

DATE OF PANEL BRIEFING	26 June 2023
PANEL MEMBERS	Justin Doyle (Chair), Louise Camenzuli, David Kitto, Carlie Ryan, Ross Fowler
APOLOGIES	None
DECLARATIONS OF INTEREST	None

MATTER DEFERRED

PPSSWC-289 – Penrith – DA22/1080 - 68 Lockwood Road, Erskine Park - Construction of a Warehouse, Ancillary Office, Landscaping, Parking, Hardstands and Civil Works

REASONS FOR DEFERRAL

The panel agreed to defer the determination of the matter pending resolution of the outstanding issues set out below.

1. The proposed development for a warehouse is permissible with consent and considered consistent with the objectives for the IN1 – General Industrial zone under the SEPP (Western Sydney Employment Area). It is also supportive of objective W7 of the Western City District Plan to the extent it aims to establishing the land use structure to deliver a liveable, productive, and sustainable Western Parkland City. It will assist in driving opportunities for investment, business and jobs growth; supporting economic diversity; supporting internationally competitive industry sectors.
2. An issue as to whether the development might be state significant development has been resolved by the clearer separation of the two warehouses which are not proposed for common use.
3. The proposal will contribute to future employment opportunities in the area and is not considered to impose significant negative impacts on the surrounding neighbourhood.
4. Overall, the proposal, as amended, may be considered to have addressed key planning considerations relating to urban design, public amenity, biodiversity conservation, traffic, heavy vehicle manoeuvring, and parking.
5. In particular, significant changes were made during the DA process to increase and embellish the landscaping provided with the result that the substantial building facades will be well screened.
6. The proposal is generally consistent with applicable controls under the Penrith Development Control Plan 2014, with significant attention in the discussions between the parties and before the Panel to the issue of setbacks to given to the three road frontages of the site. A portion of the building intrudes within the minimum building setback required to the three road frontages of the site. The relevant minimum setbacks required by the DCP are relevantly:
 - a) Lenore Drive - 20m
 - b) Other Road Frontages - 15m
7. Significant attention was given to the requirements of those controls in discussions before the Panel and negotiations between the Applicant and Council. The final amendment of the plans in response to those discussions is depicted in the following two images, one which shows the development in plan form in relation to both the building setback control (marked with a blue line,

and the minimum landscaped setback marked by a red line), and one which depicts a substantial awning proposed at the Lockwood Road frontage which:

- a) proposes an awning roof which complies with the setback at both ends, but does not comply along its Lockwood frontage edge because of the bend in the road which cuts into the property frontage (as depicted in figure 1); and
- b) as designed will also rely on eight black steel supports which are situated within the setback area (as depicted in figure 2).

There also remains an encroachment into the setbacks required at the intersection of Lenore Drive and Compass Drive

8. The encroachment into the 20 m building setback from Lenore Drive arises because the site is situated on a bend in Lenore Drive. Following discussions with Council staff, the façade has been stepped along Lenore Drive to achieve substantial compliance, noting some parts of the façade exceed the standard and substantial landscape screening is proposed. The stepping of the façade will also introduce some articulation along the very long wall presenting to Lenore Drive and will better respond to the sweep of the road alignment. The Panel finds that setback non-compliance to be acceptable, as does the Council assessment staff.
9. Notably, changes have also been made to reconfigure the turning head at the north eastern corner of the site, allowing compliance with the minimum landscape setback in that location.
10. Two remaining breaches of the DCP minimum setback controls remained controversial between the Applicant and the Council assessment staff. The competing positions presented to the Panel can be summarised as:
 - A. Should a design alteration to the proposed warehouse 1 be required by deferred commencement condition such that it would be required to be clear of both the 20 m setback to Lenore Drive and the 15 m setback to Compass Drive?

In relation to this issue in summary, the Council argues that:

“The relationship of the built form to the intersection of Lenore Drive and Compass Drive which extends to a setback of approximately 10m from Compass Drive, is unsatisfactory from an urban design and streetscape perspective, at a key and signalised intersection. The 15m setback requirement seeks to enhance the visual quality of development and the urban landscape. ...

