

DATE OF DETERMINATION	13 December 2023
DATE OF PANEL DECISION	12 December 2023
DATE OF PANEL BRIEFING	4 December 2023
PANEL MEMBERS	Justin Doyle (Chair), Louise Camenzuli, David Kitto, Carlie Ryan, Ross Fowler
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 28 November 2023.

MATTER DETERMINED

PPSSWC-315 – Penrith – DA23/0076 – 72 Park Avenue, Kingswood - Construction Of A Two Storey Child Care Facility Catering For 117 x Children With Basement Car Parking, Signage, Tree Removal & Associated 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.

Development application

The panel determined to refuse 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 Council staff assessment report recommended refusal of the DA. The principal reason for that recommendation can be seen in the report to be the staff's conclusion that the proposal:

"... will have a negative impact on the surrounding character of the area, specifically the design, setbacks, and general design of the overall development ... and provides an unacceptable level of amenity for the occupants and adjoining neighbours."

Particulars of those concerns were summarised to be:

- a) Inappropriate site due to topography and extensive earthworks, recontouring and retaining walls.
- b) Context and compatibility with the character of the local area or the desired future character of the area.
- c) Poor design interface, setback treatments and spatial arrangement.
- d) Unacceptable built form, size, and scale.
- e) Inadequate outdoor play space area calculations.
- f) Poor play space.
- g) Insufficient tree protection, on-site landscaping and replacement planting, and inadequate protection of trees on adjoining properties.

- h) Unacceptable residential interface and amenity for future occupants, and amenity impacts for adjoining properties.
- i) Inadequate infrastructure including stormwater drainage, driveway design, parking, manoeuvring and evacuation.
- j) Lack of consideration of impacts on groundwater.
- k) Insufficient address of urban heat and sustainability requirements.
- l) Compliance with Penrith Local Environmental Plan 2010 and Penrith Development Control Plan 2014.
- m) Lack of information or errors and inconsistencies in documentation.
- n) Insufficient information particularly in relation to the resolution of issues of hydrology associated with the proposed basement carpark.

The Panel ultimately agreed with the Council assessment that the present design could be improved to better resolve the relationship between the proposed centre and the adjacent residential apartment building, the use of landscaping to improve the street presentation and separation from the adjacent development, and the technical information required in relation to the excavation.

The Panel was however of the opinion that the site is a good location for a childcare centre due to its proximity to the adjacent school, station and substantial additional residential development planned for the area. A residential flat building to be located on the site would generate many of the same issues. The outstanding matters ought to be able to be resolved to allow a conciliated outcome in the pending appeal.





Representatives of the Applicant attending the final briefing indicated an intention to amend the DA to address those issues of concern, and asked the Panel to defer its determination until 2024 to allow the amendment material to be prepared and submitted. The Panel was mindful that the Applicant has elected to appeal against the deemed refusal of the DA to the Land & Environment Court, such that there are ongoing interlocutory processes allowing for amendment of the DA and for conciliation between the Applicant and the Council aimed at resolving the Council's concerns.

Discussions at the briefing indicated that amended and supplementary material was expected to be submitted to the Council to be considered in the appeal by the end of January. Given that alternative ongoing process, the Panel was unanimously of the opinion that the DA ought to be determined based on the material presently lodged with the Council. For the reasons set out above the DA does not yet warrant approval and must be refused.

The Panel expects that it is to be briefed further by the Council staff once the amended material is received to enable the Panel to consider whether any direction by the Panel is required under s 8.15(4) of the EP&A Act. If the Applicant can lodge its supplementary and amended material by the end of January, the Panel would hope to reconvene in late February for that purpose.

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 
David Kitto 	Ross Fowler 

 Carlie Ryan	
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SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-315 – Penrith – DA23/0076
2	PROPOSED DEVELOPMENT	Construction Of A Two Storey Child Care Facility Catering For 117 x Children With Basement Car Parking, Signage, Tree Removal & Associated Works.
3	STREET ADDRESS	72 Park Avenue, Kingswood
4	APPLICANT/OWNER	Applicant: Montessori Academy Owner: CCA Investments – Turrumurra Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Private infrastructure and community facilities over \$5 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 (Industry and Employment) 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 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: 28 November 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	<ul style="list-style-type: none"> Kick Off Briefing: 3 April 2023 <ul style="list-style-type: none"> <u>Panel members</u>: Louise Camenzuli (Acting Chair), David Kitto, Carlie Ryan <u>Council assessment staff</u>: Pukar Pradhan, Gavin Cherry, Kate Smith

		<ul style="list-style-type: none"> ○ <u>Applicant representatives</u>: Daniella Assaf, Charles Assaf, Emma Ziegenfusz, Julie Horder, Frank Sartor, Daniel Bloomfield, Alastair Walker • Final briefing to discuss council's recommendation: 4 December 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), David Kitto, Louise Camenzuli, Carlie Ryan, Ross Fowler ○ <u>Council assessment staff</u>: Pukar Pradhan, Gavin Cherry, Kate Smith, Maya Goldsmith ○ <u>Applicant representatives</u>: Daniella Assaf, Charles Assaf, Emma Ziegenfusz, Julie Horder, Frank Sartor, Daniel Bloomfield, Alastair Walker
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Not Applicable