

Filed: 6 June 2022 7:01 PM



Form 20 UCPR 6.2

# **NOTICE OF MOTION**

**COURT DETAILS** 

Court Land and Environment Court of NSW

Division Class 1

Registry Land and Environment Court Sydney

Case number 2021/00355201

**TITLE OF PROCEEDINGS** 

First Applicant URBAN APARTMENTS PTY LTD

ABN 49096925423

First Respondent Penrith City Council

ABN 43794422563

**FILING DETAILS** 

Filed for URBAN APARTMENTS PTY LTD, Applicant 1

Legal representative

Legal representative reference

Telephone 02 8035 7918

#### **NOTICE OF LISTING**

If this Notice of Motion has been listed, a Notice of Listing must be attached and served with the Notice of Motion.

**SEAN AARON GADIEL** 

#### **ATTACHMENT DETAILS**

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Notice of Motions (Chambers) (e-Services), along with any other documents listed below, were filed by the Court.

Notice of Motion (UCPR 20) (Notice of motion to amend - June 2022.pdf) Affidavit (Affidavit of Julide Ayas 6 June 2022.pdf)

[attach.]

jayas003 Page 1 of 1

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# **NOTICE OF MOTION**

**COURT DETAILS** 

Court Land and Environment Court of New South Wales

Class 1

Case number 2021/355201

**TITLE OF PROCEEDINGS** 

First Applicant Urban Apartments Pty Ltd

Respondent Penrith City Council

**FILING DETAILS** 

Filed for Urban Apartments Pty Ltd, Applicant

Legal representative Aaron Gadiel

Mills Oakley

Level 7, 151 Clarence Street

SYDNEY NSW 2000

Legal representative reference AXGS/JZAS/3554691

Contact name and telephone Julide Ayas

Contact email

# **PERSONS AFFECTED BY ORDERS SOUGHT**

Urban Apartments Pty Ltd, Applicant and Penrith City Council, Respondent.

## **HEARING DETAILS**

This motion is listed at

## **ORDERS SOUGHT**

- 1. The Applicant is granted leave to file and serve the amended class 1 application at tab 28 to Exhibit JA-1.
- 2. The Court exercising under s 39(2) of the Land and Environment Court Act 1979 the function of the consent authority under clause 55(1) of the Environmental Planning and Assessment Regulation 2000 agrees to the Applicant amending or varying the development application DA20/0167 to rely on the plans and documents listed in the Schedule.
- 3. The Applicant is to lodge the amendment of the development application on the NSW planning portal within 7 days of this order and notify the Respondent after it has been lodged.
- 4. The Applicant is to file an affidavit confirming satisfaction of order 3 within 7 days after the Applicant has complied with order 2.
- 5. In the event the Applicant is unable to lodge the amended development application on the NSW Planning Portal as directed in 3 above, the Applicant is to notify the Court via Online Court as soon as possible and no later than 14 days and request that the matter be relisted for further directions.
- 6. Upon satisfaction of orders 3 and 4, that pursuant to section 8.15(3) of the *Environmental Planning and Assessment Act 1979* the Applicant pay the Respondent's costs thrown away as a result of the amendment of the application for development consent, as agreed or assessed.
- 7. The hearing dates of 18 to 22 July 2022 are confirmed.
- 8. The Respondent file and serve an amended statement of facts and contentions by **17 June 2022.**
- 9. The Applicant is to file and serve any amended statement of facts and contentions in reply by **20 June 2022.**
- 10. The parties are to lodge an agreed Online Court communication seeking any variation to the orders for expert evidence made on 29 March 2022 by **22 June 2022**.
- 11. The parties have liberty to restore on three working days' notice.

# **SIGNATURE**

Signature of legal representative

Capacity Solicitor

Date of signature 6 June 2022

## NOTICE TO PERSON AFFECTED BY ORDERS SOUGHT

If you do not attend, the court may hear the motion and make orders, including orders for costs, in your absence.

## **REGISTRY ADDRESS**

Street address The Land and Environment Court of NSW

Level 4, 225 Macquarie Street

Windeyer Chambers Sydney NSW 2000

Postal address GPO Box 3565

SYDNEY NSW 2001

Telephone 02 9113 8200

## Schedule

- (a) Amended architectural plans prepared DKO:
  - (i) Drawing DA000 ('Title Page'), revision C dated 9 May 2022;
  - (ii) Drawing DA001 ('Calculations'), revision D dated 9 May 2022;
  - (iii) Drawing DA100 ('Site Analysis'), revision C dated 9 May 2022;
  - (iv) Drawing DA102 ('Site Plan'), revision C dated 9 May 2022;
  - (v) Drawing DA200 ('Basement 01 Plan'), revision E dated 9 May 2022;
  - (vi) Drawing DA201 ('Ground Floor Plan'), revision G dated 9 May 2022;
  - (vii) Drawing DA202 ('Mezzanine Floor Plan'), revision E dated 9 May 2022;
  - (viii) Drawing DA203 ('Level 1'), revision E dated 9 May 2022;
  - (ix) Drawing DA204 ('Level 2'), revision E dated 9 May 2022;
  - (x) Drawing DA205 ('Level 3 Plan'), revision E dated 9 May 2022;
  - (xi) Drawing DA206 ('Level 4 Plan'), revision E dated 9 May 2022;
  - (xii) Drawing DA207 ('Level 5 Plan'), revision E dated 9 May 2022;
  - (xiii) Drawing DA208 ('Level 6 Plan'), revision E dated 9 May 2022;
  - (xiv) Drawing DA209 ('Level 7 Plan'), revision E dated 9 May 2022;
  - (xv) Drawing DA210 ('Level 8-9 Plan'), revision E dated 9 May 2022;
  - (xvi) Drawing DA211 ('Level 10 Technical Floor'), revision E dated 9 May 2022;
  - (xvii) Drawing DA212 ('Typical Levels 11, 12, 14, 15, 17, 18, 20, 21, 22'), revision E dated 9 May 2022;
  - (xviii) Drawing DA213 ('Terrace Levels 13, 16, 19, 22, 25), revision E dated 9 May 2022;
  - (xix) Drawing DA214 ('Typical Levels 26, 27, 29, 30, 32, 33, 35, 36'), revision E dated 9 May 2022;

