

<b>Date of Determination</b>	10 April 2025
<b>Panel Members</b>	John Cole (Chair) David Crofts (Independent Expert) Dr. Awais Piracha (Independent Expert) John Smolders (Community Representative)
<b>Apologies</b>	NIL
<b>Declarations of Interest</b>	NIL

Public meeting held remotely via teleconference on 10<sup>th</sup> April 2025 opened at 3:00pm and closed at 3:36pm.

Papers circulated electronically on 03<sup>rd</sup> April 2025.

#### **MATTER DETERMINED**

##### **LDA2025/0012**

**Address:** 167, 169-171 and 173 Rowe Street, Eastwood

**Proposal:** Alterations and additions and use of an existing commercial building as a Pub and Hotel for up to 300 patrons, operating between 10:00am and 2:00am the following day, 7 days a week for the ground floor and 10:00am and 12:00 midnight for the rooftop space with associated business identification signage.

The following people addressed the meeting:

1. Hugh Lee OAM JP – Objector (speaking on behalf of the Eastwood Chinese Senior citizens club)
2. Edmund Leung – Objector (on behalf of a group of Eastwood community members (parents, residents and businesses) who signed petitions against the Development Application)
3. Meiling Huang – Objector
4. David Rippingill – Design Collaborative (on behalf of the applicant)


The Panel noted two submissions received from Amy Lam and Wendy Huang who were unable to attend the meeting and a petition containing over 200 signatures opposing the development

#### **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.

The Panel noted that the description of the proposal is amended to the following to include the existing solicitor's office, optometrist and beauty salon on the premises:

Alterations and additions to existing commercial buildings at 167, 169-171 and 173 Rowe Street, change of use to a Pub and Hotel at 167 and 169-171 Rowe Street for up to 300 patrons, operating 7 days a week between 10:00am and 2:00am the following day for the ground floor and 10:00am and 12:00 midnight for



the first floor area, with associated business identification signage, and retention of the existing uses (optometrist and beauty salon) at 173 Rowe Street and solicitor's office on part of the first floor level of 169 – 171 Rowe Street. The optometrist, beauty salon and solicitor's office are proposed to continue to operate in accordance with their respective development consents.

## **DEVELOPMENT APPLICATION**

The Panel determined to approve 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**

Members of the Panel visited the subject sites and the surrounding area in the Eastwood commercial centre. In particular the existing form and content of the surrounding development including commercial premises, the laneway at the rear and the Council decked carpark.

The Panel determined to approve the application for the following reasons:

- 1) The proposal is consistent with the objectives for MU1 Mixed Use zoned land.
- 2) The proposal is consistent with the statutory provisions set out in the Environmental Planning and Assessment Act 1979.
- 3) The proposal does not result in any significant adverse impacts upon adjoining properties and surrounding environment. Any potential adverse impacts upon adjoining properties or the surrounding environment are addressed by conditions of consent.
- 4) The issues raised in submissions are in some ways addressed by conditions, and/or do not warrant the refusal of this DA given the use is permissible in the zone and many of the concerns expressed related to the important character of the area must be reviewed within the statutory planning framework.
- 5) Accordingly, the proposed use is to be considered suitable to the site and the proposal is not contrary to the public interest as expressed by the Council's planning controls which govern the use of the land.

## **CONDITIONS**

The development application was approved subject to the conditions in the Council assessment report with the following amendments.

- A) Condition 34 is to be amended to include the follow:

**D) Concertina Windows Along the Southern Elevation-** Acoustically attenuated concertina windows must be constructed along the Southern Elevation in the opening above the planter boxes for the entire length of the planter boxes (as marked on the approved plans). All first-floor level windows must be closed from 10pm to 12am midnight when the premises is in operation. The 'Plan Level 1 Proposed' (Dwg: A112) and the Southern Elevation on the 'Elevations' Plan (Dwg: A200) must be amended to show the concertina windows and acoustic treatment.

