

JOHNSON | WINTER | SLATTERY

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Our Ref: D1712
Your Ref: PPSSWWC-289
Doc ID: Doc ID: 302557945.1

22 May 2023

Mr Robert Walker
Senior Development Assessment Planner
Development Services
Penrith City Council
PO Box 60
PENRITH NSW 2751

BY EMAIL robert.walker@penrith.city

Dear Robert

PPSSWC-289 - DA22/1080 - 68 Lockwood Road, Erskine Park

We act for Fitzpatrick Investments Pty Ltd, the Applicant to the above development application.

We refer to the Record of Deferral dated 8 May 2023, which was circulated to the Applicant by the Planning Panels Secretariat on 17 May 2023.

Towards the end of the Record of Deferral, the Panel Members stated that they expected revised information to be submitted to Penrith City Council (**Council**) within 3 days. We hereby respond to the points within the Record of Deferral that are directed to the Applicant.

Point 1 – Whether the application is for SSD

On 10 May 2023, the Applicant wrote to the Panel as requested to confirm that it is only seeking approval for a warehouse that would be used for two operations. A copy of that letter is **enclosed** for your reference. We refer in particular to point (a) of that letter.

Point 2 – Proposed setbacks

The Panel queried whether the Applicant could articulate or break up the awning on Lockwood Road to make provision for further tall canopy tree planting to assist with ensuring integration of the warehouse into the landscape. The Applicant proposes reducing the width of the awning from 36m to 30m so as to ensure that the awning structure will not impede the natural growth of the tree canopy in this location. That change is indicated on the updated site and roof plans which are **enclosed** for your reference.

Point 5 – Compatibility with infrastructure routes

We can confirm that the Applicant has contacted Ryan Klingberg, Senior Planning Officer Metro West at the Department of Planning and Environment in relation to the future widening of Lenore Drive. A copy of the Applicant's correspondence is **enclosed**, however no response has yet been received as

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at the date of this letter. We note the Panel's instruction that the Council is to prepare a draft deferred commencement condition requiring this written confirmation in the event that a response is not received.

Yours faithfully,

A handwritten signature in blue ink that reads "Johnson Winter Slattery". The signature is written in a cursive, flowing style.

Johnson Winter Slattery

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10 May 2022

Ms Sharon Edwards
Project Officer
Planning Panels Secretariat
32 Mann Street
GOSFORD NSW 2250

BY EMAIL sharon.edwards@planning.nsw.gov.au

Dear Sharon

PPSSWC-289 - DA22/1080 - 68 Lockwood Road, Erskine Park

We act for Fitzpatrick Investments Pty Ltd, the Applicant to the above development application (**DA**).

We refer to the final briefing for the electronic determination of the DA on 8 May 2023, which was attended by the Sydney Western City Planning Panel (**SWCPP**), and representatives from Penrith City Council (**PCC**) and the Applicant.

During the course of the final briefing, the Applicant took on notice a number of queries directed to it by Mr Justin Doyle, Chair of the SWCPP. The Applicant responds to those queries as follows:

- (a) **Use of the premises** – The Applicant sought consent for the construction of a single building with two tenancies (“Warehouses 1 and 2”) as either a combined operation or two separate tenancies. Development having a CIV of more than \$30million for the purpose of warehouses/distribution centres at one location and related to the same operation is prescribed as State significant development (per item 2, Sch 1 of the Planning Systems SEPP 2021). To avoid any issue as to the characterisation of the development as at the date of lodgement of the DA, and therefore any issue as to whether the SSD designation has been triggered, the Applicant wishes to seek consent for the construction of Warehouses 1 and 2 as two separate tenancies. The Applicant is therefore prepared to accept a condition of consent to the effect that the future use of the premises as a combined operation will require the DA to be modified.
- (b) **Attitude of DPE to setback encroachments** – Attached to PCC’s assessment report in respect of the DA was a letter from Ryan Klingberg, Senior Planning Officer at DPE dated 10 April 2023 providing DPE’s referral response. The letter stated that the proposed variation to the street setback of the proposed development was not supported as it could potentially limit the prospects of widening of this transport corridor in the future. During of the course of the final briefing, the Applicant submitted that in providing this response, it appears that Mr

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Klingberg had not been made fully aware of the history of this site, including the fact that the Applicant has already dedicated land to DPE for the future widening of Lenore Drive surrounding the intersection with Compass Drive, and the fact that a 9 metre wide transmission easement running along this frontage would also be an impediment to further widening in the future. Mr Doyle invited the Applicant to procure written confirmation from DPE on this issue.

We can advise that the Applicant has spoken to Mr Klingberg, who has indicated he will review the minutes of the final briefing once they are made available and provide a further written response via the Planning Portal. Mr Klingberg also advised that it is unusual that the DPE is being asked to provide a further referral response and it is up to PCC to make a decision about the weight of the referral response items raised. We provided PCC with the registered plan of subdivision which clearly shows the provisions which have already been made for the future road widening. Enclosed with this correspondence is the Ultimate Intersection Layout Plan (Drawing No. SKC184) for the intersection which shows, in green outline, the existing road footprint. The blue outline shows the original road boundary and the red outline shows the extent of the future road widening, including the addition of a second left-hand turn land from Lenore Drive. In the circumstances, the Applicant would ask that the SWCPP make its determination with regard to the provision of land which has already been made for future widening.

