain information and clarify matters relating to its duties, responsibilities and functions and matters before it.
- 7.2 You may not direct or pressure council staff in the performance of their work, or recommendations they should make. Any direction to staff can only be given by the general manager.
- 7.3 You must not approach a councillor, or if approached by a councillor must not discuss any application that is either before the panel or will come before the panel at some future time, except during a panel meeting where the application forms part of the agenda and the councillor has a right to be heard by the panel at the meeting.
- 7.4 Panel members must:
 - a) give their attention to the business of the panel while on duty
 - b) ensure that their work is carried out efficiently, economically and effectively
 - c) carry out lawful directions given by any person having authority to give such directions.



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ATTACHMENT 1

Part 8 – Access to Information and Council Resources

- 8.1 The general manager is responsible for ensuring that panel members can access information necessary for the performance of their official functions, including the reporting of development applications to the panel in a timely manner or as requested by the panel.

Panel members to properly examine and consider information

- 8.2 Panel members must ensure that they to act honestly and exercise a reasonable degree of care and diligence by properly examining and considering all the information provided to them relating to matters that they are required to make a decision on.

Use of certain council information

- 8.3 In regard to information obtained in your capacity as a panel member, you must:
- a) only access council information needed for panel business
 - b) not use that council information for private purposes
 - c) not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for yourself, or any other person or body, from any information to which you have access by virtue of your panel membership
 - d) only release council information in accordance with established council policies and procedures and in compliance with relevant legislation.

Use and security of confidential information

- 8.4 You must maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible.
- 8.5 In addition to your general obligations relating to the use of council information, you must:
- a) only access confidential information that you have been authorised to access and only do so for the purposes of exercising your official functions
 - b) protect confidential information
 - c) only release confidential information if you have authority to do so
 - d) only use confidential information for the purpose for which it is intended to be used
 - e) not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person
 - f) not use confidential information with the intention to cause harm or detriment to the council or any other person or body
 - g) not disclose any information discussed during a confidential forum.



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Personal information

- 8.6 When dealing with personal information you must comply with:
- a) the *Privacy and Personal Information Protection Act 1998*
 - b) the *Health Records and Information Privacy Act 2002*
 - c) the Information Protection Principles and Health Privacy Principles
 - d) the council's privacy management plan
 - e) the Privacy Code of Practice for Local Government.

Use of council resources

- 8.7 You must use council resources ethically, effectively, efficiently and carefully in the course of your official duties, and must not use them for private purposes unless this use is lawfully authorised and proper payment is made where appropriate.
- 8.8 You must be scrupulous in your use of council property, including intellectual property, official services and facilities, and must not permit their misuse by any other person or body.
- 8.9 You must avoid any action or situation that could create the appearance that council property, official services or public facilities are being improperly used for your benefit or the benefit of any other person or body.
- 8.10 You must not use the council letterhead, council crests or other information that could give the appearance it is official council material for.
- 8.11 You must not convert any property of the council to your own use unless properly authorised.

Internet access and use of social media

- 8.12 You must not use council's computer resources or other mobile devices to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature, or that could otherwise lead to criminal penalty or civil liability and/or damage the council's reputation.
- 8.13 You must not use social media to post comments, photos, sound recordings or other information that:
- a) compromises your capacity to perform your official duties in an unbiased manner
 - b) has the potential to have a negative impact on your working relationships within the council or with external parties
 - c) is offensive, humiliating, threatening or intimidating to anyone
 - d) has the capacity to damage the council's reputation or contains content about the council that may be misleading or deceptive
 - e) divulges confidential council information
 - f) breaches the privacy of other panel members
 - g) contains allegations of suspected breaches of this code or information about the consideration of a matter under this code or the council's code of conduct, or



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- h) could be perceived to be an official comment on behalf of the panel or council where you have not been authorised to make such comment.

Council record keeping

- 8.14 All information received in your official capacity is a council record and must be managed in accordance with the council's approved record management practices and policies.
- 8.15 All information stored in either soft or hard copy on council supplied resources is deemed to be related to the business of the council and can be used by the council as a council record regardless of whether the original intention was to create the information for personal purposes.

Panel member access to council buildings

- 8.16 Panel members are entitled to have access to any room designated by the general manager for the use of the panel and public areas of the council's buildings during normal business hours and for meetings.



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Part 9 – Maintaining the Integrity of this Code

- 9.1 You must not conduct yourself in a manner that is likely to undermine confidence in the integrity of this code or its administration.

Complaints made for an improper purpose

- 9.2 You must not make a complaint or cause a complaint to be made under this code for an improper purpose.
- 9.3 For the purposes of clause 9.2, a complaint is made for an improper purpose where it is trivial, frivolous, vexatious or not made in good faith, or where it otherwise lacks merit and has been made substantially for one or more of the following purposes:
- a) to intimidate or harass another council official
 - b) to damage another's reputation
 - c) to obtain a political advantage
 - d) to influence a panel member or council official in the exercise of their official functions or to prevent or disrupt the exercise of those functions
 - e) to influence the council in the exercise of its functions or to prevent or disrupt the exercise of those functions
 - f) to avoid disciplinary action under this code
 - g) to take reprisal action against a person for making a complaint under this code
 - h) to take reprisal action against a person for exercising a function prescribed under Part 10 of this code
 - i) to prevent or disrupt the effective administration of this code.

Detrimental action

- 9.4 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for a complaint they have made under this code.
- 9.5 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for any function they have exercised under this code.
- 9.6 For the purposes of clause 9.4 and 9.5, a detrimental action is an action causing, comprising or involving any of the following:
- a) injury, damage or loss
 - b) intimidation or harassment
 - c) discrimination, disadvantage or adverse treatment in relation to employment
 - d) dismissal from, or prejudice in, employment
 - e) disciplinary proceedings.



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Compliance with requirements under this code

- 9.7 You must not engage in conduct that is calculated to impede or disrupt the consideration of a matter under this code.
- 9.8 You must comply with a reasonable and lawful request made by a person exercising a function under Part 10. A failure to make a written or oral submission invited under Part 10 will not constitute a breach of this clause.

Disclosure of information about the consideration of a matter under this code

- 9.9 All allegations of breaches of this code must be dealt with under and in accordance with Part 10.
- 9.10 You must not allege breaches of this code other than by way of a complaint made or initiated under Part 10.
- 9.11 You must not make allegations about, or disclose information about, suspected breaches of this code panel meetings, whether open to the public or not, or in any other forum, whether public or not.
- 9.12 You must not disclose information about a complaint you have made under this code or a matter being considered under this code except for the purposes of seeking legal advice, unless the disclosure is otherwise permitted under Part 10.



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ATTACHMENT 1

Part 10 – Breaches of this Code

What is a code of conduct complaint?

- 10.1 For the purpose of this code, a code of conduct complaint is a complaint that alleges conduct on the part of a panel member in connection with their role as a panel member or the exercise of their functions as a panel member that would constitute a breach of the standards of conduct prescribed under this code of conduct.
- 10.2 The following are not "code of conduct complaints" for the purposes of this code:
- a) complaints about the standard or level of service provided by the panel or a panel member
 - b) complaints about the merits of a decision made by the panel or a panel member or the exercise of a discretion by the panel or a panel member
 - c) complaints about the policies or procedures governing the operations of the panel or of the council
 - d) complaints about the exercise in good faith by the panel or a panel member of their functions, whether or not involving error.
- 10.3 Only code of conduct complaints are to be dealt with under this code. Complaints that are not a code of conduct complaint for the purposes of clause 10.1, are to be dealt with under the council's routine complaints management processes.

When must a code of conduct complaint be made?

- 10.4 A code of conduct complaint must be made within 3 months of the alleged conduct occurring or within 3 months of the complainant becoming aware of the alleged conduct.
- 10.5 A complaint made after 3 months may only be accepted if the general manager or their delegate is satisfied that there are compelling grounds for the matter to be dealt with under this code.

How may a code of conduct complaint about a panel member be made?

- 10.6 All code of conduct complaints about panel members are to be made to the general manager in writing. This clause does not operate to prevent a person from making a complaint to an external agency.
- 10.7 Where a code of conduct complaint about a panel member cannot be made in writing, the complaint must be confirmed with the complainant in writing as soon as possible after the receipt of the complaint.
- 10.8 Notwithstanding clause 10.6 and 10.7, where the general manager becomes aware of a possible breach by a panel member of this code, he or she may initiate the process for the consideration of the matter without a written complaint.

Delegation by general managers of their functions under this Part

- 10.9 A general manager may delegate his or her functions under this Part to a member of staff of the council or to a person or persons external to the council other than a state government agency. References in this Part to the general manager are also to be taken to be references to their delegates.



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ATTACHMENT 1

What complaints may be declined at the outset?

- 10.10 Without limiting any other provision in this code, the general manager may decline to deal with a complaint under this code where he or she is satisfied that the complaint:
- a) is not a code of conduct complaint for the purposes of clause 10.1, or
 - b) subject to clause 10.5, is not made within 3 months of the alleged conduct occurring or the complainant becoming aware of the alleged conduct, or
 - c) is trivial, frivolous, vexatious or not made in good faith, or
 - d) relates to a matter the substance of which has previously been considered and addressed by the council and does not warrant further action, or
 - e) is not made in a way that would allow the alleged conduct and any alleged breaches of this code to be readily identified.

How are code of conduct complaints about panel members to be dealt with?

- 10.11 The general manager is responsible for the management of code of conduct complaints about panel members and for determining the outcome of such complaints.
- 10.12 The general manager may decide to take no action in relation to a code of conduct complaint about a panel member on the grounds that he or she considers that no action is warranted in relation to the complaint.
- 10.13 Where the general manager decides to take no action in relation to a code of conduct complaint about a panel member, the general manager must give the complainant reasons in writing for their decision and this shall finalise the consideration of the matter.
- 10.14 Where the general manager considers it to be practicable and appropriate to do so, the general manager may seek to resolve code of conduct complaints about panel members, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or a voluntary apology. The resolution of a code of conduct complaint under this clause is not to be taken as a determination that there has been a breach of this code.
- 10.15 Where the general manager resolves a code of conduct complaint under clause 10.14 to the general manager's satisfaction, the general manager must notify the complainant in writing of the steps taken to resolve the complaint and this shall finalise the consideration of the matter under this code of conduct.
- 10.16 Sanctions for breaches of the code of conduct by panel members depend on the severity, scale and importance of the breach and may include one or more of the following:
- a) censure
 - b) requiring the person to apologise to any person or organisation adversely affected by the breach in such a time and form specified by the general manager
 - c) prosecution for any breach of the law
 - d) removing the person from membership of the panel.



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10.17 Prior to imposing a sanction against a panel member under clause 10.16, the general manager or any person making enquiries on behalf of the general manager must comply with the requirements of procedural fairness. In particular:

- a) the substance of the allegation (including the relevant provision/s of this code that the alleged conduct is in breach of) must be put to the person who is the subject of the allegation, and
- b) the person must be given an opportunity to respond to the allegation, and
- c) the general manager or their delegate must consider the person's response in deciding whether to impose a sanction under clause 10.16.

Complaints about the consideration of matters under this Part

10.18 Complaints about the consideration of a code of conduct complaint by the general manager or his or her delegate under this Part, may be made in writing to the Office of Local Government or the Department of Planning and Environment.



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ATTACHMENT 1

Schedule 1: Disclosures of Interest

Part 1: Preliminary

Definitions

1. For the purposes of the schedules to this code, the following definitions apply:

address means:

- a) in relation to a person other than a corporation, the last residential or business address of the person known to the panel member disclosing the address, or
- b) in relation to a corporation, the address of the registered office of the corporation in New South Wales or, if there is no such office, the address of the principal office of the corporation in the place where it is registered, or
- c) in relation to any real property, the street address of the property.

de facto partner has the same meaning as defined in section 21C of the *Interpretation Act 1987*.

disposition of property means a conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, including the following:

- a) the allotment of shares in a company
- b) the creation of a trust in respect of property
- c) the grant or creation of a lease, mortgage, charge, easement, licence, power, partnership or interest in respect of property
- d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of a debt, contract or chose in action, or of an interest in respect of property
- e) the exercise by a person of a general power of appointment over property in favour of another person
- f) a transaction entered into by a person who intends by the transaction to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of another person.

gift means a disposition of property made otherwise than by will (whether or not by instrument in writing) without consideration, or with inadequate consideration, in money or money's worth passing from the person to whom the disposition was made to the person who made the disposition, but does not include a financial or other contribution to travel.

interest means:

- a) in relation to property, an estate, interest, right or power, at law or in equity, in or over the property, or
- b) in relation to a corporation, a relevant interest (within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth) in securities issued or made available by the corporation.

listed company means a company that is listed within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth.

occupation includes trade, profession and vocation.



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professional or business association means an incorporated or unincorporated body or organisation having as one of its objects or activities the promotion of the economic interests of its members in any occupation.

property includes money.

return date means:

- a) in the case of a return made under clause 4.15(a), the date on which a person became a panel member
- b) in the case of a return made under clause 4.15(b), 30 June of the year in which the return is made
- c) in the case of a return made under clause 4.15(c), the date on which the panel member became aware of the interest to be disclosed.

relative includes any of the following:

- a) a person's spouse or de facto partner
- b) a person's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
- c) a person's spouse's or de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
- d) the spouse or de facto partner of a person referred to in paragraphs (b) and (c).

travel includes accommodation incidental to a journey.

Matters relating to the interests that must be included in returns

- 2. Interests etc. outside New South Wales: A reference in this schedule or in schedule 2 to a disclosure concerning a corporation or other thing includes any reference to a disclosure concerning a corporation registered, or other thing arising or received, outside New South Wales.
- 3. References to interests in real property: A reference in this schedule or in schedule 2 to real property in which a panel member has an interest includes a reference to any real property situated in Australia in which the panel member person has an interest.
- 4. Gifts, loans etc. from related corporations: For the purposes of this schedule and schedule 2, gifts or contributions to travel given, loans made, or goods or services supplied, to a panel member by two or more corporations that are related to each other for the purposes of section 50 of the *Corporations Act 2001* of the Commonwealth are all given, made or supplied by a single corporation.