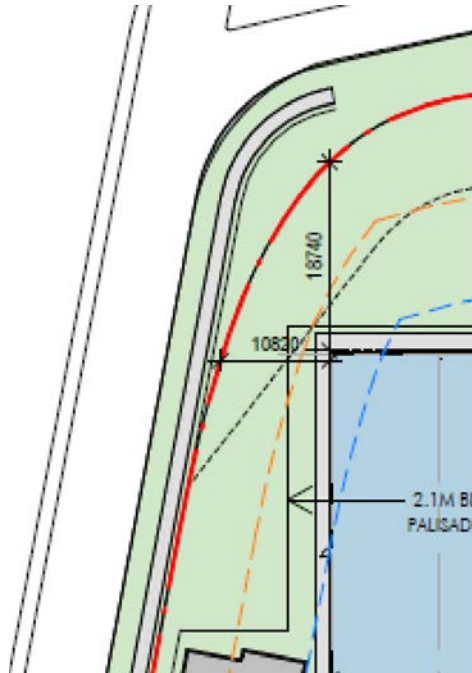
... (compliance) could be achieved by either chamfering or stepping-in the north-western corner of the building.”

In answer, the applicant argues:

- a) (The non-compliance) is offset/accommodated by significant landscaping at this intersection... The setback of the building corner from the Lenore Drive roadway is generally well in excess of the required building setback.
- b) The setback in that location is comparable with the setback on the opposite (south-west) corner of Compass Drive and Lenore Drive, providing consistency in building form and landscape quality.
- c) Splaying would reflect a dramatic change in building footprint that is counterproductive to the use envisaged, which relies on straight line movements and relationships to work with the racking and automated nature of the building use for warehouse logistics.
- d) The built form comprises simple volumetric forms that relate to the building use and are consistent with buildings within the surrounding estate and in particular the Followmont building opposite on Compass Drive.

- e) Adding a splayed building form in this location is out character with the building design and the majority of buildings in the estate, noting that the corner is generally well articulated and has been articulated with a translucent façade to enhance the activation of the corner.

This image shows the non-compliance (noting extensive planting is proposed in the green area):



- B. Should a design alteration to the proposed awning to Lockwood Road be required by deferred commencement condition to reduce the proposed awning out of the 15 m building setback (noting that the Applicant has submitted a letter to state that the maximum depth of a cantilevered awning removing the black steel supports would be 20 m)?

In relation to that issue the Council argues that:

“.. the proposed 167m wide (approx.) super awning, which includes support posts with a setback of approximately 5m from Lockwood Road, is unsatisfactory from a streetscape amenity and landscape outcomes perspective ...

The 15m setback requirement seeks to provide an open streetscape and to enhance the visual quality of development and the urban landscape.

... The proposed awning is inconsistent with other approved developments within the vicinity of the site and within the broader Western Sydney Employment Area. ”

The Applicant argues:

- a) Prominence of the posts will be very significantly reduced once the landscaping matures.
- b) The awning will have a different impact to a building facade to which the control is directed because it adds interest to the design (as required by the DCP), and allows views beneath the awning to the building.
- c) The provision of an awning over 30m of the 36m deep hardstand will allow greater flexibility for all weather loading and unloading of goods.

This rendering supplied by the Applicant shows a portion of the proposed awning and the anticipated matured landscaping:



