

DATE OF DETERMINATION	28 June 2023
DATE OF PANEL DECISION	27 June 2023
DATE OF PANEL BRIEFING	19 June 2023
PANEL MEMBERS	Justin Doyle (Chair), David Kitto, Louise Camenzuli, Ross Fowler, Carlie Ryan
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 17 March 2023.

MATTER DETERMINED

PPSSWC-214 – Penrith – DA21/0945 – 180 Great Western Highway, Kingswood - Demolition of Existing Structures & Staged Construction of Mixed Use Commercial & Residential Development including Eight (8) Storey Building (Building A - Great Western Highway), Six (6) Storey Building (Building B - Rodgers Street), Ground Floor Pub (Building A), Bottle Shop & Temporary Pub (Building B), 133 Residential Apartments, Rooftop Communal Open Space, Three (3) Levels of Basement Car Parking & Associated Site 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 the briefings listed at item 8 in Schedule 1.

At the meeting on 27 March 2023, the Panel determined to defer the determination of the matter until such time as an independent traffic consultant's advice could be obtained to consider any potential impacts of the parking shortfall, particularly the potential for unacceptable impacts on available street parking.

The Panel was subsequently provided with an independent peer review traffic report prepared by EMM Consulting (**EMM**) and dated 15 May 2023. This report made a number of recommendations in relation to both the proposed temporary pub on the southern site at 26 Rodgers Street and the proposed permanent pub on the northern site at 180 Great Western Highway. In relation to parking requirements, the EMM Report generally referred back to the Council's 2014 DCP rates.

The Panel referred the EMM Report to the Council and the Council provided its response to the EMM Report on 1 June 2023. In summary, the Council's response retains the view that the dispensation from the Council's DCP car parking rates is warranted. Specifically, Council's City Planning Coordinator clarified that the car parking rates for Kingswood have not been strategically reviewed since the consolidation of policies resulting in the DCP 2006. The car parking rates have also not been reviewed since the DCP 2014 was adopted. The Panel is also aware that the site is located in close proximity to Kingswood Train Station, with relatively regular services.

The Council's response also outlines that the other matters raised by the EMM Report are addressed by various conditions of consent, which the Panel agrees with.

The Panel has considered all of the above material. The Panel remains unconvinced at this point in time that the parking shortfall, assuming a capacity of 500 patrons in the permanent pub, will not have an unacceptable parking impact on the surrounding streets. For this reason, the Panel determined that the application should be approved with a maximum number of 300 patrons as is proposed in the context of the temporary pub on the southern site at 26 Rodgers Street. The Panel suggests that the restriction on the

maximum number of patrons can be lifted by further application in due course should no adverse impacts on surrounding street parking arise.

In forming the above view, the Panel understands the primary areas to be occupied will generally comprise:

A 158sqm bistro;
A 294sqm sports bar; and
A 301sqm VIP lounge.

The DCP adopts a parking rate of 1 space per 4sqm for the sports bar and 1 space per 6sqm for the bistro and VIP lounge.

The Applicant's traffic expert, Mr Chris Palmer from CJP Consulting Engineers, in a further report dated 7 June 2023, has indicated that the rate of 1 space per 13.4sqm is proposed for this application.

The Panel recommends that the parking rates in the Council's DCP be revisited if it is the case that the parking rates currently specified warrant reconsideration as a consequence of the effluxion of time or otherwise.

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 2023 (LEP), that has demonstrated that:

- a) compliance with cl. 4.3 (development standard) 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 (development standard) of the LEP and the objectives for development in the B4 zone; and
- c) the concurrence of the Secretary has been assumed.

Specifically, the Panel was satisfied that the variation to the development standard does not give rise to any unreasonable visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas.

Development application/ Application for modification of consent

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 and the Council Addendum Report and the Peer Review Report of CJP Engineers and the relevant considerations arising under s.4.15 of the EP&A Act, and for the following additional reasons:

1. The development is consistent with the objectives of the applicable B4 mixed use zone in which it is permissible with development consent.
2. The built form of the development is appropriate and will not give rise to any significant adverse environmental impacts.
3. The shortfall in parking is appropriately managed by a condition that limits the maximum number of patrons to 300 for the permanent pub, as opposed to 500, pending a trial of the impact of the

parking shortfall on the available surrounding street parking. For this reason, the Panel determined to vary condition 9 as set out below.

CONDITIONS

The Development Application was approved subject to the conditions in the Council Assessment Report, but subject to the following variation to bullet point 3 of condition 9.

*The patron capacity is limited to ~~500~~ **300** persons (not including staff);*

The following note can be added to the end of condition 9.




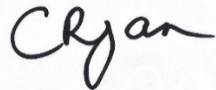

Note: Should the operation of the temporary or permanent pub with this number of patrons over a 2 year trial period, under normal operating circumstances, not give rise to any unacceptable impacts on the surrounding street parking, an application can be made to vary this condition to lift the maximum number of patrons, subject to the required merits assessment at the time.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition. The Panel notes that issues of concern included:

- Possible impacts to the development potential of an adjoining site.
- Adequacy of parking.

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report and that no new issues requiring assessment were raised during the public meeting.

PANEL MEMBERS	
Justin Doyle (Chair) 	David Kitto 
Louise Camenzuli 	Carlie Ryan 
Ross Fowler 	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-214 – Penrith – DA21/0945
2	PROPOSED DEVELOPMENT	Demolition of Existing Structures & Staged Construction of Mixed Use Commercial & Residential Development including Eight (8) Storey Building (Building A - Great Western Highway), Six (6) Storey Building (Building B - Rodgers Street), Ground Floor Pub (Building A), Bottle Shop & Temporary Pub (Building B), 133 Residential Apartments, Rooftop Communal Open Space, Three (3) Levels of Basement Car Parking & Associated Site Works.
3	STREET ADDRESS	180 Great Western Highway, Kingswood
4	APPLICANT/OWNER	Applicant: Hamptons Property Services Pty Ltd Owner: Kingswood Hotel Property Pty Ltd
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 No 65 – Design Quality of Residential Flat Development State Environmental Planning Policy (Industry and Employment) 2021 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Western Sydney Aerotropolis) 2020 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: 20 March 2023 Council Addendum and Supplementary report: 1 June 2023, 7 June 2023 Clause 4.6 variations: Penrith Local Environmental Plan (LEP) 2010, Clause 4.3, 18 metre and 24 metre Maximum Building Height

		<ul style="list-style-type: none"> • Written submissions during public exhibition: 2 • Total number of unique submissions received by way of objection: 2
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 21 March 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, Nicole Gurran, Ross Fowler ○ <u>Council assessment staff</u>: Gavin Cherry, Sandra Fagan, Robert Craig • Final briefing to discuss council's recommendation: 27 March 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Carlie Ryan, Ross Fowler ○ <u>Council assessment staff</u>: Gavin Cherry, Sandra Fagan, Robert Craig ○ <u>Applicant representatives</u>: Andrew Harvey, Warren Duarte • Council/Applicant Final briefing: 19 June 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Carlie Ryan, Ross Fowler ○ <u>Council assessment staff</u>: Gavin Cherry, Sandra Fagan, Robert Craig ○ <u>Applicant representatives</u>: Andrew Harvey, Warren Duarte <p>The panel members performed a site inspection in their own time.</p>
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report