

DETERMINATION AND STATEMENT OF REASONS

SYDNEY WESTERN CITY PLANNING PANEL

DATE OF DETERMINATION	15 December 2023
DATE OF PANEL DECISION	15 December 2023
PANEL MEMBERS	Justin Doyle (Chair), David Kitto, Brian Kirk, Ross Fowler
APOLOGIES	Carlie Ryan
DECLARATIONS OF INTEREST	Louise Camenzuli declared a conflict of interest

Papers circulated electronically on 13 December 2023.

MATTER DETERMINED

PPSSWC-255 – Penrith – DA22/0545 - 18 Ransley Street, 22 Ransley Street and 123 Mulgoa Road, Penrith - Staged Construction of Mixed Use Residential & Retail Development including Four (4) Buildings (5 to 14 Storeys), 349 Residential Apartments, 18 Retail Premises, Two (2) Levels of Basement Car Parking, Ground Level 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 meetings observed at the site inspection listed at item 8 in Schedule 1.

In its preparation for a determination briefing to inform the Panel for its final determination of this DA, the Panel was presented with a Council assessment report which recommended the grant of development consent subject to conditions.

Two issues of substance arose for discussion at the panel briefing.

The first issue arose from advice from the State Emergency Service (SES) supplied 11 December 2023 (the scheduled day of the final briefing) which identified matters of concern in relation to flood evacuation, and particularly that the Flood Impact Assessment and Water Quality Management Report from 2016, and the SES consideration of 2017, each relied upon for the DA assessment were outdated and could not be relied upon in light of subsequent modelling based on recent flood observations which had not been taken into account.

The Panel was considering deferring its assessment until a follow up letter was received the next day (12 December) from the Senior Manager, Emergency Risk Management NSW State Emergency Service advised:

“On further review and on the basis of the information provided since our response, we consider that our advice of 13 October 2017 is consistent with Stages 4 and 5 of the ESQ1818 development, i.e. that the existing evacuation capacity covers this development. **Please disregard our letter of 11 December 2023.**”

Given advice of further change in the SES position, the Panel is satisfied that the issue of flood evacuation risk has been sufficiently examined and the conditions recommended by Council before the now withdrawn caution of the SES are sufficient to address the issue of flooding.

The second issue related to advice in the assessment report that the architectural design of the new buildings is inadequate in achieving sufficient cross ventilation of apartments with only 181 of 349

apartments achieving the required standard, equating to 51.8% of the proposed apartments. 21 habitable rooms (study rooms) have been assessed not to have been designed to permit natural ventilation.

Despite the reported non-compliance, the staff report advises that the shortfall in cross ventilation can be resolved at Construction Certificate stage by conditioning that a performance solution under the BCA must be designed and certified. The Panel accepts that advice but requires an update to the proposed condition (see below) to introduce a requirement for an independent expert to peer review the proposed performance solution to provide greater certainty the outcome will be achieved.

Concerns about exacerbation of traffic impacts on busy Mulgoa Road and the surrounding road system were examined during the staff assessment. The DA was referred to the Transport for NSW (TfNSW) for comment. In its letter dated 30 September 2022, TfNSW acknowledged that a cumulative transport study had been undertaken for the overall Penrith Panthers Precinct Masterplan including mitigation measures on Mulgoa Road to be managed through a Voluntary Planning Agreement relating to road network upgrades to facilitate the implementation of the Penrith Panthers Precinct Masterplan. Against that background Council's Traffic Engineer and Transport for NSW are both reported to have reviewed the development proposal and raised no remaining concerns regarding potential traffic impacts.

A stage 1 contamination assessment has been carried out and an unexpected finds condition is included in the recommended conditions.

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 (LEP), that has demonstrated that:

- a) compliance with cl. 4.3 Height of Buildings 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 Height of Buildings of the LEP and the objectives for development in the SP3 Tourist zone; and
- c) the concurrence of the Secretary has been assumed.

The Panel has reached that opinion because the exceedances of the height control are limited in scope, being largely limited to the lift overruns which are setback from the roof edge. They will not be visually intrusive and are not expected to impose any significant amenity impacts on the development or the adjoining public space.

Development application

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 which are replicated below:

- The proposal is considered to suitably satisfy the aims, objectives and provisions of relevant environmental planning instruments, in particular State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development, State Environmental Planning Policy (Resilience and Hazards) 2021, Penrith Local Environmental Plan 2010 and Penrith Development Control Plan 2014, these planning instruments. The site is suitable for the proposed development,

the proposal is in the public interest and there is unlikely to be negative impacts arising from the proposed development.

CONDITIONS

The development application was approved subject to the conditions in the council assessment report with the following amendment:





- For the reasons discussed above, Condition 22 is to be updated to read:
 - (a) Prior to the issue of any Construction Certificate, a report resulting from a peer review undertaken by a senior engineer independent of that firm of at least 5 years experience in the field of ventilation engineering is to be undertaken of the Natural Ventilation Statement by Windtech Consultants which confirms that at least 60% of apartments in each building achieve natural cross ventilation.
 - (b) The Certifier is to ensure the following are shown on the construction plans:
 - A passive acoustic wall ventilation system for apartments which share an external wall in a building slot at level one and above;
 - No more than one (1) operable window is permitted per building slot, per floor on either side of breezeway lobbies at level one and above: and
 - The operable window mentioned above is to be 3m from the glazed louvres of the breezeways.
 - Such other features as are recommended in the peer review required by this condition as necessary to ensure that at least 60% of apartments in each building achieve natural cross ventilation.
 - (c) No additional window or door opening is to be introduced to the design shown in the approved plans and no significant change is to be made to the arrangement of rooms and walls in the building floor plans to achieve compliance with this condition (without approval of a s 4.55 modification application)

CONSIDERATION OF COMMUNITY VIEWS

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

- Increased traffic
- Suitability of building heights
- The need for landowner's consent for works proposed on Penrith Panthers land.

The panel considers that concerns raised by the community have been adequately addressed in the assessment report.

PANEL MEMBERS	
Justin Doyle (Chair) 	Brian Kirk 
David Kitto 	Ross Fowler 

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PSSWC-255 – Penrith – DA22/0545
2	PROPOSED DEVELOPMENT	Staged Construction of Mixed Use Residential & Retail Development including Four (4) Buildings (5 to 14 Storeys), 349 Residential Apartments, 18 Retail Premises, Two (2) Levels of Basement Car Parking, Ground Level Car Parking & Associated Site Works.
3	STREET ADDRESS	18 Ransley Street, 22 Ransley Street, 123 Mulgoa Road, Penrith
4	APPLICANT/OWNER	Applicant: Cabe Developments (NSW) Pty Limited/Think Planners Owner: ESQ 1818 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 (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 State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Buildings 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 2021</i>: Nil 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: 7 December 2023 Clause 4.6 variation – Height of Building Written submissions during public exhibition: 3 Total number of unique submissions received by way of objection: 3
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Council Briefing: 28 November 2022 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle, Nicole Gurran, Brian Kirk, Carlie Ryan, Ross Fowler <u>Council assessment staff</u>: Wendy Connell, Robert Craig, Gavin Cherry Final briefing to discuss council's recommendation: 12 February 2024 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), David Kitto, Brian Kirk, Ross Fowler

		<ul style="list-style-type: none">○ <u>Council assessment staff</u>: Wendy Connell, Robert Craig, Gavin Cherry
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report