

DATE OF DETERMINATION	13 May 2019
PANEL MEMBERS	Justin Doyle (Chair), Bruce McDonald, Nicole Gurran and Ross Fowler
APOLOGIES	Glenn McCarthy
DECLARATIONS OF INTEREST	Nil

Public meeting held at Penrith City Council on Monday, 13 May 2019, opened 4.27pm and closed at 6.05pm

MATTER DETERMINED

Panel Ref - 2019WCI005 – LGA – Penrith - DA18/1222, Address - 11 Barber Avenue, Kingswood (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 briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

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

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

1. The proposed development will provide health services and facilities to the Sydney Western District and the City of Penrith within the Penrith Health and Education Precinct adding to the now established public and private facilities and services within the precinct.
2. The proposed development subject to the conditions imposed adequately satisfies the relevant State legislation and State Environmental Planning Policies including SEPP 55 (Remediation of Land), SEPP (Infrastructure) 2007 SEPP 64- Advertising and Signage and State Regional Environmental Plan No. 20- Hawkesbury Nepean River.
3. The proposal adequately satisfies the relevant objectives and provisions of Penrith LEP 2010 (Amendment 4) The Panel notes that while the proposed development is not a permitted use within the applicable B4 Mixed Use zoning under Penrith LEP 2010, a health service facility is permitted by virtue of Cl. 57 of SEPP (Infrastructure) 2007 which overrides the provisions of Penrith LEP 2010.
4. The proposal adequately satisfies the objectives and provisions of Penrith Development Control Plan 2014.

5. The proposed development subject to the conditions imposed will have no unacceptable adverse impacts on the natural or built environments including the function of existing or proposed nearby premises or the operation of the local road system.
6. The Panel recognises that the development during its construction phase will limit access to the proposed helipad located on the Nepean Hospital car park located to the south of the subject site and has determined that a deferred commencement condition be imposed requiring a safe means of accessing that helipad be developed and employed during that construction phase before the consent becomes operative.
7. The Panel noted that the development application does not propose any development outside of the DA site, and that both the Applicant and Council staff confirmed at the public meeting that while the available Right of Way over the adjoining property including Lots 4, 5 and 6 DP 29525 offered a means of more direct access to the parking on Lot 1 DP 1093052 which is benefitted by that Right of Way, the proposed development was not reliant on the availability of that Right of Way because alternative vehicular access could be obtained across the DA site from the east. In any event, a representative of the owner of the land benefitted by the Right of Way advised that it did not oppose the grant of consent to the DA provided that there was a condition preventing the use of the Right of Way by cars that did not park on Lot 1. Such a condition is to be included in the consent.
8. Accordingly, the Panel did not see any legal obstacle to the grant of consent, with any issues concerning proprietary rights to use the Right of Way to be resolved between the land owners.
9. The proposed development is considered to be of a scale and form which will integrate with the future development of adjoining allotments to form a well presented entry to the Health Precinct and is consistent with the existing and planned development of this sector of Penrith Health and Education Precinct.
10. In consideration of conclusions 1-9 above the Panel considers the proposed development is a suitable use of the site and approval of the proposal is in the public interest.

CONDITIONS

The development application was approved subject to the conditions supplied to the Panel at the public meeting (adapted from the conditions proposed in the Council Assessment Report but with amendments to reflect subsequent discussions with the Applicant), but with the following amendments:

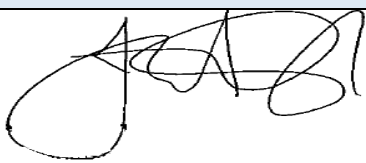



- (a) The words "The existing Right of Carriageway that burdens Lots 4, 5, and 6, DP 29524 is to benefit Lot 1, DP 109305 only." are to be deleted from proposed condition 7 and replaced with:
 - “(c) Provision to prevent vehicles other than cars which do not park on Lot 1 DP 1093052 from using the Right of Way that burdens Lots 4, 5, and 6, DP 29524.
- (b) Deferred commencement condition 71(2) is to be deleted.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from those wishing to address the panel as listed at item 7 in Schedule 1.

The Panel particularly took into account the fact that Josh Peacock who addressed the meeting on behalf of the owner of Lots 4, 5, and 6, DP 29524 indicated support for the DA subject to the comments discussed above.

The Panel considers that concerns raised by the community have been adequately addressed in the assessment report and that no further new issues requiring assessment were raised during the public meeting.

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

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	Panel Ref - 2019WCI005 – LGA – Penrith - DA18/1222
2	PROPOSED DEVELOPMENT	Description - Nepean Private Hospital Expansion including Construction of Four (4) Storey Building containing Ground Floor Reception, Retail Premises & Undercroft Car Parking & Three (3) Levels of Consulting Rooms & Associated On-Grade Car Parking & Site Works
3	STREET ADDRESS	Address - 11 Barber Avenue, Kingswood
4	APPLICANT/OWNER	Applicant – Memphis Strategic Pty Ltd Owner – Healthscope Operations Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Private Infrastructure and community facilities – CIV > \$5million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none">• Environmental planning instruments:<ul style="list-style-type: none">○ Penrith Local Environmental Plan 2010 (Amendment 4)○ State Environmental Planning Policy No. 55 – Remediation of Land○ State Environmental Planning Policy No. 64 – Advertising and Signage○ State Environmental Planning Policy (Infrastructure) 2007○ State Environmental Planning Policy (State and Regional Development) 2011

		<ul style="list-style-type: none"> ○ Sydney Regional Environmental Plan No. 20 – Hawkesbury Nepean River • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Penrith Local Environmental Plan 2014 • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil • 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: 13 May 2019 • Written submissions during public exhibition: 4 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ In support – Josh Peacock ○ In objection – Nil ○ Council assessment officer – Gemma Bennett ○ On behalf of the applicant – Wayne Gesbach, Stephen Janson
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Site inspection and briefing: 18 March 2019 • Final briefing to discuss council's recommendation, 13 May 2019, time 3.30pm • Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Bruce McDonald, Nicole Gurran and Ross Fowler ○ <u>Council assessment staff</u>: Gemma Bennett
9	COUNCIL RECOMMENDATION	Approval – deferred commencement
10	DRAFT CONDITIONS	Attached to the council assessment report