

<b>Date of Determination</b>	12 March 2020
<b>Panel Members</b>	Abigail Goldberg (Chair) Eric Armstrong (Independent Expert) Michael Leavey (Independent Expert) Donna Gaskill (Community Representative)
<b>Apologies</b>	NIL
<b>Declarations of Interest</b>	NIL

Public meeting held at the City of Ryde Council Chambers on 12 March 2020 opened at 5:00pm and closed at 5:16pm.

Papers circulated electronically on 5 March 2020.

#### **MATTER DETERMINED**

LDA2020/0005 – 153 Cox’s Road, North Ryde

Alterations to the existing building which contains a dwelling house and secondary dwelling to a dual occupancy pursuant to *SEPP (Affordable Rental Housing) 2009* and strata subdivision.

The following people addressed the meeting:

1. Ben Tesoriero (Consultant Planner – application intro)
2. Martin Borri (objector)

#### **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 and the matters observed at site inspections 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 is inconsistent with the provisions of Ryde Local Environmental Plan in that:
  - The proposal is contrary to the objectives of the R2 Low Density Residential Zone,

- The proposed development does not comply with Clause 4.1B(2)(b) of Ryde Local Environmental Plan 2014. The proposal seeks to utilise a 15.24 metre frontage presenting to Cox's Road to accommodate a dual occupancy (attached) which does not meet the minimum 20 metre lot frontage requirement, and,
  - The written request prepared by Think Planning dated 5 March 2019 to vary the minimum frontage width pursuant to clause 4.6 of *Ryde Local Environmental Plan 2014* is not well founded. Specifically, the written request fails to adequately demonstrate that:
    - i. The proposed development is not in the public interest as it is inconsistent with the objectives of the development standard (Clause 4.6 (4)(a)(ii));
    - ii. Compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and the matters required to be demonstrated have not been adequately addressed (Clause 4.6(3)(a) and Clause 4.6(4)(a)(i)); and,
    - iii. There are sufficient environmental planning grounds to justify contravening the development standard and the matters required to be demonstrated have not been adequately addressed (Clause 4.6(3)(b) and Clause 4.6(4)(a)(i)).
2. The development is inconsistent with the provisions within Division 1 of State Environmental Planning Policy (Affordable Rental Housing) 2009, in that:
- Pursuant to clause 16A, the design of the development is incompatible with the character of the local area.
  - The proposed development includes a landscape area that equates to 25% of the site area. Pursuant to clause 14(1)(c)(ii), as less than 30% landscaped area is provided, the insufficient landscape area can be used as a reason to refuse consent.
3. The applicant has failed to provide acceptable BASIX Certificates in respect to *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*, in that:
- BASIX certificate No. A284161\_02 is invalid, as it was prepared more than three months prior to lodgement.
  - Both BASIX certificate No. A284161\_02 and A284161\_03 have been prepared for alterations and additions instead of new residential dwellings.
4. The development is inconsistent with the provisions within Ryde Development Control Plan 2014, in that:
- The design of the development is incompatible with the character of the local area under Section 2.1 (Desired Future Character) within Part 3.3 (Dwelling Houses and Dual Occupancies (attached)) of the DCP, and
  - The layout of the site is inconsistent with the landscaping controls (with regard to hard spaces within the front setback, compatibility of landscaping, mature tree placement) within Section 2.13 (Landscaping) within Part 3.3 (Dwelling Houses and Dual Occupancies (attached)) of the DCP.
5. The site is unsuitable for the proposed development pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act, as the land is unable to satisfy the key development standards for a dual occupancy (attached) in accordance with relevant planning instruments and plans.



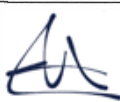

6. The proposed development is contrary to the public interest pursuant to Section 4.15(1)(e) in that:
  - o The proposal fails to achieve the objectives of the zone and applicable development standards of applicable environmental planning instruments, in addition to the controls and associated objectives within the DCP
  - o Approval of the proposal would establish a poor planning precedent and is therefore not in the public interest. Consenting to the development would contribute to an abandonment of the lot frontage development standard and legitimise a building constructed for the purposes of circumventing Council's planning controls.