E) **Planter Boxes**- A Section must be prepared showing the soil depth of the planter boxes along the Southern Elevation to ensure sufficient soil depth is available to support plant growth. This is to be accompanied by a suitability qualified horticulturist or landscape architect report confirming this, along with the suitable species proposed.

B) Condition 46 is to be amended to note the correct National Construction Code. Condition 46 shall be amended to the following:

46)	<p><b>Food Premises – Waste Storage Area</b></p> <p>A) To ensure the adequate storage and collection of waste from the food premises, all garbage and recyclable materials emanating from the premises must be stored in a designated enclosed waste storage area. The waste storage area must be designed and constructed in accordance with <i>AS 4674 – Design, Construction and Fit-out of Food Premises, Australia New Zealand Food Standards Code 3.2.3 – Food Premises and Equipment</i> and must be:</p> <ul style="list-style-type: none"> <li>a. Suitably sized to contain all waste and recyclable material.</li> <li>b. Provided with a hose tap connected to the water supply.</li> <li>c. Paved with impervious floor materials.</li> <li>d. Coved at the intersection of the floor and walls.</li> <li>e. Graded and drained to a waste disposal system in accordance with the requirements of the relevant regulatory authority (Sydney Water).</li> <li>f. Adequately ventilated (mechanically or naturally) so that odour emissions do not cause offensive odour or air pollution as defined by the <i>Protection of the Environment Operations Act 1997</i> or a nuisance.</li> <li>g. Fitted with appropriate interventions to meet fire safety standards in accordance with the <i>National Construction Code 2022</i>.</li> <li>h. Provided with the appropriate number and size of bins adequate for the storage of waste generated by the business, including recycling.</li> <li>i. Appropriately managed so that it does not attract pests or create litter.</li> </ul> <p>B) Detailed plans and specifications for the construction of the waste storage area must be submitted to and approved by the Principal Certifier prior to the issue of the Construction Certificate. The proposed must be constructed in accordance with such plans and specifications prior to the issue of an Occupation Certificate.</p> <p><b>Condition Reason:</b> To ensure waste generated by the business is appropriately contained.</p>
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C) Condition 89 is required to be relocated from the “Occupation and Ongoing Use” section of the notice of determination to the “Before Issue of an Occupation Certificate” section of the notice of determination.

D) The Plan of Management condition is required to be amended to include ‘d’, and ‘e’ and be relocated from the “Occupation and Ongoing Use” section to the “Before Issue of an Occupation Certificate” section of the notice of determination requiring the Plan of Management to be updated. The new condition is to read as:

	<p><b>Plan of Management</b></p> <p>Prior to the issue of an Occupation Certificate, the Plan of Management must be amended to include the following:</p> <ul style="list-style-type: none"> <li>a) The phone number of the premises must be made available and kept up to</li> </ul>
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	<p>date on both the pub's website and in the Plan of Management for persons who wish to make a complaint (section 3.2).</p> <p>b) All waste must be collected from Hillview Lane in accordance with the approved Operational Waste Management Plan (section 3.6).</p> <p>c) A security guard must be provided from 8pm until 30 minutes after close on Thursday, Fridays and Saturdays and, from 12am midnight until 30 minutes after close on any other occasion the pub trades past midnight (section 5.2).</p> <p>d) As part of the required RSA monitoring obligations, all staff and security must monitor patrons for signs of drug use. This must be added in section 4.3 of the Plan of Management.</p> <p>e) The Plan of Management must be consistent with all conditions of consent (such as but not limited to conditions 90, 94, 96, 106 and 110).</p>
	<b>Condition Reason:</b> To protect residential amenity.

