

**DETERMINATION AND STATEMENT OF REASONS**  
SYDNEY WESTERN CITY PLANNING PANEL

<b>DATE OF DETERMINATION</b>	28 June 2024
<b>DATE OF PANEL DECISION</b>	28 June 2024
<b>DATE OF PANEL MEETING</b>	3 June 2024
<b>PANEL MEMBERS</b>	David Kitto (Chair), Brian Kirk, Judith Clark, Carlie Ryan, Ross Fowler
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	Justin Doyle declared a conflict of interest as he represents the applicant on another matter. Louise Camenzuli declared a conflict of interest as she represents the applicant for another site.

Public meeting held by videoconference on 3 June 2024, opened at 10:30am and closed at 11:30am.

**MATTER DETERMINED**

PPSSWC-329 – Penrith – DA23/0281 – 68-80 O’Connell Street, Caddens - Lot 1 and 2 DP 1268507

Staged construction of a mixed-use development (Caddens Corner), involving the construction of 17 buildings, 469 residential apartments, 5 commercial premises, basement car parking and associated demolition, tree removal, construction of roads, 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, the material presented at meetings and briefings and the matters listed at item 8 in Schedule 1.

**Inconsistent with the strategic planning framework for the Caddens release area**

The site forms part of the Caddens release area within the Werrington Enterprise Living and Learning (WELL) precinct.

Following detailed strategic planning, in 2004 Council adopted a strategy for the redevelopment of the WELL precinct.

This strategy envisaged the development of around 2,500 dwellings and 640,000 m<sup>2</sup> of employment floor space within the WELL precinct over 30 years, including around 1,250 dwellings and 10,000 m<sup>2</sup> of retail floor space in the Caddens release area.

Council subsequently amended the *Penrith Local Environmental Plan 2010* (LEP) and *Penrith Development Control Plan 2014* (DCP) to include specific planning controls for the redevelopment of the WELL precinct and made a contributions plan to support the provision of new infrastructure and services to the precinct.

Under the specific planning controls:

- the site is zoned EI Local Centre and R4 High Density Residential
- the dwelling yield is to be 102 dwellings in the R4 High Density Residential zone (see area shaded C in Figure 1 below) and 134 dwellings in the E1 Local Centre zone (see area shaded D in Figure 1 below), which includes additional land to the north of the site
- the site has a height limit of 15 metres
- residential development on site is to be a maximum of 4 storey plus roof element
- only shop top housing is allowed in the EI Local Centre zone
- commercial development is capped at 10,000 m<sup>2</sup>.

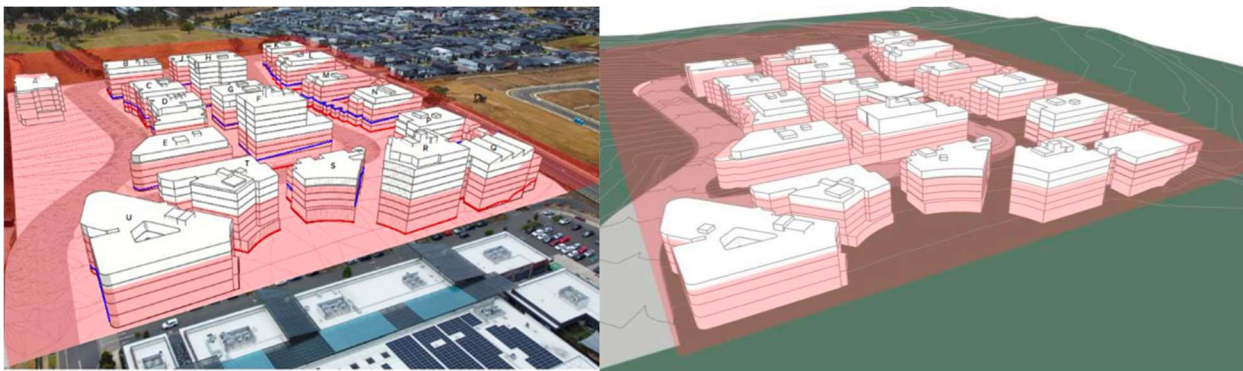


*Figure 1: Dwelling yields for the Caddens release area in DCP*

The Applicant considers these planning controls to be “unworkable” and has put forward a development proposal that is totally inconsistent with the controls.