- (xx) Drawing DA215 ('Terrace Levels 28, 31, 34, 37), revision E dated 9 May 2022;
- (xxi) Drawing DA216 ('Level 38 Plan'), revision E dated 9 May 2022;
- (xxii) Drawing DA217 ('Level 39 Plan'), revision E dated 9 May 2022;
- (xxiii) Drawing DA218 ('Level 40 Plan'), revision E dated 9 May 2022;
- (xxiv) Drawing DA219 ('Level 41 Plan'), revision E dated 9 May 2022;
- (xxv) Drawing DA220 ('Level 42 Plan'), revision E dated 9 May 2022;
- (xxvi) Drawing DA221 ('Level 43 Plan'), revision E dated 9 May 2022;
- (xxvii) Drawing DA222 ('Roof Plan'), revision E dated 9 May 2022;
- (xxviii) Drawing DA225 ('Pre & Post Adaptable Unit Layouts'), revision C dated 9
  May 2022;
- (xxix) Drawing DA226 ('Accessible Unit Layouts'), revision C dated 9 May 2022;
- (xxx) Drawing DA227 ('Silver Standard Livable Housing Unit Layouts'), revision C dated 9 May 2022;
- (xxxi) Drawing DA300 ('Elevations Sheet 01'), revision E dated 9 May 2022;
- (xxxii) Drawing DA301 ('Elevations Sheet 02'), revision E dated 9 May 2022;
- (xxxiii) Drawing DA302 ('Elevations Sheet 03'), revision E dated 9 May 2022;
- (xxxiv) Drawing DA303 ('Elevations Sheet 04'), revision E dated 9 May 2022;
- (xxxv) Drawing DA304 ('Sections Sheet 1'), revision E dated 9 May 2022;
- (xxxvi) Drawing DA305 ('Sections Sheet 2'), revision E dated 9 May 2022;
- (xxxvii) Drawing DA307 ('Streetscape Montage'), revision C dated 9 May 2022;
- (xxxviii) Drawing DA308 ('Streetscape Montage'), revision C dated 9 May 2022;
- (xxxix) Drawing DA309 ('Finishes Board'), revision C dated 9 May 2022;
- (xl) Drawing DA400 ('Solar Calculations'), revision C dated 9 May 2022;
- (xli) Drawing DA401 ('Solar Calculations'), revision C dated 9 May 2022;

- (xlii) Drawing DA402 ('Eye of the Sun'), revision D dated 9 May 2022;
- (xliii) Drawing DA403 ('Solar Study'), revision C dated 9 May 2022;
- (xliv) Drawing DA404 ('Cross Ventilation Calculations'), revision C dated 9 May 2022;
- (xlv) Drawing DA405 ('GFA Calculations'), revision D dated 9 May 2022;
- (xlvi) Drawing DA406 ('GFA Calculations'), revision D dated 9 May 2022;
- (xlvii) Drawing DA407 ('C.O.S & Deep Soil Calculation'), revision C dated 9 May 2022;
- (xlviii) Drawing DA408 ('Apartment Mix'), revision C dated 9 May 2022;
- (xlix) Drawing DA409 ('Storage Diagrams'), revision C dated 9 May 2022;
- (I) Drawing DA410 ('Public Art Location Plan'), revision C dated 9 May 2022;
- (li) Drawing DA411 ('Building Separation'), revision B dated 9 May 2022;
- (lii) Drawing DA412 ('Overshadow Analysis'), revision B dated 9 May 2022;
- (liii) Drawing DA413 ('Communal Open Space'), revision B dated 9 May 2022;
- (liv) Drawing DA417 ('Overshadowing Study Sheet 1'), revision B dated 9 May 2022;
- (Iv) Drawing DA418 ('Overshadowing Study Sheet 2'), revision B dated 9 May 2022;
- (Ivi) Drawing DA419 ('Overshadowing Study Sheet 3'), revision B dated 9 May 2022;
- (Ivii) Drawing DA420 ('Overshadowing Study Sheet 4'), revision B dated 9 May 2022:
- (Iviii) Drawing DA421 ('Shadow Study RE1 Zone Winter Solstice'), revision A dated 9 May 2022;
- (lix) Drawing DA422 ('Shadow Study RE1 Zone Summer Solstice'), revision A dated 9 May 2022;
- (lx) Drawing DA425 ('Apartment Mix'), revision A dated 9 May 2022;

