

DATE OF DEFERRAL	Monday, 26 April 2021
PANEL MEMBERS	Justin Doyle (Chair), Nicole Gurran, Noni Ruker, Glenn McCarthy and Ross Fowler
APOLOGIES	None
DECLARATIONS OF INTEREST	Louise Camenzuli: One of my Partners at Corrs Chambers Westgarth acts for the proponent or an associated entity of the proponent and I consider that this fact gives rise to a perceived conflict of interest

Public meeting held by teleconference on 26 April 2021, opened at 12:42pm and closed at 2:45pm.

MATTER DEFERRED

PPSSWC-65 – Penrith – DA20/0148 at 300 DP 1243401,87 93 Union Road, PENRITH NSW 2750 – Construction of Part 14 Storey, (as described in Schedule 1).

DETERMINATION

The Panel agreed to defer the determination of the matter for a short period to allow the Applicant to clarify with the benefit of the Council report and the discussion in the Panel's reasons below:

- (a) Any additional information it proposed to supply;
- (b) Any amendments it proposes to make to the development application; and
- (c) Specifically, the nature of community infrastructure to be included in the proposed development under clause 8.7 of Penrith LEP.

The Panel anticipates that with the benefit of that additional information it will determine electronically whether to allow for a further deferment, or alternatively whether the development application should thereupon be approved or refused.

The decision to defer the matter was 4:1 in favour, against the decision was Glenn McCarthy. The Panel adjourned during the meeting to deliberate on the matter and formulate a resolution.

REASONS FOR DEFERRAL

1. Clauses 8.4 and 8.7 of Penrith LEP provide specific planning controls and processes for this site which is identified as a Key Site on the Key Sites Map, with particular attention to the achievement of design Excellence and the delivery of community infrastructure.
2. Clause 8.7(4) permits substantially more dense development - an increase from the mapped FSR of 3:1 to a permitted FSR of 6:1. However the clause says the extra density is only to be approved if the Panel is satisfied that:
 - (a) The desired character of the locality will be attained, and adverse impacts on the locality will be minimised (those being goals raised by the objectives of clause 8.7).

In that regard:

- (i) The relevant "desired character" would seem to be that expressed for Penrith City West (Mixed Use) at 11.1.3 of the Penrith DCP:

"This area should be redeveloped, primarily as a high-density residential precinct that will complement and bring additional activity to the adjoining civic and cultural precinct. It is envisaged that this area develop a live-work environment, which is promoted through the

design and layout of residential buildings, and the location of compatible commercial and retail uses at the street level of such buildings.

This precinct currently enjoys unobstructed views of the Blue Mountains escarpment. It is acknowledged that redevelopment will result in loss of such views however, where view corridors can be reasonably maintained from High Street, then the views should be retained.

There is an opportunity to locate an urban space in this precinct that affords an “eat street” environment with connection to the adjoining civic and cultural precinct.”

- (ii) The emphasis on the *“live work environment ... promoted through the design and layout”* would seem to focus on *“compatible commercial and retail uses at the street level”*. While the potential for an “eat street” is only described as an opportunity, the provision for an engaged ground level is plainly a major touchstone for a design which will draw upon the clause 8.7 bonus density.

At present the Panel does not see that consideration as being sufficiently addressed.

What the Panel would be looking for is a vibrant response of the new building to its surroundings at ground level to contribute to the desired character of the community.

- (b) The proposal exhibits sufficient excellence in design (being an essential consideration under clause 8.7(5)).

Where the consideration of “excellence in design” is raised in clause 8.7, it seems to require consideration of the objectives of the clause as discussed above. That is because it is raised as a consideration over and above the requirement for “design excellence” in clause 8.4. If the reference to “excellence in design” in clause 8.7 merely duplicated the requirement in clause 8.4 it would be redundant.

- (c) The proposed development includes community infrastructure.

“The nature and value of the community infrastructure to the City Centre” is a consideration directly raised for the Panel’s attention by clause 8.7(5)(c), and sufficiency of the community infrastructure included in the proposed development (as opposed to funding of infrastructure that is separate the development - see the express wording of clause 8.7(3)) will be a focus of the Panel’s consideration.

The objective at clause 8.7(1)(a) ties the requirement for *“community infrastructure”* directly to the acceptability of the proposed increase in permitted density.

The objectives of clause 8.7 including ‘desired character of the locality’ would also seem relevant to the required weighing up of the adequacy of the community infrastructure.

