

<b>DATE OF DETERMINATION</b>	13 December 2022
<b>DATE OF PANEL DECISION</b>	12 December 2022
<b>DATE OF PANEL MEETING</b>	5 December 2022
<b>PANEL MEMBERS</b>	Justin Doyle (Chair), Louise Camenzuli, Nicole Gurran, Ross Fowler, Carlie Ryan
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	None

Papers circulated electronically on 30 November 2022.

#### **MATTER DETERMINED**

**PPSSWC-285 – Penrith – Mod22/0083 -12 Carson Lane St Marys** - Section 4.55(2) Modification to an Approved Residential Flat Building DA14/0513 including Amendments to Floor Heights, Facade Treatments with Revised Material Schedules, Basement Car Park General Arrangement, Landscape Design, Storm Water Design & Internal Modifications to Apartment Layouts

#### **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 listed at item 8 in Schedule 1.

#### **Application to vary a development standard**

While development standards do not strictly apply to the assessment of an application under s 4.55 (see *North Sydney Council v Michael Standley & Associates Pty Ltd [1998] NSWSC 163*; *SDHA Pty Ltd v Waverley Council [2015] NSWLEC 65 at [31] to [36]*), the application was accompanied by a written request from the applicant with reference to cl 4.6 (3) of the Penrith Local Environmental Plan 2010 (PLEP 2010) that sought to justify a departure from the height standard under cl 4.6(3).

Following consideration of that written request from the applicant, the Panel is satisfied that the Applicant has demonstrated that:

- strict compliance with the numerical control applying under cl. 4.3 (Height of Buildings) is unreasonable or unnecessary in the circumstances; and
- there are sufficient environmental planning grounds to justify exceeding the development standard

the Panel is satisfied that:

- the applicant's written request adequately addresses the matters that would be required to be addressed under cl 4.6 (3) of the PLEP 2010; and
- 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 Zone B4 Mixed Use zone.

The concurrence of the Secretary can be assumed to such variations assumed (see Planning Circular PS 20-002 issued 5 May 2020).

Specifically, the current Modification Application seeks to increase the building height of the approved development. The proposed maximum height increase is to 27.455m (Building B). Representing a maximum departure to the 24m height control of 3.455m, or 14%. The increase to building height is a result of increased floor to floor heights to meet current building requirements, to address

Council's flooding requirements, and to enable access for Council's waste vehicle to the basement for onsite collection.

The Panel is satisfied that the proposed development is compatible with the height, bulk and scale of the existing and desired future character of the locality, as the 24m height limit generally allows for 7-8 storeys, and the proposal remains as an 8 storey building.

Further, the amended proposal remains compliant with the FSR control. The amended development minimises impact, disruption of views and loss of privacy and solar access to existing development/public areas, particularly noting that the proposed increase of height to buildings A, C and D are minor (0.9m). The amended development is also unlikely to have an adverse impact on the adjoining heritage item (St Marys Public School), noting that the building setbacks to the heritage item remains consistent with the approved scheme and a landscape buffer is provided.

Finally, the proponent has responded to urban design issues raised by Council staff and the Urban Design Review Panel and the revised development will provide a more contemporary design.

### **Application for modification of consent**

The Panel determined to approve the development application pursuant to section 4.55 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

### **REASONS FOR THE DECISION**

The Panel accepts the arguments set forth in the the Clause 4.6 in relation to the variation to the LEP standard for building height, and approve the application for the reasons outlined in the Council Assessment Report.

In particular, the Panel is satisfied that the development as modified does not alter the nature of the development or its impacts on the surrounding locality. The modified proposal will add to the supply of housing (being consistent with the original dwelling yield), and adequately satisfies relevant planning instruments and controls, particularly Penrith LEP 2010 and Penrith DCP 2014. Further, the proposal is consistent with the planned context and locality and will not unduly impact on the built or natural environment, subject to conditions particularly regarding the location of infrastructure along the Carson Lane Street edge. The modified proposal is considered suitable for the site and is unlikely to generate significant issues of public interest, noting that no submissions were received.

At the meeting on 5 December 2022, the Panel Chair queried whether there is scope for the Application to include provision of solar panels and charging facilities for electric vehicles within the development, which have now been integrated into the conditions of consent. Clarification was also sought and provided in relation to the documents and plans listed in Condition 1 of Council's assessment report.

### **CONDITIONS**

The Development Application was approved subject to the conditions in the Council Assessment Report with the following amendments.

- A new condition is to be prepared by Council staff to be included in the notice of determination for the modified development consent requiring the construction certificate plans to make appropriate provision for electric vehicle charging facilities and solar panels, with evidence that these provisions have been provided to be submitted to the Principal Certifying Authority.

Reason-The modified plans ought to provide for contemporary expectations in that regard noting the extensive delay in the development being implemented and the significant changes in the modified plans.

