

Assessment report to Sydney Central City Planning Panel

Panel reference: PPSSCC-296

Development application

DA number	SPP-21-00010	Date of lodgement	2 August 2021
Applicant	2 - 6 First Ave Blacktown Pty Ltd		
Owner	2 - 6 First Ave Blacktown Pty Ltd		
Proposed development	Construction of a 25-storey shop top housing development comprising 6 levels of basement car parking, retail premises on the ground level, commercial premises on the first and second floors with 220 residential apartments above, including rooftop areas.		
Street address	2 - 6 First Avenue, Blacktown		
Notification period	18 August to 1 September 2021	Number of submissions	2, including 1 letter of support

Assessment

Panel criteria Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021	<ul style="list-style-type: none"> Development with Capital investment value (CIV) of more than \$30 million. The proposal has a CIV of \$89,857,728.
Relevant section 4.15(1)(a) matters	<ul style="list-style-type: none"> Environmental Planning and Assessment Act 1979 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 Blacktown Local Environmental Plan 2015 Blacktown Development Control Plan 2015 Central City District Plan 2018 Blacktown Local Strategic Planning Statement 2020
Report prepared by	Bertha Gunawan
Report date	21 October 2022
Recommendation	Refusal, for the reasons listed in this report.

Attachments

- 1 Location map
- 2 Aerial image
- 3 Zoning extract
- 4 Detailed information about proposal and DA submission material
- 5 Development application plans
- 6 Applicant's Clause 4.6 variation submission

- 7 Council's assessment of Clause 4.6 variation
- 8 Statement of Facts and Contentions filed with the Land and Environment Court

Checklist

Summary of section 4.15 matters

Have all recommendations in relation to relevant section 4.15 matters been summarised in the Executive summary of the Assessment report? Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments, where the consent authority must be satisfied about a particular matter, been listed and relevant recommendations summarised in the Executive Summary of the Assessment report? Yes

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the Assessment report? Yes

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (section 7.24)? No

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1 Executive summary

1.1 The key issues that need to be considered by the Panel in respect of this application are:

- Urban design and Apartment Design Guide issues

The proposal substantially fails to meet the design quality principles set out in the Apartment Design Guide.

There is no submission of a statement by a qualified designer to verify that the proposal addresses the design quality principles or the objectives in Part 3 (Siting the Development) and Part 4 (Designing the Building) of the Apartment Design Guide.

There are also major concerns for the future residents' amenity, in relation to matters such as adequate solar access and cross ventilation and the quality of the communal open space area due to the proposed building layouts.

For the reasons above the proposal does not meet the compliance criteria for design excellence as required under Clause 7.7 Design Excellence of the Blacktown Local Environmental Plan 2015.

- Site isolation

The proposed development has not demonstrated how the properties at 8 - 14 Sunnyholt Road (separated by Zolyomi Lane) can be appropriately developed in a future context, that is without creating site isolation issues for these properties. It has not given sufficient consideration to the site context, opportunities and constraints.

- Planning issues

The applicant's request to vary the maximum building height limit of 80 m by 2.71 m (3.4%) under the Blacktown Local Environmental Plan 2015 lacks credibility and is not warranted. Based on the above urban design issues, the proposed building height variation is unlikely to benefit the residents or achieve a good design outcome and will set an undesirable precedent.

- Stormwater issues

The applicant has not provided sufficient information to allow a proper assessment of the proposed drainage, stormwater and water conservation arrangements for the site. There are also discrepancies between the civil and architectural plans in terms of what stormwater measures are proposed on the site.

- Waste management issues

The applicant has not provided sufficient information to allow a proper assessment of the proposed operational waste management arrangements.

- Site contamination issues

The applicant has not provided current information on site contamination. The information provided was prepared in 2016, so is out-of-date and unacceptable.

- Earthworks issues

The applicant has not provided a proposed earthworks plan, which is necessary to confirm the extent of impacts to the existing underground gas pipeline.

1.2 Assessment of the application against the relevant planning framework and consideration of matters by our technical departments have identified issues of concern that cannot be dealt with by conditions.

