



4 MARCH 2020

NOTICE OF MEETING

You are advised of the following meeting:

THURSDAY 12 MARCH 2020.

City of Ryde Local Planning Panel Meeting No. 2/20

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 1 Pope Street، Ryde (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 دراین 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 12 March 2020
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.

NOTICE OF BUSINESS

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DECLARATIONS OF INTEREST

DEVELOPMENT APPLICATIONS

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PLANNING PROPOSALS

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DEVELOPMENT APPLICATIONS

- 1 153 Cox's Road, North Ryde - Alterations to the existing building which contains a dwelling house and secondary dwelling to a dual occupancy pursuant to SEPP (Affordable Rental Housing) 2009 and strata subdivision - LDA2020/0005**

Report prepared by: Creative Planning Solutions

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

Report dated: 4/03/2020 **File Number:** GRP/09/6/12/1/2 - BP20/188

City of Ryde Local Planning Panel Report

DA Number	LDA2020/0005
Site Address & Ward	153 Cox's Road, North Ryde East Ward
Zoning	R2 Low Density Residential
Proposal	Alterations to the existing building which contains a dwelling house and secondary dwelling to a dual occupancy pursuant to <i>State Environmental Planning Policy (Affordable Rental Housing) 2009</i> and strata subdivision.
Property Owners	Sajjad Falamaki
Applicant	Sajjad Falamaki
Report Author	Ben Tesoriero Consultant Planner
Lodgement Date	3 January 2020
No. of Submissions	Two (2) submissions objecting to the development
Cost of Works	\$40,685.00
Reason for Referral to LPP	Departure from Development Standard –The proposal results in 24% departure from the minimum frontage requirement of Clause 4.1B(2)(b) of RLEP 2014.

ITEM 1 (continued)

Recommendation	Refusal
Attachments	<p>Attachment 1 – LEP and DCP Compliance Table</p> <p>Attachment 2 – SEPP (Affordable Rental Housing) 2009 – Division 1 – Compliance Table</p> <p>Attachment 3 - Clause 4.6 variation to Clause 4.1B(2) minimum road frontage</p> <p>Attachment 4 Judgement in respect of <i>Falamki v Council of the City of Ryde [2019] NSWLEC 1007</i></p> <p>Attachment 5 A3 Plans submitted with DA</p>

1. Executive Summary

The following report is an assessment for alterations to an existing building containing a dwelling house and secondary dwelling, to create an attached dual occupancy pursuant to *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARH SEPP). The proposal is very similar to Development Application LDA2017/0226, which was previously refused by the LPP in 2018 with a subsequent Land and Environment Court (LEC) appeal dismissed in 2019 (*Falamki v Council of the City of Ryde [2019] NSWLEC 1007*).

This application is reported to the Ryde Local Planning Panel for determination as it proposes a departure from a development standard in excess of 10% in accordance with the *Environmental Planning and Assessment Act 1979*, Section 9.1 - Directions by the Minister.

The frontage to Cox's Road does not meet the minimum 20 metre development standard required for dual occupancy development pursuant to Clause 4.1B(2)(b) of *Ryde Local Environmental Plan 2014* (RLEP 2014). The site has a frontage of 15.24 metres, and the shortfall represents a 24% variation to the standard.

The assessment has concluded that the submitted Clause 4.6 written variation request does not satisfy the jurisdictional prerequisites required to satisfy the consent authority and to enable variation to the standard, in that the Clause 4.6 submission fails Clause 4.6(3)(a) and (b) and Clause 4.6(4) of RLEP 2014.

The proposed development does not achieve compliance with the character and landscaping provisions of ARH SEPP. In addition to the proposed variation to the lot frontage development standard, the proposal is inconsistent with the requirements of Part 3.3 (Dwelling Houses and Dual Occupancy (Attached)) within *Ryde Development Control Plan 2014* (RDCP 2014) in respect to the character of the local area and landscaping controls.

ITEM 1 (continued)

The application was lodged on 3 January 2020, with owners of surrounding properties being notified from 17 January 2020 until 5 February 2020. In response, two (2) submissions were received, both of which objected to the subject DA.

The proposal has been assessed in accordance with the relevant environmental planning instruments and local provisions in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*. The planning assessment found that the proposal is not supportable, as it would have adverse impacts upon the existing and desired character of the streetscape and the locality more broadly. The subject site is therefore not suitable for the proposed development.

For the reasons outlined above, the subject DA is recommended for refusal.

2. The Site and Locality

The site is legally described as Lot 159 within Deposited Plan 28396 and is known as No. 153 Cox's Road, North Ryde. The site is a rectangular-shaped allotment with a width of 15.24 metres and a depth of 35.05 metres. The front south western boundary adjoins Cox's Road (**Figure 1**). The total site area is 534.17m² (based on the submitted survey plan). The site also contains a moderate north-west to south-east (i.e. side-to-side) slope across the site.



Figure 1: Aerial photograph of the site in context.

Source: Nearmap, 21 January 2019

ITEM 1 (continued)

The subject site presently contains a dwelling house that was approved under a Complying Development Certificate (CDP2015/0778 on 12 December 2015 and twice modified on 4 March 2016 and 20 July 2016. A further CDC (CDP2017/704/1), determined 20 November 2017 approved a secondary dwelling within the south eastern part of the dwelling. All complying development certificates were issued by a private certifier, with a record provided to Council. Access to the interior of the building was denied during the site inspection, therefore it is not known whether the secondary dwelling has been constructed, though the submitted plans suggest the existing floor layout includes a secondary dwelling (refer to **Figures 4 and 6**).



Figure 2: The site as viewed from the northwest side of the Coss Road frontage.
Source: CPS Site Inspection, 6 February 2020.

Adjoining the site's north western side boundary is 155 Cox's Road, which contains a single storey weatherboard dwelling house with a tiled roof. Adjoining the site's south eastern side boundary is a single storey brick building with a tiled roof that is currently being used as a centre-based childcare facility (KU North Ryde Preschool) (**Figure 3**). Adjoining the rear boundary is 4 Schumack Street, which contains a single-storey weatherboard dwelling. Directly opposite the subject site, on the south western side of Cox's Road is a large grassed area and significant vegetation which forms part of the broader Macquarie Hospital site.

The surrounding residential areas are broadly characterised by single and two storey dwelling houses; some dual-occupancy developments are also located within the surrounding area. The road reserve in front of the adjoining site at 155 Cox's Road

ITEM 1 (continued)

also includes a bus stop, which is serviced by bus routes which operate at a frequency that is sufficient to satisfy the definition of ‘accessible area’ within clause 4 of ARH SEPP.



Figure 3: The adjoining centre-based childcare facility (KU North Ryde Preschool) at 147-151 Coxs Road, which adjoins the subject site’s southeast side boundary.

Source: Google, November 2017

The site is mapped as containing ‘urban bushland’, however an inspection of the site has not identified any significant trees or vegetation.

It is noted that no balustrades have been erected on the rear first-floor balconies as required by CDA No. CDP2015/0778 (as modified).

3. The Proposal

The proposal includes alterations to the existing building (which contains a dwelling house and secondary dwelling) to enable a change of the building’s use to a dual occupancy containing in-fill affordable housing pursuant to Division 1 of the ARH SEPP and strata subdivision. The applicant proposes to surrender the complying development certificate (CDP2017/704/1) for the secondary dwelling.

It should be noted that aside from proposing to surrender the CDC for the secondary dwelling and proposing strata subdivision, the subject application is largely the same as that previously proposed by Development Application LDA2017/0226. The

ITEM 1 (continued)

application proposed a Torrens Title subdivision of the proposed dual occupancy, at the time of its refusal by the RLPP, the CDC for the secondary dwelling had not been issued.

The proposed works have been considered in the context of the secondary dwelling having been constructed. The proposed works are as follows:

- Removal of the secondary dwelling within the south eastern part of the building and a reconfiguration to the floor layouts on both levels within the building.
- Occupying two large first floor voids with habitable areas at the front of the dwelling.
- Filling in of voids on the ground and first floors.
- Replacement of a sliding glass door on the south eastern elevation of the building with an entrance door to the dwelling proposed as 153A Cox's Road.
- Construction of a kitchen within the part of the development proposed as 153A Cox's Road.
- Enclosure of two balconies (unfinished as of 6 February 2020) at the rear of the building with one metre high balustrades topped by 800mm privacy screens (1.8 metres high in total).
- Enclosure of a gap in a rear blade wall and the erection of an internal boundary fence.
- Conversion of the existing two car garage to two (2) single garages by an internal dividing wall.
- Minor landscaping works (i.e. tree planting, utilisation of parts of the two rear first floor balconies as landscaped area).

The layout of each dwelling within the dual occupancy (attached) development are proposed to be as follows (**Figures 5 and 7**):

Dwelling 153 – north western side of allotment comprising:

- Ground floor (RL62.78) containing an entry on the north western side of the front façade which would provide access to a small lounge area, beyond which is a hallway that leads past a bathroom and laundry. The rear of the ground floor would contain an open plan kitchen, dining and living room area. To the rear of this area through existing doors is a timber-decked alfresco area and predominantly turfed private open space area. An outdoor spa is also located on the northwest corner of the building.
- A single car garage would be internally accessed via a doorway that would connect to the hallway opposite the bathroom.
- First Floor containing four (4) bedrooms, a family room and a bathroom. The master bedroom provides access to an en-suite bathroom and walk-in-robe.

Dwelling 153A – south eastern side of allotment

ITEM 1 (continued)

- Ground floor (RL62.78) entry on the south eastern side of the front façade which would provide access to a small lounge area, beyond which is a hallway (which leads past a bathroom and laundry) to an open plan kitchen, dining and living room area at the rear of the dwelling. To the rear of this area through existing doors is a timber-decked alfresco area and predominantly turfed private open space area
- A single car garage would be internally accessed via a doorway that would connect to the hallway opposite the bathroom.
- First Floor containing four (4) bedrooms, an informal family room and a bathroom. The master bedroom provides access to an en-suite bathroom and walk-in-robe.

The submitted Statement of Environmental Effects has nominated Dwelling 153A to be used as infill affordable housing.

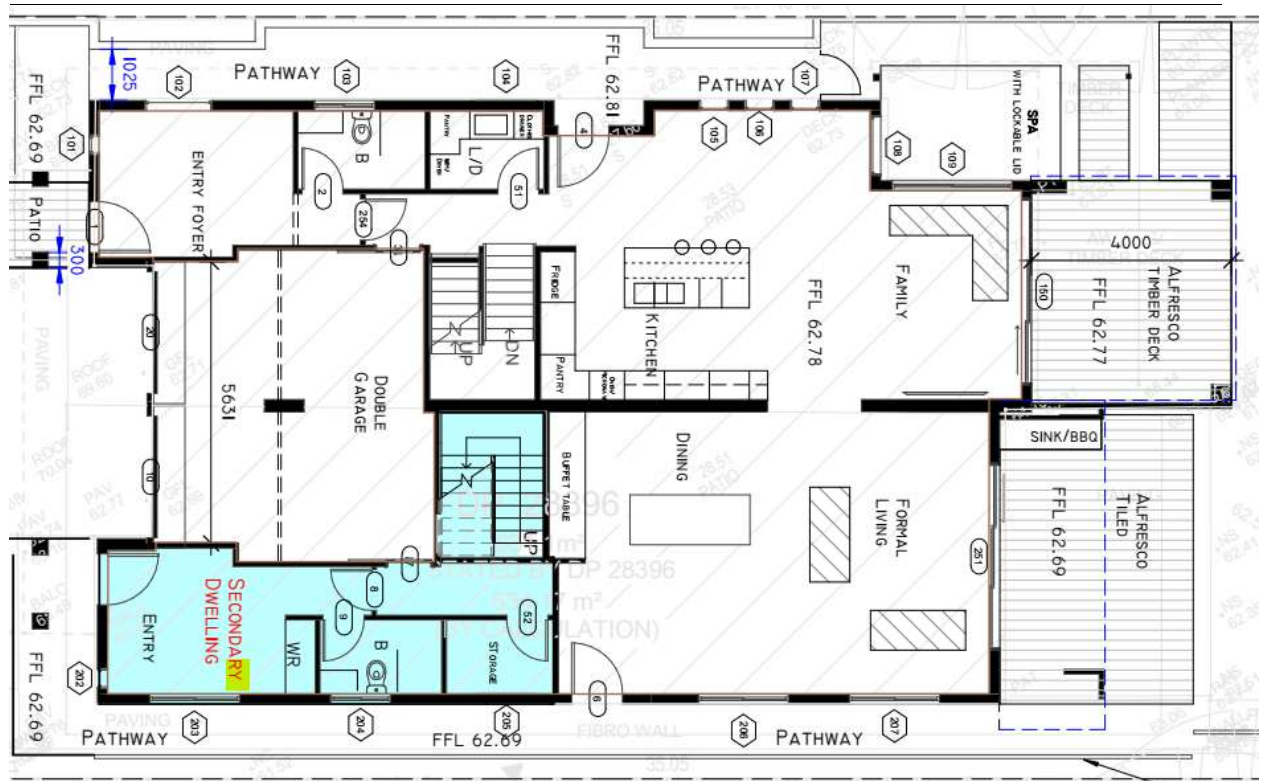


Figure 4: Extract of existing ground floor plan.
Source: RMS&F Consulting Engineers Australia, 2019

ITEM 1 (continued)



Figure 5: Extract of proposed ground floor plan.
Source: RMS&F Consulting Engineers Australia, 2019

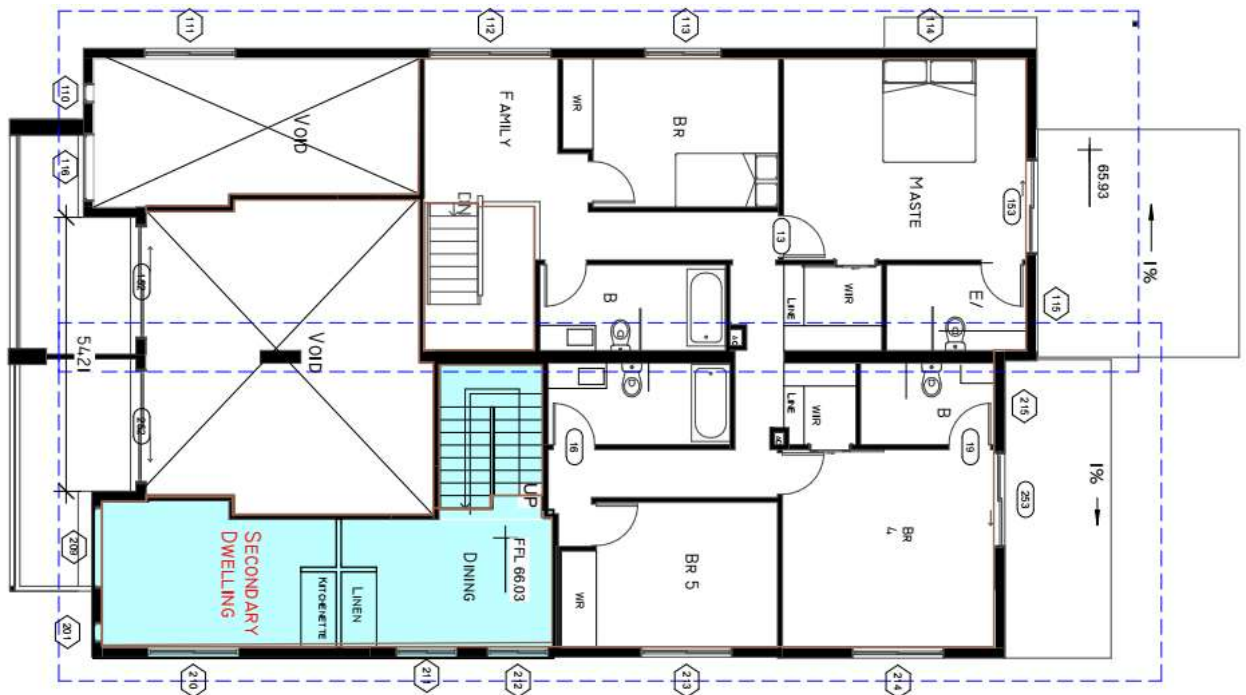


Figure 6: Extract of existing first floor plan.
Source: RMS&F Consulting Engineers Australia, 2019

ITEM 1 (continued)

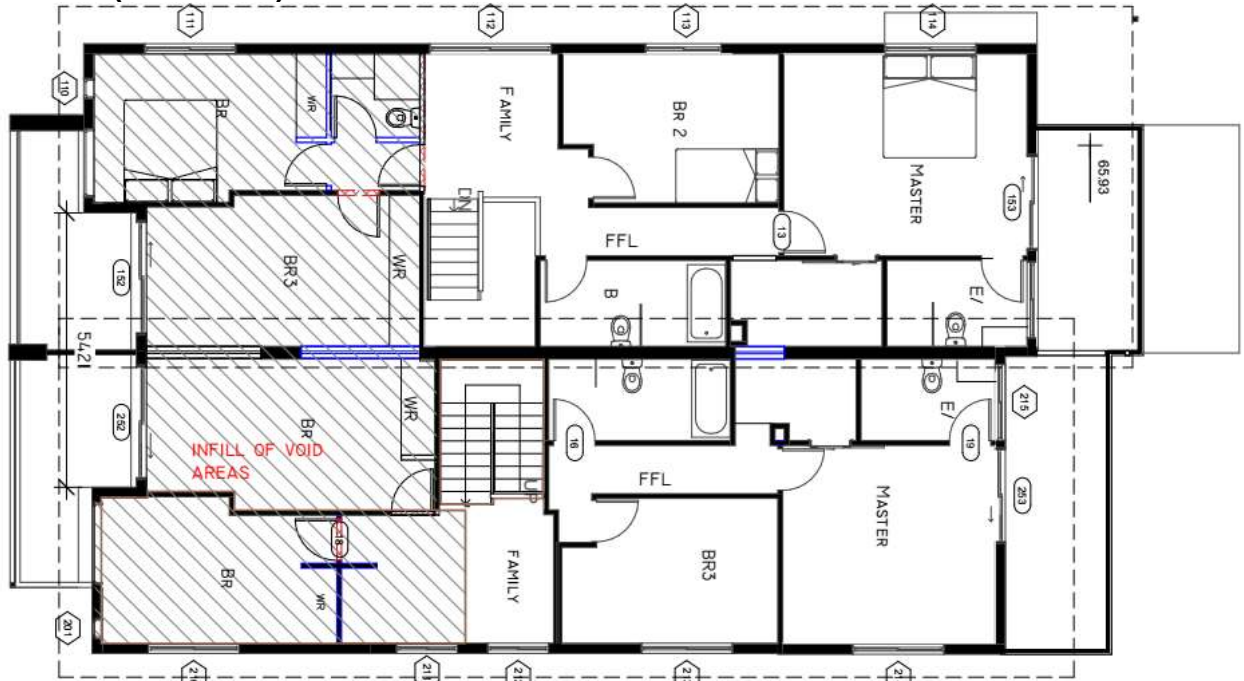


Figure 7: Extract of proposed first floor plan.
Source: RMS&F Consulting Engineers Australia, 2019

4. Background

12 December 2015	Complying Development Certificate No. CDC-015106 (Council ref. CDP2015/0778) for a dwelling house was issued.
4 March 2016	CDC-015106 modified (Council ref. D16/345604).
20 July 2016	CDC-015106 modified (Council ref. D16/103512).
12 July 2018	<p>Development Application LDA2017/0226 proposing proposing internal modifications to convert an existing dwelling to a dual occupancy (attached) & subdivision under the ARH SEPP as infill development was refused by the Ryde Local Planning Panel for the following reasons:</p> <ol style="list-style-type: none"> 1. Pursuant to Section 4.15(1)(a)(i) of the <i>Environmental Planning and Assessment Act 1979</i>, the development does not comply with the .following provisions of the <i>State Environmental Planning Policy (Affordable Rental Housing) 2009</i>:

ITEM 1 (continued)

	<ul style="list-style-type: none"> • <i>Clause 13 - Floor space ratios</i> in that the proposal only provides for 16.4% of its gross floor area as affordable housing, and therefore does not comply with the threshold provisions of Clause 13(1) under Division 1 'In-fill Affordable Housing'. <p>2. Pursuant to Section 4.15(1)(a)(i) of the <i>Environmental Planning and Assessment Act 1979</i>, the development does not comply with the following provisions of the <i>State Environmental Planning Policy (Building Sustainability Index: BASIX)</i>:</p> <ul style="list-style-type: none"> • <i>Clause 6 - 'Buildings to which this Policy'</i> applies in that the BASIX Certificate relied upon by the applicant is for alteration and additions, and not for a Dual Occupancy. <p>3. Pursuant to Section 4.15(1)(a)(i) of the <i>Environmental Planning and Assessment Act 1979</i>, the development does not comply with the following provisions of the <i>Ryde Local Environmental Plan 2014</i>:</p> <ul style="list-style-type: none"> • <i>Clause 4.1A - 'Dual occupancy (attached) subdivisions'</i> in that the site has an area of less than 580m² sufficient to permit strata subdivision. • <i>Clause 4.1 B(2)(a) - 'Minimum lot sizes for dual occupancies and multi dwelling housing'</i> in that the site area is 534.15m² and the minimum site area requirement is 580m² • <i>Clause 4.1 B(2)(b) - 'Minimum lot sizes for dual occupancies and multi dwelling housing'</i> in that the road frontage of the site is less than 20m. • <i>Clause 4.4 - 'Floor space ratio'</i> in that the development does not benefit from the floor space ratio bonus provided for under Clause 13 of <i>State Environmental Planning Policy (Affordable Rental Housing) 2009</i> and that the floor space ratio therefore exceeds that prescribed under Clause 4.4 of the <i>Ryde Local Environmental Plan 2014</i>. • <i>Clause 4.6,.. 'Exceptions to Development Standards'</i> in that the written request submitted in support of varying clause 4.1 (2)(b) has failed to satisfactorily demonstrate why it is unreasonable or unnecessary to comply with the development standard, and also failed to provide sufficient environmental planning grounds to support varying the standard. <p>4. Pursuant to Section 4.15(1)(a)(iii) of the <i>Environmental Planning and Assessment Act 1979</i>, the development does not comply with the following provisions of the <i>Ryde Development Control Plan 2014</i>:</p>
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ITEM 1 (continued)

	<ul style="list-style-type: none"> • <i>Section 2.2 - 'Dwelling Houses'</i> in that proposed Dwelling B does not include a front door or entry to the street. • <i>Section 2. 6. 1 - 'Deep Soil Areas'</i> in that the proposal provides less than the minimum 35% deep soil area required for dual occupancy (attached) developments, and does not provide for the minimum 8m x -8m deep soil area dimension within the rear yard of the development. • <i>Section 2.6.2 - 'Topography and Excavation'</i> in that the level of fill within the rear yard does not comply with the Section 2.6.2, nor Part 3 of the <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i> for which the existing dwelling house was approved. • <i>Section 2.9.1 - 'Front Setbacks'</i> in that the building does not achieving the minimum frontage requirement for dual occupancy (attached) developments resulting in small portions of landscaping which are inadequate in size and dimension to accommodate any substantial tree planting. • <i>Section 2. 9.3 - 'Rear Setbacks'</i> in that the rear setback the non-compliant rear setback is a result of the site not meeting the minimum allotment size and frontage requirements of LEP2014 for dual occupancy (attached) developments. • <i>Section 2. 13 - 'Landscaping'</i> in that the development does not include the minimum vegetation planting requirements for front and rear yards due to an insufficient amount of pervious area to accommodate the responsible planting of a tree capable of growing to a mature height of 1 Om with a spreading canopy. • <i>Section 2. 14. 1 - 'Daylight and Sunlight Access'</i> in that The shadow diagrams submitted with the application do not taken into consideration the cantilevered roofs and balconies that are located over the top of the north facing windows and sliding doors to the living rooms. <p>5. Pursuant to Section 4.15(1)(c) of the <i>Environmental Planning and Assessment Act 1979</i>, in that the site is unsuitable for the development owing the inability of the land to meet the key development standards for dual occupancy (attached) sites under the relevant planning controls.</p> <p>6. Pursuant to Section 4.15(1)(e) of the <i>Environmental Planning and Assessment Act 1979</i>, in that the development is not in the public interest because:</p> <p>a) It fails to achieve the objectives and development standards of the applicable environmental planning instruments and development control plans.</p>
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ITEM 1 (continued)

	b) It establishes an undesirable precedent that would legitimise a building constructed for the purposes of circumventing Council's planning controls for dual occupancy (attached) buildings.
20 November 2017	Complying Development Certificate No. CDC- 17320 (Council ref. CDP2017/0704) for conversion of an existing dwelling to establish a two storey secondary dwelling was issued.
18 January 2019	<p>The NSW Land and Environment Court (LEC) (<i>Falamaki v Council of the City of Ryde [2019] NSWLEC 1007</i>) was dismissed with the following findings:</p> <ul style="list-style-type: none"> • That SEPP (ARH) does not provide for a reduced allotment width standard. Clause 4.6 allows an applicant to seek a variation of the lot width standard, but that does not mean a lot width reduction comparable to the reduction in lot area will automatically be considered reasonable; • The Applicant's request has not provided sufficient information to adequately address matters required to be demonstrated by cl 4.6(3)(a), so fails cl 4.6(4)(a)(i); • The Applicant's request does not include sufficient analysis, within the request to demonstrate that there are sufficient environmental planning grounds to justify not complying with the lot width standard and thus fails; • The objective for the lot width standard has according to the Applicant's planning expert three underlying objectives, including maintaining the low density character of the local area. However, the written request does not provide sufficient explanation of how the development proposed will maintain local character, and must fail; • That the proposal is consistent with the second and third of the zone objectives. The first objective of the zone is to provide for the housing needs of the community within a low density residential environment". The proposal provides for a net increase of one dwelling, and the area is zoned low density residential. The objective is, on a straight reading, met. • The cl 4.6 variation request was not supported. Accordingly, given that obtaining approval for a cl 4.6

ITEM 1 (continued)

	variation request is a jurisdictional prerequisite, the appeal must be refused.
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APPLICATION HISTORY

3 January 2020	The subject DA was lodged.
17 January 2020 – 5 February 2020.	<p>The DA was notified to the owners of surrounding properties. In response, two (2) submissions were received from the owners of No. 2 and No.4 Schumack Street. Both submissions objected to the subject application. Issues raised by these objections are summarised as follows:</p> <ul style="list-style-type: none"> - The subject site does not meet the minimum 580m² to accommodate a dual occupancy development. - Overlooking and loss of visual privacy to the private open space area of the adjoining property to the north at No. 4 Schumack Street. - Request for screen planting to mitigate privacy impacts. - The proposal, if approved would set an undesirable precedent that could be replicated affecting the density of the area. - The proposal is not compatible with the character of the local area. - Parking and traffic. - Reference to the previous LDA2017/0226 being refused for essentially the same development. <p>A more detailed response to the issues raised by the submissions is contained within this report below.</p>

5. Planning Assessment

5.1 State Environmental Planning Instruments

State Environmental Planning Policy (Building Sustainability Index BASIX) 2004

The development is identified under the *Environmental Planning and Assessment Regulation 2000* (Regulations) as a BASIX Affected Building.

Two (2) BASIX Certificates were submitted as part of the DA:

- BASIX Certificate No. A284161_02 dated 23 September 2018 for Alterations and Additions
- BASIX Certificate No. A284161_03 dated 02 January 2020 for Alterations and Additions

ITEM 1 (continued)

BASIX Certificate No. A284161_02 is dated 23 September 2018. The Certificate is a revised certificate relating to LDA2017/226. The Certificate does not satisfy Schedule 1, Part 1 Clause 2A(1) of the Environmental Planning and Assessment Regulation 2000 as it was prepared more than 3 months prior to the lodgement of the application and it relates to the wrong LDA.