- An amendment to condition 1 to clarify the plans that are amended by the modification application with the new condition to read as follows:

*The development must be implemented substantially in accordance with the plans and documents listed below and stamped approved by Council, the application form and any supporting information received with the application, except as may be amended in red on the approved plans and documents and by the following conditions.*

<b>Plans / Documents</b>	<b>Prepared by</b>	<b>Dated</b>
<i>Letter</i>	<i>Dickson Rothschild</i>	<i>2 February 2015</i>
<i>Clause 4.6 Variation – Revision C</i>	<i>Dickson Rothschild</i>	<i>22 June 2015</i>
<i>Cover Page – Issue I</i>	<i>Dickson Rothschild</i>	<i>09/07/15</i>
<i>DA-001 - Project Summary – Issue H</i>	<i>Dickson Rothschild</i>	<i>19/06/15</i>
<i>DA-200 - Basement 2 Plan – Issue I</i>	<i>Dickson Rothschild</i>	<i>09/07/15</i>
<i>DA-201 - Basement 1 Plan – Issue J</i>	<i>Dickson Rothschild</i>	<i>09/07/15</i>
<i>DA-202 - Ground Floor Plan – Issue K</i>	<i>Dickson Rothschild</i>	<i>17/11/15</i>
<i>DA-203 - Level 01 Plan – Issue I</i>	<i>Dickson Rothschild</i>	<i>09/07/15</i>
<i>DA-204 -Level 02 Plan – Issue I</i>	<i>Dickson Rothschild</i>	<i>09/07/15</i>
<i>DA-205 - Level 03 Plan – Issue I</i>	<i>Dickson Rothschild</i>	<i>09/07/15</i>
<i>DA-206 - Levels 04-06 Plan– Issue I</i>	<i>Dickson Rothschild</i>	<i>09/07/15</i>
<i>DA-207 - Level 07 Plan – Issue I</i>	<i>Dickson Rothschild</i>	<i>09/07/15</i>
<i>DA-208 - Roof Plan – Issue I</i>	<i>Dickson Rothschild</i>	<i>09/07/15</i>
<i>Section A-A &amp; D-D – Issue F</i>	<i>Dickson Rothschild</i>	<i>19/06/15</i>
<i>DA-302 -Section B-B &amp; C-C &amp; E &amp; F – Issue I</i>	<i>Dickson Rothschild</i>	<i>19/06/15</i>
<i>DA-401 - Elevations East – Issue H</i>	<i>Dickson Rothschild</i>	<i>19/06/15</i>
<i>DA-402 - Elevations West – Issue H</i>	<i>Dickson Rothschild</i>	<i>19/06/15</i>
<i>DA-403 - Elevations North – Issue H</i>	<i>Dickson Rothschild</i>	<i>19/06/15</i>
<i>DA-404 - Elevations South – Issue H</i>	<i>Dickson Rothschild</i>	<i>19/06/15</i>
<i>GFA Calc. – Building A – Issue E</i>	<i>Dickson Rothschild</i>	<i>30/01/15</i>
<i>GFA Calc. – Building B – Issue E</i>	<i>Dickson Rothschild</i>	<i>30/01/15</i>
<i>GFA Calc. – Building C– Issue D</i>	<i>Dickson Rothschild</i>	<i>16/05/14</i>
<i>GFA Calc. – Building D – Issue D</i>	<i>Dickson Rothschild</i>	<i>16/05/14</i>
<i>Solar &amp; Vent – Building A – Issue F</i>	<i>Dickson Rothschild</i>	<i>19/09/14</i>
<i>Solar &amp; Vent – Building B – Issue G</i>	<i>Dickson Rothschild</i>	<i>30/01/15</i>
<i>Solar &amp; Vent – Building C – Issue F</i>	<i>Dickson Rothschild</i>	<i>19/09/14</i>
<i>Solar &amp; Vent – Building D – Issue F</i>	<i>Dickson Rothschild</i>	<i>19/09/14</i>
<i>DA-741 - Balcony Detail – Issue A</i>	<i>Dickson Rothschild</i>	<i>30/01/15</i>
<i>DA-901 - Materials &amp; Finishes – Issue G</i>	<i>Dickson Rothschild</i>	<i>30/01/15</i>
<i>DA-916 - Photomontage E – Issue B</i>	<i>Dickson Rothschild</i>	<i>30/01/15</i>
<i>DA-917 - Photomontage F – Issue B</i>	<i>Dickson Rothschild</i>	<i>30/01/15</i>
<i>DA-921 - View Impact Study A – Issue E</i>	<i>Dickson Rothschild</i>	<i>30/01/15</i>
<i>DA-922 - View Impact Study B – Issue E</i>	<i>Dickson Rothschild</i>	<i>30/01/15</i>
<i>DA-923 - View Impact Study C – Issue E</i>	<i>Dickson Rothschild</i>	<i>30/01/15</i>
<i>DA-931 - Shadow Study A – Winter – Issue E</i>	<i>Dickson Rothschild</i>	<i>30/01/15</i>
<i>DA-932 - Shadow Study B – Equinox – Issue E</i>	<i>Dickson Rothschild</i>	<i>30/01/15</i>
<i>Final Access for People with a Disability / Adaptable Housing Report</i>	<i>BCA Assess</i>	<i>15 May 2014</i>
<i>C-0000 - Cover Sheet and Drawing index– Issue A</i>	<i>BG&amp;E</i>	<i>17/9/14</i>
<i>C-0001 - General Notes - Revision A</i>	<i>BG&amp;E</i>	<i>17/9/14</i>
<i>C-0020 - Stormwater Longitudinal Sheet 1 – RevisionA</i>	<i>BG&amp;E</i>	<i>29/1/15</i>
<i>C-0010 - General Arrangement Plan – Revision B</i>	<i>BG&amp;E</i>	<i>29/1/15</i>

