

PENRITH LOCAL PLANNING PANEL

ELECTRONIC DETERMINATION AND STATEMENT OF REASONS

APPLICATION NUMBER	DA20/0477 – 608-612 High Street, PENRITH NSW 2750
DATE OF DETERMINATION	23 June 2022
PANEL MEMBERS	Jason Perica (Chair) Christopher Hallam (Expert) Mary-Lynne Taylor (Expert) Stephen Welsh (Community Representative)
DECLARATIONS OF INTEREST	No conflicts of interest were declared

Meeting held via video conference on Thursday, 23 June 2022, starting at 11:00am.

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

Development Application DA20/0477, at Lots C & D DP 153855, Lot 2 DP 525160 and Lot 1 DP 567138, 608-612 High Street, PENRITH NSW 2750, Demolition of Existing Structures & Construction of Five (5) Storey Mixed Use Development including Ground Floor Commercial Floor Space, 39 Residential Apartments & Basement Car Parking.

Background Information

On 13 April 2022 the Panel previously had regard to an assessment report prepared by Council staff, submissions received, and the following plans;

- Penrith Local Environmental Plan 2010
- Penrith Development Control Plan 2014
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development

The Panel resolved to defer determination of the development application for the following to be addressed and submitted to Council by 13 May 2022:-

- a) *Post construction flood modelling, using Council's data and addressing relevant flood guidelines and considerations;*

- b) *Revised traffic modelling, which should be extended to cover the situation with only the proposed development's traffic on the existing road network (i.e. if the proposed DCP link road to the west, between Union Road and High Street, is not constructed or delayed). Further, the modelling should cover the proposed developments at 614-632 High Street, Penrith and 87-93 Union Road, Penrith, assuming only the existing road network is available.*
- c) *Management of construction traffic to ensure minimised disruption in this congested area.*
- d) *Submission of a Clause 4.6 contravention request addressing Clause 8.5 of Penrith Local Environmental Plan 2010.*
- e) *Clarification of what, if any, lot consolidation is proposed, and if lot consolidation is proposed, ensure that FSR calculations have accounted for buildings to be retained.*

It was also resolved that a further public meeting was not warranted and that the application could be determined via electronic means.

Panel Decision

The Panel considered the additional information and assessment detailed within the Memorandum dated 17 June 2022 (and original Assessment Report to the previous Panel meeting) and resolved to refuse the Development Application for the reasons below:-

1. *The proposal, primarily in relation to flooding and stormwater impacts is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, as the proposed development is inconsistent with the following provisions:*

a) State Environmental Planning Policy (Biodiversity and Conservation) 2021

- *Clause 9.2 - Aim of this Chapter*

The aim of this Chapter is to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context.

This is due to the proposal adversely impacting on the road network and adjoining properties with respect to increasing flood levels and compromised flood safe access.

- *Clause 9.5(4) - Water Quantity*

(b) Ensure the amount of stormwater run-off from a site and the rate at which it leaves the site does not significantly increase as a result of development. Encourage on-site stormwater retention, infiltration and (if appropriate) reuse.

This is due to the proposal adversely impacting on the road network and adjoining properties with respect to increasing flood levels and compromised flood safe access.

b) Penrith Local Environmental Plan 2010

- *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,

(g) to minimise the risk to the community in areas subject to environmental hazards, particularly flooding and bushfire, by managing development in sensitive areas,

(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.

This is due to the proposal adversely impacting on the road network and adjoining properties with respect to increasing flood levels and compromised flood safe access which does not comply the above aims concerning minimisation of risk and appropriate management of development within sensitive areas.

- *Clause 5.21 - Flood Planning - The proposal is inconsistent with the provisions of this clause, specifically:*

(a) to minimise the flood risk to life and property associated with the use of land,

(b) to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,

(c) to avoid adverse or cumulative impacts on flood behaviour and the environment,

(d) to enable the safe occupation and efficient evacuation of people in the event of a flood.

This is due to the proposal adversely impacting on the road network and adjoining properties with respect to increasing flood levels and compromised flood safe access.

2. *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 proposed development does not satisfy the provisions of Chapter C3 - Water Management of Penrith Development Control Plan 2014.*

This is due to the proposal adversely impacting on the road network and adjoining properties with respect to increasing flood levels and compromised flood safe access.

3. *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 potential flooding impacts of the proposed development.*

This is due to the proposal adversely impacting on the road network and adjoining properties with respect to increasing flood levels and compromised flood safe access.

4. *The proposal is not satisfactory for the purpose of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, as it has not been demonstrated that the site is suitable for the proposed development, as overland flow flooding impacts in a post development scenario have not been established by the application.*

This is due to the proposal adversely impacting on the road network and adjoining properties with respect to increasing flood levels and compromised flood safe access.

5. *The proposal is not satisfactory for the purpose of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, as the proposed development is not in the public interest, as flooding impacts post development have not been established by the application, and therefore off-site impacts are unknown.*

This is due to overall safety concerns and the proposal adversely impacting on the road network and adjoining properties with respect to increasing flood levels and compromised flood safe access.

Reasons for the Decision

Following the submission of information from the applicant to address the above reasons for deferral, the Panel has been provided with a Memorandum from Council Officers addressing the reasons for deferral and outlining that the proposal remains unsupportable.



The Panel had regard to this Memorandum, additional information submitted from the applicant, a briefing from Council Officers and representations from the Applicant via an electronic meeting.

The Panel was not convinced regarding the traffic impacts of the proposal from the information provided by the Applicant. The analyses before the Panel did not include modelling of the proposed development on the current network, while there are a number of inconsistencies within the report and the modelling inputs. These should be resolved if the Application is progressed. The Panel also noted some concerns with the submitted Construction Traffic Management plan, which could be addressed by revision or potentially a condition if approved.

In terms of considering community views, the Panel previously had regard to both the written submission and verbal presentations made at the meeting of 13 April 2022. No further submissions have been received since this date.

Votes

The decision was unanimous.

<p>Jason Perica – Chair</p> 	<p>Christopher Hallam – Expert</p> 
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Mary-Lynne Taylor – Expert



Stephen Welsh – Community Representative