The application has not been supported by an acceptable BASIX Certificate. The submitted BASIX Certificates are identified as being attached dwelling house. The BASIX Certificate is required to be for multi dwelling housing. The DIY method for thermal comfort assessment cannot be used for multi dwellings. An accredited assessor is required to complete the thermal comfort section using software accredited by the Nationwide Housing Energy Rating Scheme (NatHERS). The application has not been supported by the required information.

Without the submittal of valid and correct BASIX Certificates, the proposal fails to achieve the aims of SEPP BASIX which is to encourage sustainable residential development.

State Environmental Planning Policy No. 55 – Remediation of Land

Clause 7 of State Environmental Planning Policy No. 55 – Remediation of land (SEPP 55) requires Council to consider whether the site is contaminated, and if so whether it is suitable for the proposed development purpose.

A contamination assessment has not been submitted with this application, however a review of the site history indicates that the land has been used for residential purposes for an extended period of time. Such a use and associated development are not typically associated with activities that would result in the contamination of the site.

The submitted DA documentation did not provide any information which suggests that the site may be contaminated.

With consideration to the above (and assuming that a separate proposal/consent for demolition appropriately dealt with the removal of hazardous materials (if any)), it is unlikely that the site is contaminated and would be therefore be suitable for the proposed development.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The Vegetation SEPP commenced on 25 August 2017 and replaced clause 5.9 of RLEP 2014, which related to the preservation of trees and vegetation.

The objective of the SEPP is to protect the biodiversity values of trees and other vegetation and to preserve the amenity of the area through the preservation of trees and other vegetation.

ITEM 1 (continued)

The subject site is mapped as containing significant urban bushland on Council's Environmentally Sensitive Areas map. The site inspection undertaken on 6 February 2020 indicated that the subject site does not contain any significant trees. No works are proposed that would have foreseeable impacts on trees on surrounding sites.

As such, the provisions of the Vegetation SEPP are not considered to be applicable.

State Environmental Planning Policy (Affordable Rental Housing) 2009

The subject application has been lodged pursuant to ARH SEPP.

A detailed assessment of Part 2, Division 1 (In-fill affordable housing) of the ARHSEPP is contained within the compliance checklist contained in **Attachment 1**. A summary of how the application performs against this environmental planning instrument is however covered below:

Clause 10 Development to which Division applies

Clause 10 identifies whether Division 1 (Infill affordable housing) of the ARH SEPP applies to the proposal. The proposed development is for an attached dual occupancy, which is a form of development that is permissible with consent within the R2 zone under RLEP 2014.

The subject site is also located within an accessible area by virtue of a bus stop located in front of 155 Cox's Road that is serviced by bus routes that as of 10 February 2020 meet the service frequency requirements.

For the above reasons, the proposal is development to which Division 1 of the ARH SEPP applies.

Clause 13 Floor Space Ratios

Clause 13 of the ARHSEPP permits a maximum FSR of 0.98:1. The development proposes a FRS of 0.713:1 which complies with the requirement.

Clause 14 Standards that cannot be used to refuse consent

Clause 14 of the ARHSEPP provides development standards which cannot be used to refuse consent to a DA proposed under Division 1 if they are achieved. This includes development standards relating to site area, landscaped area, deep soil areas, solar access, parking and dwelling size.

With a site area of 534.17m², the subject site achieves the minimum 450m² prescribed by clause 14(1)(b) of the ARH SEPP.

Clause 14(1)(c)(ii) of the ARH SEPP outlines a minimum 30% of the site area is to be landscaped. Notably, the ARH SEPP does not specifically define landscape area, and

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as there is no 'landscape' definition contained in the *Interpretation Act 1987*, reference is made to the Standard Instrument definition of 'landscaped area' within RLEP 2014, which for reference reads as follows:

'means a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area.'

The landscaped area of the site has been calculated as 25% (i.e. 134m²) and is therefore non-compliant with the above development standard.

Given that the 'landscaped area' definition requires that such areas be used for the growth of "*plants, grasses and trees*", small spaces adjacent to the north western side boundary would be incapable of accommodating larger vegetation. The landscaped areas on the rear first floor balconies would also be excluded on the basis that they are either covered by a roof, contain insufficient soil depths and in the case of 153 Cox's Road, would be inaccessible, as it would be separated from the remainder of the balcony by the 1.8 metre high balustrade/privacy screen. Further, areas of the front and south eastern side setbacks would be occupied or covered by structures (i.e. pathways, retaining walls and the bin storage area for 153 Cox's Road). Such spaces are therefore not classified as landscaped area. This variation is not addressed by the applicant (the SEE claims that 30% of the site would be landscaped). As outlined below, the deficient amount of landscaped/deep soil space within the front setback is partially attributable to the proposal's lack of consistency with the streetscape character; the variation is therefore not supportable.

Clause 15 Design requirements

Clause 15 requires the consent authority to take into consideration the design requirements within *Seniors Living Policy: Urban Design Guidelines for Infill Development*, to the extent that those provisions are consistent with this Policy. In summary, the proposal would not satisfy the guidelines with regard to context, site planning and design, impacts on streetscape and internal amenity. Pursuant to clause 15(1) of the SEPP, the consent authority therefore must not consent to the development.

Clause 16A Character of local area

Clause 16A requires the consent authority to take into consideration whether the design of the development is compatible with the character of the local area. The character of residential areas on the north eastern side of Cox's Road is established primarily by low-density residential development. Such development consists primarily of:

- One and two-storey detached dwelling houses and associated structures (e.g. swimming pools, outbuilding, secondary dwellings, etc.).

ITEM 1 (continued)

- Predominantly two-storey attached dual occupancies. Such developments (particularly more recent projects) are located on large and/or corner allotments that contain at least one large (i.e. 20+ metre) road frontage.
- A limited number of sites contain relatively small-scale (i.e. three-to-four dwelling) multi-dwelling housing developments.

The area contains a mostly regular subdivision pattern, and the vast majority of sites contain large landscaped/deep soil areas, with most sites containing at least some significant trees and/or vegetation. A large proportion of these sites contain relatively small dwellings, however development patterns are transitioning towards larger detached dwellings (with some scattered dual occupancies on larger sites) featuring more contemporary designs.

In response to Clause 16A of the ARHSEPP, the SEE does not contain a character assessment, instead referring to “*A detailed character assessment... on pages 8-13*” of the submitted variation request made pursuant to clause 4.6 of RLEP 2014 (prepared by Think Planners, dated 5 March 2019).

Key points from the submitted character assessment are listed below:

- The proposal requires minimal changes to the existing built form.
- Approval of the development would create no/few additional non-compliances aside from the lot width variation which is the subject of the 4.6 variation request.
- The locality is undergoing a transition towards larger buildings, including dual occupancy developments.
- The LEC planning principle relating to compatibility, found within *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*, states that compatibility is “different from sameness” and that it is therefore not necessary that the development adopt the same built form, scale, and appearance as surrounding developments to be compatible. Considered against this planning principle, the development should be found to be compatible with the locality.

The proposed development would be inconsistent with the existing and desired character of both the streetscape and the locality more broadly. A detailed consideration of the submitted character assessment is attached to this report; however, a summary of the conclusions is provided below:

- The appearance of the dual occupancy development would not be compatible with the streetscape, particularly in relation to the inadequate landscaping and tree planting proposed at the site (each discussed elsewhere).
- Approval of such development would create a local planning precedent (noting the significant number of surrounding allotments with similar frontage widths) that would likely instigate similar future proposals that would progressively erode the character of the streetscape, locality and LGA more broadly.

ITEM 1 (continued)

- Residential development on allotments with similar sizes and dimensions consists of detached dwelling houses, and not higher density development (i.e. attached dual occupancies).
- The nominated examples of dual occupancy developments within the locality are compliant with the minimum RLEP 2014 lot requirements. The applicant has not identified other contemporary attached dual occupancies on sites within the surrounding area that are provided with a non-compliant frontage like that being proposed.
- The design of the development, characterised by two dwellings on relatively narrow allotments, would be consistent with residential development typically found in higher density zones and areas, and is not reflective of the character of the low density local area.

It recommended that the proposal be refused, in part because it fails to satisfy clause 16A Character of local area of the ARH SEPP.

Sydney Regional Environmental Plan (Sydney Harbour Catchment 2005)

The aims of the SREP (deemed SEPP) are as follows:

- (a) *to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained—*
 - (i.) *as an outstanding natural asset, and*
 - (ii.) *as a public asset of national and heritage significance,*
- (b) *for existing and future generations,*
- (c) *to ensure a healthy, sustainable environment on land and water,*
- (d) *to achieve a high quality and ecologically sustainable urban environment,*
- (e) *to ensure a prosperous working harbour and an effective transport corridor,*
- (f) *to encourage a culturally rich and vibrant place for people,*
- (g) *to ensure accessibility to and along Sydney Harbour and its foreshores,*
- (h) *to ensure the protection, maintenance and rehabilitation of watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity,*
- (i) *to provide a consolidated, simplified and updated legislative framework for future planning.*

The proposed external modifications to the site are relatively minor; in the event of an approval any issues associated with this policy would be capable of being addressed via conditions so as to prevent pollution of the catchment. The aims of the deemed SEPP would therefore be capable of being satisfied.

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5.2 Ryde Local Environmental Plan 2014 (RLEP 2014)

A detailed assessment of applicable development standards is contained within the compliance checklist contained in **Attachment 2**. Outlined below are the following clauses applicable to the proposal.

Clause 2.3 - Zone Objectives and Land Use Table

Under RLEP 2014, the subject site is zoned as R2 Low Density Residential zone. Residential development and more specifically a 'Dual Occupancy (Attached)' is permissible with consent within the R2 zone.

Objectives for residential zones:

The objectives of the R2 low density residential zone are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provides facilities or services to meet the day to day needs of residents.*
- *To provide for a variety of housing types.*

A detailed assessment of the zone objectives is contained within the assessment of Clause 4.6 (Exceptions to development standards).

Part 4 - Principal development standards

The following table provides a summary of the principal development standards that apply to the proposal:

Clause	Proposal	Compliance
4.1 Minimum subdivision lot sizes		
580m ²	Standard does not apply to strata subdivisions pursuant to clause 4.1(4)(a).	N/A
4.1A Dual occupancy (attached) subdivisions		
(2) Development consent may only be granted to the strata subdivision of a dual occupancy (attached) on land in Zone R2 Low Density Residential if the land has an area of at least 580 square metres.	Refer to clause 18 of the ARH SEPP, which enables subdivision of land on which development has been undertaken pursuant to Division 1 of the SEPP.	N/A
4.1B Minimum lot sizes for dual occupancies and multi dwelling housing		
580m ²	Site area: 534.17m ² Note: Provisions of cl. 14(1)(b) of the ARH SEPP prevail.	N/A

ITEM 1 (continued)

20m frontage	15.24m frontage.	No, 4.6 variation request submitted
4.3(2) Height of Buildings		
9.5m	No change is proposed to the existing building height, which is compliant with the standard.	N/A
4.4(2) Floor Space Ratio		
0.5:1 (350.95m ²)	Not applicable, refer to the assessment of clause 13 of the ARH SEPP.	N/A
4.6 Exceptions to development standards		
(1) The objectives of this clause are as follows— (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.	Refer to the discussion below.	No

Clause 4.6 – Exceptions Clause 4.6 – Exceptions to Development Standards.

The development contravenes Clause 4.1B (2)(b) which requires Dual Occupancy developments to contain a road frontage which is equal to or greater than 20 metres. The site has a frontage of 15.24 metres to Cox's Road and does not comply with the development standard. The proposal results in a 24% departure to the development standard.

The application was accompanied by a Clause 4.6 request, prepared by Think Planners and dated 5 March 2019, to vary the development standard and the following is a discussion based on the Applicant's submission, which includes the assessment made by Council.

An assessment of the relevant provisions of Clause 4.6 is as follows.

Is compliance unreasonable or unnecessary in the circumstances of the case?
Are there sufficient environmental planning grounds to justify the proposed contravention of the development standard?

The objectives of clause 4.6 of RLEP 2014 are to provide an appropriate degree of flexibility in applying certain development standards to particular development, to achieve better outcomes for and from development.

ITEM 1 (continued)

Clause 4.6(4)(a)(i) requires that the consent authority “...is satisfied that the written request has adequately addressed the matters required to be demonstrated by cl 4.6(3), namely that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.”

With regard to the above, the environmental planning grounds provided by the applicant and a response to each are as follows:

- *The departure from the lot width standard facilitates the delivery of 2 dwellings on the allotment that has a compliant allotment size and ample area to accommodate the dwellings when considering that the nature of the proposal sees limited external change to the building and the reduced frontage has no impact on the ability to provide 2 dwellings on the site - other than in creating a numerical non-compliance with the standard.*

Comment: It is submitted that the area of the site is insufficient for two four-bedroom dwellings, given that the development is unable to provide sufficient landscape space. Further, the external changes to the building would result in a streetscape presentation that is inconsistent with the existing and desired character of the locality.

- *The departure from the standard and ability for the development to have been designed to still meet the requirements of all other relevant requirements of the SEPP, LEP and DCP demonstrates the site is suitable for a dual occupancy despite the technical departure to the lot frontage control. This demonstrates that residential amenity is maintained and achieved as all other planning controls are achieved.*

Comment: As demonstrated by the detailed assessments, aside from failing to comply with the lot frontage standard, the proposed development includes multiple non-compliances with the ARH SEPP and DCP controls. . The submitted information contains inconsistent information regarding the design of the rear balconies and associated solar access impacts on rear ground floor living areas, and further information would be required to ascertain whether compliance with the ARH SEPP and DCP is achieved.

- *The locality contains a variety of dual occupancy forms and therefore the reduced frontage width remains consistent with the desired future character in the locality noting the emergence of more contemporary 2 storey housing forms in the locality. It must also be recognised that the building currently exists on the site and makes a contribution to the streetscape character that is fundamentally unchanged by the proposal despite the numerical departure to the frontage control.*

Comment: No information is provided within the 4.6 to suggest that there are other non-compliant dual occupancy developments in the locality. It is unclear how existing

ITEM 1 (continued)

dual occupancies support the variation request, when these existing dual occupancy developments better reflect what is sought within the locality.

Whilst it is recognised that the proposal seeks relatively minor works to an existing structure, such a proposal would fundamentally change the appearance of the building (i.e. from a detached dwelling to a noncompliant dual occupancy) that would adversely affect streetscape character and likely establish an undesirable development precedent. The 4.6 variation does not demonstrate how this development could be approved without setting a precedent for non-compliance.

- *The orientation of the lot also means that its reduced width does not preclude achieving a northerly orientation to the rear POS and living area.*

Comment: It is agreed that the rear north-eastern orientation of the allotment would remain unchanged, though it is unclear how this relates to the lot frontage width and forms environmental planning grounds that would support the variation of the standard.

- *As illustrated by the extract from Council's assessment report, the vast majority of lots in the immediate area are greater than 600m². This indicates that the locality will likely contain a number of dual occupancy developments and therefore from a character perspective the likely future character must be given significant weight in the consideration of this proposal and minor departure to the lot width control.*

Comment: It is unclear what extract the variation request is referring to. Regardless, even if the 'vast majority' of allotments within the surrounding area were greater than 600m² in size, the frontages of such allotments are unknown (though larger lot sizes may enable larger lot frontages and dimensions). It is not considered that a comparison of the current noncompliant proposal to hypothetical (and potentially compliant) future development demonstrates a sound environmental planning ground for varying the lot frontage development standard.

- *The variation to the allotment width control enables the delivery of an affordable housing dwelling to expand the availability of affordable rental housing in an accessible area and provides for a variety of housing types that is consistent with the objectives of the R2 zone.*

Comment: There would be a marginal increase in available floor space for affordable housing (noting that the applicant already has consent for a secondary dwelling on the site under the ARH SEPP). It is unclear why the provision of one affordable dwelling would form a suitable environmental planning ground for varying the standard, given the adverse planning outcomes and development precedent that would be associated with doing so.

- *The variation to the allotment width control enables development of the site pursuant to SEPP (Affordable Rental Housing) 2009 and furthers the Aims of the Policy- specifically those set out at Clause 3(a) and (b) and will facilitate*

ITEM 1 (continued)

delivery of 1 affordable rental housing dwelling on the site required to be used for affordable rental housing for a period of 10 years. Strict compliance with the allotment width control would prevent this from occurring and prevent development for a dual occupancy form being located on the site despite compliance with the minimum site area provision of the SEPP.

Comment: It is agreed that strict compliance with the standard would prevent the proposed dual occupancy and affordable housing from proceeding; irrespective of the lot size requirements of the ARH SEPP, clause 16A states 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.” As assessed above, this planning report has found that the proposal is not consistent with the existing or future character of the area, therefore consent cannot be granted.

- *The variation to the allotment width control enables the ‘Objects’ of the Environmental Planning and Assessment Act 1979 to be achieved, specifically:*
 - (c) *to promote the orderly and economic use and development of land,*
 - (d) *to promote the delivery and maintenance of affordable housing,*

Comment: Promoting the delivery of affordable housing would need to be undertaken in a manner that would also satisfy the objectives of the Act. Approval of the proposed development would promote disorderly development of the land, by establishing an undesirable planning precedent that could enable similar future development to occur on inappropriate sites. Object (c) would subsequently not be satisfied. Approval of the proposal would also likely fail to satisfy object (g), as the proposal would not satisfy the visual amenity of the local area.

Is the proposal in the public interest?

A development is generally seen to be in the public’s interest if it is consistent with the objectives of the development standard and the zone in which the particular development is carried out. A discussion of the objectives is contained below.

Objectives of the standard

- (1) *The objective of this clause is to achieve planned residential density in certain zones.*

Comment – The 4.6 submission argues that the objective does not fully capture the ‘underlying objective’ of the site area and frontage control, as in addition to the achievement of ‘planned residential density’, a minimum lot size and frontage control is in place to:

- *Ensure an allotment is of sufficient size and area to accommodate a dual occupancy;*

ITEM 1 (continued)

- *To minimise likely impacts of development on the amenity of the area;*
- *To ensure that a low density character is maintained.*

Clause 4.6 states that the consent authority must not grant consent to the variation unless they are satisfied that the development is consistent with the objectives of the standard. The standard contains only one objective, which is aimed at achieving planned density in certain zones. Whilst the three points listed above might be relevant in demonstrating that compliance is unreasonable or unnecessary, the application fundamentally fails to satisfy the single objective to the standard, as it provides for densities which will exceed that contemplated by the standard, particularly as it provides an avenue for future developments to continue to undermine the objective of the standard.

Objectives of the zone

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

Comment: The modifications to the existing building to enable its use as a dual occupancy would further define the proposed development as two dwellings presenting to the public domain. As assessed above, the appearance of the development would be inconsistent with that found within a low-density residential environment and would adversely affect the character of both the streetscape and the locality more broadly. Further, if approved the development would likely establish a local development precedent; subsequently the development would be a trigger for transforming the character of the existing low-density residential area into an environment akin to higher-density areas.

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

Comment: The proposal would satisfy the objective, as it would not affect the ability of surrounding sites to meet the day to day needs of residents.

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

Comment: The proposal would provide a small increase in housing choice and diversity within the locality, however if approved the development would set a precedent that is inconsistent with the density of housing envisaged by the local planning controls.

Summary

The applicant has failed to adequately address the matters under clause 4.6(3)(b) and Clause 4.6(4)(a)(i), as sufficient environmental planning grounds have not been raised to justify breaching the lot width standard. The following is also noted:

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- Given the notable adverse outcomes that would be associated with the development and that:
 - There are other relatively unconstrained allotments within the locality with compliant lot frontage widths to accommodate compliant dual occupancy developments, and
 - No examples of contemporary dual occupancy development with non-compliant lot frontage widths have been provided, it is unclear why the consent authority should be flexible in allowing a significant variation to the development standard in this instance,
- There is no existing development within the surrounding area that would either serve as a local development precedent and/or demonstrate that the development standard has been abandoned or destroyed by Council's own actions through of granting development consents that have departed from that standard.

Further, having regards to:

- The design and layout of the dwelling house,
- That the development standard within clause 4.1B(2)(b) was in effect at the time that the original CDC was approved, and
- The development history of the site (particularly the previous refusal and dismissal of the subsequent LEC appeal),

The subject application is viewed as an attempt to circumvent the development standard through retrospectively modifying the existing building and attempting to address other issues previously raised by Council. To support the variation to the development standard would show Council's willingness to abandon the standard, as it is likely that future developments would utilise approval of this application as a precedent to enable future noncompliant dual occupancy developments within the area.

The submission pursuant to clause 4.6 of RLEP 2014 is therefore not considered to be well-founded nor in the public interest. The proposed variation to the lot frontage standard is not supported, and shall form a reason for refusal.

5.3 Draft Environmental Planning Instruments

Draft Remediation of Land State Environmental Planning Policy

The Draft SEPP is a relevant matter for consideration as it is an Environmental Planning Instrument that has been placed on exhibition. The explanation of Intended Effects accompanying the draft SEPP advises:

ITEM 1 (continued)

As part of the review of SEPP 55, preliminary stakeholder consultation was undertaken with Councils and industry. A key finding of this preliminary consultation was that although the provisions of SEPP 55 are generally effective, greater clarity is required on the circumstances when development consent is required for remediation work.

The draft SEPP does not seek to change the requirement for consent authorities to consider land contamination in the assessment of DAs. As discussed within the SEPP 55 assessment above, the subject site has been used for residential purposes for an extended period of time, and is therefore unlikely to have been associated with land uses that would result in contamination of the site. The site would therefore be suitable for development, and further investigation is not warranted in this instance.

Draft Environment SEPP

The draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018. The consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways and urban bushland areas. Changes proposed include consolidating SEPPs, which include:

- State Environmental Planning Policy No. 19 – Bushland in Urban Areas
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The proposal is not inconsistent with the provisions of the draft SEPP.

Ryde Development Control Plan 2014 (RDCP 2014)

The proposal is subject to the provisions of the following parts of RDCP 2014:

- Part 3.3: Dwelling Houses and Dual Occupancy (Attached);
- Part 7.2: Waste Minimisation and Management;
- Part 8.1: Construction Activities;
- Part 8.2: Stormwater & Floodplain Management;
- Part 8.3: Driveways;

The provisions of RDCP 2014 have been considered in this assessment. A discussion of notable non compliances with the relevant provisions are detailed below:

Part 3.3: Dwelling Houses and Dual Occupancy (Attached)

Section 2.1 - Desired future character of the area

The proposed development is not consistent with the low-density character of the area, as:

ITEM 1 (continued)

- The appearance of the dwelling would not be consistent with that of a detached dwelling due to the width of each dwelling/strata allotment and a lack of suitable landscaping within the front setback area,
- The dwellings would not be located in a landscaped setting, noting the non-compliant amount of landscaped area on the site and a front setback layout with limited dimensions that would prevent the establishment of suitable trees,
- The amenity of the dwellings would not be significantly altered, however the 1.8metre high balustrades/privacy screens on the rear first floor balconies would likely reduce solar access and natural ventilation of habitable areas at the rear of the first floor of both dwellings,
- While the total deep soil area would comply with the ARH SEPP, the site contains excessive hardstand area that would not promote rainwater absorption,
- The site provides only small landscaped areas within the front setback; the insufficient dimensions of the deep soil space would not enable the establishment and growth of large trees (refer to the separate assessment and comments below).

Section 2.13 - Landscaping

Control (e) requires that hard paved areas within the front setback be limited to 40%, however the plans propose that 55.7% of the front setback area would continue to contain structures and hard-paved surfaces. As discussed below, the proposal has not nominated a waste storage area for 153A Cox's Road; given that there is insufficient space within the garage, it is therefore unclear where such waste storage areas would be located, noting that 153 Cox's Road contains a waste storage structure within the front setback.

Control (g) requires that landscaping within the front setback be compatible with the size of the development. The landscaping plans lack detail with regard to landscaping treatments, however noting issues below with the placement of a large tree within the front setback, it is submitted that the size of landscaping elements within this area would be limited, and therefore would not be compatible with the scale of the development.

Control (h) requires that the front setback have at least one tree capable of a minimum mature height of 10 metres with a spreading canopy. While such a tree is proposed, its location would be atop of a pit and connecting pipes within the front setback. Further, issues raised by internal landscaping are outlined as follows:

- The location of the tree is not ideal due to the conflict with onsite stormwater lines and pits,
- The recommended positioning of the tree (i.e. at least four metres from the dwelling in accordance with the submitted arborist letter) fails to take into account the girth of the tree as it matures, and would likely end up being within four metres of the dwelling. It should also be noted that the nominated location, four metres from the dwelling, is in very close proximity to onsite pits and pipes,

ITEM 1 (continued)

- All but one of the species nominated would have narrow/upright forms, and not a spreading canopy as required by the DCP, and
- With regard to the larger tree described above, the tree is unlikely to achieve full mature growth potential.

It is considered that these issues would be a result of insufficient landscape area on the site. Further, the submitted landscape plan is misleading, as it:

- Does not accurately show the locations of structures (e.g. retaining walls and the bin enclosure) within the front setback, and
- Includes spaces (such as the pathway on the southeast side of the building) which are not defined as landscaped area.

Such issues are related to the non-compliant (i.e. 25%) landscaped area of the site, and are recommended to form part of the reasons for refusal.

Part 7.2: Waste Minimisation and Management

Section 2.3 – All development

As discussed, the plans do not nominate a waste storage area for proposed dwelling 153A Cox's Road that would be screened from the road reserve, noting that the garage is unlikely to contain sufficient space for residential bins. Noting that dwelling 153 Cox's Road contains an external dedicated waste storage area, there is concern that the placement of an external waste storage area for 153A Cox's Road would further reduce landscaped space on the site.

5.4 Planning Agreements OR Draft Planning Agreements

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

5.5 Section 7.11 Development Contributions Plan 2007 (Amendment 2010)

Section 7.11 would apply to the subject development; however, the subject application has been recommended for refusal.

5.6 Any matters prescribed by the regulations

The Regulation guides the processes, plans, public consultation, impact assessment and decisions made by local councils, the Department of Planning, Industry and Environment and others. As the proposal is recommended for refusal, there are no further matters for consideration.

6. The likely impacts of the development

ITEM 1 (continued)

The proposal is inconsistent with the provisions of the ARH SEPP, RLEP 2014 and RDCP 2014. The development proposes numerous and significant variations to provisions within these instruments and plans. The proposal would subsequently have adverse and unacceptable impacts when viewed from the adjoining public domain. Further, approval of the development would likely establish a development precedent within the Ryde LGA that would enable future applications to circumvent applicable development standards, resulting in overdevelopment throughout the LGA that would negatively impact the built and natural environments.

While it is acknowledged that the development would provide a larger affordable dwelling on the site, on balance, the impacts and ramifications of approving the proposed development are unacceptable.

7. Suitability of the site for the development

The site is within an R2 Low Density Residential zone. The proposal is for the conversion of an existing dwelling to an attached dual occupancy with strata subdivision. The proposal does not meet the minimum road frontage, nor would it satisfy minimum landscaped area requirements. The submitted clause 4.6 variation has not met the jurisdictional prerequisites to enable the consent authority to support the proposed departure from the development standard. The design of the finished development is also inconsistent with relevant built form controls. The proposal is therefore not suitable for the site.

8. The Public Interest

The public interest is best serviced by the consistent application of the requirements of the relevant environmental planning instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment is minimised.

The proposal has been assessed and is non-compliant with the principal development standards regarding frontage width for dual occupancies pursuant to cl. 4.1B(2)(b) of RLEP 2014. The submitted variation request has not satisfied clause 4.6 of RLEP 2014, as it has not established satisfactory environmental planning grounds for the variation, nor has it demonstrated that the proposal would be consistent with the objectives of the R2 zone.