E) Condition 92 is required to be amended to the following:

	<p><b>Hours of Operation</b></p> <p>The pub within the tenancies of 167 and 169-171 Rowe Street may operate 7 days per week but is restricted to the following hours of operation:</p> <p>a) The use of the first floor may commence at 10am but must cease at 12am (midnight) with all external building elements including doors and windows closed and all amplified music switched off. No staff are to use the first floor for cleaning after 12:30am. Use of the first floor between 10pm and 12am (midnight) is only permitted with all windows closed. This includes the concertina windows required by the 'Design Amendments' condition above.</p> <p>b) The use of the alfresco areas and beer garden on the ground floor may commence at 10am but must cease at 2am the following day. Use of these areas between 12am (midnight) and 2am is only permitted with all windows and doors closed.</p> <p>c) The use of all other internal ground floor areas may commence at 10am and must cease at 2am the following day.</p> <p>d) The existing uses at the premises (being optometrist, beauty salon and solicitor's office) must only operate in accordance with their existing development consents.</p>
	<b>Condition Reason:</b> To ensure compliance with submitted reports and relevant acoustic criteria.

F) Condition 101 is required to be amended to the following:

	<p><b>Bottle, Can or Garbage Removal</b></p> <p>No glass bottle, aluminium can or garbage removal from the site or collection from Hillview Lane shall take place between the hours of 8:00pm and 7:00am (the following day) Monday to Friday, and between 5:00pm and 9:00am (the following day) on weekends and public holidays.</p>
	<b>Condition Reason:</b> To protect the amenity of the local area.

G) Condition 102 is required to be amended the following:

	<p><b>Deliveries</b></p> <p>Deliveries to the development must not be undertaken between the hours of 8:00pm and 7:00am (the following day) Monday to Friday, and between 5:00pm and 9:00am (the following day) on weekends and public holidays.</p>
	<b>Condition Reason:</b> To protect the amenity of the local area.

H) Condition 110 is required to be amended to the following:

	<b>Plan of Management</b>
	The use must always be operated and managed in accordance with the Plan of Management, submitted with the application and as amended by this development consent. In the event of any inconsistency, the conditions of this consent will prevail over the Plan of Management.
	<b>Condition Reason:</b> To protect residential amenity.

I) Two new conditions are required to be imposed in the 'Occupation and Ongoing Use' section of the conditions of consent regarding noise limiters. The two new conditions are:

	<b>Instillation of Noise Limiter</b>
	Prior to the use of any amplified sound systems at the premises, a noise limiter must be installed for all amplified sound systems. The installed sound systems must always be under the control of the noise limiter. At all times any amplified music must be played through the installed sound systems, with no temporary sound systems permitted. The noise limiter must be calibrated following installation so that during the approved operating hours, the sound pressure level does not exceed the acoustic criteria outlined in the DA Acoustic Report prepared by Pulse White Noise Acoustics, Report Number 240692, dated 10 March 2025.
	<b>Condition Reason:</b> To ensure that noise control measures outlined in the acoustic report are complied with.
	<b>Noise Limiter</b>
	<p>Prior to the commencement of the use of the premises, all sound amplification equipment must comply with the following:</p> <ul style="list-style-type: none"> <li>a) All sound amplification equipment and associated noise limiters shall be approved by a suitably qualified acoustic consultant* in accordance with the manufacturer's specification to ensure that resultant amplified sound complies with the entertainment noise emission criteria set out in this consent and any other relevant criteria identified in the acoustic reports associated with this application.</li> <li>b) On setting the noise limiters an acoustic compliance report shall be prepared by the acoustic consultant identifying the limiter settings, a block diagram of the sound systems, identification of the type and location of speakers and measurement results with a confirmation of acoustic compliance. A copy of this report must be kept on the premises at all times and be able to be produced on request of a Council officer.</li> <li>c) The limiter and all post-limiter equipment including power amplifiers must be tamper proof and only operable by the acoustic consultant and occupier.</li> <li>d) There shall be no modifications to the sound system with respect to replacement amplifiers or speakers without recalibration of the limiter settings and recertification as set out in part (b) of this condition.</li> <li>e) Within 12 months from the full commencement of the operations a suitably qualified noise engineer shall be retained to certify the normal operation of the premises complies with the requirements of the conditions of consent, including noise outputs and necessary equipment. This report shall be provided to Council's Manager Development Assessment for consideration along with any recommended changes to the operation and equipment necessary to achieve compliance.</li> </ul> <p>*Note: Suitably qualified Acoustic Consultant means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustics Society or the Association of Australasian Acoustical Consultants.</p>

