

# PENRITH LOCAL PLANNING PANEL

## DETERMINATION AND STATEMENT OF REASONS

<b>APPLICATION NUMBER</b>	DA24/0754
<b>DATE OF DETERMINATION</b>	28 May 2025
<b>PANEL MEMBERS</b>	Graham Brown (Chair) Patrick Hurley (Expert) Chris Young (Expert) Vanessa Howe (Community Representative)
<b>DECLARATIONS OF INTEREST</b>	Patrick Hurley declared a non-pecuniary and non-significant interest in the application. The declaration was not considered to preclude an impartial determination of the application.
<b>LIST OF REGISTERED SPEAKERS</b>	Daniel Barber – Applicant (In Person) Samuel Agius (Online)
<b>ADDITIONAL SPEAKERS</b>	Komal Godekar (In Person) Brian Ferdinands (In Person) Anthony Sarkis – Applicant Architect (In Person)
<b>LIST OF ADDITIONAL REGISTERED ATTENDEES</b>	Donna Clarke – External Consultant Planner – Landmark Planning (In Person) Sandra Fagan – Council – Principal Planner (In Person) Gavin Cherry – Council – Development Assessment Coordinator (In Person) Katelyn Davies- Council – Panel Management Support Officer (In Person) Maya Goldsmith – Council – Business Operations Coordinator (In Person)

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	<p>Hannah Vousden – Council – Development Assessment Officer (In Person)</p> <p>Sam Sumer (Online)</p> <p>Joanne Taylor (Online)</p> <p>Maria Trijo (In Person)</p> <p>Nitin Gadekar (In Person)</p>
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Hybrid Public Meeting held in person and via video conference on Wednesday, 28 May 2025, starting at 2.00pm

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

DA24/0754, Demolition of Existing Structures, Tree Removal and Construction of a Childcare Facility for 185 Children with Basement Parking and Associated Works, Including an On-Site Drop-Off Area and New Landscaping at Nos. 110 Explorers Way, ST CLAIR, NSW, 2759.

### **Panel Consideration**

The Panel had regard to the assessment report prepared by Council staff, supporting plans and information, and the following environmental planning instruments and policies:

- State Environmental Planning Policy (Biodiversity & Conservation) 2021
- State Environmental Planning Policy (Industry and Employment) 2021
- State Environmental Planning Policy (Precincts – Western Parkland City) 2021
- State Environmental Planning Policy (Resilience & Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021 and the Child Care Planning Guideline
- Penrith Local Environmental Plan 2010
- Penrith Development Control Plan 2014

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In terms of considering community views, the Panel noted there were seventeen (17) submissions received, including a petition, in response to the

public notification of the Development Application, whilst the Panel also listened to registered speakers at the public meeting. The nature of the submissions were also addressed within the Council's Assessment Report.

The Panel noted that additional information was uploaded to the NSW Planning Portal on 27 May 2025. This information included a plan of children's play area (for an unrelated site and assumed to be uploaded in error), a Traffic and Parking Assessment Report and Stormwater Drainage Plans. The documents have not been assessed by Council Officers and have not been considered in the deliberation and determination of the development application due to the nature of upload and receipt being 1 x day prior to the scheduled determination meeting.

The Panel also noted that the applicant at the Public Meeting requested that the matter be deferred to allow for the submission of additional / further information.

### **Panel Decision**

In accordance with Section 38(1) of the Environmental Planning & Assessment Regulations (2021), the Applicants request to amend the development application via the NSW Planning Portal on 19 May and 27 May 2025 under Section 37 of the Regulations is rejected. This is due to the extremely late nature of the requested amendment and the inability for either Council or the Penrith Local Planning Panel to reasonably assess and consider the nature and implications of the amendment.

In accordance with Section 4.16 of the Environmental Planning and Assessment Act 1979, DA24/0754, Demolition of Existing Structures, Tree Removal and Construction of a Childcare Facility for 185 Children with Basement Parking and Associated Works, Including an On-Site Drop-Off Area and New Landscaping at Nos. 110 Explorers Way, ST CLAIR, NSW, 2759 be refused as recommended by Council Staff.

The Panel notes the request from the Applicant to defer the determination of the application however the Panel determined that a deferral was not appropriate in this instance.

