

SWCPP Ref. No.:	PPSSWC-298
DA No.:	DA22/1086
PROPOSED DEVELOPMENT:	Construction of Ten (10) Storey Mixed Use Commercial & Residential Development including Two (2) Storey Podium containing 14 Ground Floor Retail Premises & First Floor Commercial Floor Space, Two (2) x Eight (8) Storey Residential Towers containing 287 Residential Apartments (East Tower - 152 Units; West Tower - 135 Units), Rooftop Communal Open Space, Three (3) Levels of Basement Car Parking & Public Domain Works
PROPERTY ADDRESS:	162 Lord Sheffield Circuit, PENRITH NSW 2750 172 Lord Sheffield Circuit, PENRITH NSW 2750 160 Lord Sheffield Circuit, PENRITH NSW 2750
PROPERTY DESCRIPTION:	Lot 3001 DP 1184498, Lot 3011 DP 1184498, Lot 3002 DP 1184498,
ZONING:	Zone E1 – Local Centre - LEP 2010
CLASS OF BUILDING:	Class 2 , Class 6 , Class 7a
ASSESSING OFFICER	Wendy Connell
APPLICANT:	UPG Lord Sheffield 162 Pty Ltd
DATE RECEIVED:	14 November 2022
REPORT BY:	Wendy Connell, Senior Planner, Penrith City Council
RECOMMENDATIONS:	Approve

Assessment Report

Executive Summary

This development application seeks consent for the construction of a 10 storey mixed use development including 287 residential apartments, 410 car parking spaces, roof top communal open space, 1,794sqm of retail floor space, 4,331sqm of commercial floor space, public domain works, landscaping and drainage works at 160-172 Lord Sheffield Circuit, Penrith.

The subject site is legally described as Lots 3001, 3002 and 3011 in DP 1184498 and is zoned E1 Local Centre under Penrith Local Environmental Plan 2010 (PLEP 2010). Development for the purpose of commercial premises is permissible with consent in the E1 Local Centre zone. Residential flat buildings are also permissible with consent on the subject site under Schedule 1 - Additional permitted uses of PLEP 2010.

The proposal was the subject of a design excellence competition. The competition jury has confirmed the proposed development achieves design excellence in accordance with Clause 8.4 of PLEP 2010.

The application was referred to Transport for NSW (TfNSW) - Sydney Trains division for concurrence under Section 2.99(4) of State Environmental Planning Policy (Transport and Infrastructure) 2021. In its letter dated 6 October 2023, TfNSW issued concurrence, subject to conditions.

The application was also referred to the Department of Planning and Environment (DPE), which coordinated referrals with the SES and Infrastructure NSW in regards to flood evacuation capabilities with the Penrith City Centre. Both authorities raised no objections to the proposal in their respective responses dated 23 December 2022 and 21 December 2022.

The application was notified to occupiers and owners of surrounding properties, advertised in the local newspaper and publicly exhibited between 5 December 2022 and 30 January 2023. A total of two submissions were received in response to the public exhibition process. Key matters raised in the submissions include traffic and parking generally and during the construction phase, flood evacuation, heritage impacts, CBD linkage and the existing and proposed community garden on the site.

Key issues identified during the assessment of the proposal include:

- Delivery of a bus way under the railway corridor in alignment with Statement of Commitment No. 24 under Major Project Determination No. 10-0075.
- Development near and over easements burdening the site - Endeavour Energy 11KV and 33KV easements and a 3m wide Transport Asset Holding Entity.
- The building height standard variation sought under Clause 4.6 of PLEP 2010.

The identified key issues were raised with the applicant who has addressed these matters by submission of additional documentation or, where appropriate, the matters will be addressed via recommended conditions of consent.

The proposed development has a Capital Investment Value of \$111,197,688. Accordingly, pursuant to Schedule 6 of State Environment Planning Policy (Planning Systems) 2021, the proposal meets the category requirements of '*General development over \$30 million*' and is classed to be 'regionally significant development'. In accordance with Section 2.12 of the Environmental Planning and Assessment Act 1979, the Sydney Western City Planning Panel (SWCPP) is the determining authority for regionally significant development.

An assessment of the proposal under Section 4.15 of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for approval, subject to recommended conditions.

Site & Surrounds

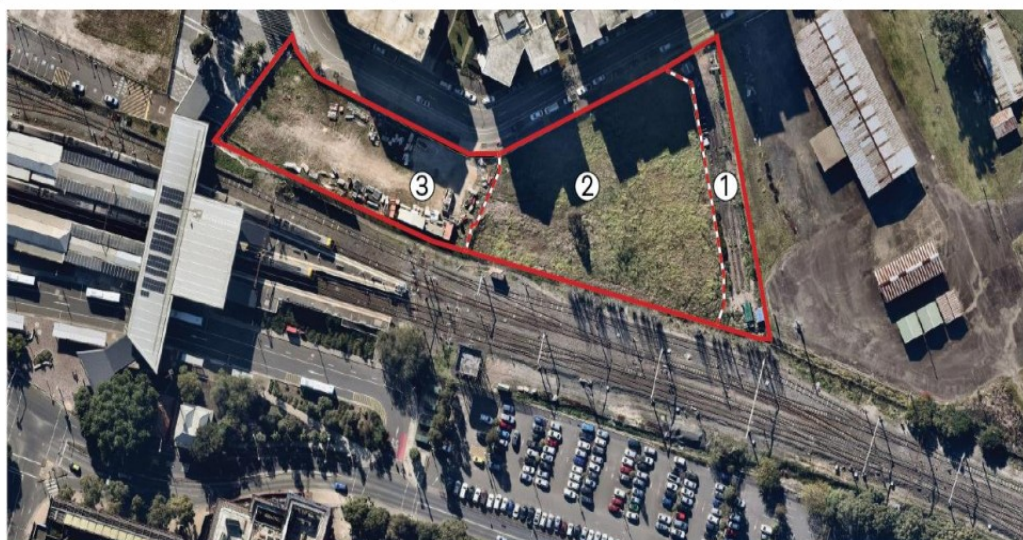
The subject site is located on the northern side of Penrith Railway Station and comprises three (3) lots legally described as Lots 3001, 3002 and 3011 in DP 1184498. The site is also known as 160-172 Lord Sheffield Circuit, Penrith.