**CONDITIONS**

Not applicable

**CONSIDERATION OF COMMUNITY VIEWS**

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from all those wishing to address the panel. Community issues raised include concerns relating to the neighbourhood character, the precedent which such an approval would set, the potential for an increase in density and traffic congestion should multiple such applications be approved. Submitters noted their support for affordable housing but expressed a preference for this to occur in multi-dwelling housing. The panel considers that concerns raised by the community have been adequately addressed in the assessment report and that no new issues requiring assessment were raised during the public meeting.

<b>PANEL MEMBERS</b>	
Abigail Goldberg (Chair)	
Eric Armstrong	
Michael Leavey	
Donna Gaskill	

**SCHEDULE 1**

<b>1</b>	<b>DA No.</b>	LDA2020/0005
<b>2</b>	<b>Proposal</b>	Alterations to the existing building which contains a dwelling house and secondary dwelling to a dual occupancy pursuant to <i>SEPP (Affordable Rental Housing) 2009</i> and strata subdivision.
<b>3</b>	<b>Street Address</b>	153 Cox's Road, North Ryde
<b>4</b>	<b>Applicant / Owner</b>	Sajjad Falamaki
<b>5</b>	<b>Reason for referral to RLPP</b>	Departure from Development Standard –The proposal results in 24% departure from the minimum frontage requirement of Clause 4.1B(2)(b) of RLEP 2014.
<b>6</b>	<b>Relevant mandatory considerations</b>	<ul style="list-style-type: none"> <li>• Environmental planning instruments: <ul style="list-style-type: none"> <li>○ State Environmental Planning Policy (Building Sustainability Index BASIX) 2004</li> <li>○ State Environmental Planning Policy No. 55 – Remediation of Land</li> <li>○ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</li> <li>○ State Environmental Planning Policy (Affordable Rental Housing) 2009</li> <li>○ Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</li> <li>○ Ryde Local Environmental Plan 2014</li> </ul> </li> <li>• Draft environmental planning instruments: <ul style="list-style-type: none"> <li>○ Draft Remediation of Land State Environmental Planning Policy</li> <li>○ Draft Environment SEPP</li> </ul> </li> <li>• Development control plans: <ul style="list-style-type: none"> <li>○ Ryde Development Control Plan 2014</li> </ul> </li> <li>• Planning agreements: Nil</li> <li>• Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil</li> <li>• Coastal zone management plan: Nil</li> <li>• The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>• The suitability of the site for the development</li> <li>• Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> </ul> <p>The public interest, including the principles of ecologically sustainable development</p>
<b>7</b>	<b>Material considered by the Panel</b>	<ul style="list-style-type: none"> <li>• Council assessment report</li> <li>• Clause 4.1B(2)(b) minimum frontage requirement</li> <li>• Written submissions during public exhibition: 2</li> <li>• Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>○ In support – Nil</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>○ In objection – Martin Borri</li> <li>○ Council assessment officer - Ben Tesoriero (consultant)</li> <li>○ On behalf of the applicant – Nil</li> </ul> <ul style="list-style-type: none"> <li>● <i>Martin Borri submitted a summary of his verbal submission</i></li> </ul>
8	<b>Meetings, briefings and site inspections by the Panel</b>	<ul style="list-style-type: none"> <li>● Site inspection: 12 March 2020</li> <li>● Briefing: 12 March 2020</li> </ul> <p>Attendees:</p> <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Abigail Goldberg (Chair), Eric Armstrong, Michael Leavey, Donna Gaskill</li> <li>○ <u>Council assessment staff</u>: Sandra Bailey, Ben Tesoriero (Consultant)</li> </ul> <ul style="list-style-type: none"> <li>● Papers were circulated electronically on 5 March 2020</li> </ul>
9	<b>Council Recommendation</b>	<b>Refusal</b>
10	<b>Draft Conditions</b>	Not Applicable