

Date of Determination	5 December 2024
Panel Members	Julie Savet Ward (Chair) Philip Bull (Independent Expert) Susan Hobley (Independent Expert)
Apologies	NIL
Declarations of Interest	NIL

Public meeting held remotely via teleconference on 5 December 2024 opened at 3:20pm and closed at 3:50pm.

Papers circulated electronically on 27 November 2024.

MATTER DETERMINED

LDA2024/0195

Address: 56 Rutledge Street, Eastwood

Proposal: Construction of a two storey child care centre with basement car parking and a capacity for 70 children

The following people addressed the meeting:

1. Kai Hong (Garry) Huang – Objector (Against)
2. Jake Janseen – 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*.

A majority of the Panel (Julie Savet Ward, Susan Hobley) voted in favour of the refusal and, Philip Bull voted in favour of deferral.

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 is inconsistent with the provisions of *State Environmental Planning Policy (Transport and Infrastructure) 2021* (SEPP (T&I)). In particular, the development does not satisfy:

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- a) Section 2.119(2)(a) of SEPP (T&I) because the proposal does not provide vehicular access to the land by a road other than a classified road. The proposal is not supported by Transport for NSW on this basis.
 - b) Section 2.119(2)(c) of SEPP (T&I) because the application does not satisfactorily demonstrate that the development is of a type that is not sensitive to vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential vehicle emissions within the site of the development arising from the adjacent classified road.
 - c) The following Design Quality Principles in Part 2 of the Child Care Planning Guideline (September 2021):
 - i. Principle 1 – Context.
 - ii. Principle 2 – Built Form.
 - iii. Principle 6 – Amenity.
 - d) The following Matters for Consideration in Part 3 of the Child Care Planning Guideline (September 2021):
 - i. Clause 3.1 – Site Selection and Location:
 - a. Sub-clause C2.
 - b. Sub-clause C4.
 - ii. Clause 3.6 – Noise and Air Pollution:
 - a. Sub-clause C26.
 - b. Sub-clause C27.
 - iii. Clause 3.8 – Traffic, Parking and Pedestrian Circulation
 - a. Sub-clause C33.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development has been assessed as not complying with the floor space ratio development standard of the Ryde Local Environmental Plan 2014. The standard permits a maximum floor space ratio of 0.5:1 and the proposal has a floor space ratio of 0.522:1. No Clause 4.6 request has been submitted with the application. Where a variation to a development standard is proposed, a Clause 4.6 is a jurisdictional prerequisite to consent being granted.
 3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the application is not accompanied by a Heritage Impact Statement addressing the impact of the development on the adjacent heritage item (No. 31 Campbell Street) and does not adequately address Clause 5.10 of the Ryde Local Environmental Plan 2014. The development is considered to result in adverse likely impacts and is not supported in its current form.
 4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is considered unsatisfactory in relation to Clause 6.4 of the Ryde Local Environmental Plan 2014 as the proposed on-site detention tank is located in the front setback in an area which is intended for deep soil landscaping. This placement conflicts with the objectives of deep soil landscaping in the front setback area. Further, the front of the property is subject to flood affectation and, due to the proposed detention tank levels being nearly equivalent to those of the pit fronting the site, the on-site detention system will suffer a submerged outlet and not function as designed, potentially resulting in backflow / surcharge of the system and flooding the site.

5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of the *Ryde Development Control Plan 2014*. In particular, the development does not satisfy:

a) The following controls under Part 3.2 – Child Care Centres:

- i. Clause 2.1 – Suitability of Location and Site for Child Care
- ii. Clause 3.2 – Detached Centres in Residential Areas
- iii. Clause 4.2 – Acoustic Privacy – for Adjoining Residents
- iv. Clause 5.1 – Car Parking
- v. Clause 6.1 – General Landscape Design Requirements
- vi. Clause 7.1 – Miscellaneous Controls – Centre Facilities
- vii. Clause 7.4 – Waste Storage and Management

b) The following control under Part 3.3 – Dwelling Houses and Dual Occupancy:

- i. Clause 2.9.1 – Front Setbacks

(whilst the proposal is for a child care centre, the above control is fundamental in ensuring that any non-residential development is compatible with the existing and desired future character of the area)

6. Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the development does not provide sufficient information to appropriately consider the likely impacts. The submitted air quality assessment does not rely on relevant site-based data and results in a questionable conclusion.
7. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the site is not considered suitable for the development.
8. Pursuant to Section 4.15(1)(d) of the Environmental Planning and Assessment Act 1979, the public exhibition of the application has resulted in submissions which raise issues that warrant the refusal of the application.
9. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposal is not considered to be in the public interest.

Phillip Bull disagreed with the majority decision for the following reasons:

Mr Janssen requested deferral of the development application, he claimed not to have been notified of the meeting (officers rang him on the day) nor had he had any contact with the officers prior concerning the issues raised in the report. The site is vacant, in an area undergoing housing renewal and a childcare centre is considered to be an appropriate use in this context.




- A deferral was supported in this instance, to seek an amended DA from the applicant that:
 - Provided alternative vehicular access off Wentworth Road.
 - Resolution of the technical reporting issues noted in the officer's report (e.g. floor space compliance, air quality and flooding); and
 - Reduction in the size and scale of the facility.

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

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	
Julie Savet Ward (Chair)	
Philip Bull	
Susan Hoblely	

SCHEDULE 1

1	DA No.	LDA2024/0195
2	Proposal	Construction of a two storey child care centre with basement car parking and a capacity for 70 children
3	Street Address	56 Rutledge Street, Eastwood
4	Applicant / Owner	Janssen Group Pty Ltd (Applicant) AFD Family Trust (Owner)
5	Reason for referral to RLPP	Contentious Development – 10 or more unique submissions by way of objection.
6	Relevant mandatory considerations	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy (Biodiversity and Conversation) 2021 ○ State Environmental Planning Policy (Resilience and Hazards) 2021 ○ State Environmental Planning Policy (Transport and Infrastructure) 2021 ○ 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 2021</i>: Nil • Provisions of the <i>Childcare Planning Guidelines 2021</i> • Provisions of the <i>Education and Care services National Regulations 2012</i> • 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: Twenty-two (22) • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ In objection – Kai Hong (Garry) Huang ○ In support – Jake Janssen (Applicant) ○ Council assessment officer – Shannon Butler
8	Meetings, briefings and site inspections by the Panel	<ul style="list-style-type: none"> • Site inspection: 5 December 2024 • Briefing: 5 December 2024 Attendees:

		<ul style="list-style-type: none"> ○ <u>Panel members</u>: Julie Savet Ward (Chair), Philip Bull, Susan Hoblely ○ <u>Council assessment staff</u>: Sohail Faridy, Shannon Butler, Jason Chanphakeo ● Papers were circulated electronically on: 27 November 2024
9	Council Recommendation	Refusal
10	Draft Conditions	Not applicable