

<b>Date of Determination</b>	10 December 2020
<b>Panel Members</b>	Marcia Doheny (Chair) Eugene Sarich (Independent Expert) Jennifer Bautovich (Independent Expert) Rob Senior (Community Representative)
<b>Apologies</b>	NIL
<b>Declarations of Interest</b>	NIL

Public meeting held remotely via teleconference (Council staff at the North Ryde Office) on Thursday 10 December 2020 opened at 5:00pm and closed at 5:30pm.

Papers circulated electronically on Tuesday 1 December 2020.

#### **MATTER DETERMINED**

LDA2020/0167 – 5 Aeolus Avenue, Ryde

Construction of a two (2) storey child-care centre catering for fifty-nine (59) children between the ages of 0-5 years of age and one (1) level of basement car parking for thirteen (13) car spaces.

The following people addressed the meeting:

1. Julie Li (objector)
2. Nigel White (applicant)

#### **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:

- Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development does not comply with Clause 22 of the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 and development consent cannot be granted unless concurrence is provided by the Department of Education as the outdoor play area does not satisfy the minimum requirements for unencumbered outdoor space per child under Regulation 108 of the Education and Care Services National Regulations. The proposal does not comply with Clause 23 of the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 as the design of the child care centre is inconsistent with the matters for consideration under Principles 1 to 7 in Part 2 – Design Quality Principles in the Child Care Planning Guidelines and has not adequately demonstrated the scale and design of the child care centre is appropriate within the context of the neighbourhood, provides good amenity and a safe environment for children, appropriate landscaping of outdoor areas and minimises amenity impacts on adjoining properties.
- 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 under Part 3 – Matters for Consideration of the Child Care Planning Guideline and Part 3.2 – Child Care Centres in the Ryde Development Control Plan (DCP) 2014:

Clause 3.1 – Site Selection and Location in the Child Care Planning Guidelines and Clause 2.1 – Suitability of Location and Site for Child Care in the Ryde Development Control Plan (Ryde DCP) 2014

- The proposal is inconsistent with Clauses C1, C2 and C15 in the Child Care Planning Guidelines for development in or adjacent to a residential zone in that:
  - The site is not suitable for the use as a child-care centre as the use is not compatible with existing surrounding residential developments. The design and operation of the child-care centre will have adverse acoustic and privacy impacts on adjacent residential properties and exacerbate traffic conditions in the local road network;
  - The intensification of use of the site requires additional car parking to be provided. The proposal has not demonstrated the required parking spaces can be adequately accommodated within the development and is likely to increase traffic volumes and demand for on street parking during drop off and pick up times, thus adversely impacting on traffic conditions in the surrounding streets;
  - The acoustic assessment submitted with the proposal contains insufficient information to determine the proposed development will not have any adverse acoustic impacts on adjoining properties.
- The site is inconsistent with Clauses 2.1.1(b) and (c) of the Child Care Planning Guidelines and will not provide children with good amenity as natural ventilation to indoor areas of the child-care centre cannot be achieved due to the acoustic impact of the development on



adjoining residential properties. The outdoor play area adjacent to the ground floor level will be subject to overlooking by adjacent properties as the rear outdoor deck is elevated above the height of the 2.7m acoustic barrier.

- The proposal is inconsistent with Clause C3 in the Child Care Planning Guidelines as the site is not in a location that is well serviced by public transport.

#### Part 3.2 – Local Character, streetscape and the public domain interface

- The proposal is inconsistent with Clause 5.2 in the Child Care Planning Guidelines as the design for vehicular access and car parking does not comply with the requirements under Australian Standards AS2890.1 and will negatively impact on vehicular movements to and from the site. Having regard to the number of vehicular movements generated by the proposed development, the proposal is out of character with traffic movements within the low-density residential area and will impact on the amenity of the streetscape.
- The proposal does not satisfy the provisions in Clauses C6 and C92 in the Child Care Planning Guidelines in that:
  - Insufficient details have been submitted relating to secure front fencing including any pedestrian gates to ensure the safety of children entering or leaving the premises;
  - The design of the front fence contains insufficient information and does not demonstrated compliance with development controls for permeability under Clause 2.16.1(e) in Part 3.3 of the Ryde DCP 2014 and does not enable a proper assessment of the visual impact of the proposed fence on the character of the streetscape.
  - The proposed design does not maximum opportunities for passive surveillance of the street as the main entrance does not consist of a staffed reception area and no details have been provided relating to the fitout or frequency in which the ground floor office space or the first floor area will be occupied;
- The proposal is inconsistent with Clause C82 in the Child Care Planning Guidelines as the rear boundary fence adjacent to the public reserve consists of a 2.7m high acoustic barrier that is higher than existing residential fences adjacent to the park and will not contribute to the amenity of the public open space.