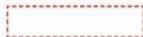
The site has frontage to Lord Sheffield Circuit along its northern boundary and the Western Railway Line along its southern boundary. Station Plaza which provides public entry to Penrith Railway Station adjoins the site to the west. Department of Defence owned land is located to the east.

The total site area is 8,281sqm. The site is irregular in shape and has a relatively flat topography. The site is currently vacant with the exception of the Thornton Community Garden located on Lot 3011. Development in the vicinity is predominantly newly constructed residential flat buildings, mixed use commercial and residential developments, single dwellings and terraces.

Below - Site Details and Aerial View of Site

Address	Legal Description	Area (approx.)	Map Reference <i>Refer to Figure 2</i>
160 Lord Sheffield Circuit	Lot 3011 DP 1184498	1136.4m ²	1
162 Lord Sheffield Circuit	Lot 3001 DP 1184498	4414.7m ²	2
172 Lord Sheffield Circuit	Lot 3002 DP 1184498	2726.7m ²	3



 The Site  Lot Boundaries ① Table 5 Lot Reference

Source: Statement of Environment Effects by Ethos Urban

The site has a number of easements including 11KV and 33KV electrical easements traversing the site and a rail electrical easement along the southern boundary related to the Western Railway Line corridor.

The site is identified as flood affected, including from both mainstream flooding and local overland flow flooding.

Background - Part 3A Concept Plan

In 2010 and 2011, the (then) NSW Department of Planning and Infrastructure undertook the assessment of a Transitional Part 3A Concept Plan (MP10-0075) and Stage 1A Project Application (MP10-0078) submitted by

Urban Growth NSW (formerly Landcom) for a mixed use and residential development relating to a 40 hectare site known as the Thornton Estate. A rezoning of the land for urban purposes was also sought concurrently.

The Concept Plan included provision for approximately 1,000 dwellings, 4,500sqm of retail floor space, 10,625sqm of commercial floor space, 7,000sqm of light industrial floor space, 7.2 hectares of open space and drainage and associated infrastructure. The Stage 1A Project Application included site preparation works, subdivision to create 120 lots and the construction of roads and supporting infrastructure.

The Transitional Part 3A Concept Plan and Stage 1A Project Application were approved by the Planning Minister on 9 November 2011, subject to the conditions listed in Schedule 2 and the Statement of Commitments listed in Schedule 3. The concurrent rezoning of the land was gazetted on 25 November 2011.

The subject site is located within Stage 3A of the Thornton Estate, being the Village Centre. A separate Stage 3A Project Application was approved under delegation by the NSW Department of Planning and Environment on 7 May 2014. This approval included subdivision to create 13 super lots for future residential, commercial and retail uses, a future bus corridor and construction of public spaces (McHenry Place and Station Plaza).

Proposal

The development application is for the construction of a ten (10) storey mixed use development comprising two (2) residential towers above a commercial podium, including:

- 287 x residential apartments;
- 14 x ground floor retail tenancies;
- 4,331sqm of commercial floor space;
- 1,794sqm of retail floor space;
- 331 residential car parking spaces and 79 retail car parking spaces over 3 basement levels;
- Communal open spaces and facilities;
- Public domain improvements; and
- Landscaping and stormwater works.

Consistency with Part 3A Concept Plan

A review of the subject proposal against the Part 3A Concept Plan conditions (Schedule 2) and the Statement of Commitments (Schedule 3) has been undertaken. The proposal is found to be generally consistent with the conditions under Schedule 2, however, the following matters are outlined below with regard to the consistency of the proposal with the Schedule of Commitments listed within Schedule 3.

Below - Consistency with Schedule 3 of Transitional Part 3A Concept Plan

Matter	Commitment	Comment	Compliance
Traffic and Access	Landcom will carry out the road works identified in Road Hierarchy Plan and dedicate those works on a stage by stage basis to Penrith City Council.	The road hierarchy of the Thornton Estate has been provided and dedicated to Council in accordance with the Major Project approval.	Complies
	<i>Responsibility/Timing:</i> To be demonstrated by the proponent at the time of any relevant detailed application.		
	Landcom will reserve land for a	Following the Concept Plan approval, a	Complies

bus underpass of the Western Rail Line to promote the future development of the CBD bus network.

separate lot (Lot 3011 DP 1184498) was created for the proposed bus underpass, which fulfils the commitment.