11. The Panel has unanimously resolved that the DA ought to be approved subject to conditions generally in line with those recommended by Council staff except for the matters addressed below.
12. The Panel took a separate vote respectively in relation to each of the two principal issues in dispute summarised above. The split of that vote was different in each case, but ultimately favoured the Applicant's position on both issues. Specifically:
13. On the issue of whether to require the depth of the awning to be reduced by way of a deferred commencement condition as recommended by Council staff, two of the Panel members voted to follow that advice, but a majority of three Panel members voted to approve the awning as it had been amended and reduced in the latest design, accepting in substance the reasoning of the Applicant as outlined above. It was also noted that where as the "building" was required to be set back from Lockwood Avenue, the visual impact of an awning would be less than the wall of an industrial development. The impact of the eight posts would not be substantial in the context of the location within an industrial zone. Given that the awning complied with the DCP building setback requirement at its two ends, and would be increasingly screened as the landscaping matured, the majority concluded the awning as designed sufficiently addressed the DCP requirement at E6.3.3, and its objectives and would not give rise to unacceptable impacts.
14. The two Panel members voting against the awning as designed accepted and agreed with the Council staff's assessment.
15. On the issue of whether to require the building to comply with the 15 metre setback to Compass Drive, again a majority of four Panel members voted to accept the design as proposed in the latest amendment of the DA plans. The reasoning of the majority followed the Applicant's position in substance as set out above having regard particularly to the extensive landscaping to the intersection of Compass Avenue and Lenore Drive. The one Panel member voting with the Council staff in relation to that issue (who notably voted against the Council staff in relation to the awning) formed a minority view that the building could comply with the building setback in that location with modest change to the building (whether through a tapering or a stepping of the built form) and that with a site so large, greater compliance with that setback could reasonably be achieved for the main built form which is visible from a classified road.
16. Having reviewed the Council's assessment report the Panel is otherwise satisfied that the proposal complies with the applicable provisions of Penrith LEP and the planning instruments identified below.

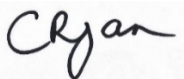
17. In addition to those matters the Applicant requested changes to a number of the conditions of consent. The Panel does not have the benefit of the Council's consideration of those changes, particularly having regard to the matters decided by the Panel as reported above.

18. In relation to those changes the Panel is of the preliminary opinion in general principal that:

- a) Compliance should be suitably conditioned, with compliance with conditions left to the PCA, rather than requiring further assessment by Council.
- b) Deferral of Endeavour Energy issues that will not alter the construction of the building can be left to occupation certificate stage rather than CC.
- c) In the absence of any existing policy on the subject to date reduction in the required provision for (future) electric vehicle charging stations from 15 to 7 spaces is acceptable.
- d) The landscaping appears to be reasonably resolved.

19. The Panel would be assisted with an update of the proposed conditions from Council taking those matters into account, identifying any matters considered to be still in dispute with the Applicant in that regard as soon as practicable. The Panel will then issue its final determination.

The decision to defer the matter was unanimous.

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

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-289 – Penrith – DA22/1080
2	PROPOSED DEVELOPMENT	Construction of a Warehouse, Ancillary Office, Landscaping, Parking, Hardstands and Civil Works
3	STREET ADDRESS	68 Lockwood Road, Erskine Park
4	APPLICANT/OWNER	Fitzpatrick Investments Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	- Environmental planning instruments: - 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 - Draft environmental planning instruments: Nil - Development control plans: - Penrith Development Control Plan 2014 - Planning agreements: Nil - Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</i> - 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	- Council Assessment Report: 1 May 2023 - Council Memorandum: 6 April 2023, 16 May 2023, 17 May 2023, 19 June 2023, 23 June 2023, 26 June 2023, 28 June 2023 - Written submissions during public exhibition: 0 - Total number of unique submissions received by way of objection: 0
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	- Briefing: 13 March 2023 <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Carlie Ryan, Ross Fowler <u>Council assessment staff</u>: Kathryn Saunders, Robert Walker - Final briefing to discuss council's recommendation: 8 May 2023 <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Carlie Ryan, Ross Fowler <u>Council assessment staff</u>: Kathryn Saunders, Robert Walker, Gavin Cherry <u>Applicant representatives</u>: Jamie Stewart, Barton Cottle, Will Dwyer, Angus Hannam, Dan Brindle

		• Final briefing to discuss council’s recommendation: 26 June 2023 - o <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Carlie Ryan, Ross Fowler - o <u>Council assessment staff</u>: Kathryn Saunders, Robert Walker, Gavin Cherry - o <u>Applicant representatives</u>: Jamie Stewart, Barton Cottle, Will Dwyer, Angus Hannam, Dan Brindle
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Not Applicable