	<b>Condition Reason:</b> To ensure that noise control measures outlined in the acoustic report are complied with.
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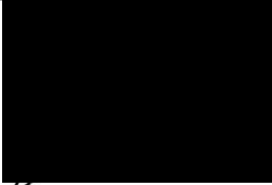
## CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from all those wishing to address the panel. There was obviously a great deal of concern within the community concerning the potential adverse impacts of the pub/ hotel use within this commercial locality. Notwithstanding the Panel was required to apply a statutory planning framework which reviewed the permissible use of the site, the detailed conditions of consent provided for the regulatory framework, along with the licencing laws to allow for an approval.

In particular the Panel noted the concerns raised by members of the public and noted that the concerns raised regarding noise generated from the use of the premises, increased traffic generating from the proposed used and the potential impacts to the amenity of the neighbourhood.

After consultation with Council's officers and reviewing the conditions of consent, the Panel considered that appropriate controls have been implemented and is satisfied that the proposed will not have an unreasonable adverse impact on the neighbourhood.



PANEL MEMBERS	
John Cole (Chair)	
David Crofts (Independent Expert)	
Dr. Awais Piracha (Independent Expert)	
John Smolders (Community Representative)	

SCHEDULE 1		
1	DA No.	LDA2025/0012
2	Proposal	Alterations and additions and use of an existing commercial building as a Pub and Hotel for up to 300 patrons, operating between 10:00am and 2:00am the following day, 7 days a week for the ground floor and 10:00am and 12:00 midnight for the rooftop space with associated business identification signage.
3	Street Address	167, 169-171 and 173 Rowe Street, Eastwood Lots 5, 6 and 7 DP 26136 West Ward
4	Applicant / Owner	Mr Myles (Applicant) ENROCORP PTY (Owner)
5	Reason for referral to RLPP	Contentious development – Development that (b) in any other case – is the subject of 10 or more unique submissions by way of objection. Schedule 1, Part 2 of the Local Planning Panels Direction  Sensitive development – (d) Development for the purposes of new licensed premises, which will require the following liquor licence: (ii) a hotel (general bar) licence under the Liquor Act 2007. Schedule 1, Part 4 of Local Planning Panels Direction
6	Relevant mandatory considerations	<ul style="list-style-type: none"> <li>Environmental planning instruments: <ul style="list-style-type: none"> <li>State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>State Environmental Planning Policy (Industry and Employment) 2021</li> </ul> </li> <li>Draft environmental planning instruments: Nil</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 2021</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> <li>Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>The public interest, including the principles of ecologically sustainable development</li> </ul>
7	Material considered by the Panel	<ul style="list-style-type: none"> <li>Council assessment report</li> <li>Written submissions during public exhibition: 25 submissions in objection and 1 in support</li> <li>Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>In objection – Hugh Lee OAM JP, Edmund Leung &amp; Meiling Huang</li> </ul> </li> </ul>



		<ul style="list-style-type: none"> <li>○ On behalf of the applicant – David Rippingill</li> <li>○ Written submissions in objection who were unable to attend: Amy Lam and Wendy Huang and a petition containing over 200 signatures</li> </ul>
8	Meetings, briefings and site inspections by the Panel	<ul style="list-style-type: none"> <li>• Site inspection: Panel Chair John Cole and member John Smolders visited the site on 10 April 2025 with Council officers. The other panel members, Dr Awais Piracha and David Crofts, conducted their site inspections independently.</li> <li>• Briefing: 10<sup>th</sup> April 2025 Attendees: <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: John Cole (Chair), David Crofts (Independent Expert), Dr. Awais Piracha (Independent Expert), John Smolders (Community Representative)</li> </ul> </li> <li>• <u>Council assessment staff</u>: Gavin Zev, Holly Charalambous, Sohail Faridy, Laura Linares, Jason Chanphakeo</li> <li>• Papers were circulated electronically on: 3 April 2025</li> </ul>
9	Council Recommendation	Approval
10	Draft Conditions	Attachment 1 to the Council assessment report