Landcom has since sold Lot 3011. Lot 3011 forms part of the site subject to this application.

The proposal includes an access driveway to the development via Lot 3011. The design of the development does not include the bus underpass or any intersection at Lord Sheffield Circuit for a future bus underpass.

Discussion has been held between the applicant and Transport for NSW (TfNSW) regarding this matter. A letter was sent to TfNSW during the assessment of the proposal specifically seeking comment on TfNSW's position regarding the bus underpass.

TfNSW in its letter dated 8 March 2023 has raised no objection to the proposed development and provided the following information:

'TfNSW does not have any plans over the subject property from a bus perspective however TfNSW commenced work on a Strategic Cycleway Corridors for Western Sydney Parklands City and until that work was complete was reluctant to relinquish any land reservation.

Following recent discussions with the applicant regarding the extent of landscaping and structures shown in the submitted landscaping plans as part of this development application, the applicant has provided amended concept landscaping plans within the easement which provides a 4m wide minimum clear width corridor that could be used to facilitate a future active transport crossing of the railway line. In this regard TfNSW provides in principle support for the amended landscaping plans but would require that the 4m corridor be constructed as a paved path

without any landscaping encroaching into this area for the entire length between Lord Sheffield Circuit and the railway line.'

TfNSW has requested a condition of consent for a 4m wide corridor (held under easement) along the eastern boundary to serve as an active transport connection between Lord Sheffield Circuit and the future link across the rail line. A condition of consent has been recommended in this regard.

Commercial premises will provide cyclist end-of-trip facilities in accordance with the Planning for Walking and Cycling (NSW Planning, December 2004).

End-of-trip facilities are provided in the basement (B1).

Complies

Responsibility/Timing: To be demonstrated by the proponent at the time of any relevant detailed application.

Landcom, through conditions on its future sales and tenancy agreements, will produce Transport Access Guides for new residents and require commercial tenants to produce Workplace Travel Plans for their employees and clients.

A condition of consent is recommended in this regard.

Able to comply.

Responsibility/Timing: To be demonstrated by the proponent at the time of any relevant detailed application.

Flooding The final ground surfaces will be at or above the regional 100 year ARI flood level of RL 25.4m AHD.

The finished ground levels vary across the site with the lowest being RL 26.95m AHD at the north-western corner of the site up to RL 28.0m AHD at the eastern end.

Complies

The minimum habitable floor level for the site will be RL 25.9m AHD, being 0.5m freeboard above the 1 in 100 year annual recurrence interval (ARI) flood event.

The finished floor level of the level 3 residential apartments is proposed to be RL 36.8m AHD.

Responsibility/Timing: To be demonstrated by the proponent at the time of any relevant detailed application.

Contamination	A Construction Environmental Management Plan (CEMP) is to be prepared which includes a site-specific Unexploded Ordnance Protocol (UOP), Unexpected Finds Protocol (UFP) and Soil and Water Salinity Management Plan. <i>Responsibility/Timing:</i> To be demonstrated by the proponent at the time of any relevant detailed application.	No CEMP has been provided. It is recommended that a condition of consent be imposed in this regard.	Able to comply.
Railway Corridor Matters	Development requiring excavation or other ground penetration of greater than 2m and within 25m of the rail corridor will be supported by Geotechnical and Structural Reports and information to meet Rail Corp's requirements. Fencing and landscaping within 20m of the rail corridor is to be endorsed by Rail Corp.	The application was supported by relevant information such as a Rail Interface Report, Piling Report, Geotechnical Report and Building Services Report. The application was referred to TfNSW (Sydney Trains) seeking concurrence. Concurrence has been given by TfNSW (Sydney Trains) on 6 October 2023, subject to conditions. The application was referred to TfNSW (Sydney Trains) seeking concurrence. Concurrence has been given by TfNSW (Sydney Trains) on 6 October 2023, subject to conditions.	Complies Complies
Employment Generation	Development on the site will include uses that generate at least 783 full time jobs. <i>Responsibility/Timing:</i> To be demonstrated by the proponent at the time of any relevant detailed application.	This commitment relates to key sites located within 400mm of the railway station. The subject site is identified within the applicable built form controls as a key mixed use site. The proposal includes delivery of 1,794sqm of retail floor space and 4,331sqm of commercial floor space, which will contribute to the quantum of full time jobs anticipated within the estate.	Complies
Noise and Vibration	Future development shall be generally consistent with the findings and the recommendations of the Noise and Vibration Assessment Report prepared by JBA Urban Planning Consultants Pty Ltd dated October 2010.	A condition of consent is recommended in this regard.	Able to comply.

The approved Concept Plan adopted Design Guidelines for development within the Thornton Estate. The Design Guidelines are now reflected in Penrith Development Control Plan (DCP) 2014, Chapter E11, Part B - North

Penrith. A review of the subject proposal against Penrith DCP has been undertaken and discussion in this regard is provided under the DCP section of this report.

Architectural Design Competition

In accordance with Clause 8.4 of Penrith LEP 2010, an Architectural Design Competition was held for the development of the site. The winning scheme by SJB Architects was subject to refinement as requested by the Architectural Design Jury. Final endorsement of the design by the Architectural Design Jury has been received. The design subject to this application is substantially the same design that was subject to the Architectural Design Competition process. Further details on the Architectural Design Competition are provided under the Penrith LEP Clause 8.4 section of this report.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- 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 (Planning Systems) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- State Environmental Planning Policy No 65—Design Quality of Residential Flat Development

Planning Assessment

- **Section 2.12 – Sydney Western City Planning Panel (SWCPP)**

In accordance with Section 2.12 of the Environmental Planning and Assessment Act 1979, the Sydney Western City Planning Panel (SWCPP) is the determining authority for this application as the proposal is identified as regionally significant development under State Environment Planning Policy (Planning Systems) 2021.

