



Penrith Local Planning Panel

Determination and Statement of Reasons

DATE OF DETERMINATION	Wednesday 26 September 2018
PANEL MEMBERS	Jason Perica (Chair) Christopher Hallam (Expert) Stephen Welsh (Community Representative)
APOLOGY	Mary-Lynne Taylor (Expert)
DECLARATIONS OF INTEREST	N/A
LISTED SPEAKER(S)	Andrew Hanna (Applicant) Ziad Boumelhem (Urban Link)

Public Meeting held at Penrith City Council on Wednesday 26 September 2018, opened at 5:00pm.

Matter Determined pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979

Development Application DA17/0559 at Lot 10, DP 1224143, No. 72 Park Avenue, Kingswood – Proposed 45 x Unit Residential Flat Building Including Area for a Future Potential Ground Floor Child Care Centre with Associated Basement Car parking, Landscaping & Drainage works.

Panel Consideration/Reasons for the Decision

The Panel had regard to the assessment report prepared by Council officers, a site inspection, a memo dated 26 September 2018 and verbal advice from Council staff prior to the meeting. This advice addressed questions raised by the Panel relating to the zone and height objectives, SEPP 55 (Remediation of Land), parking and recommended conditions.

The Panel generally agreed with the environmental assessment as outlined within the Council staff report.

The Panel had regard to the applicant's Clause 4.6 written request regarding the Building Height contravention within Clause 4.3 of Penrith Local Environmental Plan 2010 and formed the view the applicant's written request satisfactorily addressed required matters within Clause 4.6(3) of the LEP. The Panel was satisfied that the proposal was consistent with the zone objectives and the objectives of the Building Height development standard, notwithstanding the non-compliance. In reaching this conclusion, the Panel had regard the Council staff report, the proposal and observations at the site. It was noted the proposed height non-compliance was relatively minor and localised, and the scale and height was consistent with that

envisaged for the area. The bulk, scale and height had been modified to reach an acceptable outcome for the site.

The condition requiring a separate Development Application for the Child Care Centre was appropriate, to ensure the layout and amenity for children was satisfactory having regard to Child Care Regulations. There was some duplication of conditions, addressed by the decision.

However, despite the above, the Panel was not in a position to determine the Development Application. This was because the required concurrence, or time to assume concurrence, had not been obtained from Sydney Trains, under the provisions of Clauses 85 and 86 of SEPP (Infrastructure) 2007. While favouring granting consent, the appropriate pathway was to delegate determination to Council staff, pending satisfaction of the concurrence and/or referral requirements of SEPP (Infrastructure) 2007.

There was also discussion at the Panel meeting regarding the parking provision, layout and allocation of spaces, including some parking spaces not meeting accessibility requirements. It was considered that a logical allocation based on 1 space per residential unit, 9 spaces for visitor parking and the remainder for the ground floor was appropriate. This could be addressed between the applicant and Council staff while the Sydney Trains process is underway.

In terms of considering community views, the Panel noted there was 1 (one) submission received from the public exhibition of the Development Application. The Panel agreed with the Council staff assessment of the issue raised, and took the view that the market is best placed to address child care supply and further competition may assist in services and price, to the benefit of the community.

Panel Decision

Pursuant to the provisions of Section 2.20(8) of the Environmental Planning and Assessment Act, 1979, the Panel delegates its determination functions to the General Manager (or his delegate) regarding Development Application DA17/0559 for Proposed 45 x Unit Residential Flat Building Including Area for a Future Potential Ground Floor Child Care Centre with Associated Basement Car parking, Landscaping & Drainage works.

In determining the matter, the Council should:

- (a) Ensure the provisions of SEPP (Infrastructure) (2007) are met (relating to Sydney Trains), prior to making a decision;
- (b) Ensure the basement parking meets Australian Standards;
- (c) Consider the appropriate allocation of parking to different uses of the building;
- (d) Review any conditions, if approved, to ensure there is no reference to a Child Care Centre, given it is not being approved
- (e) Amend the plans in red where necessary, if approved, to ensure there is no reference to a Child Care Centre, given it is not being approved
- (f) Review potential duplication of conditions.

Votes

The decision was unanimous.

Jason Perica – Chair Person	Christopher Hallam - Expert
Stephen Welsh – Community Representative	



MEMORANDUM

Reference: DA17/0559

To: Penrith City Council Local Planning Panel

From: Jane Hetherington, Senior Development Assessment Planner

Date: 26 September 2018

Subject: **Proposed 45 x Unit Residential Flat Building Including Area for a Future Ground Floor Child Care Centre with Associated Basement Car parking, Landscaping & Drainage works at 72 Park Avenue, Kingswood**

I refer to the above matter scheduled for determination with the Penrith City Council Local Planning Panel on Wednesday 26 September 2018 and an email from Penrith Local Planning Panel Chairperson dated 25 September 2018 and provide the following clarification on the matter/recommend the following;

