

Meeting Date: Thursday 11 February 2021
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 APPLICATION

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| 1 | 298-312 Blaxland Road, Ryde - Demolition of existing structures; new multi-dwelling housing development containing 30 dwellings (9 x 2 bed, 20 x 3 bed, 1 x 4 bed, including 3 adaptable dwellings) over a split basement containing 63 car parking spaces, under Division 1 of State Environmental Planning Policy (Affordable Rental Housing) 2009 - LDA2020/0247 | 3 |
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There are no LPP Planning Proposals

DEVELOPMENT APPLICATIONS

- 1 **298-312 Blaxland Road, Ryde - Demolition of existing structures; new multi-dwelling housing development containing 30 dwellings (9 x 2 bed, 20 x 3 bed, 1 x 4 bed, including 3 adaptable dwellings) over a split basement containing 63 car parking spaces, under Division 1 of State Environmental Planning Policy (Affordable Rental Housing) 2009 - LDA2020/0247**

Report prepared by: Creative Planning Solutions

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

Report dated: 03 February 2021

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

BP21/47

City of Ryde Local Planning Panel Report

DA Number	LDA2020/0247
Site Address & Ward	298-312 Blaxland Road, Ryde NSW 2112 Lot 10 DP 6367, Lot 9 DP 6367, Lot 8 DP 6367, Lot D DP 322336, Lot 11 DP 6367, Lot 12 DP 6367 Central Ward
Zoning	R2 Low Density Residential
Proposal	Demolition of existing structures; new multi-dwelling housing development containing 30 dwellings (9 x 2 bed, 20 x 3 bed, 1 x 4 bed, including 3 adaptable dwellings) over a split basement containing 63 car parking spaces, under Division 1 of <i>State Environmental Planning Policy (Affordable Rental Housing) 2009</i> .
Property Owners	Mr Mohammed Dib
Applicant	Kool Family Developments Pty Ltd
Report Author	Brendon Clendenning, Consultant Planner
Lodgement Date	29 July 2020
No. of Submissions	10 submissions received, all objecting to the proposed development.

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Cost of Works	\$15,097,236.00
Reason for Referral to LPP	<p>Contentious development – (b) in any other case – is the subject of 10 or more unique submissions by way of objection. <i>Schedule 1, Part 2 of Local Planning Panels Direction</i></p> <p>and</p> <p>Departure from development standards – contravention of the height of buildings development standard by more than 10% - <i>Schedule 1, Part 3 of Local Planning Panels Direction</i></p>
Recommendation	Refusal
Attachments	<p>Attachment 1 – LEP & DCP Compliance Tables</p> <p>Attachment 2 – ARH SEPP Compliance Table</p> <p>Attachment 3 – Clause 4.6 Request</p> <p>Attachment 4 – Plans submitted with the DA</p>

1. Executive Summary

The subject development application (DA No. LDA2020/0247) was lodged on 29 July 2020 and seeks consent for the demolition of existing structures, and construction of a new multi-dwelling housing development containing 30 dwellings (9 x 2 bed, 20 x 3 bed, 1 x 4 bed, including 3 adaptable dwellings) over a split basement containing 63 car parking spaces, under the provisions of *State Environmental Planning Policy (Affordable Rental Housing) 2009* (“the ARH SEPP”).

A development substantially the same as that currently being proposed on the site was subject to a previous Class 1 Appeal in the Land and Environment Court. The Appeal was discontinued by the Applicant shortly before the final hearing in early 2020.

In accordance with the *Environmental Planning and Assessment Act 1979*, Section 9.1 – Directions by the Minister, 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%, and is contentious development, having received greater than ten (10) submissions.

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The development relies upon Clause 4.6 variation requests to the height of buildings standards prescribed by both Clause 4.3 and Clause 4.3A of Ryde Local Environmental Plan 2014 (RLEP). These variations are stated by the applicant to be less than 10%; however, there remains some uncertainty in relation to existing ground levels for some of the dwellings, and were the actual ground level correctly established, the height non-compliances would likely exceed 10%, necessitating referral to the Panel.

The application was advertised in accordance with the provisions of the *Ryde Community Participation Plan*, and ten (10) submissions were received, all objecting to the development.

The proposal has been assessed in accordance with the relevant matters for consideration under Section 4.15 of the Act. The proposed land use, multi dwelling housing, is subject to a draft planning instrument (a Planning Proposal) made by Council seeking to prohibit multi dwelling housing within the R2 Low Density Residential zone (among other matters). The Planning Proposal has been exhibited and referred to the Minister for finalisation, and the Amendment is now certain and imminent.

There are a range of issues with the proposal that suggest that the site is not suitable for multi dwelling housing, and the impending prohibition of the housing type in the zone strengthens this position. The proposal performs poorly against the provisions within the *Ryde Development Control Plan 2014* (RDCP 2014); the proposal contains non-compliances relating to cut and fill, solar amenity, privacy, number of dwellings, pedestrian access, ceiling heights, private open space location, the number of storeys, and the number of dwellings. Many of these issues relate to the steep topography of the site, and the number of dwellings that are proposed. The proposal also includes the removal of a significant number of trees that form part of a Critically Endangered Ecological Community.

Furthermore, the design of the development to Blaxland Road, characterised by continuous rows of attached 2-3 storey housing is not compatible with the locality, which is primarily characterised by low density or low rise development. Finally, there are a number of information deficiencies in the application, which preclude a complete assessment of the proposal, and therefore also preclude approval of the DA.

The site has been assessed as being unsuitable for the proposed development, and not within the public interest. For the reasons outlined above, the subject DA is recommended for refusal.

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2. The Site and Locality

The site is legally described as Lots 8-12 in Deposited Plan (DP) 6367 and Lot D in DP 322336, described collectively as 298-312 Blaxland Road, Ryde. The site is rectangular in shape, with an area of 6,878m², a north-eastern frontage of 115.67m to Blaxland Road, a south-eastern side boundary of 59.5m, a south-western rear boundary of 115.67m, and a north-western side boundary of 59.435m. An aerial photograph of the site and surrounding developments is provided below.



Figure 1: Aerial photograph of the site and surrounds, with the site shown marked

The site currently includes four (4) detached two-storey dwelling houses of brick and tiled roof construction, with associated ancillary structures that are to be demolished as part of the proposed development. The dwelling at 302 Blaxland Road was recently demolished and that lot is now vacant. The site is affected by an existing drainage easement that is 2.4m wide and traverses Lots 11 and 12 of DP 6367.

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Figure 2: Photo of subject site looking south from 312 Blaxland Road, to the remainder of the subject site's frontage.



Figure 3: 300 Blaxland Road, showing the parking area accessible from Blaxland Road, with the dwelling located in the background.

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Figure 4: 302 Blaxland Road, now vacant following the recent demolition of the dwelling.



Figure 5: 308 Blaxland Road, showing the steep driveway forward of the dwelling.

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Figure 6: 312 Blaxland Road, looking towards the north-west.



Figure 7 View from the parking platform at 300 Blaxland Road, to the north-west showing 308 Blaxland Road, beyond the vacant site at 302 Blaxland Road.

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The site contains approximately 80 existing trees. A number of these trees form part of the Blue Gum High Forest (BGHF) vegetation community, which is listed as a Critically Endangered Ecological Community (CEEC) under the *Threatened Species Conservation Act 1995* (TSC Act 1995).



Figure 8: Example of the density of tree coverage surrounding 302 Blaxland Road.

The topography of the local area generally falls from the north, southwards in the direction of the Parramatta River. The land at the subject site falls away from Blaxland Road to the rear south-western boundary. The fall of 16.26m occurs over a distance of 58.37m, approximately from RL 80.05 to RL64.24. This fall results in an average site gradient of 1:3.6.

The site is located on the southern side of Blaxland Road, between Anzac Avenue to the north-west and Melville Street to the south-east, and is situated approximately 1km north east of West Ryde Station, 1km north of Victoria Road, and 1km north-west of the Top Ryde Town Centre.

Development in the immediate vicinity is generally characterised by low density residential accommodation in the form of dwelling houses. However, some examples of significantly smaller scale low rise multi-dwelling housing developments are also evident.

Limited non-residential land uses are also present within the local area, including a Sydney Water infrastructure facility, which is listed as a local heritage item and is

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located directly opposite the subject site, and the Ryde Congregational Church located further to the east, on the north-eastern side of Blaxland Road. Photographs of surrounding developments are provided below.



Figure 9: Sydney Water reservoirs located across the road from the subject site.



Figure 10: Multi dwelling housing development located to the rear and west of the subject site, at 13 Benson Street.

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Figure 11: Multi dwelling housing development at 292-298 Blaxland Road, which adjoins to the south-east.

3. The Proposal

The proposal seeks consent for the demolition of existing structures and construction of an in-fill affordable rental housing development under Division 1 of the ARH SEPP.

The proposal generally includes three (3) rows of buildings that run parallel to Blaxland Road and one (1) building running perpendicular to Blaxland Road along the north-western side boundary, as depicted in **Figure 12** below.

The development comprises thirty (30) multi-dwelling housing units. The dwellings are predominantly two storey in height with select dwellings (H12 only and the entirety of the central row) provided with split levels. Three (3) storey dwellings are also proposed, being H12, H28, and H30, with H30 being split level. The stated dwelling mix comprises of nine (9) x two-bedroom dwellings, twenty (20) x three-bedroom dwellings and one (1) x four-bedroom dwelling. Basement parking over two (2) levels for sixty-three (63) cars, four (4) motorcycles and thirty (30) bicycles is also proposed. However, the proposal also includes a number of studies and secondary living rooms, dimensioned and located so as to allow for relatively simple conversions into additional bedrooms. Such rooms are provided to eleven (11) of the dwellings, with two (2) dwellings provided with studies and nine (9) provided with secondary living rooms. These rooms are depicted in the images below in **Figures 13 and 14**.

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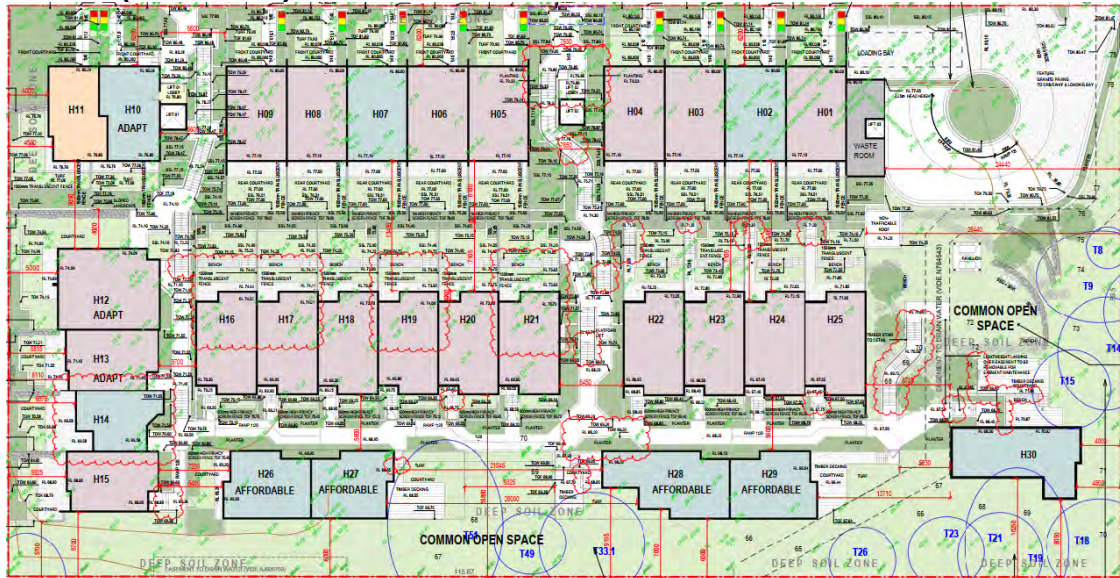


Figure 12: Site plan depicting layout of the dwellings across the site

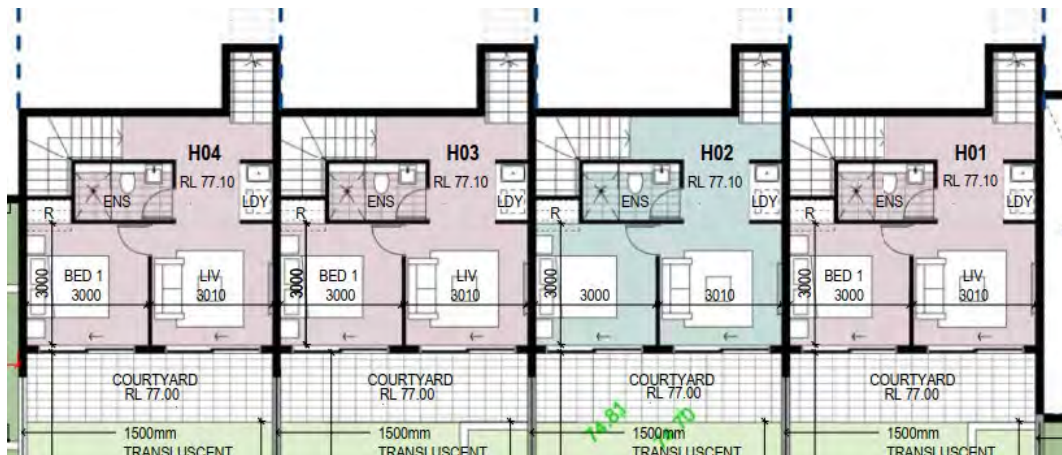


Figure 13 Floor plan extract depicting examples of secondary living rooms provided dimensioned and located for simple conversion into additional bedrooms

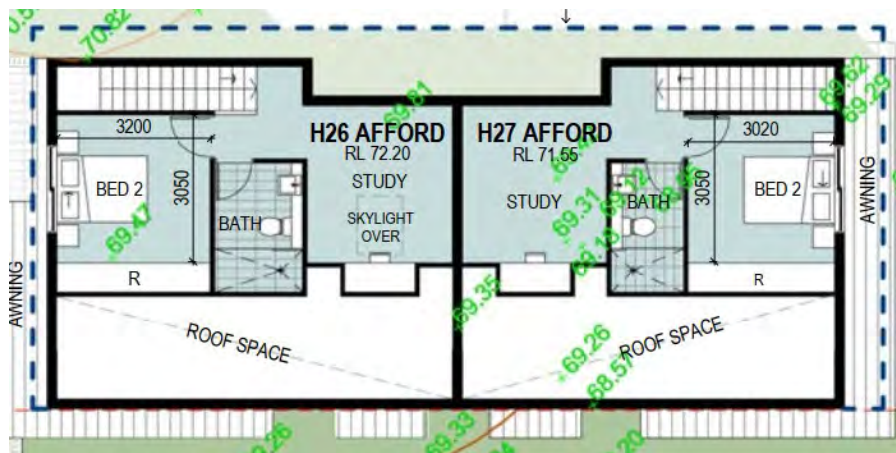


Figure 14 Floor plan extract depicting studies provided with dimensioned and located for simple conversion into additional bedrooms

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Based on the inclusion of the rooms described above and for the purposes of this assessment, the development is therefore calculated to contain five (5) x two-bedroom dwellings, seventeen (17) x three-bedroom dwellings and eight (8) x four-bedroom dwellings.

Four (4) dwellings, being Dwelling H26, H27, H28 and H29 are nominated as affordable housing. The combined gross floor area (GFA) of these dwellings is 316m², or 12% of the total GFA of the development.

Further details in relation to the proposal are outlined below.

Dwellings H1-H11

The first row of dwellings (Dwellings H1-H11), which run parallel to Blaxland Road have a frontage to the street. Pedestrian access is available directly from Blaxland Road and the built form is broken up into three (3) individual buildings, which comprise Dwellings 1-4, Dwellings 5-9 and Dwellings 10-11.



Figure 15 Extract of North (front) Elevation depicting the streetscape presentation

Each of these dwellings are three storeys in height, with the ground floor level (closest to Blaxland Road) at RL 80.00 (Dwelling 1-9), RL 80.26 (Dwelling 10) and RL 80.29 (Dwelling 11). With the exception of H11, the primary living areas are provided at this level. Whilst none of these dwellings are adaptable, the ground floor of Dwellings H1-H9 are marked within the Access Report as “living units”.

Each dwelling also contains a first floor oriented towards the street. The first floor level of Dwellings H1-H9 is at RL 82.90 whilst Dwelling H10 and H11 are at RL 83.36 and RL 83.39, respectively.

The lower ground floor levels sit at RL 77.10 (Dwelling 1-9) and RL 76.80 (Dwelling 10-11), with the living areas to H11 contained at this level. The lower ground floor of each dwelling within the front row sits higher than all floor levels of dwellings within the other rows, as depicted within the section plan shown below.

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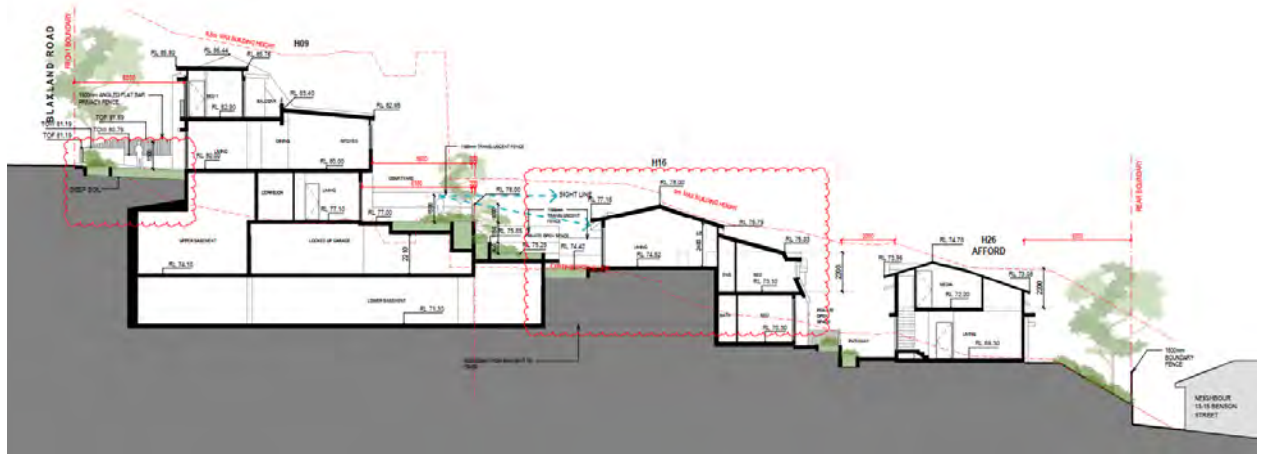


Figure 16: Section plan depicting the relationship between levels across the site

Dwellings H12-H15

The row of dwellings (Dwellings H12-H15) that run perpendicular to Blaxland Road are aligned with the adjacent north-western side boundary. The built form is two storey and terraced down the site; i.e. the floor levels become progressively lower towards the rear. The ground floor levels range from RL 74.09 for Dwelling H12, down to RL 68.90 for Dwelling H15 towards the rear of the site.

Dwelling H12 is one of only three single storey dwellings within the development, and along with dwellings H10 and H13, comprise the adaptable dwellings within the development.

Dwellings H16-H25

The second row of dwellings (Dwellings H16-H25) is broken up into two (2) individual buildings, which comprise Dwellings H16-H21 and Dwellings H22-H25. The higher level of each dwelling contains the living areas and private open spaces (POS). The POS areas are located on the north-eastern side of the dwelling, and directly adjoins the POS of dwellings within the first row. However, the ground levels between each row of POS varies by more than 2m. Stairs are provided to create two levels within each POS, with ground level differences within individual POS areas of up to 0.8m.

The south-western side of each of these dwellings is two storeys in height. The upper levels towards the rear connect to the front living areas via internal stairs, creating split levels, but with individual level differences of up to 1.8m. The landings of the staircases are provided at approximately the midway point of the two rear levels. The entry areas are located at the lowest level, to the rear of each dwelling, and can only be accessed via a series of staircases, either from the lower basement level or from Blaxland Road (via further stairs).

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Due to the variations in topography through this part of the site, floor and ground levels vary significantly across and between dwellings in this row.

Dwellings H26-H30

Dwellings H26-H30 consists of three (3) buildings located at the rear of the site that are aligned parallel with the lowest level of Dwellings H16-H25 and separated by a common pedestrian access pathway.

Dwelling H26 and H27 are two storey dwellings attached to one another with ground floor levels of RL 69.30 and RL 68.65 and first floor levels of RL 72.20 and RL 71.55, respectively. Dwelling H28 is single storey with a ground floor level of RL 68.20. Dwelling H29 is attached to Dwelling H28, and is a two storey dwelling with a ground floor level of RL 66.54 and first floor level of RL 69.44. Dwelling H30 is a split level single storey dwelling with floor levels of RL 68.50 and RL 70.92, and two courtyards that are also provided at levels that are 0.99m apart from one another.

Basement Upper Level

The upper level basement is at RL 74.10, located underneath Dwellings H1-H11. This level provides secure parking for twenty (20) cars associated with these dwellings, in the form of two (2) tandem/stacked parking spaces for each of Dwelling H1-H9 and single spaces for Dwelling H10-H11. Direct access is available via internal stairs from the individual garages into these dwellings. Alternative access for individuals unable to utilise the stairs is proposed via three (3) lifts within the basement. Pedestrian access is available from the rear of this level to the remaining dwellings within the development. A portion of the circulation area of the basement sits underneath landscaped areas within the front setback, whilst another portion is provided with double-height ceilings.

Basement Lower Level

The lower level basement is at RL71.30 and provides parking for forty-three (43) cars, in association with Dwellings H12 to H30 inclusive. Stair access is directly available from the basement into the lower ground floor of Dwellings H16-H25.

A waste storage room and bulk waste room is also included on this level along with lift access, plant rooms, bicycle storage, motorcycle parking, stairs and services.

External

The proposed vehicular access to the basement parking levels is via a driveway located off Blaxland Road in the eastern corner of the site, with access between the basement levels available via a circular ramp. Public art is proposed adjacent to the circular ramp, with a loading bay proposed that sits forward of the building line, parallel to Blaxland Road.

