



**DETERMINATION AND STATEMENT OF REASONS**  
SYDNEY WESTERN CITY PLANNING PANEL

<b>DATE OF DETERMINATION</b>	Monday 30 April 2018
<b>PANEL MEMBERS</b>	Justin Doyle (Chair), Bruce McDonald, Nicole Gurran, Ross Fowler, Glenn McCarthy
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	None

Public meeting held at Penrith City Council, 601 High Street Penrith on 30 April 2018, opened at 4:25pm and closed at 5:25pm.

**MATTER DETERMINED**

2016SWT003 – Penrith – DA16/1236 at 2-8 Twin Creeks Drive Luddenham (AS DESCRIBED IN SCHEDULE 1)

**PANEL CONSIDERATION AND DECISION**

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and the matters observed at site inspections listed at item 8 in Schedule 1.

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*, subject to the conditions and deferred commencement conditions following.

The Panel adjourned during the meeting to deliberate on the matter and formulate a resolution.

The decision was 4:1 in favour of the decision.

**REASONS FOR THE DECISION**

The reasons for the decision of the majority of the Panel (Justin Doyle, Bruce McDonald, Ross Fowler and Glenn McCarthy) were:

1. The proposed development will provide a tourist resort that will add to the economic and employment activity within the Sydney Western City District and the City of Penrith on a site within the ambit of the future Badgerys Creek Airport. The proposal will also provide additional amenities for the residents of Twin Creeks and Luddenham locality.
2. The encouragement of employment and tourism offered by the proposal is considered to be consistent with Planning Priority W8 of the Western City District Plan, and is in the public interest.
3. The proposed development adequately satisfies the relevant State Environmental Planning Policies including SEPP No.55 -Remediation of Land, SEPP (Infrastructure) 2007 and SREP No.20 Hawkesbury Nepean River.
4. The proposal substantially satisfies the applicable provisions and objectives of Penrith LEP 2010 and the Penrith DCP 2014. In that regard it was noted that there is no applicable LEP

height or density control applying to the land. The Panel carefully considered the DCP controls addressing compatibility with the surrounding locality and impacts on sensitive adjacent land uses, with specific attention to clause D 1.5.3 *Tourist and visitor accommodation*, and noted that:

- (a) clause D 1.5.3 subclause 1(a) requires 'structures and landscaping associated with the development to be designed to harmonise with the rural character', and
- (b) General Objective 1.5B(a) is "to ensure that the bulk and scale of structures do not adversely affect the visual amenity and scenic quality of an area".

In that regard, the Panel was satisfied by the visual impact assessment forming part of the application and the Council staff advice that when seen from a distance the completed development would blend in with its surroundings given its architectural presentation.

In relation to views of the development from within the master planned estate and properties surrounding the site, the Panel accepted that the visual impact of the development would be substantial and could not be said to harmonise with a rural character. However, the Panel considered that within the master planned golfing estate the surrounding rural character had already been departed from. The site of the proposed building had been earmarked for a golf club facility. Given the other considerations under the DCP required by s.4.15 of the EP&A Act, and in particular the public interest of encouraging employment and tourist generating facilities, on balance that impact was acceptable. The Panel weighed the local visual impacts in the context of the significant mitigating measures that had been introduced to the design both prior to and during the assessment process which have improved the vegetative and structural screening and privacy, as well as increasing separation of the active uses from surrounding residences. In that way the final design when regulated by the proposed conditions was seen to adequately remove or minimise impacts on the adjacent residential land uses "through careful site planning, building design and landscape treatment" to warrant approval (see DCP D4.8 C).

- 5. While so recognising the building is of a scale which contrasts substantially with the current built form character of Twin Creeks the building design and related conditions provide adequate moderation of environmental impacts on the lower scale residences nearby. Further the Panel considers that as the site is within the context of the future Badgerys Creek Airport the character of the broader locality will over time convert to a more substantial urban context.
- 6. The Panel took into account the deferred commencement conditions proposed by Council staff as amended by the Panel's determination concerning the issues of acoustic impact, landscaping, privacy, and effluent management, and concluded that those issues could be satisfactorily addressed. Specifically, given the significant setbacks between the proposed hotel building and surrounding residences (which are landscaped to reduce activities close to the dwellings), and given the proposed restriction on outdoor amplified noise, the acoustic impacts raised in the objections could be adequately managed. Importantly, the Council will be in a position to ensure that measures recommended in an adequate and sufficiently thorough acoustic report prepared by a registered acoustic engineer (which the Panel expects would include a management plan for the facility) will be in place. To that end, the deferred commencement condition addressing acoustic impact was reworded by the Panel as set out in the proposed "Acoustic Condition" following.
- 7. The Panel considered legal advice provided by Council's Legal Services Manager concerning the permissibility of the development. After considering that advice the Panel was satisfied that the "ballroom" and associated parking component of the new building proposed development which would be an expansion of an 'existing use' that would be permissible under the relevant provisions of the EP&A Act. In that regard the Panel took into account the relevant history of the site including DA04/0576 on 22 July 2004 as modified.

8. The proposed development, subject to the conditions imposed, and allowing for a satisfactory response by the applicant to the deferred commencement conditions, will have no unacceptable adverse impacts on the natural or built environments including the amenity of existing residential premises in Twin Creeks, the riparian systems, the operation of the local road system, or the Heritage significance of Luddenham Road alignment.
9. In consideration of conclusions 1-8 above the Panel considers the proposed development is a suitable use of the site and approval of the proposal is in the public interest.