The proposal is defined as a mixed use development, including residential accommodation and commercial premises, and the documents submitted with the application identify that the proposal has a Capital Investment Value of \$111,197,688. Accordingly, pursuant to Schedule 6 of State Environment Planning Policy (Planning Systems) 2021, the proposal meets the category requirements of '*General development over \$30 million*' and is classed to be 'regionally significant development'.

The SWCPP was briefed on the development proposal on 13 February 2023.

- **Section 4.15 - Evaluation**

The proposed development has been assessed in accordance with the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, and having regard to such, the following matters have been identified for consideration.

- **Section 4.46 - Integrated development**

The development application was not submitted as integrated development in accordance with Section 4.46

of the Environmental Planning and Assessment Act 1979, and therefore concurrent approval has not been sought in this regard under this application.

A Geotechnical Investigation by EI Australia, Reference No. E25358.G03_Rev1, dated 4 November 2022 was submitted in support of the application.

The report states:

"...the proposed development involves the construction of a ten storey mixed use development overlaying three levels of basement. The lowest basement level is proposed to have a finished floor level of RL 18.15. The Bulk Excavation Level (BEL) is assumed as RL 17.80 to allow for the construction of the basement slab. To achieve the BEL, an excavation depth up to 9.2m to 10.20m Below Existing Ground Level is expected. Locally deeper excavations may be required for footings, service trenches, crane pads, and lift overrun pits."

Section 3.2 of the report provides the following table outlining groundwater observations and levels at each borehole.

3.2 Groundwater Observations

Groundwater seepage was observed during auger drilling of all boreholes. Following completion of auger drilling, the boreholes were left open and one groundwater monitoring well was installed in BH4M and bailed dry. The groundwater observations are detailed as per **Table 3-2** below:

Table 3-2 Groundwater Levels

Borehole ID	Groundwater Seepage Level During Augering	
	m BEGL	RL (m AHD)
BH1	6.00	21.50
BH2	7.10	20.30
BH3	6.45	21.05
BH4M	7.00	20.60
BH5	7.10	20.40
BH6	7.60	20.20

Borehole ID	Measurement Date	Depth to Groundwater (m BEGL)	Groundwater RL (m AHD)
BH4M	15/12/2021	7.10	20.50
	15/07/2022	6.10	21.50

We note that the groundwater levels may not have become evident or stabilised in the augered boreholes within the limited observation period. No long term groundwater monitoring was carried out. Water circulation due to coring within the boreholes prevented further observations of groundwater levels.

The report concludes that based on the investigations undertaken, that ground water will be within the depth of the excavation works for the basement.

Given the findings of the geotechnical investigations, a controlled activity approval under Section 91 of the Water Management Act for aquifer interference is required. It is recommended that a condition of consent be imposed requiring approval from NSW Water prior to the commencement of works on the site.

Section 4.15(1)(a)(i) The provisions of any environmental planning instrument

State Environmental Planning Policy (Biodiversity and Conservation) 2021

An assessment has been undertaken of the proposal against relevant criteria under Chapter 6 - Water Catchments of State Environmental Planning Policy (Biodiversity and Conservation) 2021.

The development site will be connected to the existing formed roadway drainage system that has been installed as part of the formation of the road network for the Thornton Estate. This drainage infrastructure contains a community wetland as part of the stormwater management system for the estate.

Stormwater quality for the proposal can therefore be managed by the precinct system. Based on the stormwater treatment being catered for within the community stormwater treatment system, no on-site devices are required. The estate Water Cycle Management Strategy includes a requirement that prior to the Construction Certificate stage of a development within the precinct, a detailed management strategy which details how the wetland and central water feature will be protected during the civil and housing construction stages is to be prepared. A condition of consent is recommended in this regard.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ensures the implementation of the BASIX scheme which encourages sustainable residential development. It requires certain kinds of residential development to be accompanied by a list of commitments to be carried out by applicants.

BASIX Certificate No. 1334150M_02, dated 10 November 2022, was submitted in support of the application demonstrating compliance with set sustainability targets for water use, energy efficiency and thermal comfort. Proposed BASIX commitments include a photovoltaic system on the roof to generate at least 80.0 peak kW, water saving fittings, 220kL water storage (two tanks) for landscaping irrigation and insulation. Implementation of the BASIX commitments will be secured via a recommended condition of consent.

State Environmental Planning Policy (Planning Systems) 2021

The proposal is defined as a mixed use development, including residential accommodation and commercial premises, and the documents submitted with the application identify that the proposal has a Capital Investment Value of \$111,197,688. Accordingly, pursuant to Schedule 6 of State Environment Planning Policy (Planning Systems) 2021, the proposal meets the category requirements of '*General development over \$30 million*' and is classed to be 'regionally significant development'. In accordance with Section 2.12 of the Environmental Planning and Assessment Act 1979, the Sydney Western City Planning Panel (SWCPP) is the determining authority for regionally significant development.