Site Discharge Stormwater Drainage Information	AJ Whipps Consulting Group	2/6/15
Hydraulic Services Site Plan & Legend - HDA01/P5	Cundall	13/11/15
Hydraulic Services Basement2Plan- HDA02/P5	Cundall	13/11/15
Hydraulic Services Basement1Plan - HDA03/P5	Cundall	13/11/15
Hydraulic Services Ground Floor Plan - HDA04/P5	Cundall	13/11/15
Hydraulic Services Roof Plan- HDA05/P5	Cundall	13/11/15
Hydraulic Services Detail Sheet No. 1- HDA06/P5	Cundall	13/11/15
Hydraulic Services Detail Sheet No. 2 - HDA07/P5	Cundall	13/11/15
Swept Path Analysis	Calibre Consulting Pty Ltd	9/7/15
Swept Paths (4 sheets) - Rev J	DR Design Pty Ltd	9/7/15
Preliminary Geotechnical Investigation and Phase One Environmental Assessment	Intrax Consulting Engineering Pty Ltd	22/12/14
Additional Environmental Investigation	Consulting Earth Sciences Pty Ltd	23/4/15
BCA Assessment Report	BCA Logic	15 May 2014
Landscape Concept Plans Issue J	Arcadia	05/02/2016
Landscape Master Plan - 101 - Issue J	Arcadia	05/02/2016
Landscape Plan - 301 - Issue J	Arcadia	05/02/2016
Landscape Plan - 302 - Issue J	Arcadia	05/02/2016
Landscape Plan - 303 - Issue J	Arcadia	05/02/2016
Landscape Plan - 304 - Issue J	Arcadia	05/02/2016
Landscape Plan - 305 - Issue J	Arcadia	05/02/2016
Landscape Plan - 306 - Issue J	Arcadia	05/02/2016
Landscape Plan - 307 - Issue J	Arcadia	05/02/2016
Landscape Details - 501 - Issue J	Arcadia	05/02/2016
Landscape Details - 502 - Issue J	Arcadia	05/02/2016
Waste Management Plan	Elephants Foot	July 2015
Cover Letter – Additional Information	Diddum	10 July 2015

**As amended by the following plans and documents under Section 4.55(2) of the Environmental Planning and Assessment Act 1979 (MOD22/0083):**

<b>Plans / Documents</b>	<b>Prepared by</b>	<b>Dated</b>
Cover Sheet, Drawing No. DA-000, Revision K	Design Corp Architects	26 August 2022
Project Summary, Drawing No. DA-001, Revision K	Design Corp Architects	26 August 2022
GA Plan - Basement 2, Drawing No. DA-200, Revision L	Design Corp Architects	20 October 2022
GA Plan - Basement 1, Drawing No. DA-201, Revision L	Design Corp Architects	20 October 2022
GA Plan - Ground, Drawing No. DA-202, Revision L	Design Corp Architects	20 October 2022
GA Plan - Level 1, Drawing No. DA-203, Revision K	Design Corp Architects	26 August 2022
GA Plan - Level 2, Drawing No. DA-204, Revision K	Design Corp Architects	26 August 2022

