

DATE OF DETERMINATION	17 August 2020
PANEL MEMBERS	Justin Doyle (Chair), Louise Camenzuli, Nicole Gurran and Ross Fowler
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Public meeting held Public Teleconference on 17 August 2020, opened at 11:05am and closed at 11:50am.

MATTER DETERMINED

2019WCI036 – Penrith City Council – DA19/0348 at 90-98 Glenmore Ridge Drive, Glenmore Park – Four Storey Mixed Use Development Comprising Commercial Premises and Shop Top Housing (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.

Application to vary a development standard

The proposed development will have a maximum height of 15.9m.

That height exceeds the height development standard of 15m expressed for the site under each of clause 4.3 of Penrith LEP (the 15 metre height is specified in the LEP Height of Buildings Map) and Clause 7.16(7) of the LEP (which specifies that same 15m height in column 3 for shop top housing development in area 3’).

The height variation relates to lift overruns and three portions of roof slab as follows:

- Block A, Lift overrun 900mm and roof form 650mm
- Block B, Lift overrun 30mm 31mm and roof form 230mm
- Block C, Lift overrun 210mm (Lift 1), and 300mmm (Lift 2) and roof form 220mm

Following consideration of a written request from the applicant, made under cl 4.6 (3) of the Penrith Local Environmental Plan 2010 (LEP), that has demonstrated that:

- a) compliance with the height standard applying under both “4.3 Height of Buildings” and “Clause 7.16 Glenmore Park Stage 2” of Penrith LEP 2020 is unreasonable or unnecessary in the circumstances; and
- b) there are sufficient environmental planning grounds to justify contravening the development standard,

the panel is satisfied that:

- a) the applicant’s written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- b) the development is in the public interest because it is consistent with the objectives of cl. 4.3 and cl.7.16 of the LEP and the objectives for development in the B2 Local Centre zone; and
- c) the concurrence of the Secretary has been assumed.

Specifically the panel accepts the analysis of the clause 4.6 written request provided in the staff assessment report and agree that the minor height non-compliance associated with lift overruns and three portions of roof slab will not adversely affect views from the Northern Road or depart from the objective of the height control to restrict the maximum dwelling yield (see clause 7.6(1)(b)).

Development application

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

The panel determined to approve the application generally for the reasons outlined in the council assessment report.

1. The proposed development will provide a mixed use shopping village to compliment and service the needs of the existing residential housing within Glenmore Park. Specifically, it is anticipated to deliver uses including a major retailer, a medical centre, a childcare centre, a swim school, a gym, a chemist, cafes and small kiosks, retail and commercial opportunities. It will also provide 147 new residential units with mixed sizes and layouts. The new dwelling will be located close to shops, services, open space, a future school, child care facilities, shared pathways and a bus route.
2. When completed in accordance with the proposed development consent conditions, the development will be of a sufficiently sophisticated design, achieving compliance with the Apartment Design Guide. The conditions of consent will embellish the finished proposal with public artworks, and four main pedestrian through links are proposed into the centre, one from each street frontage. The conditions require public domain and awning plans to be submitted to Council's satisfaction. The proposal has been found by Council's assessment staff to provide:
 - a. a high quality public domain;
 - b. accessible, legible linkages between other key community components;
 - c. excellent pedestrian and cycle links; and
 - d. open lot and street based parking for convenience.
3. With the proposed conditions complied with, the proposal will adequately address the parking needs of the locality with a total of 507 car spaces to be provided, including 3 service vehicle and 3 residential car wash spaces. The carparking is supplemented by 73 bicycle spaces.
4. Taking those matters into account, the panel concludes that the proposal will satisfactorily address "Section E7 Glenmore Park Part B – Glenmore Park Stage 2" of the Penrith Development Control Plan 2014 (DCP) which applies to the subject site. In particular it will deliver a neighbourhood centre in the location in the DCP Neighbourhood Precinct Structure map as a focal point for the community, where it is adjacent to the future school and active open space areas. In that way it aligns with the DCP structure plan at Figure E7.1.
5. The proposal adequately satisfies the relevant objectives and provisions of Penrith LEP 2010 (Amendment 4) and the B2 Local Centre zone in which the proposal is to be located. Most notably it will "provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area".
6. SEPP 55 (Remediation of Land) has been addressed, with the Contamination Assessment Report and Preliminary Site Investigation found to be acceptable. Council's Urban Designer found the proposal to be of acceptable quality and representative of the principles contained within SEPP 65, if the recommended conditions are complied with. The conditions provide for an increase in separation distances for Block A to achieve ADG compliance. The proposal has been assessed against other applicable planning instruments and found to be acceptable.
7. While the proposal presents a minor non-compliance with the LEP height development standard, the panel sees the proposal as acceptable in that regard having regard to the applicable objectives of the standard and the zone, and for the reasons set out above the clause 4.6 written request has been upheld.
8. The proposal has been found to perform suitably in relation to environmental performance standards and includes areas for solar panel installation. A communal vegetable garden is proposed