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Part 2: Pecuniary interests to be disclosed in returns

Real property

5. When making a return under clause 4.15 of this code you must disclose:
 - a) the street address of each parcel of real property in which you had an interest on the return date, and
 - b) the street address of each parcel of real property in which you had an interest in the period since 30 June of the previous financial year, and
 - c) the nature of the interest.
6. An interest in a parcel of real property need not be disclosed in a return if the person making the return had the interest only:
 - a) as executor of the will, or administrator of the estate, of a deceased person and not as a beneficiary under the will or intestacy, or
 - b) as a trustee, if the interest was acquired in the ordinary course of an occupation not related to your duties as the holder of a position required to make a return.
7. An interest in a parcel of real property need not be disclosed in a return if you ceased to hold the interest prior to becoming a panel member.
8. For the purposes of clause 5 of this schedule, "interest" includes an option to purchase.

Gifts

9. When making a return under clause 4.15 of this code you must disclose:
 - a) a description of each gift received in the period since 30 June of the previous financial year, and
 - b) the name and address of the donor of each of the gifts.

Contributions to travel

10. When making a return under clause 4.15 of this code you must disclose:
 - a) the name and address of each person who made any financial or other contribution to the expenses of any travel undertaken by you in the period since 30 June of the previous financial year, and
 - b) the dates on which the travel was undertaken, and
 - c) the names of the states and territories, and of the overseas countries, in which the travel was undertaken.
11. A financial or other contribution to any travel need not be disclosed under this clause if it:
 - a) was made from public funds (including a contribution arising from travel on free passes issued under an Act or from travel in government or council vehicles), or
 - b) was made by a relative of the traveller, or
 - c) was made in the ordinary course of an occupation of the traveller that is not related to his or her functions as the holder of a position requiring the making of a return, or



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- d) did not exceed \$500, unless it was among gifts totalling more than \$500 made by the same person during a 12-month period or less, or
 - e) was a political donation disclosed, or required to be disclosed, under Part 6 of the *Election Funding Expenditure and Disclosures Act 1981*, or
 - f) was made by a political party of which the traveller was a member and the travel was undertaken for the purpose of political activity of the party in New South Wales, or to enable the traveller to represent the party within Australia, or
 - g) subject to paragraph (d) it was received prior to the person becoming a panel member.
12. For the purposes of clause 13 of this schedule, the amount of a contribution (other than a financial contribution) is an amount equal to the value of the contribution.

Interests and positions in corporations

13. When making a return under clause 4.15 of this code you must disclose:
- a) the name and address of each corporation in which you had an interest or held a position (whether remunerated or not) on the return date, and
 - b) the name and address of each corporation in which you had an interest or held a position in the period since 30 June of the previous financial year, and
 - c) the nature of the interest, or the position held, in each of the corporations, and
 - d) a description of the principal objects (if any) of each of the corporations, except in the case of a listed company.
14. An interest in, or a position held in, a corporation need not be disclosed if the corporation is:
- a) formed for the purpose of providing recreation or amusement, or for promoting commerce, industry, art, science, religion or charity, or for any other community purpose, and
 - b) required to apply its profits or other income in promoting its objects, and
 - c) prohibited from paying any dividend to its members.
15. An interest in a corporation need not be disclosed if the interest is a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company.
16. An interest or a position in a corporation need not be disclosed if the person ceased to hold the interest or position prior to becoming a panel member.

Positions in trade unions and professional or business associations

17. When making a return under clause 4.15 of the code you must disclose:
- a) the name of each trade union, and of each professional or business association, in which you held any position (whether remunerated or not) on the return date, and
 - b) the name of each trade union, and of each professional or business association, in which you held any position (whether remunerated or not) in the period since 30 June of the previous financial year, and



ITEM 2 (continued)

ATTACHMENT 1

c) a description of the position held in each of the unions and associations.

18. A position held in a trade union or a professional or business association need not be disclosed if the person ceased to hold the position prior to becoming a panel member.

Dispositions of real property

19. When making a return under clause 4.15 of this code you must disclose particulars of each disposition of real property by you (including the street address of the affected property) in the period since 30 June of the previous financial year, under which he or she wholly or partly retained the use and benefit of the property or the right to re-acquire the property.
20. When making a return under clause 4.15 of this code you must disclose particulars of each disposition of real property to another person (including the street address of the affected property) in the period since 30 June of the previous financial year, that is made under arrangements with, but is not made by, the person making the return, being a disposition under which the person making the return obtained wholly or partly the use of the property.
21. A disposition of real property need not be disclosed if it was made prior to you becoming a panel member.

Sources of income

22. When making a return under clause 4.15 of this code you must disclose:
- a) each source of income that the you reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June, and
- b) each source of income received by you in the period since 30 June of the previous financial year.
23. A reference in clause 26 of this schedule to each source of income received, or reasonably expected to be received, by you is a reference to:
- a) in relation to income from an occupation of the person:
- (i) a description of the occupation, and
- (ii) if the person is employed or the holder of an office, the name and address of his or her employer, or a description of the office, and
- (iii) if the person has entered into a partnership with other persons, the name (if any) under which the partnership is conducted, or
- b) in relation to income from a trust, the name and address of the settlor and the trustee, or
- c) in relation to any other income, a description sufficient to identify the person from whom, or the circumstances in which, the income was, or is reasonably expected to be, received.
24. The source of any income need not be disclosed by you in a return if the amount of the income received, or reasonably expected to be received, by the person from that source did not exceed \$1000, or is not reasonably expected to exceed \$1000, as the case may be.
25. The source of any income received by the person that they ceased to receive prior to becoming a panel member need not be disclosed.



ITEM 2 (continued)

ATTACHMENT 1

Debts

26. When making a return under clause 4.15 of this code you must disclose the name and address of each person to whom you were liable to pay any debt:
- a) on the return date, and
 - b) at any time in the period since 30 June of the previous financial year.
27. A liability to pay a debt must be disclosed by you in a return made under clause 4.15 whether or not the amount, or any part of the amount, to be paid was due and payable on the return date or at any time in the period since 30 June of the previous financial year, as the case may be.
28. A liability to pay a debt need not be disclosed by you in a return if:
- a) the amount to be paid did not exceed \$1000 on the return date or in the period since 30 June of the previous financial year, as the case may be, unless:
 - (i) the debt was one of two or more debts that you were liable to pay to one person on the return date, or at any time in the period since 30 June of the previous financial year, as the case may be, and
 - (ii) the amounts to be paid exceeded, in the aggregate, \$1000, or
 - b) you were liable to pay the debt to a relative, or
 - c) in the case of a debt arising from a loan of money you were liable to pay the debt to an authorised deposit-taking institution or other person whose ordinary business includes the lending of money, and the loan was made in the ordinary course of business of the lender, or
 - d) in the case of a debt arising from the supply of goods or services:
 - (i) the goods or services were supplied in the period of 12 months immediately preceding the return date, or were supplied in the period since 30 June of the previous financial year, as the case may be, or
 - (ii) the goods or services were supplied in the ordinary course of any occupation of you that is not related to your duties as the holder of a position required to make a return, or
 - e) subject to paragraph (a), the debt was discharged prior to you becoming a panel member.

Discretionary disclosures

29. You may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision of this Schedule.



ITEM 2 (continued)

ATTACHMENT 1

Schedule 2: Form of Return

Disclosures return

1. The pecuniary interests and other matters to be disclosed in this return are prescribed by Schedule 1 of the Code of Conduct for Local Planning Panels in NSW (the Code).
2. If this is the first return you have been required to lodge do not complete Parts C, D of the return. All other parts of the return should be completed with appropriate information based on your circumstances at the return date, that is, the date on which you became a panel member.
3. If you have previously lodged a return with the general manager and you are completing this return for the purposes of disclosing a new interest that was not disclosed in the last return you lodged with the general manager, you must complete all parts of the return with appropriate information for the period from 30 June of the previous financial year to the return date which is the date you became aware of the new interest to be disclosed in your updated return.
4. If you have previously lodged a return with the general manager and are submitting a new return for the new financial year, you must complete all parts of the return with appropriate information for the 12-month period commencing on 30 June of the previous year to 30 June this year.
5. This form must be completed using block letters or typed.
6. If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.
7. If there are no pecuniary interests or other matters of the kind required to be disclosed under a heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.
8. ^{*)} means delete whichever is inapplicable.

Important information

This information is being collected for the purpose of complying with clause 4.15 of the Code.

You must not lodge a return that you know or ought reasonably to know is false or misleading in a material particular (see clause 4.17 of the Code). Complaints about breaches of these requirements are to be referred to the general manager and may result in disciplinary action by the council.

The information collected on this form will be kept by the general manager in a register of returns. The general manager is required to table all returns at a council meeting.

Information in this return other than information about your principal place of residence will be published on the council's website.

You have an obligation to keep the information contained in this return up to date. If you become aware of a new interest that must be disclosed in this return, or an interest that you have previously failed to disclose, you must submit an updated return within three months of becoming aware of the previously undisclosed interest.



ITEM 2 (continued)

ATTACHMENT 1

Disclosure of pecuniary interests and other matters by [full name]

*as at [return date]

*in respect of the period from [date] to [date]

[person's signature]

[date]

A. Real Property

Street address of each parcel of real property in which I had an interest *at the return date/*at any time since 30 June	Nature of interest

B. Sources of income

1 *Sources of income I reasonably expect to receive from an occupation in the period commencing on the first day after the return date and ending on the following 30 June:

*Sources of income I received from an occupation at any time since 30 June:

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)

2 *Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June:

*Sources of income I received from a trust since 30 June:

Name and address of settlor	Name and address of trustee

3 *Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June:

*Sources of other income I received at any time since 30 June:

[Include description sufficient to identify the person from whom, or the circumstances in which, that income was received]

C. Gifts

Description of each gift I received at any time since 30 June	Name and address of donor



ITEM 2 (continued)

ATTACHMENT 1

D. Contributions to travel

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time since 30 June	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel was undertaken
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E. Interests and positions in corporations

Name and address of each corporation in which I had an interest or held a position *at the return date/*at any time since 30 June	Nature of interest (if any)	Description of position (if any)	Description of principal objects (if any) of corporation (except in case of listed company)
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F. Positions in trade unions and professional or business associations

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) *at the return date/*at any time since 30 June	Description of position
---	-------------------------

G. Debts

Name and address of each person to whom I was liable to pay any debt *at the return date/*at any time since 30 June

H. Dispositions of property

1 Particulars of each disposition of real property by me (including the street address of the affected property) at any time since 30 June as a result of which I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time

2 Particulars of each disposition of property to a person by any other person under arrangements made by me (including the street address of the affected property), being dispositions made at any time since 30 June, as a result of which I obtained, either wholly or in part, the use and benefit of the property

I. Discretionary disclosures



4 7 BALACLAVA ROAD, EASTWOOD - CONSTRUCTION OF A 14 ROOM BOARDING HOUSE COMPRISING 9 SINGLE ROOMS, 5 DOUBLE ROOMS AND PARKING FOR 7 CARS UNDER STATE ENVIRONMENTAL PLANNING POLICY (AFFORDABLE RENTAL HOUSING) 2009 - LDA2018/0224

Report prepared by: Acting Senior Coordinator - Development Assessment

Report approved by: Manager - Development Assessment; Director - City Planning and Environment

File Number: GRP/09/6/12/1/2 - BP18/960

**City of Ryde
Local Planning Panel Report**

DA Number	LDA2018/0224
Site Address & Ward	7 Balaclava Road, Eastwood
Zoning	R2 Low Density Residential
Proposal	Construction of a 14 room boarding house comprising 9 single rooms, 5 double rooms and parking for 7 cars under State Environmental Planning Policy (Affordable Rental Housing) 2009
Property Owner	Huong Thu Do
Applicant	Huong Thu Do
Report Author	Madeline Thomas – Assessment Officer
Lodgement Date	5 June 2018
No. of Submissions	26 submissions (including 5 petitions)
Cost of Works	\$1,737,843

ITEM 3 (continued)

Reason for Referral to IHAP	Contentious Development – Development is the subject of 10 or more unique submissions by way of objection
Recommendation	Refusal

1. Executive Summary

Application is made to construct a two storey boarding house to contain 14 boarding rooms, comprising 9 single rooms and 5 double rooms.

The notification of the application attracted 26 submissions (including 5 petitions) objecting to the application with the most common concerns related to overshadowing, the type of occupant, visual and acoustic privacy, inconsistent with the R2 Low Density Residential zone, traffic generation, car stackers and lack of onsite management.

It is acknowledged that new generation boarding houses are an effective way of addressing the need for affordable housing in the City of Ryde, and broader Sydney area. However, the detail and design of the proposal does not demonstrate compliance with a number of planning controls specified in the State Environmental Planning Policy (Affordable Rental Housing) 2009 or the Ryde Development Control Plan 2014.

Given the proposal provides 4 of the 7 required parking spaces by way of car stackers, and that insufficient information in regard to these car stackers has been provided, it is not possible to assess the impact of this development on adjoining properties or future occupants of the boarding house.

The proposed design is also considered to be unacceptable due to:

- Unacceptable landscaped setting;
- Proposal fails to comply with the Building Code of Australia in respect to the number of accessible rooms required;
- Proposal fails to comply with the Building Code of Australia in respect to the shared area for the accessible parking space;
- Excessive hardstand area within the front setback due to passing bay and motorcycle parking;
- Proposal will result in poor amenity to the occupants of the boarding house and adjoining neighbours;
- Number of rooms proposed exceeds Ryde DCP 2014's control for number of rooms permitted in boarding houses located on land zoned R1 General Residential or R2 Low Density Residential;

ITEM 3 (continued)

- The proposed vehicular access does not provide adequate manoeuvring for the proposed car stackers;
- Unacceptable Plan of Management;
- Stormwater calculations do not reflect the Eastwood catchment zone; and
- The limited to no detail provided in the following regard:
 - Levels across the site. No driveway profile, limited detail in regard to the site levels and inadequate building sections have been provided to allow for the assessment of the impact of the proposal on adjoining neighbouring trees;
 - No amended landscape plan was provided with the amended plans;
 - No suitable BASIX Certificate was provided with the amended plans;
 - The acoustic report provided did not assess the car stackers in relation to the impact on the boarding house occupants or adjoining properties;
 - Insufficient detail provided in regard to the layout and operation of double rooms; and
 - The shadow diagrams provided do not allow for a proper assessment of the overshadowing occurring on the adjoining property.