State Environmental Planning Policy (Resilience and Hazards) 2021

State Environmental Planning Policy (Resilience and Hazards) 2021 includes aims to provide a framework for the assessment, management and remediation of contaminated land throughout the state.

Section 4.6(1) of the SEPP prevents consent authorities from consenting to a development unless it has considered whether the land is contaminated and is satisfied that the land is suitable (or will be suitable, after remediation) for the purpose for which development is proposed to be carried out.

A Detailed Site Investigation (DSI) was submitted with the application. The DSI included soil and ground water sampling and analysis in accordance with NSW EPA guidelines. The sampling density is in accordance with the Sampling Design Contaminated Land Guidelines.

Key findings of the DSI include:

- Concentrations in groundwater of copper, nickel and zinc were found to be above NEPC 2013 and ANZG 2018 criteria, however, the levels were low and consistent with naturally expected background levels in an urban environment. The levels are not considered to pose a risk to human health or the environment in terms of the proposed development (levels in soil were low).
- PAHs (as BaP) were detected in the shallow fill layer at Borehole 108 (located in the south-eastern portion of the site directly adjacent to the rail corridor). The DSI further considered and assessed this exceedance to determine the 95% Upper Confidence Level in accordance with the EPA Contaminated Land Sampling Design Guidelines and this further analysis determined that the presence of BaP is within the Health Investigation Level (HIL) criteria that applies to the development (HIL B for ground floor commercial development with residential above ground). The development includes three levels of basement car parking to a depth of approximately 9.5m BGL which requires removal of the BaP impacted fill material from the site.
- A minor quantity of slag was detected in Borehole 112.

The DSI concludes that the site is suitable for the proposed development giving consideration to the NEPM HIL criteria that applies for open space areas, as well as commercial ground floor use with residential above. The DSI recommends:

- A Construction Waste Management Plan be prepared and that excavated waste material be classified and removed from the site.
- Material imported to the site be VENM.
- An Unexpected Finds Protocol be developed.

Council's Environmental Management Officer has reviewed the DSI and considers it satisfactory. The proposal is deemed to satisfy the provisions of Section 4.6(1) of State Environmental Planning Policy (Resilience and Hazards) 2021, subject to recommended conditions of consent.

State Environmental Planning Policy (Transport and Infrastructure) 2021

The development proposal was referred to the relevant public authorities in accordance with the requirements of State Environmental Planning Policy (Transport and Infrastructure) 2021, as outlined below.

• Division 5 - Electricity transmission or distribution

Section 2.48 - Determination of development applications - other development

Section 2.48 of the SEPP relates to development within or adjacent to an easement for electricity purposes and states that the consent authority must:

(a) give written notice to the electricity supply authority for the area in which the development is to be

carried out, inviting comments about potential safety risks, and

(b) take into consideration any response to the notice that is received within 21 days after the notice is given.

The development application was referred to Endeavour Energy for its review on two occasions during the assessment period. In letters dated 29 November 2022 and 7 February 2023, Endeavour Energy raised no objection to the development proposal subject conditions of consent.

- **Division 15 - Railways**

Section 2.98 - Development adjacent to rail corridors

Section 2.98 of the SEPP relates to development on land that is in or adjacent to a rail corridor, if the development is located within 5m of an exposed overhead electricity power line that is used for the purpose of railways or rail infrastructure facilities and states that the consent authority must:

(a) within 7 days after the application is made, give written notice of the application to the rail authority for the rail corridor, and

(b) take into consideration -

(i) any response to the notice that is received within 21 days after the notice is given, and

(ii) any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.

Section 2.99 - Excavation in, above, below or adjacent to rail corridors

Section 2.99 of the SEPP relates to development that involves the penetration of ground to a depth of at least 2m below existing ground level within 25m (measured horizontally) of a rail corridor and states that the consent authority must:

(a) within 7 days after the application is made, give written notice of the application to the rail authority for the rail corridor, and

(b) take into consideration -

(i) any response to the notice that is received within 21 days after the notice is given, and

(ii) any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.

In response to Section 2.98 and Section 2.99 of the SEPP, the development application was referred to Sydney Trains for its review and comment. In its letter dated 6 October 2023, Sydney Train provided concurrence to the development, subject to conditions of consent.

Section 2.100 - Impact of rail noise or vibration on non-rail development

Section 2.100 of the SEPP relates to development for the purposes of residential accommodation adjacent to a rail corridor in relation to the likely adverse effect of rail noise or vibration. The consent authority must be satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:

(a) in any bedroom in the residential accommodation - 35dB(A) at any time between 10pm and 7am,

(b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway) - 40 dB(A) at any time.

Council's Environmental Management Officer has reviewed the submitted Noise Impact Assessment prepared by Pulse White Noise Acoustics (Report No. 220387, Revision 4, dated 8 May 2023) and confirmed the above criteria can be achieved, subject to the recommendations within the report and through the imposition of recommended conditions of consent.

State Environmental Planning Policy No 65—Design Quality of Residential Flat Development

State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development aims to improve the design quality of residential apartment development in New South Wales. In particular, the SEPP requires consideration of the design quality of residential apartment development when evaluated in accordance with the 'Design Quality Principles' of the SEPP and the Apartment Design Guide (ADG).

Design Quality Principles

An assessment of the proposal against the 'Design Quality Principles' of the SEPP is provided in the table below.