for the use of the residents. A BASIX certificate is provided in relation to environmental building design and it is assessed to meet the Apartment Design Guideline objectives for natural cross flow ventilation, solar access and day light penetration

9. The design achieves overall a level grade across the development and has been assessed to provide suitable connections to the infrastructure required to service and maintain the development.
10. The proposal otherwise adequately satisfies the relevant objectives and provisions of the DCP generally. Issues of construction noise, overshadowing, traffic impacts and waste collection will be managed as set out in the assessment report. Subject to the conditions imposed, the development will not unacceptably impact on the natural or built environments including nearby premises and will not unduly impact the operation of the local road system.
11. In consideration of conclusions 1-10 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

1. A number of outstanding issues were raised at the panel public meeting in relation to several conditions which at that time remained outstanding. At the instigation of the panel, revisions to the material supplied in support of the Application were made, resulting in a supplementary Memorandum supplied by the Council assessment staff together with a spreadsheet entitled "Revised Condition Set" dated 20 August 2020, which in general recorded agreement as to the proposed conditions between the Applicant and the Council assessment staff.
2. One outstanding matter which was not agreed concerned the carwash café proposed at the north eastern corner of the site and architectural detailing of the child care centre play area, which were the subject of the proposed deferred commencement condition L.
3. The Council proposed that by deferred commencement condition the car park and associated signage be deleted from the plans with an alternative treatment to that part of the proposal and affected carparking. It also proposed that circular voids located above the child care centre play area should be deleted for acoustic reasons.
4. The Applicant argued that the carpark is a useful facility to be included in the design which should be retained and that the circular voids can be acoustically treated in stead of their being removed.
5. The panel's conclusion in relation to those matters was that activation of the north eastern corner of the site was desirable, but that the design for the carpark was not satisfactorily resolved in the assessment material in terms of its potential visual, traffic and acoustic impacts to allow the panel to approve it, noting its close proximity to existing detached housing across the road and the proposed new dwellings. The panel concluded that the carwash and associated signage ought to be deleted from the proposal to be the subject of a further DA if that use, or another permissible active use was proposed to be reintroduced to the scheme. In the meantime, the Council's proposal for adjacent detailing to be extended for the time being across the location of the proposed carwash – pending any future approved use for that location – and the acoustic treatment for the 'circular voids' is appropriate.
6. On that basis, the development application is approved:
 - (a) subject to the conditions as proposed in the council assessment report, but with amendments as agreed between the Council assessment staff and the Applicant through discussion occurring after the public meeting before the panel at the panel's instigation - as recommended by the assessing Council staff in the "revised condition set" dated 20 August 2020 provided to the Panel on that date;
 - (b) but with deferred commencement condition L to read:

"L The architectural plans are to be amended to delete the proposed at grade commercial car wash, signage and marked bays and replace with landscaping and an extension to the parking aisles.

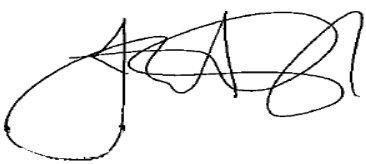



Additional information is to be prepared by a qualified acoustic consultant to detail the acoustic attenuation measures to be incorporated into the circular voids above the Child Care Centre and this is to be shown on the amended plans.