Given the reasons detailed above, the development application is recommended for refusal.

2. The Site and Locality

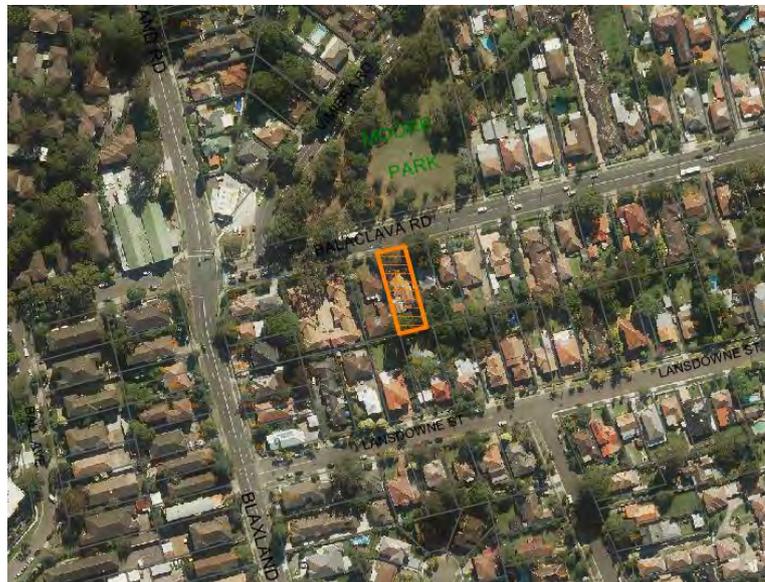


Figure 1 - Aerial photograph of site in context

The site is known as No. 7 Balaclava Road, Eastwood and is a single allotment with a legal description of Part Lot 1 in DP 325719.

ITEM 3 (continued)

The site is located on the southern side of Balaclava Road, to the east of its intersection with Blaxland Road. Moore Park is located on the opposite side of Balaclava Road to the subject site.

The site is a rectangular shaped allotment with frontage to Balaclava Road of 16.155m, a rear boundary dimension of 16.765m, side boundary dimensions of 50.3m and a site area of 841m². The site is generally flat, with a slight fall to the street from the rear by approximately 1m.

The site is currently developed with a single storey residential dwelling and detached fibro garage at the rear of the dwelling (see **Figure 3** below). The site currently has two driveways and associated driveway crossings. Landscaping consists of planted species within a domestic setting.

Figure 2 below shows the site in its context.



Figure 2 - Subject site's proximity to the Eastwood Town Centre

The site is located within an established residential area, and is located within 400m of the Eastwood Town Centre, as shown in **Figure 2** above.

The existing dwelling currently on the site is consistent with the established residential development in the area.

ITEM 3 (continued)



Figure 3 - Existing dwelling located on subject site

Immediately adjoining the site to the west, at No. 5 Balaclava Road, is a single storey residential development comprising of two detached units.

The two units are accessed by a common driveway which runs along the western boundary, as shown in **Figure 4** below.

Unit 1 has a frontage to Balaclava Road and setback approximately 9m to the front boundary, with the other unit located directly behind the front unit, with a rear setback of approximately 4.6m.

No. 5 Balaclava Road has one large Camphor Laurel tree located within close proximity of the adjoining boundary to the subject site, and several small trees located within the front setback within close proximity of the dividing boundary to No. 7 Balaclava Road.



Figure 4 - Residential development at No. 5 Balaclava Road

ITEM 3 (continued)

Immediately adjoining the site to the east, at No. 9 Balaclava Road, is a single storey fibro dwelling with a carport located on the western boundary (i.e. adjoining No. 7 Balaclava Road), as shown in **Figure 5** below.

The dwelling is setback approximately 11.3m from the front boundary, and has a rear setback of approximately 23.4m.

No. 9 Balaclava Road has two large trees, including one Casuarina and one Silky Oak, located within close proximity of the adjoining boundary to the subject site.



Figure 5 - Residential development at No. 9 Balaclava Road

A turning lane facilitating the turning from Balaclava Road to Blaxland Road begins at the front of the dwelling, as shown in **Figure 6**. Balaclava Road does not permit parking on the southern side in front of the subject site due to the bus stop and turning lane, however, parking is permitted on the northern side of Balaclava Road.

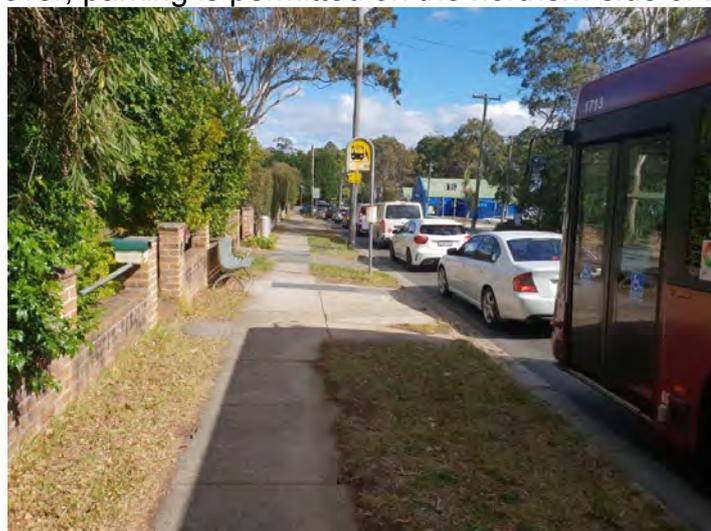


Figure 6 - Turning lane and bus stop at the front of the subject site

ITEM 3 (continued)

3. The Proposal

Application is made to construct a two storey 'new generation' boarding house to contain 14 boarding rooms, as is described following:

Ground Floor

The ground floor of the proposed development contains the following:

- 2 x double boarding rooms (including one accessible room);
- 2 x single boarding rooms;
- 1 x communal living area;
- 7 x parking spaces (four of which are provided by car stackers);
- 3 x motorcycle spaces; and
- 3 x bicycle spaces.

All boarding rooms are self-contained, meaning they have individual ensuites, laundry facilities and kitchenettes.

Each room is accessed through a common hallway, which has a gradient of 1:15 and 1:16. The accessible room is located at the front of the boarding house, as is one double boarding room.

The front entrance is accessed by a concrete path to the front boundary. Three motorcycle parking spaces are also located within the front setback. An additional entrance is provided as a side entrance along the eastern boundary. The side entrance also incorporates a bin room, clothes drying area and the bicycle storage area.

The proposed driveway is located along the western boundary, and includes a passing bay adjacent to the motorcycle parking in the front setback.

The middle portion of the ground floor contains five parking spaces, four of which are provided by a mechanical car stacker system, and one that is a dedicated accessible parking space. The accessible space is adjoined by a shared area to facilitate the accessible space and to provide a turning bay for the remaining two parking spaces. "No Parking" signage is proposed to be erected in the shared area. This shared area also encompasses pedestrian access to the fire exit.

The rear portion of the site comprises one single room, one double room and the communal living area. A communal living deck is accessed off the communal living room in the rear yard. The rear portion also contains two parking spaces that are perpendicular to the other five parking spaces.

ITEM 3 (continued)

The internal hallway is proposed as a ramp with a gradient of 1:15 and 1:16. The nature of the ramp/landing at the intersection of the side entrance and fire exit is unclear, with the section showing a step down and the floor plan not clearly showing the details of the landing.

A large *Eucalyptus microcorys* (Tallowwood) tree is located in the rear yard, and is proposed to be retained. An additional tree (Tuckeroo) within the rear setback is proposed within close proximity of the communal deck. Scarce planting is proposed between the proposed driveway and the adjoining boundary to the west. One Narrow-leaved Black Peppermint Tree within the front setback is proposed to be removed, with a replacement tree (Tuckeroo) proposed within the front setback. All other trees on the subject site and adjoining properties are proposed to be retained. Planting within the front setback is proposed to be to a height of approximately 0.7m. Limited planting is proposed beyond the front setback area.

First Floor

The first floor contains three double rooms and seven single rooms.

All the first floor boarding rooms are also self-contained. Room 05 has a window with an outlook to Balaclava Road, with Rooms 08, 10 and 12 having windows with an outlook to the proposed driveway. Additionally, Rooms 08 and 10 have louvres/privacy screens across the windows.

Access to the first floor is gained by the main staircase located in the front portion of the boarding house, and an alternative fire exit at the rear of the boarding house.

The Statement of Environmental Effects indicates that the boarding house will allow for a maximum of 19 lodgers at one time, and that the boarding house will not have an onsite manager.

Each boarding room is provided with a bathroom and kitchenette containing a sink, a cooktop, and washing machine. The details of the facilities provided within each room are not clearly identified on the plans, nor are they listed in the Statement of Environmental Effects.

The proposed building is to have a minimum 1.5m side setback to the eastern (side) boundary, and a minimum 1.8m setback to the western (side) boundary. It is noted that the parking spaces are located 1m from the western boundary. The building is setback approximately 6.2m from the front boundary. The building has a rear setback of 8.5m measured from the rear communal living deck, and a rear setback of 10.6m measured from the closest wall of the building.

The design of the building is a mixture of modern and traditional architecture, with a variation of pitched and flat roofs (see **Figures 8, 9 & 10**). The materials proposed are a combination of dry press facebrick, white render and operable timber louvres

ITEM 3 (continued)

are proposed to the rear fire exit stairwell, the first floor rear elevation and the upstairs windows facing the driveway.

Figures 7 to 10 below show the site and various perspectives of the development.

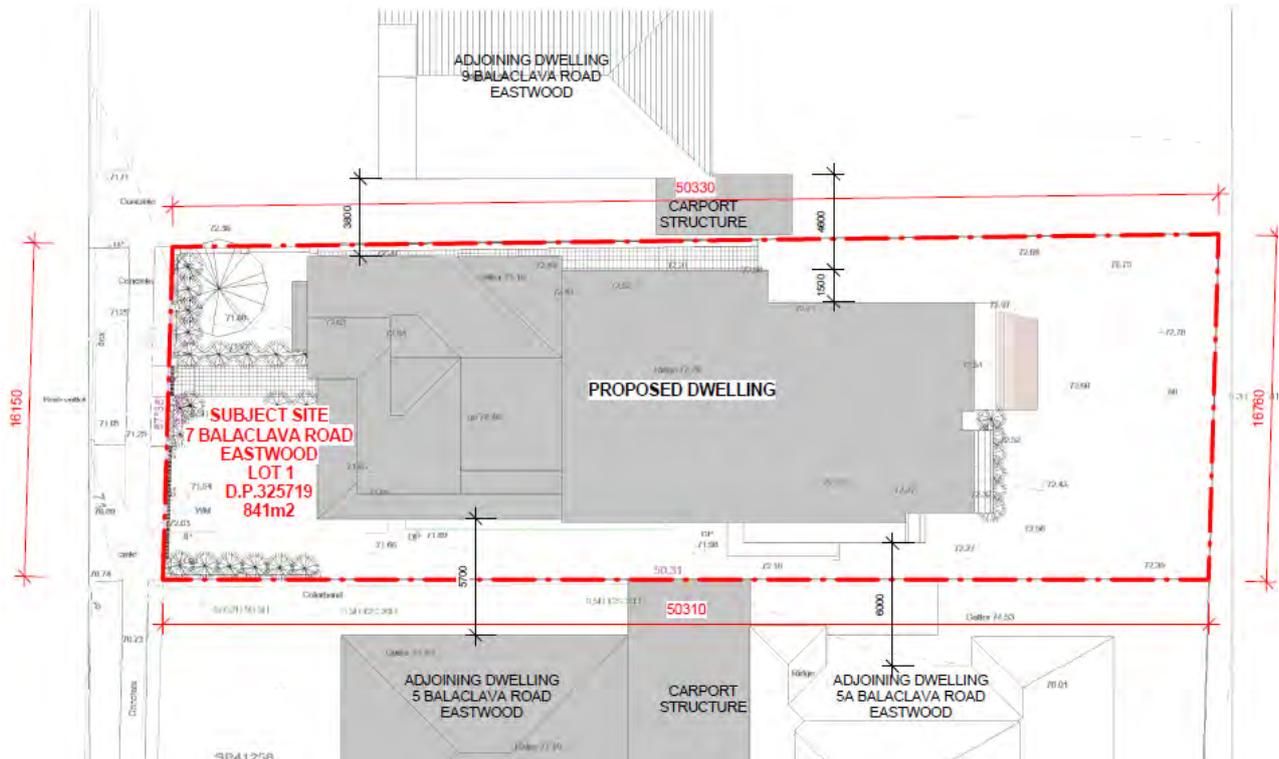


Figure 7 – Site plan



Figure 8 - Photomontage of proposed development as viewed from Balaclava Road

ITEM 3 (continued)



Figure 9 – Rear elevation (view from the south-west).



Figure 10 – 3D depiction (elevated view from the north-east).

Plan of Management

The application includes an Operational Plan of Management dated 25 May 2018 which provides for the following:

- Section 3 – Duties of the manager;
- Section 4 – Maximum number of lodgers;
- Section 5 – Minimising impacts on residents;
- Section 6 – Display of house rules;
- Section 7 – Fire safety
- Section 8 – Cleaning & maintenance;

ITEM 3 (continued)

Section 9 – Boarder/Lodger information;
Section 10 – Boarding house furniture & facilities;
Section 11 – Waste management & recycling; and
Section 12 – Safety & security.

It is noted that the Plan states that the boarding house will be operated and managed by a real estate company.