These inconsistencies include

- the proposed dwelling yield of 469 dwellings is more than double the dwelling yield envisaged for the site in the DCP and nearly double the dwelling yield envisaged for areas C and D in the Caddens release area, which includes additional land to the north of the site
- none of the 17 buildings comply with the 15 metre height limit in the LEP - even following an amendment to the development application during the assessment process which deleted a building and substantially reduced the height of several buildings (see Figure 2 below) – with the proposed building heights of the amended proposal ranging from 16.6 metres to 26.4 metres
- only 2 of the 17 buildings comply with the 4 storey limit in the DCP with 10 of the remaining buildings being 5 storeys and the other 6 being 6 storeys
- 3 of the 8 buildings in the E1 Local Centre zone are wholly residential buildings and therefore prohibited in the zone
- the proposal will increase the amount of commercial development on site to 10,907 m<sup>2</sup>, which will exceed the commercial cap of 10,000 m<sup>2</sup> set for the local centre – including additional land to the north of the site (see area shaded D in Figure 1 above) – to retain the existing hierarchy of Penrith’s local commercial centres.



*Figure 2: The development proposal as originally submitted (left) and in its current form (right)*

The Applicant has argued these inconsistencies are justified and lodged written requests under Clause 4.6 of the LEP to vary:

- the height limit for the site in Clause 4.3 of the LEP
- the commercial floor space limit for the Caddens release area in Clause 7.12 of the LEP.

The Applicant has also argued that the prohibited development in the E1 Local Centre zone should be allowed under the discretionary powers for development near zone boundaries under Clause 5.3 of the LEP.

The panel has considered these requests and arguments carefully along with Council's assessment of these matters.

In relation to the Clause 4.6 requests, the panel is not satisfied that the Applicant's written request has demonstrated that compliance with the relevant development standards is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify contravening these development standards, particularly in relation to the proposed variation of the height limit in the LEP.

A large part of the Applicant's argument for a variation to the height limit relies on using a "rationalised height plane" for the site that reflects natural ground levels before the site was modified, rather than the existing ground levels. This argument is unconvincing given the strategic planning for the site was clearly based on the existing ground levels across the site and the LEP requires building heights to be measured from "ground level (existing) to the highest point of the building".

Further, the proposed exceedances of the height limit are substantial. In fact, they are so substantial that they are effectively seeking to replace the existing strategic planning framework that was developed for the site with a completely new planning framework – with significantly greater building heights, building forms and dwelling yields – without considering in any detail the implications this may have on the planned redevelopment of the Caddens release area and WELL precinct, including the provision of suitable infrastructure and services.

The panel does not support this and considers that a variation of this scale and nature should be dealt with under the plan making provisions in Part 3 of the *Environmental Planning & Assessment Act 1979*, rather than under the development assessment provisions in Part 4 of the Act.

The panel is also not satisfied that the development is in the public interest as the proposed development is clearly not compatible with the height, bulk and scale of the desired future character of the locality – as expressed in the current strategic planning framework – and will not provide a suitable transition in built form and land use intensity between the site and development in the adjoining areas.

Consequently, under Clause 4.6(3) of the LEP the panel is unable to approve the development application.

In relation to the prohibited development, the panel notes that buildings E and F extend beyond the 20 metres allowed under Clause 5.3 of the LEP and are therefore ineligible for the flexible zoning provisions in the clause.

Consequently, the proposed development is not wholly permissible with development consent and the development application cannot be approved.

Even if the DA was amended to make these buildings eligible for the flexible zoning provisions in Clause 5.3 of the LEP, the panel is not satisfied that the relevant development (buildings E, F & N) is consistent with the objectives for development in both the zones and desirable due to compatible land use planning, infrastructure capacity and other planning principles relating to the efficient and timely development of the land.

Consequently, the panel would not support the use of the flexible zoning provisions even if they applied to the relevant development.

### **Matters capable of being resolved**

In its assessment report, Council identified several reasons for refusing the DA that the panel thought could be satisfactorily resolved by the Applicant with minor amendments to the DA, modifications to the approved concept development application for the site or the provision of additional information.

This included:

- ensuring the development is consistent with the approved concept development application for the site
- managing the clearance of kangaroos on site
- managing the construction impacts on trees
- securing the general terms of approval for the aquifer interference approval required for the development under Section 91 of the *Water Management Act 2000*
- demonstrating that the development will have a neutral and beneficial impact on water quality under *State Environmental Planning Policy (Biodiversity and Conservation) 2021*.

### **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 panel determined to refuse the application for the reasons outlined in the council assessment report as modified by the matters outlined above.

In particular, the panel concluded that:

- the development is inconsistent with the planning controls for the site in the LEP and DCP that were set following detailed strategic planning by Council in the early 2000s
- the development is prohibited in the EI Local Centre zone
- the Applicant has not adequately addressed under Clause 4.6 of the LEP the matters required to justify variations to the exceedances of the development standards in Clause 4.3 and Clause 7.12 of the LEP, and the exceedances of these development standards are not in the public interest
- the development is inconsistent with the height, bulk and scale of the desired future character of the locality
- the development is not in the public interest.