1.3 On this basis, the application is considered to be unsatisfactory when evaluated against Section 4.15 of the Environmental Planning and Assessment Act 1979.

- 1.4 This report recommends that the Panel refuse the application based on the grounds listed in the Recommendation at section 12 below.

2 Location

- 2.1 The site is located in the northern precinct of the Blacktown CBD, on the southern side of First Avenue, off Sunnyholt Road. It is bounded by Zolyomi Lane to the east and Humphries Lane to the south.
- 2.2 The location of the site is shown at attachment 1.
- 2.3 The property immediately to the north of the site (separated by First Avenue) is a single storey funeral home.
- 2.4 The property immediately to the east of the site (separated by Zolyomi Lane) is a row of single storey food and drinks premises and other shops.
- 2.5 The property immediately to the south of the site (separated by Humphries Lane) is currently under construction for a 16-storey shop-top housing development (under SPP-19-00008) comprising 7 basement car parking levels, a supermarket and other retail tenancies and 227 residential apartments as well as landscaping and public domain works.
- 2.6 The adjoining property to the west is a 2-storey office building occupied by Centrelink and Medicare. The entrance to Blacktown Railway Station is approximately 550 m from the proposed main entrance of the development and the railway corridor is approximately 70 m from the southern boundary of the site.

3 Site description

- 3.1 The site is legally described as Lot 2 DP 1214977 and is otherwise known as 2 - 6 First Avenue, Blacktown.
- 3.2 The site is trapezoidal in shape with an area of 2,111 m². The land slopes down from the north-east to the south-west corners of the side boundaries by 1.65 m over distance of 61.64 m resulting in a gradient of 2.7%. The site is currently vacant.
- 3.3 An aerial image of the site and surrounding area is at attachment 2.

4 Background

- 4.1 The site is subject of an existing development consent under JRPP-15-02087 granted by the Sydney West Joint Regional Planning Panel on 26 July 2016, for an 18-storey shop-top housing development consisting of 4 levels of basement car parking, a 2-storey commercial podium (1,170 m² in gross floor area) and 16 residential floors (160 apartments). This development consent is valid until 26 July 2023.
- 4.2 The site is zoned B4 - Mixed Use. The zoning plan for the site and surrounds is at attachment 3.
- 4.3 The applicant had a pre-DA lodgement meeting with Council on 15 December 2020, where it was recommended that:
 - the building be designed to respond to the site and context characteristics including the prevailing development densities, street layout and hierarchy
 - the development achieves adequate levels of natural lighting and ventilation, privacy, visual amenity and spatial separation from the neighbouring properties
 - the proposal articulates the roof form, building modulation and articulation through range and combination of materials and details.

- 4.4 Shortly after the application was lodged on 2 August 2021, the applicant was:
- advised (on 24 September 2021 and 29 October 2021) that there are issues relating to building setbacks and the external materials and appearance of the building in the CBD area, waste and stormwater provisions
 - requested to revise the Clause 4.6 request to depict the correct building height variation.
- Provision of car parking in the basement levels was also identified to be a shortfall at the time. However, our traffic engineer later confirmed that the proposed car parking spaces will be adequate.
- 4.5 The applicant submitted amended plans and additional information on 13, 15 October and 23 November 2021. These amendments did not satisfactorily address the issues raised, and we sought advice from the Sydney Central City Planning Panel on 10 March 2022 to determine the application on this basis. The Panel resolved that the applicant should be given 1 last opportunity to address the outstanding issues.
- 4.6 Our request for information was sent to the applicant on 18 March 2022, with a deadline of 15 April 2022.
- 4.7 On 28 April 2022, the applicant requested Council to determine the application in its current form.
- 4.8 On 2 June 2022, a Class 1 Appeal against the deemed refusal of the application was filed with the NSW Land and Environment Court.
- 4.9 On 11 October 2022, the proposal was subject to a Section 34 reconciliation conference. This resulted in the applicant undertaking to amend the plans to Council's satisfaction
- 4.10 Amended plans lodged on 26 October 2022 still fail to satisfy our concerns.

