

BRIEFING DETAILS

BRIEFING DATE / TIME	Monday, 11 December 2023, 11:00am to 12:00pm
LOCATION	MS teams

BRIEFING MATTER(S)

PPSSWC-329 – Penrith – DA23/0281 – 80 O’Connell Street, Kingswood - 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.

PANEL MEMBERS

IN ATTENDANCE	Justin Doyle (Chair), Louise Camenzuli, David Kitto, Ross Fowler
APOLOGIES	Carlie Ryan
DECLARATIONS OF INTEREST	NIL

OTHER ATTENDEES

COUNCIL ASSESSMENT STAFF	Gavin Cherry
APPLICANT	Brad Delapierre, Marvin Huang, Simon Manoski, Brian Fong, Stephen Cox, Adam Byrnes
RSD	Kate McKinnon, Sharon Edwards, Tim Mahoney

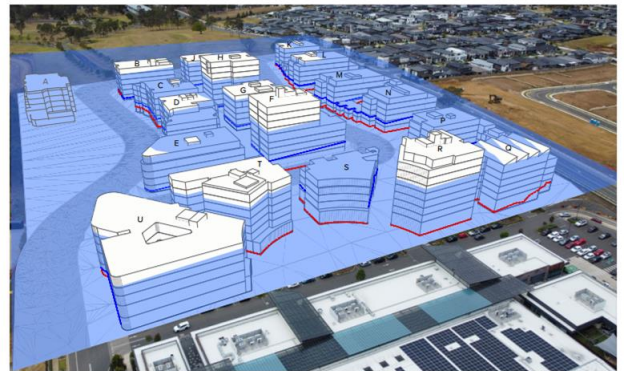
KEY ISSUES DISCUSSED

1. The Panel refers to the minute of its briefing concerning this DA convened on 20 November 2023, which (which in addition to the discussion of the merits and design issues for the proposal) identified three issues of permissibility in relation to which it sought the Applicant’s response.
2. The Panel convened a briefing with the Council and the Applicant on Monday 11 December 2023 to allow that response to be discussed with the Applicant and Council.
3. The issue of the non-compliant height of the proposal was the focus of discussion.
4. As the panel pointed out, even where issues of direct impacts of additional height such as overshadowing and visual impact associated height can be managed, the additional density that accompanies such a major increase in height across a master-planned site brings different issues which are relevant to the objectives of the height control identified by clause 4.3 of Penrith LEP.
5. As one example of the structure planning issues that arise from a substantial increase in height, TfNSW responded to the referral to it of the DA shortly before the briefing by advising that it was not in a

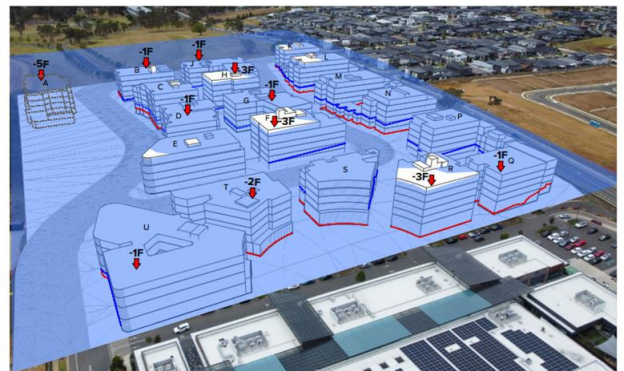
position to give its concurrence to the proposal essentially because it had insufficient information to consider the consequences of the additional traffic the development would generate.

6. In that context, the Applicant was asked whether it would consider withdrawing the DA to enable the Council and the Applicant to work on expediting a planning proposal that would remove permissibility issues which could be considered concurrently with a revised DA. Issues of concern to TfNSW could be resolved as the planning proposal was considered.
7. The panel sees possible merit in additional density for the site which is well located next to a neighbourhood centre and a university campus, but is concerned that the Applicant may be wasting both money and time pursuing a non-compliant proposal which cannot be approved under the present controls, and which might be more quickly and appropriately advanced through a different statutory process.
8. In response to the Panel's concerns, the Applicant asked for the opportunity to supply an indication of an amended scheme which it thought might soften the panel's concerns, and the panel agreed to allow a short time for that to be done.
9. The result is a letter of 12 December 2023 from the Applicant's consultant town planners which includes with it the following images which show a revision to the scheme compared to what the panel understands to be the permissible height limit under clause 4.3 (without clause 4.6 variation) in blue, and second presentation which compares the same built form to the same heights if measured from a projected 'natural' ground level prior to excavation of the site to allow its previous use as a drive in cinema. 'Natural' or 'pre-existing' ground level was said by the Applicant to be a more appropriate basis for assessing the development's impacts).

CURRENT SUBMITTED PROPOSAL



REVISED PROPOSAL
NOTE: BUILDING A TO BE REMOVED



Planning Panels Secretariat

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10. The 12 December letter also contends that the terms of clause 2.122 of the Transport and Infrastructure SEPP 2021 that relates to Traffic Generating Development would allow the panel to approve the development even against the objection of TfNSW.
11. The panel would require convincing that the substantial amendment proposed should be considered through the vehicle of this DA. The Council advised that as things currently stand it would consider a partial refund of DA fees if the DA was withdrawn, and the assessment to date could be drawn upon in consideration in any relodged DA – with or without a concurrent planning proposal.
12. More than 10 objections have been received to the DA. A public meeting should be convened before a determination can be made under the panel's protocols.
13. The Panel has unanimously resolved to invite comment from the Council as to the way forward in the new year – by 29 January 2024 – as to whether an amendment as foreshadowed by the Applicant should be permitted. That time will also allow some discussion between Council and the Applicant of alternative planning pathways, issues surrounding the infrastructure impacts of the proposed density, and the prospect of the revised proposal obtaining a positive recommendation from the Council assessment staff. A better articulation of the matters to be resolved before TfNSW might consider granting concurrence might assist.
14. Upon receipt of that comment, the panel expects to convene a public meeting to hear from objectors and a final decision as to the proposed amendment can be made.
15. If a deferral to facilitate the amendment is not permitted in the new year, the panel (subject to considering all relevant submissions in due course) is presently of the opinion that the exceedances of the height controls (and associated increases in density) of the currently pending DA proposal are such that the tests in clause 4.6 are not likely to be satisfied to allow the height standard to be varied to the extent required for an approval.

TENTATIVE DETERMINATION DATE SCHEDULED FOR APRIL 2024