The operating hours for communal areas and outdoor spaces are limited to:

- Monday to Friday: 8am to 8pm; and
- Saturday to Sunday: 8am to 10pm.

4. Planning Assessment**4.1 State Environmental Planning Instruments****State Environmental Planning Policy (Affordable Rental Housing) 2009**

The development is subject to Division 3 (Boarding Houses) of the SEPP.

Clause 26 – Land to which this Division applies

Clause 26 stipulates that this Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones:

- a) *Zone R1 General Residential,*
- b) *Zone R2 Low Density Residential,*
- c) *Zone R3 Medium Density Residential,*
- d) *Zone R4 High Density Residential,*
- e) *Zone B1 Neighbourhood Centre,*
- f) *Zone B2 Local Centre,*
- g) *Zone B4 Mixed Use.*

The site is located within a R2 Low Density Residential zone under the RLEP 2014. Therefore, the SEPP applies.

Clause 27 – Development to which this Division applies

Clause 27(1) and (2) of the SEPP stipulates:

- 1) *This Division applies to development, on land to which this Division applies, for the purposes of boarding houses.*
- 2) *Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is*

ITEM 3 (continued)

equivalent to that zone in the Sydney region unless the land is within an accessible area.

With respect to 27(1), “Boarding house” is defined under the SEPP (and the RLEP 2014) as follows:

“boarding house means a building:

- a) *that is wholly or partly let in lodgings, and*
- b) *that provides lodgers with a principal place of residence for 3 months or more, and*
- c) *that may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and*
- d) *that has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,*

but does not include backpackers’ accommodation, a group home, a serviced apartment, seniors housing or hotel or motel accommodation.”

The development satisfies the above definition.

With respect to (2), “Accessible Area’ is defined under the SEPP as follows:

“accessible area means land that is within:

- a) *800 metres walking distance of a public entrance to a railway station or a wharf from which a Sydney Ferries ferry service operates, or*
- b) *400 metres walking distance of a public entrance to a light rail station or, in the case of a light rail station with no entrance, 400 metres walking distance of a platform of the light rail station, or*
- c) *400 metres walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.”*

The site is serviced by four (4) bus routes being:

East Bound

- Route 545: Parramatta to Macquarie Park.
- Route 551: Eastwood to Busaco Road.

West Bound

- Route 545: Macquarie Park to Parramatta.

ITEM 3 (continued)

- Route 551: Busaco Road to Eastwood.

Route 545 is a high frequency route which services Macquarie Park and Parramatta (with stops in Eastwood). Route 551 is infrequent and only services Saturday morning.

As the two stops located within 400m of the site service a high frequency route (545) in both directions, the development complies with the requirements of Clause 27(2) and the boarding house is a permitted use on the site.

Clause 29 – Standards that cannot be used to refuse consent

Clause 29 stipulates that a consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2) as set out in the table below.

Note: An amendment to Clause 29(2)(e) of SEPPARH commenced on 1 June 2018. The amendment did not include a savings provision and affects the required number of parking spaces for boarding houses.

The amendment states (amendments in bold):

- 29(2)(e)(i) *in the case of development **carried out by or on behalf of a social housing provider** in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and*
- (ii) *in the case of development **carried out by or on behalf of a social housing provider** not in an accessible area—at least 0.4 parking spaces are provided for each boarding room;*
- (iia) ***in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room***
- (iii) *in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,*
- 29(5) social housing provider does not include a registered community housing provider unless the registered community housing provider is a registered entity within the meaning of the Australian Charities and Not-for-profits Commission Act 2012 of the Commonwealth.**

Provision	Required	Proposed	Complies
Floor Space Ratio	Existing maximum FSR for any residential accommodation permitted on the land (i.e. 0.5:1). Site area is	Ground floor: 162.6m ² First Floor: 244.9m ² Total GFA = 407.5m ² FSR = 0.485: 1	Yes

ITEM 3 (continued)

Provision	Required	Proposed	Complies
	841m ²		
Building Height	Maximum building height under LEP – 9.5m	The building has a maximum height of 7.55m at the front portion and 6.95m – 7.4m at the rear portion.	Yes
Landscaped area	Landscape treatment of front setback is compatible with streetscape	As is discussed in relation to the character test following, the proposal will result in inadequate landscaping forward of the building to be compatible with the streetscape which is characterised by large landscaped setbacks.	No
Solar access	One or more communal living room receives at least 3 hours sunlight between 9am and 3pm at mid-winter	A minimum of 3 hours sunlight is provided to one or more communal living room windows.	Yes
Private Open Space	One area of at least 20m ² with minimum dimension of 3m is provided for use of lodgers.	An area greater than 20m ² of private open space provided.	Yes
Parking	At least 0.5 parking spaces are provided for each boarding room – minimum 7 spaces	7 spaces provided through 4 car stacker spaces and 3 other spaces.	No See note below
Accommodation size	Single rooms are at least 12m ² , and 16m ² in any other case, in area excluding private kitchen or bathroom facilities	Boarding rooms range from 12.3m ² to 20.5m ² . All double rooms exceed 16m ² .	Yes
Facilities	A boarding house may have a private kitchen or bathroom in each boarding room	Private kitchenette and bathroom provided in each room.	Yes

Note: It is acknowledged that seven (7) parking spaces have been provided in accordance with the ARHSEPP. However, four (4) of these spaces are provided by car stackers. Limited details have been provided in regard to these car stackers. The car stackers are not considered to be accessible for the following reasons:

- The architectural plans provided do not indicate that the building has a floor to ceiling height to allow for the minimum clearance for the car stackers.

ITEM 3 (continued)

- Swept paths diagrams have not been provided for the car stackers, and therefore, it is not demonstrated that access could be readily provided with the current driveway configuration.
- Insufficient details have been provided in regard to the operation of the car stackers.

Clause 30 – Standards for boarding houses

Clause 30 stipulates that a consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:

Provision	Required	Proposed	Complies
Common room	Minimum one communal living room is 5 or more boarding rooms	One common living room is provided.	Yes
Gross Floor Area	No boarding room to have gross floor area exceeding 25m ² excluding private kitchen and bathroom	Boarding rooms range from 12.14m ² to 18.72m ² .	Yes
Occupancy	No boarding room to be used by more than 2 adult lodgers	Each boarding room is proposed to be a single or double room.	Yes
Kitchen/Bathroom	Adequate kitchen and bathroom facilities are required for a boarding house for the use of each lodger	Private kitchenette and bathroom provided in each room.	Yes
Manager	If a boarding house accommodates 20 or more lodgers a manager's dwelling shall be provided onsite	19 boarders proposed – N/A.	N/A
Commercial zoning	If the site is primarily zoned for commercial purposes ground floor not to be used for residential purposes	Not zoned primarily for commercial purposes – N/A.	N/A
Parking	At least 1 motorcycle and bicycle parking space shall be provided for every 5 boarding rooms – 14 room - 3 motorcycle and bicycle spaces required	3 motorcycle and bicycle spaces provided.	Yes

Clause 30A – Character of the Area

ITEM 3 (continued)

Clause 30A stipulates that a consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.

The character along this section of Balaclava Road is one where the developments are located on medium to large allotments, are one and two storeys in construction with pitched roof and have generous front setbacks which are substantially landscaped (see **Figures 11 and 12 below**).

The subject site is of a size and configuration that is consistent with the surrounding subdivision layout. The site is located within an established low density neighbourhood.



Figure 11 – Views of the northern side of Balaclava Road.



Figure 12 - Streetscape character of Balaclava Road

ITEM 3 (continued)

Given the inclusion of the passing bay and motorcycle parking within the front setback, a small amount of landscaping has been provided within the front setback. Provision of such a small amount of landscaping would be inconsistent with the setting of adjoining properties and the character of Balaclava Road in the vicinity of the site.

Secondly, the design of the development provides for only a 6m setback where the average setback of the adjoining properties is approximately 9m and 11.3m. Whilst it is acknowledged that there are some residences along Balaclava Road which have a 6m to 8m setback, and that Part 3.3 Dwelling Houses and Dual Occupancy (detached) of the Ryde Development Control Plan 2014 allows for a front setback of generally 6m, the reduced setback will result in the building projecting forward of the adjoining buildings by 3 metres (as shown in **Figure 13**). It is noted that the dominant front setback in Balaclava Road is 7-9m, with few dwellings having a setback of 6-7m within the street. In combination with the limited landscaping proposed in the front or side setbacks of the building, the projection is not appropriately ameliorated, and is considered to create an inconsistent building line in this section of Balaclava Road.

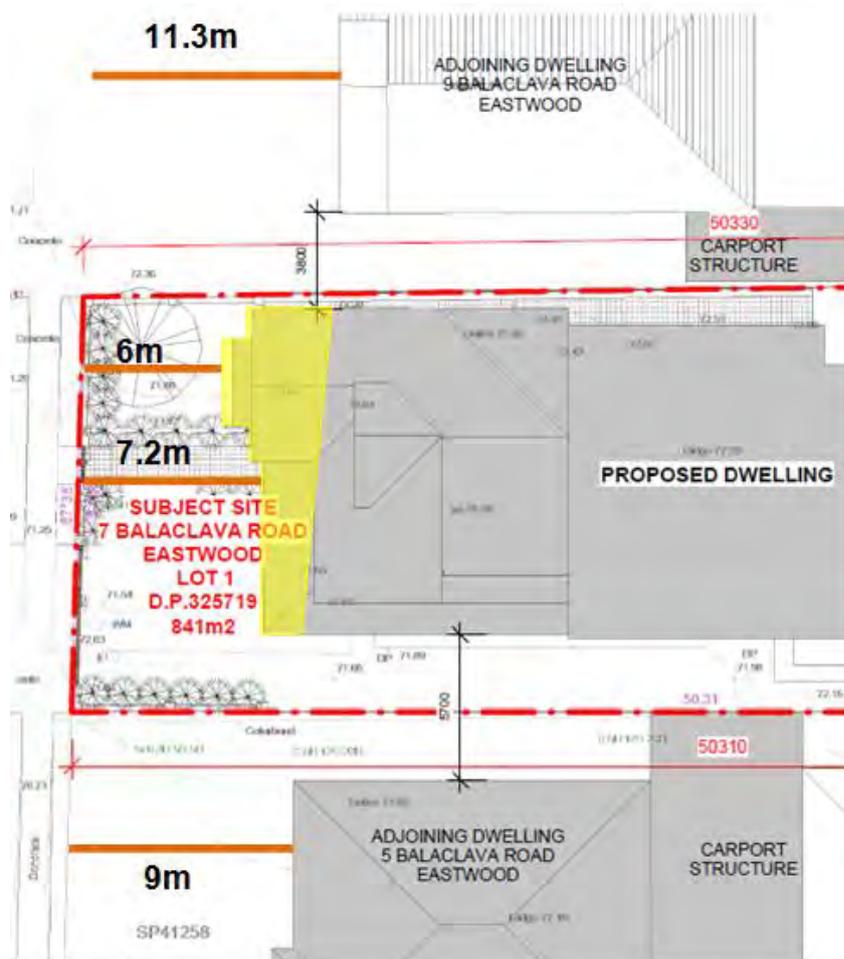


Figure 13 - Proposed building projection forward of neighbouring buildings shaded in yellow.

ITEM 3 (continued)

The Arborist report provided indicates that all trees, with the exception of the tree in the front setback, are to be retained. Insufficient detail has been provided in regard to the level of excavation required to facilitate the paving, stormwater infrastructure, driveway and building footprint, and therefore, an assessment of the impact of the trees on the site and the trees on the adjoining properties cannot be made. Insufficient evidence has been provided that the trees can be retained given the scale of the development and the location of stormwater infrastructure. If the trees cannot be retained, the proposal will not allow for the preservation of existing site characteristics that will assist in reducing the visual dominance of the development.

Due the lack of landscaped setting at the Balaclava Road frontage of the site and the building protruding forward of the established building line, the design of the development is not considered to be compatible with the character of the area.

Clause 52 prevents consent being granted to strata or community title subdivide a boarding house. The application does not seek approval for subdivision.

State Environmental Planning Policy (Building Sustainability Index BASIX) 2004

Clause 3 of the *Environmental Planning and Assessment Regulation 2000* defines a *BASIX Affected Building* as any building that contains one or more dwellings, but does not include a hotel or motel.

In the recent NSW Land & Environment Court (LEC) case *SHMH Properties Australia Pty Ltd v City of Sydney Council [2018] NSWLEC 66* Commissioner Preston went on to determine that, if rooms in a boarding house are capable of being used as a separate domicile (and therefore meeting the definition of a 'dwelling'), a BASIX certificate for the development will be required to accompany the development application.

As each of the boarding rooms contains facilities to make each room a separate domicile (i.e. bathroom, kitchenette and washing machines) and are therefore self-contained dwellings in their own right.

Clause 2A(1) under Schedule 1 of the *Environmental Planning and Assessment Regulation 2000* requires:

“a development application for any BASIX affected development must also be accompanied by a BASIX certificate or BASIX certificates for the development, being a BASIX certificate or BASIX certificates that has or have been issued no earlier than 3 months before the date on which the application is made.”

The application was originally proposed as a 15 room boarding house, and an adequate BASIX Certificate accompanied the application. However, as a result of Council's request for additional information in regard to proposal's non-compliance

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with the parking provision, the total number of rooms was reduced to 14, and the overall design was amended.

No amended BASIX Certificate was supplied with the amended plans, and therefore, a suitable BASIX Certificate has not been supplied that supports the application in its current state.

State Environmental Planning Policy (Infrastructure) 2007
Clause 102 - Impact of road noise or vibration on non-road development

Clause 102 requires the consent authority to consider if development is likely to be adversely affected by road noise or vibration on land that is adjacent to a road corridor for a freeway, a tollway or a transit way or any other road with an annual average daily traffic volume of more than 40,000 vehicles.

Balaclava Road is not featured in the RMS Traffic Volume Data and it is therefore assumed that the volume of traffic does not exceed 40,000 vehicles per day.