GA Plan - Level 3, Drawing No. DA-205, Revision K	Design Corp Architects	26 August 2022
GA Plan - Level 4-6, Drawing No. DA-206, Revision K	Design Corp Architects	26 August 2022
GA Plan - Level 7, Drawing No. DA-207, Revision K	Design Corp Architects	26 August 2022
GA Plan - Roof, Drawing No. DA-208, Revision K	Design Corp Architects	26 August 2022
Sections - AA & BB, Drawing No. DA-301, Revision K	Design Corp Architects	26 August 2022
Sections - CC & DD, Drawing No. DA-302, Revision K	Design Corp Architects	26 August 2022
Sections - EE & FF, Drawing No. DA-303, Revision K	Design Corp Architects	26 August 2022
Elevations East, Drawing No. DA-401, Revision L	Design Corp Architects	20 October 2022
Elevations West, Drawing No. DA-402, Revision L	Design Corp Architects	20 October 2022
Elevations North, Drawing No. DA-403, Revision L	Design Corp Architects	20 October 2022
Elevations South, Drawing No. DA-404, Revision L	Design Corp Architects	20 October 2022
GFA Calculations Building A, B, C, D Drawing No's. DA701, DA-702, DA-703, 704, Revision K	Design Corp Architects	26 August 2022
Solar & Cross Ventilation Building A, B, C, D Drawing No's. DA-711, DA-712, DA-713, DA-714, Revision K	Design Corp Architects	26 August 2022
Waste Room Details, Drawing No. DA-740, Revision L	Design Corp Architects	20 October 2022
Typical Balcony Detail, Drawing No. 750, Revision K	Design Corp Architects	26 August 2022
Maximum Height Diagrams 1 & 2, Drawing No. DA-811 & DA-812, Revision K	Design Corp Architects	26 August 2022
Photo Montage 1 & 2, Drawing No. DA-901 & DA-902, Revision K	Design Corp Architects	26 August 2022
Stormwater Concept Plans Proposed Residential Flat Building at 12 Carson Lane, St Marys, Project No. 2936-DA, Drawing No. SW001 Issue B, SW010 Issue E, SW020 Issue E, and SW021 Issue B.	Mance Arraj Civil & Structural Engineers	23 March 2022 (Issue B) 19 August 2022 (Issue E)
Landscape Plan, Drawing No. LPS4.55-22 - 274, Page No's 1-16, Issue C	Concept Landscape Architects	October 2022





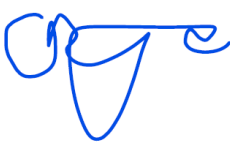
#### **Documents:**

- |  |                                       |                |
|--|---------------------------------------|----------------|
| • BASIX Certificate, No. 537278M_05  | Certificate Prepared by<br>BCA Energy | 19 April 2022  |
| • Statement of Environmental Effects, 12 Carson Lane St Marys Section 4.55(2) Modification Application Amended August 2022 | GLN Planning<br>Consulting Strategy   | August 2022    |
| • Access & Adaptability Assessment Report, Issue B   | Access Mobility<br>Solutions          | 18 August 2022 |
| • Design Verification Statement, Design Quality Principles of Residential Flat Building                                    | Design Corp Architects                | 21 April 2022  |
| • Waste Management Plan (Amended)  | Elephants Foot<br>Recycling Solutions | October 2022   |

- *Traffic Statement, Reference 21727* Varga Traffic Planning 18 August 2022
  - *Traffic Statement Reference 21727* Pty Ltd 6 October 2022
  - *Geotechnical Opinion on Drained Basement, Ref: E23929.G20.02\_Rev2* Varga Traffic Planning 20 September 2022
  - *Acoustic Statement, Document Ref: SYD2021-1160-R002A* eiaustralia 22 November 2022
- Acouras  
Consultancy

## CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel notes that no written submissions were made during public exhibition and therefore no issues of concern were raised.

PANEL MEMBERS	
 Justin Doyle (Chair)	 Louise Camenzuli
 Nicole Gurran	 Ross Fowler
 Carlie Ryan	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-285 – Penrith – Mod22/0083
2	PROPOSED DEVELOPMENT	Section 4.55(2) Modification to an Approved Residential Flat Building DA14/0513 including Amendments to Floor Heights, Facade Treatments with Revised Material Schedules, Basement Car Park General Arrangement, Landscape Design, Storm Water Design & Internal Modifications to Apartment Layouts
3	STREET ADDRESS	12 Carson Lane St Marys
4	APPLICANT/OWNER	Mary 88 Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Section 4.55(2) Modification Application
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>• Environmental planning instruments: <ul style="list-style-type: none"> <li>○ Local Environmental Plan 2010 (Amendment 4)</li> <li>○ State Environmental Planning Policy No 65—Design Quality of Residential Flat Development</li> </ul> </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>• Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</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: 28 November 2022</li> <li>• Supplementary Council Assessment Report: 8 December 2022</li> <li>• 4.6 Variation to Height of Buildings Standard</li> <li>• Written submissions during public exhibition: 0</li> <li>• Total number of unique submissions received by way of objection: 0</li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>• Final briefing to discuss council's recommendation: 5 December 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, Nicole Gurran, Ross Fowler, Carlie Ryan</li> <li>○ <u>Council assessment staff</u>: Gavin Cherry, Lucy Goldstein</li> </ul> </li> </ul>
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report and as amended by Council's Supplementary memo of 8 December 2022.