Nicole Gurran disagreed with the majority decision for the following reason:

- The height and scale of the proposed development is incompatible with the rural and residential character of the immediate vicinity and as such is inconsistent with the relevant DCP 2014 controls. In particular, subclause 1(a), D 1.5.1 *Rural Amenity and Design* requires that: 'There will not be significant visual impacts from either the main activity or associated activities on the rural area or adjacent properties'. At its maximum height of 10 storeys the proposal is considered to have a significant visual impact for adjoining properties and the primarily one and two storey residences which comprise the Twin Creeks community, notwithstanding the attempt to mitigate this impact through the building's stepped design.

## CONDITIONS

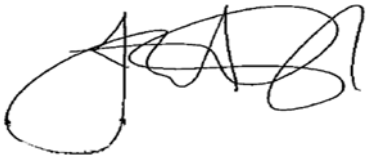




The development application was approved subject to the conditions in the Council Assessment Report with the following amendment:

Prior to this consent becoming operational, an updated acoustic assessment **including an operational management** plan regulating significant noise generating activities within the approved development is to be submitted and approved by Penrith City Council addressing the following points:

- The updated acoustic assessment is to reflect architectural and landscape plans (as amended by conditions of consent) forming part of this determination.
- The impact of aircraft noise is to be addressed in accordance with AS 2021-2000: Acoustics – Aircraft Noise Intrusion – Building Siting and Construction with any provided updated acoustic assessment and should include but not be limited to maximum aircraft noise levels at the subject site, required ANR, details of all calculations and recommended forms of construction.
- The Noise Policy for Industry dated 2017 (NSW EPA) and other industry recognised guidelines should be utilised throughout the updated acoustic assessment. The assessment shall include a summary and schedule of all proposed uses of the function facilities within the complex including the ball room throughout the year, hours of operation, the provision of all noise sources such as amplified music and speech, general patron noise, vehicle noise associated with car parking and loading docks, mechanical plant and equipment (ventilation, lifts, waste management infrastructure, pool pumps, filtration and refrigeration). This assessment needs to be done for all areas of the development including but not limited to the function centre, swimming pool and associated outdoor bar, karaoke room and external verandas, balconies and decks. Cumulative noise impacts must also be assessed. If appropriate further restrictions on opening hours beyond those required by other conditions of consent may be required.
- An assessment of sleep disturbance criteria in accordance with the Noise Policy for Industry for all activities including but not limited to (a) car parking, (b) hotel reception, (c) function centre / ball room, (d) kitchen and room service.

- Recommendations to attenuate noise to achieve project specific criteria needs to be clearly detailed. If windows and doors are required to be kept closed to achieve internal noise amenity, the report needs to detail which rooms require mechanical ventilation.
- Included in the measures in the Management Plan is a suitable prohibition on amplified sound in the outdoor areas (other than a modest house system characteristic of a café)

The acoustic assessment is to be prepared by a suitably qualified and experienced person who is a member of the Association of Australasian Acoustic Consultants.

PANEL MEMBERS	
 Justin Doyle (Chair)	 Bruce McDonald
 Nicole Gurran	 Ross Fowler
 Glen McCarthy	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2016SWT003 – Penrith – DA16/1236
2	PROPOSED DEVELOPMENT	Staged Construction of Twin Creeks Resort including 165 Room Hotel & Related Facilities & Alterations & Additions to Existing Twin Creeks Golf & Country Club Building and upgrading of an existing Sewage Management Treatment Plant in association with the proposed development.
3	STREET ADDRESS	2-8 Twin Creeks Drive Luddenham
4	APPLICANT/OWNER	Twin Creeks Holdings (Australia) Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
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 (Infrastructure) 2007</li> <li>State Environmental Planning Policy No.55 – Remediation of Land</li> <li>Sydney Regional Environmental Plan No.20 Hawkesbury Nepean River (Deemed SEPP)</li> <li>Penrith Local Environmental Plan 2010 (Amendment 4)</li> </ul> </li> <li>Draft environmental planning instruments: Nil</li> <li>Development control plans: <ul style="list-style-type: none"> <li>Penrith Development Control Plan 2014</li> </ul> </li> <li>Planning agreements: Nil</li> <li>Provisions of the <i>Environmental Planning and Assessment Regulation 2000</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: 16 February 2018</li> <li>Council supplementary report: 17 April 2018</li> <li>Written submissions during public exhibition: 29 including 1 petition with 85 signatures</li> <li>Verbal submissions at the public meeting 1 March 2018: <ul style="list-style-type: none"> <li>In objection: Amanda Wozniak and Noel Fairweather</li> <li>On behalf of the applicant: Vince Hardy</li> </ul> </li> <li>Verbal submissions at the public meeting 30 April 2018: <ul style="list-style-type: none"> <li>In support: Nil</li> <li>In objection: Amanda Wozniak, Darren Smith, Simone Barnhoorn</li> <li>On behalf of the applicant: Tony Owen, Vince Hardy, Grant Martin</li> </ul> </li> </ul>
8	MEETINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>Briefing Meetings: 22 February 2017, 24 August 2017, 24 January 2018</li> <li>Site inspection: 24 January 2018</li> <li>Determination meeting (matter deferred): 1 May 2018</li> <li>Final briefing meeting to discuss council's recommendation, 1 March 2018, 2.35 pm to 4.10pm. Attendees: <ul style="list-style-type: none"> <li><u>Panel members</u>: Justin Doyle (Chair), John Griffin, Bruce McDonald, Ross Fowler and Glenn McCarthy</li> <li><u>Council assessment staff</u>: Paul Anzellotti and Gavin Cherry</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>• Final briefing meeting to discuss council's recommendation, 30 April 2018, 4:25pm. Attendees: <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurran, Bruce McDonald, Ross Fowler and Glenn McCarthy</li> <li>○ <u>Council assessment staff</u>: Paul Anzellotti. Peter Wood, Robert Craig and Wayne Mitchell</li> </ul> </li> </ul>
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report