Design Quality Principles		Discussion
Principle 1: Context and Neighbourhood Character	Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions. Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.	The proposal is a ten (10) storey mixed use development comprising two (2) residential towers above a commercial podium within an E1 Local Centre zone. This is an appropriate land use for the site as it complements other mixed use developments in the area and is in accordance with the future vision of the Penrith City Centre in that it provides residential accommodation above commercial uses. The proposal is one of the last sites to be developed in the Thornton Estate and fulfils the vision as set out in the Major Project Approval and Concept Plan. The siting of the proposed building has responded to the adjoining railway line and the orientation and shape of the site. The development is considered appropriate and compatible within the local context of the estate and City Centre location.

Principle 2: Built Form and Scale	Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings. Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.	The proposed development was the winning scheme of a competitive design competition. The competition jury stated key aspects that were fundamental in the design achieving design excellence including the following: • Elegant building form; • Constructive responses to environmental constraints; • Effective residential layout; • Passive and fully integrated facades as environmental filters; • Consolidation of communal recreation areas on the rooftop; • Integrated colonnade and opportunities for personalisation of shopfronts; and • Landscaping. The proposed building height exceeds the 32m permitted under the Penrith LEP and this has been supported by a well founded written request for variation under Clause 4.6 of the LEP. Two residential towers sit over a two storey podium. The podium allows for a double height activated pedestrian colonnade at the ground level along Lord Sheffield Circuit. The setback to Station Plaza is varied and provides activated retail tenancies as an interface with the entry to the railway station. The linear building form is responsive to environmental constraints such as acoustics from the western railway line and western summer sun. The building design has achieved design excellence and provides a quality gateway interface to and from the Penrith Rail and Bus interchange and CBD.
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Principle 3: Density	Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context. Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.	The development proposes 287 apartments across two towers, 4,331sqm of commercial floor space at the first floor level and 1,794 sqm of retail floor space at the ground floor level, on a site that is 8,281sqm in area. The North Penrith Concept Plan approval provided for approximately 1,000 residential dwellings, 10,625sqm of commercial floor space and 4,500sqm of retail floor space. At the time, a draft SEPP to rezone the Thornton Estate land was prepared to enable the development proposed under the Concept Plan. The LEP amending SEPP was made on 25 November 2011 and rezoned the land and set maximum building heights. Although the Part 3A approval was for approximately 1,000 dwellings, 16 super lots were created in the Village Centre for higher density residential development. In July 2011, a Memorandum of Understanding was signed between Penrith City Council and Landcom to collectively pursue the provision of higher order employment and higher rise residential development on the land. As envisaged by Council, the Thornton Estate has been successful in delivering higher density residential development. The density of residential dwellings under this proposal is appropriate for the location adjoining a major transport corridor.
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Principle 4: Sustainability	Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and re-use of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.	The linear design west to east maximises the northern aspect to apartment living and private open spaces, resulting in 69.9% of apartments achieving required solar access. In addition, cross ventilation is achieved to 60.9% of apartments. Roof top communal open space is provided with extensive landscaping elements. Other landscaping elements are provided over the structure and along facade edges. On-site rainwater detention and re-use is proposed for landscaping. The proposal is accompanied by a BASIX Certificate attesting to energy efficient lighting, water efficient fixtures and a photovoltaic system (80.0 peak kW). The development is in close proximity to public transport (i.e. rail and bus services) and secure bicycle parking and end of trip facilities are incorporated into the design.
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Principle 5: Landscape	Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood. Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.	Landscaping elements have been incorporated into the building and site design. The roof top communal space is provided with extensive landscaping, including non-trafficable green roof areas. The roof top design and landscaping creates various spaces for social gathering, relaxation and exercise. Non-trafficable green roof space is also provided at the podium roof which wraps around the southern and eastern sides of the building. This provides a green outlook for apartments overlooking this space and softens the building from the public domain of Penrith CBD and Penrith railway station. Landscaping is also provided within the ground floor pedestrian colonnade (colonnade planters at level 1), community forecourt and community garden area along the eastern boundary, as well as street tree planting. The community forecourt provides a destination marker for the development. It includes a central water feature, seating, quality paving and lighting. The community garden will be the new public offering to replace the current Thornton Community Garden which is currently located on the vacant site. It provides an opportunity for residents and the broader community to come together and grow food. The species list provided for the development includes a mix of natives and exotics suited to the Penrith climate. The City Centre location restricts deep soil opportunities. Deep soil is provided along the eastern and southern boundaries. The southern boundary is restricted and cannot support canopy planting due to the rail corridor easement. Canopy planting is provided along the eastern boundary at ground level (no planter boxes or seating is permitted by TfNSW). Planting on the podium and roof is provided within adequately sized planter boxes.
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Principle 6: Amenity	Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.	The proposed apartments generally comply with the core ADG provisions, including cross ventilation, solar access, privacy / separation, apartment sizes and storage.
Principle 7: Safety	Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety. A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.	The building has been designed with apartment's living areas and private open spaces overlooking Lord Sheffield Circuit, the western railway line or east over the community garden/driveway, which provides good passive surveillance of these areas. The lobbies are large and subject to lighting, provide clear views from the public domain. Secure parking is provided on-site for residents and access is via a driveway along the eastern boundary. The roof top communal open space area is for use by residents only. No public access is permitted. A condition of consent is recommended for lighting in common spaces.

