

# PENRITH LOCAL PLANNING PANEL

## DETERMINATION AND STATEMENT OF REASONS

<b>APPLICATION NUMBER</b>	DA20/0767– 28 – 32 Somerset Street KINGSWOOD NSW 2750
<b>DATE OF DETERMINATION</b>	22 September 2021
<b>PANEL MEMBERS</b>	Jason Perica (Chair) John Brunton (Expert) Mary-Lynne Taylor (Expert) Geoff Martin (Community Representative)
<b>DECLARATIONS OF INTEREST</b>	No conflicts of interest were declared
<b>LISTED SPEAKERS</b>	Representatives from the applicant – Michael Viskovich (Boston Global) & Ben Pomroy (Project Architect) Penny Dalton (Traffic Officer), Tony Polvere (Planner) Philipa Leroux (Operator/Hilton)  Residents/Others – Doris Matlock, Jean Cook, Clare Brown (Urbis), Chris Smith (Healthcare Property, Australian Unity)

Public Meeting held via video conference on Wednesday 22 September 2021, starting at 2:00pm.

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

Development Application DA20/0767, Lot 59 DP 36728 & Lot 58 DP 36728 & Lot 57 DP 215146, 28 – 32 Somerset Street KINGSWOOD NSW 2750 - Demolition of Dwelling, Construction of a Seven (7) Storey Accommodation Hotel with Rooftop Bar and Restaurant, 3 Levels of Basement Parking for 63 Vehicles, Ground Floor Reception, Lounge and Dining, and Associated Site Works with Consolidation of Three Lots.

### **Panel Consideration**

The Panel had regard to the assessment report prepared by Council Officers, a memorandum dated 21 September 2021 prepared by Council officers, submissions received, and including the following plans:

- Penrith Local Environmental Plan 2010;
- Penrith Development Control Plan 2014;
- State Environmental Planning Policy (Infrastructure) 2007;
- State Environmental Planning Policy (Vegetation in non-rural areas) 2017;

- State Environmental Planning Policy (Western Sydney Aerotropolis) 2020;
- State Environmental Planning Policy No.55 – Remediation of Land;
- State Environmental Planning Policy No. 64 – Advertising and Signage; and
- Sydney Regional Environmental Plan No 20 – Hawkesbury Nepean River.

In terms of considering community views, the Panel noted there was a total of 8 submissions received representing 6 landowners, in response to the public notification of the Development Application. There was also 1 submission received supporting the proposal.

### **Panel Decision**

DA20/0767, Lot 59 DP 36728 & Lot 58 DP 36728 & Lot 57 DP 215146, 28 – 32 Somerset Street KINGSWOOD NSW 2750 - Demolition of Dwelling, Construction of a Seven (7) Storey Accommodation Hotel with Rooftop Bar and Restaurant, 3 Levels of Basement Parking for 63 Vehicles, Ground Floor Reception, Lounge and Dining, and Associated Site Works with Consolidation of Three Lots be approved subject to the recommended conditions of consent outlined within the Council Officer assessment report to the Panel, with the following amendments;

#### **1. Insert New Condition**

The southern elevation is to be further articulated to improve the facade's presentation to Hargrave Street. These changes are to include the following:

- (a) Additional decorative screening to the open stairwell, which may also serve to provide a form of artwork and visual interest;
- (b) Additional windows on the southern facade of the hotel rooms at all levels;
- (c) A window on the eastern wall of the employee break room; and
- (d) The basement driveway is to be amended by replacing some of the perforated screen to the harbour with solid screening (towards the rear), to assist with noise mitigation.

Details of these amendments are to be submitted to Penrith City Council for approval prior to the issue of a Construction Certificate.

#### **2. Amend Condition 4**

The food and drink areas of the hotel are not to be sub-let to a third party. Those spaces are to be operated and managed by the hotel operator.

An operational 'Plan of Management' to reflect the above, and outline appropriate management measures to mitigate impacts upon neighbours (including matters outlined below), is to be submitted to, and written approval obtained from Penrith City Council prior to the issue of any Occupation Certificate.

Thereafter, the hotel shall be managed in accordance with the approved Plan of Management, which can be reviewed and updated to improve processes and

operations, with the written approval of Penrith City Council. The Plan of Management is to include details of the following:

- The 24 hour contact details of the property caretaker or manager, who has overall responsibility for the operation, administration, cleanliness, maintenance and fire safety of the premises;
- Any rules, including details of how they will be publicised to guests, visitors and patrons, that cover guest behaviour, activities and noise, visitor policy and any other relevant rules;
- Measures to minimise unreasonable impact to the habitable areas of adjoining properties, including the management of the licensed bar / restaurant areas and the external seating areas;
- The use of external and publicly accessible spaces should be restricted in accordance with the Acoustic Report referenced at Condition 1 and other conditions of this consent; and
- Details of how complaints will be investigated and managed.

### **3. Amend Condition 5**

The car parking spaces at all basement levels are to be used solely by staff and visitors/guests of the hotel. At no time are the car parking spaces to be let to a third party.

### **4. Amend Condition 24**

The basement car park and basement waste storage room are to be mechanically ventilated in accordance with the relevant sections of the BCA and AS 1668, Parts 1 & 2. The discharge of the mechanical ventilation is to be to the roof of the building. The exhaust risers are to be reticulated through the internal areas of the building prior to their discharge to the roof. Suitable details are to be submitted to Penrith City Council for approval prior to the issue of a Construction Certificate and the approved details are then to be included in the Construction Certificate drawings.