- (lxi) Drawing DA426 ('Shadow Study RE1 Zone Winter Solstice'), revision A dated 9 May 2022;
- (Ixii) Drawing DA500 ('Light Spill Diagram'), revision A dated 9 May 2022. (**Tab 1**)
- (b) Schedule of amendments to accompany the architectural plans (**Tab 2**).
- (c) DCP overlay drawings prepared by DKO:
  - (i) Drawing DA501 ('DCP Overlay 1:200');
  - (ii) Drawing A502 ('DCP Overlay 1:500'). (**Tab 3**)
- (d) Stormwater Concept Design plans prepared by SGC Consulting Engineers:
  - (i) Drawing SW100 ('Cover Sheet'), revision J dated 6 June 2022;
  - (ii) Drawing SW200 ('Stormwater Concept Design Basement Plan'), revision J dated 6 June 2022;
  - (iii) Drawing SW201 ('Stormwater Concept Design Ground Floor Plan'), revision J dated 6 June 2022;
  - (iv) Drawing SW202 ('Stormwater Concept Design Roof Plan'), revision J dated 6June 2022;
  - (v) Drawing SW300 ('Stormwater Concept Design Detail Sheet Sheet 1 of 2'), revision J dated 6 June 2022;
  - (vi) Drawing SW400 ('Erosion and Sediment Control Plan and Details'), revision J dated 6 June 2022;
  - (vii) Drawing SW500 ('Stormwater Concept Design Music Catchment Plan'), revision J dated 6 June 2022;
  - (viii) Drawing SW501 ('Stormwater Concept Design HGL Analysis & Long Section'), revision J dated 6 June 2022(Tab 4)
- (e) Public Domain Civil Works plans prepared by SGC Consulting Engineers:
  - (i) Drawing C100 ('Cover Sheet'), revision I undated

- (ii) Drawing C201 ('Public Domain Civil Works General Arrangement Plan'), revision I dated 6 June 2022.(**Tab 5**)
- (f) Schedule of amendments to accompany the stormwater and civil works drawings prepared by SGC Consulting Engineers (**Tab 6**).
- (g) Development Application Landscape Report prepared by Turf dated 30 May 2022(Tab 7).
- (h) Noise Impact Assessment prepared by White Noise Acoustics (Revision 2) dated 13May 2022 (Tab 8).
- (i) WSUD Strategy Report prepared by SGC Consulting Engineers (Issue C) dated 18 May 2022 (**Tab 9**).
- (j) Draft Plan of Subdivision of Lot 10 in Deposited Plan 1162271 prepared by DKO dated 16 May 2022 (**Tab 10**).
- (k) Environmental Site Status prepared by El Australia Pty Ltd dated 19 May 2022 (**Tab** 11).
- (I) Flood Evacuation Report prepared by SGC Consulting Engineers dated 9 March 2022 (**Tab 12**).
- Initial Assessment Retail Spaces at High Street Penrith prepared by Retail Strategy
   Group dated 27 May 2022 and Retail Strategy Group Corporate Profile (Tab 13).
- (n) Remediation Action Plan prepared by El Australia (Revision 03) dated 18 May 2022 (**Tab 14**).
- (o) Waste Management Report in response to waste contentions prepared by Dickens Solutions Pty Ltd dated 15 May 2022 (**Tab 15**).
- (p) Wind Environment Desktop Assessment prepared by RWDI Australia Pty Ltd dated 3 June 2022 (Tab 16).
- (q) Hydrogeological Assessment for 614-632 High Street, Penrith NSW prepared by Martens dated 27 May 2022 (Tab 17).
- (r) Preliminary Public Art Strategy prepared by DKO dated May 2022 (**Tab 18**).
- (s) Development Application SEPP 65 Report prepared by DKO dated 9 May 2022 (**Tab** 19).

- (t) Letter from Government Architect NSW to Council re Design Excellence Competition waiver, 614-632 High Street Penrith dated 28 April 2022 (**Tab 20**).
- (u) Letter from Mills Oakley to Dentons regarding community infrastructure under clause 8.7 of the LEP dated 6 June 2022 (**Tab 21**).
- (v) Clause 4.6 Variation Request Floor Space Ratio prepared by Think Planners Pty Ltd dated June 2022 (Tab 22).
- (w) Clause 4.6 Variation Request Height prepared by Think Planners Pty Ltd dated June 2022 (Tab 23).
- (x) Amended Statement of Environmental Effects prepared by Think Planners Pty Ltd dated June 2022 (**Tab 24**).
- (y) Traffic and Parking Impact Assessment of the Proposed Mixed-use Development at 614-632 High Street, Penrith prepared by McLaren Traffic Engineering dated 2 June 2022 (Tab 25).
- (z) Draft Release of Extinguishment of Restriction on the Use of Land (Form 13RRE) (**Tab 26**).
- (aa) Email from Dentons to Mills Oakley re contention 1 dated 10 May 2022 (Tab 27).
- (bb) Proposed amended class 1 application form (**Tab 28**).