Clause 104 - Traffic-generating development

Clause 104 of the SEPP requires development which involves a new premises of the relevant size or capacity (as specified in Column 1 of the Table to Schedule 3 of the SEPP), or an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity to be referred to the NSW Roads and Maritime Service (RMS) as Traffic Generating Development.

Schedule 3 includes the following relevant developments:

Column 1 Purpose of the development	Column 2 Size or capacity – site with access to any road	Column 3 Size of capacity - site with access to classified road or to road that connects to classified road
Apartment or residential flat building	300 or more dwellings	75 or more dwellings
Commercial premises	10,000m ² in area	2,500m ² in area
Any other purpose	200 or more motor vehicles	50 or more vehicles

The site is located on a regional road which connects to state road (Blaxland Road) which is approximately 105m to the west. However, the development does not trigger any of the size or capacity criteria listed in Column 2.

Therefore, the development was not required to be referred to the RMS.

State Environmental Planning Policy No. 55 – Remediation of Land

ITEM 3 (continued)

SEPP 55 requires consideration of whether a site is potentially contaminated and whether any such contamination makes the site unsuitable for the proposed form of development or whether remediation works are required to make the site suitable for the form of development proposed.

Given the established residential use, the proposal is not likely to result in contamination and the site is suitable for the proposed development without need for remediation.

4.2 Ryde Local Environmental Plan 2014 (RLEP 2014)

The RLEP 2014 commenced on 12 September 2014 as the new environmental planning instrument applicable to the City of Ryde.

Under the RLEP 2014, the property is zoned R2 Low Density Residential, and the proposed development is permissible with Council's consent.

Aims and objectives for the R2 Low Density Residential zone

The objectives of the zone are as follows:

- ***To provide for the housing needs of the community within a low density residential environment.***

The development will provide for the housing needs of the community.

- ***To enable other land uses that provide facilities or services to meet the day to day needs of residents.***

This objective is not applicable to the proposed development

- ***To provide for a variety of housing types.***

The provision of a boarding house would satisfy the objective of providing a variety of housing types.

Therefore, the development satisfies the relevant objectives of the R2 Low Density Residential zone.

Part 4 – Principle Development Standards

The following is a summary of the numerical clauses under RLEP 2014 applicable to the development.

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Clause	Permitted	Proposed	Compliance
4.3 – Height of Buildings	9.5m	6.95m to 7.55m	Yes
4.4 – Floor Space Ratio (FSR)	0.5:1 (420.5m ²)	0.48:1 (407.5m ²)	Yes

Other Relevant Clauses
Clause 6.2 - Earthworks

Clause 6.2 requires consideration of the impact of earthworks in relation to environmental functions, processes, neighbouring uses, cultural and heritage items and features of the surrounding land.

The following matters are required to be considered:

(a) *the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development.*

The site is not located within an overland flow area.

(b) *the effect of the development on the likely future use or redevelopment of the land.*

The proposed excavation is to facilitate the future development of the site. The proposed plans do not indicate if excavation is required to facilitate the car stacker system.

(c) *the quality of the fill or the soil to be excavated, or both.*

The site has not been identified as contaminated and a condition of any consent will expect that all imported fill must be validated in accordance with the Contaminated Sites Sampling Design Guidelines (EPA, 1995).

(d) *the effect of the development on the existing and likely amenity of adjoining properties.*

The plans provided with the application do not provide sufficient detail in regard to the level of excavation required to accommodate the proposed driveway, building footprint, stormwater infrastructure and site paving. Given the lack of details regarding the levels on the site, an assessment of the impact of the excavation on the site trees and trees on adjoining properties cannot be made.

Therefore, it is not guaranteed that the amenity of the adjoining properties will be maintained as a result of the proposal.

ITEM 3 (continued)



Figure 14 - Location of trees on subject site and adjoining properties that may be affected by proposal

(e) the source of any fill material and the destination of any excavated material.

The site has not been identified as contaminated. No information has been provided in regard to either the source of fill or the destination of excavated materials and conditions of any consent would be required to address these matters.

(f) the likelihood of disturbing relics.

Given the location of the site and its previous development, it is considered unlikely that any relics would be disturbed.

(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area.

Subject to adequate sedimentation measures during construction, the proposal is unlikely to impact any waterway and it will not impact any drinking water catchment or environmentally sensitive area.

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Any consent should include conditions addressing sedimentation measures during construction and requiring dilapidation reports for adjoining structures.

ITEM 3 (continued)**Clause 6.4 - Stormwater Management**

Clause 6.4 addresses Stormwater management and requires the following matters to be considered:

- (a) *is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*
- (b) *includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*
- (c) *avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.*

The applicant has proposed an underground onsite detention system (OSD) within the proposed driveway.

The outlet pipe from the OSD tank is directed to the layback within the driveway, and has not properly considered the design of the proposed driveway. Additionally, the OSD calculations have not considered the Eastwood catchment zone properly, and it is likely that the size of the OSD would need to be increased and the discharge reduced.

4.3 Draft Environmental Planning Instruments

There are no draft environmental planning instruments of relevance to the assessment of the application.

4.4 Development Control Plans**Ryde Development Control Plan 2014****Part 3.5 – Boarding Houses**

The development is subject to Part 3.5 of the RDCP 2014.

Clause 1.3 – Objectives

Clause 1.3 states that the objectives of Part 3.5 are:

1. *“To recognise boarding house accommodation as a component of the City of Ryde’s residential housing mix.*
2. *To facilitate the provision of high quality affordable rental housing in the form of boarding houses where permissible in residential and business zones in the City of Ryde.*

ITEM 3 (continued)

3. *To support government policy which facilitates the retention and mitigates the loss of existing affordable rental housing.*
4. *To encourage appropriate design of boarding house development to ensure the impact and operation does not interfere with surrounding land uses and amenity.*
5. *To provide controls for boarding houses that are not within “accessible area” as defined under the SEPP ARH.*
6. *To ensure that boarding houses are designed to be compatible with and enhance the local area character and the desired future character.*
7. *To ensure that any building that has been developed or adopted into a boarding house maintains a satisfactory standard of amenity for both the needs of occupants and neighbours alike”.*

Of the above objectives, it is considered that the development does not satisfy the following:

4. ***To encourage appropriate design of boarding house development to ensure the impact and operation does not interfere with surrounding land uses and amenity.***

Given the issues identified within this report, it is not considered that the development can ensure that its operation would not adversely impact upon the amenity of surrounding land uses.

7. ***To ensure that any building that has been developed or adopted into a boarding house maintains a satisfactory standard of amenity for both the needs of occupants and neighbours alike.***

Given the issues identified within this report, it is not considered that the development can ensure that its operation would not adversely impact upon the amenity of both the needs of occupants and neighbours alike.

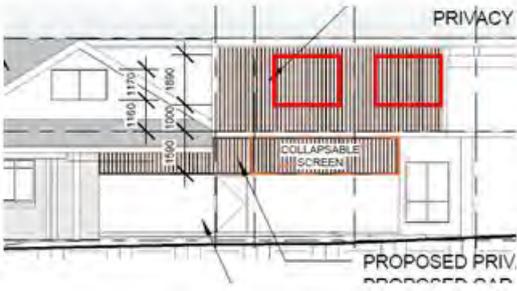
The following table provides an assessment of the development against the applicable clauses of Part 3.5.

Provision	Required	Proposed	Complies
Local Character	Compatible with character of local area, consider – <ul style="list-style-type: none"> • Predominant building type • Predominant height • Predominant front setback and landscape 	This has been addressed in relation to ARHSEPP and the development is not considered to be compatible due to the inadequate front setback and landscaped setting.	No

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Provision	Required	Proposed	Complies
	<ul style="list-style-type: none"> • Permissible FSR and site coverage • Predominant spacing of buildings • Predominant parking arrangement • Predominant side setbacks • Predominant rear setback 		
Heritage	Within vicinity of heritage item needs to be sympathetic to heritage significance	The site is not within the vicinity of a heritage item. Council's Heritage Officer has not raised any concerns in relation to the proposal.	Yes
Size and Scale	Must demonstrate satisfactory <ul style="list-style-type: none"> • Overshadowing and privacy • Streetscape • Building setbacks • Parking and traffic impact • Landscape • View impacts • Impact on trees • Suitable lot size, shape and topography 	<p>Section 2.3e has a requirement that boarding houses in the R1 General Residential or R2 Low Density Residential zones are not to have more than 12 bedrooms. The proposal is in the R2 zone, and contains 14 boarding rooms, and therefore does not comply with this control.</p> <p>The shadow diagrams provided do not indicate whether sufficient solar access for the adjoining neighbour to the west (No. 5 Balaclava Road).</p> <p>As discussed previously in this report the front setback, landscaped setting and building design is not compatible with the streetscape.</p> <p>The proposal provides for inadequate onsite parking as a result of the lack of operational detail provided for the car stackers.</p> <p>The proposal has no unacceptable impact upon views.</p> <p>The proposal will result in the loss of a two site trees and six trees on adjoining properties, several of which provide aesthetic value to the streetscapes and benefit to the neighbouring properties.</p> <p>The deficiencies with the front setback, and the provision of 4 of the 7 required parking spaces provided by inaccessible car stackers indicates that the scale of the</p>	No

ITEM 3 (continued)

Provision	Required	Proposed	Complies
		proposed development is not suitable for the subject site.	
Parking and Traffic	Parking is not to be located within communal open space or landscape areas	The motorcycle parking area is located within the front setback, and is prevents adequate landscape setting within the front setback.	No
Privacy and Amenity	Main entrance to be located and designed to address street	The main entrance at the front of the property faces Balaclava Road.	Yes
	Access ways to front entrance located away from windows of boarding rooms for privacy	The window to Room 02 has an outlook to the main entrance and connected verandah. Privacy to Room 02 is further diminished given the verandah wraps around the entire boarding room.	No
	Designed to minimise privacy impacts on neighbours	<p>The boarding house has some design elements that aim to minimise impacts upon neighbours by provision of highlight windows and privacy screens/louvres, but in doing so provides for a poor level of amenity in boarding rooms. For example, the windows of boarding rooms 08 and 10 will overlook windows and private open space of adjoining properties, which has been resolved by proposing privacy louvres to the windows, which was restrict the outlook of these rooms strictly to the driveway of the proposed development, inappropriately impacting upon amenity (see Figure 15 below).</p>  <p>Figure 15 - Extract from Level 1 of affected rooms</p> <p>The side entrance, which encompasses a bin room and bicycle parking, is located within close proximity of the neighbouring dwelling at No. 9 Balaclava Road. Given the number of occupants expecting to use this entrance, the amenity for the occupants of No. 9 Balaclava Road is adversely impacted by the close proximity of the side entrance.</p>	No

ITEM 3 (continued)

Provision	Required	Proposed	Complies
		<p>Furthermore, the acoustic report provided does not assess the noise impact of the proposed car stacker system on both the occupants of the boarding house or adjoining residents.</p>	
Accessibility	All boarding house developments to be accompanied by accessibility report	<p>An access report has been prepared by Matt Shuter + Associates indicates two major non-compliances in regard to the Building Code of Australia. Specifically, the report identifies that the application fails to satisfy “deemed to satisfy” provision D3.1, which requires 2 accessible rooms to be provided for the application. The proposal only provides one such room. The report indicates that a Performance Solution will be sought to address this issue. Given no such performance solution has been provided, nor is one envisaged which would provide for another accessible room without significant redesign, the application fails to comply with the BCA, and does not achieve the objectives of the Section 3.3 of the RDCP 2014.</p> <p>Furthermore, the report identifies that the application fails to satisfy “deemed to satisfy” provision D3.5, which requires a bollard to be constructed across the shared zone, which will also be used as a reversing bay. Once again, the report identifies that a Performance Solution is required to address this non-compliance. The absence of this bollard presents an unacceptable risk to pedestrians using the site.</p> <p>Furthermore, the plans are not clear as to the details of the hallway landing near the side entrance. Finished floor levels and details of the ramp are not clearly shown on the sections, and therefore, it is not clear that the communal living areas are accessible.</p> <p>Therefore, the BCA report provided with the application does not adequately satisfy this control.</p>	No
Waste Minimisation and Management	Required in accordance with DCP	This has been addressed previously in the report and is acceptable.	Yes

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Provision	Required	Proposed	Complies
Sustainability and Energy Efficiency	BASIX Certificate required	A suitable BASIX Certificate has not been supplied with the amended plans.	No
Internal Building Design	Must make provision for laundry facilities, communal food preparation facilities, sanitary facilities and storage areas	Each boarding room has a bathroom, laundry, kitchenette and storage.	Yes
	Safety to be optimized by providing for overlooking of communal areas, provision of lighting and providing clear definition between public and private spaces	<p>The Statement of Environmental Effects provided suggests that safety and security will be achieved by an increase in surveillance to the street through the glass windows provided to the front boarding rooms, and basic security measures such as keys and sufficient lighting. The report fails to address the dark, non-visible area that occurs at the rear of the parking area, as shown in red hatching in Figure 16 below.</p>  <p>Figure 16 - Non-visible area on western boundary</p> <p>This area is not visible from the street, nor is surveillance provided from the proposed building. Therefore, this is considered to be an unacceptable safety outcome.</p>	In part
Bedrooms	<ul style="list-style-type: none"> Not to open directly onto a communal area Must comply with ARHSEPP Minimum 2.1m² required for basin and toilet plus 0.8m² for shower, 1.1m² for laundry which must include 	<p>All boarding rooms open to a common hallway on both levels.</p> <p>Rooms comply with the areas specified in the ARHSEPP.</p> <p>The boarding rooms are of adequate size.</p> <p>It appears from the plans provided that the rooms all contain fridges and laundry facilities. However, there are a lack of detail</p>	In part

ITEM 3 (continued)

Provision	Required	Proposed	Complies
	a tub and 2m ² for a kitchenette <ul style="list-style-type: none"> Kitchenettes must have small fridge, cupboards, shelves, microwave and 0.5m² of bench space 	in the Plan of Management and in design documentation submitted as to the kitchenette facilities.	
Communal Living Room	<ul style="list-style-type: none"> Locate adjacent to communal open space to minimise impact on neighbours Minimum size 15m² plus additional 15m² for each additional 12 persons Openings to be oriented away from adjoining residential properties 	Appropriately located. 30m ² communal open space is adequate. Windows from the communal living area face the neighbouring property at No. 9 Balaclava Road. However, given the height of these windows, no overlooking opportunities will occur.	In part
Communal Kitchen and Dining Areas	<ul style="list-style-type: none"> To be in accessible location Area to be minimum 6.5m² or 1.2m² per resident that does not contain a kitchenette and provide one sink and stove top cooker per 6 people Combined kitchen/dining areas to have minimum 15m² area 	No communal kitchen is provided given each room as its own kitchen facilities. No dining area proposed.	N/A
Bathroom	Communal bathrooms must be accessible 24 hours a day	No communal bathrooms.	N/A
Laundry and Drying Facilities	Outside drying areas shall be located in communal open space	A clothes drying area has been provided near the side entrance.	Yes
Management	Required to be managed. Plan of Management Required	The Plan of Management (POM) provided is not consistent with the requirements of Part 3.5 for the following reasons: <ul style="list-style-type: none"> A manager needs to be contactable 24 hours a day for emergencies POM is not consistent with plans 	No

ITEM 3 (continued)

Provision	Required	Proposed	Complies
		<ul style="list-style-type: none"> • POM contradicts house rules • POM does not include training in car stacker system • Inadequate complaints handling procedure provided • Unacceptable evacuation procedure detailed • No statement of allocation of parking provided • POM does not detail minimum provisions for kitchenettes • Details on the operation of the double rooms has not been provided • No details on provision of outdoor furniture for communal outdoor space provided 	

4.5 Planning Agreements or Draft Planning Agreements

The application is not the subject of any planning agreements or draft planning agreements.