5 The proposal

- 5.1 The development application was lodged by 2 - 6 First Ave Blacktown Pty Ltd.
- 5.2 The applicant proposes the construction of a 25-storey shop-top housing development comprising 6 levels of basement car parking, retail premises on the ground level, commercial premises on the first and second floors, and 220 residential apartments above including rooftop areas.
- 5.3 Other details about the proposal are at attachment 4, and a copy of the development plans is at attachment 5.

6 Assessment against planning controls

- 6.1 A summary assessment of the development application against the section 4.15(1)(a) matters is provided below but only for those planning controls that directly relate to refusal of the development application.

6.2 Section 4.15 'Heads of Consideration'

Heads of Consideration	Comment
a. The provisions of: (i) Any environmental planning instrument	The proposal is not consistent with the relevant environmental planning instruments including the provisions under State Environmental Planning Policy No. 65, State Environmental Planning Policy (Biodiversity and Conservation) 2021, State Environmental Planning Policy (Resilience and Hazards) 2021, and Blacktown Local Environmental Plan 2015, for the following reasons:

Heads of Consideration	Comment
	<ul style="list-style-type: none"> • The current proposal does not address the relevant design principles in the Apartment Design Guide in terms of minimum setbacks, solar access to the units as well as to the communal open space on the podium level and cross ventilation. The proposed internal layouts create amenity issues. • The proposed building design and height do not demonstrate adequate considerations to the relevant site context and constraints. The proposal does not exhibit design excellence for the Blacktown CBD area as required by the Blacktown Local Environmental Plan 2015. • There are inadequate planning grounds to support the proposed variation of 2.71 m to the maximum building height of 80 m (refer to the applicant's Clause 4.6 justification request at attachment 6 and Council's justification at attachment 7) and the proposal does not demonstrate that the neighbouring properties at 8 - 14 Sunnyholt Road can be appropriately developed in a future context without isolation issues. • The site is contaminated by asbestos and the submitted Remediation Action Plan and Detailed Site Investigation Report are more than 6 years old (prepared in February 2016). The applicant has not confirmed if the site has been remediated nor submitted updated reports to ensure soil is not leaching or to confirm the suitability of the site for shop-top housing development. • The proposal has not demonstrated adequate stormwater and waste provisions and therefore has not confirmed that the site will adequately cater for such development. • The proposal has not established if there will be any potential impact to the existing underground gas pipeline.
<p>(ii) Any proposed instrument that is or has been the subject of public consultation under this Act</p>	<p>The following draft instruments apply to the proposal:</p> <p>Draft State Environmental Planning Policy (Environment)</p> <p>The draft State Environmental Planning Policy (Environment) was exhibited between October 2017 and January 2018 and seeks to simplify the NSW planning system and reduce complexity without reducing the rigour of considering matters of State and Regional significance.</p> <p>The draft policy effectively consolidates several State Environmental Planning Policies including:</p> <ul style="list-style-type: none"> • State Environmental Planning Policy 19 Bushland in Urban Areas, • State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011, • Sydney Regional Environmental Plan No. 20 - Hawkesbury-Nepean River (No. 2 – 1997) • Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment <p>and removes duplicate considerations across Environmental Planning Instruments</p> <p>Draft State Environmental Planning Policy (Remediation of Land)</p>