LPP comment	Assessment Officer Comment
Zone and height objectives	<p>The objectives of the R4 High Density Residential zone are as follows:</p> <ul style="list-style-type: none"> (a) <i>To provide for the housing needs of the community within a high density residential environment.</i> (b) <i>To provide a variety of housing types within a high density residential environment.</i> (c) <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> (d) <i>To ensure that a high level of residential amenity is achieved and maintained.</i> (e) <i>To encourage the provision of affordable housing.</i> (f) <i>To ensure that development reflects the desired future character and dwelling densities of the area.</i> <p>The proposal is considered to satisfy the above objectives on the following grounds:</p> <ul style="list-style-type: none"> - The development allows for a range in unit sizes/housing types in a high density residential zone in close proximity to public transport (railway station). - The proposal provides floor space for future uses (potentially a child care centre) which would provide facilities and service to the immediate locality. - The proposal reflects the desired character and dwelling density envisaged in the R4 zone with a built form design and landscape treatment which is contextually responsive to site conditions and adjoining developments. - The development provides for, and maintains, a high level of residential amenity through compliance with solar access, open space, deep soil zones and cross flow ventilation in accordance with ADG requirements. <p>The objectives of the Height of Buildings control are as follows:</p>

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	<ul style="list-style-type: none"> (a) <i>to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,</i> (b) <i>to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas, including parks, streets and lanes,</i> (c) <i>to minimise the adverse impact of development on heritage items, heritage conservation areas and areas of scenic or visual importance,</i> (d) <i>to nominate heights that will provide a high quality urban form for all buildings and a transition in built form and land use intensity.</i> <p>The proposal is considered to satisfy the objectives of the LEP height standard. Of particular importance is the overarching objective of the control which is to facilitate development that is of an appropriate built form. The proposed design accommodates a high quality urban design outcome for the site with compliant internal amenity by way of solar access, cross flow ventilation, open space and deep soil zones. In addition the proposal is not considered to result in adverse amenity impacts to surrounding properties.</p> <p>The exceedance is, in part, due to the provision of the rooftop common open space which is considered to add to the amenity for future occupants and provides for a better outcome that would otherwise be provided by a height compliant scheme. Throughout the course of the assessment the application has also been amended to further step the built form as viewed from the public domain, reduce the height variation and increase separation to respond to site conditions which includes a north-south cross fall of approximately 5m. As a result the proposal is considered to comply with the above objectives.</p>
SEPP 55	<p><i>State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)</i> requires that the suitability of the site be considered in the assessment of a development application. Clause 7 of the SEPP 55 outlines these provisions to be considered. The Statement of Environmental Effects (SOEE) outlined that the site has been vacant for some time and historically has been used as surplus land for the adjoining school. A review of aerial photography and site history has not identified any evidence of land contaminating activities that would warrant a detailed site investigation noting that the site is zoned for residential development with adjoining residential development currently constructed. The proposal has been reviewed by Council’s Environmental Management Team who raised no objection to the application including consideration of SEPP 55 requirements subject to conditions of consent. Specifically a condition of consent (Condition No. 24) has been included requiring that should any “unexpected finds” occur during the excavation and earthworks, that works cease immediately and Council be notified. The condition requires that should any contamination be found and remediation be required that further development consent be sought prior to remediation works commencing.</p> <p>As such, in accordance with Clause 7(b) of the SEPP 55, it is considered that the site is suitable for the proposed development subject to recommended conditions of consent specifically requiring an unexpected finds protocol.</p>

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<p>Parking requirements</p>	<p>In the event that a child care centre is not pursued by way of separate application and the occupation of this floor space is utilised as ancillary communal open space for the residential apartments, then the car parking spaces that have been reserved could be relied upon as additional visitor car parking or allocated to residential units through separate strata approval.</p> <p>Other non-residential uses permitted in the R4 High Density Residential zones include: <i>community facilities, information and education facilities, neighbourhood shops, places of public worship, recreation facilities (indoor) and respite day care centres</i>. Penrith Development Control Plan 2014 requires the following on-site parking provision with an assessment of compliance detailed below:</p> <table border="1" data-bbox="560 786 1460 1160"> <thead> <tr> <th>Land Use Element</th> <th>Parking Rate</th> <th>Required</th> </tr> </thead> <tbody> <tr> <td>Place of Public Worship</td> <td>1 space per 4 seats or 1 space per 6m² of gross floor area, whichever is the greater</td> <td>359m² = 60 spaces Shortfall of 46 spaces</td> </tr> <tr> <td>Fitness centre including gym (type of recreation facility - indoor)</td> <td>7 spaces per 100m² GFA</td> <td>359m² = 26 spaces Shortfall of 12 spaces</td> </tr> </tbody> </table> <p>A parking rate for the other non-residential permitted uses are not provided within the Penrith DCP 2014 and would be considered on merit.</p> <p>It is however noted that the occupation of this floor space requires a separate DA to be lodged and considered by Council which would be required to address DCP car parking requirements and demonstrate that the proposed use is suitable for the site having regard to the residential units within the development and impact to adjoining properties.</p>	Land Use Element	Parking Rate	Required	Place of Public Worship	1 space per 4 seats or 1 space per 6m ² of gross floor area, whichever is the greater	359m ² = 60 spaces Shortfall of 46 spaces	Fitness centre including gym (type of recreation facility - indoor)	7 spaces per 100m ² GFA	359m ² = 26 spaces Shortfall of 12 spaces
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<p>Conditions (without pre-empting any decision):</p>	<ul style="list-style-type: none"> • What is the difference between 8 and 9? <p>Condition 9 requires a design verification statement to be submitted prior to the issue of a Construction Certificate, while Condition 8 requires a design verification statement be submitted prior to the issue of an Occupation Certificate. This is to ensure that the design quality and ADG compliance is not compromised during the preparation of the construction certificate plans or prior to occupation.</p> <ul style="list-style-type: none"> • What is the difference between 49 and 51? <p>Duplicate – Condition 51 to be deleted.</p>									



Jane Hetherington
Senior Development Assessment Planner