

DETERMINATION AND STATEMENT OF REASONS

SYDNEY CENTRAL CITY PLANNING PANEL

DATE OF DETERMINATION	24 November 2022
DATE OF PANEL DECISION	23 November 2022
DATE OF PANEL MEETING	17 November 2022
PANEL MEMBERS	Abigail Goldberg (Chair), David Ryan, Roberta Ryan, Glenn Elmore, Ola Hamad
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 15 November 2022.

MATTER DETERMINED

PPSSCC-377 – Cumberland – MOD2022/0211 – 228 Pitt Street, Merrylands - Section 4.55(2) modification to an approved mixed-use development, including altering the floor levels and overall height of the development, revised unit layout, reduction in unit numbers from 365 to 363, provision of additional commercial space, revised plant and service areas, revised basement level layout and alterations to facade treatment and communal open space areas.

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.

Development application

The panel determined to partially approve the modification application pursuant to section 4.55 of the *Environmental Planning and Assessment Act 1979*.

The decision was 3:2 in favour, against the decision were Glenn Elmore and Ola Hamad.

REASONS FOR THE DECISION

The panel determined to approve the majority of the application for the reasons outlined in the Council Assessment Report and Addendum Report.

The panel did not agree to modify residential floor to floor heights of Building A from 3 metres to 3.1 metres, because of the marginal increase this would cause to the currently approved non-conforming height of the building.

Notwithstanding this, the majority of the panel considered that approval of 3.05 metre residential floor to floor heights was acceptable for buildability reasons and to improve internal amenity for residents.

The majority of the panel notes that this application has had a long and complex history, which has included previous decisions that resulted in sub-optimal common open space outcomes for Building A residents. The current application seeks to improve those outcomes by reinstating communal open space on the rooftop of Building A, and through the resolution of other practical buildability issues, including measures to mitigate potential flooding on lower levels that are to be used for commercial purposes.

However, these modifications come at the 'cost' of cumulatively significant variations to overall building heights that may, in ordinary circumstances, not have been considered appropriate. The majority of the

panel consider that this decision should not be viewed as a precedent for what may be considered as an acceptable height variation in other circumstances.

Glenn Elmore and Ola Hamad disagreed with the majority decision in relation to approving additional residential floor to floor heights above those currently approved because of the impact this has on increasing the overall height of the building.

CONDITIONS

The modification application was approved subject to the conditions in the Draft Conditions of Consent issued on 16 November 2022, with the following amendment:

15a DACCZ01 - Maximum height of Building A

The maximum building height of Building A shall not exceed RL 85.95 AHD to the topmost part of the lift overrun. The construction certificate plans must clearly demonstrate that no structure / lift shaft / parapet or part of the building exceeds RL 85.95 AHD at any point and that residential floor-to-floor heights in Building A are 3.05 metres.






(Reason: To ensure the height of Tower A is compliant with the approved plans.)

[Condition 15a is modified by the Section 4.55(2) Modification Application 2022/0211]

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel considered one written submission made during the public exhibition. The panel notes that no details were provided as part of the submission. While Council correspondence was sent back to the writer, no second submission was made.

Due to an insufficiency of information, the panel considers that no issues have been raised by the community that can be addressed.

PANEL MEMBERS	
 Abigail Goldberg (Chair)	 David Ryan
 Roberta Ryan	 Glenn Elmore
 Ola Hamed	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSCC-377 – Cumberland – MOD2022/0211
2	PROPOSED DEVELOPMENT	Section 4.55(2) modification to an approved mixed use development, including altering the floor levels and overall height of the development, revised unit layout, reduction in unit numbers from 365 to 363, provision of additional commercial space, revised plant and service areas, revised basement level layout and alterations to facade treatment and communal open space areas
3	STREET ADDRESS	228 Pitt Street, Merrylands
4	APPLICANT/OWNER	Applicant: Merrylands 88 Development Pty Ltd Owner: Merrylands 88 Development Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Section 4.55(2) Modification Application
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Planning Systems) 2021. State Environmental Planning Policy (Biodiversity and Conservation) 2021. State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 - Part 2.43. State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development and the Apartment Design Guide (ADG). State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. Cumberland Local Environmental Plan 2021 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Cumberland Development Control Plan 2021 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: 26 October 2022 Written submissions during public exhibition: 1 Council Addendum Report: 15 November 2022
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing: 4 August 2022 <ul style="list-style-type: none"> <u>Panel members</u>: Abigail Goldberg (Chair) <u>Council assessment staff</u>: Jai Shanker, Michael Lawani, Esra Calim Final briefing to discuss Council's recommendation: 3 November 2022 <ul style="list-style-type: none"> <u>Panel members</u>: Abigail Goldberg (Chair), David Ryan, Roberta Ryan, Glenn Elmore, Ola Hamad <u>Council assessment staff</u>: Esra Calim, Jai Shanker, Michael Lawani

		<ul style="list-style-type: none"> ○ <u>Applicant representatives</u>: Anas Rahhal, Jacob Yammine, Jonathon Wood, Ryan Lane • Briefing to discuss Council's recommendation: 10 November 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Abigail Goldberg (Chair), David Ryan, Roberta Ryan, Glenn Elmore, Ola Hamad ○ <u>Council assessment staff</u>: Esra Calim, Jai Shanker, Michael Lawani, Harley Pearman • Further briefing to discuss Council's recommendation: 17 November 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Abigail Goldberg (Chair), David Ryan, Roberta Ryan, Glenn Elmore, Ola Hamad ○ <u>Council Assessment staff</u>: Jai Shanker, Michael Lawani, Harley Pearman, Esra Calim
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report