

DATE OF DETERMINATION	3 May 2024
DATE OF PANEL DECISION	3 May 2024
DATE OF PANEL BRIEFING	22 April 2024
PANEL MEMBERS	Justin Doyle (Chair), Louise Camenzuli, David Kitto, Ross Fowler
APOLOGIES	Carlie Ryan
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 12 April 2024.

MATTER DETERMINED

PPSSWC-296 – Penrith – DA22/1171 at 1-3 Emerald Street, Emu Plains

Construction of Seniors Housing Development, including five (5) Buildings (3 to 4 Storeys) containing 147 Independent Living Units & communal clubhouse, single level basement Car Park and associated demolition works, tree removal, earthworks, landscaping and stormwater drainage 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 briefings and the matters listed at item 8 in Schedule 1.

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:

- compliance with Sections 84 and 108 of State Environmental Planning Policy (Housing) 2021 is unreasonable or unnecessary in the circumstances; and
- there are sufficient environmental planning grounds to justify contravening the development standard.

the panel is satisfied that:

- the applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- the development is in the public interest because it is consistent with the objectives of Sections 84 and 108 of State Environmental Planning Policy (Housing) 2021 and the objectives for development in the R3 Medium Density Residential zone; and
- the concurrence of the Secretary has been assumed (PS 20-002).

The Panel notes that the final building forms were the subject of multiple versions and a revised 4.6 variation. The Panel is satisfied, that while the departures from the height standard for buildings A-D, in particular, are not immaterial, the heights of the proposed buildings are in keeping with heights in this part of Emu Plains and there are no adverse privacy, visual amenity or overshadowing issues that have not been satisfactorily addressed through design considerations and conditions. Further, the variation facilitates social and housing benefits and a superior built form and landscape design outcomes is achieved as a result of the variations.

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 building envelope development standards; and approve the application for the reasons outlined in the council assessment report.

At the final briefing meeting, the Panel considered the late receipt of a letter from the NSW SES dated 18 April 2024 (following the issue of the Council assessment report) raising several issues for the Panel's consideration as set out below.

As part of the interim measure for the Hawkesbury Nepean, development applications exceeding 150 dwellings, 200 employees vehicles or where multiple development applications are located close to each other, are referred to NSW SES to understand if the development exceeds the evacuation capacity.

The NSW SES' three issues relate to evacuation capacity, the draft Hawkesbury Nepean Flood Study (not yet publicly available and with no particular timeframe for finalisation), reconsideration of basement carparking, potentially obtaining further advice from DCCEEW on the flood behaviour for adjacent and downstream areas and a potential update to the flood emergency response plan.

The Panel was informed by both the Council and the Applicant that the Applicant's proposed development has been designed to accommodate shelter in place, noting that there is no risk to life in the event of a flood that exceeds the adopted flood level plus 0.5m freeboard. Following an amended Flood Evacuation Response Plan, dated 14 February 2024, it is proposed that in an emergency flood event, ground floor residents would be evacuated to the residential aged care facility (RACF) on the site. The RACF approved via DA 18/0306 has a shelter in place response due to the vulnerability of the RACF residents. The RACF has communal facilities serviced by staff members and has been deemed an acceptable alternative by Council's Development Engineer. Residents of upper levels will shelter in place.

In view of the above, the Council advised the Panel at the meeting that its recommendation in relation to approval of the application remained unchanged following the SES correspondence, as the DA is wholly compliant with the section 5.21 of the Penrith LEP.

On this basis, the Panel determined to approve the DA in accordance with the conditions set out below.

CONDITIONS

The development application was approved subject to the final draft conditions of consent provided to the Panel on 26 April 2024.

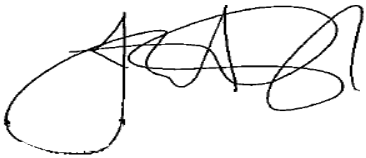



Following the issue of the proposed draft conditions in the council assessment report the Applicant, by way of letter to Penrith City Council dated 22 April 2024, requested a number of amendments, all of which were accepted, other than requested amendments to draft condition 62. In relation to draft condition 10, the second paragraph of this condition was deleted in recognition of the fact that the future levying of rates by Council is a separate matter regulated under the Local Government Act.

CONSIDERATION OF COMMUNITY VIEWS

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

- Loss of privacy
- Over shadowing
- Construction noise
- Dust and vibration
- Construction traffic and parking impacts
- Decrease in property values

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

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

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-296 – Penrith City Council – DA22/1171
2	PROPOSED DEVELOPMENT	Construction of Seniors Housing Development, including five (5) Buildings (3 to 4 Storeys) containing 147 Independent Living Units & communal clubhouse, single level basement Car Park and associated demolition works, tree removal, earthworks, landscaping and stormwater drainage works.
3	STREET ADDRESS	8 Troy Street, EMU PLAINS NSW 2750 6 Troy Street, EMU PLAINS NSW 2750 1 - 3 Emerald Street, EMU PLAINS NSW 2750 Lot 14 and 15 DP 232740 and Lot 10 DP 1242243
4	APPLICANT/OWNER	Applicant: Uniting (NSW.ACT) Owner: The Uniting Church in Australia Property Trust NSW/ ACT
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 (Housing) 2021 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 Penrith Local Environmental Plan 2010 Draft environmental planning instruments: No applicable draft EPIs 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> <ul style="list-style-type: none"> s29 – Residential Apartment Development s69 – compliance with the Building Code of Australia s75 – fulfillment of BASIX commitments 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.
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council assessment report: 12 April 2024 NSW SES response: 18 April 2024 Applicant response: 22 April 2024 Final draft conditions provided to the Panel on 26 April 2024 Clause 4.6 variation: request to vary development standards prescribed in s84 and 108 of State Environmental Planning Policy (Housing) 2021 Written submissions received during public exhibition: Four (4) Total number of unique submissions received by way of objection: Four (4).

8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Kick Off Briefing: 8 May 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Carlie Ryan, Ross Fowler ○ <u>Council assessment staff</u>: Gavin Cherry ○ <u>Applicant representatives</u>: John Philpott • Council/Applicant Briefing: 12 February 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Carlie Ryan, Ross Fowler ○ <u>Council assessment staff</u>: Gavin Cherry ○ <u>Applicant representatives</u>: John Philpott, Onofrio Marzulli, Felipe Strahovsky, Grace Carpp, Belinda Barrie, Alister Eden • Final briefing to discuss council's recommendation: 22 April 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Carlie Ryan, Ross Fowler ○ <u>Council assessment staff</u>: Gavin Cherry ○ <u>Applicant representatives</u>: John Philpott, Onofrio Marzulli, Grace Carpp, Belinda Barrie, Alister Eden
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Final draft conditions provided to the Panel on 26 April 2024