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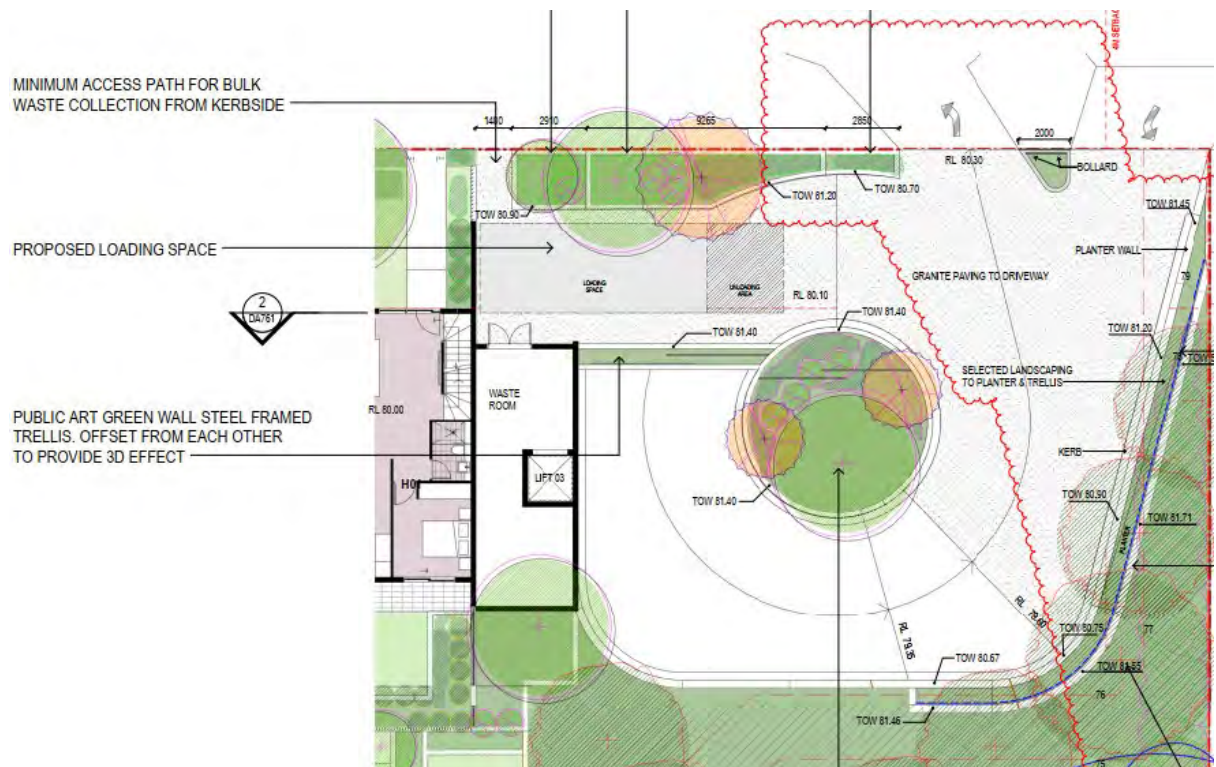


Figure 17: Driveway and Public Art Zone

Excavation of up to approximately 8m is required to accommodate basement parking areas, with the deepest excavation occurring along the northern edge of the basement adjacent to Blaxland Road.

The proposed stormwater drainage arrangements include the collection of runoff into a below ground on-site detention (OSD) and separate 1kL rainwater tank for each dwelling. The proposal also includes realignment of a drainage easement located within the south-eastern portion of the site, which runs from the Blaxland Road frontage to the rear boundary.

The proposal also includes a comprehensive landscape planting scheme for the redeveloped site, including a common open space area located towards the south-eastern boundary. Deep soil and canopy planting is located primarily along the south-western rear boundary.

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Figure 18: Proposed Landscape Plan

Subdivision is not proposed as part of this application.

4. Background

A development substantially the same as that currently proposed on the site was previously subject to a protracted Class 1 Appeal in the Land and Environment Court. As part of the appeal, Robson J ordered that the matter be set down before a Judge for the determination of two preliminary questions, being:

- (a) *Whether the proposed development is on land which is within an accessible area for the purposes of cl 10 of the State Environmental Planning Policy (Affordable Rental Housing) 2009 (NSW); and*
- (b) *Whether there is an “inconsistency” between cl 4.5A of the Ryde Local Environmental Plan 2014 [“the Ryde LEP”] and cl 14(1)(b) of the State Environmental Planning Policy (Affordable Rental Housing) 2009 (NSW) for the purposes of cl 8 of the State Environmental Planning Policy (Affordable Rental Housing) 2009 (NSW).*

In a decision published on 17 December 2018 (*Bella Ikea Ryde Pty Ltd v City of Ryde Council (No 2)* (2018)), Sheahan J found the answer to both questions to be “yes”, and the appeal continued before a Commissioner. Following numerous design amendments, the Court proceedings were discontinued by the applicant before the final hearing in early 2020. The last set of amended plans that were filed ahead of the final hearing in this matter are largely identical to those submitted within the current DA.

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A brief history of the subject DA and the draft instrument that would prohibit the proposed land use (refer to later discussion) is outlined below:

1 April 2020	The Planning Proposal was forwarded to the Department of Planning, Industry and Environment (DPIE).
1 June 2020	A conditional Gateway Determination, requiring additional clarification of the Planning Proposal, was issued by DPIE.
29 July 2020	The DA was lodged with Council.
Application Advertising 10 August 2020 to 4 September 2020.	The DA was advertised on Council's webpage and notified to surrounding properties. In response, 10 submissions were received, all objecting to the proposed development. The objectors raised a range of issues discussed later in this report.
3 September 2020	Approval to place the Planning Proposal on public exhibition was issued by DPIE.
Planning Proposal Exhibition – 16 October to 16 November 2020	The Planning Proposal and the Local Housing Strategy were placed on public exhibition concurrently.
15 December 2020	Council support the Planning Proposal and forward the proposal to the Minister to make the new LEP.
14 December 2020	A withdrawal request is sent to the applicant, which sought a response by 21 December 2020. No response was received to the withdrawal request letter. The issues listed within the letter are in line with those discussed throughout this report, and are therefore not reproduced in this table.

5. Planning Assessment

Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)

The site does not contain any Threatened Species or Ecological Communities as listed under the EPBC Act.

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5.1 Biodiversity Conservation Act 2016

The proposal is subject to the requirements of the *Biodiversity Conservation Act 2016* (BC Act) and the *Biodiversity Conservation Regulation 2017* which are mandatory considerations pursuant to Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The site contains vegetation belonging to the Blue Gum High Forest (BGHF) vegetation community, which is listed as a Critically Endangered Ecological Community (CEEC) under the *Threatened Species Conservation Act 1995* (TSC Act 1995).

The proposal includes the removal of a significant number of tree species consistent with a Critically Endangered Ecological Community within the City of Ryde being Blue Gum High Forest in the Sydney Basin Bioregion. No Flora and Fauna assessment has been carried out to determine impacts from an ecological perspective. In this regard, the proposal cannot be supported given the ecological impact of site's redevelopment has not been taken into consideration. Refer to commentary provided with the Consultant Landscape Architect / Arborist referral comments within Section 10 of this report.

5.2 State Environmental Planning Instruments

State Environmental Planning Policy (Affordable Rental Housing) 2009

The application is lodged pursuant to State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP).

A complete assessment of Part 2, Division 1 (In-fill affordable housing) of the ARH SEPP is contained within **Attachment 1**. A discussion of how the proposal performs against select controls and a summary compliance table are contained below.

Clause 10 – Development to which this Division Applies

The proposed development is for multi-dwelling housing, which is a form of development that is permissible with consent within the R2 zone under RLEP 2014. The site does not contain a heritage item as identified by Schedule 5 of RLEP 2014.

The subject site is also located within an accessible area by virtue of the land being within 400m walking distance of bus stops on Blaxland Road. The ARH SEPP also requires that the bus stop must have “at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday”.

There are no individual bus stops within 400m of the site which meet the above frequency criteria on their own. However, as discussed within the Background section

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of this report, in *Bella Ikea Ryde Pty Ltd v City of Ryde Council (No 2)* (2018), Sheahan J found that the land was within an accessible area. The decision was based on several arguments put forward by the applicant regarding the frequency criteria, including:

- Combining bus stops on both sides of Blaxland Road.
- Measuring the frequency at “chronological hours”, being during each hourly interval (e.g. 9am to 10am, and 10am to 11am), even if services arrived more than an hour apart from one another.
- Applying the *de minimis* principle legal principle, that is to allow for minor departures to strict compliance.

For the above reasons, the site is located within an accessible area, and the proposal is development to which Division 1 of the ARH SEPP applies.

Clause 13 – Floor space ratios

The submitted Statement of Environmental Effects nominates four (4) units (26, 27, 28 and 29) to be used for the purposes of affordable housing which constitutes a total of 316.89m², or approximately 12%, of the total GFA. However, clause 13 requires that a minimum 20% of the total GFA is required to be used for the purposes of affordable housing. The proposal does not achieve compliance with this minimum requirement, and Division 1 of this policy is, therefore, of no effect.

The Statement of Environmental Effects has argued that the consequence of providing less than 20% of the GFA for the purposes of affordable housing is that only clause 13 is not invoked, with the rest of Division 1 remaining applicable. This interpretation would lead to absurd circumstances whereby a development may provide only a token amount of affordable housing GFA, or even no affordable housing GFA at all, but utilise all other benefits of the ARH SEPP aside from the FSR bonus.

The DPIE fact sheet on the policy, entitled ‘Supporting infill affordable rental housing’, also confirms that the benefits of the policy are only available for residential developments whereby the proportion of affordable housing is between 20% and 50% of the gross floor area of the development.

Clause 14 - Standards that cannot be used to refuse consent

Clause 14 of the ARH SEPP provides development standards that, if complied with, cannot be used to refuse consent to a DA proposed under Division 1. The table below provides an assessment against these provisions.

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14 Standard that cannot be used to refuse consent.		
Required	Proposed	Complies
(1) Site and solar access requirements		
(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	Site Area: 6,878m ²	Yes
(c) landscaped area if: (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 (ii) in any other case—at least 30 per cent of the site area is to be landscaped	The Development Application is not being lodged on behalf of a public housing authority. 2798.4m ² or 40.7% of the site is proposed to be landscaped area.	N/A Yes
(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: (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 (ii) each area forming part of the deep soil zone has a minimum dimension of 3 metres, and (iii) if practicable, at least two-thirds of the deep soil zone is located at the rear of the site area,	1698.3m ² or 24.7% of the site is proposed to be deep soil area. Only deep soil areas with minimum dimensions of at least 3m have been included in the above calculation. 1214.9m ² or 71.5% of the total 1698.3m ² of deep soil is located at the rear of the site.	Yes Yes Yes
(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.	The shadow diagrams submitted with the development application demonstrates that 90% of the dwellings will <u>not</u> receive at least 3 hours direct sunlight between 9am and 3pm on June 21.	No, refer to related discussion within RDCP 2014.

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(2) General

<p>(a) parking if: (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 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 (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 Development Application was not made by or on behalf of a social housing provides.</p> <p>5 x 2 bed = 5 parking spaces. 17 x 3 bed = 25.5 spaces. 8 x 4 bed = 12</p> <p>Total Spaces Required: 42.5 – rounded to 43 Car Parking Spaces required.</p> <p><u>Proposed:</u> Sixty-three (63) car parking spaces provided</p>	<p>N/A</p> <p>Yes</p>
<p>(b) dwelling size if each dwelling has a gross floor area of at least: (i) 35 square metres in the case of a bedsitter or studio, or (ii) 50 square metres in the case of a dwelling having 1 bedroom, or (iii) 70 square metres in the case of a dwelling having 2 bedrooms, or (iv) 95 square metres in the case of a dwelling having 3 or more bedrooms.</p>	<p>Based on the number of bedrooms stated by the applicant, it has been calculated that 13 dwellings do not comply with this requirement. When also accounting for Council's calculated dwelling mix, an additional 4 dwellings do not comply.</p>	<p>No, also see discussion below</p>

Clause 14(2)(b) – Dwelling size

The proposal does not comply with clause 14(2)(b). The non-compliances relate to dwellings that are provided at multiple levels; when accounting for landings, and outdoor areas, some dwellings are provided with at least seven different levels.

RLEP 2014 and RDCP 2014 provides multiple provisions to indicate that multi dwelling housing developments are primarily targeted as single storey rear dwellings located on relatively flat sites. Part 3.4 of RDCP 2014, Section 2.3 indicates that multi-dwelling housing (MDH) is not preferred on steeply sloping sites, Section 3.2 indicates that site levels should not be altered by more than 300mm, and Section 3.3.1 prescribes that multi dwelling housing development must be contained within a

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single storey building. This is in addition to the 5m height limit for rear dwellings prescribed by clause 4.3A of RLEP 2014.

The proposed rear dwellings are inconsistent with the type contemplated by the local planning controls, and the proposed non-compliant dwellings provide a relatively poor level of amenity in terms of privacy, solar access and relationship to the associated POS.

The dwellings should meet the minimum requirements of clause 14(2)(b), and failure to comply with this provision is included as a recommended reason for refusal.

Clause 15 – Design requirements

The design requirements for MDH development under the ARH SEPP are set out in clause 15, which refers to the *Seniors Living Policy: Urban Design Guidelines for Infill Development* published by the Department of Infrastructure, Planning and Natural Resources in March 2004.

Consideration of the provisions of the policy has identified the following design issues:

Chapter 1 - Responding to Context:

- The area is characterised by detached dwellings with simple pitched roofs and generous boundary setbacks. Where MDH is located nearby, it is provided within buildings that provide a single storey appearance to the street, and within building envelopes of a similar size to other dwellings in the locality.
- The proposal seeks to introduce MDH to the locality, within continuous rows of attached housing, with relatively complex roofs. The dissonance of the appearance will be particularly evident from the south-western side of Blaxland Road where existing dwellings are currently located primarily below street level, whereas the proposal would introduce prominent two storey row housing.
- The proposal fails to appreciate the defining characteristics of the neighbourhood, including architectural style, dwelling density, topography and landform, and existing significant vegetation on the site. The result is a built form outcome that is incompatible with the neighbourhood character.

Chapter 2 - Site Planning and Design

- The proposal does not maximise solar access to private open space areas, as evidenced by the inability to achieve compliance with the minimum solar access requirements of both the ARH SEPP and RDCP 2014.

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Chapter 3 - Impacts on Streetscape

- The proposal includes private open space areas within the front setback to Blaxland Road. This results in a front setback arrangement that does not relate to adjoining development.
- Two-storey dwellings attached to each other along Blaxland Road present a visual bulk that is overstated in the streetscape.
- The excessive hardstand area and bulk structures associated with the basement driveway ramps and waste collection area in the north-east corner of the site contribute poorly to the presentation of the development to Blaxland Road and are a discordant element in the streetscape.

Chapter 4 - Impacts on Neighbours

- The design relationship between buildings and open spaces is inconsistent with the existing patterns in the block, and is incompatible with the desired future character of the low density residential zone.
- The presentation of the development to the properties to the south-east is excessive from a bulk and scale perspective. Significant walls and open cavity elevations associated with the basement ramps and car park are located less than 2m from the boundary in some circumstances.
- The acoustic impacts associated with vehicles manoeuvring through the open driveway ramps will impact on the amenity of the adjoining residents at 292-296 Blaxland Road particularly given vehicles will also cross the verge of the neighbouring property to enter the site.

Chapter 5 - Internal Site Amenity

- The proposal will result in poor internal site amenity as the dwellings have not been designed with satisfactory solar access.
- The proposal will give rise to overlooking and subsequent loss of visual and acoustic privacy to other dwellings within the development as a result of the topography of the site and poor building design response.

Clause 16A – Character of local area

Clause 16A stipulates that a consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area. For the reasons

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outlined in relation to clause 15, the assessment has concluded that the proposal is not compatible with the character of the area.

Clause 17 – Must be used for affordable housing for 10 years

Were the application approved, the condition prescribed by this clause could be included within the development consent.

Clause 18 – Subdivision

This clause allows for subdivision. However, no subdivision is proposed as part of this application.

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.

The submitted Statement of Environmental Effects indicates that a Preliminary Site Investigation (PSI) was undertaken and that the report was submitted with the DA. However, no such report was included with the application.

The Statement of Environmental Effects goes on to state that the PSI had recommended that an assessment of the identified areas of concern (potential asbestos, heavy metals, pesticides and hydrocarbons) be undertaken prior to any future development, and that this could be undertaken prior to the issue of a construction certificate. However, Council requires the submission of the PSI, in order to properly consider whether to support that recommendation, or whether to require the information prior to the determination of the application. This forms part of the recommended reasons for refusal of the application.

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

In accordance with Clause 6(1) of this SEPP, BASIX applies to BASIX affected development which includes a building that contains one or more dwellings.

The proposal is supported by BASIX Certificate 786157M dated 19 June 2020. The proposal achieves compliant project scores as follows:

Project Score		
Water	40	(Target 40)
Thermal Comfort	Pass	(Target Pass)
Energy	48	(Target 40)

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Were the application recommended for approval, compliance with the commitments in the BASIX Certificate would be able to be imposed as a condition of consent.

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

The objectives of this SEPP are to protect biodiversity values and amenity, through the preservation of trees and other vegetation.

The proposal seeks to remove 68 trees on the site to facilitate the development, and this is supported by an Arboricultural Impact Assessment (AIA), prepared by Footprint Green, dated 21 July 2020.

The proposal was referred to Council's Consultant Landscape Architect/Arborist who raised a number of issues with the arborist report. Refer to the discussion of referrals within Section 10 of this report.

State Environmental Planning Policy (Infrastructure) 2007

The site is located on Blaxland Road, which is identified on the RMS website as accommodating greater than 20,000 vehicular movements a day. Clause 102 requires that certain acoustic criteria be met for residential uses that are adjacent to such roads.

No acoustic report was submitted with the application, and there is no information available to Council to consider whether compliance with this requirement has been achieved; Council is therefore unable to be satisfied that the given acoustic criteria can be met.

It should be noted that this clause was amended on 31 August 2018 to reduce the threshold of vehicular movements from 40,000 to 20,000.

5.3 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The deemed SEPP applies to the whole of the Ryde Local Government Area. The aims are to establish a balance between promoting a prosperous working harbour, maintaining a healthy and sustainable waterway environment and promoting recreational access to the foreshore and waterways by establishing planning principles and controls for the catchment as a whole.

Given the residential scale of the project and the location of the site away from the waterway, there are no specific controls that directly apply to this proposal and the proposal is not inconsistent with this SEPP.

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5.4 Ryde Local Environmental Plan 2014 (RLEP 2014)

The subject site is identified as being within the R2 Low Density Residential zone under the provisions of RLEP 2014. The proposed MDH development is permissible with development consent. However, a current Planning Proposal seeks to prohibit this form of development. For further discussion of this matter, refer to Part 5.5 of this report.

The following outlines provisions of the current RLEP 2014 that are relevant to the proposal.

Aims and objectives for low density 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 provide facilities or services to meet the day to day needs of residents.*
- *To provide for a variety of housing types.*

The proposal is not consistent with the objectives of the zone as it fails to provide for housing that serves the needs of the community within a low density residential environment, as discussed throughout this report.

The following table provides a summary of the key provisions that apply to the proposal:

RLEP 2014	Proposed	Compliance
4.1B Minimum Lot Size		
<ul style="list-style-type: none"> • 900 square metres • Road frontage of the lot is equal to or greater than 20 metres. 	<p>The proposed development seeks a multi-dwelling housing development over 6 lots.</p> <p>Total Site Area – 6,878m² Total Road Frontage – 115.67m²</p>	Yes
4.3(2) Height of buildings		
<ul style="list-style-type: none"> • 9.5m – maximum building height 	<p>The height of each dwelling which fronts the street is calculated to be as follows:</p> <ul style="list-style-type: none"> • Dwelling H01 – 10.32m • Dwelling H02 – 8.53m • Dwelling H03 – 9.11m • Dwelling H04 – 9.20m • Dwelling H05 – 8.97m • Dwelling H06 – 9.16m 	No

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RLEP 2014	Proposed	Compliance
	<ul style="list-style-type: none"> Dwelling H07 – 7.53m Dwelling H08 – 9.27m Dwelling H09 – 8.61m Dwelling H10 – 9.04m Dwelling H11 – 8.67m 	
4.3A(2) Exceptions to height of buildings		
(a) Despite clause 4.3, the maximum height of multi dwelling housing on land in Zone R2 Low Density Residential is 5 metres for any dwelling that does not have a road frontage.	<p>The height of dwellings without road frontages is provided below:</p> <ul style="list-style-type: none"> Dwelling H12 - 3.32m Dwelling H13 - 5.25m Dwelling H14 - 5.15m Dwelling H15 - 5.16m Dwelling H16 - 4.63m Dwelling H17 - 4.76m Dwelling H18 - 4.75m Dwelling H19 - 4.94m Dwelling H20 - 5.01m Dwelling H21 - 4.96m Dwelling H22 - 4.92m Dwelling H23 - 4.68m Dwelling H24 - 4.83m Dwelling H25 - 5.14m Dwelling H26 - 4.97m Dwelling H27 - 4.71m Dwelling H28 - 4.84m Dwelling H29 - 4.72m Dwelling H30 - 4.96m 	No
4.4 Floor Space Ratio		
Clause 4.4A(2) states that clause 4.4 does not apply to development for multi-dwelling housing on land in Zone R2 Low Density Residential.	No calculation required.	N/A
4.5A Density controls for Zone R2 Low Density Residential		
<p>(a) The site area for the building is not less than:</p> <p>i. For each 1, 2 or 3 bedroom dwelling – 300 square metres and</p> <p>ii. For each 4 or more bedroom dwelling – 365 square metres</p>	<p>5 x 2 Bedroom dwellings. 17 x 3 Bedroom dwellings. 8 x 4 Bedroom dwelling.</p> <p>Required site area: (5 x 300m²) + (17 x 300m²) + (8 x 365m²) = 9,520m²</p> <p>The subject site has a site area of 6,878m² and therefore does not comply with this requirement.</p> <p>The Land and Environment Court had established that this provision competes with clause 14(1)(b) of the ARH SEPP.</p>	No

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RLEP 2014	Proposed	Compliance
	Therefore, if the ARH SEPP applies to the development, this provision has no weight. However, this assessment concludes that the ARH SEPP does not apply to the development, and therefore, failure to comply with this provision is a reason for refusal.	
(b) each dwelling will have its own contiguous private open space	Each dwelling has its own contiguous private open space.	Yes
4.6 Exceptions to development standards		
<p>(1) The objectives of this clause are as follows:</p> <p>(a) To provide an appropriate degree of flexibility in applying certain development standards to particular development,</p> <p>(b) To achieve better outcomes for and from development by allowing flexibility in particular circumstances.</p>	A clause 4.6 written request has been submitted. Refer to discussion below.	No
5.10 Heritage Conservation		
<p>(5) Heritage assessment. The consent authority may, before granting consent to any development:</p> <p>(a) on land on which a heritage item is located or</p> <p>(b) on land that is within a heritage conservation area or</p> <p>(c) on land that is within the vicinity of land referred to in paragraph (a) or (b).</p> <p>require a heritage management document to be prepared.</p>	<p>The subject site does not contain a heritage item, and is not located within a heritage conservation area. The site is located opposite Local Heritage Item No.329, being the Hermitage Reservoir and associated buildings.</p> <p>Given the large size of the reservoirs and that they are non-residential structures located on the opposite side of Blaxland Road, it is unlikely that the proposal will detract from the heritage significance of the nearby item.</p>	Yes
6.2 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 features of the surrounding land.	Significant earthworks are proposed across the site well in excess of the 300mm limit prescribed by RDCP 2014. The most significant earthworks proposed are within the basement level car park. The proposed earthworks are unsympathetic to the natural topography of the site, resulting in unacceptable impacts on dwelling amenity and the streetscape.	No

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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.	Various stormwater issues remain outstanding as outlined within the discussion of the Development Engineer's and Drainage Engineer's referral comments.	No

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

Clause 4.3 and 4.3A(2) prescribe the maximum building heights that are applicable for the proposed development. Dwellings that front a road are subject to a maximum building height of 9.5m (Clause 4.3), whereas dwellings that do not front a road are limited to a maximum building height of 5m (Clause 4.3A(2), relating to MDH developments in the R2 zone).

The proposal results in the following departures from the height standards:

- Dwelling H01 - 10.32m
- Dwelling H13 - 5.25m
- Dwelling H14 - 5.15m
- Dwelling H15 - 5.16m
- Dwelling H20 - 5.01m
- Dwelling H25 - 5.14m

It should be noted that the extent of the variation is based on limited information on levels contained within the application, particularly with respect to the submitted section plans. In relation to Dwellings H13, H14, and H15, the submitted survey depicts contours beneath a deck located on site as shown below.