Heads of Consideration	Comment
	<p>The draft State Environmental Planning Policy (Remediation of Land) was exhibited from January to April 2018 with the intent that it repeals and replace State Environmental Planning Policy 55 - Remediation of Land (SEPP 55) in relation to the management and approval pathways for contaminated land.</p> <p>SEPP 55 has since been repealed and its provisions were consolidated into the State Environmental Planning Policy (Resilience and Hazards) 2021, Chapter 4. However, Chapter 4 of this new policy does not include the changes that were exhibited in 2018 and those provision are still under review.</p> <p>The draft State Environmental Planning Policy (Remediation of Land) will:</p> <ul style="list-style-type: none"> • provide a state-wide planning framework for the remediation of land • maintain the objectives and reinforce those aspects of the existing framework that have worked well • clearly list the remediation works that require development consent • categorise remediation work based on the scale, risk and complexity of the work • require environmental management plans relating to post remediation, maintenance and management of on-site remediation measures to be provided to Council. <p>The proposal is inconsistent with these draft instruments as discussed in section (i) above.</p>
(iii) Any development control plan	<p>Blacktown Development Control Plan 2015 applies to the site, but its provisions for the residential component are overridden by the requirements of the Apartment Design Guide.</p> <p>The proposal fails to satisfy some aspects of the Apartment Design Guide, as outlined in this report.</p> <p>In addition, the required stormwater and waste provisions of the Development Control Plan for such a development have not been satisfactorily addressed. The proposal does not comply with parts G and J of the Development Control Plan.</p>
(iii a) Any 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,	<p>The applicant did request to enter a voluntary planning agreement to address the car parking shortfall, however, this is no longer necessary as our Traffic Officer has confirmed adequate parking provision as proposed.</p>
(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),	<p>The development application is contrary to Clause 29(1)(2) of the Environmental Planning and Assessment Regulation 2021 as there is no submission of a statement by a qualified designer to verify that the proposal addresses the design quality principles and the objectives in parts 3 and 4 of the Apartment Design Guide.</p>

Heads of Consideration	Comment
b. The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality	<p>The development is likely to result in negative environmental impacts on the natural and built environment as it has not demonstrated the capability to achieve an adequate stormwater system or waste management, or that the site contamination from asbestos can be sufficiently treated for residential and commercial uses.</p> <p>The current proposal also does not sufficiently address the Apartment Design Guide in regard to establishing its relationship with the site context, resulting in negative social and economic impacts.</p>
c. The suitability of the site for the development	<p>There is inadequate engineering, waste and site contamination information provided to enable a complete assessment of the development's likely impacts. The applicant has not satisfied Council that the site can cater for this development. On this basis, the site is not suitable for the proposed development.</p>
d. Any submissions made in accordance with this Act, or the regulations	<p>The application was exhibited for a period of 14 days and 2 submissions including 1 letter of support, were received. Refer to Section 7 below.</p>
e. The public interest	<p>The proposal is not in the public interest as it is not proposing orderly development, is not compatible with the site's context and surroundings. The current proposal also does not provide adequate stormwater and waste provisions despite Council's requests to address these matters.</p>

7 Issues raised by the public

- 7.1 The proposed development was notified to property owners and occupiers in the locality between 18 August and 1 September 2021. The development application was also advertised in the local newspapers and a sign was erected on the site.
- 7.2 We received 2 submissions including 1 letter of support.
- 7.3 The issues raised in the objection relate to construction impacts, such as the availability of street parking, noise issues and soil stability from excavation works. These issues can be addressed by conditions of consent including the preparation of a construction traffic and environmental management plans and a dilapidation report should the development application be approved.
- 7.4 The objections themselves are not considered sufficient to warrant refusal of the development application.

8 Key issues and reasons for refusal

8.1 Urban design issues

8.1.1 Design quality

The proposal fails to demonstrate a high standard of architectural design and that the form and external appearance will improve the quality and amenity of the public domain, in terms of:

- The articulation of tower and podium forms
- the incorporation of appropriate street and side setbacks

- amenable and (Apartment Design Guide) compliant internal layouts
- amenable and (Apartment Design Guide) compliant communal open space
- well considered materials and detailing
- lane activation at ground level
- upgrade and detailing of footpaths, lanes and landscapes
- integration of the substation.

8.1.2 Setbacks

The proposed footprint of the building consists of a zero setback to the western boundary for the full height of the building. A zero setback above the podium to the western boundary is unacceptable because it contravenes the controls in Clause 5.3 of Part D of the Blacktown Development Control Plan 2015, which require a setback of at least 6 m as 'an absolute minimum'.

The proposal will therefore result in a continuous 25-storey solid wall to the streetscape and a poor urban design outcome when considering future neighbouring developments. It will also reduce solar access to the podium communal open space and place an unacceptable burden on the development of neighbouring land.