- (c) **Engineering considerations** – During the course of the final briefing, the Applicant was asked about alleged deficiencies in its DA relating to earthworks and stormwater management, in particular the matters set out at page 7 of PCC's assessment report in relation to certain requirements of sections 2.40 and 2.44 of SEPP (Industry and Employment) 2021. The Applicant directs SWCPP's attention to point 5 of its letter to PCC dated 23 March 2023, which addressed PCC's concerns. The Applicant notes that the civil plans for the DA were amended in the manner foreshadowed in that letter, and a MUSIC model was provided. Those documents were contained in Annexures A and K to the Applicant's position paper which was provided to SWCPP in advance of the final briefing. As explained at the outset of the final briefing, PCC's assessment report contains reference to issues such as these which have been resolved by the Applicant, given that the assessment was finalised upon the documents submitted at lodgement, ie in November 2022.
- (d) **Canopy and site cover** – The parties addressed SWCPP at some length during the final briefing as to the requirements set out in Part C14.2.1.4 and Part E6.3.2 of the Penrith DCP 2014, ie that a minimum of 40% tree canopy cover must be provided over the total combined area of all car parking spaces, and that site coverage shall not exceed 50%. The Applicant has provided tree canopy coverage which exceeds the 40% minimum canopy cover requirement, as explained during the final briefing: see the revised landscaping drawings, specifically L607. As for site cover, the Applicant submits that the proposed 61% ratio is entirely consistent with comparable developments in the immediate precinct along Lenore Drive, and directs SWCPP's attention to Annexure A to its letter to PCC dated 23 March 2023.

For the reasons set out above, the Applicant submits that none of these matters should be dealt with by way of deferred commencement conditions, but instead that SWCPP would determine they have been satisfactorily resolved by the Applicant.

We would ask that you please provide the SWCPP members with a copy of this correspondence for their consideration in reaching a determination of the DA. A copy of the documents referred to in items (c) and (d) above is again enclosed for ease of reference.

Yours faithfully,

A handwritten signature in blue ink that reads "Johnson Winter Slattery". The signature is written in a cursive, flowing style.

Johnson Winter Slattery

Angus Hannam

From: Jamie Stewart <jamies@fitzpatrickproperty.com.au>
Sent: Wednesday, 17 May 2023 10:54 AM
To: ryan.klingberg@planning.nsw.gov.au
Subject: FW: Development Application No. 22/1080 - No. 68 Lockwood Rd, Erskine Park
Attachments: DP1261030.pdf; RE: Record of Briefing - PPSSWC-289 – Penrith – DA22/1080 - 68 Lockwood Road, Erskine Park [JWSDOCS-DOCUMENTS.FID716303]; Lockwood North - Panel Determination Meeting Presentation - 8 May 2023 (302464101.1).pdf

Ryan,

Further to our discussion in relation the email below, please find attached the Record of Deferral. I draw your attention to item 5 and the Panel's request for confirmation from the Department that given an allowance has in fact already been made for road widening following consultation with TfNSW for the design of the 2050 intersection special requirements, there is no longer this reason to object to the proposed setbacks. Also attached is additional information that has been provided to Council and the Panel demonstrating the adequacy of the setbacks provided. If you do not believe this to be the case or you require further information from me to demonstrate this provision please let me know. I trust the attached registered deposited plan is sufficient to allow you to provide the requested confirmation. Could you please as a matter of urgency, send me back an email confirming that, based on the existing setbacks provided for future road widening, **"the Department does not object to the proposed location of the development."**

Regards,

Jamie

From: Jamie Stewart
Sent: Tuesday, 2 May 2023 6:23 PM
To: Robert Walker <Robert.Walker@penrith.city>
Cc: ryan.klingberg@planning.nsw.gov.au; Gavin Cherry <gavin.cherry@penrith.city>
Subject: RE: Development Application No. 22/1080 - No. 68 Lockwood Rd, Erskine Park

Robert,

I have reviewed your JRPP Assessment Report and note that you have not taken into consideration anything that has been provided to you subsequent to the initial lodgement. Can you explain why Council has taken this approach which appears to completely disregard the last 5 months of effort to come to a resolution?

I also note that we dedicated additional land to the Department of Planning to widen Lenore Drive surrounding the intersection with Compass Drive (which included potentially the whole frontage of this site to Lenore Drive) to make provision for its future configuration. Refer to DP1261030 Diagram 2 attached. I also note that it will be difficult to widen the road further on this frontage given the Endeavour Easement that runs along the first 9m of the frontage. With respect, I am not sure Ryan Klingberg was aware or made aware of the site's history when his letter supporting your setback position was put together.

Regards,

Jamie

From: Robert Walker <Robert.Walker@penrith.city>
Sent: Tuesday, 2 May 2023 5:45 PM
To: Jamie Stewart <jamie.stewart@fitzpatrickproperty.com.au>
Subject: Development Application No. 22/1080 - No. 68 Lockwood Rd, Erskine Park

Hello Jamie,

Thank you for providing the submission made to the Panel ahead of Monday's meeting.