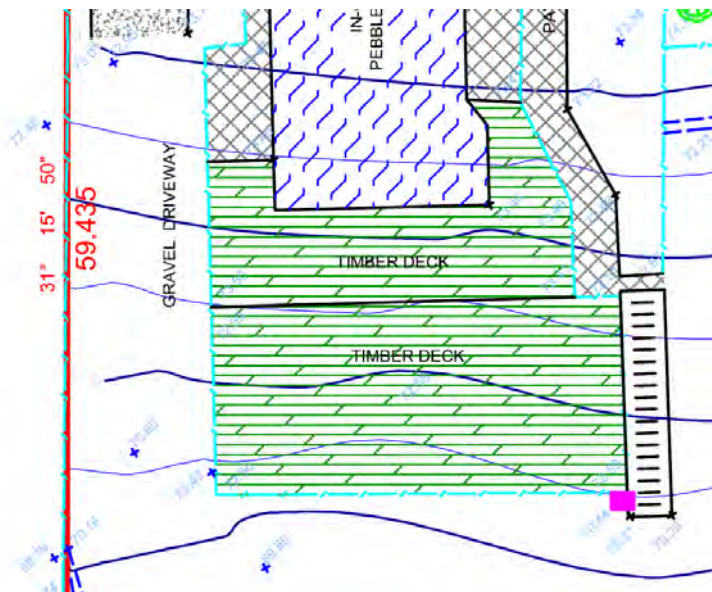


Figure 19: Extract from survey plan showing the rear deck located at 312 Blaxland Road

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The submitted section plan appears to have partially utilised levels associated with the timber deck to depict the existing ground level in the location of Dwellings H13 – H15, as shown below.



Figure 20: Extract from Section AA showing the 'existing ground line' in relation to Dwellings H13 – H15

This may be the reason that H13 was not nominated as non-compliant within the application documentation. However, the west elevation depicts ground levels noted as showing the "extent of existing ground line at House 12 façade" (bold dashed line), which can be used to estimate the height non-compliances.

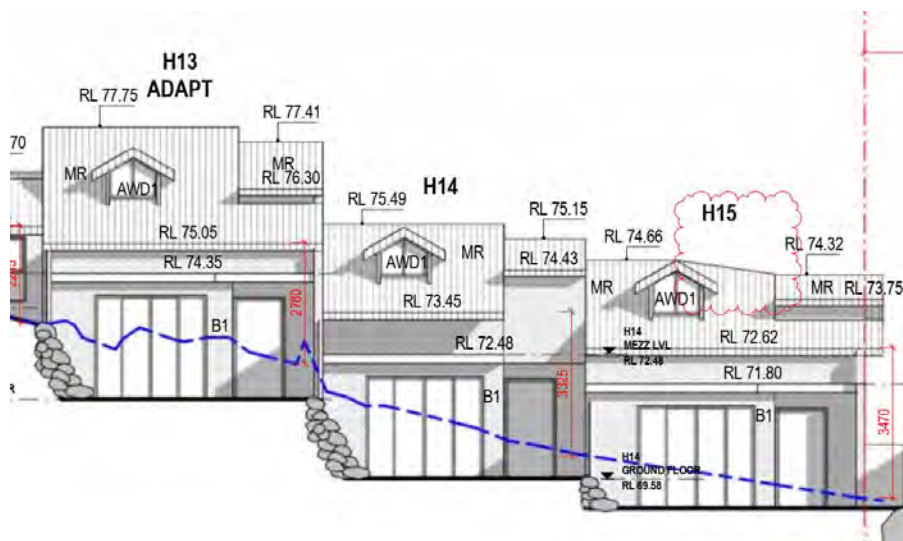


Figure 21: Extract of West Elevation showing the roof levels of Dwellings H13 – H15.

A comparison made between the site plan and the survey indicates that the lowest ground level (existing) in the location of Dwelling H13 appears to be approximately

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RL 71.50; however, further confirmation was sought from the applicant. The lowest roof height of this dwelling is shown on the elevation plan to be RL 77.41 as depicted in the image above. The maximum height of this dwelling is therefore potentially up to approximately 5.9m.

Based on the above, although the proposal represents a stated maximum 8.6% variation to the standard, the extent of the variation may be up to approximately 0.9m or 18% within Dwelling H13, a dwelling that is nominated as compliant within the application documentation.

The applicant has submitted a Clause 4.6 request prepared by Urban Plan and dated 22 June 2020 (**Attachment 3**) to vary the development standard of Clause 4.3A(2). The written request does not specifically state it is seeking to vary Clause 4.3.

Within the clause 4.6 request, the dwellings that do not achieve compliance and the extent of the height non-compliance differs from that listed above. The request identifies the following dwellings as being non-compliant (the variation request does not specify the exact heights but references breaches between 15mm – 215mm):

- Dwelling H01
- Dwelling H14
- Dwelling H15
- Dwelling H20
- Dwelling H24
- Dwelling H25
- Dwelling H26
- Dwelling H30

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

- Clause 4.6(3)(a) - Is compliance unreasonable or unnecessary in the circumstances of the case?
- Clause 4.6(3)(b) - Are there sufficient environmental planning grounds to justify the proposed contravention of the development standard?

The written request provides a number of reasons why compliance with the standard is considered to be unreasonable and/or unnecessary, with selected excerpts shown below:

Firstly, there are no adverse consequences attributable to the proposed non-compliant aspect of the development. To ensure absolute compliance with the height standard would necessitate the removal of part or all of the upper levels of a number of dwellings. The burden placed on the landowner via such a requirement would be disproportionate to any adverse consequences

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attributable to the proposed non-compliant development (relying on comments made in an analogous context, in Botany Bay City Council v Saab Corp [2011] NSWCA 308 [15]).

Secondly, requiring strict compliance (and refusing the DA) will thwart achievement of a number of the objectives of the height standard as discussed earlier in this report

Finally, requiring strict compliance (and reducing the height the proposal) will undermine achievement of the zone objectives, as discussed on the previous page of this report.

The proposed development achieves a balanced development outcome between an acceptable built form within the R2 zone and the surrounding mixed density neighbourhood. The built form outcome will be one of quality, with care taken in the design phase to ensure that any adverse impacts to surrounding properties and the public domain are minimised. Finally, the location of the site promotes walking and public transport use.

In view of all of the above, compliance with the numerical LEP standard for the height of the building is considered to be unreasonable and unnecessary in the circumstances. If approved, the proposal (when built) will not be out of place with, nor detrimental to the amenity of its surroundings and will fit within the desired future character of the area as envisaged in the relevant planning framework.

The proposed development represents a good fit with the aims of the LEP, the objectives of the height standard and the objectives of the zone. The proposal development will continue to contribute to the improved overall supply of housing stock in the area, improving housing opportunity and choice.

Assessment Officer's Comments: Compliance with the height of buildings development standard does not thwart nor undermine the achievement of the zone objectives. The number of dwellings, number of storeys and dwelling configurations is contrary to the anticipated form and desired character for the low density residential zone. In addition, the site is in a non-preferred location by virtue of its steep slope, and exhibits a number of non-compliances that directly stem from the siting of this development in a non-preferred location.

The development exhibits a number of adverse impacts in relation to overlooking, ceiling heights, solar access, access, and the siting, location and amenity of POS areas. The unsuitability of this site for MDH and the scale of the development combine to provide a development that is not compatible with the objectives of the standard or the objectives of the zone. It is not unreasonable to require compliance with the height of buildings standard given the range of issues identified above.

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The written request provides the following environmental planning grounds, with selected excerpts shown below:

“In all but one instance the location of the height variations are in the middle of the land, which together with their minor nature will ensure that the additional height is unlikely to impact on adjoining properties or be readily perceived from the public domain. There will be no shadow impact on the streetscape, while as the increased height is located in the upper reaches of the roof forms and does not derive from any habitable residential space, there will be no visual or privacy impacts.

In the case of dwelling 01, while this building faces the street, the height variation is between 90mm - 185mm and will not be appreciable from Blaxland Road. The streetscape is consistent in terms of the heights and forms of the two storey buildings and therefore the increased height of one dwelling will not be obvious in the streetscape. In that context the variation will have no urban design or public domain consequence.

A better planning outcome can also be considered in terms of the potential impact of the proposal from the increased height on the public domain and in an urban design sense. Any assessment of these issues must consider the proposal in terms of the context of the site, its built form, the need for additional housing supply in the locality and the design parameters of the relevant Canada Bay DCP. These matters are discussed within the SEE submitted with the DA, with the proposal performing well in regard thereto.

It may be suggested in certain submissions that all of the above benefits could be achieved by a smaller compliant development. However, to ensure that the proposal met the LEP height standard at all points, would require the removal of the upper level of a number of dwellings or dropping them further into the ground, which would create other issues in terms of site planning.

Such a reduction would impact on the viability of the project to a level not commensurate with the minor nature of the proposed variation. The location of the primary height variation and its minor nature will ensure that the additional height is unlikely to impact on adjoining properties or be readily perceived from the public domain”.

The variation to the standard would occur on the dwellings in the middle of the site. There is no impact on the street frontage nor will the non - or affect the compatibility of the proposal to its neighbours. The proposal seeks to consolidate a number of allotments into one and by stepping down the site and providing an increased rear boundary setback minimises its impact on surrounding lands. In that context, the proposal generally satisfies these objectives.

Furthermore, no significant adverse impacts arise from the non-compliance.

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The only potential adverse impacts from an increased height could arise if there was an increased shadow impact, privacy or view loss on adjoining / nearby land. However, bearing in mind the consistent streetscape appearance, central location of the majority of the non - conforming dwellings, the slope of the land and as the buildings step down with that slope, neither of these circumstances is likely to arise.

These facts, taken together, constitute environmental planning grounds sufficient to justify contravening the development standard.

Assessment Officer's Comments: This assessment has outlined a range of issues with the proposed development, including that the development seeks an unusually large and non-compliant MDH development, being a land use that is likely to become prohibited in the R2 zone in the near future.

Further, it is clear that the current development controls are targeted towards single storey rear dwellings located on relatively flat sites. The non-compliances are likely to be partly derived from the response to the slope of the land, but rather than provide grounds for a height variation, this confirms the reasons why the slope is not appropriate for MDH development. In addition, given the fall of the land to the south, the proposed dwellings are likely to appear prominent from neighbouring properties and neighbouring streets, far more prominent than a compliant development on a flat site.

It is not agreed that the only means for achieving compliance are to either require the removal of the upper level of a number of dwellings or drop them further into the ground. There are opportunities for reducing the intensity of the development, particularly noting that RDCP 2014 permits only 12 dwellings within each multi dwelling housing development.

In this context, there are no environmental planning grounds for a departure to the height of buildings standard.

Is the proposal in the public interest?

Pursuant to clause 4.6(4)(ii), a development will be in the public's interest if it is consistent with the objectives of the development standard and also the zone objectives in which the particular development is carried out. Council is of the view that the development is contrary to the public interest as required by Clause 4.6(4)(a)(ii) for the following reasons:

- The proposal does not achieve the objective of the standard as required by Clause 4.6(3)(a) and 4.6(4)(a)(i).

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Summary

The applicant has submitted a Clause 4.6 written request that seeks to justify contravention of the development standard Clause 4.3 and Clause 4.3A(2) Height. Pursuant to Clause 4.6(3)(a) of RLEP 2014, the written request has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. The written request has not demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard, as required by Clause 4.6(3)(b).

Pursuant to Clause 4.6(4)(a)(i) of RLEP 2014, Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3). Further, it is Council's opinion that the proposed development will be contrary to the public interest because it is inconsistent with the objectives of the development standard for height.

The concurrence of the Planning Secretary is not required. Circular PS 08-003 issued on 9 May 2008 informed Council that it may assume the Director-General's concurrence for exceptions to development standards.

Accordingly, the proposal variation is not supported.

5.5 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:

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 development applications. The proposal does not meet the requirements of this policy, for the same reasons outlined within the assessment against SEPP 55 provided earlier in this report.

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

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water catchments, waterways and urban bushland areas. Changes proposed include consolidating SEPPs and deemed SEPPs, which includes:

- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

Draft Amendment to the Ryde Local Environmental Plan 2014

The City of Ryde has prepared a draft Local Housing Strategy and a Planning Proposal to amend the *Ryde Local Environmental plan 2014* (RLEP) to remove multi dwelling housing as a permitted use in the R2 zone.

The exhibition for these documents ended on Monday 16 November 2020, and the draft is now a matter for consideration. At its meeting of 15 December 2020, Council considered a report which documented the issues raised in the submissions, recommended that some minor changes to the proposal (not relevant to the prohibition of MDH development) and recommended that the proposal be forwarded to the Minister requesting that the Plan be made. A resolution was passed at that Council meeting, and the proposal was forwarded to the Minister on 15 December 2020 and is expected to become policy in the near future.

The weight to be given to a draft instrument is considered at length in the Court of Appeal's judgement in *Terrace Tower Holdings Pty Limited v Sutherland Shire Council* (2003). The following extracts of this judgement are of relevance to the appropriate weight to be given to the draft Amendment to RLEP 2014:

At [5] Spiegelman CJ states that:

"I agree with the proposition that the greater the certainty that a draft instrument will in fact be adopted, the greater the weight that may be given to that draft."

At [7] Spiegelman CJ states that:

"Where a draft instrument seeks to preserve the character of a particular neighbourhood, that purpose will be entitled to considerable weight in deciding whether or not to reject a development under the pre-existing instrument, which would in a substantial way undermine that objective".

At [56] Mason P states that:

"Section 79C(1) does not stipulate or imply a hierarchy among its various paragraphs or among the subparagraphs of (a)".

The draft instrument has been given Gateway approval by the Minister and supported by the Council following exhibition. It is therefore provided with a high degree of

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certainty and is considered imminent. Further, the draft instrument seeks to preserve the low density character of the R2 zone. The proposed development, which seeks to provide 30 dwellings (18 more than permitted by RDCP 2014, as discussed later), and with a range of non-compliances, would clearly undermine the intent of the prohibition of multi-dwelling housing.

Finally, Section 4.15 (previously 79C) does not provide a hierarchy to which to sort planning instruments and draft planning instruments. The issues raised throughout this letter are therefore given added importance on the basis of the draft instrument, and it is the conclusion of this assessment that the imminent prohibition of the development should form a reason for refusal.

5.6 Development Control Plans

Ryde Development Control Plan 2014 (RDCP 2014)

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

- Part 3.4: Multi Dwelling Housing;
- Part 7.2: Waste Minimisation and Management;
- Part 8.2: Stormwater & Floodplain Management;
- Part 8.3: Driveways; and
- Part 9.3: Parking Controls.

A full assessment of the proposal under RDCP 2014 is illustrated in the compliance table at **Attachment 1**.

The provisions of RDCP 2014 have been considered in this assessment, and it is concluded that the proposal is inconsistent with the aims and objectives of RDCP 2014. The key RDCP 2014 (Part 3.4) discussion points are below:

Non-Preferred Location

Section 2.3 provides that specific locations have been identified by the Council as unsuitable for MDH development. These non-preferred locations are listed within Section 3.1 and Schedule 2 of Part 3.4 and includes land where the slope is greater than 1:6.

The slope of the site has been calculated as follows:

- A fall of 13m from the north-western corner (contour RL 80.50) to the south-western corner (spot level RL 67.50) over a distance of 58.6m. This results in a slope of 1:4.5.

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- A fall of 15.09m from the central portion of the front of the site (spot level RL 80.04) to the central portion of the rear of the site (spot level RL 64.95) over a distance of 58.9m. This results in a slope of 1:3.9.
- A fall of 10.64m from the north-eastern corner of the site (spot level RL 80.34) to the south-eastern corner of the site at (spot level RL 69.70) over a distance of 58.9m. This results in a slope of 1:5.5.

In each measurement undertaken above the slope exceeds 1:6, and the subject site is therefore not suitable for multi-dwelling housing. It is also noted that the cross fall of the site measures to be approximately 1:6.3, which exceeds the cross fall slope permitted by Section 3.1 of 1:14.

Number of Dwellings

Section 2.6 states that a multi dwelling housing development shall not contain more than 12 dwellings. The proposal includes thirty (30) dwellings. Accordingly, the proposal exceeds the maximum number of dwellings by eighteen (18). The 150% variation to the development control results in an outcome whereby MDH dominates the form of development in the local area and dramatically changes the character of the location from one of low density to a medium density environment.

Given the impending changes to the RLEP 2014, which would prohibit MDH in this locality, such a dramatic change is not appropriate.

Type of Dwellings

Section 2.7 states as follows:

- b. In any proposed Multi dwelling housing development the slope of the site, proposed levels, height of dwellings, site coverage, landscaping, setbacks, accessibility and overshadowing must be considered when assessing:*
 - i. Whether the development will complement and enhance the existing neighbourhood; and*
 - ii. Whether the development meets the needs of all householders including older persons and persons with disabilities.*

The development does not complement or enhance the existing neighbourhood, and has not adequately accounted for the needs of all householders, including older persons, young children and families, and persons with disabilities. In relation to (b)(ii), not only does the poor accessibility limit potential occupants, it also limits the potential for the proposed dwellings to be visited by persons with limited mobility.

Altering the Levels of the Site

Site levels are proposed to be altered significantly more than the 300mm permitted by Section 3.2. Extensive levels of excavation are proposed in order to accommodate

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the two-level basement garage, approximately up to 8m within the northern corner of the basement. Basement garages are not permitted by Section 3.2(c) and the design of the access to the basement creates additional streetscape issues in relation to Section 3.8.4 (refer to discussion of 'Parking and Driveways' below).

Aside from the basement, the levels of excavation and fill proposed across the site will result in a proliferation of stairs and retaining walls throughout the development, further exacerbating the bulk and scale. Section 3.2 states that stairs are to be minimised in MDH developments; however stairs are proposed are proposed throughout the development, with pedestrian access from Blaxland Road to dwellings towards the rear available only through the navigation of in excess of 60 steps over a distance of between approximately 50m and 80m.

Inadequate section plans are provided to gain a thorough understanding of the level of cut and fill proposed across the site. However, the plans depict in excess of 2m of both cut and fill to accommodate individual dwellings; examples are shown below.

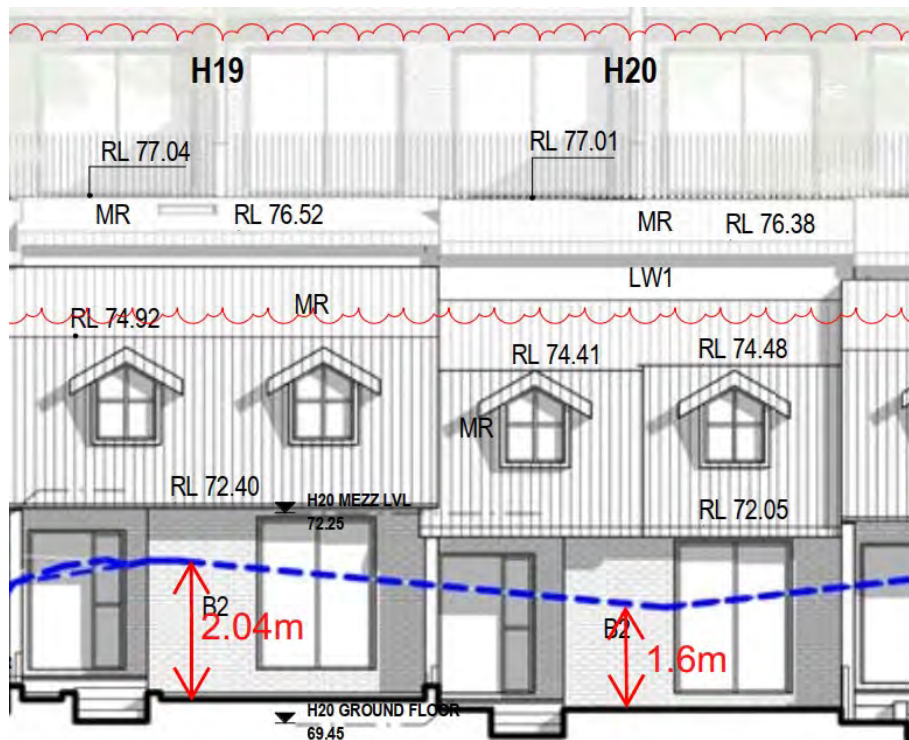


Figure 22: Extract from the Elevations Plan showing examples of proposed cut to Dwellings H19 and H20 (natural ground line is shown dashed)

ITEM 1 (continued)

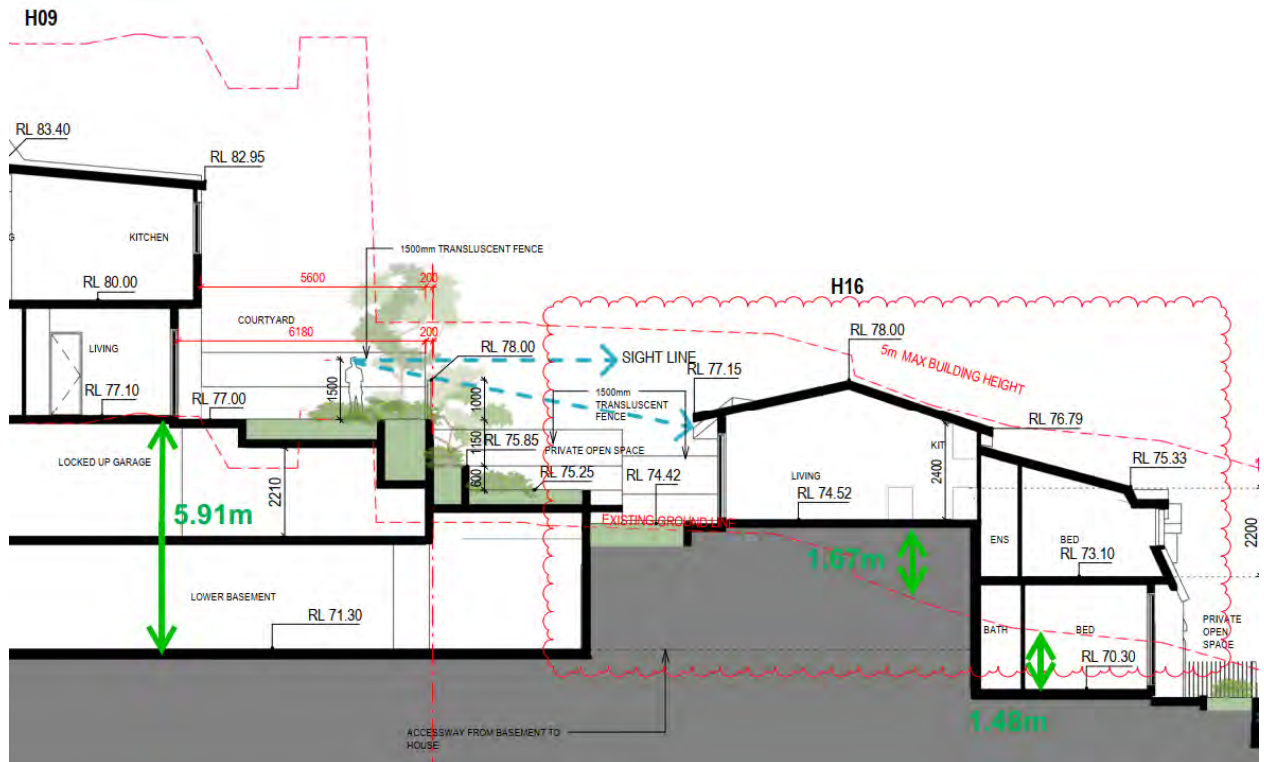


Figure 23: Extract from section plan showing examples of cut and fill

A similar level of earthworks is likely to be found throughout the development.

