

DATE OF DEFERRAL	20 April 2023
PANEL MEMBERS	Justin Doyle (Chair), Louise Camenzuli, David Kitto, Ross Fowler, Carlie Ryan
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 30 January 2023.

MATTER DEFERRED

PPSSWC-244 – Penrith – DA22/0326 - 28 SOMERSET STREET KINGSWOOD - Construction of a Seven (7) Storey Accommodation Hotel with 140 Rooms, including Food and Beverage Use on the Top Floor with Outdoor Rooftop Seating, and Three (3) Basement Levels with 63 Parking Spaces

REASONS FOR DEFERRAL

A briefing to the Panel by Council’s assessment staff was convened on 13 February 2023, at which the Panel discussed matters raised by the Council assessment report recommending approval of the DA uploaded to the NSW Planning Portal on 13 January 2023.

At that briefing, the Panel resolved to defer determination to a public meeting, in circumstances where:

- (a) Eight public submissions were received, including seven objecting to the DA and one in support;
- (b) A development consent previously granted for the same land and for similar uses by the Council is presently the subject of a Land & Environment Court challenge to its legal validity, with that challenge having been heard by the Court, but a judgment is yet to be handed down. The Council is respondent to that Court challenge. While this proposal is different in various respects to that considered by the Court, the controls, the correct application of which was considered by the Court, also apply to this DA.
- (c) The DA proposal exceeds the LEP height control of 18 metres by 5.854m or 32.5%.
- (d) The DA assessment report estimates a parking shortfall measured against Council’s DCP control of somewhere between 157 spaces and 93 spaces (or between 71% and 42%) with the uncertainty as to the size of the shortfall arising because the assessment report states that the hotel food and beverage space within the proposal might not be considered as a separate use. The assessing planning officer has found the shortfall to be acceptable for a number of reasons including that the proposal is consistent with the objectives recorded by Clause C10.5.1 of the DCP and the parking provision being appropriate *“having regard to the proposed use of the land, the nature of the locality, and the intensity of the use”*. The Panel was informed verbally at the Panel meeting that the Council officer from Council’s traffic team did not support the variation.
- (e) A nil setback is proposed along part of the rear boundary to the immediate rear owned by Australian Unity Limited, which is not permitted under the controls of Section E12 of the DCP.

The public briefing was convened on 13 March 2023.

At that meeting, the Panel was first addressed by Clare Brown (a consultant Town Planner of Urbis) on behalf of Australian Unity Limited who owns the adjoining site. The principal objection is that the proposed development does not provide sufficient parking. She referred to the non-compliance with the LEP height standard, but (in response to questioning from the Panel) said her client did not object to any impact from

the additional height other than a complaint that the additional density the height non-compliance facilitated should be reflected in additional parking provided on site.

A number of persons presented on behalf of the Applicant, but particularly Tony Polvere as the Applicant's consultant town planner. Mr Polvere justified the non-compliance in relation to height as being appropriate in the changing locality and particularly developments which had been approved within the Penrith Health and Education Precinct including two other buildings recently approved by this Panel and the Nepean Hospital Car Park. In relation to parking demand, an emphasis was placed on the overlap between the different uses within the proposed building (with hotel guests also using the food and beverage space) and also with persons using the hospital also being accommodated at the proposed hotel, and with patrons of the food and beverage space including hospital staff and patients etc.

Mr Polvere appeared to accept that the 20% height bonus provided for by clause 7.11 was not available, both because the proposal was more than the height the bonus allows for (clause 7.11 only allows for a building "up to 20%" above the height standard whereas the proposed building exceeds that height), and because the proposal does not meet the preconditions of clause 7.11 because the floor to ceiling height of both the ground and first floors are not equal to or greater than 3.5 metres as the clause requires for the bonus to apply.

The Council assessment officer also addressed the public meeting reiterating her general support for the architectural design which she felt was acceptable in context of the recent approvals and development expected on the adjoining site. She also supported the reasons given in the report for the non-compliance with the DCP parking standard, noting that the Applicant had supplied parking demand observed at what was said to be a comparable use in Homebush.

The Panel on its assessment of the material to date, is open to accepting the advice of Council's assessment staff that the height non-compliance could be supported and the clause 4.6 request upheld for the reasons set out in the assessment report, noting in particular the advice that the proposal achieves the objectives of the 18 metre height standard, essentially due to the rapidly changing character of the area, good design and the fact that the proposal will be separated from the adjoining residential development to the east by the Australian Unity site. The roof top bar and dining area would be set well back from the principal street elevations such that its height is unlikely to give rise to amenity impacts.