#### Part 3.3 - Building orientation, envelope and design, Part 3.5 – Visual and Acoustic Privacy and Part 3.6 – Noise and Air Pollution in the Child Care Planning Guidelines

- The proposal is inconsistent with Clauses C11 and C21 in the Child Care Planning Guidelines in that:
  - As the outdoor play areas to the rear of the site, particularly the elevated outdoor decks will have adverse noise and loss of privacy impacts on adjoining properties;
  - Insufficient information has been provided to demonstrate that the outdoor play areas, particularly the elevated rear outdoor decks, will be appropriately screened to protect the privacy of children from surrounding properties;

- Insufficient information has been provided to clarify the extent of solar access achieved for indoor activity areas and the level of amenity experienced within the indoor spaces;
  - The shadow diagrams submitted contain insufficient information to demonstrate that the proposal will not result in any adverse overshadowing to north facing window openings of adjoining properties and will maintain adequate amenity in accordance with the provisions of Clause 2.14.1 – Daylight and Sunlight Access under Part 3.3 of the Ryde DCP 2014;
  - The proposal includes excavation that exceeds the maximum extent of excavation permitted Clause 2.6.2(b)(ii) in Part 3.3 of the Ryde DCP 2014 and is inconsistent with the Objective (4) as the proposed excavation will result in loss of privacy impacts on adjoining properties as the proposed ground floor will be elevated above the height of the boundary fence. The proposal is inconsistent with Clause C15 as the excavation is out of character with the topography maintained by surrounding properties; and
  - The proposal does not provide sufficient detail addressing the south-eastern elevation of the elevated rear ground floor outdoor decks and does not adequately demonstrate how the outdoor decks will be protected from south-easterly winds during the winter months.
- The proposal is inconsistent with Clause C12 and C25 in the Child Care Planning Guidelines in that:
    - The proposed building setbacks and siting of the building do not enable the operation of the child-care centre without adverse acoustic and visual privacy impacts on adjoining residential properties;
    - The proposed side setbacks are not designed adequately to provide maintenance access between the front and rear of the site. The landscape plan is inconsistent with the architectural plans and do not clearly indicate access gates or paths to enable servicing of the site without travelling through the child-care centre.
  - The proposal is inconsistent with Clause C22 as the orientation and design of the rear elevated outdoor deck will result in additional overlooking of private open space of adjoining properties and adversely impact on the amenity of adjoining residents.

Part 3.8 – Traffic, Parking and Pedestrian Circulation in the Child Care Planning Guidelines, and Part 3.2 – Child Care Centres and Part 9.3 – Parking Controls of the Ryde DCP 2014

- The proposal does not provide sufficient car parking spaces in accordance with the requirements for child care and staff parking spaces under Clauses 5.1(b) and (h) in Part 3.2 of the Ryde DCP 2014 and Clause 2.3(a) in Part 9.3 of the Ryde DCP 2014 and will have a detrimental impact on traffic conditions in the local road network by exacerbating traffic congestion and increasing demand for on street parking spaces;
- The Traffic Impact Assessment Report submitted with the proposal does not satisfy the requirements of Clause C33 2 in the Child Care Planning Guidelines and Clause 5.3(c) in Part

3.2 of the Ryde DCP 2014 as the report contains insufficient information and does not accurately reflect existing traffic conditions or provide adequate justifications that the intensification of use of the site will not adversely impact on the amenity of surrounding properties, the neighbourhood and surrounding road network;

