

# PENRITH LOCAL PLANNING PANEL

## DETERMINATION AND STATEMENT OF REASONS

<b>APPLICATION NUMBER</b>	MOD22/0035 – 20 Memorial Avenue, Penrith NSW 2750
<b>DATE OF DETERMINATION</b>	13 July 2022
<b>PANEL MEMBERS</b>	Jason Perica (Chair) John Brunton (Expert) Christopher Hallam (Expert) Vanessa Howe (Community Representative Member)
<b>DECLARATIONS OF INTEREST</b>	No conflicts of interest were declared
<b>LISTED SPEAKERS</b>	Nil

Meeting held via video conference on Wednesday 13 July 2022, starting at 12:00pm.

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

Development Application MOD22/0035, Lot 21 & 22 DP 1236215, 20 Memorial Avenue, Penrith NSW 2750 - Section 4.55(1A) Modification to DA20/0208 for Log Cabin Hotel for Installation of Playground Shade Sails

### **Panel Consideration**

The Panel had regard to the assessment report prepared by Council Officers, memorandum dated 12 July 2022 including the following plans:-

- Penrith Local Environmental Plan 2010 (Amendment 4)
- Draft Local Environmental Plan Amendment – Mitigating Urban Heat Island Effect (Planning Proposal)
- Penrith Development Control Plan 2014

In terms of considering community views, the Panel noted there were no submissions received.

### **Panel Decision**

- A) Modification Application MOD22/0035, Lot 21 & 22 DP 1236215, 20 Memorial Avenue, Penrith NSW 2750 - Section 4.55(1A) Modification to DA20/0208 for Log Cabin Hotel for Installation of Playground Shade Sails be refused for the following reasons:-

1. *The proposal is not satisfactory for the purpose of Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with the following provisions:*
  - (I) *The proposed modifications would result in environmental impacts beyond a minimal impact, noting that the scale of the proposed shade sail structures has been assessed to result in moderate to severe impacts on key view corridors from the public domain to the Blue Mountains escarpment and skyline, Nepean River and valley, Yandhai Nepean Crossing and the heritage listed Railway Bridge; and*
  - (II) *The development, if modified, would not result in substantially the same development as the original approval.*
2. *The proposal has not provided the requisite matters required by Clause 100 of the Environmental Planning and Assessment Regulation 2021, particularly subclauses (d), (f) & (g).*
3. *The proposal is unsatisfactory in view of the reasons given for the grant of the original consent, which included providing for improved visual screening and shade for the development through landscaping and ensuring adverse visual impacts on nearby heritage items are minimised.*
4. *The proposal is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with the following statutory provisions:*

*Penrith Local Environmental Plan 2010*

- (i) *Clause 1.2 - Aims - The proposal is inconsistent with the aims of Penrith LEP, specifically:*
  - (b) *to promote development that is consistent with the Council's vision for Penrith, namely, one of a sustainable and prosperous region with harmony of urban and rural qualities and with a strong commitment to healthy and safe communities and environmental protection and enhancement,*
  - (f) *to protect and enhance the environmental values and heritage of Penrith, including places of historical, aesthetic, architectural, natural, cultural, visual and Aboriginal significance.*
  - (h) *to ensure that development incorporates the principles of sustainable development through the delivery of balanced social, economic and environmental outcomes, and that development is designed in a way that assists in reducing and adapting to the likely impacts of climate change.*
- (ii) *Clause 2.3 - Objectives - The proposal is inconsistent with the objectives of the SP3 Tourist zone, specifically:*

*To create an appropriate scale that maintains important views to and from the Nepean River as well as to the Blue Mountains escarpment, while also improving important connections to the Penrith City Centre and the Nepean River.*

*The application has not demonstrated the appropriate site and sun analysis has been undertaken or consideration of alternative shading measures to mitigate sun exposure to the playground area.*

- (iii) *Clause 5.10 - Heritage conservation - The proposal is inconsistent with heritage objectives, specifically:*
- b) *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, setting and views.*

*The application has not demonstrated that key views to heritage items have been considered and informed the design of shading to the playground area, resulting in likely adverse impacts in this regard.*

5. *The proposal is not satisfactory for the purpose of Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with the provisions of the exhibited Mitigating the Urban Heat Island Effect Planning Proposal, including the related draft LEP amendment. The proposed replacement of green infrastructure with fixed hard infrastructure is contrary to the intent of the draft LEP amendment and will contribute to the heat island effect.*
6. *The proposal is not satisfactory for the purpose of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with the following provisions of Penrith Development Control Plan 2014:*
- (i) *The proposal is inconsistent with key principles under Part B 'DCP Principles', specifically:*
- *Principle 1 - Provide a long term vision for cities, based on sustainability; intergenerational, social and political equity; and their individuality;*
  - *Principle 2 - Achieve long term economic and social security; and*
  - *Principle 6 - Recognise and build on the distinctive characteristics of cities, including their human and cultural values, history and natural systems.*
- (ii) *The proposal has not satisfied the requirements under Section C1 'Site Planning and Design Principles', specifically:*
- *The application was not supported by a Statement of Environmental Effects, including a detailed site and sun analysis, outlining the site's qualities, character, constraints and relationship to key features of the site and surrounding area.*
- (iii) *The proposal has not satisfied the requirements under Section C6 'Landscape Design', specifically:*
- *The application does not propose any landscaping as part of the proposal.*
- (iv) *The proposal has not satisfied the requirements under Section C7 'Culture and Heritage', specifically:*

- *The application was not supported by a Statement of Environmental Effects, including a heritage impact statement.*
- (v) *The proposal has not satisfied the requirements under Section E13 'Part A - Riverlink Precinct', specifically:*
- *The application has not demonstrated that the aims and vision for the Riverlink Precinct have been addressed by the proposal; and*
  - *The application has not justified the variation to the 3m setback requirement to High Street.*
7. *The proposal is not satisfactory for the purpose of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 in terms of the likely impacts of the development, including those related to:*
- (i) *adverse impacts on existing view corridors to the Blue Mountains escapement and skyline, Nepean River and valley, and Yandhai Nepean Crossing; and;*
  - (ii) *adverse impacts on view corridors to local and state heritage items; and*
  - (iii) *adverse streetscape and visual impacts due to the proposed building setback.*
8. *The proposal is not satisfactory for the purpose of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 as the site is not suitable for the scale of development proposed.*
9. *Based on the above deficiencies, approval of the proposal would not be in the public interest pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.*
- B) The Panel notes that the proposal in part appears to have arisen from unauthorised works that are not in accordance with the approved landscape plan.

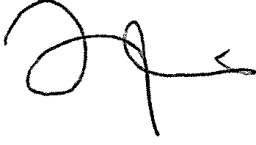


The Panel does not accept that an acceptable solution should assume that existing unauthorised works should remain. There is merit in some shading, however as originally intended by the Panel decision and changes to conditions, this should rely on planting while also considering important vistas. There may also be opportunity for some shading within play devices themselves.

### **Reasons for the Decision**

As the modification application is refused, the reasons for the decision to refuse the application are outlined above.

**Votes**

The decision was unanimous.

Jason Perica – Chair 	John Brunton – Expert 
Christopher Hallam – Expert 	Vanessa Howe – Community Representative 