

## DETERMINATION AND STATEMENT OF REASONS

### SYDNEY WESTERN CITY PLANNING PANEL

<b>DATE OF DETERMINATION</b>	Friday, 4 June 2021.
<b>PANEL MEMBERS</b>	Justin Doyle (Chair), Nicole Gurran, Noni Ruker, Glenn McCarthy and Ross Fowler
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	<p>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</p> <p>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.</p>

Papers circulated electronically on 27 May 2021.

#### MATTER DETERMINED

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).

#### 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.
- 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.
- 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:
  - Any additional information it proposed to supply;
  - Any amendments it proposed to make to the development application; and
  - Specifically, the nature of community infrastructure to be included in the proposed development under clause 8.7 of Penrith LEP.
- 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.
- Following that deferral determination, on 6 May 2021 the Applicant submitted a package of material for the Panel's consideration.
- The package included a number of positive developments with the design, including:
  - An increased building setback of a further 5m to the western site boundary;
  - An increase in retail and commercial floor space at the ground level; and

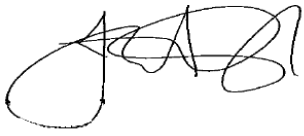
- (iii) Creation of deeper retail spaces, such that the majority of the perimeter of the ground floor of the building is now activated, although servicing and carparking above ground have yet to be demonstrated why they cannot be located below ground.
  - (iv) A Right of Public Access over 960sqm of the ground floor area which was proposed to be maintained by the Strata which contains gardens, outdoor furniture and safe and well-lit connectivity for pedestrians.
7. Notably, in response to the requirement under clause 8.7 of Penrith LEP for the development to include 'community infrastructure' as there defined, the Applicant now proposes embellishment and dedication of a 319sqm portion of land adjacent to the western boundary of the site which is proposed to allow for pedestrian connectivity with gardens and seating. This would seem to meet the definition of "community infrastructure" in clause 8.7 which may take the form of a "recreation area" which the LEP Dictionary says may include "a public park, reserve or garden or the like". However, the issue of whether the extent and choice of the community infrastructure was sufficient or appropriate was not resolved.
  8. A key issue for the development is the resolution of how traffic generated by the development is to be managed within the local road system. While a traffic engineering report was preferred which aimed address technical performance issues, the ultimate appropriateness of the reliance upon Union Lane as the principal means of vehicular access and egress for more than 270 apartments and a number of commercial uses was not established.
  9. The Council DCP includes a conceptual framework for the resolution of traffic issues proposed, the central component of which is a proposed north/south road between Union Road and High Street depicted at Figure E11.26: Precinct 1 Design Principles. If that road link proceeds it is the best solution for access and egress for this and the adjacent key sites which together will generate substantial additional impacts on the local road system. Co-ordination of the cumulative impacts of that development is an important concern for the Council in planning for this new focus of high-density development adjacent to the civic and cultural precinct adjoining the Penrith town core.
  10. The position of the Applicant as the Panel understands it is that the DCP indicative drawing for the North South Road shows it located primarily on the adjoining key site to the west (for which a development application is also pending), and that the applicant for this DA should not have to wait until the development of that site proceeds. The applicant should therefore be permitted to plan traffic for this development on the basis that the new road is not available.
  11. The Panel disagreed. The impacts of constructing this major development within the precinct with traffic arrangements which are substantially discordant with the DCP planning is inconsistent with the objective of ordered planning for the area. One feature of the DA design would be to direct substantial traffic down Union Lane which is inconsistent with the DCP planning.
  12. Co-ordination with the owner of the adjoining property ought to be encouraged. If co-ordination of the two developments cannot be achieved, then the Applicant would need to establish that it has made an appropriate contribution towards the achievement of the planned resolution of traffic in the area, which the Panel did not see as having occurred in the DA design to date.
  13. The majority of the Panel resolved to refuse the development on that basis. The Chair and Nicole Gurrán of the Panel agreed with the reasons of the majority, but saw sufficient merit in further discussions with the Applicant (to which the Applicant indicated it was open) to support further deferral of determination of the DA. However, that was a minority position.

### **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 3:2 in favour, against the decision was Justin Doyle and Nicole Gurrán who supported further deferral.

**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	<ul style="list-style-type: none"> <li>Environmental planning instruments: <ul style="list-style-type: none"> <li>State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development</li> <li>State Environmental Planning Policy No. 55 – Remediation of Land</li> <li>State Environmental Planning Policy (Infrastructure) 2007</li> <li>State Environmental Planning Policy (Building Sustainability Index BASIX) 2004</li> <li>State Environmental Planning Policy (Vegetation in Non-rural areas) 2017</li> <li>Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River</li> <li>Draft SEPP Environmental</li> <li>Draft SEPP Remediation of Land</li> <li>Penrith Local Environmental Plan 2010</li> </ul> </li> <li>Draft environmental planning instruments: Nil</li> <li>Development control plans: <ul style="list-style-type: none"> <li>Penrith Development Control Plan 2014</li> </ul> </li> <li>Planning agreements: Nil</li> <li>Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Environmental Planning and Assessment Regulation 2000</li> <li>Coastal zone management plan: Nil</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>Council assessment report: 15 April 2021</li> <li>Written submissions during public exhibition: 9</li> <li>Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>Martyn Bentham</li> <li>Council assessment officer – Peter Wood</li> <li>On behalf of the applicant – Adam Byrnes Think Planners, Nick Byrne DKO,</li> </ul> </li> <li>Total number of unique submissions received by way of objection: 9</li> <li>Additional information supplied by applicant following deferral</li> </ul>

8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>• Briefing: Monday, 21 September 2020 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (hair), Nicole Gurran and Glenn McCarthy</li> <li>○ <u>Council assessment staff</u>: Robert Craig, Kathryn Saunders and Gavin Cherry</li> </ul> </li> <li>• Site inspection: Wednesday, 31 April 2021 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Noni Ruker</li> </ul> </li> <li>• Site inspection: Friday, 2 April <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle</li> </ul> </li> <li>• 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"> <li>○ <u>Panel members</u>: Glenn McCarthy and Ross Fowler</li> </ul> </li> <li>• Final briefing to discuss council's recommendation: Monday, 26 April 2021 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurran, Noni Ruker, Glenn McCarthy and Ross Fowler</li> <li>○ <u>Council assessment staff</u>: Kathryn Saunders, Robert Craig, Gavin Cherry, Peter Wood, Adam Wilkinson and Daniel Davidson</li> </ul> </li> <li>• Final briefing to discuss council's recommendation: Monday, 31 May 2021 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurran, Noni Ruker, Glenn McCarthy and Ross Fowler</li> <li>○ <u>Council assessment staff</u>: Kathryn Saunders, Robert Craig and Peter Wood</li> <li>○ <u>Applicant details</u>: Aaron Gadiel Mills Oakley, Nick Byrne DKO Architects, Adam Byrnes Think Planners and Patrick Elias Urban Property Group</li> </ul> </li> </ul>
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	N/A