

## Record of Kick-Off Briefing Sydney Western City Planning Panel

<b>PANEL REFERENCE, DA NUMBER &amp; ADDRESS</b>	PPSSWC-329 – Penrith – DA23/0281 – 80 O'Connell Street, Kingswood
<b>APPLICANT / OWNER</b>	Applicant: Caddens Estate Pty Ltd/Think Planners Owner: 357 Caddens Corner Pty Ltd
<b>APPLICATION TYPE</b>	Demolition, tree removal, relocation of car parking spaces, boundary adjustment and construction of a staged Mixed Use Development comprising 4 retail premises and 564 residential apartments within 19 buildings.
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	Capital Investment Value > \$30M
<b>CIV</b>	\$257,725,718 (excluding GST)
<b>BRIEFING DATES</b>	19 June 2023 26 June 2023

### ATTENDEES

<b>APPLICANT</b>	Brad Delapierre, Marvin Huang, Simon Manoski, Brian Fong, Stephen Cox, Adam Byrnes
<b>PANEL</b>	Justin Doyle (Chair), Louise Camenzuli, David Kitto, Ross Fowler
<b>COUNCIL OFFICER</b>	Gavin Cherry
<b>CASE MANAGER</b>	Kate McKinnon
<b>PLANNING PANELS SECRETARIAT</b>	Sharon Edwards

This record includes a summary of matters raised and discussed at the Council only briefing held 19/06/23 and during the Council/Applicant briefing held 26/06/23.

**DA LODGED & DAYS SINCE LODGEMENT:** 27 April 2023 (60 Days)

**TENTATIVE PANEL BRIEFING DATE:** August 2023

**TENTATIVE PANEL DETERMINATION DATE:** 30 November 2023

The Panel was first briefed by the Council online (at its request) in relation to progress with the assessment of the DA and the issues it raises on 19 June 2023, and then by the Applicant (with the Council participating) on 26 June 2023.

The Panel noted that approval of the Caddens Precinct Centre on the corner shopping centre site (DA17/0995) included revisions to the original design to recognise the importance of the site as a future focal point of the locality given its proximity to a major access point of the university and as a gateway to the new large residential subdivisions further along O'Connell Street. Work with the Panel saw changes to better sleeve the parking, improve pedestrian linkages. This high-density proposal should work with that approved and now constructed shopping centre to continue delivery of a quality anchor to residential development across in the Caddens precinct.

To that end, the further sleaving of the carparking of the shopping centre by building over it, and utilising past excavation to reduce the impact of additional height on the site offers the potential to deliver a good planning outcome.

The proposal received a positive response from the Council's Design Excellence Panel, which in particular reported favourably about what that panel described as a *"give-and-take" variation of the Local Environmental Plan's (LEP) permissible maximum height*.

The Regional Planning Panel advised that while it was open to a justification for a height exceedance on that basis, with a better outcome at the ground plane used to justify built form proposed over the height limit, the quality of the outcome at the ground plane would need to be justified both by establishing that sufficient additional open space was being freed up at ground level and also that it would be of sufficient amenity in terms of solar access and usability.

That is, the offsetting open space at ground level said to justify the additional height would need to be considered both quantitatively and qualitatively.

A number of key permissibility issues were discussed which should be considered carefully before the assessment of this major DA progresses. They include:

- a) A concept plan has been approved for the Caddens Corner Shopping Centre site. S4.24(2) of the Environmental Planning and Assessment Act 1979 (EP&A Act) provides:

*"4.24(2) While any consent granted on the determination of a concept development application for a site remains in force, the determination of any further development application in respect of the site cannot be inconsistent with the consent for the concept proposals for the development of the site"*

P.24 of the SEE states *"The shopping centre as it has now been constructed differs from the retail precinct centre concept plan that is included within the site specific DCP ..."*. The Panel queries whether amendment of the concept plan is therefore required before the DA can be approved. If amendment of the concept plan is required the Panel said it would be concerned to ensure the relevant application was made as a matter of urgency.

- b) The Caddens Corner Shopping Centre lot upon which several of the residential flat buildings are proposed are proposed is zoned B2 – Local Centre under the Penrith

Local Environmental Plan 2010. Residential flat buildings are not permitted in that zone. As the Panel understands matters some of those buildings are said to be justified as being shop-top housing. The definition in the LEP states *“shop top housing means one or more dwellings located above the ground floor of a building, where at least the ground floor is used for commercial premises or health services facilities.”* The Panel would therefore need to be satisfied that below all of the housing said to be justified in that way is to be constructed above *“commercial premises or a health services facility”* situated at *“the ground floor of a building”*.