# **AFFIDAVIT OF JULIDE AYAS DATED 6 JUNE 2022**

**COURT DETAILS** 

Court

Land and Environment Court

Class

1

Case number

2021/355201

**TITLE OF PROCEEDINGS** 

**Applicant** 

**Urban Apartments Pty Ltd** 

Respondent

**Penrith City Council** 

**FILING DETAILS** 

Applicant

Urban Apartments Pty Ltd, Applicant

Legal representative

Aaron Gadiel Mills Oakley Level 7

151 Clarence Street Sydney NSW 2000

Legal representative reference

AXGS/JZAS/3554691

Contact name and telephone

Julide Ayas

Contact email

#### **AFFIDAVIT DETAILS**

Name

Julide Ayas

Address

Level 7, 151 Clarence Street, Sydney NSW 2000

Occupation

Solicitor

Date

6 June 2022

I, Julide Ayas, affirm:

- 1. I am the solicitor employed by the solicitor on the record for the Applicant and I have the day to day carriage of this matter, under the supervision of the solicitor on the record.
- This affidavit has been prepared in support of a notice of motion seeking leave to rely on amended documents.
- 3. My knowledge about the matters set out in this affidavit is drawn from:
  - (a) my personal knowledge;
  - (b) my review of documents relating to the matter; and
  - (c) information I have obtained from various individuals named in this affidavit.
- 4. Exhibited before me at the time of swearing this affidavit is a bundle of documents titled 'Exhibit JA-1" (the exhibit). Each document in the exhibit is behind a sequentially numbered tab. A reference to a tab number in this affidavit is a reference to a tab in the exhibit.
- 5. To the best of my knowledge the contents of this affidavit are true and correct.

## **Background**

- 6. The proceedings relate to development application DA20/0167 for the construction of mixed use development including residential apartments, serviced apartments, commercial/retail suites, car parking, associated landscape works and subdivision of land over Lot 10 in DP 1162271 and known as 614-632 High Street Penrith (the site).
- 7. The development application was lodged with the Respondent on 1 April 2020.
- 8. The DA was referred to the Sydney Western City Planning Panel (Planning Panel) for determination.
- On 17 May 2021, the Planning Panel resolved to refuse the development application for reasons outlined in the Respondent's Notice of Determination.

- 10. On **4 June 2020**, the Respondent issued a Notice of Determination refusing the Development application on the recommendation of the Planning Panel.
- On 15 December 2021, these proceedings were commenced as an appeal against the Respondent's actual refusal of the development application.
- On 20 January 2022, these proceedings were listed for first directions hearing. The Court made orders, amongst others, listing the proceedings for a section 34 conciliation conference on 18 March 2022.
- 13. On 18 February 2022, the Respondent filed and served its statement of facts and contentions.
- On 8 March 2022, the Applicant filed and served its statement of facts and contentions in reply.
- On 18 March 2022, the parties attended a conciliation conference before Senior
   Commissioner Dixon. The conciliation conference was terminated on the same date.
- 16. On 25 March 2022, the proceedings were listed for a second directions hearing. The proceedings are set down for a five-day hearing on 18-22 July 2022.

#### Basis for amendments

- 17. The amended material has been prepared in response to the Respondent's statement of facts and contentions and issues raised by the Respondent at the conciliation conference.
- 18. I believe the Respondent's statement of facts and contentions raises issues in respect of the development application which can be summarised as follows:
  - (a) Contention 1 Design Competition: consent must not be granted because no architectural design competition within the meaning of clause 8.4(3) and (7) of the Penrith Local Environmental Plan 2013 (the LEP) has been held.
  - (b) Contention 2 Design Excellence: the proposed development does not exhibit design excellence.
  - (c) Contention 3 Community Infrastructure Offer: the community infrastructure offer fails to satisfy clause 8.7 of the LEP.
  - (d) Contention 4 Height: the height of the building is unacceptable as it breaches the maximum height identified for the site of 24 metres.

- (e) Contention 5 Density, Bulk and Scale: the proposed development has excessive density, bulk and scale
- (f) Contention 6 Design Principles: the proposal does not achieve the Design Quality Principles set out in SEPP 65.
- (g) Contention 7 Context and character: the proposed development does not achieve the Design Quality Principles for Context and neighbourhood character in SEPP 65 and is not consistent with the desired future character of the Precinct.
- (h) Contention 8 Flood Planning: An evacuation strategy is required to satisfy clause 5.21 of the LEP.
- (i) Contention 9 Traffic: the development application should be refused because of unsatisfactory traffic, parking, access and related pedestrian safety impacts.
- (j) Contention 10 Transport, Access and Parking: the proposal does not satisfy Part C10 Penrith DCP.
- (k) Contention 11 Waste Management: the proposal does not provide suitable on-site waste arrangements.
- (I) Contention 12 Water and Stormwater Management: the proposal is inconsistent with Part C3 of the DCP.
- (m) Contention 13 Remediation of land: the consent authority cannot be satisfied that the land is not contaminated, or is suitable in its contaminated state, or will be suitable after remediation.
- (n) Contention 14 Overshadowing: the proposal will result in unreasonable and unnecessary overshadowing.
- (o) Contention 15 Landscaping: the development application should be refused as the landscaping does not enhance the environmental performance of the development.
- (p) Contention 16 ESD: the development application should be refused as the landscaping does not enhance the environmental performance of the development.
- (q) Contention 17 Public interest: the development application is not in the public interest and will establish an undesirable precedent in the locality.

