

Date of Determination	10 November 2022
Panel Members	Alison McCabe (Chair) David Epstein (Independent Expert) Susan Hobley (Independent Expert) Anthony Panzarino (Community Representative)
Apologies	NIL
Declarations of Interest	NIL

Public meeting held remotely via teleconference on 10 November 2022 opened at 5:00pm and closed at 6:45pm.

Papers circulated electronically on 1 November 2022.

MATTER DETERMINED

LDA2021/0445

Address: 5 Aeolus Street, Ryde

Proposal: Demolition of structures and child-care centre.

The following people addressed the meeting:

1. Julie Li (objector)
2. Tony Catalano (objector)
3. Nigel White & Craig Hazell (Applicant/Traffic Consultant)

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. Under Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the development does not satisfy the provisions of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* in that:
 - The proposal does not comply with the minimum outdoor space requirements contained within the *Education and Care Services National Regulations*, and payment has not been received to enable the Regulatory Authority to consider whether to grant concurrence under clause 23.
 - The proposal does not satisfy the following Design Quality Principles listed within the *Child Care Planning Guideline*, including:
 - Principle 1 - Context
 - Principle 2 - Built Form
 - Principle 3 - Adaptive Learning Spaces
 - Principle 4 - Sustainability
 - Principle 6 - Amenity
 - Principle 7 - Safety.
 - The proposal does not satisfy a range of provisions contained within the *Child Care Planning Guideline*, including:
 - i. The selection of this site for a child care centre is not suitable as it results in significant acoustic impacts on the surrounding residential properties (Part 3.1).
 - ii. The selection of this site for a child care centre is not suitable as the traffic and parking impacts of the proposal will adversely impact residential amenity and road safety (Part 3.1 and 3.8).
 - iii. The selection of this site for a child care centre is not compatible with the surrounding land uses as its operation is constrained by extensive acoustic attenuation measures and is subject to traffic congestion which blocks the frontage of the site during the peak afternoon period (Part 3.1).
 - iv. The selection of this site for a child care centre is not suitable as access to on street parking is not readily accessible during the evening peak hour periods due to congestion along Aeolus Avenue. Access to and from the site is obstructed during the peak evening period (Part 3.1).
 - v. The selection of this site for a child care centre is not suitable due to high traffic volume along Aeolus Avenue during the evening peak period which creates an unsafe situation for vehicles and pedestrians accessing the site (Part 3.1).
 - vi. The proposal fails to provide outdoor space at the ground level to reduce impacts on amenity from fences/barriers onto adjoining residences (Part 3.2).
 - vii. The proposal fails to demonstrate how amenity will be minimised as a result of the operation of the development and its associated parking and traffic impacts (Part 3.8).
 - viii. The proposal provides poor cross ventilation (Part 4.4 and clause 110 of the *Education and Care Services National Regulations Services*).
 - ix. The first floor balcony outdoor play space is not able to be included in the calculation for outdoor space given the balcony is surrounded by 1.8m acoustic

- 
- walls and has not received the concurrence of the Department of Education (Part 4.9 and clause 108 of the *Education and Care Services National Regulations Services*).
- x. The Level 1 outdoor play space fails to create a natural environment including the use of natural features such as trees, sand and natural vegetation (Part 4.10 and clause 113 of the *Education and Care Services National Regulations Services*).
 - xi. The impacts on streetscape amenity are unacceptable due to the dominant double width driveway and garage located centrally in the development.
2. Under Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the development is inconsistent with the provisions of *Ryde Local Environmental Plan 2014* in that:
- The proposed development does not comply with Clause 4.4 of *Ryde Local Environmental Plan 2014*. The proposal seeks a Floor Space Ratio (FSR) of 0.547:1 which contravenes the 0.5:1 maximum FSR prescribed for the subject site. No clause 4.6 written request to vary the development standard has been submitted by the applicant.
 - The proposed development is inconsistent with the relevant objectives of the R2 Low Density Residential zone given existing traffic congestion and road safety concerns make the site unsuitable for a child care centre in this location.
3. The development is inconsistent with a number of provisions of the *Ryde Development Control Plan 2014*, specifically:
- The site is not appropriate for a centre due to its slope, high number of adjoining dwellings and traffic congestion, contrary to Part 3.2(2).
 - The design and character are inappropriate as limited ventilation is provided to the indoor spaces; and the substantial bulk and scale of the building and first floor rear balcony results in adverse amenity impacts on surrounding properties, contrary to Part 3.2(3).
 - The operation of the centre is strictly limited to achieve acoustic attenuation; this information is not specified in the Plan of Management, contrary to Part 3.2(4).
 - The traffic associated with the proposed development will exacerbate the traffic congestion, amenity and safety of vehicles and pedestrians using Aeolus Avenue, in particular during the evening peak period, contrary to Part 3.2(4).
 - The minimum length is not achieved for car parking spaces, contrary to the requires of Part 3.2(5).
 - The landscape plan fails to provide embellishment of the first floor outdoor area, contrary to Part 3.2(6).
 - The proposal has not been designed to comply with the built form controls under Part 3.3 Dwelling Houses and Dual Occupancy, including floor space ratio and landscaping requirements, as required by Part 3.3(2).
5. The site is unsuitable for the proposed development under section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.

6. Having regard to the reasons noted above and issues raised in public submissions, under the provisions of section 4.15(1)(d) and section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the development application is contrary to 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	
Alison McCabe (Chair)	
David Epstein	
Susan Hobley	
Anthony Panzarino	

SCHEDULE 1

1	DA No.	LDA2021/0445
2	Proposal	Demolition of structures and child-care centre
3	Street Address	5 Aeolus Street, Ryde
4	Applicant / Owner	Nigel White, Planning Direction / N & S Navasardian
5	Reason for referral to RLPP	<p>Contentious Development – More than 10 unique submissions objecting to the proposal have been received as a result of public notification of the application - Schedule 1, Part 2 of Local Planning Panels Direction and</p> <p>Departure from development standards – contravention of the floor space ratio development standard by more than 10% - Schedule 1, Part 3 of Local Planning Panels Direction</p>
6	Relevant mandatory considerations	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy (Resilience and Hazards) 2021 ○ State Environmental Planning Policy (Biodiversity and Conservation) 2021 ○ State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (ESEPP) ○ Ryde Local Environmental Plan 2014 • Draft environmental planning instruments: Nil • 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: 16 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ In support: Nil ○ In objection: Julie Li, Tony Catalano ○ Council assessment officer: Nil ○ On behalf of the applicant: Craig Hazell • Supplementary Traffic and Parking Submission by Traffic Solutions Pty Ltd, dated 10 November 2022

		<ul style="list-style-type: none"> • Commentary on 5 Aeolus Ave Ryde by Nigel White, dated 10 November 2022
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: 10 November 2022 <p>Attendees:</p> <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), David Epstein, Susan Hobley, Anthony Panzarino ○ <u>Council assessment staff</u>: Sandra Bailey, Holly Charalambous, Daniel Pearse, Myra Malek <ul style="list-style-type: none"> • Papers were circulated electronically on 1 November 2022
9	Council Recommendation	Refusal
10	Draft Conditions	Not applicable