Principle 8: Housing Diversity and Social Interaction	Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets. Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.	The proposal provides a suitable mix of 1 bedroom (58 units - 20.2%), 2 bedroom (182 units - 63.4%) and 3 bedroom (47 - 16.4%) apartments. A mix of unit sizes is provided at each level of each residential tower. There are 29 apartments designed to be adaptable. Social interaction opportunities are provided at the roof top communal open space. This area has a mix of spaces including a swimming pool, dining spaces, bench areas and more intimate booth areas. Lobby spaces at lift cores are generous and allow for positive interactions between residents. The public domain at the ground floor community forecourt is also a key meeting place for residents and their friends and family.
Principle 9: Aesthetics	Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures. The visual appearance of a well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.	The proposed development was subject to a design competition and has achieved design excellence endorsement from the design jury due to the following aspects: • Elegant building form; • Constructive responses to environmental constraints; • Effective residential layout; • Passive and fully integrated facades as environmental filters; • Consolidation of communal recreation areas on the rooftop; • Integrated colonnade and opportunities for personalisation of shopfronts; and • Landscaping.

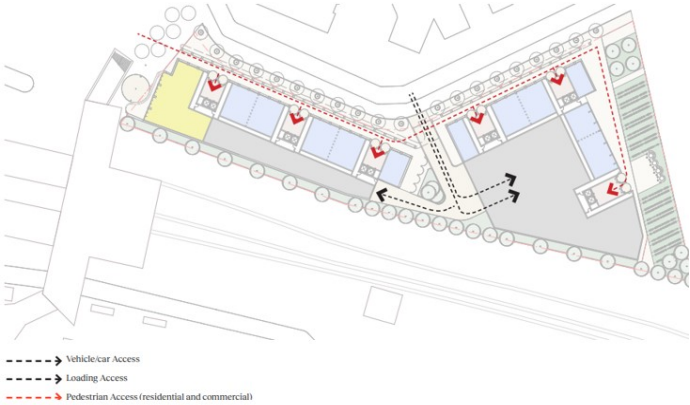
Apartment Design Guide

An assessment of the proposal against the Apartment Design Guide (ADG) is provided in the ADG appendix to this report. The table below highlights areas of non-compliance or partial compliance.

Areas of ADG Non-Compliance or Partial Compliance			
Part	Objective	Discussion	Compliance

3F-1	Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy. The design criteria requires: - Up to 12m (4 storeys) - 6m to habitable (H) and 3m to non-habitable (NH); - Up to 25m (5-8 storeys) - 9m (H) and 4.5m (NH); and - Over for 25m (9+ storeys) - 12m (H) and 6m (NH).	Separation distances are as follows: 0m to Lord Sheffield Circuit. The road reserve provides the required separation. 0m to western boundary. No development on the public space of the plaza. 1.5m to the railway corridor to the south. No development on the rail corridor. 12m minimum separation to the eastern boundary. Future development potential on the adjoining site. The separation distance between the two residential towers from level 2 to level 9 is at the narrowest point approximately 3.5m, up to 7m as depicted in the image below. At the narrowest point of 3.5m at levels 2-9 (12.75m to 31.35m) there is a technical non-compliance. The 4.5m-6m separation distance required from the non-habitable room (in this case a corridor/hallway) in the east tower to a blank wall of the west tower is not achieved. It has however been assessed to be acceptable in this instance as no privacy or acoustic impacts are anticipated from the non-compliance. 	Yes - to site boundary. Partly - separation between building on same site.
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4A-1	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space. The design criteria then states that: • Living rooms and private open spaces of at least 70% of apartments to receive 2 hours direct sunlight between 9am and 3pm mid-winter; and • A maximum of 15% of apartments receive no direct sunlight	The architectural plans include plans showing solar access to individual apartments, a solar access schedule and views from the sun. These show that 200 of the total 287 apartments will achieve compliance with the design criteria. This equates to 69.9%. Although this is technically a non-compliance with the 70% requirement, it is marginal in the context of the overall development. A total of 62 of the 287 apartments do not receive solar access in mid-winter. This equates to 21.6%, which is more than the 15% maximum under the ADG. The majority of apartments are north or east facing. There are no south facing single aspect apartments proposed. The apartments that do not receive solar access in mid-winter (seen in the image below) are shallow dual or triple aspect (south-west or south-east) apartments, which allows secondary light in mid-winter and solar access at other times of the year.  This is the result of the design strategy used for the built form, particularly as an acoustic shield and maximises northerly aspect to the majority of apartments. Given other amenity benefits offered by the development, including north facing roof top communal open space, ground floor community garden on the eastern side of the development and the physical acoustic barrier the building provides to other developments within the area, this is assessed to be acceptable in this instance.	Yes - partly
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4F-1	Common circulation spaces achieve good amenity and properly service the number of apartments. The design criteria states that no more than 8 apartments can be accessed off a circulation core. The design guidance suggests that greater corridor widths improve amenity, daylight and natural ventilation should be provided, and primary windows should not open onto the corridor.	Circulation area around lift cores is between approximately 1.8m to 2.2m. Lift cores have 2 to 3 lifts. Lift cores with two lifts service 48 apartments and the eastern lift core with three lifts services 104 apartments. The eastern lift core with three lifts services 13 apartments per floor. This is more than the ADG requirement of 8. The current design is a direct result of feedback from the Design Jury and refined recommended to relocate the vehicles asses to the eastern edge of the site to avoid conflict through the centre colonnade as per the design competition scheme. The design competition scheme also did not allow direct street access to the eastern residential lobby from Lord Sheffield Circuit and raised potential safety/passive surveillance issues. The image below reflects the design competition scheme access points. For these reasons, the proposal is assessed to be acceptable in this regard. 	Yes - partly
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Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Complies
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies - See discussion
Clause 2.5 Additional permitted uses for particular land	Complies - See discussion
Clause 4.3 Height of buildings	Does not comply - See discussion
Clause 4.4 Floor Space Ratio	Complies - See discussion
Clause 4.6 Exceptions to development standards	Complies - See discussion
Clause 5.10 Heritage conservation	Complies - See discussion
Clause 5.21 Flood planning	Complies - See discussion
Clause 7.1 Earthworks	Complies - See discussion
Clause 7.4 Sustainable development	Complies - See discussion
Clause 7.6 Salinity	Complies - See discussion
Clause 7.7 Servicing	Complies - See discussion
Clause 7.30 Urban Heat	Complies - See discussion
Clause 8.1 Application of Part	Complies
Clause 8.2 Sun access	Complies - See discussion
Clause 8.4 Design excellence	Complies - See discussion
Clause 8.5 Building separation	Complies
Clause 8.7 Community infrastructure on certain key sites	Complies - See discussion
Schedule 1 Additional permitted uses	Complies - see Appendix - LEP 2010