- (r) Contention 18 Economic & Orderly Development: the development application should be refused as it is contrary to orderly development of the land.
- (s) Contention 19 Earthworks: the proposed development should be refused as the impacts of the earthworks are not known.
- (t) Contention 20 Crime Prevention Through Environmental Design: the proposed development should be refused as the principles of crime prevention through environmental design are not addressed.
- (u) Contention 21 Suitability of the site: the development application should be refused as the site is not considered to be suitable for the development.
- (v) Contention B2 The development application does not include the following information:
  - a) A1 size plans or plans at a legible scale should be provided.
  - b) There are no shadow diagrams.
  - c) Detail on how the non-residential elements comply with Council's WSUD Policy water conservation requirements.
  - d) Additional information needed to explain which areas of common open space are accessible to residents and which areas are common open space are accessible to the serviced apartments and commercial component.
  - e) Legible, clear GFA calculations needed
  - f) Plan inconsistencies are to be rectified.
  - g) Detailed survey and design and civil and public domain plans are not provided demonstrating compliance with Penrith CBD Public Domain Technical Manual.
  - h) The Applicant has not identified the application as integrated development.
  - i) Additional information needed to enable assessment by Transport for NSW.
  - j) Remediation Action Plan and Additional Groundwater Investigation needs amending
  - Legible, clear plans and calculations providing the basis for measurement of deep soil zones needed.

- k) Amended architectural plans and sections needed.
- An assessment of the noise, vibration and light impacts on adjacent residential development needed.
- m) An amended geotechnical report is required that addresses suitability of basement parking.
- n) Evacuation Strategy for the potential occurrence of the PMF event that does not rely on shelter in place.
- o) A place making and public art strategy
- p) a revised HGL analysis required demonstrating downstream system has the capacity to take flows generated by the proposed stormwater system.
- q) Amended Stormwater Concept plans needed
- r) A Crime Prevention Through Environmental Design Assessment.
- s) Plan of Management and detailed information demonstrating the swimming pool will comply with Public Health Act 2010 and Public Health Regulation 2012.
- t) An independent valuation of the dedication land proposed to offset the CI liability.

#### Identification of documents

- 19. I believe the Applicant has prepared amended and additional plans and documents in an effort to respond to the Respondent's statement of facts and contentions and issues raised at the conciliation conference.
- 20. A list of the new and amended material is at the schedule to the notice of motion. The documents are as follows:
  - (a) Amended architectural plans prepared DKO:
    - (i) Drawing DA000 ('Title Page'), revision C dated 9 May 2022;
    - (ii) Drawing DA001 ('Calculations'), revision D dated 9 May 2022;
    - (iii) Drawing DA100 ('Site Analysis'), revision C dated 9 May 2022;
    - (iv) Drawing DA102 ('Site Plan'), revision C dated 9 May 2022;

- (v) Drawing DA200 ('Basement 01 Plan'), revision E dated 9 May 2022:
- (vi) Drawing DA201 ('Ground Floor Plan'), revision G dated 9 May 2022;
- (vii) Drawing DA202 ('Mezzanine Floor Plan'), revision E dated 9 May 2022:
- (viii) Drawing DA203 ('Level 1'), revision E dated 9 May 2022;
- (ix) Drawing DA204 ('Level 2'), revision E dated 9 May 2022;
- (x) Drawing DA205 ('Level 3 Plan'), revision E dated 9 May 2022;
- (xi) Drawing DA206 ('Level 4 Plan'), revision E dated 9 May 2022;
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- (xvi) Drawing DA211 ('Level 10 Technical Floor'), revision E dated 9 May 2022;
- (xvii) Drawing DA212 ('Typical Levels 11, 12, 14, 15, 17, 18, 20, 21, 22'), revision E dated 9 May 2022;
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- (xix) Drawing DA214 ('Typical Levels 26, 27, 29, 30, 32, 33, 35, 36'), revision E dated 9 May 2022;
- (xx) Drawing DA215 ('Terrace Levels 28, 31, 34, 37), revision E dated 9 May 2022:
- (xxi) Drawing DA216 ('Level 38 Plan'), revision E dated 9 May 2022;
- (xxii) Drawing DA217 ('Level 39 Plan'), revision E dated 9 May 2022;
- (xxiii) Drawing DA218 ('Level 40 Plan'), revision E dated 9 May 2022;
- (xxiv) Drawing DA219 ('Level 41 Plan'), revision E dated 9 May 2022;
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- (xxvi) Drawing DA221 ('Level 43 Plan'), revision E dated 9 May 2022;
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- (xxxvii) Drawing DA307 ('Streetscape Montage'), revision C dated 9 May 2022;
- (xxxviii) Drawing DA308 ('Streetscape Montage'), revision C dated 9 May 2022;
- (xxxix) Drawing DA309 ('Finishes Board'), revision C dated 9 May 2022;
- (xl) Drawing DA400 ('Solar Calculations'), revision C dated 9 May 2022;
- (xli) Drawing DA401 ('Solar Calculations'), revision C dated 9 May 2022:
- (xlii) Drawing DA402 ('Eye of the Sun'), revision D dated 9 May 2022;
- (xliii) Drawing DA403 ('Solar Study'), revision C dated 9 May 2022;
- (xliv) Drawing DA404 ('Cross Ventilation Calculations'), revision C dated 9 May 2022;
- (xlv) Drawing DA405 ('GFA Calculations'), revision D dated 9 May 2022;
- (xlvi) Drawing DA406 ('GFA Calculations'), revision D dated 9 May 2022;