The proposed zero side setback to the western boundary further contributes to an inadequately defined podium, a greater apparent bulk of the tower above and the presentation of a relentless 25-storey high wall to the streetscape. This is inconsistent with the clearly defined podiums, setback and separated towers as envisaged by the Blacktown Development Control Plan 2015. The zero side setback will also contribute to the aesthetic non-compliance of the development and a lack of privacy and amenity for residential uses stemming from the full-height, dark-shaded performance glazing that dominates the proposed building.

8.1.3 Context

The proposal fails to explain how the site fits into the wider neighbourhood streetscape (site context), and does not explain how the proposed development will enhance the adjacent public domain or the desired future character of the locality. There is no evidence of laneway activation on the ground floor and a lack of consideration for the future development of properties 8 - 14 Sunnyholt Road, i.e. in ensuring they do not become isolated sites. These are essential criteria to demonstrating design excellence.

8.1.4 Bulk and aesthetics

The proposed tower element displays excessive bulk and an overly imposing visual scale that will dominate the streetscape. It also fails to demonstrate a compliant composition of well-considered materials.

8.1.5 Amenity

The proposal has not demonstrated any footpath upgrade or landscaping provisions that will improve the quality and amenity of the public domain. The proposed commercial component has been designed without adequate consideration for access to sunlight or providing an outlook to the surrounding buildings.

The proposed residential component design is insufficient in terms of providing solar access and cross ventilation, resulting in some units having privacy and visual issues due to inadequate building separations. Furthermore, many of the internal apartment layouts contain smaller than minimum bedroom sizes or do not

have formal entries. . It is unclear whether the provisions of service equipment have been considered and incorporated into the building design.

8.1.6 Sustainability

The proposal does not achieve a satisfactory outcome in terms of ecologically sustainable development. For example, no screening is provided to reduce glare and heat.

8.1.7 For further details of the above non-compliances, please refer to Part B, contention 1 in the Statement of Facts & Contentions at attachment 8.

8.2 Planning issues

8.2.1 The proposed 2.63 m variation to the maximum building height of 80 m under the Blacktown Local Environmental Plan 2015 is unacceptable and unnecessary as it is intended to provide additional open space areas that cannot be achieved by the proposed communal open space on Level 3. There are insufficient planning grounds to justify the contravention, as the proposal maintains non-compliance with the objectives of Clause 4.3 for building height and for the B4 - Mixed Use Zone, as listed under Blacktown Local Environmental Plan 2015.

8.2.2 For further details of the above issues, please refer to Part B, contention 2 in the Statement of Facts & Contentions at attachment 8.

8.3 Stormwater issues

8.3.1 The proposal is deficient as it does not provide an adequate catchment plan nor adequate water conservation. There is inadequate information to allow a proper assessment of the proposed drainage, stormwater and water conservation arrangements for the site. There are also discrepancies between the civil and architectural plans in terms of the stormwater measures that are proposed on the site.

8.3.2 For further details, please refer to Part B, contention 3 in the Statement of Facts & Contentions at attachment 8.

8.4 Waste management issues

8.4.1 The proposal has not sufficiently demonstrated the relevant operational waste management arrangements will be able to occur on the site. The number of required bins, arrangements and delineation between commercial and residential waste, waste travel paths and the required head clearance for truck collection are not sufficiently detailed, demonstrating the lack of waste considerations.

8.4.2 For further details, please refer to Part B, contention 4 in the Statement of Facts & Contentions at attachment 8.

8.5 Site contamination issues

8.5.1 The submitted documentation is outdated and there is uncertainty that the site can be remediated.

8.5.2 For further details, please refer to Part B, contention 5 in the Statement of Facts & Contentions in attachment 8.

8.6 Earthworks issues

8.6.1 It is uncertain that the proposed development will not impact on the existing underground gas pipeline.

8.6.2 Additional information is requested as detailed in Part B, contention 6 in the Statement of Facts & Contentions in attachment 8.

