

Date of Determination	9 March 2023
Panel Members	Marcia Doheny (Chair) Michael Leavy (Independent Expert) Jennifer Bautovich (Independent Expert) Anthony Panzarino (Community Representative)
Apologies	NIL
Declarations of Interest	NIL

Papers circulated electronically on 2 March 2023.

MATTER DETERMINED

LDA2022/0098

Address: 31 Campbell Street Eastwood

Proposal: Alterations and additions to existing dwelling house, construction of an additional two storey dwelling house to create a dual occupancy (detached), Torrens title subdivision & removal of trees.

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 provisions of Ryde Local Environmental Plan (RLEP 2014) in that:
 - The proposal is for a dual occupancy (detached) which is a prohibited form of development within the R2 Low Density Residential Zone. The proposal seeks to rely upon Clause 5.10(10) of RLEP 2014 to facilitate the proposed development. The overall scale and form of the new dwelling will visually dominate the heritage item.

- The proposal does not comply with Clause 5.10(10) and the objectives of Clause 5.10 as the proposed development would adversely impact the heritage significance of the heritage item. The overall scale and form of the new dwelling will visually dominate the heritage item. The development application has not been accompanied by a heritage management document that has been approved by Council.
 - The proposed fill is considered to contribute towards the overall bulk of the new two storey dwelling which in turn adversely impacts the significance of the heritage item. The proposal is contrary to the objective of Clause 6.2.
 - The proposed land subdivision does not comply with the minimum area requirements of Clause 4.1(3) and results in lots inconsistent with the objectives of Clause 4.1.
 - No clause 4.6 variation request has been submitted to vary the minimum lot size standards.
2. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the development does not comply with the following provisions of the *Ryde Development Control Plan 2014* in that:

Part 3.3 – Dwelling houses and Dual Occupancy (attached)

Section 2.8.2 – Ceiling Height

- The extension of the living area at the rear of the existing dwelling (heritage item) has a floor to ceiling height of 2.2 metres and does not comply with Control 2.8.2(a).

Section 2.13 – Landscaping

- The siting of the new dwelling results in the loss of private open space for the existing dwelling (heritage item). The private open space area associated with the existing dwelling (heritage item) orientates to Wentworth Road. A standard sightline from the footpath would allow views into the private open space. The proposal results in poor amenity to the future occupants of the heritage item. The proposal does not comply with Control 2.13(c).

Section 2.14.2 – Visual Privacy

- The alfresco associated with the new dwelling orientates to the side boundary and rear boundary. The alfresco is elevated and results in overlooking into the private open space areas of the neighbouring properties. The proposal does not comply with Control 2.14.2(b), Control 2.14.2(c) and Control 2.14.2(d).
 - The two (2) rear north facing windows associated with the living areas of the new dwelling are elevated approximately 1.2 metres above the existing ground level and result in overlooking into the private open space of the neighbouring property. The proposal does not comply with Control 2.14.2(d).
3. Pursuant to Section 4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act 1979*, a correct BASIX has not been provided. A separate certificate is required for the new dwelling and a separate certificate is required for alterations and additions to the existing dwelling.
4. Pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the suitability of the site cannot be assessed properly as insufficient information being submitted being:
- The proposed alterations and additions to the heritage item are inconsistent between plans;

- All the proposed works to the heritage item are not identified clearly on the plans;
 - The Heritage Impact Statement and Schedule of Conservation Works do not reflect the amended architectural plans;
 - A demolition plan has not been submitted;
 - Required retaining walls have not been provided;
 - The Waste Management Plan does not include measures for waste avoidance and details of the ongoing management of waste;
 - Insufficient information has been submitted to determine the height of the returning front fence, dividing fence and boundary fencing; and
 - Insufficient information submitted of the proposed materials and colours
5. Pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the likely impacts are deemed to be unacceptable.
 6. Pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the proposed alterations and additions to existing dwelling house, new dwelling to create a dual occupancy (detached), Torrens title subdivision & removal of trees is not suitable for the site as detailed in reasons (1).
 7. Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the development is contrary to the public interest.



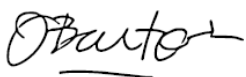

The Panel adopts the recommendation outlined in the Assessment Officer's report and the reasons for refusal as finalised above.

CONDITIONS

Not applicable

CONSIDERATION OF COMMUNITY VIEWS

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

PANEL MEMBERS	
Marcia Doheny (Chair)	
Michael Leavey	
Jennifer Bautovich	
Anthony Panzarino	

SCHEDULE 1

1	DA No.	LDA2022/0098
2	Proposal	Alterations and additions to existing dwelling house, construction of an additional two storey dwelling house, to create a dual occupancy (detached), Torrens title subdivision & removal of trees.
3	Street Address	31 Campbell Street Eastwood
4	Applicant / Owner	Archian Pty Ltd – Colin Jiang / Shaohui Zhao
5	Reason for referral to RLPP	<p>Sensitive Development - <i>Schedule 1, Part 4 of LPP Direction.</i> Demolition of part of a heritage item and removal of trees</p> <p>Departure from Development Standard - <i>Schedule 1, Part 3 of LPP Direction.</i> Subdivision creates lot sizes resulting in greater than 10% variation from the development standard for minimum subdivision lot size imposed by Clause 4.1 of RLEP 2014. No Clause 4.6 submitted.</p>
6	Relevant mandatory considerations	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy Resilience and Hazards SEPP 2021 ○ 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 Plan 2014 • Provisions of the <i>Environmental Planning and Assessment Regulation 2001</i>: Clause 61(1) & Clause 64 • 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: 4
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: 9 March 2023 Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Marcia Doheny (Chair), Michael Leavey, Jennifer Bautovich, Anthony Panzarino ○ <u>Council assessment staff</u>: Sandra Bailey, Niroshini Stephen, Sohail Faridy, Daniel Pearse, Fiona Mann (Heritage), Myra Malek • Papers were circulated electronically on 2 March 2023
9	Council Recommendation	Refusal
10	Draft Conditions	Not Applicable