The majority of private open space (POS) areas throughout the development are not provided at natural ground level, as required by Section 3.2(d). Large levels of cut and fill are located within the POS areas, which results in extensive retaining wall heights, significant visual privacy impacts amongst dwellings within the development, poor solar access, and a sense of enclosure.

Storeys

Section 3.3 states that multi-dwelling housing units are to be contained within single storey building, with dwellings fronting the street able to be two (2) storeys, provided they are not attached to another two storey dwelling.

The proposal would present numerous 2-3 storey dwellings in an attached arrangement that would present poorly with the character and streetscape of the low-density surrounding area, exacerbating the dramatic change that would eventuate from this development. In addition, numerous dwellings within the central component of the site and adjacent to the north-western side boundary which are 2-3 storey are also proposed in an attached arrangement which results in visual privacy and solar access impacts.

ITEM 1 (continued)

Setbacks

Section 3.5.4(a) and (d) prescribes a minimum 4.5m setback to the side and rear boundaries. However, to promote variation and interest in design, a reduced setback of as low as 3m may be permitted for not more than 50% of any wall. The following non-compliances are noted in relation to Unit H11:

- 70.8% of the width of the ground floor wall has been setback less than 4.5m from the north-western side boundary.
- The first floor wall has been setback 3.78m from the north-western side boundary.



Figure 24: H11 First Floor Side Setback

ITEM 1 (continued)

The non-compliant side setbacks further impose the bulk and scale of the proposed development, provide poor variation in the design and exacerbate the continuous built form that presents to Blaxland Road.

Private Outdoor Space (Courtyard)

Control 3.6(a)(ii) requires a minimum of 35m² private open space area for each dwelling with 3 or more bedrooms. The proposal details this dwelling as consisting of 2 bedrooms, however it contains a study that is capable of being easily converted into a third bedroom. Therefore, this dwelling has been considered as consisting of three bedrooms and the 32.35m² of private open space area provided is insufficient. Control (e) of Section 3.6 prescribes that access other than through the dwelling must be provided to each outdoor space for maintenance purposes, with the access not to be less than 1m in width. However, access to the POS areas for maintenance purposes, other than through the dwelling, is not provided for twenty (20) dwellings being Dwellings H1-H11 and H13-H21. Control (b) also requires that POS be located generally at natural ground level, and the proposal fails to achieve compliance with this requirement.

Courtyards are not permitted within the front setback areas in accordance with control (h) Section 3.6. However, Units H01-H11 fronting Blaxland Road include courtyard areas within the front setback, which are enclosed by a 1m high open style front fencing. Based on compliance details given within the Statement of Environmental Effects, it is understood that these areas are provided so as to contribute to the proportion of dwellings that receive compliant solar access; however, these courtyards front four lanes of traffic on Blaxland Road, and are subject to high levels of road noise. In addition, these courtyards receive little visual privacy. The proposal incorporates landscape planting adjacent to the front boundary fencing, in an attempt to screen the courtyard areas of Units H01-H11 from the public domain. However, landscaping is not considered an acceptable solution to what is fundamentally poor positioning of the private open space areas.

Both the front and rear courtyards of these dwellings are therefore provided with compromised amenity.

Finally, having regard to the study provided to Dwelling H26, this dwelling is calculated to be a 3 bedroom dwelling, rather than a 2 bedroom dwelling as stated within the application documents. This dwelling provides only approximately 32.4m² of POS area; although this complies with the 30m² requirement for 2 bedroom dwellings, it does not comply with the 35m² requirement for dwellings with 3 or more bedrooms.

ITEM 1 (continued)

Landscaping

The proposal is non compliant with the provisions of Section 3.7 of RDCP. The proposal is considered unacceptable with regards to landscaping matters for the following reasons:

- The proposal has not been supported by an Arboricultural assessment or a Flora and Fauna assessment. The proposal includes the removal of a significant number of tree species consistent with a Critically Endangered Ecological Community. The proposal includes removal of sixty-eight (68) of the eighty (80) trees located on site which will result in a considerable loss of canopy cover and fragmentation of the vegetation corridor that runs along the rear of the site and has an adverse impact to the landscape character.
- 21 dwellings do not provide access to the POS other than through the dwellings.
- The Private Open Space areas are not provided generally at natural ground level in accordance with Section 3.2(d) and Section 3.6(b) of Part 3.4 of RDCP 2014.
- The proposal includes excavation within courtyards resulting in depths more than 3m below the existing ground level and fill resulting in courtyards being more than 2m above the existing ground level.
- The proposed level arrangements and retaining walls have not been fully resolved and requires further consideration to ensure workable open spaces of high amenity and functionality that are harmonious with the existing landform.
- The proposal does not meet the required solar access requirements for 90% of the proposed POS.
- The common open space is located away from primary use and circulation areas where minimal passive surveillance is available. The location and design of the communal open space does not promote the security and safety of residents.

Parking and Driveways

Whilst the proposal complies with the numerical parking requirements of Division 1 of the ARH SEPP, this assessment has concluded that the proposal does not provide sufficient affordable housing GFA to benefit from the parking concessions offered by the ARH SEPP. Assessment of car parking provision is therefore required against the requirements of RDCP 2014.

ITEM 1 (continued)

Section 3.8 indicates that the minimum number of required parking spaces is prescribed by Part 9.3 of RDCP 2014. For MDH developments, Part 9.3 requires:

- 1 space / one bedroom or two bedroom dwelling
- 2 spaces / three or more bedroom dwelling
- 1 visitor space / four dwellings.

Accounting for the inclusion of the additional studies and living rooms, the proposal would require a total of 63 car parking spaces (55 resident and 8 visitor), complying with the minimum number of car parking spaces required by Part 9.3 of RDCP 2014. 63 car parking spaces are proposed.

In relation to vehicular access, the application includes a 11.5m driveway crossing located off Blaxland Road in the eastern corner of the site, with access provided to basement levels via a circular ramp. A loading bay is also proposed forward of the building line, parallel to Blaxland Road. Section 3.8.4(a) limits driveway crossing widths to 6m.

The wide crossing, prominent circulation area, and loading bay within the front setback, each create a dominant streetscape element. The presentation of the development to Blaxland Road, characterised by a repetitive and continuous built form, along with dominant vehicular manoeuvring elements, will not sit in harmony with the existing or future character of the locality.

Overshadowing and Access to Sunlight

Section 3.6(c) and Section 3.9(b) requires that 50% of each courtyard within a development be provided with at least two hours of solar access between 9 am and 3 pm on June 21. The shadow diagrams submitted with the DA demonstrate that 90% of the dwellings will not receive the requisite solar access, with the only dwellings which would receive compliant solar access being H26, H28 and H30.

Figure 25, 26 and 27 show the submitted 9am, 12pm and 3pm midwinter diagrams. Due to the orientation of the site, the 3pm shadow diagrams indicate the time in which solar access is most available; however, even at this time, solar access is limited.

ITEM 1 (continued)



Figure 25: 9am midwinter shadow diagrams



Figure 26: 12pm midwinter shadow diagrams

ITEM 1 (continued)



Figure 27: 3pm midwinter shadow diagrams

Overshadowing is largely a consequence of the significant variations in levels across the site, with some courtyards surrounded by buildings that do not comply with height standards. Other courtyards are located well below existing ground level, and/or are located to the south of long continuous built forms.

Fencing that surrounds the courtyards will significantly exceed the standard 1.8m fence height. This will exacerbate overshadowing and contribute to a sense of enclosure within the courtyards. It is also noted that the plans provide inconsistent information in relation to fencing to Dwellings H12-H15. The submitted site plan indicates that the fencing is to be 1.5m in height (above the required retaining wall), whereas the submitted section plan indicates the fencing is to be 1.8m in height above the required retaining wall.

Visual and Acoustic Privacy

Section 3.10 provides a range of controls seeking to control visual privacy impacts. Qualitatively, the arrangement of the proposed dwellings results in numerous opportunities for direct views into the living room areas and POS areas of adjoining dwellings across the site. This is directly attributed to the non-compliant 2-3 storey attached dwellings, and heavily sloping context of the site. This is one of the primary reasons why sites with steep slopes are non-preferred locations for MDH.

In consideration of the numerical requirements of Section 3.10, the proposal also fails to meet the following requirements:

- *Direct views between living area windows of adjacent dwellings should be screened or obscured where ground and first floor windows are within an area*

ITEM 1 (continued)

described by taking a 9m radius from any part of the window of the adjacent dwelling. This is the “privacy sensitive zone”.

- *Direct views from living rooms of dwellings into the principal area of private open space of other dwellings should be screened or obscured within a privacy sensitive zone of a 12m radius.*
- *Balconies are prohibited on all dwellings and any elevated landing or similar structure associated with stairs to courtyard areas are to be no more than 1m wide.*

There are numerous examples of non-compliances associated with these controls. Notably, although the second control above relates to direct view from living rooms to POS areas, in this instance the opposite applies, with the majority of the impacts associated with views from POS areas to living areas and neighbouring POS areas. Similarly, in relation to the third control, it is not only landings or the like that are elevated, but the POS areas themselves. These privacy issues are not specifically contemplated by the controls, as these issues are only likely to occur on sites with unusually steep slopes in non-preferred locations for MDH. Nonetheless, the impacts associated with the issues identified are significant and warrant refusal of the application.

Accessibility

Accessibility requirements are prescribed by Section 3.11 of Part 3.4, as well as by Part 9.2 of RDCP 2014. The proposal provides only 3 adaptable dwellings, being 10% of the overall number of dwellings within the development. The Access Report submitted with the application states that:

- *“3 adaptable units are required by the Council’s DCP 9.2. It is also noted that DCP 3.4 requires 35% of the units to provide access within the unit and its private open space. The units designated as adaptable are Houses 10, 12 & 13. In accordance with AS 4299, a “living unit” is provided on the ground floor of Houses 1-9 in addition to the adaptable units to meet the 35% required by DCP 3.4”.*
- *“Council requires compliance with Class A level. It is my opinion the relevance of Class A must be questioned. The Class A was essentially determined for retirement villages where a high level of adaptability and occupant turnover is envisaged and it’s applicability to general housing stock is, in my opinion, inappropriate. Even SEPP Seniors Living only requires Class C. It is also noted that some of the requirements in Class A are not specifically appropriate to high rise multi-unit dwellings, though the principle can be achieved in alternative means”.*

Council’s Building Surveyor had requested a BCA Compliance Assessment Report be provided to further substantiate the above. Irrespective of BCA compliance, the proposed pedestrian access arrangements require considerable distances to be traversed across significant gradients for a number of dwellings on site. This includes

ITEM 1 (continued)

navigating a series of stairs, ramps and elevators for occupants located within the dwellings towards the rear of the site. Stairs are commonly provided from private entry gates into dwelling entries, and between different private open space areas of individual dwellings. Although Section 3.11.1 offers some discretion, with continuous pathways required “where the level of the land permits”, the pedestrian manoeuvring required for this development is overly complex, and contributes to the notion that the slope renders the site unsuitable for accommodating MDH development.

Despite lift access being available within the basement to avoid some of these steps, lift access does not remove the need for navigation through a number of doors, ramps, platform lifts and across the driveway aisle to reach the lift. Similar issues also arise with regards to distances required for residents to travel to disposal of waste within waste storage rooms located in the basement, and also when removalists are moving residents in and out of the development. Accordingly, wayfinding and movement within the site is complex and convoluted.

Accordingly, the excessive distances to be travelled, significant gradients to be bridged and complex navigation arrangements for occupants of the rear dwellings are not supported, particularly when having regard to the accessibility development control contained within Section 3.11, as well as the reasons outlined in the discussion of Section 2.7.

Ceiling Height

Section 4.2(a) prescribes that floor to ceiling heights must not be less than 2.7m. The submitted section plans indicate that a significant number of dwellings within the development include components that have floor to ceiling heights less than 2.7m, with some dwellings containing floor to ceiling heights as low as 1.56m within Unit H15.

ITEM 1 (continued)

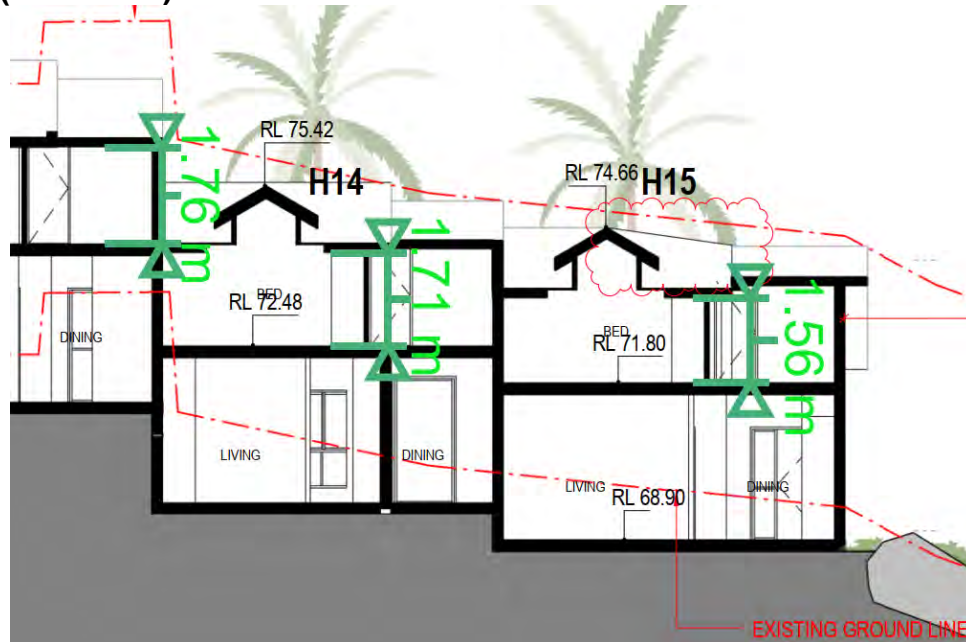


Figure 28: Examples of non-compliant ceiling heights within the development. It is noted that ceiling heights do increase beyond the measurements shown, but remain non-compliant under a low-pitched roof

The level of light, space and ventilation within the development would be compromised as a consequence of the low ceiling heights. The floor to ceiling heights highlight the difficulty in accommodating the dwellings within the permitted building heights.

Location of bin enclosures

In accordance with Section 4.8 of Part 3.4 of RDCP 2014, MDH developments with 6 or more dwellings or on steeply sloping sites are required to provide a central bin enclosure.

A central bin enclosure is located within level 1 of the basement car park. However, for many dwellings, this will necessitate an excessive travel distance to reach the waste bins, that will include negotiating numerous steps, ramps and doorways. This complex and convoluted arrangement is a consequence of the site's non-compliant slope and the overall density of the development.

Clothes Drying Facilities

The proposal does not depict clotheslines as required by Section 4.6. For this development, clothes drying facilities would be unlikely to receive suitable year round solar access.

ITEM 1 (continued)

5.7 Planning agreements or draft planning agreements

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

5.8 Section 7.11 Development Contributions Plan 2020

The Section 7.11 Development Contributions Plan 2020 commenced on 1 July 2020 and is applicable to the proposal. Although the development attracts contributions, the application has been recommended for refusal and contributions have not been calculated for this development.

5.9 Any matters prescribed by the regulations

The Regulations guide the processes, plans, public consultation, impact assessment and decisions made by local councils, the Department of Planning, Industry and Environment and others.

Regulation 98 states that any development consent issued for development involving building work will be subject to a condition requiring compliance with the *Building Code of Australia* (BCA). If the development exhibits BCA non-compliances, the prescribed condition permits the necessary design changes as part of the certification process, without requiring further approval from Council.

Given the issues relating to access and ceiling heights, and given the unknown impact of design amendments that may be made during certification, a BCA Compliance Assessment Report has been requested as part of this application. The failure to provide such a report forms part of the recommended reasons for refusal.

6. The likely impacts of the development

The proposal is inconsistent with the provisions of RLEP 2014, including the Draft Amendment, RDCP 2014, and several state planning instruments. The development proposes numerous variations to provisions within these instruments and plans. There are a number of impacts that arise from these non-compliances, which have already been discussed throughout this report. The proposal is not supported on this basis.

ITEM 1 (continued)

7. Suitability of the site for the development

The subject site is located within a non-preferred location for multi-dwelling housing, due to the slope of the site. For the reasons outlined within this report, the proposal is not suitable for the subject site.

8. The Public Interest

Based on the assessment contained in this report, approval of the development is not in the public interest, and this forms a reason for refusal.

9. Submissions

In accordance with Part 2.1 Notice of Development Application of the RDCP 2014, the proposal was advertised on Council's webpage on 10 August 2020, and the owners of surrounding properties were given notice of the application on 10 August 2020, with the notification period for submissions closing on 4 September 2020. In response, 10 submissions were received, all objecting to the development. Of the 10 submissions, two were from the same party.

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

(a) Depth of excavation and provision of basement car park.

Comment: The depth of excavation and the proposed basement are each non-compliant with the provisions of Section 3.2 of Part 3.4 of RDCP 2014. The earthworks associated with the proposal creates a number of issues and forms part of the recommended reasons for refusal.

(b) Height non-compliance, as well as issues with clause 4.6 variation request, relating to references to court judgements made in other locations, and discussions of absence of impacts, project viability, and public transport.

Comment: The various height non-compliances are not supported and the clause 4.6 variation request has not provided adequate justification or reasoning for the contravention of the development standard.

(c) Given the low number of dwellings proposed as affordable housing, related incentives should not apply, particularly to dwellings that are not marked for as affordable.

ITEM 1 (continued)

Comment: Clause 3(b) of the ARH SEPP indicates that one of the aims of the policy is *“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”*. The ARH SEPP functions so as to provide incentives to the entirety of a development, not just for dwellings that are marked as being affordable.

However, Clause 13 of ARH SEPP requires 20% of the gross floor area of the development to be used for the purposes of affordable housing, and the provision of only 12% of floor space related to affordable housing is not sufficient to attain the benefits of the incentives.

(d) The proposal will result in overlooking and visual privacy impacts to adjoining properties.

Comment: There are a number of privacy impacts associated with the development; however, these primarily relate to overlooking between dwellings within the development. Whilst the development provides a number of windows which will be visible from surrounding properties, particularly from the south, the distance between these windows and neighbouring properties is sufficient to control for any significant overlooking impacts. The proposed dwellings which adjoin side boundaries have generally been designed to minimise overlooking to adjacent properties.

(e) The site is within a non-preferred location for multi dwelling housing, given its steep slope.

Comment: The slope provides an exceptionally steep topography and is in a non-preferred location for multi dwelling housing. This forms part of the recommended reasons for refusal.

(f) The proposal will result in excessive tree removal, including concerns relating to:

- The number of large trees being removed.
- Removal of individual trees within tree clusters, affecting the health of trees within the cluster that are proposed for retention.
- The limited number of replacement species.
- Removal of Sydney Blue Gums.
- Associated climate change, wildlife and soundscape impacts.

One submission provided a letter from an arborist questioning claims made within the submitted arborist report.

ITEM 1 (continued)

Comment: The proposal was referred to Council's Consultant Landscape Architect/Arborist who agreed that there were shortcomings in the documentation surrounding tree removal, including in relation to the Sydney Blue Gums. This is included as a reason for refusal.

- (g) **There is a risk of impact associated with flooding and landslip, and erosion. One submission refers to similar impacts from a development carried out at 40 Melville Street, and another indicates that the site contains a dry creek bed and large stormwater drains.**

Comment: The application was referred to Council's Development Engineer and Drainage Engineer for comment. Whilst information remains outstanding, conditions of consent would enable effective management of risks. Whilst the circumstances which may have led to impacts at another property are not clear, the assessment aims to ensure that stormwater impacts are managed on site.

Overland flow is considered in this assessment, and the application seeks to reorient a stormwater easement associated with an overland flow path. Information remains outstanding in relation to this aspect of the proposal.

- (h) **Peer review of stormwater assessment and concerns with flooding.**

Comment: Council Engineers have considered the peer review, and noted that whilst the review raises legitimate issues, these issues would be expected to be able to be overcome through enforcement of conditions of consent.

- (i) **Request for 24/7 contact number during construction.**

Comment: Certifier contact details are required to be made available during works, and this would be required by condition. However, it is not reasonable to require the number to be monitored at all times.

- (j) **Request for excavation works to be supervised by a geotechnical engineer, and for an engineer to supervise sediment retention measures.**

Comment: Standard conditions require that an erosion and sediment control plan (ESCP) be prepared by a suitably qualified consultant. Provided measures are installed in accordance with an ESCP, it is not reasonable to require supervision by an engineer. Due to the degree of excavation and geotechnical matters, any development consent issued would require the geotechnical components to be overseen by a suitably qualified engineer. Such an engineer would ensure that the works are to be undertaken in a safe manner.

ITEM 1 (continued)

(k) Concerns regarding impact to services and utilities.

Comment: The following standard condition could be imposed on any development consent, to ensure adequate services and utility connections and upgrades as required.

- ***Service Alterations.*** All services or utilities required to be altered in order to complete the development works are to be undertaken in accordance with the requirements of the relevant service provider (eg Telstra, Jemena, Ausgrid, etc), with all costs associated with this alteration to be borne by the applicant.

Notwithstanding, the proposal is recommended for refusal.

(l) The proposal will increase traffic congestion and reduces the availability of off-street parking. Concerns also include that:

- A clearway is in operation on Blaxland Road, and is not referred to within submitted traffic report.
- Safety issues with the adjoining footpath and cycle path.
- Request for vehicular access to be from secondary street, such as Benson Street.

Comment: The proposal provides compliant car parking and the submitted Traffic Report concluded that the proposed development will not have any unacceptable implications in terms of road network capacity or off-street parking/loading/access requirements. The traffic report does acknowledge that Blaxland Road is affected by clearway restrictions. The site has no frontage with any other street and therefore it is not reasonable for Council to insist that access be from any street other than Blaxland Road. However, the access arrangement results in unacceptable streetscape impacts.

Council's Traffic Engineer has reviewed the proposal and raised no objections on the basis of the information that was provided.

(m) Incomplete documentation on Council's website, particularly site plan and stormwater plan.

Comment: All information submitted with the Development Application is provided on the Council website.

(n) Absence of rainwater harvesting measures

Comment: The proposal provides rainwater tanks and an onsite detention system.

ITEM 1 (continued)

- (o) **The proposed development does not address at all how stormwater will be treated once it leaves the site and fails to comply with the LEP in this regard. Request for a detailed plan prior to construction certificate.**

Comment: Due to the size of the site, a sediment basin is required for this development, and information in this regard has been requested by Council. The intent of Council's stormwater assessment is to ensure that stormwater discharge is controlled and treated so as to create no additional impacts compared with the existing drainage arrangement at the site. The final stormwater management system implements sediment control by way of implementation of the onsite detention storage, which provides a trash screen (to filter gross pollutants) and a sump to filter out fine sediment. The completed development, once landscaped, is not anticipated to have grade levels which will minimise potential for soil laden runoff.

- (p) **Frequency of bus services not adequate to confirm site's location within an accessible area pursuant to the ARH SEPP, with the submission suggesting that bus services may be several hours apart.**

Comment: The bus route 515 travels along Blaxland Road, and bus stops to the north-east and the south-west, along Blaxland Road, are within 400m walking distance of the subject site. In 2018 Land and Environment Court proceedings, Justice Sheahan established that the site is within an accessible area (*Bella Ikea Ryde Pty Ltd v City of Ryde Council (No 2)* (2018)). This judgement was made despite there being instances of longer than one hour between the arrival of services to these stops. However, time between the arrival of services was only slightly longer than one hour, and it is not clear on what basis the submission established a duration of several hours between services.