Further, the proposal is inconsistent with the ARH SEPP, in that it provides insufficient landscaped area and is inconsistent with the existing and desired future character of the site and relevant provisions within RDCP 2014.

These non-compliances are considered unacceptable and on this basis, the proposal is contrary to the public interest.

9. Submissions

ITEM 1 (continued)

In accordance with the RDCP 2014 *Part 2.1 Notice of Development Applications*, owners of surrounding properties were notified from 17 January 2020 until 5 February 2020. In response to the public notification period, two (2) submissions were received from the owners of No. 2 and No.4 Schumack Street, North Ryde. Both submissions objected to the application.

The objections raised in the submissions are covered below, followed by a comment from the assessing planner:

- A. The original 2016 Development Application was for a single dwelling. In 2018, an application was submitted for a duplex which was rejected. The application is essentially similar.**

Comment: The original dwelling was approved via a complying development pathway (i.e. CDA No. CDP2016/077) on 2 August 2016. Despite similarities to LDA2017/0226 which was refused by Council (and a subsequent appeal being dismissed by the NSW LEC), the subject application is a separate application that is to be assessed on its merits. However, this assessment has concluded that many of the issues with the previous application remain.

- B. The proposal is not compatible with the character of the local area. There are some strata developments in Cox's Road, but they are located on much larger allotments of land.**

Comment: This assessment concurs that the proposal is not consistent with the local character of the area. Refer to the detailed assessment of clause 16A of the ARH SEPP and to the overview of DCP controls relating to character.

- C. If approved this could set a precedent for other residents to construct similar developments on small allotments.**

Comment: This assessment concurs with the objection, in that approval of the development would effectively abandon the lot frontage development standard and likely set a development precedent within the Ryde LGA.

- D. The required land size for a dual occupancy is 580m². The subject site falls considerably short at 534.17m².**

Comment: The lot size requirement to which the objection refers is within Clause 4.1B(2) of the RLEP 2014, which prescribes the minimum lot size of 580m² for attached dual occupancy developments. The subject application has however been lodged pursuant to Division 1 of the ARHSEPP, which prescribes a 450m² lot area pursuant to cl. 14(1)(b) of the ARH SEPP.

- E. Objectors have raised concern that the development is not permitted with consent under another environmental planning instrument.**

ITEM 1 (continued)

Comment: Pursuant to cl. 10(1)(a) of the ARH SEPP, Division 1 applies to development including dual occupancies if the development concerned is permitted with consent under another environmental planning instrument. Dual occupancies (attached) are permissible with consent within the R2 zone under RLEP 2014.

F. The development increases the density in the area, resulting in an overdevelopment

Comment: This assessment agrees with the submission in that the proposed development would be an overdevelopment of the land. The development does not provide sufficient landscaped area, suggesting that the dwellings and associated works would be too large for the site. Further, the external changes to the building's primary elevation and the insufficient frontage would alter the building's appearance in a manner that would be inconsistent with surrounding development and the character of the area.

G. Overlooking and loss of visual privacy to the POS area of No.4 Schumack Street from the first-floor balconies which currently do not include hand-rails. The objector has requested for some form of screening, such as the planting of trees, at a reasonable height to increase privacy.

Comment: As of 6 February 2020, balustrades had not been erected on the rear first floor balconies. The application will be referred to Council's compliance team for investigation given that the lack of balustrades fail to comply with CDA No. CDP2015/0778 (as modified).

The plans propose to erect 800mm privacy screens atop of a one metre high balustrade (i.e. total height of the structure would be 1.8 metres). If the application were approved, the height of such a feature would be sufficient to effectively block views from these areas to sites adjoining the rear boundary.

H. The proposal if approved, would result in traffic and parking impacts to Cox's Road and surrounding street such as Blamey Street and Schumack Street.

Comment: The proposal is for a dual occupancy development. While the development on its own would not significantly increase local traffic volumes, approval of the development on a noncompliant allotment would likely set a development precedent; if large proportion of similarly-sized allotments in the surrounding area were to be developed in a similar manner, then it is possible that local population densities would increase, thereby creating potential future traffic and parking issues.

10. Referrals

INTERNAL REFERRALS

ITEM 1 (continued)

An internal landscape referral was made given the changes to the proposed landscaping layout. The comments provided are as follows:

"I agree that the recommendation of the Arborist to position the tree 4m from the dwelling would appear to be in close proximity to stormwater lines and pits which is not ideal.

I note the recommended positioning (4m from dwelling) also does not take into account the increase in trunk girth as the tree matures. By the time the tree reaches maturity, the stem/trunk would likely be within 4m of the dwelling and therefore fall under Council's exempt provisions.

I also note that all but one (1) species recommended by the Arborist do not conform with Section 2.13(h.) of Part 3.3 of the Ryde DCP 2014 given they do not have a 'spreading canopy' but rather narrow upright forms.

Whilst the a tree may survive, it is unlikely to thrive or realise full mature growth potential given the restricted growing environment."

EXTERNAL REFERRALS

None required.

11. Conclusion

After consideration of the development against the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979* and the relevant statutory and policy provisions, the proposal is not suitable for the site and is contrary to the public interest.

It is therefore recommended that the application be refused. The reasons for this decision are as follows:

- The site fails to comply with the provisions of RLEP 2014. The frontage requirement to Cox's Road and the submitted Clause 4.6 written variation request is not well founded and fails to demonstrate consistency with both the objectives of the standard and the R2 zone, that the non-compliance is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify contravention of the development standard.
- The proposal would provide an insufficient amount of landscaped area on the site. The proposed landscape layout would not provide suitable landscaped or deep soil area within the front setback for landscaping treatments that both comply with relevant DCP provisions and that are consistent with streetscape character.
- The development does not comply with the suite of built form controls, which would ultimately result in unacceptable impacts to the character of streetscape and locality

ITEM 1 (continued)

more broadly. Approval of such development would likely establish a local planning precedent that would effectively abandon or destroy the development standard; this would likely encourage development on similarly unsuitable sites that would be undertaken in such a way to circumvent applicable development standards.

12. Recommendation

Pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979*, that the Ryde Local Planning Panel refuse LDA2020/0005 for alterations to the existing building which contains a dwelling house and secondary dwelling to a dual occupancy pursuant to *State Environmental Planning Policy (Affordable Rental Housing) 2009* and strata subdivision for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the development is inconsistent with the provisions of Ryde Local Environmental Plan in that:
 - The proposal is contrary to the objectives of the R2 Low Density Residential Zone,
 - The proposed development does not comply with Clause 4.1B(2)(b) of Ryde Local Environmental Plan 2014. The proposal seeks to utilise a 15.24 metre frontage presenting to Cox's Road to accommodate a dual occupancy (attached) which does not meet the minimum 20 metre lot frontage requirement, and,
 - The written request prepared by Think Planning dated 5 March 2019 to vary the minimum frontage width pursuant to clause 4.6 of *Ryde Local Environmental Plan 2014* is not well founded. Specifically, the written request fails to adequately demonstrate that:
 - i. The proposed development is not in the public interest as it is inconsistent with the objectives of the development standard (Clause 4.6 (4)(a)(ii));
 - ii. Compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and the matters required to be demonstrated have not been adequately addressed (Clause 4.6(3)(a) and Clause 4.6(4)(a)(i)); and,
 - iii. There are sufficient environmental planning grounds to justify contravening the development standard and the matters required to be demonstrated have not been adequately addressed (Clause 4.6(3)(b) and Clause 4.6(4)(a)(i)).
2. The development is inconsistent with the provisions within Division 1 of *State Environmental Planning Policy (Affordable Rental Housing) 2009*, in that:
 - Pursuant to clause 16A, the design of the development is incompatible with the character of the local area.
 - The proposed development includes a landscape area that equates to 25% of the site area. Pursuant to clause 14(1)(c)(ii), as less than 30% landscaped area

ITEM 1 (continued)

is provided, the insufficient landscape area can be used as a reason to refuse consent.

3. The applicant has failed to provide acceptable BASIX Certificates in respect to *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*, in that:
 - BASIX certificate No. A284161_02 is invalid, as it was prepared more than three months prior to lodgement.
 - Both BASIX certificate No. A284161_02 and A284161_03 have been prepared for alterations and additions instead of new residential dwellings.
4. The development is inconsistent with the provisions within Ryde Deployment Control Plan 2014, in that:
 - The design of the development is incompatible with the character of the local area under Section 2.1 (Desired Future Character) within Part 3.3 (Dwelling Houses and Dual Occupancies (attached)) of the DCP, and
 - The layout of the site is inconsistent with the landscaping controls (with regard to hard spaces within the front setback, compatibility of landscaping, mature tree placement) within Section 2.13 (Landscaping) within Part 3.3 (Dwelling Houses and Dual Occupancies (attached)) of the DCP.
5. The site is unsuitable for the proposed development pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act, as the land is unable to satisfy the key development standards for a dual occupancy (attached) in accordance with relevant planning instruments and plans.
6. The proposed development is contrary to the public interest pursuant to Section 4.15(1)(e) in that:
 - The proposal fails to achieve the objectives of the zone and applicable development standards of applicable environmental planning instruments, in addition to the controls and associated objectives within the DCP
 - Approval of the proposal would establish a poor planning precedent and is therefore not in the public interest. Consenting to the development would contribute to an abandonment of the lot frontage development standard and legitimise a building constructed for the purposes of circumventing Council's planning controls.

ATTACHMENTS

ITEM 1 (continued)

- 1** ARH 2009 Detailed Assessment
- 2** Compliance Check (LEP and DCP)
- 3** Clause 4.6 Variation
- 4** Falamki V Council L&EC Ruling
- 5** A3 Plans - subject to copyright provisions - CIRCULATED UNDER SEPARATE COVER

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ITEM 1 (continued)

ATTACHMENT 1

Attachment 1

Detailed assessment of *State Environmental Planning Policy (Affordable Rental Housing) 2009*

LDA No: LDA2020/0005	Date Plans: 03/01/2020
Address: 153 Cox's Road, North Ryde NSW, 2113	
Proposal: Alterations to the existing building which contains a dwelling house and secondary to a dual occupancy pursuant to State Environmental Planning Policy (Affordable Rental Housing) 2009.	

State Environmental Planning Policy (Affordable Rental Housing)	Proposal	Compliance
Division 1 In-fill affordable housing		
10 Development to which this Division applies		
(1) This Division applies to development for the purposes of dual occupancies, multi dwelling housing or residential flat buildings if:	The proposal is for alterations to, and conversion of, an existing building (which contains a dwelling house and approved secondary dwelling) to a dual occupancy.	Yes
(a) the development concerned is permitted with consent under another environmental planning instrument, and	A dual occupancy is permitted with consent within the R2 Low Density Residential Zone under RLEP 2014.	Yes
(b) the development is on land that does not contain a heritage item that is identified in an environmental planning instrument, or an interim heritage order or on the State Heritage Register under the Heritage Act 1977.	The site does not contain a heritage item, is not within a heritage conservation area, nor are there any heritage items within the immediate vicinity.	Yes
(2) Despite subclause (1), this Division does not apply to development on land in the Sydney region unless all or part of the development is within an accessible area.	The site is located within an accessible area as defined by the SEPP. As of 10 February 2020, the subject site is located within 400m (approx. 10m) walking distance of a bus stop; this stop is serviced by the 288 bus route; this service operates at least once every hour from Monday to Friday between 6am and 9pm and	Yes

ITEM 1 (continued)

ATTACHMENT 1

State Environmental Planning Policy (Affordable Rental Housing)	Proposal	Compliance
	Saturday and Sunday from 8am to 6pm.	
(3) Despite subclause (1), this Division does not apply to development on land that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use, or within a land use zone that is equivalent to any of those zones.	The subject site is located within the Sydney region.	N/A
13 Floor Space Ratios		
(1) This clause applies to development to which this Division applies if the percentage of the gross floor area of the development that is to be used for the purposes of affordable housing is at least 20 per cent.	The submitted Statement of Environmental Effects nominates Dwelling 153A to be used for the purposes of affordable housing; the GFA of the affordable component would be 380.8m ² , which would constitute 49.4% of the total proposed GFA.	-

ITEM 1 (continued)

ATTACHMENT 1

State Environmental Planning Policy (Affordable Rental Housing)	Proposal	Compliance
<p>(2) The maximum floor space ratio for the development to which this clause applies is the existing maximum floor space ratio for any form of residential accommodation permitted on the land on which the development is to occur, plus:</p> <p>(a) if the existing maximum floor space ratio is 2.5:1 or less:</p> <p>(i) 0.5:1—if the percentage of the gross floor area of the development that is used for affordable housing is 50 per cent or higher, or</p> <p>(ii) Y:1—if the percentage of the gross floor area of the development that is used for affordable housing is less than 50 per cent, where:</p> <p>AH is the percentage of the gross floor area of the development that is used for affordable housing. $Y = AH \div 100$</p>	<p>The existing maximum FSR permitted under the RLEP 2014 is 0.5:1. 49.4% of the development's GFA is to be dedicated as affordable housing which equates to a bonus FSR of 0.48:1. Therefore the maximum FSR is 0.98:1.</p> <p>The existing maximum FSR is 2.5:1 or less.</p> <p>Less than 50% affordable housing proposed.</p> <p>49.4% of GFA proposed to be used, is for affordable housing. Therefore, the bonus FSR allows for a maximum FSR on the site of 0.99.4:1.</p> <p>The plans propose a GFA of 380.8m², which equates to an FSR of 0.713:1m, based on a site area of 534.17m²</p>	<p>Yes</p> <p>Yes</p> <p>N/A</p> <p>Yes</p>
<p>(b) if the existing maximum floor space ratio is greater than 2.5:1:</p> <p>(i) 20 per cent of the existing maximum floor space ratio—if the percentage of the gross floor area of the development that is used for affordable housing is 50 per cent or higher, or</p> <p>(ii) Z per cent of the existing maximum floor space ratio—if the percentage of the gross floor area of the development that is used for affordable housing is less than 50 per cent, where:</p> <p>AH is the percentage of the gross floor area of the development that is used for affordable housing. $Z = AH \div 2.5$.</p>	<p>Refer to assessment above.</p>	<p>N/A</p>

ITEM 1 (continued)

ATTACHMENT 1

State Environmental Planning Policy (Affordable Rental Housing)	Proposal	Compliance
<p>(3) In this clause, gross floor area does not include any car parking (including any area used for car parking).</p> <p>Note. Other areas are also excluded from the gross floor area, see the definition of gross floor area contained in the standard instrument under the <i>Standard Instrument (Local Environmental Plans) Order 2006</i>.</p>	Noted and applied	-
14 Standard that cannot be used to refuse consent.		
<p>(1) Site and solar access requirements A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:</p>	Noted	-
<p>(b) site area if the site area on which it is proposed to carry out the development is at least 450 square metres,</p>	Site Area: 534.17m ² (survey)	Yes
<p>(c) landscaped area if:</p> <p>(i) in the case of a development application made by a social housing provider—at least 35 square metres of landscaped area per dwelling is provided, or</p> <p>(ii) in any other case—at least 30 per cent of the site area is to be landscaped,</p>	<p>The Development Application is not being lodged on behalf of a public housing authority.</p> <p>134m² or 25% of the site is proposed to be landscaped area.</p> <p>There are notable discrepancies between these calculations and those of the applicant. Areas excluded from the applicant's landscaped areas include an area beneath a suspended pathway (which is not defined as landscaped area), the waste storage area within the front setback, both first floor terrace areas (aside from discrepancies on the plans, there would be an inability to access the larger of the two areas due to the placement of a 1.8m high balustrade/privacy screen, while the smaller area would be covered by a roof and as such is not defined as landscaped area) and areas occupied</p>	<p>N/A</p> <p>No</p>

ITEM 1 (continued)

ATTACHMENT 1

State Environmental Planning Policy (Affordable Rental Housing)	Proposal	Compliance
	by a retaining wall and pathway to 153 Coks Road.	
<p>(d) deep soil zones if, in relation to that part of the site area (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) that is not built on, paved or otherwise sealed:</p> <p>(i) there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15 per cent of the site area (the deep soil zone), and</p> <p>(ii) each area forming part of the deep soil zone has a minimum dimension of 3 metres, and</p> <p>(iii) if practicable, at least two-thirds of the deep soil zone is located at the rear of the site area,</p>	<p>120.9m² or 22.6% of the site is proposed to be deep soil area. The discrepancy between these calculations and the applicant's plan is due to the applicant's likely inclusion of retaining walls and onsite drainage infrastructure as deep soil areas.</p> <p>Noted and applied.</p> <p>99.05m² or 73.85% of the total 136.7m² of deep soil is located within the rear setback.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
<p>(e) Solar access if living rooms and private open spaces for a minimum of 70 per cent of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter.</p>	<p>Submitted solar access plans demonstrate that the living rooms and private open space areas of both dwellings will receive a minimum of 3 hours of sunlight between the hours of 9am and 3pm on June 21, however there are inconsistencies noted within the 3D modelling regarding the size of the first floor balcony at the rear of 153 Cox's Road.</p>	<p>Yes</p>
<p>(2) General A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:</p> <p>(a) parking if</p> <p>(i) in the case of a development application made by a social housing provider for development on land in an accessible area—at least 0.4 parking spaces are provided for each dwelling</p>	<p>The Development Application is not being lodged on behalf of a social housing provider.</p>	<p>N/A</p>

ITEM 1 (continued)

ATTACHMENT 1

State Environmental Planning Policy (Affordable Rental Housing)	Proposal	Compliance
<p>containing 1 bedroom, at least 0.5 parking spaces are provided for each dwelling containing 2 bedrooms and at least 1 parking space is provided for each dwelling containing 3 or more bedrooms, or</p> <p>(ii) in any other case—at least 0.5 parking spaces are provided for each dwelling containing 1 bedroom, at least 1 parking space is provided for each dwelling containing 2 bedrooms and at least 1.5 parking spaces are provided for each dwelling containing 3 or more bedrooms</p>	<p>The proposal includes 2 x 4-bedroom dwellings.</p> <p><u>Requirements:</u> 3 car spaces required (i.e. 2 dwellings x 1.5 parking spaces)</p> <p><u>Proposed:</u> 4 car spaces are proposed (2 x garages spaces and 2 x spaces within the front setback)</p>	<p>Yes</p>
<p>(b) dwelling size if each dwelling has a gross floor area of at least:</p> <p>(i) 35 square metres in the case of a bedsitter or studio, or</p> <p>(ii) 50 square metres in the case of a dwelling having 1 bedroom, or</p> <p>(iii) 70 square metres in the case of a dwelling having 2 bedrooms, or</p> <p>(iv) 95 square metres in the case of a dwelling having 3 or more bedrooms.</p>	<p>No studios proposed.</p> <p>No one-bedroom apartments proposed.</p> <p>No two-bedroom apartments proposed.</p> <p>Dwelling 153 – 188m²</p> <p>Dwelling 153A – 182.65m²</p>	<p>N/A</p> <p>N/A</p> <p>N/A</p> <p>Yes</p>
<p>(3) 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).</p>	<p>Noted.</p>	<p>-</p>
15 Design Requirements		
<p>(1) A consent authority must not consent to development to which this Division applies unless it has taken into consideration the provisions of the Seniors Living Policy: Urban Design Guidelines for Infill Development published by the Department of Infrastructure, Planning and Natural Resources in March 2004, to the extent that those provisions are consistent with this Policy.</p>	<p>A detailed assessment of the Urban Design Guidelines is provided below. In summary, the proposal would not satisfy the guidelines with regard to context, site planning and design, impacts on streetscape and internal amenity.</p>	<p>N/A</p>

ITEM 1 (continued)

ATTACHMENT 1

State Environmental Planning Policy (Affordable Rental Housing)	Proposal	Compliance
(2) This clause does not apply to development for the purposes of a residential flat building if State Environmental Planning Policy No 65—Design Quality of Residential Flat Development applies to the development.	The proposal is not for a residential flat building, therefore the provisions of the clause 15 would apply.	-
16 Continued application of SEPP65		
Nothing in this Policy affects the application of State Environmental Planning Policy No 65—Design Quality of Residential Flat Development to any development to which this Division applies.	Noted, however not applicable.	N/A
16A Character of local area		
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 proposal is not considered to be consistent with the existing and desired future character of the locality; refer to the detailed assessment within the planning report to which this assessment is attached.	No
17 Must be used for affordable housing for 10 years		
(1) A consent authority must not consent to development to which this Division applies unless conditions are imposed by the consent authority to the effect that: (a) for 10 years from the date of the issue of the occupation certificate: (i.) the dwellings proposed to be used for the purposes of affordable housing will be used for the purposes of affordable housing, and (ii.) all accommodation that is used for affordable housing will be managed by a registered community housing provider, and	Dwelling (153A) has been nominated to be used as affordable housing in accordance with this Clause. Accordingly, if the DA were capable of being approved, a condition of consent would be imposed requiring that the dwelling to be maintained as affordable housing by a social housing provider for 10 years. A letter dated 18 September 2018 from Ecclesia Housing was submitted detailing an agreement to manage Dwelling 153A under the requirements of Part 1, Clause 6 of the <i>State Environmental Planning Policy (Affordable Rental Housing) 2009</i> ; the company ABN on the letterhead is however related to a different company (Amelie Housing; established by the St Vincent de Pauls Society); this organisation is also a Registered Tier 2 Community Housing Provider.	Yes

ITEM 1 (continued)

ATTACHMENT 1

State Environmental Planning Policy (Affordable Rental Housing)	Proposal	Compliance
(b) a restriction will be registered, before the date of the issue of the occupation certificate, against the title of the property on which development is to be carried out, in accordance with section 88E of the Conveyancing Act 1919, that will ensure that the requirements of paragraph (a) are met.	Refer to the assessment of clause 17(1) above.	Yes
(2) Subclause (1) does not apply to development on the land owned by the Land and Housing Corporation or to a development made by, or on behalf of, a public authority.	Noted	-
18 Subdivision		
Land on which development has been carried out under this Division may be subdivided with the consent of the consent authority.	Noted. Strata Subdivision is proposed.	-

Assessment of clause 15 – Design requirements

Clause 15 of SEPP (Affordable Rental Housing) 2009 provides that a consent authority must take into consideration the provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development*. This policy aims to promote a balance between the need for greater housing choice and the need to safeguard the character of residential neighbourhoods. The policy is divided into five chapters each corresponding to a key issue when designing infill development. Each chapter is addressed below:

COMPLIANCE TABLE		
Design Guideline	Proposed	Complies
1. Responding to context - Neighbourhood Character - Site Analysis	A site analysis has not been submitted. As assessed under clause 16 of the ARH SEPP (see below), the proposal would not be consistent with the character of the streetscape and the locality more broadly.	No
2. Site planning and design - minimise the impact on neighbourhood character - retain existing natural features of the site - high levels of amenity for new dwellings - maximise deep soil and open	As assessed under clause 16 of the ARH SEPP (see below), the proposal would not be consistent with the character of the streetscape and the locality more broadly. The site would provide a noncompliant amount of landscaped area; deep soil area within the front setback would also be highly constrained. As	No

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COMPLIANCE TABLE		
Design Guideline	Proposed	Complies
<p>space for mature tree planting, water percolation and residential amenity</p> <ul style="list-style-type: none"> - minimise the physical and visual dominance of car parking, garaging and vehicular circulation - provide housing choice through a range of dwelling sizes 	<p>such, the site would not provide sufficient space for mature tree planting, water percolation and residential amenity.</p> <p>Further information would be required to confirm whether solar access to ground floor living areas would be sufficient, however suitable solar access would be provided for private open space areas. It is however submitted that enclosure of the rear first floor balconies would likely reduce the amenity of the first-floor areas with regard to solar access and natural ventilation.</p>	
<p>3. Impacts on streetscape</p> <ul style="list-style-type: none"> - minimise impacts on the existing streetscape - new development is designed and scaled appropriately in relation to the existing streetscape - minimise the dominance of driveways and car park entries in the streetscape - provide a high level activation and passive surveillance to the street. 	<p>The proposed dual occupancy would occupy an existing dwelling. While the physical scale of the development would not change, its presentation to the public domain would be inconsistent with the character of the streetscape; refer to the detailed assessment of clause 16 of the ARH SEPP (see below).</p>	No
<p>4. Impacts on neighbours</p> <ul style="list-style-type: none"> - minimise impacts on the privacy and amenity of neighbouring dwellings - minimise overshadowing of existing dwellings and private open space - retain neighbours' views and outlook to existing mature planting and tree canopy - reduce the apparent bulk of development - provide adequate building separation. 	<p>The proposed dual occupancy would occupy an existing dwelling. The proposed works are therefore unlikely to worsen impacts on adjoining sites in terms of visual privacy, overshadowing, bulk and scale and building separation. View considerations are not applicable.</p>	Yes
<p>5. Internal site amenity</p> <ul style="list-style-type: none"> - provide quality useable private and communal open spaces for all residents - provide dwellings with a distinct identity and safe entries - provide safe and distinct pedestrian routes to all dwellings and communal facilities - ensure adequate solar access to living areas and private open space 	<p>The plans propose usable private open space areas.</p> <p>Both dwellings would have defined entrances, though as a result of removing the stepping stone pathway within the front setback, a defined accessway to proposed 153A Cox's Road would not be clear from the public domain.</p> <p>As indicated above, no issue is raised with solar access to private open space areas, though additional information would be required to</p>	No

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COMPLIANCE TABLE		
Design Guideline	Proposed	Complies
- reduce the dominance of parking, garaging and vehicular circulation space on the internal character of new development	confirm the adequacy of solar access to ground floor living areas.	

Assessment of clause 16A – Character of Local Area

An assessment of the proposal has found however that the proposed development would be inconsistent with the existing and desired character of both the streetscape and the locality more broadly.

Relevant extracts from the 4.6 variation request that relate to character are contained below, with responses provided from the assessment officer.

“The character of the locality is undergoing transition to large and more contemporary built forms that are all permitted in the R2 zone and the bulk and scale of the dual occupancy is comparable to that of a large dwelling house. Therefore, it is clear that the R2 low density character is maintained through compliance with the planning controls that apply to R2 low density development. Further the lack of any discernible alteration to the existing presentation of the dwelling and secondary dwelling to the streetscape, and therefore the low density character is maintained notwithstanding the numerical departure,”

“The building is desired to be compatible with the desired future character of the area in terms of the building presentation to the street, the materials, and the relationship to surrounding properties.”

Comment: It is agreed that the character of the locality is undergoing a transition from smaller/single storey dwellings to larger and more contemporary forms for development, with external appearances (in terms of height, colours and materials) that are consistent with those of the dwelling on the subject site. It is also agreed that the height, bulk and scale of attached dual occupancy developments (a form of development that is permissible within the R2 zone) are comparable to that of a large dwelling house.

However, as is covered within the assessment of clause 4.6 of RLEP 2014, the proposed dual occupancy is located on an allotment with an insufficient road frontage, with the application proposing a significant (i.e. a 4.76 metre, or 23.8%) variation to the 20-metre development standard contained within clause 4.1B(2) (Minimum lot sizes for dual occupancies and multi dwelling housing) of RLEP 2014. The objective of clause 4.1B(2) “...is to achieve planned residential density in certain zones”. This objective is not clear what is intended by the term ‘density’, however noting:

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ATTACHMENT 1

- The nature of the standards within clause 4.1B (i.e. lot size and frontage width), and
- That there is a dwelling density standard for multi-dwelling housing contained within clause 4.5A (Density controls for Zone R2 Low Density Residential) within RLEP 2014,

it is considered that instead of controlling the number of dwellings on the site, the objective of clause 4.1B seeks to limit development density so that the 'apparent' appearance of the development's density is consistent with that of the surrounding low-density residential area (i.e. that dual occupancy developments are situated on allotments with sufficient space to accommodate appropriate development that (amongst other things) include sufficient landscaped and deep soil area, which is assessed above and discussed in greater depth below).