- (xlvii) Drawing DA407 ('C.O.S & Deep Soil Calculation'), revision C dated 9 May 2022;
- (xlviii) Drawing DA408 ('Apartment Mix'), revision C dated 9 May 2022;
- (xlix) Drawing DA409 ('Storage Diagrams'), revision C dated 9 May 2022;
- (I) Drawing DA410 ('Public Art Location Plan'), revision C dated 9 May 2022;
- (li) Drawing DA411 ('Building Separation'), revision B dated 9 May 2022;
- (lii) Drawing DA412 ('Overshadow Analysis'), revision B dated 9 May 2022;
- (liii) Drawing DA413 ('Communal Open Space'), revision B dated 9 May 2022;
- (liv) Drawing DA417 ('Overshadowing Study Sheet 1'), revision B dated 9 May 2022;
- (Iv) Drawing DA418 ('Overshadowing Study Sheet 2'), revision B dated 9 May 2022;
- (Ivi) Drawing DA419 ('Overshadowing Study Sheet 3'), revision B dated 9 May 2022;
- (Ivii) Drawing DA420 ('Overshadowing Study Sheet 4'), revision B dated 9 May 2022;
- (Iviii) Drawing DA421 ('Shadow Study RE1 Zone Winter Solstice'), revision A dated 9 May 2022;
- (lix) Drawing DA422 ('Shadow Study RE1 Zone Summer Solstice'), revision A dated 9 May 2022;
- (lx) Drawing DA425 ('Apartment Mix'), revision A dated 9 May 2022;
- (lxi) Drawing DA426 ('Shadow Study RE1 Zone Winter Solstice'), revision A dated 9 May 2022;
- (Ixii) Drawing DA500 ('Light Spill Diagram'), revision A dated 9 May 2022.

(Tab 1)

(b) Schedule of amendments to accompany the architectural plans (Tab 2).

- (c) DCP overlay drawings prepared by DKO:
  - (i) Drawing DA501 ('DCP Overlay 1:200');
  - (ii) Drawing A502 ('DCP Overlay 1:500').

#### (Tab 3)

- (d) Stormwater Concept Design plans prepared by SGC Consulting Engineers:
  - (i) Drawing SW100 ('Cover Sheet'), revision J dated 6 June 2022;
  - (ii) Drawing SW200 ('Stormwater Concept Design Basement Plan'), revision J dated 6 June 2022;
  - (iii) Drawing SW201 ('Stormwater Concept Design Ground Floor Plan'), revision J dated 6 June 2022;
  - (iv) Drawing SW202 ('Stormwater Concept Design Roof Plan'), revision J dated 6June 2022;
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  - (vi) Drawing SW400 ('Erosion and Sediment Control Plan and Details'), revision J dated 6 June 2022;
  - (vii) Drawing SW500 ('Stormwater Concept Design Music Catchment Plan'), revision J dated 6 June 2022;
  - (viii) Drawing SW501 ('Stormwater Concept Design HGL Analysis & Long Section'), revision J dated 6 June 2022

# (Tab 4)

- (e) Public Domain Civil Works plans prepared by SGC Consulting Engineers:
  - (i) Drawing C100 ('Cover Sheet'), revision I undated
  - (ii) Drawing C201 ('Public Domain Civil Works General Arrangement Plan'), revision I dated 6 June 2022.

### (Tab 5)

- (f) Schedule of amendments to accompany the stormwater and civil works drawings prepared by SGC Consulting Engineers (**Tab 6**).
- (g) Development Application Landscape Report prepared by Turf dated 30 May 2022(Tab 7).
- (h) Noise Impact Assessment prepared by White Noise Acoustics (Revision 2) dated 13 May 2022 (Tab 8).
- (i) WSUD Strategy Report prepared by SGC Consulting Engineers (Issue C) dated 18May 2022 (Tab 9).
- (j) Draft Plan of Subdivision of Lot 10 in Deposited Plan 1162271 prepared by DKO dated 16 May 2022 (**Tab 10**).
- (k) Environmental Site Status prepared by El Australia Pty Ltd dated 19 May 2022 (Tab11).
- (I) Flood Evacuation Report prepared by SGC Consulting Engineers dated 9 March 2022 (Tab 12).
- (m) Initial Assessment Retail Spaces at High Street Penrith prepared by Retail Strategy Group dated 27 May 2022 and Retail Strategy Group Corporate Profile (Tab 13).
- (n) Remediation Action Plan prepared by El Australia (Revision 03) dated 18 May 2022 (**Tab 14**).
- (o) Waste Management Report in response to waste contentions prepared by Dickens Solutions Pty Ltd dated 15 May 2022 (Tab 15).
- (p) Wind Environment Desktop Assessment prepared by RWDI Australia Pty Ltd dated 3 June 2022 (Tab 16).
- (q) Hydrogeological Assessment for 614-632 High Street, Penrith NSW prepared by Martens dated 27 May 2022 (Tab 17).
- (r) Preliminary Public Art Strategy prepared by DKO dated May 2022 (**Tab 18**).
- (s) Development Application SEPP 65 Report prepared by DKO dated 9 May 2022 (Tab 19).

