

DETERMINATION AND STATEMENT OF REASONS

SYDNEY WESTERN CITY PLANNING PANEL

DATE OF DETERMINATION	8 November 2022
DATE OF PANEL DECISION	8 November 2022
DATE OF PANEL MEETING	24 October 2022
PANEL MEMBERS	Justin Doyle (Chair), Nicole Gurran, Louise Camenzuli, Ross Fowler
APOLOGIES	Tricia Hitchen, Carlie Ryan, Glenn McCarthy
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 18 October 2022.

MATTER DETERMINED

PPSSWC-177 – Penrith City Council – DA21/0607 – 94-100 Explorers Way, St Clair – Construction of Two (2) Storey & 154 Bed Residential Aged Care Facility including Associated Services & Facilities, Allied Health Facility (Therapy Room, Consulting & Treatment Rooms & Outdoor Exercise Area), Resident & Visitor Cafe, 37 At-Grade Car Parking Spaces & Associated Demolition, Stormwater Management & Landscaping Works

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, that has demonstrated that:

- compliance with cl. 4.3 (Height of Buildings) is unreasonable or unnecessary in the circumstances; and
- there are sufficient environmental planning grounds to justify contravening the development standard

the Panel is satisfied that:

- the applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- the development is in the public interest because it is consistent with the objectives of cl. 4.3 of the LEP and the objectives for development in the R2 – Low Density Residential zone; and
- the concurrence of the Secretary has been assumed.

Development application

The Panel determined to refuse 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 met to consider this DA on 22 August 2022, at which time it was recommended for Refusal.

Despite that recommendation, the Panel prepared a substantial briefing note on that date listing various issues of remaining concern, while noting its concerns about the length of time the DA was taking to resolve.

Of the issues canvassed at that time, the issue of separation between the main car parking area and the adjoining low density residential premises to the west remains as the main sticking point with Council staff.

While Council reports that a draft site layout plan has been discussed, it still would result in the main car parking area extending to within around 2.1m of the western boundary. The Panel is not satisfied that setback is sufficient in the context of the site to provide landscaping that would adequately mitigate impacts of the development at the western site boundary.

Council also advises that while progress has been made in relation to biodiversity, further work is still required in relation to identifying the measures that the proponent of the proposed development, activity or clearing proposes to take to avoid or minimise the impact of the proposed development (see s 6.12(a) of the Biodiversity Conservation Act 2016).





While it may be that the issue of biodiversity might be resolvable, there is not sufficient progress to justify the Panel allowing further time for the issue of setback to the car parking to be addressed by further plan revisions.

It is of course open to the Applicant to pursue further revisions to the DA through the review process available under s 8.3 of the EP&A Act.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered the written submissions made during public exhibition and heard from all those wishing to address the Panel. A number of issues were raised in those submissions including:

- Consistency with the character of the area
- Impacts on the amenity of neighbouring properties
- Traffic and parking concerns

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

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-177 – Penrith City Council – DA21/0607
2	PROPOSED DEVELOPMENT	Demolition of a Dwelling, Tree Removal, and Construction of a Two (2) Storey Residential Aged Care Facility, comprising of 153 beds with Associated Facilities / Services, an ancillary Cafe, and Health Consulting and Treatment Rooms
3	STREET ADDRESS	94-100 Explorers Way, St Clair
4	APPLICANT/OWNER	Principal Healthcare Finance (Opal HealthCare)
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 (Housing for Seniors or People with a Disability) 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 (Transport and Infrastructure) 2021 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 Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</i> 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: 10 August 2022 4.6 variation request to Height of Buildings Council memo received: 18 October 2022 Written submissions during public exhibition: 6 Total number of unique submissions received by way of objection: 6
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing: Monday, 15 November 2021 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurrán, Louise Camenzuli and Glenn McCarthy <u>Council assessment staff</u>: Kathryn Saunders, Robert Walker, Robert Craig, Jacqueline Kincke, Jill Williams Final briefing to discuss council's recommendation: 24 October 2022 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurrán, Louise Camenzuli and Ross Fowler

		<ul style="list-style-type: none">○ <u>Council assessment staff</u>: Gavin Cherry, Kathryn Saunders, Robert Walker, Robert Craig
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	N/A