### **5. Amend Condition 25**

An acoustic report is to be provided to Council and written approval obtained from Council, prior to a Construction Certificate being issued, which outlines the noise impacts and mitigation measures required for all mechanical plant on the premises. The acoustic report is to be prepared by a suitably qualified and practising person in accordance with the Noise Guide for Industry.

### **6. Amend Condition 29**

The following restrictions apply to the bar, lounge, and dining areas of the hotel. This includes the internal bar and lounge areas located on ground level, the external seating area located on the ground floor arbour on Somerset Street, the internal 'food & beverage' area located at rooftop level, and the whole of the external/outdoor terrace around the perimeter of the rooftop level (northern, southern, and eastern sides). These areas are to be used and managed in

accordance with the recommendations of the acoustic report referenced at Condition 1. In this regard, the use of those spaces is restricted as follows:

- The use of the internal areas of both the ground floor and rooftop bar/lounge/dining are limited to between 6:00am to 12:00am (midnight) every day;
- All external facades adjoining the ground floor and rooftop level food and beverage spaces, including windows and doors, are to be closed between 10:00pm and 7:00am with doors used only for direct ingress and egress as required;
- The use of the ground floor arbour area to Somerset Street, and the rooftop external terrace area is limited to between 7:00am to 10:00pm, Monday to Saturday, and 8:00am to 10:00pm on Sundays and Public Holidays, except for the two areas shown in red at page 35 of the Acoustic Report, being the northern and southern end of the external rooftop terrace, with these areas only able to operate until 6:00pm, unless Penrith City Council approve additional acoustic treatments;
- The total number of patrons permitted internally in the rooftop bar/dining area is 75 patrons, in the external roof top area is 99 patrons (as per page 34 of the Acoustic Report), in the ground level lounge is 84 patrons, and in the ground level bar is 36 patrons (these limits do not include staff);
- Music can only be played within internal areas and is not to exceed 75dBA within the space; and
- The 1.8m high glazed balustrade around the entire perimeter of the outdoor dining/bar area is to be retained/provided.

### **Reasons for the Decision**

The majority of the Panel (hereinafter referred to as 'the Panel') agreed with the assessment contained with Council's Assessment Report.

The Panel considered the applicant's written requests to contravene the Development standards relating to Building Height and floor-to-ceiling height contained in Clauses 4.3 and 7.11 of Penrith Local Environmental Plan 2010 respectively, made pursuant to Clause 4.6 of that Plan, and formed the view these combined written requests satisfactorily addressed the requisite matters in Clause 4.6(3) of the Penrith Local Environmental Plan 2010. The Panel is of the opinion that the proposal meets the objectives of Clause 4.3 and Clause 7.11 of Penrith Local Environmental Plan 2010, and the objectives of the zone, and granting consent would be in the public interest.

In terms of traffic impact, the Panel noted and agreed with the conclusions within the Assessment Report. Similarly, whilst Council's Traffic Engineer did not support the proposed parking provision, the Panel concurred with the assessment and conclusions within the Assessment Report that the parking provided was adequate for the proposed use.

In terms of the proposed design, the Panel noted the side/rear nil setback is contemplated and permitted by the precinct Development Control Plan controls

and would not unduly restrict development of the adjoining land. Setbacks of the development were also deemed appropriate notwithstanding some non-compliances as outlined within the Assessment Report. The design overall was supported by Council's UDRP and was deemed acceptable by the Panel, subject to further design refinement to Hargrave Street.

In terms of the use and potential impact arising from the "bar" areas, this was satisfactorily mitigated and managed by the design and recommended conditions of consent, as amended. These spaces augment and complement the proposed use and are also suitable for the wider precinct in which the site is located.

Different views were expressed at the meeting regarding the ability to retain the Liquidamber tree (tree 5) by a neighbours' representative and the applicant. The Panel was advised by Council staff that it is proposed and intended to retain this tree and this is supported by expert Arboricultural advice. A suitable condition addresses this issue.

The Panel also noted the following;

- The proposal satisfies the aims, objectives and provisions of Penrith Local Environmental Plan 2010 and associated Development Control Plan.
- The site is suitable for the development and the Penrith Health and Education precinct in which it is located.
- There is scope to improve the southern elevation to Hargrave Street without causing any significant altered impacts to neighbours, and this was supported in principle by the applicant's representative at the meeting. Similarly, there may be scope to provide additional cover over the driveway to contain noise, and an additional condition to this effect was also imposed by the Panel.

The Panel had regard to the issues raised within submissions and raised in the meeting, and concurred with the assessment and conclusions regarding these issues within the Council Assessment Report, subject to some further refinements reflected in additional conditions.

John Brunton had a dissenting view in that he supports the concept for the proposed development within the Penrith Health and Education Precinct and accepts that an increase in building height is reasonable in the circumstances. However, Mr Brunton is of the view the applicant's written submission in support of the clause 4.6 request does not establish that the objectives of clause 7.11 are achieved, the built form of the proposed development is not suitable for both residential and health service facilities, and the built form would not encourage or facilitate adaptive reuse for health service facilities should any future residential use cease.

### **Votes**

The decision was 3-1 as outlined above.

Jason Perica – Chair 	John Brunton – Expert 
Mary-Lynne Taylor – Expert 	Geoff Martin – Community Representative 