

No.	Clause	Comment	Yes	No	N/A
Part 2 – New Affordable Rental Housing					
10	Development to which Division applies				
(1)	<i>This Division applies to development for the purposes of dual occupancies, multi dwelling housing or residential flat buildings if:</i> (a) <i>the development concerned is permitted with consent under another environmental planning instrument, and</i> (b) <i>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.</i>	The development is permissible with consent in the R4 zone and the site does not contain a heritage item.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2)	<i>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.</i>	The site is located within an accessible area as defined in Clause 4 of the SEPP. The site is located within 400 metres walking distance to at least 1 bus stop that is serviced by the T80 T Way service which includes at least one bus per hour 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.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13	Floor Space Ratio				
(1)	<i>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.</i>	The development proposes 100% affordable housing.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2)	<i>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:</i> (a) <i>if the existing maximum floor space ratio is 2.5:1 or less:</i> (i) <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,</i>	Required = 1.2:1 + 0.5:1 = 1.7:1 Proposed = 1.4:1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14	Standards that cannot be used to refuse consent				
(1) (b)	Site Area <i>if the site area on which it is proposed to carry out the development is at least 450 square metres</i>	4,297m ²	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(1) (c)	Landscaped Area (i) <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</i> (ii) <i>in any other case—at least 30 per</i>	<u>Required:</u> 30% x 4,297m ² = 1,503.95m ² <u>Proposed:</u> 47.5% / 2,045m ²	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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	cent of the site area is to be landscaped																											
(1) (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	1,019.8m ² (23.7%) deep soil areas proposed around the building, within the front setback and central COS area. All deep soil zones have a dimension of at least 3 metres with more than two-thirds located at the rear of the site.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>																							
(1) (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.	Living rooms of 69/78 units (88%) achieve at least 3 hours of solar access between 9:00am and 3:00pm on 21 June. Refer to table provided as Appendix A to Attachment 4.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>																							
(2) (a)	Parking (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	<table><tr><th>Bed</th><th>Qty</th><th>Rate</th><th>Req</th><th>Pr op</th></tr><tr><td>1</td><td>38</td><td>0.4</td><td>15.2</td><td rowspan="3">68</td></tr><tr><td>2</td><td>32</td><td>0.5</td><td>16</td></tr><tr><td>3</td><td>8</td><td>1.0</td><td>8</td></tr><tr><td colspan="3">Total</td><td>39.2</td><td></td></tr></table> <p>The development proposes car parking that exceeds the minimum requirement of the SEPP.</p>	Bed	Qty	Rate	Req	Pr op	1	38	0.4	15.2	68	2	32	0.5	16	3	8	1.0	8	Total			39.2		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bed	Qty	Rate	Req	Pr op																								
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2	32	0.5	16																									
3	8	1.0	8																									
Total			39.2																									
(2) (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.	All dwellings exceed the minimum required sizes. Refer to table provided as Appendix C to Attachment 4.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>																							
(3)	A consent authority may consent to development to which this Division applies whether or not the development complies	Noted. The development complies with the standards set out above.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>																							

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	with the standards set out in subclause (1) or (2).				
15	Design Requirements				
(1)	A consent authority must not consent to development to which this Division applies unless it has taken into consideration the provisions of the Seniors Living Policy: Urban Design Guidelines for Infill Development published by the Department of Infrastructure, Planning and Natural Resources in March 2004, to the extent that those provisions are consistent with this Policy.	SEPP 65 applies to the development and therefore this clause does not apply.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(2)	This clause does not apply to development to which clause 4 of State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development applies.	SEPP 65 applies to the development and therefore this clause does not apply.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
16	Continued Application of SEPP 65				
	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.	SEPP 65 applies to the development and an assessment against SEPP 65 and the ADG is provided as Attachment 4.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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	Refer to discussion following this table.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17	Must be used for affordable housing for 10 years				
(1)	A consent authority must not consent to development to which this Division applies unless conditions are imposed by the consent authority to the effect that: (a) for 10 years from the date of the issue of the occupation certificate: (i) the dwellings proposed to be used for the purposes of affordable housing will be used for the purposes of affordable housing, and (ii) all accommodation that is used for affordable housing will be managed by a registered community housing provider, and (b) a restriction will be registered, before the date of the issue of the occupation certificate, against the title of the property on which development is to be carried out, in accordance with section 88E of the Conveyancing Act 1919, that will ensure that the requirements of paragraph (a) are met.	A condition will be imposed requiring the dwellings to be used as affordable housing for a period of 10 years from the date of the issue of the occupation certificate as well as a requirement for a restriction to be registered on the title to the same effect.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2)	Subclause (1) does not apply to development on land owned by the Land and Housing Corporation or to a	The site is not owned by the Land and Housing Corporation and the application is not made by, or on	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

