

Electronic Determination of Deferred Item 2 of 13 July 2023 meeting	
Date of Determination	13 September 2023
Panel Members	Steve O'Connor (Chair) Jennifer Bautovich (Independent Expert) Jeremy Swan (Independent Expert) Anthony Panzarino (Community Representative)
Declarations of Interest	NIL

MATTER DETERMINED

85 Westminster Road, Gladesville - LDA2022/0334

Proposal: Demolition of existing 3-storey dwelling and construction of a new 3-storey dwelling, swimming pool and carport.

PANEL CONSIDERATIONS AND DECISION

On 13 July 2023 the Panel made the following decision after hearing public addresses made to the Panel -

*The Panel determined to **defer** the determination of this development application in order to achieve procedural fairness and give the applicant the opportunity to address any inaccuracies in the assessment report by 10 August 2023. The Panel also wanted to give the applicant the opportunity to provide a preliminary site investigation report by 10 August 2023 which addresses the contamination concerns raised at the Panel meeting.*

Council officers are then to assess the information provided and prepare a supplementary report. The Panel will then proceed to determine the development application by electronic means, via the circulation of papers.

A supplementary report and was circulated electronically on 7 September 2023.

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


On 13 September 2023, 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 proposed development fails to satisfy Clause 4.6(1) of *State Environmental Planning Policy (Resilience and Hazards) 2021*:
 - The Preliminary Site Inspection identifies Asbestos & Arsenic contamination is present on site and requires a Detailed Site Investigation to delineate the extent of contamination within the soils.
 - A Detailed Site Investigation has not been provided for consideration by the consent authority.
 - Pursuant to clause 4.6(1) of *State Environmental Planning Policy (Resilience and Hazards) 2021*, a consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

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- In the absence of a Detailed Site Investigation, the consent authority cannot be satisfied of the extent of site contamination, nor the suitability of the site for the proposed development. The consent authority also does not have sufficient information on whether remediation is required.
2. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the development contravenes Clause 4.3 of *Ryde Local Environmental Plan 2014* in that:
 - The development results in a building height of 11.64m and contravenes the building height development standard of 9.5m by 2.1m (22.53% variation).
 - The written request seeking a variation to the building height development standard has not demonstrated compliance with the standard is unreasonable or unnecessary pursuant to Clause 4.6(3)(a).
 - Pursuant to Clause 4.6(3)(b), the written request does not demonstrate sufficient environmental planning grounds to justify the building height contravention. The building height contravention arises solely through pursuit of oversized floor to ceiling heights and slab thicknesses across a three-storey development.
 - The jurisdictional prerequisites have not been met with respect to the development application, and development consent cannot be granted.
 3. Pursuant to Section 4.15 of the *Environmental Planning and Assessment Act 1979* the development is contrary to Section 1.3 Objects for the following reasons:
 - The proposal does not promote the orderly and economic use and development of land. The development results in adverse impacts upon surrounding properties that could be avoided with a more sensitive building design that responds better to the site's context.
 - The proposal does not promote good design and amenity of the built environment. The development is not responsive to the site's prominent position at the end of a ridge overlooking the Field of Mars Reserve, and consequently results in environment impacts, and is inconsistent with the suite of built form controls applying to the land.
 4. Pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the development results in unacceptable and adverse impacts upon the natural and built environment:
 - The development results in adverse visual impacts to the local area as a result of the contravening building height, and large three-storey scale of the building.
 - The development results in unreasonable amenity impacts to adjoining properties in terms of views loss.
 - The development does not satisfy Chapter 2 of *State Environmental Planning Policy (Biodiversity and Conservation) 2021*. The development results in a major encroachment upon existing significant trees nominated for retention. Despite Council's request for additional information, the Applicant has declined to provide sufficient information to assess the impact of the proposed development on significant vegetation and confirm tree retention is possible.
 5. The development fails to comply with development controls and objectives contained in the *Ryde Development Control Plan 2014*, specifically:
 - Part 3.3, including the following provisions –
 - 2.1 and 2.2 Desired future character and dwelling houses. The proposal is three storeys in scale and exceeds the two-storey maximum.
 - 2.6.2 Topography and excavation – the proposal includes excavation up to 5.93m and retaining walls up to 2.465m high. The proposal fails to satisfactorily retain natural ground levels and minimise the extent of excavation and fill.
 - 2.8.1 Building Height – the proposed building height exceeds the 9.5m control, and two-storey height limit.

- 2.9.1 Front setback – The 3.9m high blade wall extending from the building façade to the front boundary with Boyd Street fails to comply with the 6m front setback control.
- 2.9.3 Rear setbacks – The proposal includes a detached garage accessed from Westminster Road with a rear boundary setback of 3.2m.
- 2.14.4 View sharing – The development fails to ensure new dwellings endeavour to respect important views from living areas within neighbouring dwellings, specifically 83 Westminster Road.

6. The application fails to provide sufficient information to carry out a proper assessment of all aspects of the proposal. This includes insufficient information depicting the entire southern elevation showing all components of the proposed development.

The landscape plan is not consistent with the architectural plans, including depictions of landscape works being undertaken outside of the property boundary within the Boyd Lane Road reserve.

Plans demonstrating works necessary within the Westminster Road reserve to facilitate access to the new garage on the rear boundary have not been provided, including a supporting arboricultural assessment demonstrating impacts to trees.

7. The site is not suitable for the proposed development pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.





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 not in 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.

PANEL MEMBERS	
Steve O'Connor (Chair)	
Jennifer Bautovich	
Jeremy Swan	
Anthony Panzarino	

SCHEDULE 1

1	DA No.	LDA2022/0334
2	Proposal	Demolition of existing 3-storey dwelling and construction of a new 3-storey dwelling, swimming pool and carport
3	Street Address	85 Westminster Road, Gladesville
4	Applicant / Owner	Jonathan Spicer / Paul Miles
5	Reason for referral to RLPP	Contentious development – Departure from development standards. Development results in a 22.53% contravention of Clause 4.3 Height of Buildings under RLEP 2014. <i>Schedule 1, Part 2 of Local Planning Panels Direction</i>
6	Relevant mandatory considerations	<ul style="list-style-type: none"> • Environmental Planning & Assessment Act S4.14 Bushfire Prone Land • Environmental planning instruments: <ul style="list-style-type: none"> ○ 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 Plan 2014 • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2001, Australian Standard for Demolition – Clause 61(1)</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>EP&A 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"> • Consultant Planner’s assessment report and supplementary assessment report • Clause 4.6 variation request for Cl. 4.3 (Height of buildings) • Written submissions during public exhibition: 3 • Documentation provided on behalf of the Applicant in response to issues raised in the Consultant Planner’s report • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ In objection – Edwina Clifton ○ On behalf of the applicant – Jonathan Spicer, Paul Miles
8	Meetings, briefings and site inspections by the Panel	<ul style="list-style-type: none"> • Site inspection: At the discretion of Panel members • Briefing: 13 July 2023 Attendees: <ul style="list-style-type: none"> ○ <u>Panel</u>: Steve O’Connor (Chair), Jennifer Bautovich, Jeremy Swan, Anthony Panzarino ○ <u>Council assessment staff</u>: Carine Elias, Sohail Faridy, Ben Tesoriero (Consultant Planner), Myra Malek • Papers were circulated electronically on 7 July 2023 • Supplementary report (incl. amended info attachments) was circulated 7 September 2023.
9	Council Recommendation	Refusal
10	Draft Conditions	Not applicable