

DATE OF DETERMINATION	Friday, 4 June 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

Papers circulated electronically on 27 May 2021.

MATTER DETERMINED

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).

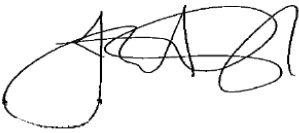




PANEL CONSIDERATION AND DECISION

The panel considered the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

1. The Panel was referred this development application for consideration on 26 April 2021. Following conferral between the Panel members following that meeting a report was prepared which set out the Panel's observations concerning the development application and associated documents arising from its assessment of the DA under s.4.15 of the EP&A Act, taking into account submissions made at the meeting.
2. Given the importance of the development of this 'key site' as mapped under Penrith LEP, it was resolved 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 response to the development application as set out in the report:
 - (a) Any additional information it proposed to supply;
 - (b) Any amendments it proposed 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.
3. In that way it was intended that the Panel could consider whether revisions to the scheme might be forthcoming which would overcome the Panel's concerns.
4. Following that deferral determination, on 6 May 2021 the Applicant filed with the NSW Land & Environment Court a Class 1 appeal with the NSW Land & Environment Court (LEC Proceedings No. 2021/126870) as it is entitled to do.
5. At the same time, the applicant by way of a letter from its consultant planners Urbis dated 19 May 2021 advised that its previous offers of community infrastructure to address clause 8.7 of Penrith LEP were withdrawn, and replaced by an offer to construct a north/south road on the site (but not the dedication of the road).
6. Given that no intention to make any significant revision to the development application has been communicated to address the merit concerns outlined in the Panel's reasons for deferral following the

meeting of 26 April 2021, the Panel resolved unanimously to refuse the development application on the basis set out in those reasons.

7. While it is therefore not necessary for the Panel to assess the revised community infrastructure offer made by the applicant, it is observed that while the definition in the LEP of “community infrastructure” as required to be included in proposed development for a key site that relies on the clause 8.7 bonus allows for the requirement to be met by a road, it must be a “public road”. The Panel therefore queries whether the decision of the applicant not to dedicate the proposed north south road forming part of the proposal excludes it from consideration as ‘community infrastructure’ as justifying the substantial FSR increase available under the clause.
8. One matter that was reviewed by the Panel in its final deliberations was the evolution of the DA design from the scheme which won the design competition required by clause 8.3 of Penrith LEP. The Panel observed that a number of the features which were recognised by the competition jury as merit worthy in the design winning entry have been foregone and that while the principal design team has been retained, the emerging architect involved in the preparation of the design winning scheme (an essential requirement of the competition rules) is no longer noted as involved with the project.
9. The Panel notes the submission by the Development Manager of Toga that a number of changes to the competition winning entry were made as a response to direction from the Council assessment staff, but sees that loss of the distinctive attributes of the competition winning entry would have to be considered carefully or the intended effect of the competition process required by the planning instrument would be negated, noting that a report from GMU Urban Design and Architecture dated 23 April 2021 commissioned by the Council is critical of the changes made.
10. The panel unanimously determined to refuse the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

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 ○ <u>Applicant briefing</u>: • Final briefing to discuss council's recommendation: Monday, 31 May 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 and Peter Wood
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	N/A