No.	Clause	Comment	Yes	No	N/A
	<i>development application made by, or on behalf of, a public authority.</i>	behalf of, a public authority.			
18	Subdivision				
	<i>Land on which development has been carried out under this Division may be subdivided with the consent of the consent authority.</i>	Noted. However, the application does not seek consent for subdivision.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

CHARACTER OF LOCAL AREA

The SEPP ARH 2009 does not provide guidance in how to determine if a development is compatible with the local area. In this regard case law in the Land and Environment Court has considered the merit assessment of Clause 30A. In addition the Land and Environment Court's Planning Principle 'Surrounding Development – Compatibility of proposal with surrounding development' (*Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191*) provides for guidance on how to assess compatibility of development with the character of local area. Using case law and the Land and Environment Court Planning Principle, a merit assessment of character of the local area should consider the following 3 steps:

- Step 1 – Identify the local area.
- Step 2 – Determine the character (present and future) of the local area.
- Step 3 – Determine if the development is compatible with the character of the local area.

As assessment against each step is provided below.

Part A – Identify the local area

This assessment identifies the local area as primarily the visual catchment of the site (as viewed from within the site and directly adjacent to the site on the street).

Part B – Determine the character of the local area

The zoning of the broader locality comprises R4 – High Density Residential to the south, south-east and south-west and R3 – Medium Density Residential to the east and west under Holroyd Local Environmental Plan 2013.

The height limit and Floor Space Ratio (FSR) for this particular site are greater than the permitted height and FSR adjoining.

The site adjoins existing single and two storey dwelling houses on all sides which establish the existing character of the local area. In terms of the desired future character of the local area, the LEP envisages medium and high density residential development surrounding the site with heights of between 3 to 4 storeys. To the south towards the Sherwood Road and Merrylands Road intersection, development up to 7 storeys in height is envisaged as part of the Merrylands West town centre.

Part C – Determine if development is compatible with character of the local area.

Compatibility within the urban environment is an issue that has been given detailed consideration by the Land and Environment Court. In the decision of *Project Ventures Development Pty Limited and Pittwater Council*, the Senior Commissioner of the Court was asked to consider the process of deciding whether a building is compatible with its surroundings. This led to the development of a Planning Principle that planners could refer to as a guide on this particular issue.

The planning principle states there are two important aspects of compatibility that need to be satisfied:

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

Physical impacts generally include privacy, overshadowing, visual bulk and compatibility in the streetscape.

In terms of the physical impacts of the development:

- The height, gross floor area and setbacks of the proposed building are consistent with

	<p>recently approved developments in the Local Area;</p> <ul style="list-style-type: none">• The design of the proposed building is considered to respond and contribute to its context, particularly having regard to the desired future character of the area established by the LEP and DCP controls; and• The proposal meets the requirements of the Affordable Rental Housing SEPP and LEP in terms of GFA, as well as being a permissible land use. The height of the development is considered acceptable as noted within this report. The context of the building is appropriate for its location. <p>• <i>Is the proposal's appearance in harmony with the building's around it and the character of the street?</i></p> <p>The proposed development resembles a residential flat building and is considered to be in harmony with the character of recently approved development in the vicinity of the site.</p>
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