



DATE OF DETERMINATION	14 June 2023
DATE OF PANEL DECISION	13 June 2023
DATE OF PANEL BRIEFING	5 June 2023
PANEL MEMBERS	Justin Doyle (Chair), Louise Camenzuli, David Kitto, Carlie Ryan
APOLOGIES	Ross Fowler
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 24 May 2023.

#### MATTER DETERMINED

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

#### 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 and the matters observed at site inspections listed at item 8 in Schedule 1.

#### Application to vary a development standard

For the reasons outlined in the consideration below, and following consideration of the written request from the applicant, made under cl 4.6 (3) of Penrith Local Environmental Plan 2010 (LEP), the Panel is satisfied that:

- a) compliance with the height development standard contained in cl. 4.3 is unreasonable or unnecessary in the circumstances; and
- b) there are sufficient environmental planning grounds to justify contravening the development standard

The concurrence of the Secretary is assumed.

#### Determination of Development application

The panel resolved pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979* to grant development consent for Development Application DA22/0326 for the construction of a seven storey accommodation hotel (tourist and visitor accommodation) with three basement parking levels, at 28-32 Somerset Street, Kingswood, subject to the amended conditions attached to the Memorandum from Council's Senior Development Assessment Planner dated 23 May 2023.

The decision was unanimous.

#### REASONS FOR THE DECISION

At a briefing to the Panel by Council's assessment staff convened on 13 February 2023, the Panel considered the Council assessment report recommending approval of the DA uploaded to the NSW Planning Portal on 13 January 2023.

The Panel deferred its decision at that time to allow a public meeting to be convened for reasons (recorded in a memorandum published 20 April 2023; including that:

- (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 are the same.
- (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 meeting called for in that report was convened on 13 March 2023. At that meeting, the Panel was addressed by a consultant planner for the owner of the adjoining property (the Applicant in the Land & Environment Court challenge to the development consent who explained that her client's sole concern about the proposal was a perceived deficiency in parking, when viewed in the context of the non-compliant height (as generally summarised above).

Given the extent of that discrepancy, the fact that the Council's own internal traffic engineer did not support the extent of the non-compliance being accepted, and the potential for this DA to serve as a precedent for a reduction in parking for the major developments expected in the Kingswood locality, the Panel resolved to seek a peer review of the parking assessment for the development, which was commissioned from EMM Consulting – an independent traffic and transport engineering firm.

At the same time the Panel noted the Council's reasons for concluding that the parking shortfall was acceptable, and particularly:

- “ *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.”*

When the EMM Consulting report was received, it supported approval of the DA notwithstanding the shortfall in parking controls of Penrith DCP given its bespoke use and anticipated overlap with demand from the adjacent hospital.

By further memorandum published on 15 May 2023, the Panel resolved that the DA should be supported. In stating its reasons why the proposal was found to satisfy the applicable planning instruments the Panel indicated general acceptance of the reasoning of the Council assessment report.

The Panel considered the request made by the Applicant under clause 4.6 of Penrith LEP to depart from the numerical height development standard applying to the site, finding that (having regard to the EMM consulting report and the Council assessment report) it is in the public interest to grant the request. The Panel was satisfied that the request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP and convinced the Panel that there were sufficient environmental planning grounds identified and established in the written request to justify contravening the development standard such that compliance would be unreasonable or unnecessary in the circumstances.

There were however a number of traffic design issues noted in the EMM Consulting peer review which the Panel concluded ought to be resolved by condition before a development consent for the proposal should issue.



By Memorandum dated 23 May 2023, Council’s Senior Development Assessment Planner reviewed the recommendations and comments contained in the EMM Consulting report and supplied updated recommended conditions of development consent which accompanied the Memorandum.

The Panel is satisfied that those conditions are appropriate, and should be adopted in the grant of development consent.

**CONSIDERATION OF COMMUNITY VIEWS**

In coming to its decision, the panel considered written submissions made during public exhibition and the address to the public meeting of the Panel by Clare Brown of Urbis who spoke for the adjoining property owner.

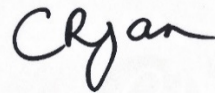
The panel considers that concerns raised by the community have been adequately addressed in the assessment report, other than the related issues of parking and height which are considered in the Panel’s Reasons outlined above.

<b>PANEL MEMBERS</b>	
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: Michael Viscovich Owner: Boston Nepean Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>• Environmental planning instruments: <ul style="list-style-type: none"> <li>• State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>• State Environmental Planning Policy (Industry and Employment) 2021</li> <li>• State Environmental Planning Policy (Planning Systems) 2021</li> <li>• State Environmental Planning Policy (Precincts—Western Parkland City) 2021</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>• State Environmental Planning Policy (Transport and Infrastructure) 2021</li> </ul> </li> <li>• Penrith Local Environmental Plan 2010</li> <li>• Draft environmental planning instruments: Nil</li> <li>• Development control plans: <ul style="list-style-type: none"> <li>• Penrith Development Control Plan 2014</li> </ul> </li> <li>• Planning agreements: Nil</li> <li>• Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i></li> <li>• Coastal zone management plan: Nil</li> <li>• The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>• The suitability of the site for the development</li> <li>• Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>• The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>• Council assessment report: 13 January 2023</li> <li>• Clause 4.6 variation Development standard for building height at Clause 4.3 of the Penrith LEP</li> <li>• List any council memo or supplementary report received: 23 May 2023</li> <li>• Written submissions during public exhibition: 8</li> <li>• Total number of unique submissions received by way of objection: 7</li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>• Council Briefing: 24 October 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, Ross Fowler</li> <li>○ <u>Council assessment staff</u>: Gavin Cherry, Robert Craig, Sandra Fagan</li> </ul> </li> <li>• Council Briefing: 13 February 2022</li> </ul>

		<ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Ross Fowler, Carlie Ryan</li> <li>○ <u>Council assessment staff</u>: Gavin Cherry, Robert Craig</li> <li>● Public Meeting - Deferral: 13 March 2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Ross Fowler, Carlie Ryan</li> <li>○ <u>Council assessment staff</u>: Gavin Cherry, Robert Craig</li> </ul> </li> <li>● Panel Briefing : 5 June 2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Carlie Ryan</li> </ul> </li> </ul>
<b>9</b>	<b>COUNCIL RECOMMENDATION</b>	Approval
<b>10</b>	<b>DRAFT CONDITIONS</b>	Attached to the council assessment report