

PENRITH LOCAL PLANNING PANEL

RECORD OF BRIEFING

AGENDA ITEMS	DA25/0332
DATE OF BRIEFING	13 August 2025
PANEL MEMBERS	Graham Brown (Chair) Chris Young (Expert) Patrick Hurley (Expert) Laura Howard (Community Representative)
DECLARATIONS OF INTEREST	No conflicts of interest were declared
LISTED SPEAKERS	NIL
COUNCIL ATTENDEES	Natalie Piggot – Council – Senior Development Assessment Planner Tania Shephard - Council – Principal Planner Gavin Cherry- Council – Development Assessment Coordinator Katelyn Davies- Council – Panel Management Support Officer

Proposed Development

DA25/0332, Alterations to the existing building and associated works for use as a long day child care centre at 382-396 Great Western Highway ST MARYS, NSW, 2760.

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Briefing Details

An electronic briefing of the Penrith Local Planning Panel was held via video conference on Wednesday 13 August 2025 starting at 11.30am. The briefing was held between Panel Members and Council Staff, to discuss the ongoing assessment of the above development application, specifically the relationship and application of Penrith LEP 2010, Clause 7.8 – Active Street Frontages as a development standard vs prohibition and considerations relating to what can be taken to satisfy the LEP activation requirements of the clause.

Summary of Legal Advice

Council's Legal Services Department has provided legal advice to confirm the following:-

- i. The clause is not considered to be a prohibition standard. The clause can be taken to be a development standard, and an applicant can seek a variation to the provisions of the clause via a request to vary pursuant to Clause 4.6 of the Penrith LEP 2010.
- ii. Clause 7.8 is not taken to expressly define the term "active street frontage". Clause 7.8(5) outlines a circumstance where it can be taken that activation is provided for, however the clause is not written to the exclusion of other means of providing for activation to then satisfy the provisions.
- iii. If the assessment of the application determined that the proposed works are not sufficient to achieve an active street frontage', noting the absence of a specific definition, then the proposal represents a variation to a development standard that would exceed 10% and would require reporting to, and determination by, the Penrith Local Planning Panel.

Summary of Panel Discussion

- i. In the absence of a prescribed definition of active street frontage within the Penrith LEP 2010 or the Standard Instrument Order, a merit assessment will need to be undertaken in recognition of the existing development on the site and the nature of the proposed works and land use
- ii. Clause 7.8(1) establishes expectations for activation under the clause, being the promotion of uses that “*attract pedestrian traffic along street frontages*”. However the Panel noted that the objective is not definitive on requirements for activation but rather suggests promotion of activation 'which is different to requirements that any change of use will / must achieve activation. Further the clause does not define what constitutes an active street frontage.
- iii. The Panel also formed the view that the clause does not specifically require a land use that can or will provide for activation, allowing for discretion in the enforcement of the clause and in recognition of the allowances permitted via Clause 4.6 of the LEP.
- iv. The Panel also noted that it is not appropriate or reasonable for all land uses to provide for activation in certain circumstances, such as the subject site where an existing building remains largely unaltered (externally), where there is no public footpath connection along the frontage of the site within the Great Western Highway road reserve, and where the intended land use requires controlled access points (security and child safety) and via a single entry point with direct access to a rear loaded car park.
- v. The Panel formed a view, that there was reasonable grounds to consider a variation to Clause 7.8 of PLEP 2010, in recognition of




received legal advice that the provision is a development standard.

- vi. The Panel noted that Clause 4.6(3) allows for consideration of a variation to the development standard via Clause 7.8, where it can be found to the satisfaction of the consent authority, that compliance is unreasonable or unnecessary, and there are sufficient environmental planning grounds to justify the contravention.
- vii. While the Panel cannot provide a determining view on the suitability of a clause 4.6 variation request at this stage (being a briefing and not a determination meeting), the Panel did agree that the attributes of the site and the proposed land use would lend themselves to reasonable consideration of such a variation.

Conclusion

- i. It was agreed that the proposal as lodged warrants reporting to and determination by the Penrith Local Planning due to the inclusion and requirement of a clause 4.6 variation to the development standard outlined within Clause 7.8 of the LEP.
- ii. It was emphasised that the applicants Clause 4.6 variation request should address and justify grounds for the variation having regard to Clause 4.6(3) and the objectives of Clause 7.8 and consider / address the ability for the site to still achieve compliance with the clause in the future, where site wide redevelopment or more substantial alterations and additions to the existing built form were to be pursued.
- iii. Council's City Planning or City Strategy Departments should be engaged to review the wording and requirements of Clause 7.8 of PLEP 2010, including reconsideration of Clause 7.8(5) to better define and articulate what is taken to constitute an active street frontage, in recognition of the legal advice received from Council's Legal Services Department. This also includes further consideration and potential

refinement of the objective of the clause, given the references to promotion of uses, rather than delivery of established expected outcomes.

Graham Brown (Chair) 	Chris Young (Expert) 
Patrick Hurley (Expert) 	Laura Howard (Community Representative) 