

Addendum to Record of Deferral PPSSWC-244 – Penrith – DA22/0326 - 28 SOMERSET STREET KINGSWOOD

Following a public meeting convened on 13 March 2023, the Panel reported its reasons for concluding that the concerns raised by the community in the public submissions had been adequately addressed in the assessment report.

The Panel was otherwise minded to support the grant of development consent for this DA for the reasons set out in the staff assessment report, but reserved its position only in relation to the major departure from the DCP parking rates reported by the Council assessment staff to be somewhere between 157 spaces and 93 spaces (or between 71% and 42%), depending upon the extent to which the hotel food and beverage space within the proposal might not be considered as a separate use.

The parking shortfall was seen as critical because at the same time the DA sought a major relaxation of the development standard for height applying under clause 4.3 of the LEP of 18 metres which would be exceeded by 5.854m or 32.5%. The additional density arising consequent upon the increase in height had the potential in the Panel's consideration to generate additional parking demand. The Council's traffic team was reported not to have supported the extent of the shortfall when measured against the DCP parking rates.

Notably the parking shortfall (and its potential relationship with the height exceedance) was raised by the owner of the adjoining land as the principal reason for its objecting to the DA proposal. That adjoining land owner was involved in litigation heard last year by the Land & Environment Court which challenged the lawfulness of a development consent granted by the Council for the same site which related to the application of the height controls to development on the site.

In view of the potential for approval of the development to be referred to as a precedent for parking rates with a number of new commercial developments planned for the area, the Panel resolved to obtain its own independent advice from an engineering firm experienced in parking provision.

To that end, EMM (transport planning, traffic engineering and civil design consultants) were engaged through the Secretariat to undertake a peer review of the parking and traffic related aspects of the proposed Medi-hotel development. The resulting report was made available to the Panel under cover of a letter dated 10 May 2023. The report has been posted to the Portal.

EMM summarised its conclusions arising from that peer review as follows:

“The car parking, disability parking and bicycle parking provisions are generally acceptable, given medi-hotel will primarily serve the outpatients and their relatives associated with Nepean public and private hospital. However, it is undermined (sic) *(the Panel assumes the word undetermined was intended)* whether there are the loading and waste collection provisions (that) would satisfy the demand for the proposed hospital without impeding the traffic operation on the public streets. Furthermore, there are some design issues which needs to be updated for compliance of the relevant Australian Standards. The outcome of the peer review is summarised in Table 4.1.”

Table 4.1 there referred to contains a number of matters that EMM recommends be resolved prior to a development consent issuing.

Most of the matters listed in that Table 4.1 ought to be able to be resolved through condition. There are two items where EMM recommends that additional information is to be provided “from a comparable medi-hotel development for assessment (last three months data)”. EMM rejects the facility at Homebush being used as a suitable comparison for that purpose. The Panel is uncertain as to the availability of a similar medi-hotel, but agrees that if one is available it would provide a useful means to guide the conditioning of the issues identified relating to the loading dock and waste collection. If there is no comparable facility, some other means of assessment will need to be considered.

Based on the Council assessment report, and the peer review of traffic and transport related matters, the Panel is satisfied that the DA is likely to warrant approval, and invites the Council to supply updated recommended conditions for the Panel’s consideration.

In reaching that view, the Panel has considered the applicant’s written request made under cl 4.6 (3) of the Penrith Local Environmental Plan 2015 (LEP) to permit the departure from the development standard recorded by Clause 4.3 Height of Buildings discussed above in the determination of the DA.

The Panel is satisfied that it is in the public interest to grant the request, and that the request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP. There are sufficient environmental planning grounds identified and established in the written request to justify contravening the development standard such that compliance is unreasonable or unnecessary in the circumstances.

The development as proposed will be consistent with the objectives of cl. 4.3 of the LEP and the B4 mixed-use zone in which the building is located for the reasons set out in the staff assessment report. It will comply in substance with the key standards for FSR, site coverage and deep soil planting, and will be compatible with the height, bulk and scale of the developing character of the locality as discussed in the Council assessment report.

Of further relevance from the zone objectives, the height exceedance will be visually compatible with the streetscape of Somerset Avenue in the context of the Hospital carpark and recently approved developments. It will not disrupt views, or impact unacceptably on privacy or solar access to existing development or public areas (noting the stepped height to the rear).

Taking those matters into account, it is in the public interest to allow the height exceedance, and the concurrence of the Secretary is assumed (see Planning Circular PS 20-002 issued 5 May 2020).

The Panel will however reserve its final determination until it has received updated conditions from the Council responding to the matters raised by EMM.

The response from the Council should identify and discuss where any recommendation of EMM is not to be followed, or where there is any disagreement as to any condition from the Applicant. The Panel will issue its final determination electronically upon receiving that response.