4.6 Section 7.11 Development Contributions Plan 2007 (Amendment 2010)

Any applicable Section 7.11 contributions would be subject to a condition for any recommended consent.

4.7 Any matters prescribed by the regulations

All matters prescribed by the regulations have been considered in the assessment of the application.

5. The likely impacts of the development
Economic

Subject to full compliance with the requirements of the ARHSEPP and relevant parts of the RDCP 2014, the development would be considered to have a positive economic impact on the locality as the mixed uses on the site will assist to strengthen economic vitality in the local area by providing additional residential activity within the local area. Compliance however is not achieved.

Environmental

The operation of the boarding house is considered to have an adverse environmental impact for the following reasons:

ITEM 3 (continued)

- The proposal would result in the removal of several trees;
- The acoustic report fails to address the impact of the proposed car stacker system on the occupants of the boarding house and adjoining properties; and
- The number of rooms proposed exceeds the maximum number of rooms permitted in a boarding house within land zoned R2 Low Density Residential.

Social

Subject to compliance with the requirements of the ARHSEPP and relevant parts of the RDCP 2014, the development would not be considered to have a detrimental social impact in the locality considering the residential character of the proposal. In this regard, the proposal would result in positive social outcomes in terms of providing for affordable housing stock. Compliance however is not achieved.

6. Suitability of the site for the development

Given the proposal does not meet requirements in regard to landscape setting, parking and front setback, it is not considered that the site is a suitable for the size of the boarding house proposed.

7. The Public Interest

Given the above assessment, it is not considered that approval of the application would be in the public interest as the site is not suitable for a boarding house of the size proposed.

8. Submissions

In accordance with the RDCP 2014 *Part 2.1 Notice of Development Applications*, the application was notified between 15 July 2018 and 4 July 2018.

The amended plans received were renotified between 9 July 2018 and 18 July 2018, with an extension granted for the time in which submissions would be received to 1 August 2018.

In response to the two public notification periods, twenty six (26) submissions were received, including five (5) petitions, from the following properties:

Address	
1/5 Balaclava Road, Eastwood	13 Balaclava Road, Eastwood
10 Lansdowne Street, Eastwood	2/14-16 Lovell Road, Eastwood
12-16 Doomben Avenue, Eastwood	2/15 Balaclava Road, Eastwood
14 Culgoa Avenue, Eastwood	21 Balaclava Road, Eastwood
14 Lansdowne Street, Eastwood	22 Lansdowne Street, Eastwood

ITEM 3 (continued)

Address	
17 Balaclava Road, Eastwood	27 Balaclava Road, Eastwood
18 Balaclava Road, Eastwood	29 Balaclava Road, Eastwood
19 Balaclava Road, Eastwood	3/15 Balaclava Road, Eastwood
2/1-3 Balaclava Road, Eastwood	3/23 Balaclava Road, Eastwood
2/5 Balaclava Road, Eastwood	3/38-40 Balaclava Road, Eastwood
25 Munro Street, Eastwood	32 Balaclava Road, Eastwood
35 Harrison Avenue, Eastwood	4 Lansdowne Street, Eastwood
41A Milton Avenue, Eastwood	4/1-3 Balaclava Road, Eastwood
51B Anthony Road, Denistone	4A Balaclava Road, Eastwood
8/16 Vimiera Road, Eastwood	6 Lansdowne Street, Eastwood
8A Lansdowne Road, Eastwood	8 Lansdowne Street, Eastwood
9 Balaclava Road, Eastwood	24 Lansdowne Street, Eastwood
9 Vimiera Road, Eastwood	30 Lansdowne Street, Eastwood
9A Balaclava Road, Eastwood	37 Pembroke Road, Marsfield
2/5 Balaclava Road, Eastwood	7 Peach Tree Road, Macquarie Park
1/1-3 Balaclava Road, Eastwood	3 Tarrants Avenue, Eastwood
1/14-16 Lovell Road, Eastwood	12 Balaclava Road, Eastwood
1/23 Balaclava Road, Eastwood	12 Lovell Road, Eastwood
11 Balaclava Road, Eastwood	12B Lovell Road, Eastwood

The concerns raised in the submissions are summarised and addressed following.

- **The site is too small for the number of occupants proposed**

A number of submissions have raised concerns that the size of the site is too small to accommodate 19 occupants.

Comment

The Ryde LEP 2014 permits boarding houses within the R2 Low Density Residential zone. However, given the non-compliances identified above, the site is not considered suitable for the scale of the boarding house proposed.

- **Traffic congestion**

A number of submissions across both public notification periods identified the increase in traffic congestion, which they have identified as an existing problem on Balaclava Road, as a major concern.

Comment

Council's Traffic Engineer has identified that the traffic generation for the proposal is expected to be 3 vehicle trips per hour, which is a net increase from the existing development of 2 vehicle trips per hour. This is considered negligible on the surrounding road network, and therefore, is not considered appropriate to warrant refusal of the application.

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- **Type of occupant**

Concern has been raised in several submissions as to the type of occupant who will reside in the proposed boarding house, as well as raising concern that the boarding house will be used as a brothel in the future.

Comment

The issue of occupancy and who may accommodate the boarding house is not a matter for consideration under Section 4.15C of the EP&A Act 1979.

The proposed use is not for sex services, and any conditions of consent would specify that the boarding house would not be used for sex services. Therefore, the concern over the type of occupant is not considered a valid reason for refusal for the proposal.

- **Unacceptable increase in density in Eastwood area**

Comment

Boarding houses are permissible in R2 Low Density Residential zones under the Ryde LEP 2014. It is noted that the proposed design has not responded to the overall site constraints, and therefore, the scale of the proposed boarding house is not considered appropriate to the subject site.

- **Lack of parking for number of residents proposed**

It is noted that this concern was raised in the first Public Notification period, when the proposal comprised 3 parking spaces.

Comment

It is agreed that the number of parking spaces proposed in the plans originally submitted did not meet the requirements under the *State Environmental Planning Policy (Affordable Rental Housing) 2009*. It is noted that the number of parking spaces increased from 3 to 7 in the amended plans provided, thereby numerically complying with the ARH SEPP. However, the use of car stackers to achieve this is not appropriate.

- **Unacceptable overshadowing to 2/5 Balaclava Road**

The owners of No. 2/5 Balaclava Road raised concerns that the proposed development would block any sunlight to the two bedroom windows facing the west.

Comment

It is noted that the windows for No. 2/5 Balaclava Road would be in self shadow from approximately 1pm. The shadow diagrams provided do not allow for the adequate assessment of the proposal in regard to the impact on the adjoining properties, as

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they do not show the existing shadows cast by adjoining buildings and fences. It is therefore agreed that the proposal has not properly considered the impact of the proposed development on adjoining properties in respect to overshadowing.

- **Blockage of sky view for 2/5 Balaclava Road**

Concern was raised that, given the height of the new structure is more than 5m above the fence, that the sky view from the master bedroom of No. 2/5 Balaclava Road would be lost.

Comment

The side setbacks of the proposed building are consistent with the surrounding development. Therefore, the loss of a “sky view” from the bedroom window is not considered a valid reason for refusal.

- **Noise from exit door and parking spaces, exit door not considered in acoustic assessment**

Comment

This concern is concurred with. The acoustic report provided fails to assess the impact of the proposed parking spaces, as well as the impact of the car stacker system. Additionally, the location of the exit door within close proximity of the bedroom windows of No. 2/5 Balaclava Road will have an adverse impact on the amenity of the neighbours.

- **Inadequate building separation from neighbouring buildings**

Comment

The building proposes side setbacks that are consistent with the side setbacks of the surrounding development. Therefore, the building separation is considered appropriate, and does not warrant refusal of the application.

- **Harmony of boarding house in R2 zone**

Concern was raised that the use of the boarding house is not in harmony with the existing residential development, and that boarding houses are not suitable for land in the R2 zone.

Comment

Boarding houses are a form of residential development that is permissible within the R2 zone. Therefore, this concern does not warrant refusal of the application.

- **Practicality of 15 room boarding house**

Several submissions have raised concerns that a 15 room boarding house in the low density area is not practical due to increased noise levels and traffic congestion.

ITEM 3 (continued)

Comment

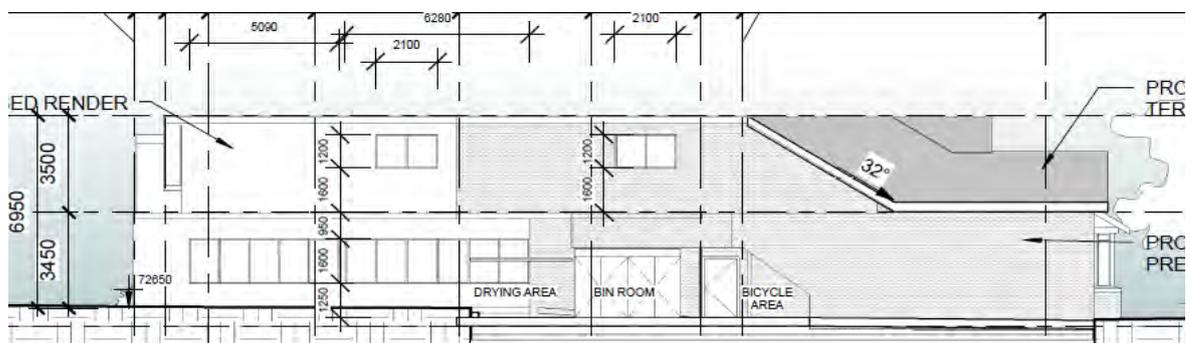
It is acknowledged that the acoustic report provided does not provide an adequate assessment in regard to car stackers. However, the proposal is not considered to significantly increase traffic congestion, and therefore, refusal is not warranted in regard to the practicality of the boarding house. The size of the proposed boarding house is not, however, supported.

- **Privacy and security**

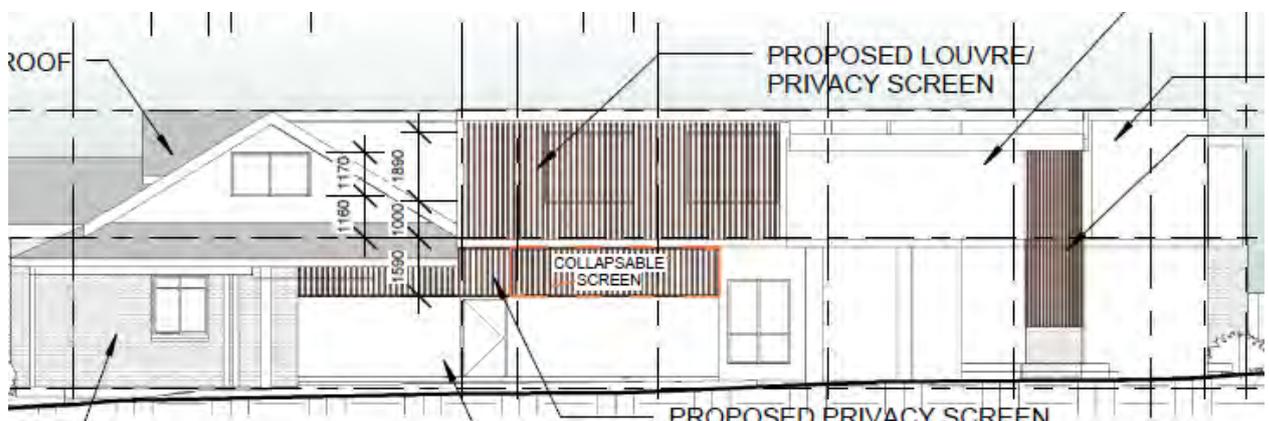
Concern has been raised by the owners of Nos. 1/5, 2/5 and 9 Balaclava Road in regard to the overlooking opportunities presented by the second storey windows on the eastern and western elevations. Additionally, concern was raised in regard to the decrease in security given the residents of the boarding house will be short term.

Comment

All the first storey windows on the eastern and western elevations mitigate any overlooking opportunities by either a 1.6m high window sill height or a privacy screen (see **Figure 17** below). This, however, results in poor amenity for the boarding room occupant.



Eastern Side Elevation



Western Side Elevation

Figure 17 - Side elevations showing sill height and privacy screens.