- The proposal is inconsistent with Clause C36 in the Child Care Planning Guidelines and Clause 5.2(d) in Part 3.2 of the Ryde DCP 2014 as the proposal does not provide a designated loading area for service vehicles to ensure that service vehicles do not impede on pedestrian access to the site or impact on pedestrian safety;
- The proposed vehicular access design does not adequately accommodate simultaneous two-way traffic to and from the site and will result in dangerous vehicle movements as vehicles entering and exiting the site attempt to manoeuvre along the driveway and car park. The proposal is inconsistent with the requirements of Clause C36 of the Child Care Planning Guideline and Clause 5.1(a), Clauses 5.2(b)(ii) and (iii) in Part 3.2 of the Ryde DCP 2014 and Clause 3.2(a) in Part 9.3 of the Ryde DCP 2014;
- The proposal is inconsistent with Clause 5.1(f) in Part 3.2 of the Ryde DCP 2014 as underground car parking for sites located in low density residential areas is not permitted;
- The proposed basement car park design is inconsistent with Clause C38 in the Child Care Planning Guidelines as no child safe fencing is provided between the car parking spaces and entrance to the building and play areas to ensure the safety of children entering or exiting the child care centre; and
- The proposal does not provide an accessible car space with adequate dimension and is inconsistent with Clause 5.5(b)(iii) in Part 3.2 of the Ryde DCP 2014.

#### Part 4 - Applying the National Regulations to development proposal

- The proposal is inconsistent with storage requirements under Clause 4.1 as the proposed plans do not clearly demonstrate sufficient storage facilities in indoor and outdoor areas to accommodate for the needs of children;
- The proposal does not provide natural ventilation to indoor activity areas as windows and doors are required to remain closed during hours of operation to minimise noise impacts on adjoining properties. As such, the proposal does not satisfy natural ventilation requirements under Clause 4.4 and does not provide optimum internal amenity.
- The proposal is inconsistent with the provisions under Clause 4.6 relating to nappy change areas and the provision of adequate cleaning facilities and supervision of play areas by staff as required by the National Construction Code;
- The proposal provides insufficient information to enable a proper assessment of the design of toilet facilities for children against the provisions under Clause 4.7 to ensure that toilet areas achieve a balance between supervision by staff and dignity for children;
- The proposed first floor activity room is inconsistent with the design provisions under Clause 4.7 and is likely to result in insufficient supervision of children.

- The proposed Evacuation Plan is inconsistent with Clause 4.8 and Regulations 97 and 168 Education and Care Services National Regulations, and Clauses 7.5(b)(i) and (iii) in Part 3.2 of the Ryde DCP 2014 as insufficient detail have been included adequately addressing procedures to evacuate children with mobility issues, the management of children and staff within the assembly area and alternative evacuation routes that do not involve travelling through the building.
- The proposal does not provide sufficient unencumbered outdoor play area per child as required under Clause 4.9 and Regulation 108 of the Education and Care Services National Regulations and will not provide satisfactory amenity for children.
- The proposed design and landscaping within the outdoor play area is inconsistent with the requirements under Clause 4.10 and Clauses 6.2.2(e)(x), (xi) and (h) in Part 3.2 of the Ryde DCP 2014 as the layout of the child care centre does not enable staff to supervise the outdoor play area from indoor areas or outdoor area obscured by the external staircase, and landscaping that limits natural materials or wide range of plant species to enhance visual stimulation and exploration.
- The proposed landscaping within the outdoor play area is inconsistent with Clauses 6.2.2(e)(v) and (x) in Part 3.2 of the Ryde DCP 2014 and does not optimise the experience of the natural environment for children as the ground cover consists of synthetic grass with no natural turf and limited planting throughout the outdoor area as substantial planting;
- The outdoor play areas do not provide sufficient space for sandpits per child in accordance with Clause 6.2.2(e)(i) in Part 3.2 of the Ryde DCP 2014 and will not contribute to the amenity of the outdoor area for children.
- The outdoor play area consists of insufficient natural and built shading required under Clause 4.11 and Clause 6.2.2(f) of the Ryde DCP 2014 as the selected plant species will not achieve a canopy cover of between 50% to 60% of the outdoor play area within 5 years of planting, and only one shade sail is proposed within the outdoor play area.

3. 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:

#### Part 3.2 – Child Care Centres

- The proposed fencing along the rear and side boundaries are inconsistent with Clauses 3.5(1), (a) and (b) in that:
  - A 2.7m high acoustic barrier adjacent to the property boundaries of residential properties is inconsistent with the height of fences within low density residential areas and will detract from the visual amenity of adjoining properties;
  - Detailed drawings clearly showing the design of the acoustic barrier and the transition from the 2.7m acoustic barrier to the 1.8m lapped and capped along the side boundary fence have not been submitted. The visual impact of the proposed acoustic barrier when viewed from adjoining properties cannot be properly assessed

