

Date of Determination	11 May 2023
Panel Members	Steve O'Connor (Chair) Brett Newbold (Independent Expert) David Crofts (Independent Expert) Anthony Panzarino (Community Representative)
Apologies	NIL
Declarations of Interest	NIL

Meeting held remotely via teleconference on 11 May 2023.

Papers circulated electronically on 4 May 2023.

MATTER DETERMINED

LDA2022/0398

Address: 20 May Street, Eastwood

Proposal: Demolition of all existing structures, construction of a 3 level boarding house with 15 boarding rooms, 3 car spaces, 2 bike spaces & 2 motorbike spaces pursuant to State Environmental Planning Policy (Housing) 2021.

PANEL CONSIDERATIONS AND DECISION

The Panel considered the matters listed at item 6, the material listed at item 7, and the material presented at meetings and briefings listed at item 8 in Schedule 1.

DEVELOPMENT APPLICATION

The Panel determined to **refuse** the development application as described in Schedule 1, pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to **refuse** the application for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the development does not comply with the following provisions of the *State Environmental Planning Policy (Housing) 2021*:
 - *Clause 24(2)(e)* – Insufficient information submitted to determine if the north facing communal living area windows receive adequate solar access.

- *Clause 24(2)(h)(i)* – The communal open space does not comply with the minimum requirement being at least 20% of the site area.
 - *Clause 25(1)(c)* – The outdoor drying area is insufficient and overshadowed throughout the day.
 - *Clause 25(1)(g)(ii)* – The site has an area of 674.4m² and does not comply with the minimum requirement being 800m².
 - *Clause 25(1)(h)(ii)* – Room 13 and Room 14 do not comply with the minimum floor area requirement being 16m².
 - *Clause 25(2)(a)(i)* – The undersized allotment results in a design that is not compatible with the desirable elements of the local built character.
 - *Clause 25(2)(c)* – The proposed building separation distances do not comply with the Apartment Design Guide.
 - *Clause 26(1)(b)* – The Plan of Management does not include details of the registered community housing provider who will manage the boarding house.
2. Pursuant to Section 4.15(1)(a)(i) of *Environmental Planning and Assessment Act 1979*, the development does not comply with the Aims of Chapter 2 of *State Environmental Planning Policy Biodiversity and Conservation 2021*. An Arboricultural Impact Assessment has not been submitted to determine the impacts to the existing trees. The *Murraya Paniculata* included in the planting schedule is a weed species identified by NSW Department of Primary Industries.
3. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the development does not comply with the provisions of Ryde Local Environmental Plan (LLEP 2014) in that:
- The development contravenes Clause 25 (1)(g)(ii) of State Environmental Planning Policy (Housing) 2021 which establishes the minimum lot size development standard of 800m². The subject site has an area of 674.4m². The Clause 4.6 written variation request fails to demonstrate compliance with the development standard is unreasonable or unnecessary or that there are sufficient environmental planning grounds to justify contravening the development standard. The proposal does not comply with Clause 4.6(3)(a) and (b).
 - A Clause 4.6 has not been submitted for the following non compliances with State Environmental Planning Policy (Housing) 2021:
 - Clause 24(2)(h)(i) – area of communal open space
 - Clause 25(1)(h)(ii) – floor area of boarding room
 - Clause 25(2)(c) – building separation distances
4. Pursuant to Section 4.15(1)(a)(iii) of *Environmental Planning and Assessment Act 1979*, the development does not comply with the following provisions of *Ryde Development Control Plan 2014*:

Part 3.5 – Boarding Houses specifically:

- *Clause 1.3 – Objectives* in that the proposed development is not consistent with objectives (2), (4), (6) and (7)
- *Clause 1.6 – Relationship of this Part to other Plans and Policies* in that the proposed development has failed to address the provisions of *State Environmental Planning Policy*

No. 65 Residential Flat Development, which are applicable when a boarding house is associated with residential flat building design.

- *Clause 2.0 – Location and Character* in that the proposed development is not consistent with the character of the local area.
- *Clause 2.3(f) – Size and Scale* in that the lot is undersized and provides for minimal building separation between the subject site and adjoining developments. The lot is undersized and results in impacts to the adjoining properties and future occupants.
- *Clause 2.3(g) – Parking and Traffic* in that the parking separates the landscaped communal open space area and boarding house and results in poor amenity for future occupants.
- *Clause 3.2(b) - Privacy and Amenity* as the ground floor entrance is located adjacent to two (2) windows and results in adverse impacts to Room 1 and Room 5.
- *Clause 3.2(c) and (d) - Privacy and Amenity* and *Clause 3.6(e)(ii)* as an Acoustic report has not been submitted to determine the noise impacts of the proposal. The ground floor communal space is elevated and results in overlooking impacts.
- *Clause 3.3(a) – Accessibility* as an Access report has not been submitted. An accessible path has not been provided from the street to the entrance of the boarding house.
- *Clause 3.4(a) – Waste Minimisation and Management* in that:
 - The architectural plans do not show how the bin storage area will accommodate 10 x 240L bins
- *Clause 3.6 – Internal Building Design* in that:
 - The outdoor drying area is insufficient and overshadowed throughout the day. A communal food preparation facility has not been provided. A suitable storage space (bulky waste room) for unwanted household items has not been provided. The proposal does not comply with Clause 3.6(b) and Clause 3.6(e)(v).
 - Room 13 and Room 14 do not meet the minimum floor area required by SEPP (Housing) 2021. The proposal does not comply with Clause 3.6(e)(i)
 - The kitchenettes are less than 2m² and the proposal does not comply with Clause 3.6(e)(i).
 - Electric cooktops are proposed within each kitchenette and do not comply with Clause 3.6(e)(i).
 - A communal kitchen has not been provided. The proposal does not comply with Clause 3.6(e)(iii).