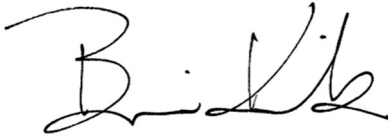

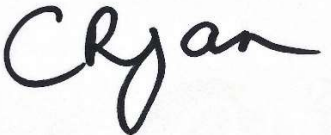
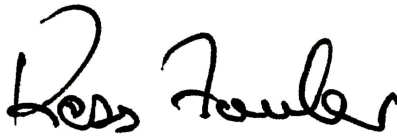
### **CONSIDERATION OF COMMUNITY VIEWS**

In coming to its decision, the panel considered written submissions made during public exhibition and the matters raised at the public meeting by Zoe Schmidt, Karen Mobbs and Vanessa Howe.

These submissions raised concerns about the:

- scale and nature of the proposed development and its inconsistency with Council's planning controls
- the significant traffic and parking impacts of the development
- likely impacts on the kangaroos that use the site
- potential impacts on Aboriginal cultural heritage
- lack of infrastructure and services to support the development given the rapid growth in surrounding areas.

These concerns were assessed in detail in Council’s assessment report and informed the panel’s decision to refuse the development application.

PANEL MEMBERS	
 David Kitto (Chair)	 Brian Kirk
 Judith Clark	 Carlie Ryan
 Ross Fowler	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-329 – Penrith – DA23/0281
2	PROPOSED DEVELOPMENT	Staged construction of a mixed use re-development (Caddens Corner), involving the construction of 17 buildings, 469 residential apartments, five (5) commercial premises, basement car parking and associated demolition, tree removal, construction of roads, earthworks, landscaping and stormwater drainage works.
3	STREET ADDRESS	68-80 O'Connell Street, Caddens, NSW, 2747 – Lot 1 and 2 DP 1268507
4	APPLICANT/OWNER	Applicant: Caddens Estate Pty Ltd/Think Planners Owner: 357 Caddens Corner Pty Ltd/ Caddens Estate Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>Environmental planning instruments: <ul style="list-style-type: none"> <li>State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>State Environmental Planning Policy (Planning Systems) 2021</li> <li>State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>State Environmental Planning Policy 65 – Design Quality Residential Apartment Development</li> <li>Penrith Local Environmental Plan 2010</li> </ul> </li> <li>Draft environmental planning instruments: There are no draft EPIs applicable to the proposed development or subject land.</li> <li>Penrith Development Control Plan 2014</li> <li>Planning agreements: Nil</li> <li>Provisions of the Environmental Planning and Assessment Regulation 2021.</li> <li>Coastal zone management plan: There is no coastal management plan that applies to the land.</li> <li>The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality.</li> <li>The suitability of the site for the development</li> <li>Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>The public interest, including the principles of ecologically sustainable development.</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>Development application and associated reports on the planning portal</li> <li>Council assessment report: 24 May 2024</li> <li>Clause 4.6 variation: Clause 4.3 – Height of buildings and Clause 7.12 - Maximum gross floor area of commercial premises</li> <li>Written submissions during public exhibition: 25</li> <li>Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>Vanessa Howe, Zoe Schmidt, Karen Mobbs</li> <li>Council assessment officer – Nicholas Cavallo, Gavin Cherry</li> <li>On behalf of the applicant – Adam Byrnes, Brad Delapierre</li> </ul> </li> <li>Total number of unique submissions received by way of objection: 25</li> </ul>

8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>• Council initial briefing: 19 June 2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Ross Fowler</li> <li>○ <u>Council assessment staff</u>: Gavin Cherry</li> </ul> </li> <li>• Council/Applicant kick off briefing: 26 June 2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Ross Fowler</li> <li>○ <u>Council assessment staff</u>: Gavin Cherry</li> <li>○ <u>Applicant representatives</u>: Brad Delapierre, Marvin Huang, Simon Manoski, Brian Fong, Stephen Cox, Adam Byrnes</li> </ul> </li> <li>• Council/Applicant briefing: 11 December 2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Ross Fowler</li> <li>○ <u>Council assessment staff</u>: Gavin Cherry</li> <li>○ <u>Applicant's representatives</u>: Brad Delapierre, Marvin Huang, Simon Manoski, Brian Fong, Stephen Cox, Adam Byrnes</li> </ul> </li> <li>• Panel meeting: 12 February 2023  <u>Panel members</u>: Justin Doyle (Chair), David Kitto, Louise Camenzuli, Carlie Ryan</li> <li>• Public meeting to discuss council's recommendation: 3 June 2024 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: David Kitto (Chair), Brian Kirk, Judith Clark, Carlie Ryan, Ross Fowler</li> <li>○ <u>Council assessment staff</u>: Nicholas Cavallo, Gavin Cherry</li> </ul> </li> </ul>
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Not Applicable