- (q) **The SEE provides a dwelling mix of 6 x 2-bed, 23 x 2-bed, and 1x4 bed dwellings, whereas remaining documents cite 9 x 2-bed, 20 x 2-bed, and 1x4 bed dwellings.**

Comment: Based on the number of bedrooms marked on the plans, the dwelling mix provided within the Statement of Environmental Effects is incorrect, and the latter dwelling mix correctly describes the number of bedrooms marked on the plan. However, for the purposes of this assessment, areas capable of relatively simple conversion into bedrooms have also been calculated as bedrooms, and this provides a dwelling mix of 5 x 2-bed, 17 x 3-bed and 8 x 4-bed dwellings. The assessment of the application has been based on this dwelling mix.

- (r) **The proposal provides more than 12 dwellings, exceeding that permitted by RDCP 2014.**

Comment: The proposed 30 dwellings on site would represent a significant non-compliance with Section 2.6 of Part 3.4 of RDCP 2014, and this contributes to the recommended reasons for refusal.

ITEM 1 (continued)

(s) The scale, density, and streetscape design of the development is not in keeping with the character of the locality.

Comment: The planning assessment concurs with this issue. The scale and design of the proposed development would be substantial and inconsistent with development in the surrounding area. It is acknowledged that multi-dwelling housing is permissible within the R2 zone, but that an amendment to RLEP 2014, prohibiting multi-dwelling housing, has been exhibited and will likely become policy in the near future.

The design of a multi-dwelling housing development would differ considerably when compared to existing development in the locality and the submitted design has not given adequate consideration for the specific design characteristics of this particular area and the adverse visual impacts that would be associated with the proposal.

(t) Queries over the financial viability of the company who has made the application (Kool Family Developments Pty Ltd) and concerns there may be no recourse for damages to neighbouring properties.

Comment: This submission concerns liability matters that are outside of the remit of development assessment. The purpose of this assessment is to consider the merits of the development, exclusive of the circumstances of the owners or applicants.

(u) Acoustic channelling created by proposal.

Comment: Although there is no specific requirement for the assessment of the acoustic impacts associated with the design of the built form, the assessment has noted that the development will create a sense of enclosure throughout the development, and this may potentially also contribute to noise impacts.

10. Referrals

Development Engineer

As part of the assessment of the subject DA, the proposal was referred to Council's Senior Development Engineer for comment. Their referral response issued on 6 November 2020, provided a list of matters requiring the applicant's attention. This list was sent to the applicant with the withdrawal request and is reproduced below:

- *"Falls towards dwellings and grated drains at the doorways of dwellings H01 to H11 on Blaxland Road and dwelling H15 are unsupported. Overland flow paths have not been provided in the event of blockage of these drains. The applicant is to demonstrate the safe conveyance of stormwater away from dwelling entrances."*

ITEM 1 (continued)

- *Falls towards the central lift stairs (Lifts 01 and 02) will result in the flooding of basement levels during large storm events which is unacceptable. Falls away from the lift shafts, redirecting overland flow, are required to be demonstrated.*
- *A single grated drain on the access ramp is insufficient to adequately capture runoff from the large ramp area. Additional grated drains are required to be provided, otherwise calculations (or modelling) is required to be provided demonstrating the capacity of the drain.*
- *The proposed barrier shown on the stormwater plan with the overland flow path off Blaxland Road impedes pedestrian access. Coordination with the Landscape Architect is required to ascertain how this measure can be incorporated.*
- *The design of the OSD system has been undertaken using DRAINS software. The input data and modelling file are required to be submitted for Council review.*
- *OSD volume calculations are required to be revised to demonstrate compliance with the PSD outlined for the detailed design method in Council's DCP, that is, the 100 year post – developed flow rate should not exceed the 5 year post developed rate.*
- *Due to the site being above 2,500sqm, a sediment basin is required to be provided to Council.*
- *Units H14 and H15 do not have a set down to the external courtyards. This is required to avoid stormwater inundation during large rainfall events.*
- *Units H12 and H13 do not have a set down to the external courtyard. It is understood these units are adaptable, however, a threshold ramp is required (35mm high) in accordance with Figure 21 of AS1428.1-2009".*

As a response to Council's letter was not received, these matters remain outstanding.

Car Parking

The assessment of the proposal found that several dwellings included additional living rooms or studies that would be capable of being converted into bedrooms. Accordingly, further comment was sought from the Senior Development Engineer with respect to the impact upon car parking. The following comments were received:

ITEM 1 (continued)

A review undertaken by CPS has revealed that the stated unit mix in the application should be considered differently as several of the dwellings have extra living areas and studies that could readily be converted for use as bedrooms. Specifically, Units 1 to 9 have a secondary living room and units 26 and 27 contain a study, therefore the following unit mix is considered to apply; 5 x 2-bedroom units, 17 x 3-bedroom units, and 8 x 4-bedroom units. Under these numbers, the development warrants 55 resident spaces and 8 visitor spaces to comply with Council's DCP. As stated above, the development provides 55 resident spaces and 8 visitor spaces generally complying with the SEPP and Council's DCP.

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

The proposal was referred to City Works and Infrastructure seeking comments from each of the Drainage, Traffic, and Waste officers. Comments from each officer are provided below.

Drainage

Comments provided on 25 August 2020 sought additional information, primarily in relation to the drainage easement and potential flooding impacts. These comments are listed below:

- *"The horizontal clearance between the proposed development and proposed stormwater easement to be shown on the plan.*
- *Eaves and gutters cannot encroach into the easement. Modification of the roof and or position of the house may be required to ensure no encroachment occurs.*
- *Any building footing/piering must be kept away from the drainage easement. However, Council may approve easily removable structures that do not involve usable floor space over Council drainage easements. If approval for such a structure is granted, the owner would need to place a "Deed of Charge"/Public positive covenant on the title of the lot that is binding on successors in title, indicating that the property owner will remove the structure at their own expense if Council deems it necessary for the purposes of accessing the easement. Any such approvals will not extinguish or limit Council's rights under the easement. Please refer City of Ryde stormwater-and-floodplain-management-technical-manual.*
- *As per the City of Ryde DCP, the footings to be extended to below invert of the pipe/solid rock for Council stormwater pipelines by 100 mm.*
- *Structural support elements adjacent to the easement/piped drainage located on the development site must be founded outside the zone of influence (or as directed by the structural engineer) to provide stability to both the structure*

ITEM 1 (continued)

and drainage system particularly during maintenance operations. Typically, where a drain is laid near to a footing the trench shall be located beyond a 45° angle from the base of the footing. Allowance needs be made for future upgrading of the pipeline to handle larger storm events. Structural plans with cross sections showing the footings proposed and the proposed location of the pipe will have to be submitted.

- No other services, including private property drainage lines, are allowed inside the proposed easement. Stormwater Management Plan shall be amended to remove the stormwater pipes currently encroaching easement space.*
- All external steps leading to natural ground to have open risers to permit the free flow of flood waters.*
- All fencing shall be constructed in a manner that does not affect the flow of flood waters so as to detrimentally change flood behaviour or increase flood levels on adjacent properties. Details of the proposed fence to be provided and included in the architectural plans.*

To this end, any fencing angled to the anticipated overland flowpath must incorporate either louvres, open type pool fencing, frangible screen, battens or floodgate system, at the base of the fence, extending from the finished surface level up to the 1% AEP (100 year ARI) flood level plus 300 mm freeboard (minimum 300 mm from the ground)".

Traffic

No traffic issues or additional information required.

Public Domain

No public domain traffic issues or additional information required.

Consultant Landscape Architect / Arborist

The application was referred to Council's Consultant Landscape Architect / Arborist, who provided comments on 15 January 2021. A range of issues were raised in these comments and these are reproduced below:

- Arboricultural Report: The Arboricultural Impact Assessment prepared by Footprint Green Pty Ltd submitted with the application is not considered sufficient for assessment purposes. The Report has been based on a previous Arborist Report prepared in 2016 relating to a separate Development Application which is not considered relevant to the proposal, is outdated and cannot be relied upon. Furthermore, the Assessment does not include the minimum content required for Arboricultural Impact Assessments as outlined in*

ITEM 1 (continued)

the Ryde Urban Forest Technical Manual. In addition, demolition works have been carried out on site which appear to have resulted in some vegetation removal which has not been considered within the Assessment.

- *Insufficient Information: The proposal includes the removal of a significant number of tree species consistent with a Critically Endangered Ecological Community within the City of Ryde being Blue Gum High Forest in the Sydney Basin Bioregion. Despite the above, no Flora and Fauna assessment has been carried out to determine impacts from an ecological perspective. In this regard, the proposal cannot be supported given the ecological impact of sites redevelopment has not been taken into consideration.*
- *Impact to Landscape Character: The site is mapped containing significant areas of urban bushland which contribute towards establishing the landscape character of the site and local area as well as providing a positive contribution to the urban forest canopy. The proposal includes removal of sixty-eight (68) of the eighty (80) trees located on site which will result in a considerable loss of canopy cover and fragmentation of the vegetation corridor that runs along the rear of the site. The intensity of built form on site is such that inadequate opportunity has been afforded to suitably replenish the urban bushland lost on site and re-establish the existing landscape character and therefore cannot be supported.*
- *Access to Private Open Space: Twenty-one (21) of the dwellings do not provide access to private open spaces for maintenance purposes other than through the dwelling therefore failing to achieve compliance with Section 3.6(e) of Part 3.4 of RDCP 2014. The proposal also fails to meet the objectives of Section 3.7 of Part 3.4 of RDCP 2014 whereby landscape designs must seek to be easily maintained.*
- *Private Open Space Levels: The Private Open Space areas are not provided generally at natural ground level in accordance with Section 3.2(d) and Section 3.6(b) of Part 3.4 of RDCP 2014. This includes private open spaces with excavation resulting in courtyards being located more than 3m below the existing ground level and fill resulting in courtyards being more than 2m above the existing ground level. The directly contravenes Section 3.2(b) of Part 3.4 of RDCP 2014 whereby the maximum level of alteration to courtyards and landscaped areas is 300mm. The alteration of levels within the private open space areas are therefore considered excessive and not supported.*

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- Private Open Space Access to Sunlight: *The shadow diagrams, sun angle views and sun access schedule present inconsistent and inaccurate information that cannot be relied upon. It would appear from the information presented that twenty-seven (27) of the thirty (30) dwellings POS do not receive sunlight to at least 50% of the courtyard for two (2) hours between 9am and 3pm on June 21 in accordance with Section 3.6(c) of Part 3.4 of RDCP 2014. This is considered insufficient to provide private open space areas of high amenity and is therefore not supported.*
- Security and Safety: *The location and design of the communal open space does not promote the security and safety of residents in accordance with Objective 6 of Section 1.3 of Part 3.4 of RDCP 2014. The common open space is located away from primary use and circulation areas where minimal passive surveillance is available. In this regard, the proposal cannot be supported given it fails to provide a design that maximises resident security and safety.*
- Resolution of Levels and Walls: *The proposal fails to properly consider and respond to the step gradients and existing topography of the site. Specifically, the proposed level arrangements and retaining walls have not been fully resolved and requires further consideration to ensure workable open spaces of high amenity and functionality which are harmonious with the existing landform.*

Several of these issues are also discussed in relation to the assessment against RDCP 2014. This comments above also provide additional reasons for refusal, relating to Section 3.7 of Part 3.4 of the RDCP, as well as the *Biodiversity Conservation Act 2016*.

Waste

Comments provided on 27 August 2020 had sought relatively minor changes to the submitted Waste Management Plan as follows:

- *“The MRV cannot service the garden organics bins, so the cleaner will be required to place these out on the kerbside for collection on a fortnightly basis”.*
- *“The Waste Management Plan advises that the Household Cleanup will occur on a different day to the waste and recycling collection, however this is not the case. Cleanup bookings availability occur on the day of the waste service only. Bulk Waste items will need to be taken to the kerbside for collection the night*

ITEM 1 (continued)

prior to the booking for servicing by an HRV truck as this truck. This truck will not be able to enter the property”.

- *“An allowance has been made for 19 x 240L garden waste bins service weekly. Firstly, garden waste is only serviced fortnightly and due to the size of the property; it is assumed that around 10 x 240L garden waste bins will be adequate. Space is shown for more, so if required, this number of bins can be increased”.*

Environmental Health Officer

The application was referred to Council’s Environmental Health Officer for comment, and the in a response provided on 16 September 2020, commentary was provided on noise, contamination and waste. Extracts associated with each issue are reproduced below.

Noise

“The proposed residential development is adjacent to a classified road. I recommend that an acoustic report be submitted to comply with the design of the noise criteria specified in Development Near Rail Corridors and Busy Roads – Interim Guideline (Department of Planning, 2008)”.

This information was not submitted with the application, and the absence of this information forms part of the recommended reasons for refusal.

Contamination

“According to the Statement of Environmental Effects on page 23 a Preliminary Site Contamination Assessment was conducted, however the report was not submitted with the development application.

Therefore I request the submission of the Preliminary Site Contamination Report to allow Council to review the findings of the report as it has been commissioned”.

According to the Statement of Environmental Effects, the Preliminary Site Investigation (PIS) recommends that further assessment be undertaken prior to the issue of a construction certificate. However, Council requires the submission of the PSI, in order to properly consider whether to support that recommendation, or whether to require the information prior to the determination of the application.

Waste

- *“The waste management plan does not state where any potential asbestos material will be disposed of during demolition. An amendment can be made to*

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the waste management plan to nominate the disposal location of any potential asbestos materials to ensure that they will be disposed of in an appropriately licenced location”.

This matter is able to be addressed by conditions requiring an updated Waste Management Plan.

Building Surveyor

The application was referred to Council's Building Surveyor. Comments provided on 11 September 2020, indicated that a BCA Compliance Assessment Report was required to address relevant provisions of the Building Code of Australia.

Transport for NSW

Section 138(2) of the *Roads Act 1993* states that works within a classified road reserve require the concurrence of RMS. As all functions of the RMS are now the responsibility of Transport for NSW, the application was referred to Transport for NSW, who provided concurrence for the road works required within Blaxland Road to accommodate the proposal, subject to conditions.

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 considered suitable for the site and is contrary to the public interest.

The planning assessment has identified an unusually high number of non-compliances with Part 3.4 of RDCP 2014, including (but is not limited to) housing types, cut and fill, setbacks, the design and layout of private open space areas, landscape space and layout, driveway design, solar access information, visual privacy, consistency with streetscape, and ceiling heights. A significant number of non-compliances are either excessive, inappropriate or insufficiently justified to warrant their support. Furthermore, when considered cumulatively, the number of non-compliances help support the notion that the proposal is an overdevelopment of the site.

In addition:

- The land is subject to draft amendments to RLEP 2014 that would prohibit the development.
- The proposed variations to the height of buildings standards are not warranted.

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- Information submitted with the application was not sufficient to satisfy the requirements of various state environmental planning policies.
- A number of well-founded objections to the proposal have been received following notification of the DA.

For these reasons, the DA is recommended for refusal.

12. Recommendation

Pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979*, that:

A.- The Ryde Local Planning Panel refuse LDA2020/0247 for the demolition of existing structures, and construction of new multi-dwelling housing development containing 30 dwellings (9 x 2 bed, 20 x 3 bed, 1 x 4 bed, including 3 adaptable dwellings) over a split basement containing 63 car parking spaces, under Division 1 of the *State Environmental Planning Policy (Affordable Rental Housing) 2009*, 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 *State Environmental Planning Policy (Affordable Rental Housing) 2009*, specifically:
 - Clause 13(1) - less than 20% of the total gross floor area of the development is to be used for the purposes of affordable housing, and Division 1 of this policy is therefore of no effect.
 - The proposal is inconsistent with the following provisions:
 - Clause 14(1)(e) – the majority of dwellings do not receive adequate midwinter solar access, and are provided with substandard amenity.
 - Clause 14(2)(b) – the majority of dwellings are provided with an insufficient size to provide adequate amenity.
 - Clause 15 – the design does not respond appropriately to the *Seniors Living Policy: Urban Design Guidelines for Infill Development*.
 - Clause 16A – the proposal is not compatible with the character of the local area.
2. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the development is inconsistent with the provisions of *State Environmental Planning Policy (Infrastructure) 2007*, specifically:
 - Clause 102 – no information has been submitted to demonstrate that appropriate measures will be taken to ensure the dwellings meet the acoustic criteria required by this clause.
3. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the development has not satisfied *State Environmental Planning Policy No.55 – Remediation of Land* as a Preliminary

ITEM 1 (continued)

Site Investigation has not been submitted to properly consider whether further contamination assessment is required.

4. 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 2014* in that:
 - The proposal is contrary to the objectives of the R2 Low Density Residential Zone in failing to provide housing that serves the housing needs of the community within a low density residential environment.
 - The proposal fails to achieve compliance with the height limits prescribed by clause 4.3 and clause 4.3A, and the clause 4.6 variation request has not provided suitable environmental planning grounds for the contravention of this standard.
 - The proposal fails to provide the site area required by clause 4.5A.
 - The proposal is inconsistent with clause 6.2 as the proposed earthworks are unsympathetic to the natural topography of the site, resulting in unacceptable impacts on dwelling amenity and the streetscape.
 - The proposal has not satisfied clause 6.4 as inadequate information has been submitted to demonstrate that the proposal will not create adverse stormwater impacts.
5. Pursuant to Clause 4.15(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979*, the development is inconsistent with the following draft planning instruments:
 - Draft Remediation of Land State Environmental Planning Policy, as a Preliminary Site Investigation has not been submitted to properly consider whether further contamination assessment is required.
 - The development would become prohibited by the Draft Amendment to the Ryde Local Environmental Plan 2014.
6. Pursuant to Clause 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the development is inconsistent with the following provisions of *Ryde Development Control Plan 2014*,
 - Part 3.4 Multi Dwelling Housing specifically:
 - Section 2.3 and Section 3.1, as the site is in a non-preferred location for multi dwelling housing because of its steep topography. The proposal is a poor response to the site's natural constraints and the character of the local area.
 - Section 2.6, as the proposal contains more than 12 dwellings and would therefore dramatically change the character of the locality.
 - Section 2.7, as the development does not complement the neighbourhood or meet the needs of all householders, including older persons and persons with disabilities.
 - Section 3.2, as site levels would be altered significantly to accommodate the development, creating a range of amenity impacts.
 - Section 3.3.1, as the proposal seeks a range of attached dwellings of

ITEM 1 (continued)

- o a height in storeys that is not compatible with the locality.
 - o Section 3.5.4, as the non-complying side setbacks contribute unnecessarily towards poor built form outcomes.
 - o Section 3.6, as private open space areas are poorly located, and provided with compromised amenity, inadequate size, and poor access.
 - o Section 3.7, as tree removal has not been supported with sufficient information, and inadequate opportunity has been afforded to suitably replenish the urban bushland which would be lost on site.
 - o Section 3.8, as the proposal provides adequate parking, and the driveway, vehicle manoeuvring areas, and service vehicle parking, each present a dominant streetscape element.
 - o Section 3.9, as buildings are not sited and designed to maximise solar access to habitable rooms and private open space areas.
 - o Section 3.10, as the proposal results in adverse overlooking impacts between dwellings, particularly from elevated private open space areas.
 - o Section 4.2 as the proposal provides inadequate ceiling heights to ensure sufficient light, space and ventilation to all rooms.
 - o Section 4.6, as well located clothes drying facilities have not been provided.
 - o Section 4.8, as waste areas are not conveniently located.
 - Part 8.2 Stormwater and Floodplain Management, as inadequate information has been submitted to demonstrate that the proposal will not create adverse stormwater impacts.
 - Part 9.2 Access for People with Disabilities, as the proposal does not provide Class A adaptable dwellings.
 - Part 9.5 Tree Preservation, as the minimum content required for Arboricultural Impact Assessments has not been provided.
7. Pursuant to Clause 4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act Regulations 2000*, a BCA Compliance Assessment Report has not been submitted to consider the impacts of potential design amendments required to achieve compliance with the *Building Code of Australia*.
8. Pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the natural impacts of the development, relating to the Critically Endangered Ecological Community located on site, have not been properly established.
9. Pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the site is unsuitable for the proposed development.
10. Having regard to the reasons noted above, pursuant to the provisions of Section 4.15(1)(d) and Section 4.15(1)(e) of the *Environmental Planning and*

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Assessment Act 1979, approval of the development application is not in the public interest.