- c) On a preliminary basis, it seems that the buildings along the southern boundary within the B2 – Local Centre might not satisfy that test. The Panel understands they are said to be justified by “Clause 5.3 Development near zone boundaries” in the LEP. Clause 5.3(2) reads

5.3 (2) This clause applies to so much of any land that is within the relevant distance of a boundary between any 2 zones. The relevant distance is 20 metres.”

The SEE says that clause is relied upon *“to ‘stretch’ the R4 zoning 20m into the B2 zoning to facilitate the construction of parts of the residential flat buildings”*. An overlay of the extent of the 20m deep area benefitted by that provision would assist in applying it.

- d) The height exceedance is significant even allowing (as the Applicant encourages) for the estimated ground level before the site was excavated for a drive-in. A 15m height limit applies to the site. 16 of the 19 buildings vary the 15m height control significantly with these buildings having an overall height to the top of the highest lift overrun of between 15.2m and 35.1m.
- e) The Panel queried whether the Section Plans supplied in the clause 4.6 request in relation to the height development standard were correctly labelled, as two different figures (figures 3 and 4) were both labelled “Section Plan Extract along southern edge of site fronting O’Connell Street” (extracted below). In fact those sections seemed to be sections taken at two locations deeper into the site than the “southern edge” which the Panel understands to be two storeys. 3D height plane diagrams might better allow an analysis of the “give and take” approach said to have been adopted. The additional height shown in Figure 4 is clearly substantial and will require careful examination (noting that it is the blue line which records the LEP standard whereas the red line marks the point 15 metres above a projection of what is estimated to be the original ground level prior to excavation of the site).

Figure 3: Section Plan Extract along southern edge of site fronting O'Connell Street

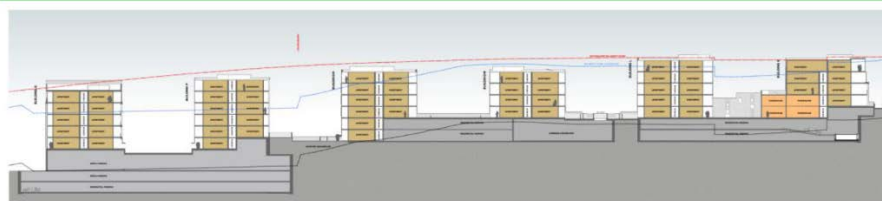


Figure 4: Section Plan Extract along southern edge of site fronting O'Connell Street



A height non-compliance of that order might ordinarily call for a planning proposal which the Council encouraged at the pre-DA stage. The objectives of the height control and the zoning will need to be considered carefully in the weighing of the s 4.6 request.

- f) While the Panel is yet to make any assessment of permissibility, the Panel noted that if for any reason an amendment of the LEP was required to allow approval of the DA, any delay in making the required planning proposal may hold up the development. Issues of permissibility should therefore be attended to as a priority.
- g) TfNSW has advised that after reviewing the submitted information it cannot presently support the development based on the information supplied. The principal concern seems to be the extent of parking required to accommodate both the retail centre and the residential development across the combined site. The Panel awaits with interest the results of ongoing discussions with TfNSW in that regard.
- h) The DA proposes 4 further retail tenancies on the site that already contains 1,087m<sup>2</sup> of retail floor space, which will result in a further exceedance of a commercial cap applying under “*Clause 7.12 Maximum gross floor area of commercial premises*”. Clause 7.12 provides that the total gross floor area of all buildings used for commercial premises on the Caddens Corner Shopping Centre site will not exceed 10,000m<sup>2</sup>. The previous approval already allowed that cap to be exceeded. As the Panel reads the clause 4.6 request, it is argued that the additional tenancies will not contribute to any undermining of competing centres and therefore does not offend the objectives of the standard. The Panel will be assisted by advice from Council as to whether that submission is well made, and whether (as the Applicant is apparently arguing) that the control is now out of date for developments of this type.

The Panel requests that the Applicant review and provide a response to matters raised by Council and by the Panel within this Briefing Note. A further Council and Applicant Briefing be convened in August 2023 to discuss the outcome of the Applicant’s work to address matters raised herein.

**Note:**

Council is yet to undertake its full application assessment, so this record is not a final list of the issues they will need to consider in order to draft their recommendation.

The application is yet to be considered by the Sydney Western City Planning Panel and therefore future comment will not be limited to the detail contained within.