- (t) Letter from Government Architect NSW to Council re Design Excellence Competition waiver, 614-632 High Street Penrith dated 28 April 2022 (Tab 20).
- (u) Letter from Mills Oakley to Dentons regarding community infrastructure under clause 8.7 of the LEP dated 6 June 2022 (**Tab 21**).
- (v) Clause 4.6 Variation Request Floor Space Ratio prepared by Think Planners Pty Ltd dated June 2022 (Tab 22).
- (w) Clause 4.6 Variation Request Height prepared by Think Planners Pty Ltd dated June 2022 (Tab 23).
- (x) Amended Statement of Environmental Effects prepared by Think Planners Pty Ltd dated June 2022 (**Tab 24**).
- (y) Traffic and Parking Impact Assessment of the Proposed Mixed-use Development at 614-632 High Street, Penrith prepared by McLaren Traffic Engineering dated 2 June 2022 (Tab 25).
- (z) Draft Release of Extinguishment of Restriction on the Use of Land (Form 13RRE)(Tab 26).

#### Nature of amendments

- 21. Based on my own consideration of the documents, I believe, that the nature of the amendments to the proposed development are as follows:
  - (a) Title Page (Drawing DA000) and Calculations (Drawing DA001) has been included.
  - (b) Reduction in the number of storeys from 46 storeys to 45 storeys.
  - (c) Increase in the number of serviced apartments from 35 to 40.
  - (d) Reduction in the number of residential apartments from 272 to 254.
  - (e) Reconfiguration of basement levels and reduction in the number of car parking spaces from 338 to 305.
  - (f) The café fronting Union Lane has been reduced in size and the shape of the tenancy has been modified.
  - (g) Greater building setback provided to Union Lane along with a new planter to the loading zone.

- (h) Greater building separation provided to the existing apartment on the southern side of Union Lane.
- (i) New podium element to the High Street frontage.
- (j) There are now four levels of podium parking which are sleeved.
- (k) Unsleeved parking provides screening in the form of blades, perforated metal and vertical planting.
- (I) Garbage truck swept paths shown on ground floor plan.
- (m) Podium level communal open space areas are amended to separate commercial outdoor space from residential outdoor space.
- (n) Revisions made to tower floorplate to provide enhanced areas of private open space
   (balconies) and additional windows to provide for solar access and natural ventilation.
- (o) Additional dimensions shown on plans.
- (p) Labelling added to show public road to be dedicated
- (q) Commercial floorspace removed from level 4 podium to provide enhanced area for communal open space.
- (r) Pool has been reorientated on Level 4.
- (s) Additional areas of communal open space provided. 71.3% of the site area is now common open space.
- (t) New sky garden introduced to level 38 with additional communal area.
- (u) Separation has been introduced between loading area and carpark access driveway.
- (v) Service road/corridor extended to front retail unit 4.
- (w) Reduced gross floor area from 6:1 to 5.96:1.
- (x) Basement drainage plan added.
- (y) OSD tank reshaped to keep clear of building outline and depth is increased to 900mm.

- (z) A rainwater tank provided to meet Council's requirements for the non-residential elements of the development.
- (aa) Pit and pipe system provided for the public road dedication area.
- (bb) Balustrade fencing shown along High Street
- (cc) The proposed kerb inlet put on western boundary removed.
- (dd) Civil works on Union Lane and public road dedication area removed.

#### Reduced environmental impact and/or improved community outcome

- 22. From my own review of the documents, I also believe that the amended and additional information will give the community greater confidence that all of the relevant impacts have been considered as part of the determination of the development application.
- 23. I am informed by Adam Byrne, the Applicant's town planner, and I believe, that the amendments will result in a reduced environmental impact and an improved community outcome in the following respects:
  - (a) The café is reduced in size to activate the pedestrian link and laneway.
  - (b) Greater building setback provided to Union Lane and greater building separation is provided to the existing apartment building on the southern side of Union Lane to enhance privacy and acoustic amenity.
  - (c) Four levels of podium parking are sleeved to ensure the presentation of the podium parking achieves a high-quality urban design outcome. Where podium levels are unsleeved, screening in the form of blades, perforated metal and vertical landscaping has been provided. This minimises light spill impacts to neighbouring properties.
  - (d) The tower is amended to provide additional windows to provide for solar access as well as natural light and ventilation.
  - (e) Commercial floor space is removed from level 4 podium to provide for enhanced area for the communal open space. The pool has also been reoriented to enhance the function and useability of the communal areas. The changes achieve a higher degree of amenity for the occupants of the serviced apartments and residential apartments.
  - (f) Loading dock has been separated from the car parking space on the ground floor.
    This allows a heavy rigid vehicle to access the site to facilitate loading and servicing

- without conflicting with residential/commercial parking access and movements. This enhances safety to residents and efficiency in terms of loading and servicing.
- (g) The service road is extended to the front of retail unit 4 to activate this frontage and provide for enhanced serviceability.
- (h) The gross floor area has been reduced from 6:1 to 5.96:1 which improves the appearance of bulk and scale.
- (i) There is a reduction in the height of the building from 46 storeys to now 45 storeys which improves amenity impacts associated with bulk and scale.