B. That the objectors be advised of the decision.

ATTACHMENTS

- 1 LEP and DCP Compliance Check
- 2 ARH Compliance Check
- 3 Clause 4.6 Report
- 4 A3 Plans - subject to copyright provisions

Report Prepared By:

Brendon Clendenning Planning Consultant
Creative Planning Solutions

Report Approved By:

Kimberley Kavwenje
Senior Coordinator - Assessment

Sandra Bailey
Manager - Development Assessment

Dyalan Govender
Acting Director - City Planning and Environment

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ATTACHMENT 1

Attachment 1 – Compliance Table

Compliance Check - Quality Certification

**Assessment of a Multi Dwelling
Housing (attached) Development**

LDA No:	LDA2020/0247	Date Plans Rec'd: 29/07/2020
Address:	298-312 Blaxland Road, Ryde NSW 2112	
Proposal: Demolition, new multi-dwelling development containing 30 dwellings (9 x 2 bed, 20 x 3 bed, 1 x 4 bed, including 3 adaptable dwellings) over a split basement containing 63 car parking spaces under the provisions of the State Environmental Planning Policy Affordable Rental Housing.		
Constraints Identified: Urban Bushland; within 100m of a Heritage Item		

RLEP 2014	Proposed	Compliance
4.1B Minimum Lot Size		
<ul style="list-style-type: none"> 900 square metres Road frontage of the lot is equal to or greater than 20 metres. 	<p>The proposed development seeks a multi dwelling housing development on 6 lots.</p> <p>Existing Lots:</p> <p>298-312 Blaxland Road, Ryde</p> <p>Lot D in DP322336 Lot 8 in DP6367 Lot 9 in DP6367 Lot 10 in DP6367 Lot 11 in DP6367 Lot 12 in DP6367</p> <p>Total Site Area – 6,878m² Total Road Frontage – 115.67m²</p>	Yes
4.3(2) Height of buildings		
<ul style="list-style-type: none"> 9.5m – maximum building height 	<p>Maximum building height:</p> <p>Unit H01 – 10.32m (RL:85.82 – EGL Contour RL:75.50).</p> <p>Unit H02 – 8.53m (RL:84.53 – EGL Contour RL:76.00).</p> <p>Unit H03 – 9.11m (RL:86.18 – EGL</p>	No

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RLEP 2014	Proposed	Compliance																																
	<p>RL:77.07).</p> <p>Unit H04 – 9.20m (RL:86.20 – EGL interpreted RL:77.00).</p> <p>Unit H05 – 8.97m (RL:86.20 – EGL RL:77.23).</p> <p>Unit H06 – 9.16m (RL:86.41 – EGL Interpreted RL:77.25).</p> <p>Unit H07 – 7.53m (RL:84.53 – EGL contour RL: 77.00).</p> <p>Unit H08 – 9.27m (RL:86.41- EGL RL: 77.14).</p> <p>Unit H09 – 8.61m (RL:85.76 – EGL RL:77.15).</p> <p>Unit H10 – 9.04m (RL:87.04 – EGL contour RL:78.00).</p> <p>Unit H11 – 8.67 (RL:87.07 – EGL RL:78.40)</p>																																	
4.3A(2) Exceptions to height of buildings																																		
(a) Despite clause 4.3, the maximum height of a multi dwelling housing on land in Zone R2 Low Density Residential is 5 metres for any dwelling that does not have a road frontage.	<p>Units H12, H13, H14, H15, H16, H17 H18, H19, H20, H21, H22, H23, H24, H25. H26, H27, H28, H29 and H30 do not have a road frontage, therefore a maximum building height of 5m applies.</p> <table><tr><th>Unit</th><th>Ridge</th><th>EGL RL</th><th>Height</th></tr><tr><td>H12</td><td>77.37</td><td>74.05</td><td>3.32m</td></tr><tr><td>H13</td><td>77.75</td><td>72.50 (contour)</td><td>5.25m</td></tr><tr><td>H14</td><td>75.15</td><td>70.00</td><td>5.15m</td></tr><tr><td>H15</td><td>74.66</td><td>69.50 (contour)</td><td>5.16m</td></tr><tr><td>H16</td><td>76.79</td><td>72.16</td><td>4.63m</td></tr><tr><td>H17</td><td>76.67</td><td>71.91</td><td>4.76m</td></tr><tr><td>H18</td><td>77.00</td><td>72.25</td><td>4.75</td></tr></table>	Unit	Ridge	EGL RL	Height	H12	77.37	74.05	3.32m	H13	77.75	72.50 (contour)	5.25m	H14	75.15	70.00	5.15m	H15	74.66	69.50 (contour)	5.16m	H16	76.79	72.16	4.63m	H17	76.67	71.91	4.76m	H18	77.00	72.25	4.75	No
Unit	Ridge	EGL RL	Height																															
H12	77.37	74.05	3.32m																															
H13	77.75	72.50 (contour)	5.25m																															
H14	75.15	70.00	5.15m																															
H15	74.66	69.50 (contour)	5.16m																															
H16	76.79	72.16	4.63m																															
H17	76.67	71.91	4.76m																															
H18	77.00	72.25	4.75																															

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RLEP 2014		Proposed				Compliance
	H19	77.04	72.10	4.94m		
	H20	77.01	72.00	5.01m		
	H21	76.21	71.25	4.96m		
	H22	75.80	70.88	4.92m		
	H23	76.25	71.57	4.68m		
	H24	74.83	70.00 (contour)	4.83m		
	H25	74.39	69.25 (interpreted between contours)	5.14m		
	H26	74.78	69.81	4.97m		
	H27	74.13	69.42	4.71m		
	H28	71.94	67.1 (interpreted)	4.84m		
	H29	72.02	67.30	4.72m		
	H30	74.46	69.50	4.96m		
	Units H13, H14, H15, H20 and H25 fail to achieve compliance with the 5m building height development standard.					
4.4 Floor Space Ratio						
Clause 4.4A(2) states that clause 4.4 does not apply to development for multi dwelling housing on land in Zone R2 Low Density Residential.	No calculation required.				N/A	
4.5A Density controls for Zone R2 Low Density Residential						
(a) The site area for the building is not less than:	The stated dwelling mix comprises of nine (9) x two-bedroom dwellings, twenty (20) x				No	

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RLEP 2014	Proposed	Compliance
<p>i. For each 1, 2 or 3 bedroom dwelling – 300 square metres and</p> <p>ii. For each 4 or more bedroom dwelling – 365 square metres</p>	<p>three-bedroom dwellings and one (1) x four-bedroom dwelling. However, the proposal also includes a number of studies and secondary living rooms, dimensioned and located so as to allow for relatively simple conversions into additional bedrooms. Dwelling H01 to H09 provide an additional living room and dwellings H26 and H27 provide a study.</p> <p>As such, the proposal is considered to comprise the following dwelling mix:</p> <p>5 x 2 Bedroom dwellings. 17 x 3 Bedroom dwellings. 8 x 4 Bedroom dwelling.</p> <p>Required: 9,520m² (22 x 300m²) (8 x 365m²)</p> <p>A site area of 9,520m² is required.</p> <p>The subject site has a site area of 6,878m² and therefore the subject site does not comply with this requirement.</p>	
(b) each dwelling will have its own contiguous private open space	Each dwelling has its own contiguous private open space.	Yes
4.6 Exceptions to development standards		
<p>(1) The objectives of this clause are as follows:</p> <p>(a) To provide an appropriate degree of flexibility in applying certain development standards to particular development,</p> <p>(b) To achieve better outcomes for and from development by allowing flexibility in particular circumstances.</p>	<p>A clause 4.6 written request has been submitted. The submitted 4.6 fails to adequately justify the contravention of the 9.5m and 5m building height development standards.</p>	No
5.10 Heritage Conservation		
<p>(5) Heritage assessment. The consent authority may, before granting consent to any development:</p> <p>(a) on land on which a heritage item is located or</p> <p>(b) on land that is within a heritage conservation area or</p> <p>(c) on land that is within the vicinity of land referred to in paragraph (a) or (b).</p>	<p>The subject site does not contain a heritage item; is not located within a heritage conservation area, but is within the vicinity of a heritage items. Unlikely to create any impact.</p>	Yes

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RLEP 2014	Proposed	Compliance
6.2 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 features of the surrounding land.	Significant earthworks are proposed across the site whereby excavation or fill in excess of the 300mm is proposed., The most significant earthworks proposed are within the basement level car park.	No
6.3 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.	The proposal has not been supported by sufficient information to demonstrate consistency with the provisions of this clause.	No

DCP 2014	Proposed	Compliance
PART 2.0 – Site Analysis, Location Number and Type of Dwelling		
2.1 Site Analysis		
(a) Site analysis submitted (b) The site analysis should be used to: i. how future dwgs will relate to their immediate surroundings and to each other ii. produce a design that minimise the negative impact on the amenity of adjoining properties and street/neighbourhood	Site analysis prepared by CDArchitects (Revision C) and dated 17 July 2020.	Yes
2.2 Minimum allotment size		
• Frontage and site area not less than 20m and 900sqm respectively.	Total Site Area – 6,878m ² Total Road Frontage – 115.67m ²	Yes
2.3 Non-preferred locations		
(c) The site is suitable for more intense residential development being multi dwelling. The site is not a non preferred location.	In accordance with Schedule 2 – Non-Preferred locations list contained within Table 3.4.S1, the subject site is unsuitable for a multi-dwelling housing development due to the site's slope.	No
2.4 Retention of Existing Dwellings		
(a) Retention of existing dwelling as part of a MDH will not be approved. Exception being heritage significant building or contributory building.	Demolition of all existing structures is proposed as part of this development application.	Yes
2.4.1 Heritage Significant Buildings		

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DCP 2014	Proposed	Compliance
<p>(a) The site can be subdivided so that the development is on a separate lot to the item.</p> <p>In this circumstance, the multi dwelling lot must have:</p> <p>i. Width not less than 20m beyond access handle;</p> <p>ii. Minimum area of 900sqm excl access handle;</p> <p>iii. Width of access handle not less than 4m for 3 or more dwellings.</p> <p>(b) New development must complement item;</p> <p>(c) Schedule of conservation and restoration works for item lodged with DA for subdivision.</p> <p>(d) The item is not to be demolished.</p>	<p>The subject site does not contain any heritage significant buildings. The site is located opposite a Local Heritage Item being the Hermitage Reservoir and associated buildings.</p> <p>The proposal is not considered to result in any adverse impacts upon the heritage item.</p>	Yes
2.5 Density controls in R2 zone		
<p>(a) The proposal complies with Clause 4.5A RLEP 2014</p> <p>(b) The area of any access handle or the area bwn the FSBL and MHWM is not included in site area.</p>	<p>The proposal fails to achieve compliance with the density requirements within cl. 4.5A or RLEP 2014.</p>	No
2.6 Number of Dwellings		
<p>(a) No more than 12 Dwellings</p>	<p>Thirty (30) dwellings proposed. Accordingly, the proposal exceeds the maximum number of dwellings by eighteen (18) dwellings, which represents a variation of 150% to the control.</p>	No
2.7 Type of Dwellings		
<p>(a) 4 or more dwgs, not more than 75% should have same number of bedrooms. (Round down)</p>	<p>The stated dwelling mix comprises of nine (9) x two-bedroom dwellings, twenty (20) x three-bedroom dwellings and one (1) x four-bedroom dwelling. However, the proposal also includes a number of studies and secondary living rooms, dimensioned and located so as to allow for relatively simple conversions into additional bedrooms. Dwelling H01 to H09 provide an additional living room and dwellings H26 and H27 provide a study.</p> <p>As such, the proposal is considered to comprise the following dwelling mix:</p> <p>5 x 2 Bedroom dwellings. 17 x 3 Bedroom dwellings.</p>	Yes

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DCP 2014	Proposed	Compliance
<p>(b) The proposed slope, levels, building height, site coverage, landscaping, setbacks, accessibility and shadowing to be considered when assessing:</p> <p>i. whether the development complements existing neighbourhood, and</p> <p>ii. whether the development meet needs of householders including older persons with disabilities.</p>	<p>8 x 4 Bedroom dwelling.</p> <p>Not more than 75% have the same number of bedrooms.</p> <p>Height: Unit H01 fails to achieve compliance with the 9.5m building height development standard within RLEP 2014.</p> <p>Units H14, H15, H20, H25 fail to achieve compliance with the 5m building development standard within RLEP 2014.</p> <p>Side Setback Unit 11 – The north-western elevation ground floor wall of Unit 11 has a total width of 10.58m. 7.49m (70.8%) of the width of Unit 11 has been setback 4m from the northern side boundary.</p> <p>The north-western elevation first floor wall has been setback 3.78m from the north-western side boundary.</p> <p>Unit 30 – The south-eastern elevation of Unit 30 has a total width of 7.68m. 3.90m (50.7%) of the width of Unit 30 has been setback 4m from the from the south-eastern side boundary.</p> <p>Site Coverage The subject site complies with the site coverage and pervious area controls (Section 3.4).</p> <p>Solar Access The submitted shadow diagrams indicate 90% of the dwellings will not receive adequate levels of solar access.</p>	<p>No</p> <p>No</p> <p>Yes</p> <p>No</p>
PART 3.0 Site Planning		
3.1 Slope of Site		
<p>(a) Dwellings presentation to street. At least one dwelling clearly seen from street.</p>	<p>Unit H01, H02, H03, H04, H05, H06, H07, H08, H09, H10, H11 face Blaxland Road.</p>	<p>Yes</p>
<p>(b) Sites with a down slope > than 1:6 unacceptable.</p>	<p>The subject site slopes down from the street front boundary to the rear boundary.</p> <p>North-western corner – South-western corner</p>	<p>No</p>

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	<p>The subject site experiences a fall of 13m from the north-western corner (Contour RL:80.50) to the south-western corner (Spot Level RL:67.50) over a distance of 58.67m. This results in a down slope of 1:4.5.</p> <p>Centre of Site – Front to Rear The subject site experiences a fall of 15.09m from the front of the site (Spot Level RL:80.04) to the rear of the site (Spot Level RL:64.95) over a distance of 58.96m. This results in a down slope of 1:3.9.</p> <p>North-eastern corner – South-eastern corner The subject site experiences a fall of 10.64m from the north-eastern corner of the site (Spot Level RL:80.34) to the south-eastern corner of the site at (Spot Level RL: 69.70) over a distance of 58.93m. This results in a down slope of 1:5.5.</p>	
(c) Site that slope up from street > than 1:6 unacceptable.	The subject site does not slope up from the street.	N/A
(d) Cross fall > than 1:14 not acceptable.	The front of the subject site falls 16.23m to the south-west. This is based on a spot level RL:80.47 at the north western corner of the site and RL:64.24 adjacent to the south western rear boundary of the site that occurs over a distance of 103.5m. This equates to an average cross fall of 1:6.3 .	No
3.2 Altering the Levels of the Site		
(a) No imported Fill.	There is no imported fill.	Yes
(b) Levels of the site outside of the building footprint not altered by >300mm.	Levels of the site have been altered significantly greater than the 300mm control.	No
(c) Basement garages not permitted. Steps to be minimised and minimal retaining walls.	The proposed development includes a two (2) level basement garage.	No
(d) Private open space generally at natural ground level.	The private open space of each dwelling would not be at ground level.	No
3.3 Storey and Height		
3.3.1 Storeys		
(a) Street facing dwelling may be		

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two storeys provided: i. Two storey dwelling not attached to any other two storey dwelling.	The proposal includes multiple two (2) – three (3) storey split level dwellings attached. Units 1-9 are 2/3 storey and are attached. Units 10 and 11 are three (3) storey and attached. Unit 12 is single storey. Units 13, 14 and 15 are attached and are two storey. Units 16-21 are 2/3 storey split level and are all attached. Units 22-25 also include a 2/3 storey split level design and are attached. Units 26 and 27 are 2 story and attached. Unit 28 is single storey and is attached to Unit 29 which is 2 storey. Unit 30 is a split level single storey and is not attached to any other dwelling.	No
ii. Two storey dwelling is suitable within streetscape.	The large number of 2/3 storey split level dwellings attached are not considered to be suitable within the streetscape.	No
3.3.2 Height		
(a) Proposal complies with Clause 4.3 and 4.3A (2) of RLEP 2014.	Refer to Clause 4.3(2) and Clause 4.3A(2) above.	No
3.4 Site Coverage		
(a) Site coverage < 40%	Site coverage 2,006.84m ² (29.17%)	Yes
(b) Pervious area > 35%	Pervious area 2798.44m ² (40.68%).	Yes
3.5 Setbacks		
3.5.1 Front Setbacks		
(a) Development must be same as adjoining if difference between setbacks of adjoining dwellings is <2m	292-296 Blaxland Road Front Setback = 6m . 314 Blaxland Road Front Setback – 7.65m The difference between the front setbacks on the two (2) adjoining	Yes

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	<p>allotments at 292-296 Blaxland Road and 314 Blaxland Road is 1.65m and therefore less 2m. This control is therefore applicable. Refer below.</p> <p>The buildings fronting the street (Units 1-4) Units (5-9) and Units (10 & 11) have all been setback 6.2m from the street front boundary.</p> <p>Minimum Front Setbacks proposed to each street facing Unit:</p> <p>Building (Units 1-4) Front Setbacks</p> <p>Unit 1 – 6.2m. Unit 2 – 6.2m Unit 3 – 6.2m Unit 4 – 6.2m</p> <p>Building (Unit 5-9) Front Setbacks</p> <p>Unit 5 – 6.2m Unit 6 – 6.2m Unit 7 – 6.2m Unit 8 – 6.2m Unit 9 – 6.2m</p> <p>Buildings (Unit 10 & 11) Front Setbacks</p> <p>Unit 10 – 6.2m Unit 11 – 6.2m</p>	Yes
<p>ii. Average of setback between the two if the setback of adjoining dwellings is >2m</p> <p>(b) Setback of 1m less than the above standard for not more than 50% of the front elevation.</p> <p>(c) May vary this requirement if streetscape is likely to change: not less than 7.5m for 50% of frontage, not less than 6.5m for 50% of frontage.</p>	<p>The difference between the front setback of the two buildings on the adjoining allotments is less than 2m.</p> <p>The proposal has been setback 6.2m for each front building elevation.</p> <p>The streetscape is unlikely to change.</p>	<p>N/A</p> <p>Yes</p> <p>N/A</p>
3.5.4 Side and Rear Setbacks		
<p>(a) Min 4.5m unless vehicular access is included in this area, then min 6m.</p> <p>(b) Must be adequate to provide appropriate solar access.</p> <p>(c) Ensure existing substantial trees not within proposed courtyard areas.</p> <p>(d) Min 3m up to 50% permitted.</p>	<p>Side Setbacks</p> <p>Waste Room – The waste room adjacent to Unit 1 has been setback 24.440m from the south-eastern side boundary.</p> <p>Unit 11 – The north-western elevation ground floor wall of Unit 11 has a total</p>	<p>Yes</p> <p>No</p>

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	<p>width of 10.58m. 7.49m (70.8%) of the width of Unit 11 has been setback 4m from the northern-western side boundary.</p> <p>The north-western elevation first floor wall has been setback 3.78m from the north-western side boundary.</p> <p>The north-western elevation lower ground floor wall has been setback a minimum of 4.5m from the north-western side boundary.</p> <p>Unit 12 – The north-western elevation wall of Unit 12 provides a minimum side setback of 4.5m to the north-western side boundary.</p> <p>Unit 13 - The north-western elevation ground floor wall of Unit 13 provides a side setback of 5.815m to the north-western side boundary.</p> <p>The north-western elevation first floor wall of Unit 13 has been setback 7.2m from the north-western side boundary.</p> <p>Unit 14 – The north-western elevation ground floor wall of Unit 13 has been setback a minimum of 6.875m from the north-western side boundary.</p> <p>The north-western elevation first floor wall of Unit 14 has been setback a minimum of 7.2m from the north-western side boundary.</p> <p>Unit 15 – The north-western elevation ground floor wall of Unit 15 has been setback 5.925m from the north-western side boundary.</p> <p>The north-western elevation first floor wall of Unit 15 has been setback a minimum of 7.2m from the north-western side boundary.</p> <p>Unit 25 – The south-eastern elevation of Unit 25 has been setback 26.440m from the south-eastern side boundary.</p> <p>Unit 30 – The south-eastern elevation of Unit 30 has a total width of 7.68m.</p>	<p>No</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>No</p>

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DCP 2014	Proposed	Compliance
	<p>3.90m (50.7%) of the width of Unit 30 has been setback 4m from the from the south-eastern side boundary.</p> <p>Minor non-compliance.</p> <p>Rear Setbacks</p> <p>Unit 15 – The south-western elevation of Unit 15 has been setback a minimum of 6.7m from the south-western rear boundary.</p> <p>Unit 26 and Unit 27 – The ground floor south-western elevation of Unit 26 and Unit 27 have been setback a minimum of 6m from the south-western rear boundary.</p> <p>Unit 28 and Unit 29 – The ground floor south-western elevation of Unit 28 and Unit 29 have been setback a minimum of 6m from the south western rear boundary.</p> <p>Unit 30 – The south-western elevation of Unit 30 has been setback a minimum of 8.050m from the south-western rear boundary.</p> <p>Solar Access 90% of the Units will not receive appropriate levels of solar access.</p> <p>Existing Substantial Trees There are no existing substantial trees proposed within the courtyard areas.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>No</p> <p>Yes</p>
3.5.5 Internal Setbacks		
(a) Habitable windows do not overlook habitable windows of another dwelling.	Habitable room windows do not overlook habitable room windows of adjoining dwellings.	Yes
(b) Min 9m separation provided between habitable windows within development.	Refer above.	
3.6 Private Outdoor Space (courtyards)		
(a) Minimum: i. 30m ² for 2 bed. ii. 35m ² for >3 bed.	<p>The stated dwelling mix comprises of nine (9) x two-bedroom dwellings, twenty (20) x three-bedroom dwellings and one (1) x four-bedroom dwelling. However, as discussed above, the following dwelling ix is considered to apply:</p>	

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	<p>5 x 2 Bedroom dwellings. 17 x 3 Bedroom dwellings. 8 x 4 Bedroom dwelling.</p> <p>2 Bedroom Dwellings</p> <p>Dwelling H10 – 36.21m² Dwelling H14 – 44.70m² Dwelling H28 – 44.68m² Dwelling H29 – 41.87m² Dwelling H30 – 44.72m²</p> <p>3 or more Bedroom Dwellings</p> <p>Dwelling H01 – 37.25m² Dwelling H02 – 37.25m² Dwelling H03 – 37.67m² Dwelling H04 – 37.68m² Dwelling H05 – 37.68m² Dwelling H06 – 37.68m² Dwelling H07 – 37.25m² Dwelling H08 – 37.25m² Dwelling H09 – 37.68m² Dwelling H11 – 46.97m² Dwelling H12 – 83.33.m² Dwelling H13 – 35.09m² Dwelling H15 – 41.64m² Dwelling H16 – 44.58m² Dwelling H17 – 45.33m² Dwelling H18 – 44.83m² Dwelling H19 – 45.40m² Dwelling H20 – 44.83m² Dwelling H21 – 45.33m² Dwelling H22 – 40.07m² Dwelling H23 – 39.50m² Dwelling H24 – 39.03m² Dwelling H25 – 39.40m² Dwelling H26 – 32.35m² Dwelling H27 – 53.40m²</p> <p>Dwelling H26 does not meet the minimum required private open space for a 3 bedroom dwelling.</p>	<p>Yes</p> <p>No</p>
(b) Min 4m dimensions.	A minimum 4m dimension is achieved for all dwellings.	Yes
(c) At least 50% access to sunlight for 2 hours.	<p>Dwellings H26, H28 and H30 will receive at least 2 hours solar access to 50% of the POS area.</p> <p>90% (27 out of 30) units will not receive 2 hours of sunlight to 50% of the POS.</p>	No

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(d) Courtyards do not contain existing substantial trees.	The courtyard areas do not contain any existing substantial trees.	Yes
(e) Access other than through dwelling to POS and not less than 1m wide.	Access to the POS areas for maintenance purposes, other than through the dwelling, is not provided for twenty (20) dwellings being, Dwellings (H01-H11) and Dwellings (H13-H21). Dwellings 12, and 22-30 provide access to the POS other than through the dwelling.	No Yes
(f) Private outdoor space securely enclosed and visible from living area.	Front POS areas to H1-H11 are not securely enclosed.	No
(g) Must be one area, can be partially paved but not roofed.	Noted.	Yes
(h) Courtyards not in front setback.	Courtyard areas are proposed within the front setback of Units H01-H11 (all units fronting Blaxland Road).	No
(i) Min 1.2m wide landscape privacy strip between courtyard and adjoining property.	Provided.	Yes
3.7 Landscaping		
Landscape plans		
(a) A concept landscape plan submitted.	A concept Landscape Plan has been submitted (refer to plans prepared by Narelle Sonter Botanica Landscape and Horticultural Specialists, Sheet No. 1-5, Drawing No. N ^o : LP.01/G dated 05.06.2020).	Yes
(b) Landscaping completed prior to occupation. Should include watering system.	Capable of being satisfied by a condition of consent.	Yes
Protection and retention of trees		
(c) Existing trees retained and buildings setback appropriately.	Numerous trees proposed for removal.	No
(d) Existing substantial trees not located within courtyards.	There are no existing substantial trees to be located within the courtyard areas.	Yes

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(e) Tree location must not cause damage to building.	No impact on buildings.	Yes
(f) Arboricultural assessment where significant tree/s impacted.	An Arborist Report (prepared by Melanie Howden of Footprint Green Pty Ltd, dated 21 July 2020) has been submitted.	Yes
Privacy planting		
(g) Planting along the driveway and around pathways. Landscape strips included for privacy purposes must be not less than 1.2 metres wide	Satisfactory planting for privacy.	Yes
(h) Landscape strip not less than 1.2m wide between driveway and boundary. Shrubs 2 - 2.5m high. Trees 5 - 6m high.	As above.	Yes
(i) Landscape strip not less than 1m between driveway and wall of dwgs.	As above.	Yes
(j) Edge between driveway & paths edged with concrete, not timber.	Able to be required by condition.	Yes
(k) Rolled edge between driveway & garden/lawn areas.		Yes
Nature strips	Able to be required by condition.	Yes
(a) Trees within footpath to be protected.		
On site detention		
(b) OSD tanks and above ground OSD not located in front setback. Driveway preferable. In landscape area, min 300mm soil cover.	There are no trees present within the footpath.	Yes
	Below Ground OSD tank proposed between Unit H21 and Unit H22.	No
	1kl rainwater tanks are proposed within the POS of each dwelling. However, a 1kl rainwater tank is proposed within the front setback of Unit H11.	
3.8 Car Parking, Manoeuvrability and Driveway crossings		
3.8.1 Car Parking		
Number of car spaces		
(a) Number of parking spaces, refer to Part 9.3 of DCP:		
- 1 space per 1 or 2 B dwelling,	5 x 2-bedroom: 5 spaces required	