RLEP 2014 therefore envisions that dual occupancy development would be placed on larger/wider allotments, and this is reflected by other contemporary attached dual occupancies within the surrounding locality, notable examples of which include the following:

- 8 Edmondson Road, which has a frontage of approximately 30 metres
- 14 Edmondson Road, which has a frontage of approximately 21 metres
- 24 Edmondson Road, which has a frontage of approximately 27 metres
- 18 Chauvel Street, which has a frontage of approximately 24.5 metres
- 101 Cox's Road, which has a frontage of approximately 24 metres
- 145 Cox's Road, which has a frontage of approximately 20 metres
- 167 Cox's Road, which has a frontage of approximately 26 metres
- 171 Cox's Road, which has a frontage of approximately 21 metres

The proposed dual occupancy would be situated on a site that does not contain sufficient dimensions (i.e. frontage) to contain a dual occupancy development; the proposed development would therefore be inconsistent with development patterns within the surrounding area and would be inconsistent with the intentions of the development standard. With regard to similar surrounding development, it is also noted that information submitted by the applicant has not identified other contemporary attached dual occupancies on sites with insufficient frontage within the surrounding area.

"The development proposal maintains the local character of the area. The planning principle outlines that where compatibility between a building and its surroundings is desirable, its two major aspects are physical impact and visual impact. In order to test whether a proposal is compatible with its context, two questions should be asked.

1. *Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*

ITEM 1 (continued)

ATTACHMENT 1

2. *Is the proposal's appearance in harmony with the buildings around it and the character of the street?*

It is also confirmed that 'Compatibility is... different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve'. Therefore it can be seen that it is not necessary that the development adopt the same built form, scale, and appearance as surrounding developments to be compatible. A key consideration for this proposal is that the form and presentation of the building is existing and will be largely unchanged as part of the development proposal which is primarily internal alterations and additions. The change to the front entry arrangements do not fundamentally change the presentation of the building- i.e. the bulk, massing, setbacks, garage location or general form. Whilst it would be a change in the streetscape the alteration in and of itself would not impact on the character of the area.

Comment: For reference, the principles being referenced by the clause 4.6 variation request are assumed to be those within *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*.

It is disagreed that "*the change to the front entry arrangements do not fundamentally change the presentation of the building*". The existing building currently presents to the public domain as a detached dwelling house. The applicant's claim that external changes on the primary façade would be limited to a new door are incorrect, as such claims overlook:

- Numbering required to identify proposed 153A Cox's Road,
- A new letterbox,
- Waste storage areas (noting that proposed 153A Cox's Road does not contain a space to store bins that would be screened from the adjoining road reserve).

These (and other required changes) are not significant in that the height, bulk, scale and/or setbacks of the building would not be altered and subsequent physical impacts would be limited. Such physical changes would however fundamentally change the appearance of the building (particularly to the casual observer), in that it would no longer present to the public domain as a dwelling but instead a dual occupancy containing two dwellings; as a result of both the noncompliant frontage and landscaped area, the proposed dual occupancy would not be in harmony with the Cox's Road streetscape, as it would:

- Be inconsistent with the character of other contemporary dual-occupancy style developments within the locality, and

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- Contain insufficient landscaped area within the front setback to assist in mitigating the appearance of the development (see below for a further discussion of this issue).

The proposal would therefore fail to satisfy the second of the questions asked within *Project Venture Developments v Pittwater Council*, as specified in the quoted extract above.

As a result, the proposal would present as a form of development that is inconsistent with a low-density residential area with generous frontages and substantive landscaped areas. Instead, by promoting development that would present as two separate dwellings on very narrow allotments, the proposed dual occupancy would present to the public domain as development that is consistent within a higher-density and/or inner-urban areas (i.e. narrow-allotment terrace-style housing with limited landscape areas within front setbacks). Further, noting the relatively consistent subdivision patterns within the surrounding area, approval of the subject application would likely set a development precedent for similar such developments within the surrounding area, resulting in further erosion of local development character.

The adjoining child care centre to the east of the site is atypical of the prevailing residential character given the substantial building length, and large areas of parking and hard surfaces in the front setback- which interrupts the landscape setting of the street. The large 2 storey form and rendered finish to the dual occupancy at 145 Cox's Road and the large 2 storey dwelling with rendered finish at 143. These heights, setback arrangements, materiality, bulk and scale and general form are reflective of the emerging character in the R2 zone which has seen demolition of the smaller scale fibro and clad single storey cottages and replacement with larger 2 storey building forms in their place. Another key aspect of character, in addition to the built form, is the landscape setting of development and notably the front setback treatments. Other than the preschool the majority of front setback areas are landscaped with grass, shrubs, and some small trees to the older cottages and less trees to the newer dwellings in the locality.

The existing form of the development on the subject site must be acknowledged as being a fundamental part of the existing character of the locality- it exists and is a lawful form of development on the site. It presents a 2 storey form with skillion roof and rendered finish with colorbond roofing as well as the use of alucobond style finish to part of the front balconies. The existing dwelling also adopts a double garage with 2 separate roller doors. I note that the only change to the building as it presents to the street is the removal of existing pavers and mulched areas in the front setback area to be replaced with additional landscaping and a canopy tree with 5 species nominated as being potentially suitable in the Treecas Letter- Coast Banksia, Blueberry Ash, Ornamental Pear, Weeping Lily Pilly, and Eumundi Quandong. This additional landscaping will improve the landscape setting of the existing built form by incorporating a small tree and removing hard surfaces.

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Comment: It is agreed that the child-care centre on the adjoining site at 147-151 Coxs Road is notably out of character with the area, however this centre has been in its present location for an extended period of time (i.e. well before the implementation of current planning requirements), and its design is not reflective of that currently sought by applicable planning controls. If this site were redeveloped (irrespective of the use, and noting that the three occupied allotments have not been amalgamated), then it would be expected that future development would better reflect the character of the surrounding area.

While the existing height, scale, general setbacks and external materials of the existing dwelling is consistent with that of contemporary residential development within the surrounding area, it is important to note that such residential development on allotments with similar sizes and dimensions consists of detached dwelling houses, and not higher density development (i.e. attached dual occupancies). As indicated above, the external modifications required to the dwelling to facilitate its conversion are minor, however the completed project would present as two dwellings located on very narrow allotments; such a form of development is not reflective within the area, as alluded to by the applicant's 4.6 variation request.

Further, it would not be possible for a large tree to be located within the front setback as proposed. The proposed location of the large tree would be directly atop of a drainage pit as indicated by the applicant's submitted landscape plans; further, a landscape response was sought which is summarised as follows:

- The placement of the tree four metres from the dwelling would situate it in close proximity to stormwater pits/pipes,
- The recommended positioning of the tree does not take into account the increase in trunk girth as the tree matures; by the time the tree reaches maturity, it would be within four metres of the dwelling, thereby falling under Council's exempt provisions, and
- All but one of the species recommended by the arborist would not conform with the DCP as they would have narrow upright forms instead of a spreading canopy.

It is also noted that the landscape plans are misleading, as they do not correctly show the locations of structures (i.e. pathways, retaining walls and bin storage areas) that are to be retained within the front setback. The highly constrained front landscape areas are therefore incapable of accommodating landscaping that would improve the landscape character of the area.

The development maintains consistency with the following aspects of character:

- *Building Typology: The building remains physically unchanged and therefore the form and presentation of the building, and its contribution to character, is*

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unchanged and therefore character is unchanged, and the development continues to contribute to the character of the streetscape and is compatible with the streetscape.

- *Site Coverage and Floor Space Ratio: The site coverage of the development is unchanged, and the physical footprint is unchanged. Whilst the FSR increases it does not change the presentation of the building and the development complies with the maximum FSR control. I also note the development complies with the relevant landscaping and deep soil requirements set out in SEPP ARH.*
- *Scale and Form of Dwellings: The form and presentation of the development is unchanged and therefore the physical presentation and contribution to the streetscape character is unchanged.*

Comment: It is disagreed that the character of the site would be unchanged. As assessed above, the external modifications required to facilitate the proposed development would change the character of the building from a detached dwelling to two attached (albeit separate) dwellings on excessively narrow allotments. Such a design is a significant departure from other similar, albeit compliant, dual occupancy developments within the area, and is not consistent with the existing and desired character of the area, being a low-density residential area within a landscaped setting.

It is agreed that the Floor Space Ratio (FSR) of the development would comply with relevant standards without increasing the bulk and scale of the dwelling. As assessed above however, the site would provide 25% (i.e. 134m²) of landscaped area, which is a notable (i.e. 16.7%) departure from the requirements of the SEPP. Further, while total deep soil areas would satisfy the requirements of the SEPP, the dimensions of deep soil areas within the front setback are insufficient to allow the growth and establishment of large trees in accordance with Council requirements.

While the scale of the existing dwelling would remain unchanged, it is disagreed that the physical presentation of the dwelling (and thus its streetscape character) would remain unchanged; the external works would change the nature of how the development would present to the public domain, which is inconsistent with existing and desired character.

The planning principle also establishes three (3) key elements that define character, being building height, setbacks and landscaping.

- *In relation to building height the development proposed will sit comfortably in the streetscape given that the overall building height is unchanged and is compliant with the height limit.*
- *In relation to landscaping the proposal complies with the landscaped area and deep soil requirements. The development will improve the landscape setting of the existing development through a reduction in hard surfaces, and the provision of a canopy tree in the front setback.*

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- *In relation to setbacks and separation there is also no change to the existing development and the presentation of the development to the street. There is substantial diversity in setbacks and building forms and building widths in the locality.*

The development demonstrates a suitable relationship between the allotment frontage and the building width and the scale of the building, setbacks, and relationship to adjoining properties is satisfactory and the development is compatible with the character of the local area.

Comment: For reference, the relevant principles within *Project Venture Developments v Pittwater Council* are as follows:

26. *For a new development to be visually compatible with its context, it should contain, or at least respond to, the essential elements that make up the character of the surrounding urban environment. In some areas, planning instruments or urban design studies have already described the urban character. In others (the majority of cases), the character needs to be defined as part of a proposal's assessment. The most important contributor to urban character is the relationship of built form to surrounding space, a relationship that is created by **building height, setbacks and landscaping**. In special areas, such as conservation areas, architectural style and materials are also contributors to character.*
27. *Buildings do not have to be the same **height** to be compatible. Where there are significant differences in height, it is easier to achieve compatibility when the change is gradual rather than abrupt. The extent to which height differences are acceptable depends also on the consistency of height in the existing streetscape.*
28. *Front **setbacks** and the way they are treated are an important element of urban character. Where there is a uniform building line, even small differences can destroy the unity. **Setbacks** from side boundaries determine the rhythm of building and void. While it may not be possible to reproduce the rhythm exactly, new development should strive to reflect it in some way.*
29. ***Landscaping** is also an important contributor to urban character. In some areas landscape dominates buildings, in others buildings dominate the landscape. Where canopy trees define the character, new developments must provide opportunities for planting canopy trees.*

With regard to the above, it is agreed that the height of the existing development is both compliant with the building height standard and is consistent with other residential development within the surrounding area. It is also agreed that the front setbacks of the building would remain unchanged and are generally consistent with the surrounding area.

As assessed above however, the site would contain insufficient amounts of landscaped area; further:

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- The front setback does not include sufficient space for suitable deep soil planting,
- The proposed location of the tree is not suitable as it would conflict with onsite drainage, and
- It is submitted that the applicant has proposed the smallest possible change to landscaped area within the front setback, as the 'hard surfaces' to be removed consist of seven stepping stones and would make a negligible change to landscaped area both within the front setback and across the site.

Further, the principles above state that while the most important contributors to character include height, setbacks and landscaping, the principles suggest that these are not the only contributors to character. With regard to the character assessment undertaken above, the presentation of the proposed development (as two dwellings on very narrow (i.e. 7.62 metre) wide allotments) would be consistent residential with development typically found in higher density zones and areas; this would be compounded by the site's inability to provide suitable landscaping (i.e. suitable mature trees) within the front setback. Such visual impacts are highly inconsistent with the character of the area.

In summary, it is acknowledged that attached dual occupancies are permissible within the R2 zone and that the proposal would not alter the existing height, bulk, scale and setbacks of the existing dwelling. The works are minor, however the applicant has only referred to the front entrance doorway, and has not considered the full visual impact of the development, which would present to the public domain as two dwellings on excessively narrow allotments; such impacts would be exacerbated by the insufficient landscaped and deep soil areas within the front setback, which would prevent proposed landscaping modifications from mitigating such visual impacts. As demonstrated above, such development is not consistent with the presentation of surrounding development (including other dual occupancies) nor the existing and desired character of the surrounding area. Approval of such development would create a local planning precedent (noting the significant number of surrounding allotments with similar frontage widths) that would likely instigate similar future proposals that would progressively erode the character of the streetscape, locality and LGA more broadly.

As such, the applicant design has not appropriately considered the development's incompatibility with the character of the area. Pursuant to Clause 16A of the ARHSEPP, the consent authority therefore must not consent to the development, and the matter shall form a reason for refusal.

ITEM 1 (continued)

ATTACHMENT 2

Attachment 2

Compliance Check - Quality Certification

Assessment of a Dual Occupancy (attached), Single Dwelling House, Alterations & Additions to a Dwelling House and ancillary development.

LDA No:	LDA2020/0005	Date Plans: 03/01/2020
Address:	153 Cox's Road, North Ryde NSW, 2113	
Proposal:	Alterations to the existing building which contains a dwelling house and secondary to a dual occupancy pursuant to State Environmental Planning Policy (Affordable Rental Housing) 2009.	
Constraints Identified:	Urban Bushland	

COMPLIANCE CHECK

Ryde LEP 2014	Proposal	Compliance
4.1 Minimum subdivision lot sizes		
580m ²	Standard does not apply to strata subdivisions pursuant to clause 4.1(4)(a)	N/A
4.1A Dual occupancy (attached) subdivisions		
(2) Development consent may only be granted to the strata subdivision of a dual occupancy (attached) on land in Zone R2 Low Density Residential if the land has an area of at least 580 square metres.	Clause 18 of ARH SEPP enables subdivision of land on which development has been undertaken pursuant to Division 1 of the SEPP.	N/A
4.1B(2)(a) & (b) Minimum lot sizes for dual occupancies and multi dwelling housing		
580m ²	Site area: 534.17m ² . Proposal relies upon 15(2) of ARH SEPP.	N/A
20m frontage	15.24m frontage.	No
4.3(2) Height of buildings		
9.5m	No change is proposed to existing building height.	N/A

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ATTACHMENT 2

Ryde LEP 2014	Proposal	Compliance
4.4(2) & 4.4A(1) Floor Space Ratio		
0.5:1 (m ²)	Not applicable; refer to the assessment of clause 13 of SEPP (Affordable Rental Housing) 2009.	N/A
4.6 Exceptions to development standards		
	Refer to the planning report for an assessment of the variation request regarding Clause 4.1B(2)(b) prepared by Think Planners, dated 5 March 2019	No
5.10 Heritage Conservation		
(1) Objectives The objectives of this clause are as follows— (a) to conserve the environmental heritage of Ryde, (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views, (c) to conserve archaeological sites, (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.	The subject site does not contain an item of heritage, is not located within a heritage conservation area nor is it in close proximity to a heritage item.	N/A
6.1 Acid Sulfate Soils		
(1) The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.	The subject site is not affected by acid sulphate soils.	N/A
6.3 Earthworks		
(1) The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or	No significant earth works (aside from footings for structures such as fences) are proposed. Earthworks of this scale are not expected to have an impact on environmental functions, processes and/or surrounding sites.	Yes

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ATTACHMENT 2

Ryde LEP 2014	Proposal	Compliance
features of the surrounding land.		
6.3 Flood planning		
(1) The objectives of this clause are as follows— (a) to minimise the flood risk to life and property associated with the use of land, (b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change, (c) to avoid significant adverse impacts on flood behaviour and the environment.	The subject site is not flood prone.	N/A
6.4 Stormwater Management		
(1) The objective of this clause is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and receiving waters.	No change is proposed to the existing stormwater management arrangements on site.	N/A

DCP 2014	Proposed	Compliance
Part 3.3 - Dwelling Houses and Dual Occupancy (attached)		
Section 1.0 Introduction		
Part 1.6 Site Analysis		
Site analysis to be submitted.	Not provided.	No
Section 2.0 General Controls		
2.1 Desired Future Character		
Development is to be consistent with the desired future character of the low-density residential areas.	The proposed development is not considered to be consistent with the existing and desired future character of the local area. Refer to the detailed assessment of this noncompliance within the planning report to which this assessment is attached.	No
2.2 Dwelling Houses		

ITEM 1 (continued)

ATTACHMENT 2

DCP 2014	Proposed	Compliance
(a) Landscape setting which includes significant deep soil areas at the front and rear	The proposal includes significant deep soil areas to the rear of the site. While a letter has been provided by an arborist indicating that the space within the front setback would be sufficient for the placement of a large tree, the location of such a tree is not indicated on the plans. Further, placement of a tree 4m from the nearest external wall (as indicated by the arborist letter) would place such a tree approximately 800mm from pits and/or pipes within the front setback. It has therefore not been demonstrated that there is sufficient deep soil space within the front setback. The pathway to 153 Cox's Road is also wider than what is portrayed on the plans, thereby further limiting landscaping/deep soil space within the front setback.	No
(b) Maximum two storeys high	Maximum two (2) storeys proposed.	Yes
(c) Dwellings address the street	The entrances to dwellings and ground floor living areas of both dwellings would address Cox's Road.	Yes
(d) Boundary between public and private space is clearly articulated	The boundary between public and private space are currently defined landscaping along the front boundary.	Yes
(e) Garages and carports are not to be visually prominent features	The existing and recessed garages would remain unaltered.	N/A
(f) Dwellings are to respond appropriately to the site analysis	Constraints and opportunities are not identified due to the lack of a site analysis. While the general form the building would remain unchanged, some design elements (i.e. opportunities for solar access and natural ventilation) would not respond appropriately to site opportunities; refer to separate assessments below.	Yes

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ATTACHMENT 2

DCP 2014	Proposed	Compliance
2.3 Dual Occupancy (attached)		
(a) New dual occupancy buildings are to meet the controls for new dwelling houses set out in 2.2.1.	Refer to the assessment of section 2.2.1 above.	Yes
(b) Alterations and additions to dual occupancy buildings are to meet the requirements of 2.2.2.	Not applicable; the existing building is not a dual occupancy.	
2.4 Subdivision		
Minimum lot sizes apply under RLEP Clause 4.1A	Torrens Title Subdivision is not proposed.	N/A
2.5 Public Domain Amenity		
2.5.1 Streetscape		
(a) Site design, building setbacks and level changes respect the existing topography	Existing setbacks and levels are to remain unchanged.	N/A
(b) Front gardens to complement and enhance streetscape character	While some elements of the front landscaping layout (e.g. planting along the front boundary) would complement the streetscape, the front garden areas are of an insufficient size to accommodate suitable trees/vegetation that would assist in screening the development and thus enhancing streetscape character.	No
(c) Dwelling design is to enhance the safety and amenity of the streetscape	As a result of changes to the building façade, the proposed development would adversely affect the visual amenity of the streetscape. Safety is however unlikely to be adversely affected, though sufficient opportunities for surveillance of the adjoining road reserve.	No
(d) Carports and garages visible from the public street are to: (i) Be compatible with the building design (ii) Be setback behind the dwelling's front elevation	Whilst externally unchanged, the garages are integrated within the structure, are both compatible with building design and are recessed behind the front building line.	Yes

ITEM 1 (continued)

ATTACHMENT 2

DCP 2014	Proposed	Compliance
(e) Driveways and hard stand areas are to be minimised.	The plans do not minimise hardstand areas within the front setback, noting excessively large entry pathways.	No
(f) Dwellings, garages and carports are to be orientated to match the prevailing orientation of such buildings in the streetscape	No change is proposed to the orientation of the existing garages.	N/A
(g) Facades from the public domain are to be well designed.	No change proposed to the existing front façade.	N/A
2.5.2 Public Views and Vistas		
(a) A view corridor is to be provided along at least one side allotment boundary where there is an existing or potential view to the water from the street. Landscaping is not to restrict views. Fence 70% open where height is >900mm.	There are no existing or potential significant views that are obtainable from the site or surrounding areas.	N/A
(b) Garages/carports and outbuildings are not to be located within view corridor if they obstruct view.	Refer above.	N/A
2.5.2 Pedestrian & Vehicle Safety		
(a) Car parking located to accommodate sightlines to footpath & road in accordance with relevant Australian Standard.	No change proposed to the existing car parking arrangements. If the proposal were recommended for approval, a condition could be applied to govern the height and spread of landscaping at the front boundary to avoid impacts on driveway sightlines.	Yes
(b) Fencing that blocks sight lines is to be splayed.	No front fencing proposed.	N/A
2.6 Site Configuration		
2.6.1 Deep Soil Areas		

ITEM 1 (continued)

ATTACHMENT 2

DCP 2014	Proposed	Compliance
(a) 35% of site area min.	Refer to the assessment of clause 14(1)(d) of the ARH SEPP. For reference, 120.9m ² , or 22.6% of the site would consist of deep soil space.	N/A
(b) Deep soil area must include: (i) Min 8x8m deep soil area in backyard. (ii) Front garden area to be completely permeable (exception driveway, pedestrian path and garden walls).	Refer to the assessment of the ARH SEPP. The front garden area would be permeable, though the pedestrian pathway is considered to be of excessive width.	N/A N/A
(c) Dual occupancies need only one 8m x 8m in back yard	Refer to the assessment of clause 14(1)(d)(ii) within the ARH SEPP	Yes
(d) Deep soil areas to have soft landscaping	All deep soil areas comprise of soft landscaping treatments.	Yes
(e) Deep soil areas to be 100% permeable. Not covered by structures, paving or the like, or have below surface structures such as stormwater detention elements.	Noted and applied to assessment.	-
2.6.2 Topography & Excavation		
(a) Building form and siting relates to the original topography of the land and of the streetscape.	The plans do not propose any cut or fill nor any changes to existing levels of the site.	N/A
(b) The area under the building footprint may be excavated or filled so long as: (i) the topography of the site requires cut and/or fill in order to reasonably accommodate a dwelling		

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ATTACHMENT 2

DCP 2014	Proposed	Compliance
<p>(ii) the depth of excavation is limited to 1.2m maximum</p> <p>(iii) the maximum height of fill is 900mm</p> <p>(c) Areas outside the dwelling footprint may be excavation and/or filled so long as:</p> <p>(i) the maximum height of retaining walls is not >900mm</p> <p>(ii) the depth of excavation is not >900mm</p> <p>(iii) the height of fill is not >500mm the excavation and filled areas do not have an adverse impact on the streetscape.</p> <p>(iv) the filled areas do not have an adverse impact on the privacy of neighbours</p> <p>(v) the area between the adjacent side wall of the house and the side boundary is not filled</p> <p>(vi) the filled areas are not adjacent to side or rear boundaries</p> <p>(d) Fill is not allowed in areas of overland flow. Refer to Part 8.2 stormwater management</p> <p>(e) Generally, the existing topography is to be retained.</p>		

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DCP 2014	Proposed	Compliance
2.7 Floor Space Ratio (FSR)		
(a) FSR is 0.5:1 in accordance Clause 4.4	Refer to the assessment of clause 13(2) of the ARH SEPP. For reference, the 0.713:1 FSR of the development would comply with the 0.994:1 FSR permitted by the SEPP.	N/A
(b) A floor area of 36m ² may be excluded when this area accommodates 2 car spaces. An area of 18m ² may be excluded when the area accommodates 1 parking space.	Irrespective of this control, car parking spaces were excluded from FSR calculations.	N/A
2.8 Height		
2.8.1 Building height		
(a) Building heights are to be as follows: <ul style="list-style-type: none"> - Maximum height of 9.5 metres for dwellings and dual occupancy. - Outbuildings including garages and carports maximum height 4.5 metres. 	<p>No change is proposed to the existing building height.</p> <p>No outbuildings are proposed.</p>	<p>Yes</p> <p>N/A</p>
<u>Maximum wall plate</u> <ul style="list-style-type: none"> - 7.5m max above FGL or - 8m max to top of parapet <p><i>NB:</i> <i>TOW = Top of Wall</i> <i>EGL = Existing Ground Level</i> <ul style="list-style-type: none"> - <i>FGL = Finished Ground Level</i> </p>	No change is proposed to existing wall plate heights.	N/A
<u>Maximum number of storeys:</u> <ul style="list-style-type: none"> - 2 storeys maximum (storey incl basement elevated greater than 1.2m above EGL). - 1 storey maximum above attached garage incl semi-basement or at-grade garages 	<p>Additional floors are not proposed on the existing two-storey building.</p> <p>One storey would be maintained above both garages. .</p>	N/A

ITEM 1 (continued)

ATTACHMENT 2

DCP 2014	Proposed	Compliance
2.8.2 Ceiling Height		
(a) Habitable rooms to have 2.4m floor to ceiling height (min).	Ceiling heights within current void areas as follows: <ul style="list-style-type: none"> • Ground floor: 2.75m • First floor: 2.515m Ceiling levels in other existing areas would remain unchanged.	Yes
2.9 Setbacks		
2.9.1 Front setbacks		
(a) Dwellings are generally to be set back 6m from street front boundary	4.62m to the primary front facade (Unchanged)	N/A
(b) N/A		
(c) Garages and carports, including semi-basement garages and attached garages, set back min 1m from façade	No change to the existing garage structures.	N/A
(d) The front setback free of structures. The exception is car parking structures which comply with 2.11.	The front setback remains free of structures, aside from the existing driveway, pathway and retaining walls.	Yes
(e) Attached garages, including semi-basement garages on secondary frontages not to protrude forward of the façade. The exception is garages located on battle axe allotments. These garages do not need to be setback.	The subject site does not contain a secondary frontage.	N/A
(f) The outside face of wall built above a garage aligns with the outside face of the garage wall below.	The outside face of the walls built above the garage remains unchanged.	N/A
2.9.2 Side Setbacks		
(a) One storey dwellings set back 900mm	Not applicable to two-storey buildings.	N/A

ITEM 1 (continued)

ATTACHMENT 2

DCP 2014	Proposed	Compliance
(b) Two storey dwellings set back 1.5m	Ground Floor Eastern elevation – 1.5m (Unchanged). Ground Floor Western Elevation - 1.65m (Unchanged). First Floor Eastern elevation – 1.5m (Unchanged) First Floor Western elevation – 1.65m (Unchanged)	N/A
(c) The second storey addition to a single storey dwelling are to be set back 1.5m	The proposal is not for additions to a single storey building.	N/A
(d) Allotments wider than they are long, one side setback a min of 20% of the width of the lot or 8m, whichever is greater.	The subject site is not is wider than it is longer.	N/A
2.9.3 Rear Setbacks		
(a) The rear setback min 25% of the site length or 8m, whichever is greater. (b) Allotments wider than they are long, min setback of 4m (c) Dwelling on battle axe allotment are to be setback the rear boundary of the front lot min of 8m. Single storey garage or outbuilding can be within setback.	The 25% site length requirement would apply; the existing 6.15m setback to the rear boundary (measured to the first floor balcony) would remain unchanged. Controls relating to wide and/or battle-axe allotments do not apply to the site.	No
2.11 Car Parking and Access		
2.11.1 Car Parking		
(a) Dwellings 2 spaces. Dual occ 1 space/dwg	Refer to the assessment of clause 14(2) of the ARH SEPP.	Yes
(b) Spaces can be enclosed or roofed.	Enclosed garages proposed for both dwellings	Yes
(c) Garages setback 1m behind front elevation.	No change to the existing garage setbacks.	N/A