Construction of a signalized intersection of the new north-south road contained in the DA with High Street’ would seem to comprise “community infrastructure” if it is included within the proposed development. As to whether it is sufficient to meet the requirements of the clause is a matter the Panel will need to consider having regard to the matters discussed above. To assist the Panel in its assessment, the Panel will require advice as to the extent to which the intersection upgrade is necessary or appropriate to offset the traffic impacts of the development separate from any contribution it makes to community infrastructure.

Given the intersection involves Council land, agreement with the Council about development on land it owns would seem necessary. The Council report advises that the infrastructure is proposed to be the subject of a voluntary planning agreement (VPA) that the Council at present does not agree to.

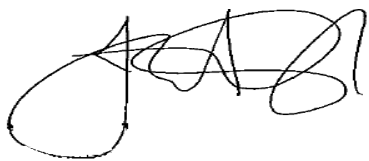
- 3. The considerations listed in clause 8.4(2) must also be satisfactorily addressed, or the development is prohibited by clause 8.4(1).
- 4. Having regard to those matters, on its review of the material presently before it, the Panel considers that the development requires a greater contribution of city shaping features necessary for the area’s transformation into a high-density, pedestrianised, mixed-use urban place.

5. Consideration of the objectives of clause 8.7 and the requirement for design excellence will require consideration of the way in which services are managed at ground level which may call into question whether basement excavation of one or two levels can be avoided, despite additional costs arising from what the Panel understands to be a high water table (although that is a matter about which no final conclusion has been reached). That is one way in which far greater positive connection could be achieved with the surrounding locality, and the dominance of the podium, carparking and services could be reduced.
6. Improved fine grain precinct ground level activation, the creation of places, spaces activated through-site pedestrian links, a wider mix of uses, and better resolved carparking and servicing areas is likely to be required so as to realise the Master Plan vision, deliver urban amenity for residents and create an attractive, distinctive and successful urban place.
7. Other factors compounding the importance of a better contribution include:
 - The significant scale of the development (bulk, height, footprint and increase in population),
 - The significant scale difference of the development from its current context and surrounding existing development.
 - Its location in proximity to the civic heart of Penrith.
8. Clause 8.4(3) requires a design competition to have been held “in relation to the development”. The Panel would expect to see an assessment of whether the proposal is consistent with the competition winning entry, noting that the winning entry proposed two levels of basement carparking with consequent available improvements in the relationship of the building with the public domain. Other apparent shifts from the competition winner are:
 - The park is being delivered in the second stage.
 - The separation of the podiums between towers C and D is absent, resulting in a single very large podium floorplate, loss of the view and sunlight corridor between buildings, and a much longer and bulkier podium.
 - Increase in above ground carparking resulting in a loss of active frontage sleeving, loss of active frontages, loss of wide and open-to-the-sky pedestrian link between buildings C and D.
 - Giving over a large proportion of the ground level to servicing and vehicular access resulting in a loss of activated ground plane and city shaping public domain and civic opportunities at ground level within and surrounding the podium.
 - Increased tower height extruded from the base to top in a similar floorplate without articulation.
9. Variation from the design winning entry will be examined carefully in terms of any compromise on the design excellence, which was recognised at that stage, particularly in terms of both the objectives of clause 8.7 and the particular considerations identified for attention under clause 8.4.
10. The increase in FSR permitted under clause 8.4(5) does not seem to be relevant given that the concurrence of the Director-General has not been obtained. In any event, the development does not propose “a height of up to 10% greater than that allowed by clause 4.3”, and the clause would not therefore seem to apply.
11. Given the combined scale of this development and its unavoidable with development of the development site at 614-632 High Street presently the subject of DA20/0167, the Panel would expect to see evidence of attempts of real collaboration between the respective design teams, particularly in relation to the presentation to and design of public spaces between the two developments and traffic management which will affect the same roads.
12. Having regard to the matters discussed above, the Panel agreed with the Council assessment that the development could not be approved in its current form.
13. It is not for the Panel to constrain the different ways in which the proposed development might attain design excellence within the sense discussed above, or by which the requirement for adequate

community infrastructure are to be met to satisfy the bonus provision objectives. However, in the interests of indicating the sort of features which might improve the proposal in that regard, the following potential benefits might be considered having regard to the direction of the competition winning entry.