To ensure that the facing west residential balustrade is defined and provides a visual break in the height of the loading dock wall, relative to what would ordinarily be the level 1 slab line, finish BR3 (which is currently only proposed to span between grids 5 and 7) is to be extended between grids 1 through to 10.

Any proposal to reintroduce the car wash, or other permissible use in the location where the carwash was proposed, is to be the subject of a separate future development application."

CONSIDERATION OF COMMUNITY VIEWS

7. In coming to its decision, the panel considered written submissions made during public exhibition and heard from all those wishing to address the panel. The panel notes that issues of concern included:
- Traffic, parking and loading dock concerns
 - Overdevelopment
 - Hours of operation
 - Noise and privacy
 - Overshadowing
 - Impacts on character and low-density lifestyle
 - Social and economic impacts
 - Safety impacts (Traffic, children, pedestrians)
8. The panel considers that concerns raised by the community have been adequately addressed in the assessment report and that no new issues requiring assessment were raised during the public meeting.
9. In particular, a concern was raised that the proposal was different to the sketch plan for the shopping centre indicated in the DCP. However, the proposal is consistent with applicable planning controls noting that the LEP allows for a 15m height and shop top housing as the built form. Given the scale of the recently completed residential flat building completed in the locality, the proposal will result in a compatible form of development consistent with the applicable planning instrument.

PANEL MEMBERS	
 Justin Doyle (Chair)	 Louise Camenzuli
 Nicole Gurran	 Ross Fowler

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2019WCI036 – Penrith City Council – DA19/0348
2	PROPOSED DEVELOPMENT	Four Storey Mixed Use Development Comprising Commercial Premises and Shop Top Housing with Basement and Ground Floor Car Parking and 147 Residential Apartments, a Major Retailer and Child Care Centre for 112 Children
3	STREET ADDRESS	90-98 Glenmore Ridge Drive, Glenmore Park
4	APPLICANT/OWNER	Think Planners on behalf of owner, Mintus Properties Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Designated development - waste management facility or works
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> Penrith Local Environmental Plan 2010 Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No. 2 – 1997) State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development State Environmental Planning Policy (Infrastructure) 2007 State Environmental Planning Policy No. 64 Advertising and Signage State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 State Environmental Planning Policy No. 55 – Remediation of land State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 State Environmental Planning Policy (State and Regional Development) 2011 Draft environmental planning instruments: Draft Environmental State Environmental Planning Policy Draft Remediation of Land State Environmental Planning Policy Planning Proposal – Phase 1 Review of Penrith LEP 2010 Development control plans: <ul style="list-style-type: none"> Penrith Development Control Plan 2014 Relevant planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Regs 92,93,94,94A, 288 Coastal zone management plan: Coastal zone management plan 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: 4 August 2020 Clause 4.6 Variation: Maximum Building Height Development Standard Written submissions during public exhibition: 13 Verbal submissions at the public meeting: <ul style="list-style-type: none"> Council assessment officer – Kathryn Saunders

		<ul style="list-style-type: none"> ○ On behalf of the applicant – Jonathan Wood and Tom Steal
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: Monday, 19 August 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Bruce McDonald (Acting Chair), Mark Grayson, Ross Fowler and Glenn McCarthy ○ <u>Council assessment staff</u>: Ian Dencker and Kathryn Saunders • Site inspection: Monday, 19 August 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Bruce McDonald (Acting Chair), Mark Grayson, Ross Fowler and Glenn McCarthy ○ <u>Council assessment staff</u>: Ian Dencker and Kathryn Saunders • Final briefing to discuss council's recommendation: Monday, 17 August 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurran, Louise Camenzuli and Ross Fowler ○ <u>Council assessment staff</u>: Kathryn Saunders, Robert Craig and Gavin Cherry
9	COUNCIL RECOMMENDATION	Deferral
10	DRAFT CONDITIONS	Attached to the council assessment report