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ATTACHMENT 2

DCP 2014	Proposed	Compliance
(d) A garage or carport may be located forward of existing dwelling if: (i) there is no other suitable position (ii) no vehicular access to the rear of side of the site (iii) it is preferred that it is single car width.	Carports not proposed in front of garages.	N/A
(e) Garages doors solid. No expanded mesh doors.	Existing solid garage doors to be retained.	Yes
(f) Preference located off laneways, secondary street frontages.	The subject site does not contain a secondary frontage.	N/A
(g) Driveway widths minimised. Driveways single car width except where needed to be widen to double garage access.	No change proposed to the existing driveway and crossover width.	N/A
(h) Driveways not roofed.	The driveways would not be roofed.	N/A
(i) Min width 6m or 50% of the frontage whichever is less	The width of both garages combined is 6m and the total frontage of the site is 15.24m. This calculates to be 39.37% of the frontage.	Yes
(j) Total width garage doors not be >5.7m	No change proposed to the existing garage door widths.	N/A
(k) Driveways for battle axe enable vehicles to enter and leave in forward direction	The subject site is not a battle axe allotment.	N/A
(l) Garage doors not be recessed more than 300mm	Existing garage setbacks are to remain unchanged.	N/A
(m) Garage windows >900mm from boundaries	Internal garages; no windows proposed.	N/A
(n) Free standing garages max GFA 36m ²	No free-standing garages are proposed.	N/A

ITEM 1 (continued)

ATTACHMENT 2

DCP 2014	Proposed	Compliance
(o) Design and materials to complement dwelling	Existing materials are to remain unchanged.	Yes
(p) Setback at least 1m from façade	Existing garage setbacks to remain unchanged.	N/A
(q) Carports not enclosed.	No carports proposed.	N/A
2.13 Landscaping		
(a) Major trees to be retained where practical	The subject site does not contain any major trees.	N/A
(b) Lots adjoining bushland, protect and retain indigenous native vegetation and use native indigenous plant spaces for a distance of 10m	The subject site is mapped as containing urban bushland, as per Councils Environmentally Sensitive Areas Map. A site inspection undertaken on 6 February 2019 noted that the subject site does not contain any significant trees or urban bushland.	Yes
(c) Provide useful outdoor spaces	The proposed private open space areas are of a sufficient size that can be used for passive outdoor recreation.	Yes
(d) Physical connection between dwelling and external ground level	Direct connections would be provided between the living areas and outdoor spaces at the rear of each dwelling.	Yes
(e) Provide landscape front garden. Hard paved areas no more than 40%.	55.7% of the front setback area would consist of hard/paved surfaces and structures.	No
(f) Pathway along one side boundary connecting front to rear. Not to be blocked by ancillary structures. Not required where there is rear lane access or corner allotment.	Obstruction free pathways are provided along one side of each dwelling.	Yes
(g) Landscape elements in front garden to be compatible with scale of dwelling.	The landscape elements within the front setback are not compatible with the scale of the dwelling.	No

ITEM 1 (continued)

ATTACHMENT 2

DCP 2014	Proposed	Compliance
(h) Front garden at least 1 canopy tree at least 10m in height	The submitted Landscaped Area plan indicates a tree capable of reaching a mature height of 10m would be planted within the front setback. Despite the advice provided by the applicant's arborist, the tree's location would conflict with onsite drainage, and a suitable tree would be incapable of both retaining insufficient clearance to surrounding structures and growing to full height.	No
(i) Mature tree at least 15m in rear garden with the DSA.	The submitted Landscaped Area plan indicates a tree capable of reaching a mature height of 15m will be planted within the rear setback of Dwelling 153A. If recommended for approval, a condition could be applied to ensure appropriate species selection.	Yes
(j) Locate and design landscaping to increase privacy between dwellings.	Existing landscaping arrangements remain unchanged.	N/A
(k) Hedge planting on boundary no greater than 2.7m	No change to existing hedge planting arrangements.	N/A
(l) Retaining walls and other landscape elements not to obstruct stormwater overland flow.	No new retaining walls proposed.	N/A
(m) OSD not to be located within front setback unless it is underneath driveway	No change is proposed to the existing stormwater arrangements.	N/A
(n) Landscaping to include POS	Landscaping and deep soil areas within the private open space at the rear of the site.	Yes
2.14 Dwelling Amenity		
2.14.1 Daylight and Sunlight Access		
(a) Living areas are to be predominantly located to the north where possible	The main ground floor living areas would continue to be oriented towards the north.	Yes

ITEM 1 (continued)

ATTACHMENT 2

DCP 2014	Proposed	Compliance
(b) Sites with northern side boundary to have increased setback of 4 metres is preferred.	No changes are proposed to the existing setbacks proposed, however the rear of the dwelling is oriented towards the north.	N/A
<u>Subject Dwelling</u> (c) Windows to north facing living areas of subject dwellings are to receive at least 3 hours of sunlight between 9am to 3pm on June 21.	Due to the site orientation, north facing windows of the proposed dual occupancy would receive at least 3 hours of sunlight to a portion of their surface between 9am and 3pm on 21 June, though it is noted that the 3D modelling is inconsistent with regard to the design of the rear first floor balconies. Compliance <i>may</i> be obtained, however further information would be required to clarify this.	Yes
(d) Private open space is to receive at least 2 hours sunlight between 9am to 3pm on June 21.		
<u>Neighbouring properties:</u> (e) For neighbouring properties: (i) sunlight to 50% of principal areas of ground level POS is not reduced to less than 2 hours between 9am to 3pm on 21 June (ii) windows to north facing living areas to receive at least 3 hours of sunlight between 9am and 3pm on 21 June over a portion of surface, where can be reasonably maintained given orientation and topography.	The submitted shadow diagrams demonstrate the private open space of both dwellings will receive at least 2 hours of sunlight between 9am and 3pm on June 21. The submitted shadow diagrams do not clearly show overshadowing impacts on adjoining sites. The proposal would not however worsen overshadowing of adjoining sites; even if the first floor landscaped area were proposed its shadow cast would be internalised by 10:00am on June 21 and would not affect surrounding sites.	Yes
2.14.2 Visual Privacy		
(a) Orientate the windows of main living spaces (living room, dining, kitchen, family etc) to the front and rear	The changes to the front door of 153A Coxs Road would remove a sliding glass door for a proposed lounge room that is currently oriented towards the front boundary, however the main living areas of both dwellings would otherwise continue to be oriented	Yes

ITEM 1 (continued)

ATTACHMENT 2

DCP 2014	Proposed	Compliance
(b) Orientate terraces, balconies and outdoor living areas to front or rear and not side boundary	towards the front and rear elevations. The existing front and rear boundaries would continue to be oriented towards the front and rear boundaries.	N/A Yes
(c) Terraces and balconies are not to overlook neighbour's living areas and POS	Rear-facing balconies on the first floor (which adjoin master bedrooms) are proposed to be enclosed by 800mm privacy screening atop of 1m masonry balustrades.	Yes
(d) Living and kitchen windows, terraces and balconies are not to allow direct view into neighbouring dwelling or POS	The placement of existing side windows are proposed to remain unchanged. The proposal is unlikely to introduce additional opportunities for overlooking of adjoining sites.	N/A
(e) Side windows are to be offset by sufficient distance to avoid visual connection between dwellings.	The placement of existing side windows are proposed to remain unchanged.	N/A
(f) Splayed walls with windows are not to be located above ground level where the windows provide views into adjoining property.	The existing building does not contain any splayed walls.	
2.14.3 Acoustic Privacy		
(a) Noise of mechanical equipment not exceed 5dB(A) above background noise measured in or on any premises in vicinity of the item.	If recommended for approval, noise from any plant equipment could be addressed via a condition.	Yes
(b) Dwellings on arterial roads double glazed windows fronting road.	The subject site is not located on an arterial road.	N/A
	Refer above.	N/A

ITEM 1 (continued)

ATTACHMENT 2

DCP 2014	Proposed	Compliance
<p>(c) Dwellings on arterial roads acoustic seal on the front door.</p> <p>(d) Dual occupancies are to be designed to reduce noise transmission between dwellings.</p>	<p>The design would situate living areas in appropriate areas to minimising noise transmission between dwellings.</p>	<p>Yes</p>
2.14.5 Cross Ventilation		
<p>(a) Designed to optimise access to prevailing breezes and provide for cross ventilation.</p>	<p>The ground floor layouts would permit natural ventilation. Both rear balconies are however proposed to be entirely enclosed by 1.8m high balustrades and privacy screens, which would reduce the effectiveness of natural ventilation.</p>	<p>Yes</p>
2.15 External Building Elements		
2.15.1 Roofs		
<p>(a) Relate roof design to the desired built form by:</p> <p>(i) articulating the roof</p> <p>(ii) roof is consistent with the architectural character of dwelling</p> <p>(iii) eaves minimum 450mm overhang on pitched roofs</p> <p>(iv) compatible roof form, slope, material and colour to adjacent buildings</p> <p>(v) roof height is in proportion to the wall height of the building</p> <p>(b) The main roof not trafficable terrace.</p> <p>(c) Proposed attic contained within the volume of the roof space.</p> <p>(d) Skylights to be minimised on roof planes visible from the public domain.</p>	<p>No changes to the existing roof are proposed.</p>	<p>N/A</p>

ITEM 1 (continued)

ATTACHMENT 2

DCP 2014	Proposed	Compliance
<p>Skylights are to be symmetrical.</p> <p>(e) The front roof plane is not to contain both dormer and skylight. Dormers are preferred.</p> <p>(f) Balconies and terraces are not to be set into roofs.</p> <p>(g) Scale of the roof is to be in proportion with the scale of the wall below.</p> <p>(h) Attics may be located in the garage roofs if the garage is located next to the dwelling. Garages located within front or rear setbacks are not to have attics.</p>		
2.16 Fences		
2.16.1 Front and return Fences and Walls		
<p>(a) Reflect the design of the dwelling</p> <p>(b) Materials compatible with the house and other fences in streetscape</p> <p>(c) Solid fence or wall max 900mm. Open light weight fence (timber picket) 1m.</p> <p>(d) Return fence is to be no higher than front fence</p> <p>(e) Fences max 1.8m if 50% open with solid base max 900mm</p> <p>(f) Fences arterial road solid and 1.8m max</p> <p>(g) No Colorbond or timber paling.</p>	<p>No front fencing proposed. If recommended for approval, a condition would be recommended that would require consent to be obtained for any new front fence that is not complying development.</p>	<p>N/A</p>

ITEM 1 (continued)

ATTACHMENT 2

DCP 2014	Proposed	Compliance
(h) Retaining walls max 900mm (i) Overland flow - fencing open not impede flow of water (j) Fence piers max 350mm.		
2.16.2 Side and Rear Fences and Walls		
(a) 1.8m Max side and rear fence	1.8m internal side boundary fencing is not clearly indicated, however the height and materials of such fencing could be addressed via condition.	Yes
(b) Overland flow - fencing to be open not impede flow of water	The subject site is not identified as being affected by an overland flow path.	N/A
(c) No Barbed wire, broken glass or other dangerous elements.	There is no information to suggest that fencing would contain dangerous elements.	Yes
(d) Fencing forward of the foreshore building line open and permeable.	The site is not affected by the foreshore building line	N/A
Part 7: Environment		
7.1: Energy Smart, Water Wise		
3.0 The information Guide		
3.2 Required information		
(a) Energy efficiency performance report (b) Site analysis	BASIX Certificates A284161_02 and A284161_03 submitted. The former certificate is invalid as it was prepared more than 3 months prior to lodgement, while both certificates are for alterations and additions, rather than a new dwelling.	No
Part 7.2 Waste Minimisation and Management		
2.3 All developments		
(a) Developments must provide space for onsite waste containers	A waste management plan has been submitted. While a bin enclosure is proposed within the front setback of proposed	No

ITEM 1 (continued)

ATTACHMENT 2

DCP 2014	Proposed	Compliance
<ul style="list-style-type: none"> (b) Compliant size of storage areas and number of storage containers. (c) Space to be provided for bulk waste where appropriate. (d) Storage of green waste provided (e) Stored within the boundaries of the site. (f) Site Waste Minimisation and Management Plan (SWMMP) to be submitted. (g) Located to provide easy, direct and convenient access. (h) No incineration devices. (i) Collection point identified on plan. (j) Path for wheeling bin collection not less than 14:1 	<p>153 Cox's Road, there is no information regarding waste storage for 153A Cox's Road. The garage is unlikely to contain sufficient dimensions for the storage of waste behind the front building line.</p>	
2.4 Demolition and Construction		
<ul style="list-style-type: none"> (a) Demolition must comply with AS and WorkCover (b) Demolition work plan submitted (c) Dedicated area on site for stockpile of materials taking into account environmental factors and amenity impacts. (d) Construction materials to be stored away from the waste materials on site. 	<p>Demolition is not proposed as part of the development application.</p>	<p>N/A</p>
2.5 Residential Developments comprising 1 or 2 Dwellings		
<ul style="list-style-type: none"> (a) Space inside each dwelling for receptacles for garbage, recycling. (b) Space provided outside the dwellings to store the required garbage, recycling and green waste bins. Screened from street. Easy access to wheel the bins to the kerbside. 	<p>While a bin enclosure is proposed within the front setback of proposed 153 Cox's Road, there is no information regarding waste storage for 153A Cox's Road. The garage is unlikely to contain sufficient dimensions for the storage of waste behind the front building line.</p>	<p>No</p>
Part 8: Engineering		

ITEM 1 (continued)

ATTACHMENT 2

DCP 2014	Proposed	Compliance
8.1 Construction Activities		
2.1.2 Erosion and Sediment Control Plan		
Erosion and sediment control plan to be submitted.	Not provided, however in the event of approval, requirements regarding erosion and sediment control could be addressed via conditions.	Yes
Part 8.2 Stormwater and Floodplain Management		
2.0 Stormwater Drainage		
(a) Drainage is to be piped in accordance with Section 2.0 Stormwater Drainage	Stormwater Plan prepared by RMS&F Consulting Engineers, ref 00122. Issue C, Drawing Number: H-00, H-01, H-02 and dated 07/12/2016.	Yes
Application has been consideration satisfactory by Development Engineering and City Works.	Existing stormwater works remain unchanged. As such the proposal was not referred to Council's Development Engineer for comment.	N/A
Part 8.3 Driveways		
4.0 Designing internal access roads and parking spaces		
4.1 (a) the design of all parking spaces, circulation roads and manoeuvring areas on the property must confirm to the minimum requirements of AS2890.1-2004.	No change is proposed to the existing car parking and manoeuvring arrangements on the site.	N/A
4.2 Design of Parking Spaces		
(b) Vehicles (85 th percentile) to enter and leave designated parking space in a single 3 point turn manoeuvre. A 99 th percentile vehicle for disabled vehicles. (c) Enter and leave in a forward direction. Waived where the garage is located at the front of a dwelling and insufficient space within front setback to provide a turning area.	The existing design of the driveways and garages would be unchanged, and would not require vehicles to undertaken a 3-point turn within the site and/or enter and leave in a forward direction.	N/A
S2.0 Design Standards		
S2.2 Vehicular crossing widths		

ITEM 1 (continued)

ATTACHMENT 2

DCP 2014	Proposed	Compliance
(a) Min 3.0m and max of 5.0m.	No change is proposed to the width of the existing vehicular crossing provided.	Yes
(b) Max width of 6m to facilitate accessing two adjacent garages if the distance between the space and the street frontage is less than 5.0m	Refer above.	N/A
Part 9.2 Access for People with Disabilities		
4.1.2 Class 1 Buildings		
Accessible path required from the street to the front door, where the level of land permits.	The pathways to both dwellings contain a single step, however would be capable of being made accessible if required.	Yes
Part 9.3 Parking Controls		
2.2 Residential Land Uses		
<ul style="list-style-type: none"> - Dwelling houses up to 2 spaces/dwelling - Dual occupancy 1 space/dwelling 	Refer to the assessment of clause 14(2) of the ARH SEPP.	N/A

ITEM 1 (continued)

ATTACHMENT 3

"E"

ANNEXURE "C"



Clause 4.6 Variation Request
153 COXS ROAD, NORTH RYDE
5 MARCH 2019



ITEM 1 (continued)

ATTACHMENT 3



INTRODUCTION AND BACKGROUND

The Development Proposal & The Site Area

The development proposal seeks consent for alterations to an existing building to establish a dual occupancy on the site.

The site area is 531m² and the site frontage is 15.24m.

Clause 4.1B under the Ryde LEP 2014 stipulates that for the development of an attached dual occupancy within the R2 zone a minimum frontage of 20m applies.

This is outlined below:

4.1B Minimum lot sizes for dual occupancies and multi dwelling housing

- (1) The objective of this clause is to achieve planned residential density in certain zones.
(2) Development consent may be granted for development on a lot in Zone R2 Low Density Residential for a purpose shown in Column 1 of the table to this clause if:
(a) the area of the lot is equal to or greater than the area specified for that purpose and shown opposite in Column 2 of the table, and
(b) the road frontage of the lot is equal to or greater than 20 metres.

Column 1	Column 2
Dual occupancy (attached)	580 square metres
Multi dwelling housing	900 square metres

The extent of departure is 4.76m, which equates to a variation of 23.8%.

Accordingly, development consent to the proposal is sought, even though the width of the site does not comply with that control, pursuant to this request that addresses the requirements of Clause 4.6 of the Ryde LEP 2014.

The applicant asks that the Consent Authority consider this request, and grant development consent to the proposal, despite the departure from the control, for the reasons stated below.

ITEM 1 (continued)

ATTACHMENT 3



THE LAW

Clause 4.6 of the Ryde LEP 2014 provides that development consent may be granted for development even though the development would contravene a development standard.¹ That clause is in the following terms:

***4.6 Exceptions to development standards**

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

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

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

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

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

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

(5) In deciding whether to grant concurrence, the Secretary must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

¹ Clause 4.6(2)

ITEM 1 (continued)

ATTACHMENT 3



Consequently, by this request, the applicant seeks to justify the contravention of the Standard by demonstrating (as clause 4.6(3) requires):

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

Further, the Consent authority must be satisfied (as clause 4.6(4) requires) that:

- "(i) (this request) has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained."*

ITEM 1 (continued)

ATTACHMENT 3



OUTLINE

As clause 4.6 provides, to enable development consent to be granted, the applicant must satisfy the consent authority that:

1. *this request has adequately addressed the matters required to be demonstrated by subclause (3),² namely that:*
 - a. *compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,³ and*
 - b. *there are sufficient environmental planning grounds to justify contravening the development standard⁴;*
2. *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
3. *the concurrence of the Secretary has been obtained.⁵*

At the outset, the applicant says the departure needs to be considered in the context of the use of SEPP (Affordable Rental Housing) 2009. The SEPP only requires a minimum lot size of 450m², which is some 130m² less than the 580m² stipulated in Clause 4.1B- being approximately 22.4% less when utilising the ARH SEPP 2009.

Therefore, consideration must be given to the fact that Clause 4.1B is designed to operate in a way that the frontage and site area controls are interrelated. The adoption of a 450m² lot size leads to a situation whereby a 20m frontage applies to a development on a small lot- and to achieve compliance with 450m² and a 20m frontage would only require a 22.5m site depth- which is a depth that would severely compromise the ability to accommodate a dual occupancy once considering front and rear setbacks, required parking and other key aspects of such a development.

Therefore, the context of the lot size control is important because as soon as an application is made under SEPP (Affordable Rental Housing) 2009 the frontage control no longer works in conjunction with the site area control and consideration of the frontage control should be undertaken on merit where the ARH SEPP is utilised.

The request deals with each relevant aspect of clause 4.6 below.

² Clause 4.6(4)(a)(i)

³ Clause 4.6(3)(a)

⁴ Clause 4.6(3)(b)

⁵ Clause 4.6(4)(b)

ITEM 1 (continued)

ATTACHMENT 3



COMPLIANCE UNREASONABLE OR UNNECESSARY

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, for the following reasons:

1. Compliance with the objectives of the development standard and the zone are achieved despite non-compliance with that standard.
2. The relevant objectives of the zone would be thwarted should the development be refused as the proposal provides housing choice within a low density context, which is the first named objective of the R2 low density zone.
3. Further, as explained below, the underlying objectives of the control, as well as the objectives of the zone, are achieved despite the non-compliance with the numerical development standard.
4. The development will achieve planned density without any discernible change to the character and presentation of the building (other than minor change to the front door treatment) on site and will replace 1 dwelling and a secondary dwelling with 2 dwellings, one of which is to be used for affordable rental housing for a period of 10 years.

ENVIRONMENTAL PLANNING GROUNDS

The following factors demonstrate that sufficient environmental planning grounds exist to justify contravening the lot width development standard.⁶ For that purpose, the critical matter that is required to be addressed is the departure from the development standard itself, not the whole development.⁷

1. The departure from the lot width standard facilitates the delivery of 2 dwellings on the allotment that has a compliant allotment size and ample area to accommodate the dwellings when considering that the nature of the proposal sees limited external change to the building and the reduced frontage has no impact on the ability to provide 2 dwellings on the site - other than in creating a numerical non-compliance with the standard.
2. The departure from the standard and ability for the development to have been designed to still meet the requirements of all other relevant requirements of the SEPP, LEP and DCP demonstrates the site is suitable for a dual occupancy despite the technical departure to the lot frontage control. This demonstrates that residential amenity is maintained and achieved as all other planning controls are achieved.

⁶ As clause 4(3)(b) requires

⁷ As confirmed in *Initial Action Pty Ltd v Woolahra Municipal Council* [2018] NSWLEC 118 at 46, per Preston CJ

ITEM 1 (continued)

ATTACHMENT 3



3. The locality contains a variety of dual occupancy forms and therefore the reduced frontage width remains consistent with the desired future character in the locality noting the emergence of more contemporary 2 storey housing forms in the locality. It must also be recognised that the building currently exists on the site and makes a contribution to the streetscape character that is fundamentally unchanged by the proposal despite the numerical departure to the frontage control.
4. The orientation of the lot also means that its reduced width does not preclude achieving a northerly orientation to the rear POS and living area.
5. As illustrated by the extract from Council's assessment report, the vast majority of lots in the immediate area are greater than 600m². This indicates that the locality will likely contain a number of dual occupancy developments and therefore from a character perspective the likely future character must be given significant weight in the consideration of this proposal and minor departure to the lot width control.
6. The variation to the allotment width control enables the delivery of an affordable housing dwelling to expand the availability of affordable rental housing in an accessible area and provides for a variety of housing types that is consistent with the objectives of the R2 zone.
7. The variation to the allotment width control enables development of the site pursuant to SEPP (Affordable Rental Housing) 2009 and furthers the Aims of the Policy- specifically those set out at Clause 3(a) and (b) and will facilitate delivery of 1 affordable rental housing dwelling on the site required to be used for affordable rental housing for a period of 10 years. Strict compliance with the allotment width control would prevent this from occurring and prevent development for a dual occupancy form being located on the site despite compliance with the minimum site area provision of the SEPP.
8. The variation to the allotment width control enables the 'Objects' of the Environmental Planning and Assessment Act 1979 to be achieved, specifically:
 - (c) to promote the orderly and economic use and development of land,
 - (d) to promote the delivery and maintenance of affordable housing,

Further, there is no adverse environmental planning ground that could be said to arise from the departure from the control. The above analysis demonstrates that there are sufficient environmental planning grounds to justify the departure from the control.

ITEM 1 (continued)

ATTACHMENT 3



CONSISTENCY WITH OBJECTIVES OF THE STANDARD AND THE ZONE

As clause 4.6(4)(a)(i) requires, the Consent Authority must also be satisfied that proposed development will be in the public interest because it is consistent with:

1. the objectives of the particular standard and
2. the objectives for development within the zone in which the development is proposed to be carried out.

The Applicant says the proposal is consistent with those objectives, for the reasons set out in this section.

The objectives of the development standard

The relevant objectives of the lot width development standard, and the objectives of the R2 low density residential zone, are set out below.

(1) The objective of this clause is to achieve planned residential density in certain zones.

The single stated objective is not considered to fully capture the 'underlying objective' of the site area and frontage control as it considered that in addition to the achievement of 'planned residential density' a minimum lot size and frontage control is in place to:

- Ensure an allotment is of sufficient size and area to accommodate a dual occupancy;
- To minimise likely impacts of development on the amenity of the area;
- To ensure that a low density character is maintained.

These underlying objectives are considered relevant.

The objectives of the zone

The objectives of the R2 Low density Zone are as follows:

**Objectives of zone*

- * To provide for the housing needs of the community within a low density residential environment.
- * To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- * To provide for a variety of housing types.

The development proposal has been designed to ensure that any adverse impacts associated with the proposal are avoided notwithstanding the non-compliance to the numerical control, noting:

- The development does not result in unacceptable overshadowing impacts to adjoining properties;

ITEM 1 (continued)

ATTACHMENT 3



- The development does not present an unacceptable bulk and scale, noting strict compliance with the FSR, building height, setback, landscaped area, and deep soil requirements;
- The development does not result in unacceptable privacy impacts to adjoining properties;
- The development does not result in unacceptable acoustic privacy impacts to adjoining properties.

The development proposal has been designed to ensure that the desired outcome for the lot size & width control is still achieved notwithstanding the non-compliance to the numerical control, as considered above, noting:

1. To the extent 'planned density' is the underlying objective it is considered as the departure from that density is not discernible given that the site meets the minimum area requirement, as well as the fact that the site currently contains 2 dwellings, being a dwelling and a secondary dwelling. This will be replaced with 2 dwellings, one of which is to be used for the purposes of affordable rental housing for 10 years.
2. The character of the locality is undergoing transition to large and more contemporary built-forms that are all permitted in the R2 zone and the bulk and scale of the dual occupancy is comparable to that of a large dwelling house. Therefore, it is clear that the R2 low density character is maintained through compliance with the planning controls that apply to R2 low density development. Further the lack of any discernible alteration to the existing presentation of the dwelling and secondary dwelling to the streetscape, and therefore the low density character is maintained notwithstanding the numerical departure;
3. The building is desired to be compatible with the desired future character of the area in terms of the building presentation to the street, the materials, and the relationship to surrounding properties.

The proposed development complies with key planning controls applying to the site and compliance is achieved with the minimum lot size contained in SEPP (Affordable Rental Housing) 2009. Further to the above technically the lot size control does not apply as the application is made pursuant to SEPP (Affordable Rental Housing) 2009 which only requires a minimum lot size of 450m², which is some 130m² less than the 580m² stipulated in Clause 4.1B- being approximately 22.4% less when utilising the ARH SEPP 2009.

Therefore, consideration must be given to the fact that Clause 4.1B is designed to operate in a way that the frontage and site area controls are interrelated. The adoption of a 450m² lot size leads to an incongruous situation whereby a 20m frontage applies to a development on a small lot- and to achieve compliance with 450m² and a 20m frontage would only require a 22.5m site depth- which

ITEM 1 (continued)

ATTACHMENT 3



is a depth that would severely compromise the ability to accommodate a dual occupancy once considering front and rear setbacks, required parking and other key aspects of such a development.

Therefore, the context of the lot size control is important because as soon as an application is made under SEPP (Affordable Rental Housing) 2009 the frontage control no longer works in conjunction with the site area control and consideration of the frontage control should be undertaken on merit where the ARH SEPP is utilised.

