

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 Stuart McDonald: SJB Planning provided a fee proposal to the applicant for the development. We were not engaged but given this early history it may be seen as a perceived conflict of interest.

Public meeting held by teleconference on 26 April 2021, opened at 2:45pm and closed at 4:09pm.

MATTER DEFERRED

PPSSWC-69 – Penrith – DA20/0167 at 614-632 High Street, Penrith – Construction of Part Seven (7) Storey & Part 46 Storey Mixed Use Development including Four (4) Storey Podium containing Basement Parking (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 5:0 in favour. 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 Key Site 10 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 develops 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 DA proposes the following as satisfying the requirement for “community infrastructure”:

\$857,925 which can be allocated to upgrades to the intersection treatments at High Street and Civic Centre –as listed under Clause 2.5 of the Council’s Community Infrastructure Policy as well as improvements to pedestrian safety and connectivity along High Street.

“*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.

The Council has adopted a policy for calculating the monetary value of the community infrastructure to be provided. The Panel will have regard to that policy but is not bound by it. The Panel also queries whether a cash payment can be accepted as satisfying the requirement for community infrastructure in the absence of a VPA that the Council is willing to enter into.

Given the intersection involves Council land, agreement with the Council about development on land it owns would seem necessary.

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. 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. It specifically does not seem to be relevant to the assessment of the acceptability or value of the community infrastructure proposed.
9. Given the combined scale of this development and its unavoidable relationship to the development site at 614-632 High Street presently the subject of DA20/0148, 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.
10. 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.
11. Notably, Council's Environmental Management unit advise that additional information is required, and that the application is not presently satisfactory having regard to State Environmental Planning Policy No. 55 Remediation of Land. That is a threshold issue that must be resolved under that instrument.

12. The Council assessment has also identified issues concerning engineering of stormwater and WSUD features including onsite detention, utilisation of cartridge filters and unsatisfactory internal parking, loading, ramp and aisle design. It also advises that the comments of TfNSW have not been addressed.
13. Given the combined scale of this development and the neighbouring development at 87-93 Union Road presently the subject of DA20/0148, 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.
14. 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.
15. 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) in collaboration with DA20/0148 including continuous and generous footpaths, landscaped verges and street trees. On-street carparking is encouraged.
 - b. Resolution with Council and/or the adjoining developer of a means to deliver the intersection upgrade including integration of pedestrian and cycle crossings.
 - c. 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.
 - d. 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. Reduction in the width of the carpark entry and combination of residential and service vehicle entries should be pursued.
 - e. The design of the commercial component is well supported and could be expanded further into the ground floor of the building and be complemented with a more generous commercial lobby area fronting High Street and the new Street. Look to providing a greater mix, size and variety of commercial and community uses on the ground floors. Look to separating commercial and residential/communal open space circulation systems.
 - f. The double height (7.8m high) ceiling height across the ground floor is well supported.
 - g. The proposed Pedestrian laneway may provide more activated uses and clarify the view lane down the lane that addresses CPTED. Mid-site pedestrian connections may be considered, these may integrate with the commercial lobby.
 - h. Consider locating the pool and associated communal open spaces lower down on the building; potentially on level 2, to consider a larger sun access corridor to Union Lane. Consider removing walkways on levels 3, 4 and 5 and the planted outdoor areas and screen on levels 4-5 on the corner of the new road and Union Lane to reduce overlooking and bulk along Union Lane. Consider limiting access to the edge of the building on the pool level in order to avoid overlooking into private outdoor spaces of existing dwellings.
 - i. A consistent approach to public domain design may be considered that integrated with the adjoining development. A regularly spaced row of street trees (with species chosen in consultation with the Council landscape officer) coordinated across adjoining developments.
 - j. The podium elevation could be designed to reflect its highly visible location and entry to the town centre. The use of vertical expression and brick is supported.

- k. The tower articulation could benefit from far greater design exploration, variety in design approach and design development. The form, massing and variety, treatment of vertical surfaces could further break down the buildings bulk visually. The podium may visually create a well-proportioned base to the tower; and expression of the podium form along High Street could be consistent with the adjoining development. Massing of the tower could vary vertically and investigation into varying the tower footprints towards the top ¼ of the building. Reflecting environmental conditions and orientation may lead to greater facade variety.

PANEL MEMBERS	
 Justin Doyle (Chair)	 Nicole Gurran
 Noni Ruker	 Glenn McCarthy
 Ross Fowler	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-69 – Penrith – DA20/0167
2	PROPOSED DEVELOPMENT	Construction of a Part 7, Part 46 Storey Mixed Used Development Containing 272 Residential Apartments and Serviced Apartments with 41 Keyed Rooms including 4 Storey Podium Containing Ground Floor Retail Premises and Car Parking, Office Premises and Upper Level Car Parking and including One Level of Basement Car Parking and Associated Landscape, Civil and Stormwater Works.
3	STREET ADDRESS	614-632 High Street, Penrith
4	APPLICANT/OWNER	Applicant: Patrick Ellias Urban Property Group Owner: High 618 Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	- Environmental planning instruments: - State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development - State Environmental Planning Policy No. 55 – Remediation of Land - State Environmental Planning Policy (Infrastructure) 2007 - State Environmental Planning Policy (Building Sustainability Index BASIX) 2004 - State Environmental Planning Policy (Vegetation in Non-rural areas) 2017 - Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River - Draft SEPP Environmental - Draft SEPP Remediation of Land - Penrith Local Environmental Plan 2010 - Draft environmental planning instruments: Nil - Development control plans: - Penrith Development Control Plan 2014 - Planning agreements: Nil - Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Environmental Planning and Assessment Regulation 2000 - 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	- Council assessment report: 15 April 2021 - Written submissions during public exhibition: 9 - Verbal submissions at the public meeting: - Martyn Bentham - Council assessment officer – Peter Wood - On behalf of the applicant – Adam Byrnes Think Planners, Nick Byrne DKO, - Total number of unique submissions received by way of objection: 9

8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	• Briefing: Monday, 21 September 2021 ○ <u>Panel members</u>: Justin Doyle (hair), Nicole Gurran and Glenn McCarthy ○ <u>Council assessment staff</u>: Robert Craig, Kathryn Saunders and Gavin Cherry • Site inspection: Wednesday, 31 April 2021 ○ <u>Panel members</u>: Noni Ruker • Site inspection: Friday, 2 April ○ <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. ○ <u>Panel members</u>: Glenn McCarthy and Ross Fowler • Final briefing to discuss council's recommendation: Monday, 26 April 2021 ○ <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