### Just quick and cheap resolution of proceedings

- 24. The proposed amendments and new documents seek to address issues raised by the Respondent's statement of facts and contentions. In particular:
  - (a) the Letter from Government Architect NSW to Council re Design Excellence Competition waiver, 614-632 High Street Penrith dated 28 April 2022 addresses contention 1. I received an email from Council's solicitor on 10 May 2022 advising that 'Contention 1 of Council's Statement of Facts and Contentions is no longer pressed'. A copy of Council's email dated 10 May 2022 is behind Tab 27.
  - (b) The letter from Mills Oakley to Dentons dated 6 June 2022 re community infrastructure under clause 8.7 of the LEP has been prepared in response to contention 3.
  - (c) The DCP overlay drawings have been prepared in response to contention 3(c)(iii).
  - (d) The gross floor area has been reduced from 6:1 to 5.96:1. The overall height of the building has also been reduced. Previously, 46 storeys were proposed whereas now the proposed development is 45 storeys. These amendments have been prepared in response to contention 4 and 5 to reduce the height of building as well as to reduce the overall density, bulk and scale of the building.
  - (e) The Wind Environment Desktop Assessment has been prepared to provide evidence that the doorstep terraces adjacent to the corridor do not need to be enclosed to protect the area from wind to rebut any suggestion that it will become gross floor area in response to contention 5. The wind report has also been obtained in response to contention 6(g) and (h) to assess the impact of wind on the common open space area on level 29 facing High Street.

- (f) An amended traffic report has been prepared in response to the traffic and transport, access and parking contentions.
- (g) The Initial Assessment Retail Spaces at High Street Penrith prepared by Retail Strategy Group dated 27 May 2022 has been prepared in response to contention 5(g).
- (h) Screening of 4 levels of podium carparking and providing screening in the form of blades, perforated metal and vertical planting for unsleeved parking levels has been introduced in response to contention 6 to limit noise, and light spill from the podium parking to reduce impacts to the adjoining dwellings. Lightspill diagram also added.
- (i) The café is reduced in size to activate the pedestrian link and laneway on the ground floor in response to contention 20. The lobby entry and clear line of site provides good casual surveillance to address the CPED principles.
- (j) Overshadow analysis and shadow diagrams provided in response to contention 14 and B2(b).
- (k) Gross floor area calculations provided in response to contention B2(d).
- (I) A Public Art Strategy has been prepared in response to contention 6(n) and B2(n).
- (m) The Hydrogeological Assessment for 614-632 High Street, Penrith NSW has been prepared in response to contention 6(h), 7(a), 7(g), 10(r), 19(a), 19(b) and B2(g).
- (n) An amended waste management report has been prepared in response to contention11.
- (o) Amended stormwater engineering plans have been prepared in response to contention 12 and B2(q).
- (p) Amended civil plans have been prepared in response to contentions 10(b), (h), (j), (s), B2(f).
- (q) A remediation action plan has been prepared in response to contention 13.
- (r) WSUD strategy has been prepared in response to contention 12(e), B2(c).
- (s) Amended landscape plans and report has been prepared in response to contentions 2(a) and (b), 6(d), 10(u), 15(a), 16(a). Low water use plant species and water efficient irrigation system proposed for the entire development to incorporate water sensitive urban design elements.

- (t) A flood evacuation report has been prepared in response to contention B2(n).
- 25. If leave is granted for the Applicant to rely on the proposed new and amended drawings and supporting material, I believe the number and scope of issues likely to be raised in these proceedings will likely be reduced.
- 26. I believe the reduction of issues in dispute ought to promote the just, quick and inexpensive finalisation of these proceedings without affecting the hearing dates.

#### Proposed amendment to the class 1 application

27. Registered on title is a restriction on the use of land (numbered 1 in deposited plan 1162271) which provides the following:

No development or building shall be allowed or be permitted on the portion of Lot 10 shown as a new public street under Figure 7.2 of the Penrith City Centre Development Control Plan 2007 unless satisfactory arrangements have been made with Penrith City Council and the owners of the adjoining lots.

- 28. The notice of motion seeks leave for an amended class 1 application to be filed by the Applicant to include an additional order from the Court, utilising the powers of the Court under section 39(2) of the Land and Environment Court Act 1979 and/or section 8.14(1) of the Environmental Planning and Assessment Act 1979. The proposed additional order is in the following terms:
  - 3A The Court directs the general manager of the Respondent to execute, for and on behalf of the Respondent, the 'Release or Extinguishment of Restriction on the Use of Land' (in relation to registered dealing DP1162271) before the Court such that the requirements for registration in that regard are satisfied.
- 29. I believe that this order
  - is responsive to contention 3(c)(iii) of the Respondent's statement of facts and contentions; and
  - (b) is necessary to enable the proposed development to be carried out.
- 30. A copy of the amended class 1 application is behind Tab 28.

#### **Timetable**

- 31. This matter is listed for hearing on 18-22 July 2022.
- 32. The Applicant proposes that:

- (a) The Respondent file and serve an amended statement of facts and contentions by 17 June 2022.
- (b) The Applicant is to file and serve any amended statement of facts and contentions in reply by **20 June 2022**.
- (c) The parties are to lodge an agreed Online Court communication seeking any variation to the orders for expert evidence made on 29 March 2022 by **22 June 2022**.
- 33. The amendments sought are likely to reduce the issues in dispute between the parties and are not likely to affect the hearing dates.

#### Costs

34. The Applicant agrees to pay the Respondent's costs that have been thrown away as a result of the amendment of the application for development consent under section 8.15(3) of the *Environmental Planning and Assessment Act 1979*, as agreed or assessed.

Affirmed at

Sydney

Signature of deponent

Name of witness

Address of witness

Level 7, 151 Clarence Street, Sydney NSW 2000

Capacity of witness

Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

- 1. I saw the face of the deponent.
- 2. I have confirmed the deponent's identity using the following identification document:

NSW Photo Card (

Identification document relied on (may be original or certified copy)

Signature of witness

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.