4. The development proposal remains compliant with all other provisions of the SEPP, LEP (height, FSR), and the DCP (setbacks, landscaped area, deep soil, parking, open space etc.) which indicates the form of development is entirely appropriate for the allotment notwithstanding the minor departure from the numerical control pertaining to lot width. Therefore, the area and dimensions of the lot are able to accommodate a dual occupancy consistent with the key planning controls notwithstanding the minor departure from the lot width control. The design and scale of the development is therefore site responsive and respects the marginally reduced lot width to deliver an appropriate form of development on the site, which is again, consistent with the relevant objectives.
5. The development proposal maintains the local character of the area. The planning principle outlines that where compatibility between a building and its surroundings is desirable, its two major aspects are physical impact and visual impact. In order to test whether a proposal is compatible with its context, two questions should be asked.

1. Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.
2. Is the proposal's appearance in harmony with the buildings around it and the character of the street?

It is also confirmed that 'Compatibility is... different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve'. Therefore it can be seen that it is not necessary that the development adopt the same built form, scale, and appearance as surrounding developments to be compatible. A key consideration for this proposal is that the form and presentation of the building is existing and will be largely unchanged as part of the development proposal which is primarily internal alterations and additions. The change to the front entry arrangements do not fundamentally change the presentation of the building- i.e. the bulk, massing, setbacks, garage location or general form. Whilst it would be a change in the streetscape the alteration in and of itself would not impact on the character of the area.

The adjoining child care centre to the east of the site is atypical of the prevailing residential character given the substantial building length, and large areas of

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parking and hard surfaces in the front setback- which interrupts the landscape setting of the street. The large 2 storey form and rendered finish to the dual occupancy at 145 Coxs Road and the large 2 storey dwelling with rendered finish at 143. These heights, setback arrangements, materiality, bulk and scale and general form are reflective of the emerging character in the R2 zone which has seen demolition of the smaller scale fibro and clad single storey cottages and replacement with larger 2 storey building forms in their place.

Another key aspect of character, in addition to the built form, is the landscape setting of development and notably the front setback treatments. Other than the preschool the majority of front setback areas are landscaped with grass, shrubs, and some small trees to the older cottages and less trees to the newer dwellings in the locality.

The existing form of the development on the subject site must be acknowledged as being a fundamental part of the existing character of the locality- it exists and is a lawful form of development on the site. It presents a 2 storey form with skillion roof and rendered finish with colorbond roofing as well as the use of alucobond style finish to part of the front balconies. The existing dwelling also adopts a double garage with 2 separate roller doors. I note that the only change to the building as it presents to the street is the removal of existing pavers and mulched areas in the front setback area to be replaced with additional landscaping and a canopy tree with 5 species nominated as being potentially suitable in the Treecas Letter- Coast Banksia, Blueberry Ash, Ornamental Pear, Weeping Lily Pilly, and Eumundi Quandong. This additional landscaping will improve the landscape setting of the existing built form by incorporating a small tree and removing hard surfaces.

The development maintains consistency with the following aspects of character:

- **Building Typology:** The building remains physically unchanged and therefore the form and presentation of the building, and its contribution to character, is unchanged and therefore character is unchanged, and the development continues to contribute to the character of the streetscape and is compatible with the streetscape.
- **Site Coverage and Floor Space Ratio:** The site coverage of the development is unchanged, and the physical footprint is unchanged. Whilst the FSR increases it does not change the presentation of the building and the development complies with the maximum FSR control. I also note the development complies with the relevant landscaping and deep soil requirements set out in SEPP ARH.
- **Scale and Form of Dwellings:** The form and presentation of the development is unchanged and therefore the physical presentation and contribution to the streetscape character is unchanged.

In relation to the Planning Principle and physical impacts of the development:

- The solar access to the development, and to adjoining development is acceptable;

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- The visual privacy impacts are acceptable
- The development does not result in the constrained development potential of adjoining properties;
- The development does not impact on view corridors;
- Traffic impacts are considered acceptable, noting the development complies with the parking controls applying to the development.

Based on the above the physical impacts of the development are acceptable.

The planning principle also establishes three (3) key elements that define character, being building height, setbacks and landscaping.

- In relation to building height the development proposed will sit comfortably in the streetscape given that the overall building height is unchanged and is compliant with the height limit.
- In relation to landscaping the proposal complies with the landscaped area and deep soil requirements. The development will improve the landscape setting of the existing development through a reduction in hard surfaces, and the provision of a canopy tree in the front setback.
- In relation to setbacks and separation there is also no change to the existing development and the presentation of the development to the street. There is substantial diversity in setbacks and building forms and building widths in the locality.

The development demonstrates a suitable relationship between the allotment frontage and the building width and the scale of the building, setbacks, and relationship to adjoining properties is satisfactory and the development is compatible with the character of the local area.

Of the objectives for the R2 zone, it is the first & third that is of principal concern for the subject proposal, namely: *"To provide for the housing needs of the community within a low density residential environment & To provide for a variety of housing types"*.

As demonstrated above, the development is consistent with those zone objectives. In particular, the dual occupancy development provides housing choice within a low density context, consistent with the first objective of the R2 Zone.

The development by providing for 2 dwellings in a dual occupancy configuration serves to provide for a variety of housing types within the R2 zone- i.e. an expanded availability of a dual occupancy form of housing in an area where single dwellings are the prevalent housing type.

The departure from the control is acceptable in the circumstances given the underlying objectives of the control are achieved and it will not set an undesirable precedent for

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future development within the locality as any future development on another site would require consideration of the relevant merits and circumstances of the individual application.

Further, the development is designed to minimise impact on the amenity of the area and adjoining properties, consistent with the inferred objectives of the control for dual occupancies.

For those reasons the applicant says the consent authority would be satisfied the development is in the public interest.

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CONCURRENCE OF THE SECRETARY

The Secretary (of Department of Planning and Environment) can be assumed to have concurred to the variation. This is because of Department of Planning Circular PS 18-003 'Variations to development standards', dated 21 February 2018. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2000*. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

CONCLUSION

For the reasons set out above, the applicant says that:

1. the matters canvassed in this request have adequately addressed the requirements of clause 4.6(3) and
2. The Consent Authority should be satisfied that the proposed development is in the public interest, as it is consistent with both the objectives of the development standard, and the objectives of the R2 zone.

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**Land and Environment Court
New South Wales**

Case Name: Falamaki v Council of the City of Ryde

Medium Neutral Citation: [2019] NSWLEC 1007

Hearing Date(s): 30 & 31 October 2018

Date of Orders: 18 January 2019

Date of Decision: 18 January 2019

Jurisdiction: Class 1

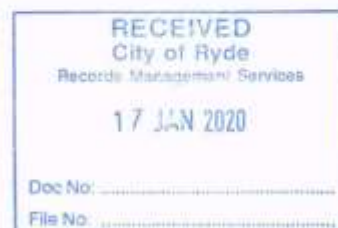
Before: Adam AC

Decision:

- (1) The Applicant is granted leave to rely on the amended plans in Exhibit C, Annexure A.
- (2) The written request made pursuant to cl 4.6 of the Ryde Local Environmental Plan 2014 to dispense with compliance with the lot width development standard in cl 4.1B is refused.
- (3) The appeal is dismissed.
- (4) Development Application No. LDA2017/0226 which proposes internal modifications to a building to enable its use as a dual occupancy (attached) under Division 1 of State Environmental Planning Policy (Affordable Rental Housing) 2009 is refused.
- (5) The exhibits, other than Exhibits 1, 3, A and C, are returned.

Catchwords: DEVELOPMENT APPLICATION: proposal to create dual occupancy (attached; affordable rental housing; whether inconsistency between provisions of Ryde Local Environmental Plan and State Environmental Planning Policy (Affordable Rental Housing) 2009; compatibility with character of the local area

Legislation Cited: Bankstown Local Environmental Plan 2001
Bankstown Local Environmental Plan 2015
Environmental Planning and Assessment Act 1979
Environmental Planning and Assessment Regulation 2000
Land and Environment Court Act 1979



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	<p>Ryde Local Environmental Plan 2014 State Environmental Planning Policy No 1- Development Standards State Environmental Planning Policy (Affordable Rental Housing) 2009 State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</p>
Cases Cited:	<p>Amine, Mouhamad and Anor v Bankstown Council [2014] NSWLEC 1188 Goldin v Minister for Transport administering the Ports Corporatisation and Waterways Management Act 1995 [2002] NSWLEC 75 Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 Louden Pty Ltd v Canterbury-Bankstown Council [2018] NSWLEC 1285 Project Venture Development v Pittwater Council [2005] NSWLEC 191 Rebel MH Neutral Bay Pty Ltd v North Sydney Council [2018] NSWLEC 191 Talebi v Mosman Council [2018] NSWLEC 1671 Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827</p>
Texts Cited:	<p>Department of Planning and Environment - Supporting infill affordable rental housing (Fact Sheet) Environmental Planning and Assessment Regulation Planning Circular 18-003 Ryde Development Control Plan 2014</p>
Category:	Principal judgment
Parties:	<p>Sajjad Falamaki (Applicant) Council of the City of Ryde (Respondent)</p>
Representation:	<p>Counsel: F Berglund (Respondent)</p> <p>Solicitor: Council of the City of Ryde (Respondent)</p> <p>Other: S Falamaki, litigant in person (Applicant)</p>
File Number(s):	2018/241743
Publication Restriction:	No

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JUDGMENT

- 1 These proceedings are an appeal by the Applicant, Mr Falamaki, against the refusal by the Respondent, City of Ryde Council, of Development Application No. LDA 2017/0226.
- 2 The development application is for proposed internal modifications to number 153 Coxs Road, North Ryde, to enable its use as a dual occupancy (attached) under Division 1 of State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP (ARH)).
- 3 The two storey dwelling house at 153 Coxs Road has been constructed only recently. The floor plan of the existing dwelling is essentially symmetrical about its midline so that relatively minor work would be required for a conversion to dual occupancy.
- 4 The site is Lot 159 in Deposited Plan 28396. The site is rectangular, with a frontage to Coxs Road of 15.24m and a depth of 35.05m, giving a site area of approximately 531m².
- 5 A lot width of 15.24m might seem to be an unusual dimension, but in imperial measure, it is exactly 50 feet; the lot depth is exactly 115 feet. These were common lot dimensions in the original subdivision pattern in the neighbourhood. This can be seen in the aerial photograph which is Figure 7 in the Statement of Facts and Contentions (SOFAC) (Exhibit 1).
- 6 The site is situated on the north-eastern side of Coxs Road, North Ryde, between Blamey Street and Blenheim Road. This section of Coxs Road has housing on only one side. On the south eastern side of this section of the road is Macquarie Hospital which has extensive open grounds. The view from the front of 153 Coxs Road is of these attractive parklike expanses.
- 7 The property adjacent to 153 Coxs Road to the south-east is a childcare centre/preschool. This is an exception to the general layout of properties in the area in that it occupies what would otherwise be three lots.

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- 8 The existing building at 153 Coxs Road was approved by a private certifier under the provisions of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP), in August 2016. Another complying development certificate was issued for the construction within the approved dwelling of a secondary dwelling (generally referred to as a granny flat) under the provisions of Division 2 of SEPP (ARH).
- 9 The application the subject of the current proceedings (LDA 2017/0226) was made to Council on 16 June 2017.
- 10 Council notified neighbouring properties as required by the Ryde Development Control Plan 2014 (RDCP 2014). Copies of the letter to residents are included behind Tab F in the Council's bundle (Exhibit 2). Two submissions objecting to the proposal were received.
- 11 The Council wrote to the Applicant on 2 August 2017 raising a number of issues, and on 16 January 2018 arranged an internal inspection of 153 Coxs Road. On 16 March 2018, the Council wrote to the Applicant detailing outstanding issues and affording a final opportunity to withdraw the DA. The Applicant did not provide a response.
- 12 The Council therefore prepared an assessment report on the proposal for consideration by the City of Ryde Local Planning Panel. At its meeting on 12 July 2018, the Panel in a unanimous decision made a determination to refuse the proposed development application.
- 13 The Applicant exercised his right of appeal and commenced the current proceedings.
- 14 The matter commenced as a conciliation on-site pursuant to s 34AA of the *Land and Environment Court Act 1979* (the Court Act). Present were the Applicant, the Respondent's legal representatives and the planning experts for the parties, Mr Jonathan Wood for the Applicant and Mr Ben Tesoriero for the Respondent.

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- 15 The proceedings commenced with an oral submission from Mr Martin Borri, who, along with his wife, had earlier made a written objection to the proposal. The Borris' reside in Schumack Street, the street running parallel to Coxs Road to the rear of the subject site. Mr Borri's concerns were with the impacts on the character of the surrounding area and the precedent that would be set if the proposal were to be approved.
- 16 Inspection of the front of the property then took place. Discussion concentrated on the arrangement for storing waste bins and there was agreement that they would be in the side setbacks, behind the building line. There was also discussion about landscaping, with the Respondent arguing for the need for a tree, which could grow quite large, to be at least 4m in front of what would become No. 153A (of the two components of the dual occupancy, the No. 153 would be retained for the western dwelling, while the eastern one would become 153A). A tree more than 4m from the front of the building would continue to enjoy throughout its life the tree protection measures applicable in the Council area.
- 17 There was also discussion of the front entrance of No. 153A. When a dual occupancy proposal was originally made, the entrance to the property was to have been from the side of the building. The RDCP 2014 requires that the entrance be clearly apparent from the street and encourages front doors facing the street rather than being on the side of the building (RDCP 2014 Part 3.3, section 2.5.1, controls c. i.) so that the building as a whole, when viewed from the street would be read as two separate residences. The plans as they stood at the start of the hearing showed the entrance at the front of the building, in the form of a sliding glass panel. The Respondent argued for a conventional wooden door, matching the existing door of No. 153, which would more definitely indicate the presence of two separate, independent residences within the one building.
- 18 After entering the building, it was explained how the existing double garage would have a partition built on the midline, creating two separate garages each with its own roller door. Currently, there is a large void above the garage

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and it is proposed that this be filled-in by construction of a new floor at the level of the existing first floor, creating extra usable space on the first floor of each of the two dwellings. It is by filling the voids that the proposal results in a considerable increase in the floor space ratio (FSR), without any alteration to the external dimensions of the building.

- 19 In the rear ground floor room of No. 153, there was discussion about whether the requirement for natural daylight at the winter solstice could be met. With the benefit of revised solar access diagrams, the experts were satisfied that the required minimum number of hours of daylight would be met.
- 20 On the first floor, the cantilevered roof of the ground floor was discussed and the experts agreed as to what would be appropriate for landscaping on the roof, and for the design of the privacy screen between the two dwellings. Both from the upper level, and from the principal outside private open space, the nature of the fence between the two dwellings was discussed, and the experts agreed as to what would be appropriate arrangements.
- 21 What will, if the proposal is approved, become 153A, includes what is currently the approved secondary dwelling. The spaces which comprise the secondary dwelling had been boarded off and were not available for inspection. It was agreed between the parties that were the current proposal to be approved then the approval for the secondary dwelling would be surrendered.
- 22 At the end of the inspection, the Respondent raised a number of concerns about what was covered by the original approval for the current single dwelling. It was proposed to seek information from relevant Council officers during the adjournment between leaving the site and resuming in Court. The Council's concerns related to the room, which under the application before the Court, was to become the kitchen of 153A.

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The need for amended plans

- 23 During the inspection of the existing building, it was noted that the room, which if the dual occupancy were approved, would be modified to become the kitchen of 153A, already had the features of the kitchen, in particular a cooktop was present. There was discussion on site between the Applicant and the Respondent as to what constituted a kitchen. On resumption in Court, the Respondent's position, based on the information gathered from the relevant officers, was that the room should not currently be a kitchen, and that the presence of the cooktop was sufficient to characterise the space as a kitchen.
- 24 If what was seen was a kitchen, the Respondent argued that a jurisdictional barrier to the Court granting approval arose.
- 25 The Court in an appeal stands in the shoes of Council and makes its own decision as to the appropriate outcome, based on the evidence before it. However, in reaching its decision, the Court has the same powers as would a council. If the room, in the form it was at the inspection, was a kitchen, and this was contrary to what was originally approved, a consent authority, be it Council or the Court, could not grant approval for what was proposed in the application before it – the proposal includes the conversion of the space to a kitchen. Absent the ability to grant approval in those circumstances, the matter could not proceed and the appeal must be refused.
- 26 There are avenues by which non-compliant works could be approved retrospectively, but they are not available in proceedings which have commenced seeking the approval of a new proposal predicated on the relevant space not already being a kitchen. The Applicant would need, if he sought an approval to retain the existing kitchen, to commence separate and different proceedings.
- 27 After discussions between the parties, it was agreed that one way to permit the matter to proceed to a determination of the core issues in contention

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would be for Mr Falamaki to seek to rely on amended plans. The matter was adjourned to permit amended plans to be prepared.

- 28 The following morning, 31 October 2018, Mr Falamaki filed a Notice of Motion with an annexure of amended plans. On resumption of the proceedings, the Notice of Motion was tendered as Exhibit C.
- 29 The Respondent did not oppose granting approval to rely on the amended plans. The amendments, although necessary to permit the matter to progress, were minor and did not require extra assessment so that the Respondent did not seek costs under s 8.15(3) of the *Environmental Planning and Assessment Act 1979* (EPA Act). I granted approval for the Applicant to rely on the plans forming Annexure A to Exhibit C.
- 30 The new plans reverse the arrangement of the proposed kitchen in 153A by removing the cooktop on the western side of the room and locating a new cooktop on the east side. In addition, the plans provided for a front door to 153A which would match that of 153. This formalised what had been discussed on site.
- 31 Permitting the Applicant to rely on amended plans does nothing to resolve the major issues in contention between the parties. There being no prospect of the parties reaching an agreement on any of the outstanding issues, I terminated the conciliation pursuant to s 34AA(2)(b)(i) of the Court Act and the proceedings continued as a contested hearing. The parties agreed that evidence given, and observations made, during the conciliation could form part of my considerations.
- 32 At this point it is appropriate to make clear what these proceedings are not about. The Respondent's SOFAC, the City of Ryde's Planning Panel's determination to refuse the development application, as summarised in Exhibit 1 at par [27(8)], the Respondent's planning expert's contribution to the Joint Expert Report (Exhibit 3) and the submissions of the objectors all contain statements implying that the building on the site, which is to be

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modified if the proposal is approved, was designed and constructed so as to facilitate conversion to dual occupancy, and that the proposal was to enable legitimisation of a building which had been constructed to circumvent planning controls. The Applicant strongly resists these claims. For the present matter, the history is not relevant; the Court's task is to conduct a merits assessment of the proposal represented in final form by the plans in Annexure A to Exhibit C. If there are issues regarding compliance of the existing structures, then there are avenues available to Council to pursue them if it so wishes.

The planning regime

- 33 The applicable local environmental plan is the Ryde Local Environmental Plan 2014 (RLEP). The aims of the RLEP are:

1.2 Aims of Plan

- (1) This Plan aims to make local environmental planning provisions for land in Ryde in accordance with the relevant standard environmental planning instrument under section 33A of the Act.
- (2) The particular aims of this Plan are as follows:
- (a) to encourage a range of development, including housing, employment and recreation, that will accommodate the needs of the existing and future residents of Ryde,
 - (b) to provide opportunities for a range of housing types that are consistent with adjoining development and the existing environmental character of the locality,
 - (c) to foster the environmental, economic, social and physical development of Ryde so that it develops as an integrated, balanced and sustainable city,
 - (d) to identify, conserve and promote Ryde's natural and cultural heritage as the framework for its identity, prosperity, liveability and social development,
 - (e) to improve access to the city, minimise vehicle kilometres travelled, facilitate the maximum use of public transport and encourage walking and cycling,
 - (f) to protect and enhance the natural environment, including areas of remnant bushland in Ryde, by incorporating principles of ecologically sustainable development into land use controls,
 - (g) to preserve and improve the existing character, amenity and environmental quality of the land to which this Plan applies,
 - (h) in relation to economic activities, to provide a hierarchy of retail, commercial and industrial activities that enable employment capacity targets to be met, provide employment diversity and are compatible with local amenity.

- 34 These objectives are broad, but of particular relevance to the current matter are subs 1.2(b) and (g).

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- 35 Under the RLEP, the site is within the Zone R2 Low Density Residential. The Land Use Table for the zone is:

Zone R2 Low Density Residential

1 Objectives of zone

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide for a variety of housing types.

2 Permitted without consent

Home occupations

3 Permitted with consent

Bed and breakfast accommodation; Boarding houses; Business identification signs; Centre-based child care facilities; Community facilities; Dual occupancies (attached); Dwelling houses; Environmental protection works; Group homes; Health consulting rooms; Home-based child care; Home businesses; Home industries; Hospitals; Multi dwelling housing; Places of public worship; Recreation areas; Residential care facilities; Respite day care centres; Roads; Secondary dwellings

4 Prohibited

Any development not specified in item 2 or 3

- 36 Dual occupancies (attached) are permitted with consent.
- 37 The development application has been made under the provisions of SEPP (ARH). The aims of the policy are:

3 Aims of Policy

The aims of this Policy are as follows:

- (a) to provide a consistent planning regime for the provision of affordable rental housing,
- (b) to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards,
- (c) to facilitate the retention and mitigate the loss of existing affordable rental housing,
- (d) to employ a balanced approach between obligations for retaining and mitigating the loss of existing affordable rental housing, and incentives for the development of new affordable rental housing,
- (e) to facilitate an expanded role for not-for-profit-providers of affordable rental housing,
- (f) to support local business centres by providing affordable rental housing for workers close to places of work,
- (g) to facilitate the development of housing for the homeless and other disadvantaged people who may require support services, including group homes and supportive accommodation.

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38 Clause 8 of SEPP (ARH) provides that:

8 Relationship with other environmental planning instruments

If there is an inconsistency between this Policy and any other environmental planning instrument, whether made before or after the commencement of this Policy, this Policy prevails to the extent of the inconsistency.

39 The application is for in-fill affordable housing under Part 2 Division 1 of SEPP (ARH). Clause 10 states:

10 Development to which Division applies

(1) This Division applies to development for the purposes of dual occupancies, multi dwelling housing or residential flat buildings if:

- (a) the development concerned is permitted with consent under another environmental planning instrument, and
- (b) the development is on land that does not contain a heritage item that is identified in an environmental planning instrument, or an interim heritage order or on the State Heritage Register under the *Heritage Act 1977*.

(2) Despite subclause (1), this Division does not apply to development on land in the Sydney region unless all or part of the development is within an accessible area.

(3) Despite subclause (1), this Division does not apply to development on land that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use, or within a land use zone that is equivalent to any of those zones.

40 As dual occupancy (attached) is permitted with consent in the R2 zone, cl 10(1)(a) of SEPP (ARH) is satisfied. The land does not contain a heritage item (cl 10(1)(b)).

41 Under cl 10.1(2), the land must be within an "accessible area". Accessible area is defined in cl 4 of SEPP(ARH):

4 Interpretation-general

(1) In this Policy:

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

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and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday

42 Coss Road has regular bus services, and there is a bus stop almost directly in front of the property, so that clause 10(2) is satisfied.

43 SEPP (ARH) provides for bonus increases in allowable FSR in cl 13:

13 Floor space ratios

(1) This clause applies to development to which this Division applies if the percentage of the gross floor area of the development that is to be used for the purposes of affordable housing is at least 20 per cent.

(2) The maximum floor space ratio for the development to which this clause applies is the existing maximum floor space ratio for any form of residential accommodation permitted on the land on which the development is to occur, plus:

(a) if the existing maximum floor space ratio is 2.5:1 or less:

(i) 0.5:1-if the percentage of the gross floor area of the development that is used for affordable housing is 50 per cent or higher, or

(ii) Y:1-if the percentage of the gross floor area of the development that is used for affordable housing is less than 50 per cent,

where:

AH is the percentage of the gross floor area of the development that is used for affordable housing.

$Y = AH \div 100$

or

(b) if the existing maximum floor space ratio is greater than 2.5:1:

(i) 20 per cent of the existing maximum floor space ratio-if the percentage of the gross floor area of the development that is used for affordable housing is 50 per cent or higher, or

(ii) Z per cent of the existing maximum floor space ratio-if the percentage of the gross floor area of the development that is used for affordable housing is less than 50 per cent,

where:

AH is the percentage of the gross floor area of the development that is used for affordable housing.

$Z = AH \div 2.5$

(3) In this clause, gross floor area does not include any car parking (including any area used for car parking).

Note

Other areas are also excluded from the **gross floor area**, see the definition of gross floor area contained in the standard instrument under the *Standard Instrument (Local Environmental Plans) Order 2006*.

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- 44 RLEP cl 4.4 establishes the FSR applicable to the site:

4.4 Floor space ratio

- (1) The objectives of this clause are as follows:
- (a) to provide effective control over the bulk of future development,
 - (b) to allow appropriate levels of development for specific areas,
 - (c) in relation to land identified as a Centre on the Centres Map-to consolidate development and encourage sustainable development patterns around key public transport infrastructure.
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

- 45 The FSR map covering the subject site is reproduced in Exhibit 1 (behind tab A at p39), and shows that the maximum FSR under RLEP is 0.50. While there is minor disagreement between the planning experts as to the calculation of FSR for the proposal, even if the higher of the two figures advanced is assumed to be correct, it is less than the maximum which would be allowable under cl 13 of SEPP (ARH).

- 46 SEPP (ARH) provides restrictions (in cl 14) on the grounds under which a consent authority might otherwise, under the provisions of RLEP, refuse consent:

14 Standards that cannot be used to refuse consent

(1) Site and solar access requirements

A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:

- (a) (Repealed)
- (b) site area

if the site area on which it is proposed to carry out the development is at least 450 square metres,

- 47 Clause 15 of SEPP (ARH) provides that:

15 Design requirements

- (1) A consent authority must not consent to development to which this Division applies unless it has taken into consideration the provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* published by the Department of Infrastructure, Planning and Natural Resources in March 2004, to the extent that those provisions are consistent with this Policy.
- (2) This clause does not apply to development to which clause 4 of *State Environmental Planning Policy No 65-Design Quality of Residential Apartment Development* applies.

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- 48 Clause 15(1) requires that the consent authority has taken into consideration the relevant provisions. It does not require satisfaction of a particular standard such that would require refusal if that standard were not met, rather the weight to be given to the guidelines forms part of the consent authority's merit consideration.

- 49 Clause 16A requires consideration of the character of the local area:

16A Character of local area

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.

- 50 It is necessary that if approval is granted 153A must be used for affordable housing for 10 years

17 Must be used for affordable housing for 10 years

(1) A consent authority must not consent to development to which this Division applies unless conditions are imposed by the consent authority to the effect that:

(a) for 10 years from the date of the issue of the occupation certificate:

(i) the dwellings proposed to be used for the purposes of affordable housing will be used for the purposes of affordable housing, and

(ii) all accommodation that is used for affordable housing will be managed by a registered community housing provider, and

(b) a restriction will be registered, before the date of the issue of the occupation certificate, against the title of the property on which development is to be carried out, in accordance with section 88E of the *Conveyancing Act 1919*, that will ensure that the requirements of paragraph (a) are met.

- 51 Annexure B to the Applicant's Statement of Facts and Contentions in Reply (Exhibit B) is a letter dated 18 September 2018 from Mr Kerans, Area Manager of Ecclesia Housing, a registered community housing provider, stating that the organisation has agreed to manage 153A Coxs Road as affordable rental housing for 10 years under the requirements of cl 6 of SEPP (ARH), thus satisfying cl 17(1)(a)(ii) of SEPP (ARH).

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Torrens or Strata title?

- 52 The Development Application Form (DA) included within the application for these Class 1 proceedings (Exhibit A) includes as the handwritten entry for 6.a)

"6.a) **Detailed description of development** In-fill Affordable Housing - Dual Occupancy pursuant to ARHSEPP 2009 and Strata Subdivision."

