

Mr Peter Wood
Development Services Manager
Penrith City Council
P O Box 60
Penrith NSW 2751

25 June 2019

Dear Peter,

DA18/0264 at 87-93 Union Road, Penrith
Panel Ref – 2018SWT005

I refer to the deferment of the determination of this development application on 6 May 2019 for the reason that:

“When the status of the 12 April 2019 email from Mr Toomey is resolved, the Panel proposes to determine the matter electronically by way of circulation of papers without a further public meeting.

The reference to the email from Mr Toomey was in relation to a concurrence requirement under clause 8.4 of the Penrith LEP. Relevantly, clause 8.4 of Penrith LEP reads:

- 8.4(5) **Development consent may not be granted for the erection or alteration of a building to which this clause applies that has** a floor space ratio of up to 10% greater than that allowed by clause 4.4 or **a height of up to 10% greater than that allowed by clause 4.3, unless:**
- (a) the design of the building or alteration is the result of an architectural design competition, and
 - (b) the concurrence of the Director-General has been obtained to the development application.

However, it is also relevant that clause 8.7 allows a different path to variation of the height standard. Notably, 8.7 (3) reads:

- 8.7(3) **Despite clauses** 4.3, 4.4 **and 8.4 (5)**, the consent authority may consent to development on land to which this clause applies (including the erection of a new building or external alteration to an existing building) that exceeds the maximum height shown for the land on the Height of Buildings Map or the floor space ratio for the land shown on the Floor Space Ratio Map, or both, if the proposed development includes community infrastructure.

The wording of those subclauses when considered carefully, and the words emphasised in particular, suggest strongly that in the Panel's view, clause 8.4(5) is intended to impose an absolute maximum on the height exceedance permitted by that subclause being 10% above the height development standard before variation.

It seems to follow that the mechanism allowed by clause 8.7 for exceedances of maximum heights for “key sites” of which this site is one, is appropriate. That would mean that the Panel must have regard to the considerations under clause 8.7 when determining the DA.

In particular, subclause 8.7 (5) provides:

- (5) In deciding whether to grant development consent under this clause, the consent authority must have regard to the following:
 - (a) the objectives of this clause,
 - (b) whether the development exhibits design excellence,
 - (c) the nature and value of the community infrastructure to the City Centre.
- (6) In this clause, *community infrastructure* means development for the purposes of recreation areas, recreation facilities (indoor), recreation facilities (outdoor), recreation facilities (major), public car parks or public roads.

There is evidence available from the recorded opinion of the NSW Government Architect’s Design Excellence Panel as to whether the DA design exhibits design excellence.

Before the Panel determines the DA, I expect that the Panel would be assisted by specific advice from the Council assessment staff (taking into account the matters discussed above) as to:

- (i) what the relevant “nature and value of the community infrastructure to the City Centre” is considered to be; and
- (ii) whether it is considered to be sufficient for the council to recommend a grant of consent of the DA under clause 8.7, if all other relevant matters are satisfactorily addressed and the DA is otherwise considered to have merit.

As the Panel is eager to see the DA promptly determined, we would be grateful for that advice as a matter of urgency.

Yours Faithfully



Justin Doyle
Chair
Sydney Western City Planning Panel