

DATE OF DETERMINATION	Thursday, 19 May 2022
DATE OF PANEL DECISION	Wednesday, 18 May 2022
DATE OF PANEL MEETING	Monday, 28 March 2022
PANEL MEMBERS	Justin Doyle (Chair), Louise Camenzuli, Nicole Gurran
APOLOGIES	None
DECLARATIONS OF INTEREST	Ross Fowler: I personally know two of the owners of the properties subject to this DA matter. As such I have a conflict of interest and will be excusing myself from the Panel.

A Public meeting held by teleconference on 28 March 2022, opened at 2:50pm and closed at 3:50pm.

The determination of the DA (originally recommended for refusal) was deferred by decision made by the Panel on 1 April 2022. The minutes of that deferral determination identified further material to be provided and conferral to occur between the Applicant and the Council. That process has concluded successfully, and Council has reported that it is satisfied with the additional material and now recommends approval of the DA.

This determination is made by electronic circulation of papers.

MATTER DETERMINED

PPSSWC-121 – Penrith – DA20/0824 - 96-98 Lethbridge Street & 42-46 Evan Street, Penrith. Construction of Two Residential Flat Buildings (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 listed at item 8 in Schedule 1.

Application to vary a development standard

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 cl. 4.3 (Height of Buildings) 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 (Height of Buildings) of the LEP and the objectives for development in the R4- High Density zone; and
- c) the concurrence of the Secretary has been assumed.

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 uphold the Clause 4.6 variation to building height; and approve the application for the reasons outlined in the council assessment report.

In particular, the Panel notes that:

- The impact of the development's height exceedance is unlikely to generate amenity impacts in terms of additional overshadowing or visual appearance, as the additional height is confined to central sections of the development (including lift towers and ventilation stacks) and not distinguishable when viewed from the surrounding area of public domain. Further, the panel notes that the site is flood prone, necessitating the raising of the ground level of apartments to the flood planning level which increase the building height of up to 1.6m; and that the additional building height does not result in an increased building volume of scale. Further, the applicant has demonstrated that a '*compliant*' building design which concentrated the floor space permissible within the FSR density control below the permitted height limit would have a greater adverse impact on the adjoining heritage item and result in further tree removal. For these reasons, the clause 4.6 (3) application is supported.
- The proposed development provides for new housing supply and achieves a high level of residential amenity, so is consistent with the objectives of the R4 High Density Residential Zone.
- The (amended) design of the development generally satisfies the requirements of the Apartment Design Guide and State Environmental Planning Policy 65
- The (amended) landscaping scheme for the development provides for privacy, high quality and usable open space, and minimises the visual impact of the development including on the adjacent heritage item.
- An (updated) Test of Significance for potential impact on Cumberland Plain Woodland was undertaken, and assessed by Council's Senior Biodiversity Officer to be satisfactory from a biodiversity perspective, subject to the conditions of consent.

CONDITIONS

The development application was approved subject to the conditions in the supplementary Council Assessment Report.

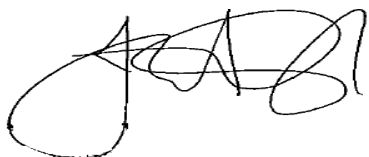
CONSIDERATION OF COMMUNITY VIEWS

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:

- Drainage and flooding concerns
- Potential privacy impacts
- Potential overshadowing impacts
- Demolition of 'older' dwellings
- Insufficient car parking

The Panel considers that concerns raised by the community have been adequately addressed in the assessment report and subsequent design modifications undertaken by the applicant.

PANEL MEMBERS

A handwritten signature in black ink, appearing to be 'J. Doyle', with a large loop at the end.

Justin Doyle (Chair)

A handwritten signature in blue ink, appearing to be 'Louise Camenzuli', with a large loop at the end.

Louise Camenzuli

A handwritten signature in black ink, appearing to be 'N. Gurran', with a long horizontal line extending to the right.

Nicole Gurran

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-121 – Penrith – DA20/0824
2	PROPOSED DEVELOPMENT	Demolition of Existing Structures, Tree Removal & Construction of Two (2) Residential Flat Buildings (5 Storey Building & 6 Storey Building) comprising of 128 Apartments, above Two (2) Basement Levels
3	STREET ADDRESS	46 Evan Street, Penrith
4	APPLICANT/OWNER	Devcon Partners Pty Ltd / Alison, Matthew and Shirley Freeburn
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy (Biodiversity and Conservation) 2021 ○ State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ○ State Environmental Planning Policy (Planning Systems) 2021 ○ State Environmental Planning Policy (Precincts – Western Parkland City) 2021 ○ State Environmental Planning Policy (Resilience and Hazards) 2021 ○ State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development ○ Penrith Local Environmental Plan 2010 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Penrith Development Control 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: 15 March 2022 • The proposal exceeds the maximum building height Development Standard of Clause 4.3 of the Penrith Local Environmental Plan 2010 • Council memo: 28 March 2022 • Council memo: 28 April 2022 • Written submissions during public exhibition: 4 <ul style="list-style-type: none"> ○ Council assessment officer - Robert Walker, Robert Craig, Gavin Cherry ○ On behalf of the applicant – Tony Jreige, Vince Hardy, Joe McLoughlin and Charlie Dahar • Total number of unique submissions received by way of objection: 4

8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 23 April 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, Nicole Gurran, Glenn McCarthy, Ross Fowler ○ <u>Council assessment staff</u>: Robert Walker, Robert Craig, Gavin Cherry • Final briefing to discuss council's recommendation: 28 March 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, Nicole Gurran ○ <u>Council assessment staff</u>: Robert Walker, Robert Craig, Gavin Cherry ○ <u>Applicant representatives</u>: Tony Jreige
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report