

Date of Determination	12 August 2021
Panel Members	Stephen O'Connor (Chair) Graham Brown (Independent Expert) David Epstein (Independent Expert) Rob Senior (Community Representative)
Apologies	NIL
Declarations of Interest	NIL

Public meeting held remotely via teleconference on 12 August 2021 opened at 5:00pm and closed at 5:45pm.

Papers circulated electronically on 4 August 2021.

MATTER DETERMINED

LDA2020/0439

79-81 Station Street, West Ryde

Proposal: Demolition, new two storey child care centre accommodating 60 children with basement car parking for 13 vehicles. Two (2) street trees are also proposed to be removed.

The following people addressed the meeting:

1. Adele Johnston (objector)
2. David Furlong (applicant)
3. Sam Tadros (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:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development does not satisfy the following provisions of the *Child Care Planning Guideline* as required by Clause 23 of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017.
 - Part 2, Principle 1 – Context and Part 2, Principle 2 – Built Form. The proposal is not considered to be designed in response to the site's topography. The proposed basement contributes to uncharacteristic visual presentation to the streetscape.
 - Part 2, Principle 3 – Adaptive learning spaces. Insufficient detail has been provided with regard to adaptive learning spaces.
 - Part 2, Principle 4 – Sustainability. A Section J report addressing sustainability has not been submitted.
 - Part 2, Principle 5 - Landscape. The proposed landscape design does not contribute to the existing landscape character of the streetscape and neighbourhood. A lack of landscape buffer zones and deep soil planting result in poor amenity for users of the site as well as adjoining residents.
 - Part 2, Principle 6 – Amenity. The proposal has not been designed to provide high levels of amenity for the children, with the design incorporating a subterranean outdoor play space.
 - Part 3, 3.1 – Site selection and location. The proposal has not demonstrated the acoustic impacts on the adjoining residential properties. The findings in submitted acoustic report were based on inconsistent and impractical assumptions.
 - Part 3, 3.2 - Local character, streetscape and the public domain interface. The character and scale of proposed development does not achieve the desired outcomes anticipated by the CCPG nor is it considered to be residential-compatible or small-scale. The subject site is considered to be unsuitable for the proposed childcare centre.
 - Part 3, 3.3 – Building, orientation, envelope, building design and accessibility. The building design is not considered to be fit for purpose and does not deliver a high level of amenity for children or adjoining properties.
 - Part 3, 3.4 - Landscaping. The proposed landscaping design does not contribute to streetscape and amenity.
 - Part 3, 3.5 – Visual and acoustic privacy. Insufficient detail has been provided with regard to the proposed acoustic fence.
 - Part 3, 3.6 – Noise and Air Pollution. The submitted acoustic report has concluded that traffic noise intrusion generated from Station Street to the indoor areas of the childcare centre will not exceed the noise criteria if all doors and windows remain closed. This will result in a non-compliance with ventilation requirements.
 - Part 3, 3.8 – Traffic, parking and pedestrian circulation. The proposal is contrary to Part 3.8 Traffic, parking and pedestrian circulation of the Child Care Planning Guideline.

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- Part 4, Principle 4.9 – Outdoor space requirements. The proposal provides for a subterranean outdoor space which is enclosed in by 1.8m high retaining walls which site on top of proposed fencing.
 - Part 4, 4.1 – Shade. The submitted documentation does not demonstrate that year round solar access is provided to outdoor play areas.
2. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the development does not comply with the following provisions of *Ryde Local Environmental Plan 2014*:
- Clause 6.2 Earthworks. The proposal includes excavation across the entire site including 5.68m depth for the basement, 2.58m for the ground floor and 2.52m for the outdoor play spaces. The proposal relies upon retaining walls across the site and is not sympathetic to the site's topography.
3. Pursuant to Section 4.15(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the development does comply with the following provisions of the *Ryde Development Control Plan 2014*:
- Section 2.0 – Size, Location and Site Selection for the following reasons:
 - 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 privacy impacts on adjacent residential properties and exacerbate traffic conditions in the local road network.
 - The subject site does not meet minimum site area requirements. The RDCP requires sites to have a minimum area of 800m². The subject site has an area of 760.30m².
 - Section 3.1, Clause 3.1 - All Child Care Centres. Clause 3.1 of the Ryde DCP 2014 requires attention to be paid in the design to maximise energy efficiency and sustainability and compliance with Part 7.1 Energy Smart, Water wise of the RDCP 2014. The application has not been supported by a Section J report and has not demonstrated energy efficiency.
 - Section 3.1, Clause 3.1 - All Child Care Centres. Clause 3.1 of the Ryde DCP 2014 requires that all child care centres are compatible with the streetscape. The proposal is not consistent with the existing or desired future character of the area.
 - Section 4.0, Clause 4.1 Acoustic Privacy for children in the centre. The proposal has not demonstrated that children's play and sleep areas are not subjected to excessive traffic noise, or other external noises.
 - Section 4.0, Clause 4.2 Acoustic Privacy for adjoining residents. The proposal has not demonstrated that site layout and building design, including internal layout, minimises the noise emitted from the centre and does not have an adverse impact on the amenity of surrounding residences.
 - Section 3.0, Clause 3.2 and Section 5.0, Clause 5.1 Car Parking, Traffic and Access and Part 9.3 Parking Controls of the Ryde DCP 2014. The proposal is an intensification of