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<ul style="list-style-type: none"> - 2 spaces per 3+B dwelling, - 1 visitor space per 4 dwellings. 	<p>25 x 3-bedroom plus: 50 spaces required</p> <p>30 dwellings proposed - 1 space per 4 dwellings – 7.5 spaces (rounded up to 8)</p> <p>A total of 63 car parking spaces are required, including 8 visitor parking spaces.</p> <p>The proposed two-level basement car park provides 63 car parking spaces, including 8 visitor car parking spaces.</p>	Yes
<p>(b) At least 1 space per dwg must be lockable garage (round up).</p> <p>Hatchet shaped allotments</p> <p>(c) Additional onsite parking to be provided for hatchet-shaped lots.</p> <p>(d) Hatchet shaped lots require 1 additional space for every 4 dwellings and be accessible to all residents.</p> <p>Location</p> <p>(e) Garages not located between dwellings and street frontage.</p> <p>(f) Garages and parking spaces do not dominate streetscape.</p>	<p>Two Level Basement Car Park proposed.</p> <p>The subject site is not a hatchet shaped allotment.</p> <p>Refer above.</p> <p>Two level basement Garage proposed.</p>	<p>N/A</p> <p>N/A</p> <p>N/A</p>
<p>(g) Garage (doors) should be designed to reduce visual prominence.</p> <p>(h) Tandem parking not permitted in front of a garage.</p> <p>(i) Garages and parking areas convenient.</p> <p>(j) Garages separate dwellings.</p>	<p>The proposed two-level basement garage and associated driveway access arrangements are considered to be a dominant streetscape element.</p> <p>Two level basement garage proposed.</p> <p>Two level basement garage proposed.</p> <p>The two-level basement garage is not considered to be convenient.</p> <p>The proposed two level basement garage do not separate dwellings.</p>	<p>No</p> <p>No</p> <p>N/A</p> <p>No</p> <p>No</p>

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3.8.2 Manoeuvrability		
(a) Vehicles enter and leave in a forward direction.	Vehicles can enter and leave the site in a forward direction.	Yes
(b) Corner lots, reversing out permitted depending on traffic conditions.	The subject site is not located on a corner allotment.	N/A
(c) Corner lot, vehicle access point not less than 6m from property boundary at intersection of 2 roads.	Refer above.	
(d) Tandem arrangement permitted where no impact on manoeuvrability.	Tandem car parking arrangements are proposed within the basement garage for Units H01-H04 and Units H05-H09.	Yes
(e) Enter and leave parking spaces in a single 3 point turn.	Complies.	Yes
(f) Comply with AS 2890.1.	Complies.	Yes
3.8.3 Driveways		
(a) Driveways paved and extent minimised appropriately.	The extent of the driveway has not been minimised.	No
3.8.4 Driveway crossings		
(a) Up to 10 spaces – Minimum 4m More than 10 spaces– not more than 6m	Sixty-three (63) car parking spaces are proposed within the development. The proposal includes a combined 11.5m driveway crossing, thus exceeding the 6m control.	No
If width of driveway crossings more than 30% of frontage, two crossings not permitted.	The width of the driveway crossing accounts for 9.94% of the frontage. Two driveways crossings proposed.	Yes
3.9 Overshadowing and Access to Sunlight		
(a) Habitable room windows face courtyard or other outdoor space open to the sky, no closer than 1.5m to facing wall.	Habitable room windows have been orientated towards the courtyard areas.	Yes
(b) Sunlight to at least 50% of each courtyard, and principal ground level open space of adjacent properties must not be reduced to less than 2hrs between 9am and 3pm on June 21.	Dwellings H26, H28 and H30 will receive at least 2 hours solar access to 50% of the POS area. 90% (27 out of 30) units will not receive 2 hours of sunlight to 50% of the POS.	No
Where existing overshadowing by buildings and fences is greater than this on adjoining properties, sunlight must not be further reduced by more than 20%.		

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DCP 2014	Proposed	Compliance
(c) Shadow diagrams must indicate extent of shadowing within development and adjoining properties.	Sufficient shadow diagrams provided.	Yes
3.10 Visual and Acoustic Privacy		
(a) Min 9m separation between facing habitable room windows.	Habitable room windows do not overlook habitable room windows of adjoining dwellings.	N/A
(b) No direct views between living area windows or adjacent dwellings (otherwise screening or obscuring necessary).	There is considered to be some form of overlooking and subsequent loss of visual privacy from the ground floor and first floor of Dwellings 1-9 into the POS areas of Dwellings 16-25. This is attributed to non-compliant building heights, and the heavily sloping context of the site which is considered unsuitable for MDH.	No
(c) Direct views from living areas to private open space of other dwellings should be screened or obscured within privacy sensitive zone of 12m radius.	<p>The following direct views from POS to living areas is anticipated to occur:</p> <p>Overlooking from the courtyard area (POS) of Unit 16 into the POS and living areas of Unit 17.</p> <p>Overlooking from the courtyard area (POS) of Unit 17 into the POS and living areas of unit 18.</p> <p>Overlooking from the courtyard area (POS) of Unit 18 into the POS and living areas of Unit 19.</p> <p>Overlooking from the courtyard area (POS) of Unit 19 into the POS and living areas of Unit 18 and Unit 20.</p> <p>Overlooking from the courtyard area (POS) of Unit 20 into the POS and living areas of Unit 10 and Unit 21.</p> <p>Overlooking from the courtyard area (POS) of Unit 21 into the POS and living areas of Unit 20.</p> <p>Overlooking from the courtyard area (POS) of Unit 22 into the POS and living area of Unit 23.</p> <p>Overlooking from the courtyard area (POS) of Unit 23 into the POS and living</p>	No

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<p>(d) No balconies. Elevated landings (or similar associated with stairs into courtyard) max 1m wide</p> <p>(e) Living and sleeping areas protected from high levels of external noise.</p> <p>(f) Noise levels of air con pool pumps etc must not exceed background noise level by more than 5dB(A).</p>	<p>areas of Unit 22 and Unit 24.</p> <p>Overlooking from the courtyard area (POS) of Unit 24 into the POS and living areas of Unit 25.</p> <p>Overlooking from the courtyard area (POS) of Unit 25 into the POS and living areas of Unit 24.</p> <p>There is anticipated to be some form of overlooking from the first floor kitchen area windows to the courtyard (POS) areas of Units 1-4.</p> <p>There is also anticipated to be some form of overlooking from the first floor kitchen area windows to the courtyard areas of Units 5-9.</p> <p>Overlooking and loss of visual privacy is anticipated to occur from the POS of Unit 12 to the POS and Living room areas of Unit 13.</p> <p>There is also anticipated to be a visual privacy impact from the POS of Unit 13 into the POS and living areas of Unit 14.</p> <p>Balconies are proposed to the front and rear of the first floor to Dwellings H01, H03, H04, H05, H06, H08 and H09.</p> <p>Balconies are also proposed on the front elevations of H10 and H11 fronting Blaxland Road.</p> <p>The layout of each dwelling of the development is considered to be acceptable in terms of protecting living and sleeping areas of high levels from external noise.</p> <p>Capable of compliance via the imposition of consent conditions</p>	<p>No</p> <p>Yes</p> <p>Yes</p>
3.11 Accessibility		
3.11.1 Pedestrian Access		
(a) Safe access achieved for pedestrians.	Safe access can be achieved by pedestrians.	Yes

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(b) Continuous access path provided and separate from vehicle access.	A continuous path of travel has not been provided throughout the development. The proposal requires the negotiation of numerous stairs, ramps, platform lifts and varying grades across large distances.	No
3.11.2 Access for People with Disabilities – Developments of 6 or more dwellings		
(a) 6 or more dwelling developments have min 35% of dwellings provide access to all indoor areas and outdoor living areas for people with disabilities (street, car parking and common areas accessed in one continuous path of travel)	The proposed development includes thirty (30) dwellings. The proposed pedestrian access arrangements require considerable distance to be traversed across significant gradients for a number of dwellings on site. This includes navigating a series of stairs, ramps, platform lifts and elevators.	No
(b) Dwgs designed as per AS4299 must be able to access street, car pkg and common areas using continuous path of travel.	Refer above.	No
3.11.3 Access Audits		
(a) Access audit must be submitted for 6 or more dwellings.	The proposed development includes thirty (30) dwellings and as such an access audit is required to be submitted. An Access Audit has been submitted by the applicant by Accessible Building Solutions, dated 16.06.2020.	Yes
PART 4.0 Building Form		
4.1 Appearance		
(a) Complement streetscape.	The proposal does not complement the streetscape as demonstrated by numerous non-compliances identified throughout this assessment.	No
(b) Includes pitched roof, eaves, vertically oriented windows, verandahs, rendered and face brick.	The proposal includes a combination of pitched and skillion and flat roofs with vertically orientated windows. The proposal is set to include a combination of face brick and rendered brick with metal roofing.	No
(c) At least 1 dwg must face street.	Dwelling 1-11 are orientated towards Blaxland Road.	Yes
4.2 Ceiling Height		
(a) Floor to Ceiling min 2.7m	A review of the submitted section plans has revealed that a significant number of dwellings within the development include components that have floor to ceiling heights less than 2.7m with some dwellings having floor to ceiling heights as low as 1.6m.	No

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	For example, the first floor of Unit 15 has a measured floor to ceiling height of 1.56m.	
4.3 Roofscape and Roof Materials		
(a) Pitch 22-30 degrees where visible from a public place.	Majority of roof forms do not comply.	No
(b) Pitch increase to 35% where second storey contained in roof.	Not provided.	No
(c) Eaves of at least 300mm.	The proposed development does not include a second storey contained within a roof.	No
(d) Gables fronting street is required and hip roofs generally not permitted.	Gables do not front the street.	No
(e) Variation in roof line.		
(f) Use materials consistent with traditional materials.	All dwellings include variation to the roof line.	Yes
	Metal roofs provided.	Yes
4.4 Building materials for Walls		
(a) Exterior walls use materials consistent in form and colour of existing development.	Complies.	Yes
(b) Windows have vertical proportion of between 2:1 and 3:1.		
4.5 Fences		
4.5.1 Front fence		
(a) Front fences not higher than 1m and must be at least 70% visually permeable.	1m high open style front fencing proposed.	
(b) Front fences constructed of materials including`: i. Wooden pickets (open), ii. Masonry (sand stone or facebrick); and iii. Wrought iron or similar.	The submitted materials and finishes schedule indicates that the front fence will be constructed from a metal material.	Yes
4.5.2 Other boundary fences		
(a) Fences other than boundary fences facing street must be a min of 1.8m high.	1.8m high boundary fencing is proposed above large retaining walls which would further inhibit the level of solar access afforded to POS areas of each unit.	No
(b) Side, return and rear boundary fencing constructed of timber to lapped		

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and capped standard.		
4.6 Clotheslines and drying area		
(a) Clothes drying facility provided to each dwelling in appropriate location.	Clothes drying facilities have not been provided within the POS areas of each dwelling. In addition, given the poor levels of solar access to the POS, the ability to dry clothes externally in the winter months would be compromised.	No
(b) Laundry within each dwelling.	Laundries have been provided within each dwelling.	Yes
4.7 Lighting		
(a) Front yard lighting and front of dwelling provided.	No information provided. Standard condition able to be imposed.	No-Condition
(b) External lighting must not adversely affect adjoining properties.	Capable of compliance via the imposition of standard consent conditions to be imposed.	No-Condition
(c) Spot lights discouraged.	No spot lights are proposed.	Yes
4.8 Location of bin enclosures		
(a) A. Waste and recycling storage areas and facilities provided in accordance with Part 7.2 of Waste DCP.	Waste and recycling storage areas and facilities have been provided within a central bin enclosure within the basement car park in accordance with the requirements for multi dwelling housing developments (6 or more dwellings) within Section 2.6 of Part 7.2 of DCP2014.	Yes
(b) Up to 5 dwellings, not steeply sloping and wide road frontage:		
i. Each dwelling provided with storage area.	Proposal includes thirty (30) dwellings.	N/A
ii. Storage area not visible from public spaces, habitable rooms or common areas within development or other properties.	Refer above.	N/A
(c) 6 or more dwellings, or steeply sloping or have narrow frontage:		
i. Central bin enclosure provided.		
	The proposal includes thirty (30) dwellings on a sloping site. The proposal includes a central bin enclosure within the Waste Room located within Level 1	No Location not supported.

ITEM 1 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
ii. Enclosure is behind building line and suitably screened.	<p>of the basement car park. However, for a number of dwellings, green-waste will need to be transported an excessive distance to reach the green-waste bins which includes traversing numerous steps, ramps and doorways along the way.</p> <p>Bin enclosure will not be visible from the public domain, given its location within the basement car park.</p>	Yes
PART 5.0 – Engineering		
5.1 Drainage		
<p>Stormwater Runoff</p> <p>(a) Refer to Part 8.2 Stormwater & Floodplains Management DCP 2014.</p> <p>Property Drainage</p> <p>(b) Runoff from roofs and hard surfaces must not cause nuisance or damage to other private properties.</p> <p>(c) Runoff from roofs, driveways and hard surfaces collected and drained via gravity to on-site stormwater detention system before discharge to street gutter or council pipe or watercourse.</p> <p>(d) Inter-allotment easement acquired where runoff cannot be directed to street or a suitable pipeline.</p> <p>(e) Pump out systems not permitted.</p> <p>Minimising Flowrates</p> <p>(f) Surface on-site detention basis not permitted.</p> <p>(g) Pervious area must not be less than 35%.</p> <p>(h) On-site detention system must be provided.</p> <p>(i) Use of porous paving for patios and pathways encouraged.</p> <p>(j) Porous paving considered to be 25% impervious. Use for driveways not permitted.</p> <p>Stormwater Conservation</p> <p>(k) Rainwater tanks encouraged.</p> <p>(l) Details of tanks in Part 8.2 of</p>	<p>Various issues remain outstanding.</p>	No

ITEM 1 (continued)

ATTACHMENT 1

DCP 2014	Proposed	Compliance
<p>Stormwater Management DCP.</p> <p>Overland Flow</p> <p>(m) Consideration given to overland flow.</p> <p>(n) If water entering property is sizeable, demonstrate proposed development complies with minimum design standards.</p> <p>(o) If overland flow is small, hydraulic study generally unnecessary.</p> <p>(p) Overland flow must not:</p> <ul style="list-style-type: none"> ii. Be redirected in a manner which increases the quantity or concentration of flows through adjoining properties; iii. Enter buildings, lockup garages or sheds; iv. Enter the piped drainage system unless that system has been designed to accept those flows; v. Enter the on-site detention system. <p>(q) Overland flow must:</p> <ul style="list-style-type: none"> i. Be conveyed through the site in a safe manner, ii. Be conveyed in a manner which will not result in scour. <p>(r) Details of the method of dealing with stormwater are to be submitted with the Development Application to Council's satisfaction.</p>		
Part 6.0 Public Facilities		
6.1 Local Open Space Facilities		
<p>(a) Increased demand for local open space facilities is to be satisfied through the acquisition and embellishment of certain land for open space purposes identified in Council's Open Space and Recreation Facilities Plan. Contributions required.</p>	<p>Section 7.11 contribution would be applicable; however, application is to be refused.</p>	<p>N/A</p>
6.2 Local Road Facilities		
<p>(a) The construction of kerb and gutter, paved road shoulder, foot paving and landscaping where such facilities do not exist across the entire frontage of the land adjacent to the proposed development will be requested to be undertaken as part of the development. This work is to be carried out in accordance with the requirements of Council.</p>	<p>Public domain works would be applicable; however, application is to be refused.</p>	<p>N/A</p>

ITEM 1 (continued)

ATTACHMENT 2

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 a multi-dwelling housing development, which is a form of development to which this division applies.	Yes
(a) the development concerned is permitted with consent under another environmental planning instrument, and	Multi-dwelling housing is permitted with consent in the R2 Low Density Residential Zone under the Ryde Local Environmental Plan 2014 (RLEP2014).	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.	A review of Council's RLEP2014 mapping does not identify a heritage item on the site, nor is there an interim heritage order or state heritage item on the land.	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.	<p>Note: the subject site was confirmed as being within an accessible area based on the judgement made in LEC case <i>Bella Ikea v City Ryde</i> 2018. Accordingly, the site is located within an 'accessible area' as defined by the ARHSEPP.</p> <p>As of 15th September 2020, the subject site is located within an accessible area and is located within 400m (10m) walking distance of a bus stop, used by a regular bus service every hour from Monday to Friday between 6am and 9pm and Saturdays and Sundays every hour from 8am to 6pm.</p>	Yes
(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 and therefore this clause does not apply.	N/A

ITEM 1 (continued)

ATTACHMENT 2

State Environmental Planning Policy (Affordable Rental Housing)	Proposal	Compliance
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 four (4) units (26, 27, 28 and 29) to be used for the purposes of affordable housing which constitutes (316.89m ²) or 12% of the total GFA.	No
<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: AH is the percentage of the gross floor area of the development that is used for affordable housing. $Y = AH \div 100$</p>	<p>Under clause 4.4 of RLEP 2014, the existing maximum FSR permitted is 0.5:1. The proposal includes 12% GFA to be used as affordable housing. However, a minimum 20% of the total GFA is required to be used as affordable housing.</p> <p>However, Clause 4.4A(2) of RLEP 2014 states that “<i>Clause 4.4 does not apply to development for multi-dwelling housing on land in Zone R2 Low Density Residential.</i>”</p>	N/A
<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: AH is the percentage of the gross</p>	<p>Existing maximum FSR is not greater than 2.5:1.</p> <p>As above.</p> <p>As above.</p>	<p>N/A</p> <p>N/A</p> <p>N/A</p>

ITEM 1 (continued)

ATTACHMENT 2

State Environmental Planning Policy (Affordable Rental Housing)	Proposal	Compliance
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 <i>Standard Instrument (Local Environmental Plans) Order 2006</i> .	Noted. Car parking has been excluded from the GFA calcs.	Yes
14 Standard 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:	In accordance with Clause 14(3), non-compliances with these development standards do not mean that Council must refuse the application. Rather, it simply means that the particular standard that is not complied may be used by the consent authority as a potential reason for refusal.	Yes
(b) site area if the site area on which it is proposed to carry out the development is at least 450 square metres,	Site Area: 6,878m ²	Yes
(c) landscaped area if: (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 (ii) in any other case—at least 30 per cent of the site area is to be landscaped,	The Development Application is not being lodged on behalf of a public housing authority. 2798.44m ² or 40.68% of the site is proposed to be landscaped area.	N/A Yes
(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:		

ITEM 1 (continued)

ATTACHMENT 2

State Environmental Planning Policy (Affordable Rental Housing)	Proposal	Compliance
<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>1698.3m² or 24.69% of the site is proposed to be deep soil area.</p> <p>Only deep soil areas with minimum dimensions of at least 3m have been included in the above calculation.</p> <p>1214.91m² or 71.5% of the total 1698.3m² of deep soil is located at the rear of the site.</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>The shadow diagrams submitted with the development application demonstrates that 90% of the dwellings will not receive at least 3 hours direct sunlight between 9am and 3pm on June 21.</p>	<p>No</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 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 Development Application is not being lodged on behalf of a social housing provider.</p> <p>The proposal includes: 9 x 2-bedroom dwellings 20 x 3-bedroom dwellings 1 x 4-bedroom dwelling</p> <p>However, the proposal also includes a number of studies and secondary living rooms, dimensioned and located so as to allow for relatively simple</p>	<p>N/A</p> <p>Yes</p>

ITEM 1 (continued)

ATTACHMENT 2

State Environmental Planning Policy (Affordable Rental Housing)	Proposal	Compliance
	<p>conversion into additional bedrooms. 2 dwellings have studies and 9 dwellings have secondary living rooms. Based on the inclusion of these rooms, the following is the resultant dwelling mix:</p> <p>5 x 2-bedroom dwellings 17 x 3-bedroom dwellings 8 x 4-bedroom dwellings</p> <p><u>Requirements:</u> 5 x 2-bed = 5 spaces 17 x 3-bed = 25.5 spaces 8 x 4-bed = 12 spaces</p> <p>Total Spaces Required: 42.5 – rounded to 43 Car Parking Spaces required.</p> <p><u>Proposed:</u> Sixty-three (63) car parking spaces proposed over two levels. Four (4) motorcycle spaces and thirty (30) bicycle spaces are also provided.</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>No studios proposed.</p> <p>No 1-bedroom apartments proposed.</p> <p>The stated dwelling mix comprises of nine (9) x two-bedroom dwellings, twenty (20) x three-bedroom dwellings and one (1) x four-bedroom dwelling. However, the proposal also includes a number of studies and secondary living rooms, dimensioned and located so as to allow for relatively simple conversions into additional bedrooms. Dwelling H01 to H09 provide an additional living room and dwellings H26 and H27 provide a study.</p>	<p>N/A</p> <p>N/A</p>

ITEM 1 (continued)

ATTACHMENT 2

State Environmental Planning Policy (Affordable Rental Housing)	Proposal	Compliance
<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>Dwelling H10 – 99.76m² Dwelling H14 – 76.24m² Dwelling H28 – 72.33m² Dwelling H29 – 75.76m² Dwelling H30 – 73.83m²</p> <p>Dwelling H01 – 108.73m² Dwelling H02 – 90.88m² Dwelling H03 – 110.21m² Dwelling H04 – 110.28m² Dwelling H05 – 109.17m² Dwelling H06 – 109.04m² Dwelling H07 – 92.16m² Dwelling H08 – 110.21m² Dwelling H09 – 109.86m²</p> <p>Dwelling H11 – 96.04m² (note: Dwelling H11 contains four (4) bedrooms.</p> <p>Dwelling H12 – 83.23m² Dwelling H13 – 90.92m² Dwelling H15 – 85.47m² Dwelling H16 – 83.75m² Dwelling H17 – 85.03m² Dwelling H18 – 84.92m² Dwelling H19 – 86.25m² Dwelling H20 – 85.05m² Dwelling H21 – 86.10m² Dwelling H22 – 87.51m² Dwelling H23 – 86.47m² Dwelling H24 – 87.36m² Dwelling H25 – 86.86m² Dwelling H26 – 87.00m² Dwelling H27 – 81.89m²</p> <p>Dwellings H02, H07, H12, H13, H15, H16, H17, H18, H19, H20, H21, H22, H23, H24, H25, H26 and H27 each contain three (3) bedrooms and do not provide at least 95 square metres of GFA.</p>	<p>Yes</p> <p>No</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>Noted.</p>
15 Design Requirements		
<p>(1) A consent authority must not consent to development to which this Division applies unless it has</p>	<p>The proposal would be inconsistent with the following provisions of the Urban Design Guidelines:</p>	<p>No</p>

ITEM 1 (continued)

ATTACHMENT 2

State Environmental Planning Policy (Affordable Rental Housing)	Proposal	Compliance
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.	<ul style="list-style-type: none"> Chapter 1 – Responding to Context. Chapter 2 – Site Planning and Design Chapter 3 – Impacts on Streetscape Chapter 4 – Impacts on Neighbours Internal Site Amenity. 	
(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 for the construction of a multi-dwelling housing development.	N/A
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.	Refer above.	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.	It is acknowledged that there are other MDH developments within vicinity of the site, however the proposed multi-dwelling housing development results in a medium density housing form that is incompatible and unsympathetic with the conventional detached low-density residential accommodation that characterises the local area.	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	Four (4) units have been proposed to be used as affordable housing in accordance with this Clause. Accordingly, a condition of consent requiring the units to be maintained as affordable housing by a social housing provide for 10 years would be included in the consent.	Yes

ITEM 1 (continued)

ATTACHMENT 2

State Environmental Planning Policy (Affordable Rental Housing)	Proposal	Compliance
(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.	As 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.	As above.	Yes
18 Subdivision		
Land on which development has been carried out under this Division may be subdivided with the consent of the consent authority.	No subdivision is proposed.	N/A

ITEM 1 (continued)

ATTACHMENT 3



CLAUSE 4.6 VARIATION

CLAUSE 4.3A(2) - HEIGHT OF BUILDINGS

RYDE LEP 2012



Multi Dwelling Housing Development

298 – 312 Blaxland Road, Ryde.