## Part 7.2 – Waste Minimisation and Management

- The proposal is inconsistent with Clause 2.8 and Schedule 3 in Part 7.2 of the Ryde DCP 2014 and Clauses 7.4 (6), (a), (b), (c) and (d) in Part 3.2 of the Ryde DCP 2014 in that:
  - The submitted Waste Management Plan is inconsistent with the requirements for commercial waste collection;
  - The number of proposed garbage and recycling receptacles are insufficient and is not considered adequate to service the child-care centre;
  - The proposal does not provide sufficient architectural details to enable a proper assessment of the visual and amenity impacts of the garbage storage area as viewed from the public domain or adjoining properties;
  - The proposed garbage and recycling storage area is immediately adjacent to the driveway and results in the narrowing of the driveway from 5.5m to 4.6m, which does not adequately accommodate for two-way vehicular traffic to and from the car park; and
  - The proposal does not provide a designated loading or service space within the site to enable waste collection without adversely impacting on vehicular or pedestrian access.

## Part 8.2 – Stormwater and Floodplain Management

- The proposal is inconsistent with Clause 1.3 – Objectives as insufficient information has been provided to demonstrate the proposed stormwater management plan is safe, will not have any adverse impacts to adjoining properties and public safety, and minimises property damage.

4. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the site is unsuitable for the proposed development as the site as intensification of the use of the site will have adverse amenity impacts on immediately adjoining residential properties and the traffic generation resulting from the use will exacerbate traffic congestion and demands for on street parking within local streets which is inconsistent with the low density residential character of the locality.

5. Pursuant to Section 4.15(1)(d) of the Environmental Planning and Assessment Act 1979, submissions received in accordance with the Act and regulations have been considered and have identify significant amenity impacts caused by the proposal on surrounding properties and the local area.

6. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the development is not in the public interest because it fails to achieve the objectives and requirements of the applicable environmental planning instruments.





**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	
Marica Doheny (Chair)	
Eugene Sarich	
Jennifer Bautovich	
Rob Senior	



**SCHEDULE 1**

<b>1</b>	<b>DA No.</b>	LDA2020/0167
<b>2</b>	<b>Proposal</b>	Construction of a two (2) storey child-care centre catering for fifty-nine (59) children between the ages of 0-5 years of age and one (1) level of basement car parking for thirteen (13) car spaces
<b>3</b>	<b>Street Address</b>	5 Aeolus Avenue, Ryde
<b>4</b>	<b>Applicant / Owner</b>	S & N Navasardian
<b>5</b>	<b>Reason for referral to RLPP</b>	Contentious Development - Development is the subject of ten (10) or more unique submissions by way of objection.
<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 No.55 – remediation of Land</li> <li>○ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</li> <li>○ State Environmental Planning Policy No. 19 – Bushland in Urban Areas</li> <li>○ State Environmental Planning Policy (Sydney Harbour Catchment) 2005</li> <li>○ State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017</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 State Environmental Planning Policy</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> </ul>



		<ul style="list-style-type: none"><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>
7	<b>Material considered by the Panel</b>	<ul style="list-style-type: none"><li>Council assessment report</li><li>Written submissions during public exhibition: 17</li><li>Verbal submissions at the public meeting:<ul style="list-style-type: none"><li>In support – Nil</li><li>In objection – Julie Li</li><li>Council assessment officer - Peggy Wong &amp; Sandra Bailey</li><li>On behalf of the applicant – Nigel White</li></ul></li><li>Nigel White submitted additional information addressing the reasons for the refusal prior to the meeting.</li><li>Julie Li submitted a summary of her address to the Panel with her registration to speak.</li></ul>
8	<b>Meetings, briefings and site inspections by the Panel</b>	<ul style="list-style-type: none"><li>Site inspection: NA – site photos provided &amp; Panel members attended the site separately.</li><li>Briefing: 10 December 2020</li></ul> <p>Attendees:</p> <ul style="list-style-type: none"><li><u>Panel members</u>: Marcia Doheny (Chair), Eugene Sarich, Jennifer Bautovich &amp; Rob Senior</li><li><u>Council assessment staff</u>: Peggy Wong, Sandra Bailey, Steve Hanna, Alex Zhu</li></ul> <ul style="list-style-type: none"><li>Papers were circulated electronically on 1 December 2020</li></ul>
9	<b>Council Recommendation</b>	<b>Refusal</b>
10	<b>Draft Conditions</b>	Not applicable