## Reasons for the Decision

- The Panel had specific regard to the history of the application as outlined within the background section of the assessment report, the opportunities afforded to the Applicant to address issues raised, and the number of identified non-compliance with SEPP, LEP and DCP provisions. The applicant has been afforded extensive opportunity to submit necessary and critical information that is fundamental to the assessment and determination of the application. As a result the request to defer the determination of the application was rejected by the Panel.
- The Panel agreed with the reasons for refusal outlined within the Council's Assessment Report.
- The application fails to provide adequate and consistent information that allows for suitable assessment of the proposal having regard to key requirements that a consent authority must consider in the determination of an application. It has not been demonstrated that the proposal can adequately manage and mitigate social and environmental impacts of the proposal relating to:-
  - water quantity and quality management;
  - noise management and acoustic barrier design;
  - landscaping, tree retention / protection and biodiversity conservation considerations of Cumberland Plain Woodland;
  - waste management and servicing
  - Geotechnical analysis of ground conditions to support the proposed excavation works including verification of any impact to ground water
  - car parking design arrangement, access and circulation; and
  - context and character / context integration and impact to local character.
  - Revised floor plans and fixed furniture details to inform calculation of indoor and outdoor play area as per the Child Care Planning Guideline.
- The proposed development is considered to be an overdevelopment for 185 children. This is reflected by insufficient landscaping and setbacks

stemming from an unsupportable spatial arrangement with specific regard to car parking design and quantum of stacked parking, built form layout. The proposal has insufficient regard to the local context and character which is a key consideration and requirement as outlined within Statement Environmental Planning Policy (Transport and Infrastructure) 2021 and the Child Care Planning Guideline.




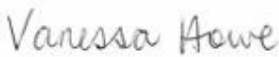
- The proposed development does not comply with key provisions within State Environmental Planning Policy (Biodiversity and Conservation) 2021.
- The proposed development does not comply with State Environmental Planning Policy (Transport and Infrastructure) 2021 and the Child Care Planning Guideline as outlined within the Council's assessment report.
- The proposed development does not comply with the Penrith Local Environmental Plan 2010 as outlined within the assessment report, most notably Clause 7.30 – Urban Heat, Clause 7.4 – Sustainable Development and the broader aims and objectives of the R2 – Low Density Residential zone.
- The proposed development does not comply with the Penrith Development Control Plan 2014 as outlined within the Council's Assessment Report, most notably Chapter C2 – Vegetation Management, Chapter C3 – Water Management, Chapter C5 – Waste Management, Chapter C6 – Landscape Design, Chapter C10 – Transport, Access & Parking, Chapter C12 – Noise and Vibration, Chapter C13 – Infrastructure and Services, Chapter C14 – Urban Heat Management and Chapter 5, Part 5.2 – Child Care Centres.
- The Panel raises concerns with any suggested indications of dual layer fencing with shrub planting between barriers. It is understood such an outcome is intended to minimise effective barrier heights and address acoustic requirements. The provision of dual layer fencing, especially in the orientation suggested, is unlikely to allow for plantings to thrive and achieve maturity and effective heights necessary to comply with screening requirements of the Child Care Planning Guideline, DCP 2014 and LEP 2010. Concern is also raised with the ability to appropriately maintain such plantings. The Panel is of the view that a single barrier condition on the boundary between residential allotments is warranted, with screen planting in front and that the acoustic fence height is no greater than 2.1m to ensure appropriate contextual integration. This may

warrant a reduction in child numbers and/or play area arrangements to ensure acoustic compliance. The use of dual fencing is also inconsistent with the streetscape and character of the local area.

- The proposal presents a general design and spatial arrangement which is inconsistent with the built form character of the locality and is not representative of the future desired character of the area, most notably with respect to fencing heights and landscaping.
- The proposal provides excessive dependency on stacked car parking well in excess of the maximum stacked parking allowance as required by the PDCP 2014. The proposal warrants a redesign of the parking arrangements. Dependency on stacked parking should be limited to staff parking only (without visitor parking in front) and should be limited to 10% as per the DCP or sufficiently justified having regard to the objectives of the control. This is also required as child care centres operate with open days and special events where parents and grandparents are invited to attend for extended duration. It cannot be assumed that visitor parking is short stay only.
- The proposal does not sufficiently respond to and enhance the qualities of the local area including adjacent sites, streetscapes and the broader residential neighbourhood as outlined within the Child Care Planning Guideline.
- The proposed development is not considered to be in the public interest

### Votes

The decision was unanimous.

Graham Brown (Chair) 	Patrick Hurley (Expert) 
Chris Young (Expert) 	Vanessa Howe (Community Representative) 

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