



24 March 2022

Justin Doyle

Chair

Sydney Western City Planning Panel

Department of Planning, Industry and Environment,

Locked Bag 5022

Parramatta NSW 2124.

Dear Mr Doyle

RE: DA20/0824 No.46 Evan St Penrith

I refer to the Assessment Report prepared in relation to the above-mentioned Development Application (DA) for consideration by Sydney Western City Planning Panel (SWCPP).

The report identifies numerous planning issues that are unresolved and as such represent the basis of the planning officer's recommendation for refusal. These are identified below together with further commentary advice to assist the Panel in their determination:

However, please note that we also provide the following attached information which also addresses these planning issues raised in the planning assessment report:

- Additional Biodiversity Assessment and 5 Part Test
- Amended ground floor plan
- Amended pathways and landscape plan
- Additional detail on private and public domain interface
- Amended pathway structures plan
- Amended elevations
- Vehicle ramp vertical clearance sections
- Updated engineering flood advice

- ***The applicant has failed to demonstrate that the development would result in a significant impact upon Cumberland Plain Woodland***

A new test of significance (5 Part test) has been completed pursuant to the *Biodiversity Conservation (BC) Act 2016*. This test concludes that the development would not have a significant impact on Cumberland Plain Woodland. This assessment accompanies this advice.

In our view this issue is now **RESOLVED**.

- ***It is unclear if the proposal exceeds the biodiversity offset scheme threshold pursuant to the Biodiversity Conservation Act, 2016***

The relevant area clearing threshold under the BC Act is 2500m².

A detailed assessment has been undertaken and clearly demonstrates that the development does not breach the 2500m² threshold and therefore does not trigger the requirement for a BDAR. This assessment accompanies this advice.

In our view this issue is now **RESOLVED**.

- ***The proposed height of 20.93m contravenes the maximum building height and the applicants request to vary the development standard is not supported***

A clause 4.6 request to vary the development standard was lodged as part of the DA. The request provides a compelling case in support of the variation including the following site specific environmental planning grounds.

- Reduced building footprint and limited increase in height is a site responsive approach to accommodate the site overland flood flows
- increased setback to adjacent heritage item
- reduced building footprint allows for retention of existing trees and this retains landscaped character and mitigates impacts from urban heat island effect
- increased landscaped area (46.4% of site and 35% deep soil planting) which significantly exceeds the 7% required by the ADG's.

In the entire period of time since the lodgement of the DA we have never had any feedback or commentary from Council planners that they would not support accept the request to vary the development standard.

The commentary in the planning assessment report would suggest that the only concern with the request to vary the development standard pertains to a lack of large scale tree plantings in the landscape plan. This is addressed at the following item.

In our view this issue is now **RESOLVED**.

- ***The proposal does not include sufficient tree planting of suitable scale***

An amended landscape plan has now been prepared that provides six (6) trees species that form part of the Cumberland Plain Woodland (CPW) ecological community and tree that have the potential to obtain heights between 12 and 40m. This plan accompanies this advice.

In our view this issue is now **RESOLVED**.

- ***Elements of the development require further design resolution owing to level changes and narrow deep pathways***

An amended landscape plan has been prepared that rationalises pathway and removes superfluous pathway throughout the site which in itself resolves many of the identified concerns.

The pathway now is generally well removed from any balcony or window at the ground level and the balcony balustrades now all have solid finishes that provide visual screening and mitigate adverse privacy or potential overlooking impacts.

This amended plan accompanies this advice and includes sections that also demonstrate an improved outcome at the interface of the public and private domain.

In our view this issue is now **RESOLVED**.

- ***The proposal does not adequately respond to the locally listed Heritage Item***

Our response is as follows:

- The DA was accompanied by a Statement of Heritage Impact that concludes:
The proposal is permissible on the site and fulfills Council's desired future character for the surrounding area. The impacts of the proposal on the setting of the adjoining Victorian period cottage at No. 163 Derby Street are managed by providing a setback from the common boundary that allows the retention of existing mature

trees that contribute to the setting of the cottage and provides for the planting of new trees. The ground floor of the new building closest to the item lies below the level of the cottage and the upper floors are setback. The elevation addressing the heritage item uses a limited material palette and is well articulated. The retention of mature canopy trees across the subject site and the planting of new ones means that the building will sit within the tree canopy. The existing view corridors towards this item at street level are retained. The public will still be able to view and appreciate this item as a Late Victorian period cottage set on a suburban allotment.

- At no point during the assessment have Council planner ever raised heritage as a concern.
- The planning assessment report provides no commentary on matters of heritage other than the development complies with the Heritage Section of the DCP.
- The planning assessment report actually states that the internal referral to raises no objections.

We are somewhat bewildered by the inclusion of this as a key unresolved planning issue but are of the view that it either **RESOLVED** or readily RESOLVABLE.

- ***The application fails to address and determine the impact of flood behaviour as a result of climate change***

The subject LEP clause that referenced 'climate change' did not exist in the Penrith LEP 2010 at the time of lodgement of the DA. My client, Council engineers and the broader industry are still coming to terms with the full implications and requirements of the relevant LEP clause.

Nevertheless, additional modelling has been undertaken and demonstrates that additional volumes of water can be accommodated within the stormwater system that forms part of the development proposal. This information accompanies this advice.

In our view this issue is now **RESOLVED**.

- ***The proposal includes works within alignment of Council's Trunk Drainage system***

This concern related simply to structural elements of the pedestrian pathway that traverses the Council drainage easement.

The amended landscape plan shows the structural elements have now been removed from the easement. This plan accompanies this advice.

In our view this issue is now **RESOLVED**.

- ***The applicant fails to demonstrate that the layout adequate from an operational waste management and collection perspective.***

Discussion with Council's planning officer indicate that this relates solely to a concern that an element of the development does not provide a vertical clearance of 3.1m as required by the DCP.

The relevant plan section demonstrate that the development actually achieves a minimum 3.5m vertical clearance. These sections are provided overpage.

In our view this issue is now and has always been **RESOLVED**.

- ***The proposal fails to comply with various sections of the Penrith DCP.***

We have addressed all DCP matters as part of the DA and are of the view that this is simply a generic reason for Councils non-support of the development.

However, one further not of relevance is that the amended plans now include a new accessible entry from Evan St.

CONCLUSION

None of the key unresolved planning issues identified in the planning assessment report are fundamental planning issues that would warrant a refusal of development.

As demonstrated in this advice and the accompanying information these issues have now been resolved.

We therefore request that the SWCPP do not accept the recommendation presented by the Council planning assessment report. Instead, we would request that the SWCPP make one of the following decisions:

- Direct Council planning officers to prepare conditions for approval
- Defer the application until the next meeting of the panel

Thank you for the opportunity to make a submission on this matter. Please do not hesitate to contact me should you wish to discuss any aspect of this matter further.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'V. Hardy', with a stylized flourish at the end.

Vince Hardy (BTP, RPIA)

Urban Planning Consultant