ITEM 3 (continued)

Therefore, the proposal is acceptable in respect to the mitigation of the overlooking opportunities. Additionally, a boarding house is a permissible use on the subject site and the concerns in relation to the safety of short term occupants are not considered appropriate or to warrant refusal of the application.

- **Tree Safety**

Concern has been raised in regard to the safety of the large trees in the rear yard of the subject site during storms.

Comment

The trees in the rear yard have been assessed in the Arborist report has being in good health, and are not currently considered a risk. However, the Arborist report does not adequately address the impact of the stormwater infrastructure and hardstand area on the trees in the backyard, or in the neighbouring properties. The retention of these trees in not considered possible, and therefore, the concern with regard to tree safety is shared.

- **Possible future unsavoury use**

Concern was raised by several submissions that the boarding house will be used as a brothel in the future.

Comment

The application has not indicated that the building will be used for anything other than a boarding house. Therefore, this concern does not warrant refusal of the application.

- **Overdevelopment in Ryde**

Comment

The boarding house use is permissible in the zone and there are no controls limiting the amount of social housing in an area. However, the non-compliances in regard to the number of rooms, parking, landscaping, accessible units and manoeuvring indicate that the proposed building is not suitable for the subject site in its current form.

- **Increase in number of parking spaces on amended plans will lead to more traffic congestion**

Comment

As discussed above, the proposal is not considered to create a significant increase in traffic congestion in the local network.

- **Number of parking spaces for amended plans still insufficient**

ITEM 3 (continued)Comment

The number of parking spaces provided complies with the requirements of the ARH SEPP. However, the configuration of the car stacker system and the insufficient manoeuvring provided for the car stackers and parking spaces 06 and 07 mean that all the parking spaces are not readily accessible, and therefore, this provision is not considered to be met.

- **Lack of community responsibility in considering the impact on neighbours regarding solar access, privacy and amenity**

Comment

It is agreed that proper consideration has not been given to the impact on the neighbours in regard to solar access and overall amenity.

- **There is not a necessity for affordable housing in the Eastwood area**

Comment

The boarding house use is permissible in the zone and there are no controls limiting the amount of social housing in an area.

- **Lack of management of boarding house proposed**

Comment

The number of occupants is limited to 19, and therefore, an onsite manager is not required under the ARH SEPP. However, the Plan of Management provided is considered insufficient, and therefore, the concern regarding the lack of management is shared.

- **Inadequate Plan of Management provided**

Comment

It is agreed that the Plan of Management provided is inadequate for the following reasons:

- Manager needs to be contactable 24 hours/s days for emergencies. The proposed hours are not acceptable
- Rooms and occupancy levels in Plan of Management is incorrect – doesn't match plans
- Plan of Management should indicate no loud music or noise is permitted, not that it is permitted until a certain time
- Hours for visitors contradicts the house rules
- Hours for outdoor area contradicts the house rules
- The house rules do not address all of the areas identified

ITEM 3 (continued)

- Section 7 indicates staff will be trained in evacuation procedure but there are no staff onsite. There is a requirement that a fire drill by manager every 3 months so boarders are aware of procedure
 - Area of clothes storage should be doubled for double rooms and two chairs are to be provided. Details of kitchenette are not provided
 - Needs to specify provision of outdoor furniture for minimum of 8 persons and BBQ
 - Inadequate complaints handling/recording procedure
 - Plan of Management needs statement of allocation of parking and training in use of stacker system
 - Plan of management needs statement on prioritisation of use of accessible room and space
 - Plan of Management needs to indicate double rooms are only to be occupied by couples as no twin bed layout provided.
- **Noise from additional occupants and parking spaces has not been considered**

Comment

It is agreed that the acoustic report does not adequately consider the impact of the car stackers and location of parking spaces 06 and 07 in relation to the neighbouring habitable windows.

- **Noise of motorcycle parking and additional parking spaces too close to bedroom windows**

Comment

The motorcycle parking spaces have been relocated to within the front setback, and therefore, do not create an adverse acoustic impact to the bedroom windows of No. 2/5 Balaclava Road. As stated above, the impact of parking space No. 6 and 7 has not been adequately addressed by the acoustic report.

- **Car stackers do not comply with the minimum width requirements for the system proposed.**

Comment

It is agreed that the car stacker system is not suitable for the proposed design. Insufficient details have been provided in regard to the car stackers to demonstrate compliance with Council controls.

- **Car stackers were not considered in acoustic assessment**

Comment

This concern is concurred with. The application fails to consider the impact of the car stackers on the future residents of the boarding house or the adjoining residents.

ITEM 3 (continued)

- **Unable to guarantee the safety of the car stackers as no training plan has been provided**

Comment

This concern is concurred with. Training for the car stackers is not included in the Plan of Management.

- **Secure gate in front door mentioned in documentation not shown on plans, and will not be compatible with local character**

Comment

It is agreed that the lack of detail regarding a security gate prevents a full assessment of the application in regard to the compatibility with the local character.

- **Lack of landscaping between adjoining properties to provide screening**

Comment

It is not considered that the landscape setting of the development as viewed from Balaclava Road is compatible with surrounding sites, particularly given the lack of setback of the proposed building. Additionally, the lack of landscaping along the side boundaries results in poor amenity for the neighbouring properties. Further, the potential loss of a number of trees on the adjoining sites is not supported without the owner's consent.

- **Inability to deal with complaints for neighbours**

Comment

It is agreed that the Plan of Management does not provide adequate procedures for neighbours to make complaints.

- **Boarding house not compatible with stand alone houses in Balaclava Road**

Comment

Given the unacceptable landscaped setting, it is agreed that the boarding house is incompatible with the existing residential development in Balaclava Road.

- **Inaccurate shadow diagrams provided for amended plans**

Comment

It is agreed that the shadow diagrams do not demonstrate that the neighbouring dwellings at No. 5 Balaclava Road receive adequate solar access.

- **Deviation from the rear setback required has been proposed**

Comment

ITEM 3 (continued)

The application makes reference to Part 3.3 of the Ryde Development Control Plan in regard to the required rear setback. It is noted that this control is not applicable in this instance, and that the rear setback must be consistent with the local character of the area. The rear setback is considered to be consistent with the adjoining development. Therefore, the rear setback does not warrant refusal of the application.

- **Generation of excessive rubbish and waste**

Concern has been raised that the development does not cater for the storage of the level of waste that would result from the development.

Comment

Council's City Works Department (Waste) has raised no issue with the bin storage room at the side of the development.

9. Referrals**External Referrals**NSW Police

NSW Police provided a detailed response addressing security and safety and recommended a series of conditions which should be included in any consent issued for the development.

Internal Referrals**Heritage Officer**

A referral was made to Council's Heritage Officer, and the following comments have been made:

"The development proposal has been referred for heritage consideration. While the subject site is not presently identified as a listed item of heritage significance, nor is within the vicinity of any heritage items, in December 2017, Council resolved to undertake a new heritage study to consider the potential significance of pre-WWII buildings.

The subject site contains a single storey, detached dwelling house which displays characteristics attributed to the Inter-War period Californian Bungalow architectural style.

While a Heritage Impact Assessment has not been submitted, from the desktop assessment undertaken, it is evident that while the dwelling retains its overall

ITEM 3 (continued)

silhouette and form, it has been modified with a series of previous changes that have distorted and diminished the architectural integrity of the building.

It is considered a pleasant but not remarkable example of the style. Demolition can be supported subject to appropriate conditions.”

City Works

A referral was made to Council's City Works department, and the following comments were provided in respect to traffic and waste:

Traffic

“The traffic impact assessment prepared by Traffix dated 9 May 2018 and subsequent amendment, have been reviewed by Traffic department.

The proposed development is for construction of a 2-storey boarding house consisting of 14 boarding rooms. Traffic generation of the proposed development is expected to be at most 3 vehicle trips per peak hour. The existing uses would generate about 1 vehicle trip per peak hour. Therefore, the net increase in traffic is expected to be less than 2 vehicle trips per peak hour. This is considered negligible on the surrounding road network.

There are seven proposed on-site car parking spaces for the proposed development, four of which are within two mechanical car stackers. On-street parking in the surrounding area is limited. Refer to Development Engineer's comments/conditions regarding the adequacy of car parking provision and compliance of car park layout.”

Waste

The proposed development is for construction of a 2-storey boarding house consisting of 14 boarding rooms. An allocated space for 6 x 240L bins has been provided. The location of the bin storage area is located more than 15 metres of the kerbside, so bins would need to be taken out by the residents or caretaker the night prior to the waste collection.

Senior Development Engineer

A referral was made to Council's Senior Development Engineer, and the following comments have been made:

“The proposed boarding house development has its frontage to Balaclava Road which is a sub-arterial road. It is also located within 100m from the signalised intersection of Balaclava & Blaxland Road.

ITEM 3 (continued)

Amended plans have been received on 5/7/18 reducing the number of bedrooms to provide 14 single bedrooms with additional parking.

Stormwater Drainage.

The applicant has proposed an underground OSD system within the driveway for the development. The outlet pipe from the OSD tank is directed to the layback within the driveway. The engineer has disregarded the location of the proposed driveway when preparing the drainage plans. Plans require further amendments.

The hydraulic engineer used the Drains computer programme to calculate the OSD details. However for sites with less than 2000m² Council's DCP recommends the use of the simplified method for calculations. The volume/discharge should be designed to suit the Eastwood catchment zone. Drainage plans/calculations require amendments to increase the tank volume and reduce the discharge.

Vehicle Access and Parking

The application has been submitted under the provisions of SEPP 2009 as a Boarding House. The SEPP has draft parking controls which have been notified on NSW legislation website on 1 June 2018. These parking controls were effective from the day they were notified.

The new parking controls require 0.5 car parking spaces per room regardless of the location. The proposed development requires 7 parking spaces, 3 bicycle spaces & 3 motor cycle spaces (1 bicycle/motorcycle space for each 5 bedrooms). The development is noted to have provided two car stacker spaces. Out of seven car parking spaces proposed, one has been reserved as disabled.

The motor cycle parking spaces are proposed within the front setback area. The location of the proposed driveway and the motor cycle parking area will impact on the existing tree adjoining the front boundary. Council's DCP recommends that bicycle parking should be in a secure undercover area. It appears these bicycle parking areas are located behind the dwelling outside.

The car park layout does not comply with the objectives of Council's DCP Part 8.3. The design of the off-street parking spaces has been assessed in relation to the relevant sections of the Australian standard AS 2890.1 & 6 and the following were noted:

- The disable parking space proposed is 3.0m wide with 1.55m shared space. This complies with AS 2890.6. An additional disable space is shown on sheet A103 (plot date 28/6/18) within the garage. (However the traffic report indicated provision of one disable space).*

ITEM 3 (continued)

- *Inconsistent information provided on the plans/documents. The dimensions shown on the sheet A103 (plot date 28/6/18) and the dimension indicated on the traffic report for the disable space is inconsistent. Note the traffic report has drawing A103 with the plot date of 18/6/18.*
- *The levels on the drainage plan show 250mm level difference between the car park area and the adjoining landing. This will require two steps to this area. This disable access is also shown as a fire exit which requires the door to be opened outward.*
- *Insufficient manoeuvring proposed within the development for vehicles to reverse and exit to the street in a forward direction. The traffic report indicates that a bollard will not be provided within the shared area of the disable space as this area will be used as a reversing bay. The reversing bay as designed consists of this shared area and also the pedestrian/disable access to the building from the car park. Using this area as a reversing bay for vehicles is not acceptable due to safety issues.*
- *The specification submitted from Evolution Parking Systems for the mechanical car stacker system shows that car stacker at ground level requires additional space for vehicles to get onto the car stacker and for the stacker to manoeuvre. The specification says system length in down position (which I assume at ground level) requires 10.55m. It's shown that vehicles have to come down the driveway and get onto the car stacker which is extended over the driveway area and then turn ninety degrees to go up. Due to the limited space available in this area, this arrangement will create disruption the flow of traffic within and considered not an acceptable solution.*
- *The plans do not clearly specify the height clearance over the car stacker area.*
- *The traffic report does not elaborate on any details of potential queue lengths of vehicles while waiting for access to the car stacker. This would warrant the entering vehicles to reverse back along the driveway or towards the footpath creating unsafe situations for pedestrians and disruption to through traffic within.*
- *The driveway at the entrance should be 5.5m wide and extended 6.0m into the property. The plans do not show the dimensions and measures to about 5.0m. The proposed transition is abrupt and a smooth transition should be provided from 5.5m wide driveway to the internal driveway.*
- *The front fence as shown does not comply with Council's DCP requirements for sightlines. The maximum height of the solid fence should be 900mm with 350 x 350 columns."*

ITEM 3 (continued)Recommendation

It is noted that drainage issues can be resolved by redesigning the OSD system. However, the parking layout/arrangement as proposed is unsatisfactory and requires major modifications to the layout. The development as proposed is an overdevelopment for the property and cannot be supported.

Senior Environmental Health Officer

A referral was made to Council's Senior Environmental Health Officer, and the following comments have been made:

"The subject site is currently used as a residential premises and the new use will also be residential. There is no known fill on this site and there is no known likelihood of contamination as the use of the site will not be intensifying.

Noise

An acoustic assessment has been submitted by Acoustic Consulting Engineers. This has provided recommendations regarding the sound insulation for the subject building and highlights the potential plant noise for the proposed development.

However, the amended plans for the site show the use of stackers for car parking. These stackers have not been considered in the acoustic report, although the operating time is around 60 seconds to unload a vehicle, which may have minimal impact on the neighbouring premises which should be considered within the acoustic assessment. However, any alteration to the previous conclusions reached in the acoustic assessment, may alter the conclusions of the acoustic report.

Asbestos/Hazardous Waste

Due to the age of the building, the subject premises is likely to contain asbestos containing materials. This does not appear to be reflected in the waste management plan."

Assessing Officer Comment

Given the concern with the suitability of the site to accommodate a boarding house of the size proposed due to the inability to provide adequate amenity for the future occupants of the proposal, the request for additional information in regard to the Waste Management Plan and Acoustic Report was not made to the applicant.