22 June, 2020

ITEM 1 (continued)

ATTACHMENT 3

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Figure 4 – Height Plane Diagrams



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ITEM 1 (continued)

ATTACHMENT 3

1

1. INTRODUCTION

This report has been prepared to support the assessment of a Development Application (DA) to be lodged with Ryde Council. The proposal seeks approval for a multi dwelling housing development at 298 - 312 Blaxland Road, Ryde.

The proposal includes a component of “*Affordable housing*” under *State Environmental Planning Policy (Affordable Rental Housing) 2009*. Four dwellings are to be retained as “affordable” being H26, H27, H28 and H29. They are nominated on the amended site plan (DA 001).

The Ryde LEP sets a maximum height limit on the subject land of 9.5 metres (m) as shown on the relevant LEP Height of Building ap and therefore under *Clause 4.3* of the *LEP*. *Clause 4.3A* of the LEP sets out circumstances where there are exceptions to the height of building requirements contained in *Clause 4.3*. Specifically, relevant to the current proposal is *sub clause 4.3A(2)*, which states as follows

(2) Despite clause 4.3, the maximum height of a dual occupancy (attached) and a multi dwelling housing on land in Zone R2 Low Density Residential is 5 metres for any dwelling that does not have a road frontage.

A recent survey (dated 22-05-20) has provided more accurate levels across the subject land. As a result, it would appear that there are minor height breaches (15mm – 215mm) to dwelling numbers 01, 14, 15, 20, 24, 25, 26 and 30, with all but 01 located in the middle or at the rear of the site.

In the context of the site the minor variations are insignificant, relate only to portions of various roofs and are unlikely to be perceived from the public domain. There is no habitable space in the areas of non - compliance and the variations will not result in any departure from the applicable density control, nor will they cause any amenity impacts to surrounding developments. In this context, the minor variations are is considered to be acceptable.

Accordingly, a request to vary the building height standard under *clause 4.6* of the *LEP* needs to be prepared. That is the purpose of this report.



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ITEM 1 (continued)

ATTACHMENT 3

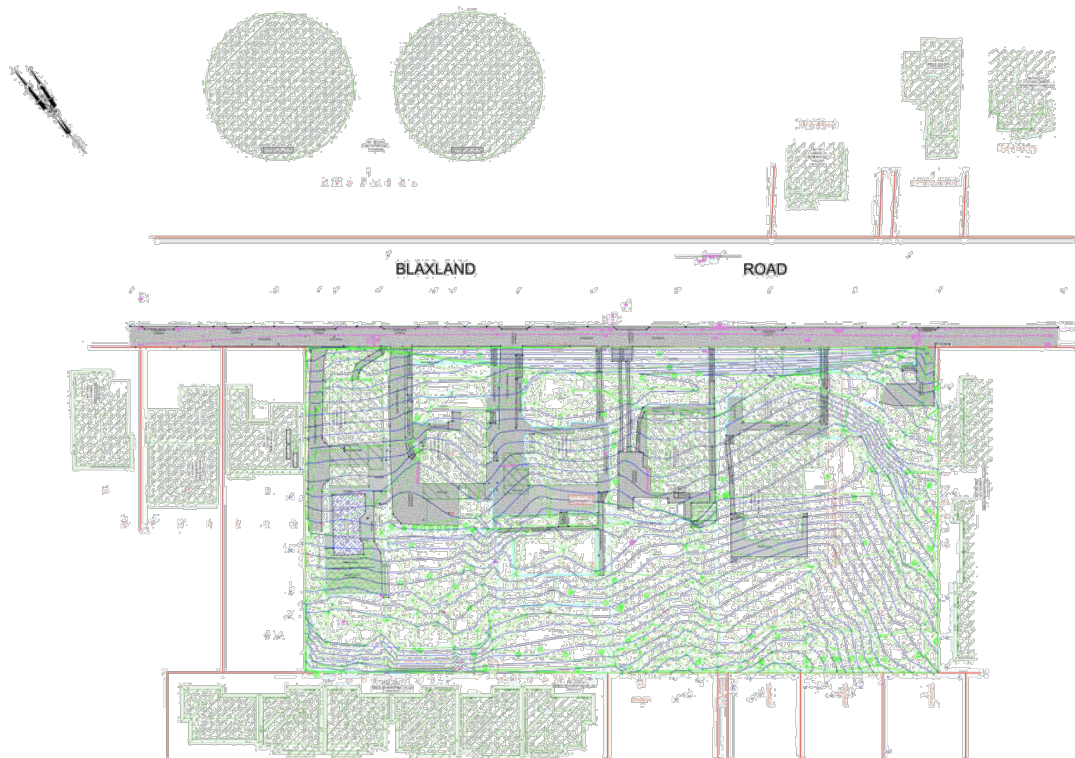
2

2. THE SITE AND LOCATION

The site that is the subject of this report comprises Lots 8 - 12, DP 6367 and is known as 298 - 312 Blaxland Road, Ryde. The site has an overall area of 6878 square metres (m²) and is located on the southern side of Blaxland Road between its intersections with Anzac Avenue and Melville Street.

The site is generally rectilinear in shape as shown in the survey in [figure 1](#) below. It has a frontage to Blaxland Road and along its southern boundary of 115.67m. The length of the eastern boundary is 59.435m and 59.5m along the eastern boundary. The site falls from the north (Blaxland Road) to the south by approximately 10m.

Figure 1 – Site Survey



298 – 312 Blaxland Road, Ryde – Multi Dwelling Housing Development. Clause 4.6 Report (June 2020)

ITEM 1 (continued)

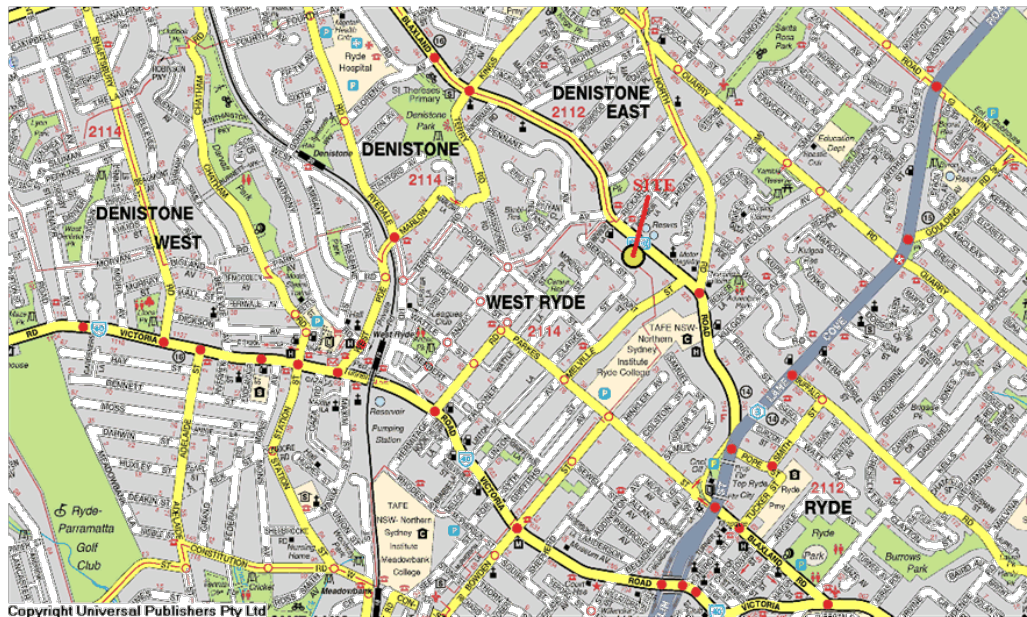
ATTACHMENT 3

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The site is conveniently located to the Top Ryde Town Centre, which is a two minute drive to the south - east. The centre provides a range of local shops in both its strip form and within the “Top Ryde City” shopping centre beneath a major residential tower development. Direct bus services are available in Blaxland Road to nearby centres including Eastwood and West Ryde and to the City. Rivercat ferry services to the City are available from the nearby Meadowbank and Putney Wharfs.

The surrounding built form is an eclectic mix of predominantly residential buildings of varied style, size and age. The land is not listed as an Item of Environmental Heritage, nor is it located within a Heritage Conservation Area. The general location of the property and an indication of the surrounding built form are shown in *figures 2* and *3* below and on the following page

Figure 2 – Location Map



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ITEM 1 (continued)

ATTACHMENT 3

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Figure 3 – Aerial Photo



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ITEM 1 (continued)

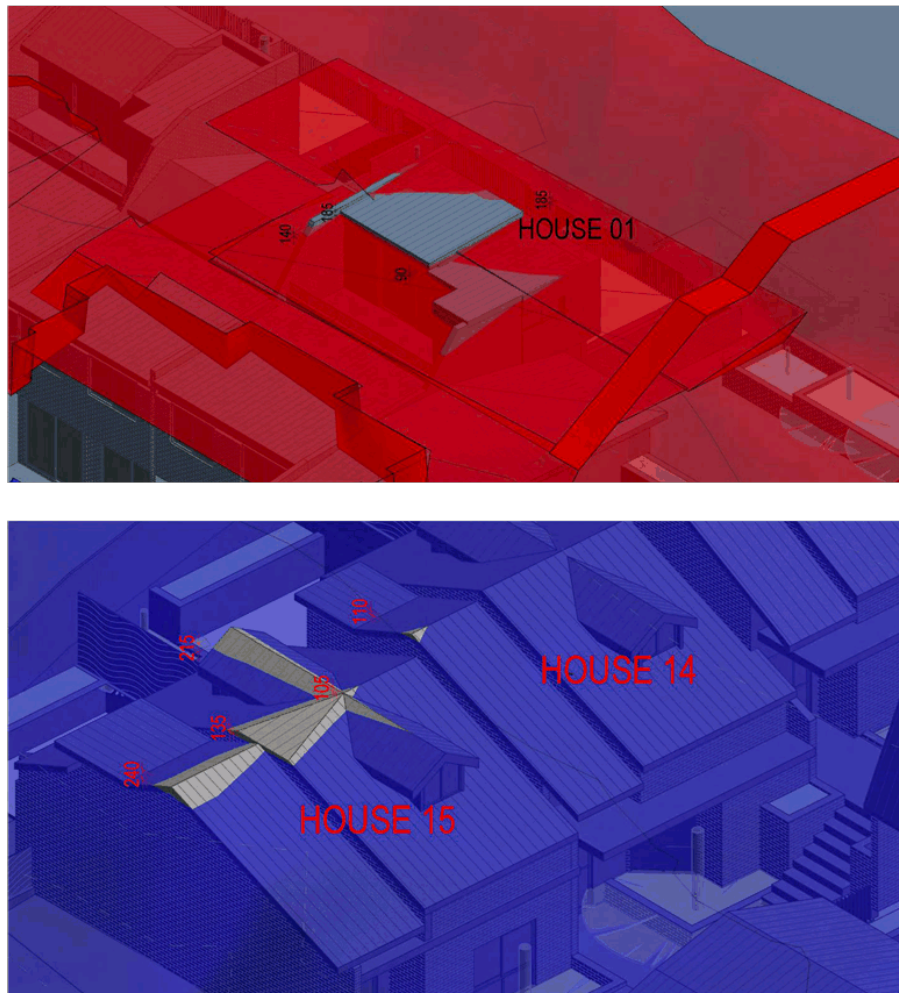
ATTACHMENT 3

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3. CLAUSE 4.6 VARIATION

Clause 4.6 of the LEP outlines the matters to be considered by Council where a proposal seeks to vary a numerical standard contained within the LEP. The subject development seeks to vary the Height of Building standard currently contained within *clause 4.3A(2)* of the *LEP* and therefore an assessment under *clause 4.6* is required. The variation in the height of the buildings are shown in *Figure 4* below.

Figure 4 – Height Plane Diagrams

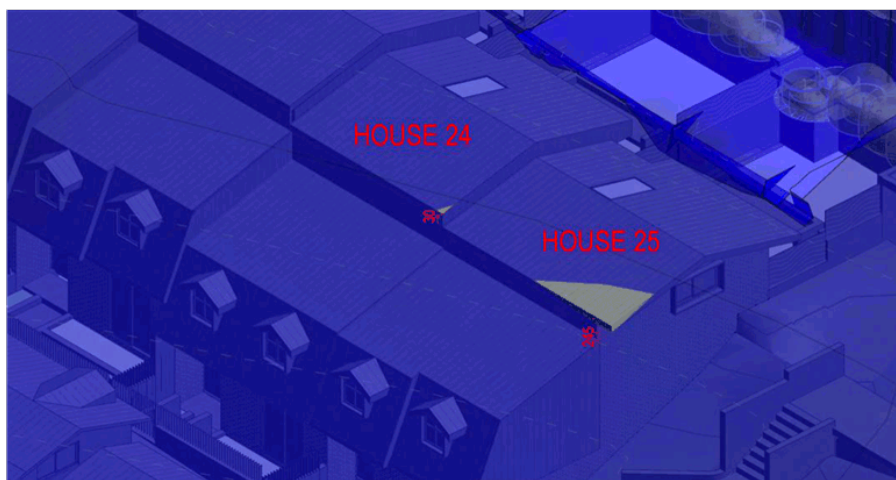


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ITEM 1 (continued)

ATTACHMENT 3

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ITEM 1 (continued)

ATTACHMENT 3

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As shown on figure 4 above there are minor height breaches (15mm – 215mm) to dwelling numbers 01, 14, 15, 20, 24, 25, 26 and 30, with all but 01 located in the middle or at the rear of the site. The overrun relates to the roof structures only and does not involve additional habitable residential space and will not result in any view loss, nor will it be appreciable from the nearby public domain or adjoining development.



298 – 312 Blaxland Road, Ryde – Multi Dwelling Housing Development. Clause 4.6 Report (June 2020)

ITEM 1 (continued)

ATTACHMENT 3

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4. THE TERMS OF CLAUSE 4.6

Development consent may still be granted to the proposed development (despite the non-compliance with the maximum height) if a variation to the relevant control is approved under *clause 4.6 of the LEP. Clause 4.6* states as follows:

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. ...

(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*



298 – 312 Blaxland Road, Ryde – Multi Dwelling Housing Development. Clause 4.6 Report (June 2020)

ITEM 1 (continued)

ATTACHMENT 3

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(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. ...

*(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). **(some bold added)** ...*

This document provides a written request from the applicant seeking to justify the contravention of the Building Height standard in accordance with [Clause 4.6](#).

[Clause 4.6](#) continues to be an appropriate and frequently applied mechanism to ensure that planning rules have appropriate levels of flexibility, when the circumstances warrant it. Some recent examples of the application of clause 4.6 by the Land and Environment Court are as follows:

- In *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386 the Land and Environment Court approved a residential flat building in Randwick with a 55 per cent exceedance of the height limit (at its highest point) and a 20 per cent exceedance of the floor space ratio control.

The Court was satisfied that the clause 4.6 request by the applicant's town planner was comprehensive and had addressed all of the prerequisites. The Court was also persuaded that the site was 'unusual in terms of its location at the low point of the locality, its proximity to larger RFBs that would not comply with the building height development standard and its flood affectation'. Those features, when taken together with other benefits of the proposal such as its design excellence and internal amenity, provided sufficient environmental planning grounds to justify approval via clause 4.6.



298 – 312 Blaxland Road, Ryde – Multi Dwelling Housing Development. Clause 4.6 Report (June 2020)

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- In *Moskovich v Waverley Council* [2016] NSWLEC 1015 the Land and Environment Court approved a residential flat building in Bondi with a floor space ratio of 1.5:1. The development standard was 0.9:1. The variation was around 65 per cent. The Court's decision set out a detailed analysis of the decision of the Court in *Four2Five v Ashfield Council*, concluding that the large exceedance of the FSR control could be supported.
- In *Baker Kavanagh Architects v Sydney City Council* [2014] NSWLEC 1003 the Court granted a development consent for a three-storey shop top housing development in Woolloomooloo. In this decision, the Court, approved a floor space ratio variation of 187 per cent.
- In the recent matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 1183 The Chief Judge (Preston CJ) considered an appeal by an applicant against the refusal by a Commissioner of the applicant's Clause 4.6 request and as a result the refusal of its appeal. The Court confirmed the principles and correct assessment practice for Clause 4.6 requests as previously set out in *In Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386.

The Court found that the Commissioner had erred in Law in making the decision, upheld the appeal and remitted the proceedings back to a Commissioner (other than the original) for determination as per the reasons laid out in the judgement.

5. ENVIRONMENTAL PLANNING GROUNDS

There are sufficient environmental planning grounds to justify contravening the building height standard.

The development in the main meets the objectives and controls of the relevant LEP and DCP. It acknowledges the site's location through the adherence to setbacks and its stepping down towards the adjoining properties to the rear. The layout facilitates a reduced density at the lower end of the site and increased setbacks to that common boundary.



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In all but one instance the location of the height variations are in the middle of the land, which together with their minor nature will ensure that the additional height is unlikely to impact on adjoining properties or be readily perceived from the public domain. There will be no shadow impact on the streetscape, while as the increased height is located in the upper reaches of the roof forms and does not derive from any habitable residential space, there will be no visual or privacy impacts.

In the case of dwelling **01**, while this building faces the street, the height variation is between 90mm – 185mm and will not be appreciable from Blaxland Road. The streetscape is consistent in terms of the heights and forms of the two storey buildings and therefore the increased height of one dwelling will not be obvious in the streetscape. In that context the variation will have no urban design or public domain consequence

A better planning outcome can also be considered in terms of the potential impact of the proposal from the increased height on the public domain and in an urban design sense. Any assessment of these issues must consider the proposal in terms of the context of the site, its built form, the need for additional housing supply in the locality and the design parameters of the relevant Canada Bay DCP. These matters are discussed within the SEE submitted with the DA, with the proposal performing well in regard thereto.

It may be suggested in certain submissions that all of the above benefits could be achieved by a smaller compliant development. However, to ensure that the proposal met the LEP height standard at all points, would require the removal of the upper level of a number of dwellings or dropping them further into the ground, which would create other issues in terms of site planning.

Such a reduction would impact on the viability of the project to a level not commensurate with the minor nature of the proposed variation. The location of the primary height variation and its minor nature will ensure that the additional height is unlikely to impact on adjoining properties or be readily perceived from the public domain.

Clause 4.3 contains the following objectives



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- (a) to ensure that street frontages of development are in proportion with and in keeping with the character of nearby development,*
- (b) to minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area,*
- (c) to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure,*
- (d) to minimise the impact of development on the amenity of surrounding properties,*
- (e) to emphasise road frontages along road corridors.*

The variation to the standard would occur on the dwellings in the middle of the site. There is no impact on the street frontage nor will the non - or affect the compatibility of the proposal to its neighbours. The proposal seeks to consolidate a number of allotments into one and by stepping down the site and providing an increased rear boundary setback minimises its impact on surrounding lands. In that context, the proposal generally satisfies these objectives,

In the circumstances of this proposal a better outcome is also achieved by varying the relevant height standard through:

- The re invigoration of an underutilised property with a new vibrant modern development that although marginally greater in height in part, respects its surroundings and reduces its impact on nearby residential properties.
- The increased height is minor and restricted to the upper portion of some roofs only, with no additional habitable space or floors above that envisaged in the relevant planning framework.
- When viewed in the round the majority of the visible portion of the development is below the height limit and will therefore not dominate the streetscape or adjoining properties.

In this context if the additional height is not approved:

- The orderly and economic use of the land (as promoted by the objects of the EP&A Act, 1979) would be suboptimal; and
- The site's capacity to provide increased residential variety and affordability within the locality would be not be fully utilised.



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Furthermore, no significant adverse impacts arise from the non-compliance. The only potential adverse impacts from an increased height could arise if there was an increased shadow impact, privacy or view loss on adjoining / nearby land. However, bearing in mind the consistent streetscape appearance, central location of the majority of the non - conforming dwellings, the slope of the land and as the buildings step down with that slope, neither of these circumstances is likely to arise.

These facts, taken together, constitute environmental planning grounds sufficient to justify contravening the development standard.

6. CONSISTENCY WITH THE STANDARD & ZONE OBJECTIVES

The proposed development will be in the public interest because it is consistent with the objectives of both the LEP Height of Building standard and relevant land use zone. In the previous section of this report the objectives of the height standard were set out and comments provided as to the proposal's satisfaction of them. The relevant zone objectives within the LEP and comments thereon relative to the current proposal are as follows:

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

Comment: The current proposal has a lower density than that permissible under both the LEP and SEPP(ARH). The scale of the dwellings being predominantly one and two levels are similar to many nearby building forms.

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

Comment: This objective is not relevant to the subject proposal.

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

Comment: The proposal satisfies this objective, which seeks to provide for a range and variety of housing in a lower density setting. The subject proposal includes dwellings of 2, 3 and 4 bedroom(s) with various layouts and accessible formats.



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7. COMPLIANCE UNREASONABLE OR UNNECESSARY

Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case. There are three reasons why this is so.

Firstly, there are no adverse consequences attributable to the proposed non-compliant aspect of the development. To ensure absolute compliance with the height standard would necessitate the removal of part or all of the upper levels of a number of dwellings. The burden placed on the landowner via such a requirement would be disproportionate to any adverse consequences attributable to the proposed non-compliant development (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 [15]).

Secondly, requiring strict compliance (and refusing the DA) will *thwart* achievement of a number of the objectives of the height standard as discussed earlier in this report

Finally, requiring strict compliance (and reducing the height the proposal) will undermine achievement of the zone objectives, as discussed on the previous page of this report.

The proposed development achieves a balanced development outcome between an acceptable built form within the **R2** zone and the surrounding mixed density neighbourhood. The built form outcome will be one of quality, with care taken in the design phase to ensure that any adverse impacts to surrounding properties and the public domain are minimised. Finally, the location of the site promotes walking and public transport use.

In view of all of the above, compliance with the numerical LEP standard for the height of the building is considered to be unreasonable and unnecessary in the circumstances. If approved, the proposal (when built) will not be out of place with, nor detrimental to the amenity of its surroundings and will fit within the desired future character of the area as envisaged in the relevant planning framework.

The proposed development represents a good fit with the aims of the LEP, the objectives of the height standard and the objectives of the zone. The proposal development will continue to contribute to the improved overall supply of housing stock in the area, improving housing opportunity and choice.



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8. CONCURRENCE OF THE SECRETARY

In accordance with the recent Planning Circular (PS 18 – 003) dated 21 February, 2018 the concurrence of the Secretary (of Department of Planning and Environment) can now be assumed for the proposed height variation. This Circular is a notice under *Clause 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.

9. CONCLUSION

An assessment undertaken against the relevant planning framework indicates that the proposal is an acceptable one. It will not impact negatively on the amenity of nearby residents. The variation to the height standard contained within *clause 4.3A(2)* of the *LEP* is a matter that, in my opinion is capable of being reasonably accepted by a consent authority exercising its planning powers diligently.

David Furlong - Director

BTP, MPLA



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