use and has not demonstrated there will be no adverse impact upon local traffic as follows:

- The Traffic Impact Assessment Report submitted with the proposal does not satisfy the requirements of *Clause C33* 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;
 - 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 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.
- Section 5.0, Clause 5.1 Car Parking, Traffic and Access and Part 9.3 Parking Controls of the Ryde DCP 2014. The application has not been supported by an access report prepared by a suitability qualified and accredited person.
 - Section 3.0, Clause 3.3 Building orientation, envelope and design. 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*. The extent of excavation is out of character with immediately surrounding low density dwellings and results in design which is not relative to the needs of the locality.
 - Section 3.3, Clause 2.5.1 Streetscape. The proposal is not compatible with the existing streetscape or desired future character of the area.
 - Section 3.3, Clause 2.9.3 – Rear Setback. The proposed 0.5m setback is not consistent with the existing or desired future character or the area.
4. The following documentation was not submitted and/or was considered to be inadequate:
- A landscape plan including details specifying the outdoor play space environment and prepared by a suitability qualified person was not submitted
 - An Air Quality Report was not submitted
 - A Section J report addressing sustainability was not submitted
 - An Access Report prepared by an accredited access consultant was not submitted
 - The findings in submitted acoustic report were based on inconsistent and impractical assumptions
 - Detail regarding the acoustic fencing, its location and height are inconsistent throughout the documentation submitted and
 - The Traffic Impact Assessment Report 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.

5. Pursuant to the provisions of Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not suitable for the site. The site as intensification of the use of the site will have adverse amenity impacts on immediately adjoining residential properties. The proposal is contrary to Section 1.3 Objects of the Environmental Planning and Assessment Act 1979.
6. 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.

The Panel adopts the recommendation and reasons for refusal as outlined in the Assessment Officer's report.


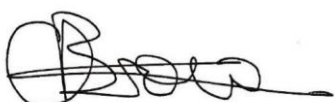
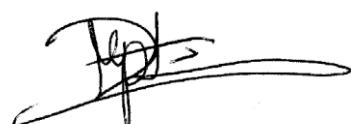

CONDITIONS

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	
Stephen O'Connor (Chair)	
Graham Brown	
David Epstein	
Rob Senior	

SCHEDULE 1		
1	DA No.	LDA2020/0439
2	Proposal	Demolition, new two storey child care centre accommodating 60 children with basement car parking for 13 vehicles. Two (2) street trees are also proposed to be removed.
3	Street Address	79-81 Station Street, West Ryde
4	Applicant / Owner	Megalli Family Trust / Samer and Shady Megalli
5	Reason for referral to RLPP	Contentious development – is the subject of 10 or more unique submissions by way of objection. <i>Schedule 1, Part 2 of Local Planning Panels Direction</i>
6	Relevant mandatory considerations	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy No. 55 – Remediation of Land State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 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 SEPP Draft Environment SEPP 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: 22 Verbal submissions at the public meeting: <ul style="list-style-type: none"> In support – Nil In objection – Adele Johnston Council assessment officer – Nil On behalf of the applicant – David Furlong, Sam Tadros

		<ul style="list-style-type: none"> • Adele Johnston sent supporting submissions which were circulated prior to the meeting
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: 12 August 2021 Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Stephen O'Connor (Chair), Graham Brown, David Epstein, Rob Senior ○ <u>Council assessment staff</u>: Sandra Bailey, Kimberley Kavwenje, Daniel Pearse ○ <u>Applicant</u>: David Furlong, Sam Tadros • Papers were circulated electronically on 4 August 2021
9	Council Recommendation	Refusal
10	Draft Conditions	Not applicable