- 53 However, in the SOFAC (Exhibit 1), and subsequently, it has been stated that the application is for Torrens title subdivision.

- 54 Subdivision is governed by cl 4.1 of RLEP:

4.1 Minimum subdivision lot size

- (1) The objectives of this clause are as follows:
- (a) to retain streetscape, amenity, landscaped areas and private open space in residential zones,
 - (b) to ensure that lot sizes enable sufficient areas of open space within each lot so as to enable the retention and embellishment of green linkage corridors in residential zones.
- (2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.
- (3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

- 55 Under RLEP, Torrens title subdivision is governed by cl 4.1A:

4.1A Dual occupancy (attached) subdivisions

- (1) Despite clause 4.1, development consent may be granted for the Torrens title subdivision of a lot if:
- (a) before the day *Ryde Local Environmental Plan 2014 (Amendment No 2)* commences a dual occupancy (attached) has been constructed on the lot or an occupation certificate has been issued for that development, and:
 - (i) the lot to be subdivided has an area of at least 580 square metres, and
 - (ii) one dwelling will be situated on each lot resulting from the subdivision, and
 - (iii) each resulting lot will have an area of not less than 290 square metres, or
 - (b) on or after the day *Ryde Local Environmental Plan 2014 (Amendment No 2)* commences a dual occupancy (attached) has been constructed on the lot, and:

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- (i) the lot has an area of at least 580 square metres and a road frontage of at least 20 metres, and
- (ii) one dwelling will be situated on each lot that has an area of not less than 290 square metres and a road frontage of not less than 10 metres, and
- (iii) an occupation certificate has been issued for that development.

(2) Development consent may only be granted to the strata subdivision of a dual occupancy (attached) on land in Zone R2 Low Density Residential if the land has an area of at least 580 square metres.

56 This clause does not apply to strata subdivision. However, despite cl 4.1, development consent may be granted for Torrens title subdivision if cl 4.1A is satisfied.

57 The property has a site area of 531m² on a road frontage of 15.24m, thus not satisfying either the requirements for Torrens title or (cl 14A(2) Strata subdivision).

58 Clause 4.6 of RLEP provides a pathway by which exceptions to development standards can be sought. However, cl 4.6(8) provides that:

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

- (a) a development standard for complying development,
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

...
(cb) clause 4.1A, to the extent that it applies to the Torrens title subdivision of a dual occupancy (attached),
...

59 Thus, cl 4.6 cannot be used to amend the application of cl 4.1A.

60 Clause 14(1) of SEPP (ARH) lists the types of development standards which a consent authority cannot used to refuse a development application. The development standards listed do not include any reference to restrictions on Torrens title subdivision; SEPP (ARH) does not provide an avenue to permit

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Torrens title subdivision in circumstances where it would be impermissible under the RLEP.

- 61 The Planning Experts in their joint report (Exhibit 3) agreed (Exhibit 3, page 8 at par [15]) that if Torrens title subdivision is proposed, then the application must be refused. I agree with this conclusion.
- 62 The Applicant in his written submissions (Exhibit D) argued at pars [8] – [9] that SEPP (ARH) should prevail and Torrens title subdivision be permitted. However, if the Court found Torrens title was not permitted “the development application is amended to be subdivided under strata.”
- 63 Given the position of the planning experts, the matter continued as a proposal for strata subdivision.

The contentions

- 64 As a result of the agreements between the planning experts, only three contentions remain, the others either being resolved or no longer applicable, or were capable of being addressed by conditions of consent. The contentions which remained are:

- Contention 3 - lot size, and specifically whether compliance with the minimum road frontage is required;
- Contention 9 - streetscape and character;
- Contention 10 - the public interest;

Contention 3 - minimum road frontage.

- 65 Clause 4.1B(2)(b) of RLEP requires the road frontage of a lot to be equal to or greater than 20m. It is agreed that the road frontage of the subject lot is 15.24m. The clause also requires a minimum lot size of 580m², whereas the lot in question is 531m².

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4.1B Minimum lot sizes for dual occupancies and multi dwelling housing

(1) The objective of this clause is to achieve planned residential density in certain zones.

(2) Development consent may be granted for development on a lot in Zone R2 Low Density Residential for a purpose shown in Column 1 of the table to this clause if:

- (a) the area of the lot is equal to or greater than the area specified for that purpose and shown opposite in Column 2 of the table, and
- (b) the road frontage of the lot is equal to or greater than 20 metres.

Column 1	Column 2
Dual occupancy (attached)	580 square metres
Multi dwelling housing	900 square metres

66 The Applicant in written submissions (Exhibit D), argues that the question of non-compliance with cl 4.1B(2)(b) can be addressed in two ways:

- (a) a finding that cl 4.1B(2)(b) is inconsistent with cl 14(1)(b) of the SEPP (ARH) and its relevant aims when construed as a whole, or
- (b) acceptance of the cl 4.6 statement submitted in the variation request in Annexure B to the Joint Expert Report (Exhibit 3) to vary the requirement under cl 4.1B that the minimum lot frontages be at least 20m.

Is RLEP inconsistent with SEPP (ARH)?

67 The argument advanced by the Applicant that SEPP (ARH) prevails (and see also the case presented by Mr Wood in the Joint Expert Report (Exhibit 3 at pars [55] – [56]) could be summed up as 'It stands to reason'.

68 The parties agree that SEPP (ARH) sets the minimal site area for dual occupancy at 450m², 22.4% smaller than the 580m² required by RLEP. Clause 14 of SEPP (ARH) specifies that provided the site area is at least 450m², non-compliance with a development standard specifying a larger site area in an LEP cannot be used as the basis for refusing consent.

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69 The parties' experts agreed that cl 14 of SEPP (ARH) makes no mention of any linear dimensions. For a rectangular lot, which is the case in the present matter, the site area is the product of length and breadth, so width is inevitably a factor in determining area.

70 If SEPP (ARH) provides for dual occupancy (attached) development in lots with an area of 450m², Mr Wood in Exhibit 3 at par [55] considers that:

"Consequently it is also logical that a smaller lot size should also mean that the ARHSEPP contemplates that development could occur on an allotment that is narrower than that envisaged by the Ryde LEP 2014. As set out in the Clause 4.6 strict application of a 20 m frontage relative to a 450 m² creates an allotment of 20 m x 22.5 m - a depth that would severely compromise a dual occupancy development."

71 Mr Wood continues in par [56]:

"On the basis of the above I consider that the proportional reduction in lot size permitted by the SEPP should also be applied to the frontage control from a merits point of view. Reduction in lot size is 22.4% and the frontage departure of 23.8% which is comparable to the proportional reduction in lot size."

72 In *Amine, Mouhamad and Anor v Bankstown Council* [2014] NSWLEC 1188 (*Amine*) Commissioner O'Neill considered a proposal under SEPP (ARH) for construction of three villas on a site where the developments standards in the Bankstown Local Environmental Plan 2001 (BLEP) required a minimum site area of 1200m² and an allotment frontage of 20m.

73 The width of the lot in *Amine* is not stated in the judgment but can be presumed to be less than 20m given that at [39] it is indicated "that the requirement for a 20m frontage for a villa development in LEP 2001 acts as a constraint to the granting of development consent."

74 The Commissioner found at [43] that the development standards in cl 4.6 of BLEP 2001 for minimum site area, allotment width, and minimum area per individual villa were all inconsistent with cl 14(b) of SEPP (ARH). Under SEPP (ARH), the minimum area required is 450m² and "The development standards

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for villas in LEP 2001 cannot be used to refuse consent, at clause 14 of SEPP (ARH), as the site area is 923sqm."

75 In [44] the Commissioner continued:

".....the incentives of the SEPP (ARH) provisions, designed to encourage the supply of affordable rental housing, permit this development to occur on a smaller site that would otherwise be required for a villa development under LEP 2001. For this reason and pursuant to cl 14 of SEPP (ARH), the development standards for villas in cl 46 cannot be used to refuse consent and therefore a SEPP 1 objection is not required."

76 BLEP 2001 did not contain cl 4.6, so that the avenue for seeking variation in application of development standards was by way of State Environmental Planning Policy No 1- Development Standards (SEPP 1).

77 The discussion in *Amine* at [44] does not include specific mention of the width of frontage, but does refer to the development standards for villas in cl 46 of LEP 2001 (which include site width).

78 The Applicant in his written submissions (Exhibit D) interpreted the discussion in *Amine* in the following terms (at pars [36] – [37]):

"36. The Court found that the LEP controls relating to site area and site frontage were to be read together and were both considered to be inconsistent with Cl. 14(b) of the SEPP ARH. This is the exact circumstance in the matter in hand; it does not matter that the SEPP ARH is silent on the frontage requirement given the objective of the SEPP is to provide affordable rental housing and its identification of suitable sites relates only to site area.

37. To impose the RLEP 2014 instead of SEPP ARH would contravene Cl. 8 of SEPP ARH and promote inconsistency, not harmony."

79 Notwithstanding that in *Amine* the Commissioner found that the requirements of the LEP were inconsistent with SEPP (ARH) and that SEPP (ARH) prevailed, ultimately she dismissed the appeal on grounds of lack of compatibility with the character of the local area.

80 More recently, Commissioner Gray considered similar issues in *Louden Pty Ltd v Canterbury-Bankstown Council* [2018] NSWLEC 1285 (*Louden*). In this

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matter, Louden Pty Ltd sought to demolish an existing dwelling house and erect a four-storey residential flat building within the R4 High Density Residential zone in Bankstown Local Environmental Plan 2015 (BLEP 2015). The application was made pursuant to the provisions of SEPP (ARH).

81 One of the contentions in the matter was that the width of the subject site at the front building line did not comply with the development standard for minimum width in cl 4.1B(2)(b) of BLEP 2015.

82 Under BLEP 2015, for residential flat buildings in the zone R4, the required lot area is 1500m² and the minimum width of the lot at the front building line is 30 m. In SEPP (ARH), the minimum requirement for lot size is 450m² and the inconsistency between the LEP and SEPP (ARH) is to be resolved by SEPP (ARH) prevailing.

83 In Louden at [20]:

"Louden also submits that there is an incongruity between the provisions of cl 14(1)(b) of the SEPP ARH regarding the lot size and the minimum width of the lot in cl 4.1B(2)(b) of the BLEP 2015 insofar as those clauses apply to a residential flat building in the R4 zone, and that this incongruity creates an inconsistency that causes the SEPP ARH to prevail and cl 4.1B(2)(b) to have no effect. The question of whether such an inconsistency exists is considered in my reasons below."

84 Despite its view that the width restriction created an inconsistency between the two planning instruments, Louden submitted a cl 4.6 request.

85 In Louden at [32], the proponent submitted that:

"... Louden submits that inconsistency in the standard for lot size between the SEPP ARH and the BLEP 2015 creates an inconsistency between the SEPP ARH and the BLEP 2015 with respect to the minimum width. Secondly, Louden submits that to maintain the 30m standard with respect to lot width for a residential flat building only requiring a minimum lot size of 450m² is so onerous that it is inconsistent. In support of this submission, Louden relies on the evidence of Mr Wood that a site of 15m depth would not be sufficient for a residential flat building, and the evidence of both town planners that they are not aware of any sites in the Bankstown area of 30m width and 15m depth. Louden refers to decision of the Court of Appeal in *Coffs Harbour Environment Centre Inc v Minister for Planning* (1994) LGERA 324, in which Kirby P found that "there will be an inconsistency if, in the provisions of one

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environmental planning instrument, there is "want of consistency or congruity"; "lack of accordance or harmony" or "incompatibility, contrariety, or opposition" with another environmental planning instrument." This test was confirmed in *Castle Constructions Pty Ltd v North Sydney Council* (2007) 155 LGERA 52; [2007] NSWCA 164, in which the majority of the Court of Appeal applied this test and determined that a provision regarding a building height plane was inconsistent with a provision regarding building height and massing. Loudon submits that a "lack of accordance or harmony" occurs with the present provisions as they apply to residential flat buildings, and that they are therefore inconsistent."

86 Commissioner Gray concluded in relation to the issue at [34] – [35]:

"The provisions are not inconsistent"

34 I accept that with a lot size of close to 450m², achieving a frontage of 30m for a residential flat building is unlikely and/or onerous. To expect to achieve such a frontage might be unreasonable in light of the "do not refuse" provision preventing refusal of the development based on lot size if the lot size is 450m². However, I do not accept that because a standard that is unlikely to be achieved, or onerous to achieve, if cl 14(1)(b) is met, it falls within the ordinary meaning of creating an "inconsistency". In that sense, the present provisions can be distinguished from those in *Castle Constructions v North Sydney Council*, in which their Honours were concerned with the inconsistency of two different provisions concerning the applicable height control. Whilst inherent incongruity in two different applicable provisions relating to the same control (e.g. height) may create an inconsistency, in my view incongruity due to a difficulty in achieving two different standards does not.

35 Further, whilst they are proportionally related, a standard with respect to the minimum width at the front building line is different to a standard with respect to lot size. In this respect, I accept the submission of the Council that cl 14(1)(b) of the SEPP ARH and cl 4.1B(2)(b) are capable of being reconciled, albeit it may be difficult to do so in the context of a residential flat building. For those reasons, and because cl 4.6 of the BLEP 2015 applies to allow consent to be granted notwithstanding a breach of cl 4.1B(2)(b), I do not accept that an inconsistency arises that causes cl 14(1)(b) of the SEPP ARH to prevail over cl 4.1B(2)(b). Had cl 4.6 not applied to cl 4.1B(2)(b), I may have reached a different view. Therefore, the development standard for the minimum width at the front building line of 30 metres applies to the application, but cl 4.6 allows consent to be granted notwithstanding non-compliance with this standard."

87 The Commissioner went on to grant the cl 4.6 request, and after considering the other contentions in the matter, upheld the appeal.

88 Faced with contradictory opinions as to whether the site area requirement in SEPP (ARH) implicitly includes lot width, or whether area and width are to be considered separately, which one is to be preferred?

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- 89 In construing environmental planning instruments, it should be assumed that the draftsperson chose to use particular words for a reason and that the words used have work to do. The converse is that the absence of particular words also signifies intent, and there is not a licence to imply the inclusion of 'missing words' however logical or convenient their inclusion might seem. If the draftsperson of SEPP (ARH) had intended that lot width as well as site area be development standards which could not, under SEPP (ARH) be used to refuse consent, reference to lot width could have been included. Support for this view can be found in State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 which includes in cl 25 (the relevant equivalent to cl 14 of SEPP (ARH)) in cl 25(2)(c) –

the development may be located on a site of any size, have any length of street frontage or any allotment depth.

- 90 The Department of Planning & Environment in August 2014 issued a fact sheet 'Supporting infill affordable rental housing' which includes a number of Frequently Asked Questions. The first of these is –

"Q. Do other local council planning controls continue to apply?

A. If the SEPP does not explicitly override a local council planning control then the local council planning control continues to apply."

- 91 The fact sheet is an advisory document and does not constitute a binding authoritative statement, but it is referred to, in particular, (e.) to Contention 3 (Exhibit 1). I note that Mr Wood, in the Joint Expert Report (Exhibit 3) at par [54] gives little weight to the fact sheet, but it is a document intended to inform the public about the interaction between SEPP (ARH) and LEPs, and is consistent with the wording of cl 14(1) of SEPP (ARH).

- 92 I am, therefore, strengthened in my view that cl 14(1) of SEPP (ARH) does not implicitly include lot width amongst the standards on which a consent authority can refuse consent and that the interpretation provided by Commissioner Gray in *Louden* is correct. Clause 4.1B of RLEP is not inconsistent with cl 14.1 of SEPP (ARH) and thus the lot width requirement in cl 4.1B is a mandatory development standard applicable to the proposal.

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93 However, cl 4.6 in RLEP permits the applicant to make a case for variation in the application of cl 4.1B which, if successful, would allow consent to be granted despite the non-compliance with the lot width standard.

94 Mr Wood, the Applicant's planning expert, makes a written clause 4.6 variation request which is included as Annexure B to the Joint Expert Report (Exhibit 3).

The clause 4.6 variation request

95 Clause 4.6 in RLEP is in standard form and provides that:

4.6 Exceptions to development standards

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

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

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

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

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

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular

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standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note.

When this Plan was made it did not include all of these zones.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* applies or for the land on which such a building is situated,

(c) clause 5.4,

(ca) clause 4.3, to the extent that it applies to the land identified as "Town Core" on the Ryde Town Centre Precincts Map,

(cb) clause 4.1A, to the extent that it applies to the Torrens title subdivision of a dual occupancy (attached).

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(cc) clause 6.9.

96 A consent authority may grant consent for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument (cl 4.6(2)). Development consent must not be granted until matters in cl 4.6(3) and cl 4.6(4) are addressed.

97 Clause 4.6(4)(b) requires that the concurrence of the Secretary has been obtained. Secretary is a reference to the Secretary of the Department of Planning and Environment. On February 2018, by an Assumed Concurrence Notice issued pursuant to cl 64 of the Environmental Planning and Assessment Regulation 2000 attached to Planning Circular PS 18-003 was issued by the Secretary. The notice provides that:

"All consent authorities may assume my concurrence, subject to the conditions set out in the table below, where it is required under:

- clause 4.6 of a local environmental plan that adopts the *Standard Instrument (Local Environmental Plan) Order 2006* or any other provision of an environmental planning instrument to the same effect

98 The conditions in the table do not, in the circumstances of the case, affect the concurrence granted by the Secretary.

99 The concurrence granted by the Secretary applies to all consent authorities, but the Court when standing in the shoes of Council has the power to grant consent if satisfied of the matter in cl 4.6(4)(a) without assuming the concurrence of the Secretary because of the powers granted to it by s 39(6) of the Court Act (*Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (*Initial Action*)).

100 The approach to be taken by a consent authority (including the Court on appeal) in determining a cl 4.6 request has recently been explained in *Initial Action* by Preston CJ.

101 Moore J in *Rebel MH Neutral Bay Pty Ltd v North Sydney Council* [2018] NSWLEC 191 (*Rebel*) considered that:

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"42 The determination of the request pursuant to cl 4.6 of the LEP and the reaching of the conclusion that the request should be sustained is jurisdictional. It is the written request that requires to be assessed and the written request is not modified by any oral evidence given which might seek to explain it. Even if this is not correct, the oral evidence concerning matters of entitlement, although not analysed in detail, did not resile from the matters later dealt with in the terms set out in the request itself (Exhibit J).

43 Without the reaching of the necessary elements of satisfaction mandated by each of the tests in cl 4.6(4)(a) and (b), there is no jurisdiction to undertake a general merit assessment of the overall development proposal pursuant to s 4.15 of the *Environmental Planning and Assessment Act 1979* (the EP&A Act). If any of the multiple jurisdictional gates mandated to be opened by the provision remain closed (because the cl 4.6 request has not established a proper basis for each of them to be open), the proposed development must be rejected."

- 102 In order for me to grant consent for the proposal, cl 4.6(4)(a) requires that I am satisfied that, as explained by Moore J in *Rebel* at [46]:

"(1)The written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of this proposed development (cl 4.6(3)(a) and cl 4.6(4)(a)(i)); and

(2)The written request adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)); and

(3)The proposed development will be in the public interest because it is consistent with the objectives of the standard in question - set out in cl 4.3 of the LEP (cl 4.6(4)(a)(ii)); and

(4)The proposed development will be in the public interest because it is consistent with the objectives of the [R2 Low] Density Residential Zone (cl 4.6(4)(a)(ii))..."
(amended to include the relevant clause and zone of the present matter)

- 103 The environmental planning grounds relied upon in the cl 4.6 written request must justify the contravention of the development standard for lot width. The focus of the enquiry is the standard, not the proposed development as a whole, so the environmental planning grounds identified in the cl 4.6 request must provide justification for contravening the development standard and not provide a platform for discussing the benefits of carrying out development as a whole (*Initial Action* at [24]).

- 104 The power to grant consent to a development which would contravene a development standard (cl 4.6(2)) is subject to conditions. The first is that the

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consent authority must be satisfied that the conditions in cl 4.6(4)(a) and (b) are met:

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

105 Clause 4.6(4)(a)(i) requires that the two matters mentioned in cl 4.6(3) have been adequately addressed.

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

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

106 Ways in which an applicant might demonstrate the compliance with a development standard is unreasonable or unnecessary were discussed in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 (*Wehbe*) at [42] - [51]. This discussion was in relation to SEPP 1 (as the case was prior to the introduction of the standard form cl 4.6) but is equally applicable to a request under cl 4.6 (*Initial Action* at [16]).

107 The ways discussed in *Wehbe* can be summarised as:

- * The objectives of the development standard are achieved notwithstanding non-compliance with the standard;
- * The underlying objective or purpose of the development standard is not relevant to the development, so that compliance is unnecessary;
- * Underlying objective or purpose would be defeated or thwarted if compliance was required, so that compliance is unreasonable;
- * The development standard has been abandoned by the council; or
- * The zoning of the site was unreasonable or inappropriate so that the development standard was also unreasonable or unnecessary (note this is a limited way of establishing that compliance is not necessary as it is not a way

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to effect general planning changes as an alternative to strategic planning powers)." (Talebi v Mosman Council [2018] NSWLEC 1671 at [10])

108 The list is not exhaustive but does include the most commonly invoked ways (Initial Action at [22]).

109 Clause 4.6(3)(b) requires that the grounds relied upon in a written request must be environmental planning grounds, but this term is not defined but it "would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act" (Initial Action at [23]).

The written request prepared by Mr Wood

110 The request addresses the minimum frontage development standard in cl 4.1B in RLEP:

4.1B Minimum lot sizes for dual occupancies and multi dwelling housing

(1) The objective of this clause is to achieve planned residential density in certain zones.

(2) Development consent may be granted for development on a lot in Zone R2 Low Density Residential for a purpose shown in Column 1 of the table to this clause if:

- (a) the area of the lot is equal to or greater than the area specified for that purpose and shown opposite in Column 2 of the table, and
- (b) the road frontage of the lot is equal to or greater than 20 metres.

Column 1	Column 2
Dual occupancy (attached)	580 square metres
Multi dwelling housing	900 square metres

111 The minimum lot size of 580m² does not apply by reason of SEPP (ARH) cl 14.1, which specifies a minimum lot size of 450m².

112 "Therefore, consideration must be given to the fact that clause 4.1B is designed to operate in a way that frontage and site area controls are interrelated" (Clause 4.6 variation request, page 2).

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113 I have already determined that the approach of Commissioner Gray in *Louden* is correct in that although the lot width and area controls in clause 4.1B create an incongruity in the context of SEPP (ARH), they do not constitute an inconsistency, so the lot width control continues to apply separately from site area.

114 Mr Wood referred to several recent cases including *Initial Action* and concludes:

- The consent authority be satisfied the proposed development will be in the public interest because it is "consistent with" the objectives of the development standard and zone is not a requirement to "achieve" those objectives. It is a requirement that the development be compatible with the objectives, rather than having to 'achieve' the objectives.

- Establishing that 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' does not always require the applicant to show that the relevant objectives of the standard are achieved by the proposal (*Wehbe* "test" 1). Other methods are available as per the previous 5 tests applying to SEPP 1, set out in *Wehbe v Pittwater*.

- The proposal is required to be in 'the public interest'.

In relation to the current proposal the keys are:

- Demonstrating that either:
 - o The underlying objective or purpose of the standard is not relevant to the proposal; or
 - o The development remains consistent with the objectives of the minimum lot size and frontage standard;
- Demonstrating consistency with the R2 zoning;
- Demonstrating there are sufficient environmental planning grounds to vary the standard; and
- Satisfying the relevant provisions of Clause 4.6."

115 Mr Wood addresses the provisions of cl 4.6(3) and (4) in turn.

116 Mr Wood seeks to justify that the compliance is unreasonable and unnecessary (cl 4.6 (3)(a)) by reference to the first two approaches provided in *Wehbe* (although Approach 1 in Mr Wood's analysis is *Wehbe* point 2 and Approach 2 is *Wehbe* point 1).

117 Approach 1 of Mr Wood gives considerable weight to the aims of SEPP (ARH), and states that:

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"if a dual occupancy can occur on a reduced site area under the SEPP then it must follow that it can occur on a reduced allotment width in a proportional way. In this instance SEPP enables a dual occupancy to occur in allotment that is 22.4% less than the planned lot area in the LEP, and the departure to the allotment width in the proposed development is 23.8% which is comparable".

118 I have already determined that SEPP (ARH) does not provide for a reduced allotment width standard. Clause 4.6 allows an applicant to seek a variation of the lot width standard, but that does not mean a lot width reduction comparable to the reduction in lot area will automatically be considered reasonable.

119 There is no consideration of the absolute numerical reduction in width of the two components of a dual occupancy that would result if the proposal were approved. The lot is 15.24m wide so that division into two equally sized areas would give each a width of 7.62m. When the side setbacks are considered the built component of each residence would be narrow.

120 There are forms of residential development across Sydney where residences are narrow (for example inner-city terraces). However, the argument advanced by Mr Wood does not raise or discuss whether, in the context of the R2 zone in the City of Ryde compliance with the lot width standard is unreasonable or unnecessary or that there are sufficient environmental planning grounds to justify contravention of the standard. That non-compliance would promote the aims of SEPP (ARH) by contravening a standard which is not explicitly referred to in SEPP (ARH), but is a standard in RLEP, is not of itself a sufficient reason not to apply the standard.

121 Mr Wood's second approach is to argue that compliance is unreasonable or unnecessary as the underlying intent of the control is satisfied. (Clause 4.6 variation request pp 6-8, in Exhibit 3).

122 Clause 4.1B has only a single objective:

(1) The objective of this clause is to achieve planned residential density in certain zones.

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- 123 The site is within the R2 Low Density Residential zone. (Density in this context relates to the density of elements of built form and not to population density.) Mr Wood considers that the single objective for the standard as written does not capture its intent.

"The single stated objective is not considered to fully capture the 'underlying objective' of the site area and frontage control as it considered that in addition to the achievement of 'planned residential density' a minimum lot size and frontage control is in place to:

- Ensure an allotment is of sufficient size and area to accommodate a dual occupancy;
- To minimise likely impacts of development on the amenity of the area;
- To ensure that a low density character is maintained.

The current proposal remains consistent with the objectives based on the following:

- The proposal has been designed to comply with key provisions relating to:

- Private open space;
- Landscaped area and deep soil;
- Parking and access; and
- Setbacks and separation.

This demonstrates the site area and allotment width is sufficient to accommodate a dual occupancy made under the provisions of SEPP (Affordable Rental Housing) 2009."

- 124 Mr Wood's first subobjective (see [123]) is to 'ensure an allotment is of sufficient site and area to accommodate a dual occupancy' should not be read as implying that all lots within the R2 zone will be capable of supporting a dual occupancy under SEPP(ARH), even though dual occupancy is permitted with consent in the zone. The focus of the cl 4.6 request should be on the development standard in cl 4.1B, and justify why variation should be allowed. That a dual occupancy that is allowable under SEPP (ARH) could be provided on the site, is, in the context of the cl 4.6 variation request not the point. The important focus should be on planned residential density, for which the second two of Mr Wood's expansionary points should be given attention.

- "To minimise likely impacts of development on the amenity of the area;
- To ensure that a low density character is maintained"

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- 125 Amenity of the area is not defined and it is not clear how extensive an area is to be considered. At the most local scale it would be the visual catchment, bounded in red in Figure 7 in the SOFAC (Exhibit 1):



Figure 7 - The visual catchment in which the development will be viewed for the purposes of establishing the residential character of the local area. Essentially the area bound by Cox's Road, Blamey Street, Schumack Street and the allotments at 143 Cox's Road and 14 Schumack Street. It is acknowledged that the curtilage area of the Macquarie Hospital site on the opposite side of Cox's Road falls within the visual catchment of the site and as such is an attribute of the local area's character. However by nature of its land use it is contended this area does not contribute to the residential character of the area.