- a. Delivery of a new public road and view corridor from High Street to Union Road (18m may be achievable) including continuous and generous footpaths, landscaped verges and street trees. On-street carparking is encouraged.
- b. Delivery of John Tipping Grove Park as part of Stage 1.
- c. Resolution with Council and/or the adjoining developer of a means to deliver the intersection upgrade including integration of pedestrian and cycle crossings.
- d. Location of carparking below ground unless a convincing case can be provided that it cannot be achieved (the Panel is not yet so satisfied). Where it is demonstrated that carparking cannot be located below ground, the Panel would expect it to be sleaved and should not be located on the ground floor. The Union Lane elevation would benefit from carparking being sleaved above the ground level.
- e. Reduction in the width of the carpark entry and combination of residential and service vehicle entries should be pursued.
- f. Justification would be required as to why servicing cannot be located below ground including (but not limited to): garbage areas, garbage collection and truck turning areas, stormwater tanks and pump rooms, bulky goods storage.
- g. An open-to-the-air generous pedestrian through site link from John Tipping Grove to Union Lane (potentially 10m wide) lined with active uses should be considered.
- h. Excellent design would ordinarily see ground level of the building on ground to all frontages. That would allow deletion of ramps, walls, stairs and planter boxes along Union Road, High Street and John Tipping Grove. Where that is not possible, strong justification is required.
- i. The design of the commercial component is well supported and could be further expanded into all podium levels along High Street and complemented with a commercial lobby area.
- j. Generous double height (7.8m high could match the neighbouring proposal) ceiling level on ground floor.
- k. A lower podium height along Union Street to reinforce Union Street as a residential area. The use of vertical expression and brick is supported on all podium elevations.
- l. A consistent approach to public domain design can be looked at between Council, the Applicant and the neighbouring Applicant, and the Panel would expect to see evidence of attempts at collaboration in that regard.
- m. A regularly spaced row of street trees (with species chosen in consultation with the Council landscape officer) coordinated across developments along High Street, the new road, John Tipping Grove and Union Road should be looked at. Again, evidence of attempts at collaboration would be expected.

PANEL MEMBERS



Justin Doyle (Chair)



Nicole Gurran



Noni Ruker



Glenn McCarthy



Ross Fowler

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-65 – Penrith – DA20/0148
2	PROPOSED DEVELOPMENT	Construction of Part 14 Storey, Part 37 Storey Mixed Use Development including 1 Level Basement Car Parking, 5 Storey Podium Containing Car Parking, Ground Floor Commercial, 356 Residential Apartments, New Public Road & Associated Site Works
3	STREET ADDRESS	87-96 Union Road, Penrith
4	APPLICANT/OWNER	Applicant: Bernardo Reiter TOGA Penrith Developments Pty Ltd Owner: TOGA Penrith Developments Pty Ltd
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"> Local Environmental Plan 2010 (Amendment 4) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (Infrastructure) 2007 State Environmental Planning Policy (State and Regional Development) 2011 State Environmental Planning Policy (Vegetation in non-rural areas) 2017 State Environmental Planning Policy No. 55 – Remediation of Land State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development Sydney Regional Environmental Plan No. 20 – Hawkesbury Nepean River Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Development Control Plan 2014 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</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: 14 April 2021 Written submissions during public exhibition: 9 Verbal submissions at the public meeting: <ul style="list-style-type: none"> Martyn Bentham Council assessment officer – Peter Wood On behalf of the applicant – John Wynne Director Town Planning Urbis, Lauren Williams Development Director Toga, Sharnie Belle Special Counsel Legal Counsel Addisons, Total number of unique submissions received by way of objection: 9
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing: Monday, 21 September 2021 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (chair), Nicole Gurran and Glenn McCarthy

		<ul style="list-style-type: none"> ○ <u>Council assessment staff</u>: Robert Craig, Kathryn Saunders and Gavin Cherry • Site inspection: Wednesday, 31 April 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Noni Ruker • Site inspection: Friday, 2 April <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle • Site inspection: As part of the previous application(s) and am familiar with the sites being in close proximity with the Civic Centre. <ul style="list-style-type: none"> ○ <u>Panel members</u>: Glenn McCarthy and Ross Fowler • Final briefing to discuss council's recommendation: Monday, 26 April 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurran, Noni Ruker, Glenn McCarthy and Ross Fowler ○ <u>Council assessment staff</u>: Kathryn Saunders, Robert Craig, Gavin Cherry, Peter Wood, Adam Wilkinson and Daniel Davidson ○
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	N/A