

Date of Determination	12 October 2023
Panel Members	Steve O'Connor (Chair) Steven Layman (Independent Expert) Jeremy Swan (Independent Expert) Anthony Panzarino (Community Representative)
Apologies	NIL
Declarations of Interest	NIL

Public meeting held on 12 October 2023 opened at 5:00pm and closed at 6:05pm.
Papers online uploaded on 6 October 2023 and circulated electronically 11 October 2023.

MATTER DETERMINED

APL2023/0003

Address: 130 Pittwater Road & 57 Thompson Street, Gladesville

Proposal: Section 8.3 Review of determination of LDA2022/0023 which sought consent for the demolition of existing structures and construction of a part 2, part 3 storey mixed use development comprising parking within basement 2, retail premises & loading docks within basement 1, a cafe, medical centre & liquor store on the ground floor, parking at level 1 and a child care facility within level 2; together with lot consolidation.

The following people addressed the Panel:

1. Doug Graham – submitter
2. Clr Roy Maggio – submitter
3. Cameron Johnson - submitter
4. Jacqueline Barrish - submitter
5. Belinda Ludlow – submitter
6. On behalf of owner:
 - Anthony El-Hazouri – Applicant
 - Jonathon Wood – Town Planner
 - Daniel Walker - Traffic Engineer

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 refusal of LDA2022/0023 under section 8.4** of the *Environmental Planning and Assessment Act 1979*.

The decision was carried by a vote of 3 for and 1 against.

Against was Steve O'Connor, who agreed with the recommendation in the Council assessment report, subject to amendments to the conditions of consent.

(Note: quorum is 3).

REASONS FOR THE DECISION

The Panel remains concerned that the application sought to use land zoned R2 Low Density Residential to gain vehicular access to the site, which is proposed to be used as a mixed-use development. The medical centre and the childcare centre are physically located in the E1 Local Centre.

The Panel agrees that the integrity of the R2 Low Density Residential and E1 Local Centre zones should be maintained and that the question of permissibility, principally the use of the R2 Low Density Residential zone, should not be questioned. The Panel did not consider that the changes made to the way the lifts would operate, provides sufficient certainty when the fundamental issue was about permissibility. The Panel also had concerns about the potential to use fire stairs to gain access to different levels of the mixed-use development.

It is not appropriate in the case of a comprehensive redevelopment of the site to rely upon an historic car-parking deficit as a justification for not complying with the DCP parking controls.

The Panel notes that the Ryde DCP 2014, Part 9.3, Section 2.1(c) refers to an “historic deficit” in the context of a change of use.

The Panel was not satisfied that the calculations used to determine the gross floor area of the development and hence FSR, were accurate. There are areas associated with the child-care centre enclosing walls greater than 1.4m in height, that were not included within the calculations. It is noted that whilst these walls serve an acoustic purpose, they add to the bulk and scale of the building.

The Panel **confirmed the refusal of LDA2022/0023** (the application) for the following reasons:

1. The proposed development must be refused as parts of the proposed mixed-use development is prohibited in the R2 Low Density Residential zone of Ryde Local Environmental Plan 2014.
2. The proposed development must be refused as the Clause 4.6 written request does not provide adequate reasons why the Floor Space Ratio development standard in cl 4.4(2) of Ryde Local Environmental Plan 2014 should be varied.
3. The proposed development should be refused as the design does not adequately address the potential impact on nearby residential properties or the commercial location or reinforce the commercial interface with the street as appropriate to the zone.
4. The configuration of the development results in an above ground carpark uncharacteristic of the area. The car- parking fails to comply with Council’s DCP controls.
5. The building has not been designed to segregate all functions of the different uses resulting in a prohibited form of development.
6. The ongoing use and function of the site requires an unreasonable reliance on strict compliance with a Plan of Management to satisfy ongoing permissibility. Non-compliance would result in a development not being permitted.

7. The streetscape presentation of the building and the setback from the street frontage is not compatible with the form of development in the local neighbourhood centre.
8. The potential impacts to traffic flow and potential for queuing arising from the implementation of boom gates and intercom system to restrict access to the basement carpark have not been addressed.





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 Reasons for Refusal above.

PANEL MEMBERS	
Steve O'Connor (Chair)	
Steven Layman	
Jeremy Swan	
Anthony Panzarino	

SCHEDULE 1

1	DA No.	APL2023/0003
2	Proposal	Section 8.3 Review of determination of LDA2022/0023 which sought consent for the demolition of existing structures and construction of a part 2, part 3 storey mixed use development comprising parking within basement 2, retail premises & loading docks within basement 1, a cafe, medical centre & liquor store on the ground floor, parking at level 1 and a child care facility within level 2; together with lot consolidation.
3	Street Address	130 Pittwater Road & 57 Thompson Street, Gladesville
4	Applicant / Owner	The Trustee for Gladesville WW Investment Trust / Anthony El-Hazouri
5	Reason for referral to RLPP	Section 8.5 of the <i>Environmental Planning and Assessment Act 1979</i> : Development Application was determined by the Local Planning Panel.
6	Relevant mandatory considerations	<ul style="list-style-type: none"> • Section 8.2 Review under Section 8.2(1)(a) of the EP&A Act 1979. • Section 8.3 Matters for consideration under Section 8.3(3) of the EP&A Act 1979. • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy (Resilience and Hazards) 2021 ○ State Environmental Planning Policy (Biodiversity & Conservation) 2021 ○ Educational Establishments and Child Care Facilities 2017 (ESEPP) ○ Ryde Local Environmental Plan 2014 • Draft environmental planning instruments: <ul style="list-style-type: none"> ○ Draft Remediation of Land SEPP ○ Draft Environment SEPP • Ryde Development Control Plan 2014 • Provisions of the <i>EP&A Regulation 2001</i>: 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>EP&A Act 1979</i> or <i>Regulations</i> • 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: 26 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ In support: Nil ○ In objection: Doug Graham, Clr Roy Maggio, Cameron Johnson, Jacqueline Barrish, Belinda Ludlow ○ Council assessment officer: Nil ○ On behalf of the applicant: Anthony El-Hazouri, Jonathon Wood, Daniel Walker • Updated conditions of consent circulated on 12/10/2023
8	Meetings, briefings and site inspections by the Panel	<ul style="list-style-type: none"> • Site inspection: 12 October 2023 • Briefing: 12 October 2023 Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Steve O'Connor (Chair), Steven Layman, Jeremy Swan, Anthony Panzarino ○ <u>Council assessment staff</u>: Sandra Bailey, Carine Elias, Sandra McCarry, Daniel Pearse, Myra Malek • Papers were circulated electronically on 11 October 2023
9	Council Rec.	Approval
10	Draft Conditions	Not Applicable