- 126 At its most extensive, it could be the whole of North Ryde. While variation between different local areas is part of the character of the larger area it is a smaller scale that is most relevant in considering the proposal. The amenity of the local area includes the visual aspects of the pattern of the historic narrow lot subdivision and the scale and nature of the dwellings constructed on the lots. These features contribute to the sense of place of the local area. Amenity would also include the regular bus services and the local childcare centre.
- 127 There is a strong overlap between amenity and the local character – the subject of Mr Wood's third subobjective of the standard.

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- 128 Considerable weight is given in both RLEP and SEPP (ARH) to consideration of local character in the objectives of the R2 zone and in cl 16A of SEPP (ARH), and at a higher level still in the aims of the RLEP as a whole. The aim in cl 1.2(g) also encompasses the importance of maintaining the character of the local area.
- 129 The Applicant's approach to arguing that the local character is maintained is largely based on the approval of the existing building (an approval which must have considered any impacts on local character) and the fact that the external dimensions of the building will remain unchanged when it becomes a dual occupancy. However, in my view this approach does not take into account the change in the appearance of the front of the building such that it will be viewed as including two separate residences. The change of one building within a local area where most of the blocks contain a single residence is likely to be seen as an exception to the general character of the local area. A greater depth of analysis is required to determine whether the change has a significant impact and thus whether the local character is maintained. The information provided in the cl 4.6 variation request is not sufficient to provide confirmation that there is no inappropriate change.
- 130 In regard to Approach 2, Mr Wood repeats his statements about the incongruity of applying a lot with standard when SEPP (ARH) allows for a smaller site area as were made in his discussion of Approach 1.
- 131 In regard to cl 4.6(4)(a)(ii), Mr Wood argues that the proposal is consistent with the objectives of the R2 zone in the sense that it is not antipathetic to them:

R2 zone objectives

1 Objectives of zone

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide for a variety of housing types.

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- 132 He argues that the proposal is consistent with the objectives in that the proposal makes:

- Provision of a dual occupancy of 2 storeys in a building that is already located on the site such that the character of the locality is unchanged;
- Provision of a total of 2 dwellings that expands housing choice and contributes to a variety of housing types. In addition, a total of 1 dwelling is identified for use as affordable rental housing for a period of 10 years.

Therefore, the development is consistent with the zone objectives."

- 133 In regard to the first of the points, the building already exists; the external dimensions of the building will remain unchanged. However, is the character of the locality unchanged? The character of the locality is for this purpose to be considered by looking at the front of the building from the street. In the most recent version of the plans (in Exhibit C), the appearance of the building will, in my view, be changed by the altered front entrance treatment, which will reinforce the distinction between the two dwellings as being part of a semi-detached building. However, even with the originally proposed sliding door there would have been a need to clearly identify the 'separateness' of 153A, and this would have raised local character issues which would have needed to be assessed.

- 134 Mr Wood has acknowledged that local character is an important matter to be considered under the objectives of both the standard and the zone.

- 135 In the Joint Expert Report, there is extensive discussion by both parties in relation to Contention 9 'the proposed development is incompatible with the streetscape and character of the local area'. This discussion involved consideration of the planning principal in *Project Venture Development v Pittwater Council* [2005] NSWLEC 191.

- 136 The analysis of local character in the Joint Expert Report is not mentioned or expanded upon in the cl 4.6 variation request.

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137 The cl 4.6 variation request is to be assessed solely on the basis of the written request (*Rebel* at [42]). I am of the opinion that the cl 4.6 variation request which forms Annexure 'B' to the Joint Expert Report has not adequately addressed the matters required to be addressed by subclause (3) (cl 4.6(4)(a)(i)).

138 For the second of the points in the discussion of cl 4.6(4), I would agree that there is an increase in housing choice and variety of housing types, albeit in both cases only marginally - and in this regard, the proposal is consistent with the zone objectives. Mr Tesoriero in the Joint Expert Report argues at par [52] that the proposal does not provide a net increase in affordable rental housing given that the existing approval includes a secondary dwelling. However, even though the secondary dwelling was approved under Division 2 of SEPP (ARH) there is no requirement for the granny flat to be available for affordable rent, whereas the additional residence currently proposed would be required to be affordable rental housing for 10 years.

Conclusion regarding the proposed cl 4.6 variation

139 The four gates through which a variation request must successfully pass before there can be a decision that compliance with the development standard for lot width is not required were explained by Moore J in *Rebel* (and reproduced above at [101]). My assessment is that:

(1) the written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of this proposed development (cll 4.6(3)(a) and 4.6(4)(a)(i)).

Finding

140 The Applicant's request has not provided sufficient information to adequately address matters required to be demonstrated by cl 4.6(3)(a), so fails cl 4.6(4)(a)(i);

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(2) the written request adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i))

Finding

- 141 The Applicant's request does not include sufficient analysis, within the request to demonstrate that there are sufficient environmental planning grounds to justify not complying with the lot width standard and thus fails;

(3) the proposed development will be in the public interest because it is consistent with the objectives of the standard in question - set out in cl 4.1B of the LEP (cl 4.6(4)(a)(ii))

Finding

- 142 The objective for the lot width standard has according to the Applicant's planning expert three underlying objectives, including maintaining the low density character of the local area. However, the written request does not provide sufficient explanation of how the development proposed will maintain local character, and must fail;

(4) the proposed development will be in the public interest because it is consistent with the objectives of the R2 Low Density Residential Zone (cl 4.6(4)(a)(ii))

Finding

- 143 I agree that the proposal is consistent with the second and third of the zone objectives. The first objective of the zone is to provide for the housing needs of the community within a low density residential environment". The proposal provides for a net increase of one dwelling, and the area is zoned low density residential. I would agree that the objective is, on a straight reading, met.

- 144 All of the gates must be opened for the variation request to succeed. Thus the cl 4.6 variation request cannot be supported. Accordingly, given that obtaining approval for a cl 4.6 variation request is a jurisdictional prerequisite, the appeal must be refused.

- 145 Subclause (7) of cl 4.6 provides that:

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(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

- 146 In this matter the Court, standing in the shoes of Council is the consent authority. Paragraphs [100] - [144] in this judgment constitute the record of those factors required to be addressed.
- 147 Given that the refusal to grant the cl 4.6 variation request is determinative of the appeal is not necessary for me to make determinations on the other two contentions which were an issue. However, lest I be wrong in my decision on the cl 4.6 variation request I will make some brief comments about the two contentions.
- 148 Contention 9 raises issues of compatibility with the desired character of the locality. This was partly discussed in relation to the clause 4.6 variation request, but was discussed more extensively in the Joint Expert Report. I have considered the competing arguments presented in the Joint Expert Report at pars [84] – [96]. If it were necessary to do so, I would have reached a decision to support the view advanced by the Respondent, and, on the merits, have refused the appeal on this ground.
- 149 Contention 10 raises public interest issues. Some aspects of the public interest were raised in the cl 4.6 variation request, but a major additional aspect was the precedent which would be set if the proposal were approved. This was a concern to the Council and was a major concern to the objectors, Mr Borri, who spoke at the start of the proceedings, and Ms Evenhuis who made a written submission.
- 150 In a Class 1 matter, the outcome will depend on the facts and circumstances of each particular case. Nevertheless it is long been recognised that decisions will be seized upon as if they were formal precedents, and as a consequence, councils will come under pressure to apply the decision made in one case to others perceived by the public to be similar (*Goldin v Minister for Transport administering the Ports Corporatisation and Waterways Management Act*

ITEM 1 (continued)

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1995 [2002] NSWLEC 75 – a judgment which reviews earlier judgments in which the issue precedent had been discussed).

- 151 Were I required to formally assess the competing arguments for Contention 10, the question of precedent is likely to have been of considerable weight.

Orders

- 152 The orders of the Court are:

- (1) The Applicant is granted leave to rely on the amended plans in Exhibit C, Annexure A.
- (2) The written request made pursuant to cl 4.6 of the Ryde Local Environmental Plan 2014 to dispense with compliance with the lot width development standard in cl 4.1B is refused.
- (3) The appeal is dismissed.
- (4) Development Application No. LDA2017/0226 which proposes internal modifications to a building to enable its use as a dual occupancy (attached) under Division 1 of State Environmental Planning Policy (Affordable Rental Housing) 2009 is refused.
- (5) The exhibits, other than Exhibits 1, 3, A and C, are returned.



P Adam

Acting Commissioner of the Court

ITEM 1 (continued)

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EXHIBIT	<u>2</u>
Corum	<u>ADAM AC</u>
File Number	<u>18,241743</u>
	<u>FALAMAKI v RYDE COUNCIL</u>
Produced by(circle): App or Resp	
Associate	
Date	

PLANNING PROPOSALS

2 PLANNING PROPOSAL TO REMOVE MULTI DWELLING HOUSING FROM THE R2 LOW DENSITY RESIDENTIAL ZONE OF THE RYDE LEP 2014

Report prepared by: Senior Strategic Planner

Report approved by: Senior Coordinator - Strategic Planning; Director - City Planning and Environment

File Number: LEP2020/2/4 - BP20/118

City of Ryde Local Planning Panel Report

Site Address and Ward	Applies to all land currently zoned R2 Low Density Residential in the Ryde Local Government Area.
Current Planning Provisions	Zoning – R2 – Low Density Residential Multi Dwelling Housing and Dual Occupancy (attached) are included as a permitted use in this zone.
Planning Proposal Overview	It is proposed to remove <i>Multi Dwelling Housing</i> as a permitted use in the Land Use Table of the R2 Low Density Residential Zone and amend the lot size provisions for <i>Dual Occupancy</i> in the <i>Ryde Local Environmental Plan 2014</i> .
Property Owner	N/A
Applicant	City of Ryde Council
Report Author	Matthew Owens – Senior Strategic Planner
Lodgement Date	Not Applicable. Council has prepared the planning proposal in response to the findings of the draft City of Ryde Housing Strategy
Reason for Referral	Required by Ministerial Direction made under Section 9.1 of the <i>Environmental Planning and Assessment Act 1979</i> dated 27 September 2018
Recommendation	That the Ryde Local Planning Panel recommend to Council that the planning proposal, seeking to remove <i>Medium Density Housing</i> from the <i>R2 Low Density Residential</i> zone of the Ryde LEP 2014 and amend the planning controls relating to <i>Dual Occupancy (attached)</i> development, as attached to this report, be submitted for Gateway Determination under 3.34 of the <i>Environmental Planning and Assessment Act 1979</i> .

ITEM 2 (continued)

Attachments	Attachment 1 – Planning Proposal (<i>Distributed under separate cover</i>) Attachment 2 – Draft Local Housing Strategy (<i>Distributed under separate cover</i>)
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1. Executive Summary

This planning proposal seeks to amend the Ryde Local Environmental Plan (LEP) 2014 to remove *Multi Dwelling Housing* as a permitted use in the Land Use Table for the *R2 Low Density Residential Zone* and amend the lot size provisions of the Ryde LEP 2014.

This would be achieved by removing Multi Dwelling Housing as a permitted use in the R2 Low Density Residential zone and increasing the lot size for Dual Occupancy developments and relating to subdivision for Dual Occupancy (attached).

The intent of the planning proposal is to have no net loss of dwellings delivered from that permitted under the current planning controls, but to ensure that dwelling types are diverse to meet the needs of the community and are in locations suitable for the dwelling density.

The principle reason for the planning proposal is to mitigate the adverse impacts from the commencement of State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Low Rise Medium Density Housing code) (Part 3B of SEPP). The draft Ryde Housing Strategy has provided evidence that the introduction of Part 3B of the SEPP in the R2 zone would increase the theoretical development capacity of the R2 zone from 5,900 to approximately 19,000 additional dwellings.

Such increases would detrimentally impact the character and amenity of this zone, outstrip the capacity of the current and planned infrastructure and ultimately be unsustainable.

This planning proposal is in alignment with all relevant strategic plans, including the Council endorsed *Ryde Local Strategic Planning Statement* and the draft Ryde Local Housing Strategy.

2. The Site and Locality

The planning proposal relates to all land currently zoned R2 Low Density Residential under the provisions of the Ryde LEP 2014.

3. The Planning Proposal

This Planning Proposal seeks to amend Ryde LEP 2014 by;

ITEM 2 (continued)

- Removing as a permitted land use *Multi Dwelling Housing* from the Land Use Table for R2 Low Density Residential zone of Ryde LEP 2014,
- Deleting Clause 4.5A
- Amending Clause 4.1A to increase the land area and subdivision lot size for Dual Occupancy subdivision,
- Amending Clause 4.1B to remove references to Multi Dwelling Housing and to increase the lot size requirements for Dual Occupancy development.

The Planning Proposal as submitted (provided in **ATTACHMENT 1**) is considered to be generally in accordance with the requirements under Section 3.33 of the *Environmental Planning and Assessment Act 1979* and the NSW Department of Planning and Environment's 'A guide to preparing planning proposals' (dated December 2018). The planning proposal adequately sets out the following:

- A statement of the objectives or intended outcomes of the proposed amending LEP;
- An explanation of the provisions that are to be included in the proposed amending LEP;
- Justification for those objectives, outcomes and provisions and the process for their implementation;
- Maps, where relevant, to identify the intent of the planning proposal and the area to which it applies;
- Details of the community consultation that is to be undertaken on the planning proposal; and
- A project timeline.

4. Background

Ryde LEP 2014 has five zones where residential development is permitted, the R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential, R4 High Residential Density and the B4 Mixed Use zone. Each zone has a unique character, established through the land use types and the density of development permitted in the zone.

The five zones provide different densities of development and aim to ensure that a diversity of housing styles and lifestyle choice are available throughout the City of Ryde. These zones have been established and maintained such that development anticipated in each zone can be adequately supported by infrastructure and services.

In recent years, parts of the LGA have supported historically high residential growth associated with urban renewal, delivery of mass transit and State planning initiatives. Following this significant growth, the Ryde community has indicated that it wants to see balance in how their neighbourhoods and centres accommodate this growth.

ITEM 2 (continued)

A draft Local Housing Strategy has been prepared which has developed a housing vision and staged implementation plan, balancing the North District Plan's housing targets and the need for growth with the community's desire to:

- Improve sustainability and design outcomes for the LGA as part of the provision of new housing,
- Protect the natural environment, water catchments and biodiversity of the LGA,
- Maintain suburban character compared with the emerging high-density character of urban renewal areas,
- Ensure that population and housing growth is matched with the provision of infrastructure, services and community facilities,
- Support communities by providing housing choice that is appropriate to the LGA's demography.

The draft Local Housing Strategy has reviewed current and future population forecasts and housing needs in response to demographic characteristics and sets out a plan for delivery of new housing in the LGA for the next 10 to 20 years. The Strategy has considered the driving forces and implications of housing growth and has proposed actions to deliver sustainable and diverse housing.

The Strategy has identified that the introduction of State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Low Rise Medium Density Housing) (Part 3B of SEPP) has potential to significantly increase residential density, in the R2 Low Density Zone, to levels that will detrimentally impact the character and amenity of this zone. The growth would also outstrip the capacity of the current and planned infrastructure, making this uncontrolled growth unsustainable.

Ryde LEP 2014 currently permits Multi dwelling housing in the R2 zone, therefore under the SEPP, Manor Houses and Multi dwelling housing will be permitted as Complying Development in the R2 zone.

Multi dwelling housing in Ryde is permitted in the R2 zone, but is currently subject to compliance with Ryde LEP 2014 controls that allow housing choice at a density which is commensurate with supporting infrastructure and is sympathetic to the character and objectives of a low-density residential zone.

Under the SEPP the site width requirements and controls are reduced from those required under Ryde LEP 2014 resulting in a significant increase in the number of allotments eligible to be developed for Multi Dwelling Housing. The Housing Strategy has estimated that Part 3B of the SEPP would increase the LGA's theoretical dwelling capacity in the R2 zone from the current estimate of 5,900 to approximately 19,000 additional dwellings. This, up to 14,000 dwelling, increase would have a significant adverse impact on the existing character of the R2 Zone; undermine the existing hierarchy of the residential zones; would not be consistent with existing or proposed infrastructure capacities and would not be sustainable in the short, medium

ITEM 2 (continued)

or long term. It should be noted that 2.5 persons on average comprise a household in the City of Ryde.

To address this matter the draft Strategy has proposed a staged approach to housing delivery that would mitigate the above impacts in the short term and allow time for additional work to focus housing delivery in appropriate locations that will provide a balanced mix of low, medium and high density housing within the City.

5. Planning Assessment

The assessment of the subject planning proposal has been undertaken in accordance with the NSW Department of Planning and Environment's 'A guide to preparing planning proposals' (dated December 2018).

• Part 1 Objectives or intended outcomes

This Planning Proposal seeks to amend RLEP 2014 by removing *Multi Dwelling Housing* as a permitted land use in the Land Use Table of the *R2 Low Density Residential zone* and amend the lot size controls for Dual Occupancy to ensure that the overall housing delivery numbers remain approximately the same.

The intended outcome of the Planning Proposal is;

- Provide housing delivery in appropriate locations that will ensure a mix of low, medium and high density housing to meet community needs.
- Retain for the City of Ryde, five distinct residential zones differentiated by the type and density of residential development permitted and the resultant streetscape and character of the five zones.
- Ensure the R2 Low Density Residential zone reflects and builds upon the current character of the zone, being diverse in residential types whilst compatible and sympathetic to the existing low-density scale.
- Ensure that the planning controls for Dual Occupancies and Secondary Dwellings in the R2 Low Density Residential zone are not eroded over time through multiple variations to those controls.
- Ensure that the quality of services and supporting infrastructure in the R2 zone and the wider LGA is commensurate with the development capacity of the zone.
- Ensure that the proposed amended planning controls do not result in a decrease in dwellings allowed under the current controls.
- Commence the implementation of the City of Ryde Local Housing Strategy.

ITEM 2 (continued)

• **Part 2 Explanation of provisions**

The submitted planning proposal seeks to amend the RLEP 2014 as follows:

1. Delete from Ryde LEP 2014:

- 1 *Multi dwelling housing* from the R2 Low Density Residential Zone Land Use Table
- 2 Delete Clause 4.5A – *Density Controls for Zone R2 Low Density Residential*

2. Amend Clause 4.1A – *Dual Occupancy (Attached) Subdivisions* in Ryde LEP 2014 subdivision controls to:

- (1) (a) permit Torrens title subdivision of Dual Occupancy (attached) constructed and where the lot has an area of at least 580m² development prior to this planning proposal coming into effect,
- (1) (b) define the Torrens title subdivision development controls for *Dual Occupancies (Attached)* that will apply after the commencement of this planning proposal, being;
 - i. Minimum lot size for subdivision being at least 750m²,
 - ii. One dwelling must be situated on each allotment that must have a minimum lot size of 375m².
- (2) Permit Strata subdivision of Dual Occupancy if the land has an area of at least 750m²

3. Amend Clause 4.1B – *Minimum Lot Sizes for Dual occupancies and Multi Dwelling Housing* in Ryde LEP 2014 to:

- 1) Delete all references to *Multi Dwelling Housing* from the Clause title and within the Clause,
- 2) Amend the road frontage control from 20 metres to 12 metres,
- 3) Insert the word Primary before the words road frontage of the lot,
- 4) In column 2 delete the Dual Occupancy (attached) lot size of 580 square metres and replace with 750 square metres.

• **Part 3 Justification**

Need for the Planning Proposal

ITEM 2 (continued)

The NSW Department of Planning and Environment's 'A guide to preparing planning proposals' requires the following two questions be answered to demonstrate the need for the proposal:

1. Is the planning proposal a result of any strategic study or report?

Response:

Yes, the planning proposal is consistent with the priority actions contained in the Council endorsed Local Strategic Planning Statement (LSPS) and the draft Ryde Local Housing Strategy.

Ryde Local Strategic Planning Statement

The LSPS deals with a full range of land use matters. However in relation to housing the LSPS will set the scene for LEP amendments by requiring the following:

- The need for actionable options to meet the housing needs of our diverse community rather than focusing on supply only,
- Direct high density living to areas around transport nodes
- Protect low density suburbs and their character
- Seek opportunities for Medium Density development in appropriate areas.

Ryde Local Housing Strategy

Council has prepared, a draft Local Housing Strategy (the Strategy) that meets the requirements set out in the Greater Sydney Commission's Greater Sydney Region Plan – A Plan for Growing Sydney and the North District Plan.

The objectives of the Strategy are to set a clear plan for housing in the Ryde LGA for the next 10 and 20 years and;

- Sets a clear plan for the delivery of housing to meet future needs,
- Aligns housing delivery with the NSW Government's strategic plans,
- Has regard for a comprehensive evidence base on housing needs, infrastructure availability, physical constraints and present opportunities.

The Strategy aligns anticipated housing growth with supporting, and necessary, infrastructure and social services such as educational facilities, health facilities, open spaces and public transport. It identifies opportunities for growth to support a growing population and projected changes to household structure. The Strategy also aligns with Council's Community Strategic Plan and the recently completed Local Strategic Planning Statement.

The Strategy reviewed the planning and strategic context for housing delivery; assessed housing needs in the LGA; reviewed housing development potential under the current planning controls and existing approvals, and considered stakeholder views prior to recommending key directions for housing delivery.

ITEM 2 (continued)

The Strategy, whilst supporting the Council approach to providing housing diversity and maintaining dwelling supply, determined that whilst this approach has achieved some good outcomes it is not sustainable in the medium and long term. This is particularly due to the impending commencement of Part 3B of the Codes SEPP.

The Strategy undertook an analysis of the development potential in the low-density areas of the LGA and areas in proximity to town centres. A summary of the findings from this analysis are as follows:

- The range of additional dwellings required in the Ryde LGA, based on DPIE and id.forecast projections, between the years 2016 to 2036 is between 20,000 and 22,000 additional dwellings.
- There are currently 12,786 dwellings in the approval pipeline and with a likely delivery rate of 70%, Council will deliver approximately 9,000 dwellings up to 2021 which exceeds the GSC target of 7,600.
- There is a theoretical capacity within the current planning controls in Ryde to achieve approximately 21,000 dwellings in the period 2016 to 2036.
- The introduction of Part 3B of the Codes SEPP would increase the existing maximum theoretical dwelling capacity of the R2 Zone from the current 5,900 dwellings to between 13,778 to 19,097 dwellings.

It is clear from the above that there is no urgent need to deliver additional dwelling capacity in the short (5 year) term as the current development pipeline will exceed the Ryde 5 year dwelling target. This will allow scope for additional planning to be undertaken to encourage the delivery of diverse housing at appropriate levels in appropriate locations.

It is also clear from the projected impacts from the SEPP that there is an urgent need to mitigate the predicted impacts from the commencement of Part 3B of the SEPP. The additional planning to cater for future residential and infrastructure growth can then be undertaken.

Given the above, the Strategy has proposed a number of actions and priorities to deliver housing. The priority action is to mitigate the potential, unintended adverse impacts from the introduction of Part 3B of the SEPP.

The purpose of this planning proposal is to undertake this priority action identified in the Local Housing Strategy.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Response:

There are two means of achieving the objectives or intended outcomes for this matter being;

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- The Minister for Planning, Industry and Environment amends the SEPP to be consistent with the Ryde LEP 2014 controls for the R2 Low Density Residential zones excludes City of Ryde Council, or does not apply it to R2 Low Density Residential zones;
- The planning proposal, as submitted, is to progress the removal of Multi Dwelling Housing from the R2 Low Density Residential zone.

It is considered that the current planning proposal is the most effective and appropriate means to achieve the SEPP objectives and the appropriate outcomes for the Ryde LGA in this case.

Relationship to Strategic Planning Framework – The Strategic Merit Test

A strategic merit test is provided in the following table.

Strategic Merit Issue	Comment
State Environmental Planning Policies and Local Directions	The planning proposal is generally consistent with the relevant State Environmental Planning Policies and Local Planning Directions under Section 9.1 of the environmental Planning and assessment Act 1979. An analysis of compliance with these policies is provided in the attached planning proposal.
Greater Sydney Region Plan - A Metropolis of Three Cities	The planning proposal is generally consistent with the Greater Sydney Region Plan - A Metropolis of Three Cities.
North District Plan	The planning proposal is generally consistent with the North District Plan.
Ryde Local Planning Study	The planning proposal is generally consistent with the Ryde Local Planning Study.
Ryde Local Strategic Planning Statement	The planning proposal is consistent with the Council endorsed LSPS 2019.
Draft Ryde Local Housing Strategy	The planning proposal is consistent with the draft Local Housing Strategy.

Key Assessment Issues

An assessment of the key issues relevant to the planning proposal is provided in the following table.

Site Specific Issues	Assessment
Housing density in the R2 <i>Low Density Residential Zone</i>	As identified in the draft Local Housing Strategy, the imminent commencement of Part 3B of the Codes SEPP has the potential to increase the theoretical dwelling capacity of the lands in the R2 zone from the current approximately 5,900 dwellings to between 13,778 to 19,097. This increase, in the absence of supporting infrastructure planning and delivery for such growth, is unsustainable. This planning proposal

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Site Specific Issues	Assessment
	is proposing to curb that substantial growth without resulting in an overall reduction in housing supply. This would then allow Council to undertake the appropriate planning to focus that growth around town centres.
Local character	The above mentioned growth figures, evidenced from the draft housing strategy, would have a substantial adverse impact on the character of existing low-density areas. The community consultation undertaken during the preparation of the LSPS and housing strategy indicate that this is a significant concern for the community and Council.
Servicing and local infrastructure	The existing low-density areas in the Ryde LGA could not adequately service growth that would be possible under the SEPP. Whilst high density and low density residential development is available in the LGA, more medium density residential development is required to service the community needs. The focusing of medium density development around existing transport and town centre services will enable adequate services and amenity for future residents. This medium density housing would also provide a development transition between the existing high and low density developments around the town centres.
Consistency with Council strategic planning direction	Council's strategic direction has been to focus medium to high density development close to centres. This is also a key direction for the North District Plan. The preparations of the LSP and draft local housing strategy have maintained this key direction and have proposed actions to maintain and implement this focus. This planning proposal is one of the first actions to implement this direction.

6. Conclusion

The planning proposal has been prepared as the first stage of implementing Council's Strategic planning directions set in the Local Strategic Planning Statement and the draft Ryde Local Housing Strategy. These directions have been developed in consultation with the community and indicate that the community's desire is to maintain the character of existing low density areas and direct medium density growth in localities around centres where they can be more readily serviced with appropriate infrastructure.

The planning proposal aims to mitigate the potential significant adverse impact that Part 3B of the SEPP will have on the R2 Low Density Residential zone in the Ryde LEP 2014. This action will not negatively impact on Council's ability to achieve housing targets, and is not intended to reduce overall dwelling potential. However, it

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will allow Council to undertake the necessary investigations and planning of the areas identified in the draft Local Housing Strategy for delivery of medium density housing.

The planning proposal does not intend to decrease the overall dwelling capacity in the LGA but does intend to mitigate any adverse impacts that the introduction of Part 3B of the SEPP will have on the character and servicing of existing localities in the R2 zone.

8. Recommendation

That the Ryde Local Planning Panel recommend to Council that the planning proposal, seeking to remove *Multi dwelling Housing* from the *R2 Low Density Residential* zone of the Ryde LEP 2014 and amend the planning controls relating to *Dual Occupancy (attached)* development, as attached to this report, be submitted for Gateway Determination under 3.34 of the *Environmental Planning and Assessment Act 1979*.

ATTACHMENTS

- 1 Planning Proposal
- 2 Draft Local Housing Strategy

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