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Landscape Architect

A referral was made to Council’s Landscape Architect, and the following comments have been made:

“The Arborist Report identifies 11 existing trees, 2 on site and 9 on adjoining sites. Tree 1 to 10 are proposed to be retained and Tree 11 to be removed. To prepare the report the Arborist only references the Survey Plan and Ground Floor Plan (page 6 of The Arborist Report). The Arborist did not reference the Stormwater Plan which shows the stormwater layout and proposed external levels. This plan has a major impact on trees 1, 5 and 6.

The Landscape Plan and the Tree Protection Plan have numbered the trees incorrectly. The tree numbers shown on the Arborist Report have been taken as being correct - Figure 1. All plans need to be co-ordinated to show consistent numbering.

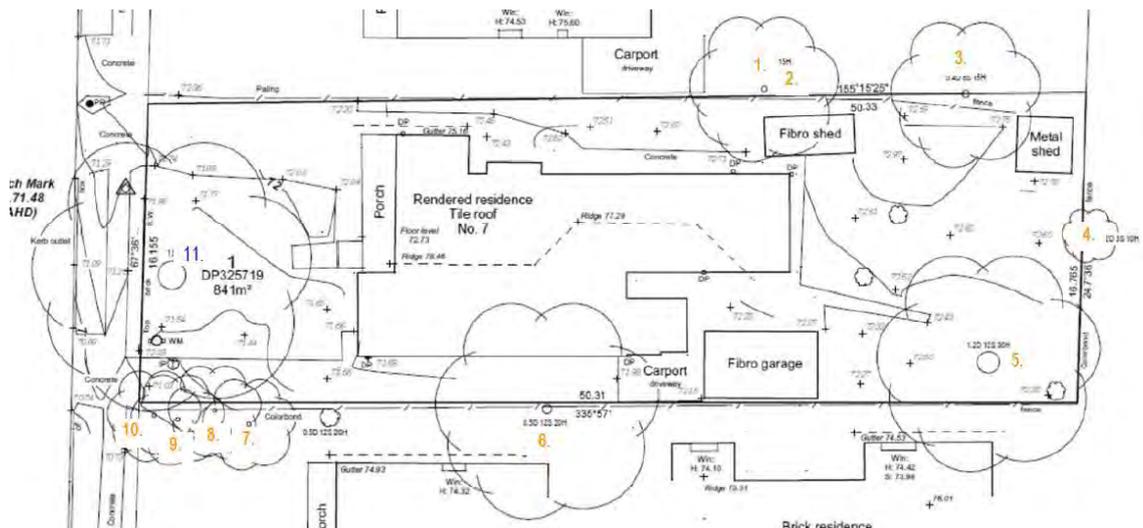


Figure 16 - Location of site trees and adjoining trees

The large trees affected by the proposal are trees 11, 5, 6, 1 and 3.

Tree 11 is a Eucalyptus nicholii (narrow leaved Peppermint) is in poor condition and can be removed.

Tree 5 is a very large Eucalyptus microcorys (Tallowood) is in good condition and is to be retained according to the Arborist Report. However, as stated earlier, this tree is impacted by the Stormwater Plan which was not been referenced by the Arborist. The Tree Protection Plan shows no encroachment allowed within 8 metres of the tree. However the Stormwater Plan shows a pit and stormwater pipe at 5 metres from the tree and excavation for paving at 6 metres from the tree. These two impacts will be well within the Tree Protection Zone (TPZ) and exceed the maximum 10% reduction in TPZ as proposed in

ITEM 3 (continued)

the Arborist Report. The tree will be severely impacted by the proposed development, and cannot be retained as described by the parameters set out in the Arborist Report.

Tree 6 is a Cinnamomum camphora (Camphor Laurel). This is a weed tree, is exempt from City of Ryde DCP 2014 Part: 9.5 Tree Preservation, and should be removed if possible. Permission has not been provided by the owners of the adjoining property and therefore the tree must be retained in a healthy condition.

The Stormwater Plan shows a below ground detention basin and connecting pipe under the proposed driveway. These works will severely impact the tree and the Arborist proposal to reconstruct the pavement to the same envelope and levels will be ineffective. Therefore the proposal does not allow for the retention of Tree 6.

Tree 1 is a Casuarina. This tree is located on the adjoining site to the east. The Arborist report states it will only have Minor Encroachment and can be retained. However the Stormwater Plan shows paving under this tree with a finish level of 72.550. The existing level is 72.71. With an assumed excavation for paving and base course of 200mm, this will give an excavation of 360mm over approximately 30% of its TPZ. This tree cannot be retained with the proposed development. It is noted that adjoining owner's permission has not been provided for the removal of this tree, and therefore it cannot be removed.

Tree 3 is a Silky Oak. There will be only minor encroachments.

Trees 7 to 10 are small Bottlebrush in poor condition. Plan A202 shows what appears to be a brick retaining wall along the western boundary in the front yard. This wall will severely impact these trees which are already struggling, and they will rapidly deteriorate and will need to be removed. Permission has not been provided from adjoining owner to remove these trees.

A summary of the existing trees identified by the Arborist are show in the table below:

Tree No.	Species "Common name"	Proposed recommendation by Arborist	Comment
1	Casuarina	Retain	Disagree. The development will require removal of this tree.
2	NSW Christmas bush	Retain	Agree
3	Silky Oak	Retain	Agree
4	Cypress	Retain	Agree
5	Tallowood	Retain	Disagree. There are further major encroachments, retention not possible.

ITEM 3 (continued)

6	<i>Camphor laurel</i>	<i>Retain</i>	Disagree. Major stormwater works will impact the tree and it will need to be removed
7	<i>Bottlebrush</i>	<i>Retain</i>	Disagree. Severely impacted by boundary retaining wall.
8	<i>Bottlebrush</i>	<i>Retain</i>	Disagree. Severely impacted by boundary retaining wall.
9	<i>Bottlebrush</i>	<i>Retain</i>	Disagree. Severely impacted by boundary retaining wall.
10	<i>Bottlebrush</i>	<i>Retain</i>	Disagree. Severely impacted by boundary retaining wall.
11	<i>Narrow Leaved Peppermint</i>	<i>Remove</i>	<i>Agree</i>

The Landscape Plan is unsatisfactory for the following reasons:

- a) Tree numbering is incorrect on both the Landscape Plan and the Tree Protection Plan
- b) The landscape requirements of City of Ryde DCP 2014 Part: 3.4, Section 3.7 Landscaping have been taken as a guide to the standard needed for the Landscape Plan. The following have not been provided:
 - A planting bed 1.2 metres wide has not been provided between the driveway and the adjoining property boundary.
 - A planting bed 1.2 metres wide has not been provided along the eastern boundary.
 - Planting in the front yard is not in a planting bed with an edging strip
- c) There is insufficient number and variety of plants in the front yard
- d) Landscape Plan has not been prepared by a suitably qualified Landscape Architect.

Recommendations

1. The Arborist Report is unsatisfactory; it has not taken into account the impact of the Stormwater Plans. The development will have major impact on trees 1, 5 and 6 which are proposed to be retained. It is noted that trees 1, 6, 7, 8, 9 and 10 cannot be removed without the neighbouring owner's consent, which has not been provided. Therefore the proposal cannot be supported in its current state.
2. The Landscape Plan and Architecture Plan are unsatisfactory. Major redesign of the proposal is required to incorporate the 1.2 wide planting strips down both side boundaries which are needed to provide privacy to the adjoining properties. Therefore the proposal cannot be supported in its current state."

Assessing Officer Comment:

ITEM 3 (continued)

Council's Landscape Architect has identified several non-compliances in regard to the landscape plan and arborist report provided. Whilst Council's Landscape Architect has identified that several trees will be impacted by the excavation associated with the proposal, it is considered that insufficient information regarding the level of excavation has been supplied to determine if these trees will be impacted.

10. Conclusion

The development application is recommended for refusal for the following reasons:

1. The proposed development provides inadequate onsite parking and is inconsistent with the requirements of Clause 29 of State Environmental Planning Policy (Affordable Rental Housing). The proposed configuration of the car stackers does not allow for all the parking spaces to be accessed, and therefore this provision is not met.
2. The proposed development is uncharacteristic of development in the vicinity of the site, having an inadequate front setback, and as such does not satisfactorily address the character test contained at Clause 30A of State Environmental Planning Policy (Affordable Rental Housing).
3. The proposed development has an uncharacteristic landscape setting as viewed from Balaclava Road and fails when assessed against Clause 29 of State Environmental Planning Policy (Affordable Rental Housing). The proposed passing bay and motorcycle parking has resulted in limited landscaped area within the front setback. Additionally, the proposal fails to assess the impact of the development on a site tree and several trees on the adjoining properties. The removal of these trees further reduces the landscape setting of the development. It is further noted that owner's consent for the removal of these trees has not been provided, and therefore, their removal is not permissible.
4. The application does not comply with the Building Code of Australia in regard to the number of accessible rooms provided. Furthermore, the application fails to comply with the Building Code of Australia in relation to design of the accessible parking space.
5. The proposed development provides for an inadequate level of amenity for the boarding room, having a poor outlook due to the proximity to the parking area. Furthermore, the use of high sill windows and privacy screening on several boarding room windows restricts the outlook of these rooms, and results in poor amenity for the occupants of these rooms.

ITEM 3 (continued)

6. The proposed development fails to comply with the Ryde DCP 2014, as it exceeds the control for number of rooms permitted in boarding houses located on land zoned R1 General Residential or R2 Low Density Residential.
7. The proposed development provides inadequate level of amenity for the adjoining properties, given the location of the side entries, insufficient landscape screening along the side boundaries. Furthermore, insufficient detail has been provided to establish that the proposal will not result in the removal of significant trees on both the site and the adjoining properties.
8. The proposed development has not considered the acoustic impact of the proposed car stackers on the future residents or adjoining properties.
9. The proposed development fails to provide a suitable BASIX Certificate.
10. The proposed development fails to address the Eastwood Stormwater Catchment in the Stormwater design.
11. The Plan of Management lodged with the application does not provide adequate information as required by Part 3.5 of the DCP.
12. The development is not considered to be in the public interest.

10. Recommendation

That Development Application LDA2018/0224 for the construction of a boarding house comprising 9 single rooms, 5 double rooms and parking for 7 cars under *State Environmental Planning Policy (Affordable Rental Housing) 2009* at No. 7 Balaclava Road, Eastwood, be refused for the following reasons.

1. Pursuant to Clause 50(1)(a) and Clause 2A(1) under Schedule 1 of the *Environmental Planning and Assessment Regulation 2000*, the application does not include a valid BASIX Certificate for the self-contained boarding rooms.
2. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the development does not comply with the following provisions of the *State Environmental Planning Policy (Affordable Rental Housing) 2009*:
 - Clause 29(2)(b) – Landscaped area in that an uncharacteristic landscape setting as viewed from Balaclava Road would result due to the large hardstand area incorporating the passing bay and motorcycle parking.

ITEM 3 (continued)

- *Clause 29(2)(e) – Parking* in that the insufficient details have been submitted to demonstrate that the proposal will comply with the required provision of on-site car parking as a result of accessibility of the car stackers.
 - *Clause 30A – Character of local area* in that the front setback is inadequate and does not address the character test.
3. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the development does not comply with the following provisions of the *Ryde Development Control Plan 2014*:

Part 3.5 – Boarding Houses

- *Clause 1.3 – Objectives* in that the boarding house does not:
 - provide high quality affordable rental housing in the form of boarding houses;
 - ensure that its operation would not adversely impact upon the operation and amenity of the site and surrounding land uses;
 - provide for a satisfactory standard of amenity for the needs of the tenants.
- *Clause 2.1 – Design and Local Area Character* in that
 - the proposal does not consider the existing front setbacks of the surrounding development, and is therefore is not compatible with the existing character.
- *Clause 2.3(e) and (f) – Size and Scale* in that
 - the number of boarding rooms exceeds the maximum requirement of 12 boarding rooms per boarding house in land zoned R2 Low Density Residential.
 - the proposal has not demonstrated that there is an acceptable level of solar access has been provided to the adjoining properties.
 - the landscaping proposed does not provide an appropriate level of amenity for the occupants of the boarding house or adjoining properties.
 - the trees on the site and adjoining properties will be significantly impacted by the proposal.
- *Clause 3.2(a) to (d) - Privacy and Amenity* in that:
 - the close proximity of the side entrance on the eastern boundary will impact upon the amenity of the adjoining neighbour;
 - the proposal provides for an inadequate level of amenity for several boarding rooms due to the location and design of the windows;
 - has not been designed and constructed to mitigate visual and acoustic impact on the amenity of future residents or adjoining properties; and
 - an Acoustic Report has not been provided which satisfactorily addresses acoustic impact, particularly in regard to the car stackers.
- *Clause 3.3(a) – Accessibility* in that
 - The boarding house does not demonstrate provision for the required number of accessible boarding rooms; and

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- the application fails to comply with the Building Code of Australia in relation to design of the accessible parking space.
- *Clause 4.2 (a) to (d) – Management* in that the Plan of Management fails to provide the following information:
 - Manager is required to be contactable 24 hours per day for emergencies;
 - The plan is not consistent with the plans and documentation provided;
 - The plan has inappropriate details in regard to loud music and noise;
 - The plan contradicts the House Rules;
 - Insufficient details are provided on emergency evacuation training and training in the use of the car stackers;
 - Insufficient details regarding the kitchenette are provided; and
 - Inadequate complaints handling and recording procedure.

Part 8.2 – Engineering

- *Clause 2.0 – Stormwater Drainage* in that the proposed development fails to address the Eastwood Stormwater Catchment in the stormwater design.
4. Pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, that the proposed boarding house design is not suitable for the site given the proposal does not meet key development standards for boarding house development under the relevant planning controls.
 6. Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, in that the development is not in the public interest because it fails to achieve the objectives and requirements of the applicable environmental planning instruments, development control plans and the Building Code of Australia.

ATTACHMENTS

- 1 A3 Plans - subject to copyright provisions - CIRCULATED UNDER SEPARATE COVER

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