9 Internal referrals

- 9.1 The development application was referred to the following internal sections of Council for comment:

Section	Comments
City Architect	Objects to proposal for the reasons discussed in section 8.1 and in Part B, contention 1 in the Statement of Facts & Contentions at attachment 8
Traffic	Satisfactory subject to conditions
Building	Satisfactory subject to conditions
Waste	Objects to proposal for the reasons discussed in section 8.3 and in Part B, contention 4 in the Statement of Facts & Contentions at attachment 8
Engineer	Objects to proposal for the reasons discussed in section 8.4 and in Part B, contention 3 in the Statement of Facts & Contentions at attachment 8
Environmental Health	Objects to proposal for the reasons discussed in section 8.5 and in Part B, contention 5 in the Statement of Facts & Contentions at attachment 8

10 External referrals

- 10.1 The development application was referred to the following external authorities for comment:

Authority	Comments
Transport for NSW (Roads & Maritime)	The application was referred to Transport for NSW due to its proximity to Sunnyholt Road, which is a classified road and the development is considered traffic generating. Transport for NSW has no objection to the proposal.
Ampol	No response to date
NSW Police - Blacktown Local Area Command	No response to date

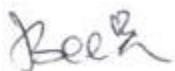
11 Conclusion

- 11.1 The proposed development has been assessed against all relevant matters and is considered to be unsatisfactory. It is considered that the likely impacts of the development have not been satisfactorily addressed and that the proposal is not in the public interest. The site is not considered suitable for the proposed development.

12 Recommendation

- 1 Refuse Development application SPP-21-00010 for the following reasons:

- a The applicant has not submitted a statement by a qualified designer to verify that the proposal addresses the design quality principles and the objectives in parts 3 and 4 of the Apartment Design Guide. [Section 4.15(a)(iv) of the Environmental Planning and Assessment Act 1979]
 - b The proposal is likely to result in negative environmental impacts on the natural and built environment as it has not demonstrated the capability to achieve adequate stormwater disposal and waste management, and that the site contamination from asbestos can be sufficiently treated to allow for residential and commercial uses. [Under Section 4.15(b) of the Environmental Planning and Assessment Act 1979]
 - c The proposal is likely to result in negative social and economic impacts as it is deficient in addressing the Apartment Design Guide compliance and establishing its relationship with the surrounding development context. [Section 4.15(b) of the Environmental Planning and Assessment Act 1979]
 - d There are inadequate planning grounds to support the proposed Clause 4.6 request to vary the maximum building height of 80 m to 82.63 m, and the proposal does not demonstrate that the neighbouring properties at 8 - 14 Sunnyholt Road can be appropriately developed in a future context without isolation issues. The proposal will set a negative precedent to the locality. [Section 4.15(b) of the Environmental Planning and Assessment Act 1979]
 - e The site is not suitable for the development as there is inadequate engineering, waste and site contamination information provided to enable a complete assessment of the development's likely impacts. The applicant has not satisfied Council that the site can cater for this development. [Section 4.15(c) of the Environmental Planning and Assessment Act 1979]
 - f Based on the reasons in (e), the proposal does not comply with Parts G - Site Waste Management and Minimisation and J - Water Sensitive Urban Design and Integrated Water Cycle Management of Blacktown Development Control Plan 2015. [Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979]
 - g The proposal will not achieve orderly development that is compatible with the site's context and surroundings and is therefore not in the public interest. [Under Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979]
 - h Based on the above reasons, the proposal is inconsistent with the provisions of the relevant environmental planning instruments including the State Environmental Planning Policy No. 65, State Environmental Planning Policy (Biodiversity and Conservation) 2021, State Environmental Planning Policy (Resilience and Hazards) 2021, and Blacktown Local Environmental Plan 2015, Draft State Environmental Planning Policy (Environment), and Draft State Environmental Planning Policy (Remediation of Land). It is therefore does not satisfactorily address Section 4.15(1)(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979.
- 2 Council officers notify the applicant, submitters and also notify the Council's Lawyer defending the deemed refusal appeal of the Panel's decision.



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