One reservation the Panel retains is the associated issue of parking shortfall arising directly from increased density proposed for the site. Problems associated with the limited parking in the area (already under pressure from the hospital use) was emphasised in a number of the public submissions.

The Panel is mindful of the assessing officer's reasons for recommending acceptance of the parking numbers proposed in the DA. Those reasons are summarised in the assessment report as follows:

- “ *There is some merit to the argument about the different style of use for motels and hotels and it is acknowledged that the RTA Guide also differentiates between the two;*
- *The proposal would comply with the parking rates suggested in the RTA Guide for a 34 star hotel (sic – presumably 4 star is meant);*
- *The site is located within 800m of Kingswood Train Station and is near bus routes that service Nepean Hospital;*
- *The proposal is compliant with (and under) the Floor Space Ratio controls for the site, floor space being a control that restricts the intensity of use;*
- *The rooftop dining uses does not change the number of hotel rooms proposed so is not seeking to increase the yield of rooms;*
- *The applicant has stated that the hotel operator will manage the entirety of the hotel and that the food and drink spaces will not be standalone or separately managed, with this also being a recommended condition;*

- *The basement footprint is constricted by the size and shape of the site;*
- *The basement footprint has been intentionally set back from property boundaries to provide deep soil landscaping along both street frontages and the rear setback, therefore, each basement level accommodates no more than 24 parking spaces;*
- *The previous proposal (DA20/0767) was amended to include the third level of basement as a means to increase the number of onsite parking spaces. This third level has been retained in the current proposed development;*
- *To provide fully DCP compliant onsite parking would require approximately 6 basement levels, or a substantial reduction of hotel rooms (potentially creating a three storey building). Either option is likely to make the proposal economically unviable, and could result in a less desirable urban form for the locality; and*
- *Other aspects of the proposal are acceptable, including the quality of the architectural appearance of the building and the positive contribution to the Health and Education Precinct.”*




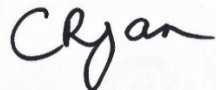
The Panel accepts that there would be some overlapping in the demand for parking from the hotel and the food and beverage uses, and accepts that the food and beverage use may attract staff from the hospital. It is also aware that persons staying in the hotel in association with the hospital might be expected to drive and park in the hotel.

The Panel is however also however mindful of the major departure from the DCP rates, and the potential for approval of this development to be referred to as a precedent for parking rates with a number of new commercial developments planned for the area. It is in that context, and noting the absence of support from Council’s traffic team for the extent of the shortfall in parking when measured against the DCP standard, that the Panel has resolved to seek external advice on that issue through the Secretariat.

The Panel has therefore deferred making its determination until that external advice is available.

Subject to resolution of the parking issue, the Panel is satisfied that the concerns raised by the community in the public submissions have been adequately addressed in the assessment report taking into account the public meeting held. The DA may therefore be suitable for electronic final determination once the external advice in relation to parking is available.

The decision to defer the matter was Unanimous.

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

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-244 – Penrith – DA22/0326
2	PROPOSED DEVELOPMENT	Construction of a Seven (7) Storey Accommodation Hotel with 140 Rooms, including Food and Beverage Use on the Top Floor with Outdoor Rooftop Seating, and Three (3) Basement Levels with 63 Parking Spaces
3	STREET ADDRESS	28 SOMERSET STREET KINGSWOOD
4	APPLICANT/OWNER	Applicant: Boston Nepean Global Pty Ltd Owner: Boston Nepean Pty Ltd as trustee for Boston Nepean Medi-hotel Fund
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 (Industry and Employment) 2021 ○ 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 • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil [or enter the clauses if relevant] • 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: 13 January 2023 • 4.6 variation request in relation to the height development standard • Written submissions during public exhibition: 8 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Clare Brown, Chris Smith ○ Council assessment officer – Sandra Fagan ○ On behalf of the applicant – Ben Pomroy, Tony Polvere • Total number of unique submissions received by way of objection: 7
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 24 October 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, Ross Fowler

		<ul style="list-style-type: none"> ○ <u>Council assessment staff</u>: Gavin Cherry, Robert Craig, Sandra Fagan ● Final briefing to discuss council’s recommendation: 13 February 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Ross Fowler, Carlie Ryan ○ <u>Council assessment staff</u>: Gavin Cherry, Robert Craig ● Final briefing to discuss council’s recommendation: 13 March 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Carlie Ryan ○ <u>Council assessment staff</u>: Gavin Cherry, Robert Craig, Sandra Fagan
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report