

Date of Determination	14 October 2021
Panel Members	Steve O'Connor (Chair) Graham Brown (Independent Expert) Bec Ho (Community Representative)
Apologies	NIL
Declarations of Interest	Jennifer Bautovich excused herself from the meeting for this item, but quorum was still achieved as there were three Panel members present.

Public meeting held remotely via teleconference on 14 October 2021 opened at 5:00pm and closed at 5:47pm.

Papers circulated electronically on 1 October 2020.

MATTER DETERMINED

APL2021/0003 (S8.3 review of LDA2020/0185)

19-21 Myra Avenue, Ryde

Proposal: Multi dwelling housing development containing 5 dwellings (2 x 5 bed and 3 x 3 bed) as well as strata subdivision.

The following people addressed the meeting:

1. Soula Karas (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 listed at item 8 in Schedule 1.

DEVELOPMENT APPLICATION


The Panel determined to **confirm the decision to refuse** the development application as described in Schedule 1, pursuant to Section 8.3 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to **confirm the decision 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 the *Ryde Local Environmental Plan 2014* in that:
 - (a) The proposal is contrary to the objectives of the R2 Low Density Residential Zone given the proposal fails to demonstrate it will deliver housing that is safe from flooding to the community.
 - (b) The proposal has not satisfied Clause 5.21 as inadequate information has been submitted to demonstrate that the proposal will not create adverse flooding impacts.
 - (c) The proposal includes fill within the provided parking areas associated with the dwellings. Given their proximity to the side boundaries and raised levels results in overlooking of the neighbouring properties and the proposal is considered to be contrary to Clause 6.2(3)(d) as it is considered to proposal results in an unacceptable amenity impact upon adjoining properties.
 - (d) The proposal has not satisfied Clause 6.4 as inadequate information has been submitted to demonstrate that the stormwater drainage system adequately responds to flooding constraints.
2. Amendment 28 to the Ryde Local Environmental Plan 2014-must be given determinative weight, as a draft planning instrument under the savings provisions, in considering the development application as the development application represents a significant change in character to that contemplated by Amendment 28 and would also undermine the objectives and planning intent of Amendment 28.
3. Pursuant to Section 4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act 1979*, the development does not satisfy State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, in that:
 - (a) The application was lodged on 5 July 2021 and the submitted Certificate has not been lodged within 3 months of being issued. The submitted BASIX Certificate 830210M_04, dated 18 October 2020. The proposal does not satisfy Schedule 1 Clause 2A of the Environmental Planning and Assessment Regulation 2000.
 - (b) The proposal is contrary to Clause 164A of the *Environmental Planning and Assessment Regulation 2000*.The amended plans include provision of skylights and changes to openings. The submitted architectural are also inconsistent with the garden areas nominated with the Certificate. Unit 2 and 4 are inconsistent with the nominated areas of 50m² and 80m².
4. Pursuant to Section 4.15(1)(a)(b) and (c) of the *Environmental Planning and Assessment Act 1979*, the development has not demonstrated an acceptable environmental impact or that the site is suitable for the proposed development in regard to flood impact:
 - (a) The proposal is contrary to Clause 5.21 Flood planning of Ryde Local Environmental Plan 2014 and Part 8.2 of Ryde Development Control Plan 2014. The objective of this clause is to minimise the flood risk to life and property, allow for development that is compatible with the flood function and behaviour and to enable the safe occupation and efficient evacuation of people in the event of flood. The proposal is inconsistent with the objectives of Clause 5.21(1).
 - (b) The proposal is not considered satisfactory with respect of Clause 5.21(2) and (3) for the following reasons:

- 
- i. The proposal has not demonstrated compatibility with the flood function and behaviour. A significant portion of the land is mapped as being subject to medium flood risk.
 - ii. The proposal does not provide sufficient detail regarding the measures to manage the risk to life from flood.
 - (c) The submitted Flood Impact Assessment does not satisfactorily address the requirements of Part 8.2 and Stormwater and Floodplain Management Technical Manual Section 2.2:
 - i. The proposal fails to demonstrate that the current flood storage is maintained.
 - ii. The proposal fails to demonstrate that post-development VxD values are acceptable as per DCP requirements.
 - iii. There is no record of a Flood Certificate request being issued by Council and included in the flood assessment. For this reason, it is not possible to demonstrate that the HEC-RAC Model has been calibrated to match the pre-development overland flow levels and the flood levels provided by Council.
 - iv. The proposed floor levels for the development does not comply with the freeboard requirements of City of Ryde (e.g. deck level at Unit 1 is proposed below 100-year ARI level). The correct freeboard on decks (non-habitable areas) as per City of Ryde DCP is required to be used.
 - v. The driveway and parking areas are clearly raised (300 mm to 800mm) from the current ground levels, creating an obstruction to the existing overland flow.
 - vi. The proposal fails to demonstrate that the footings are located outside the zone of influence of the existing pipe to demonstrate there will be no adverse structural impact.
5. 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*,
- (a) Part 3.4 Multi Dwelling Housing specifically:
 - i. Section 2.3 and Section 3.1, as the site is in a non-preferred location for multi dwelling housing because it is affected by overland flow. Insufficient information has been provided to address this constraint.
 - ii. Section 3.5.5 Internal Setbacks in regard to the separation of the living room windows of Units 1 and 5.
 - iii. Section 3.6 and Section 3.9 in regard to non-compliant solar access being provided to the dwellings. The application has not demonstrated the amount of solar amenity received the dwellings and POS.
 - iv. Section 3.8.2 Swept path diagrams have not been provided for all the parking spaces proposed. The entry and exit to some of the garages (Unit 3) require more than three-point turn.
 - v. Section 3.10 Visual and Acoustic Privacy. The submitted information is inconsistent and the proposal is considered to result in unacceptable visual privacy impacts to 23 Myra Avenue. There is also resultant internal privacy impacts between Unit 1 and 5.
 - (b) Part 8.2 Stormwater and Floodplain Management, as inadequate information has been submitted to demonstrate that the proposal will not create adverse flooding or stormwater impacts as follows:
 - i. In adequate information has been provided in regard to the proposed bridge/driveway across the overland flow. The driveway is to be constructed of porous pavers. Chapter 4.5 of the flood report indicates that there is no filling proposed within the development and the driveway will be constructed on piers with a small bridge. A driveway on piers, will require concrete slabs on top for vehicles to drive across this

- area. It is not clear whether the purpose of the porous pavers can be achieved with this arrangement.
- ii. Inadequate information has been provided in regard to method of collection of run-off from the front part of the driveway. With proposed porous pavers on top of the slab, runoff from this area still need to be collected and direct to the drainage system. A flat levelled driveway is proposed for most of the elevated part of the driveway with driveway level at RL 47.0. The pit on top of the elevated driveway will hardly capture any runoff. No levels proposed for the parking spaces at front.
- (c) Part 9.3 Parking Controls, the proposal has not demonstrated compliant vehicle manoeuvring is achieved. The visitor parking spaces at the front of the site will necessitate a retaining wall which is not notated on plans.
6. Pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the flood impacts of the development to human life and property cannot be ascertained.
 7. Pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, in the absence of sufficient flooding information to determine otherwise, the site is unsuitable for the proposed development.
 8. 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 Assessment Act 1979*, approval of the development application is contrary to the public interest.


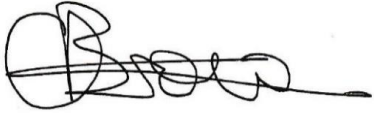

CONDITIONS

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.

The panel considers that concerns raised by the community have been adequately addressed in the assessment report. No new issues were raised during the public meeting.

PANEL MEMBERS	
Steve O'Connor (Chair)	
Graham Brown	
Bec Ho	

SCHEDULE 1		
1	DA No.	APL2021/0003 (S8.3 review of LDA2020/0185)
2	Proposal	Multi dwelling housing development containing 5 dwellings (2 x 5 bed and 3 x 3 bed) as well as strata subdivision
3	Street Address	19-21 Myra Avenue, Ryde
4	Applicant / Owner	Robert De Nicola and Patricia De Nicola
5	Reason for referral to RLPP	Application under Section 8.3 of the Environmental Planning and Assessment Act 1979 requesting a review of the refusal of the development application by the RLPP
6	Relevant mandatory considerations	<ul style="list-style-type: none"> • Section 8.2- 8.4 Reviews • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy (SEPP) No. 55 - Remediation of Land ○ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 ○ State Environmental Planning Policy (Building Sustainability Index BASIX) 2004 ○ Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 ○ Ryde Local Environmental Plan 2014 • Draft environmental planning instruments: <ul style="list-style-type: none"> ○ Draft Remediation of Land State Environmental Planning Policy ○ Draft Environment SEPP ○ Draft Amendment to the Ryde Local Environmental Plan 2014 • Development control plans: <ul style="list-style-type: none"> ○ Ryde Development Control Plan 2014 • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil • Coastal zone management plan: Nil • 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 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ In support - Nil ○ In objection – Soula Karas

		<ul style="list-style-type: none"> ○ Council assessment officer - Nil ○ On behalf of the applicant - Nil
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: 14 October 2021 <p>Attendees:</p> <ul style="list-style-type: none"> ○ <u>Panel members</u>: Steve O'Connor (Chair), Graham Brown, Bec Ho ○ <u>Council assessment staff</u>: Sandra Bailey, Kimberley Kavwenje, Daniel Pearse • Papers were circulated electronically on 1 October 2021
9	Council Recommendation	Confirmation of Refusal
10	Draft Conditions	Not applicable