- There is no Manager's office provided. A proper reception area or foyer is not provided for visitors to report, deliveries or new occupants. The proposal does not comply with Clause 3.6(e)(vi).
- *Clause 4.2(a) to(b) – Management Controls* in that:
 - Details of the registered community housing provider who will manage the boarding house have not been provided within the Plan of Management

Part 9.3 – Parking Controls specifically:

- *Clause 1.1 – Objectives of this part* in that:
 - The proposed vehicle access to the development is via a 3.05 metre wide single lane driveway with a length of over 30 metres long and lacks any waiting / overtaking bays. Vehicle manoeuvring to and from the end parking space is inadequate. The proposal does not comply with Objective (1) of Section 1.1.
 - *Clause 3.2(a) – Design of parking areas* in that:
 - The development does not comply with AS 2890.1 Section 2.4.5 in regards to the minimum motorcycle space width of 1.2m. The proposed tandem motorcycle space configuration would be impractical given the forward most space could not be exited when the alternate space is occupied. The proposal does not comply with Control 3.2(a).
5. Insufficient information has been provided in relation to the documentation provided. The following information has not been submitted:
- Arboricultural Impact Assessment
 - Acoustic Report
 - Access Report
 - A Hazardous Materials Survey
6. Pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the likely impacts are deemed to be unacceptable.
7. Pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the proposal is not suitable for the site.
8. Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the development is contrary to the public interest.



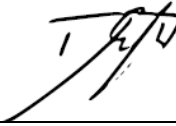

The Panel adopts the recommendation and reasons for refusal outlined in the Assessment Officer's report.

CONDITIONS

Not applicable

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered the written submission made during public exhibition. The panel considers that concerns raised by the community have been adequately addressed in the assessment report.

PANEL MEMBERS	
Steve O'Connor (Chair)	
Brett Newbold	
David Crofts	
Anthony Panzarino	

SCHEDULE 1		
1	DA No.	LDA2022/0398
2	Proposal	Demolition of all existing structures, construction of a 3 level boarding house with 15 boarding rooms, 3 car spaces, 2 bike spaces & 2 motorbike spaces pursuant to State Environmental Planning Policy (Housing) 2021.
3	Street Address	20 May Street Eastwood
4	Applicant / Owner	Just Planning – James Kim / Zhou S Mei & Yu S Mei
5	Reason for referral to RLPP	Departure from development standards – contravention of the floor space ratio development standard by more than 10% - Schedule 1, Part 3 of Local Planning Panels Direction
6	Relevant mandatory considerations	<ul style="list-style-type: none"> Section 1.3 of the EP & A Act: 1.3 Objects of Act (cf previous s 5) Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Housing) 2021 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development State Environmental Planning Policy Resilience and Hazards SEPP 2021 State Environmental Planning Policy BASIX 2004 State Environmental Planning Policy – Biodiversity and Conservation SEPP 2021 Ryde Local Environmental Plan 2014 Draft environmental planning instruments: Nil Ryde Development Control Plans 2014 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2001</i>: <ul style="list-style-type: none"> <i>Australian Standard for Demolition - Clause 61(1)</i> <i>Building Code of Australia Upgrade – Clause 64</i> The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	Material considered by the Panel	<ul style="list-style-type: none"> Council assessment report Written submissions during public exhibition: 1
8	Meetings, briefings and site inspections by the Panel	<ul style="list-style-type: none"> Site inspection: At the discretion of Panel members due to COVID-19 restrictions Briefing: 10 November 2022 Attendees: <ul style="list-style-type: none"> <u>Panel members</u>: Steve O'Connor (Chair), Brett Newbold, David Crofts, Anthony Panzarino

		<ul style="list-style-type: none"> ○ <u>Council assessment staff</u>: Sandra Bailey, Carine Elias, Sohail Faridy, Daniel Pearce, Myra Malek • Papers were circulated electronically on 4 May 2023
9	Council Recommendation	Refusal
10	Draft Conditions	Not applicable