Clause 2.3 Permissibility

'Commercial premises' are a permitted land use under the E1 Local Centre zone. Clause 2.5 - Additional permitted uses and Schedule 1 at Clause 23(1)(h) identifies 'residential flat buildings' as a permitted land use on the subject site. Each of the proposed land uses are therefore permitted with consent.

Clause 2.3 Zone objectives

The objectives of the E1 Local Centre zone are:

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.*
- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*
- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To provide retail facilities for the local community commensurate with the centre's role in the local and regional retail hierarchy.*
- *To create opportunities to improve the public domain and encourage the integration of centres with public transport and pedestrian networks.*
- *To promote development that is of a size and scale that is appropriate to meet local needs and does not adversely affect the amenity or character of the surrounding residential neighbourhood.*

The proposed development complies with the zone objectives in that it provides a flexible business space, a range of retail premises, a community garden and residential accommodation all within close proximity to public transport. The retail and commercial levels of the development provide local employment opportunities, while the ground floor retail and pedestrian promenade provide for an active and vibrant social place to meet the local needs of the Thornton Estate's community.

Clause 2.5 Additional permitted uses for particular land

Clause 2.5 stipulates that development on particular land that is referred to in Schedule 1 may be carried out with development consent. The subject site is described as Lots 3001, 3002 and 3011 in DP 1184498 and is identified in Schedule 1 under Clause 23(1)(h) as Site 22. Additional permitted uses for the land include residential flat buildings.

Clause 4.3 Height of buildings

Clause 4.3 of the LEP establishes a 32m building height for the site.

The proposed development is inconsistent with the maximum building height of 32m. The proposed height is 40.54m, which is 8.54m (26%) over the maximum building height for the site. A written request for a variation under Clause 4.6 - Exceptions to development standards is provided in support of the application. Refer to Clause 4.6 - Exceptions to development standards and Clause 8.4 - Design excellence for further discussion regarding the proposed height variation.

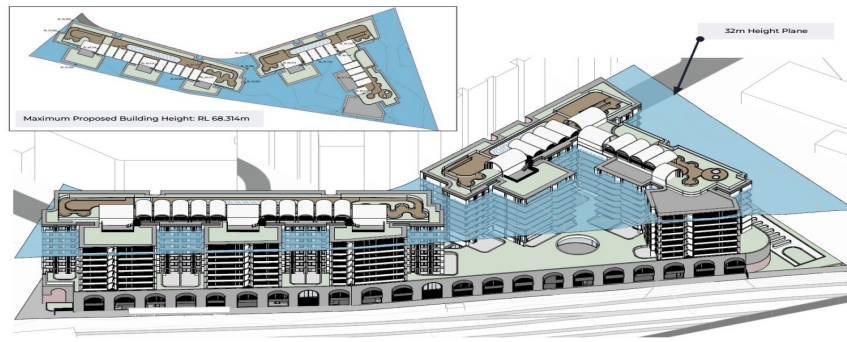
Clause 4.4 Floor Space Ratio

There is no FSR standard applicable to the site.

Clause 4.6 Exceptions to development standards

Clause 4.6 of the LEP provides flexibility in the application of planning provisions operating as development standards in circumstances where strict compliance with those standards would, in particular cases, be unreasonable or unnecessary.

The Height of Building (HOB) map identifies a maximum height of 32m for the site. The proposal does not comply with this HOB standard. The HOB proposed is 40.54m which exceeds the maximum building height by 8.54m or 26.7%.



Above - Protrusion above 32m maximum HOB.

Clause 4.6 states under sub-clause (2) that development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environment planning instrument. Sub-clause (3) states that development consent must not be granted for a development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant has submitted a written request to vary the HOB standard in accordance with the requirements of Clause 4.6. The written request to vary the HOB development standard provides the following summarised justification for the proposed contravention:

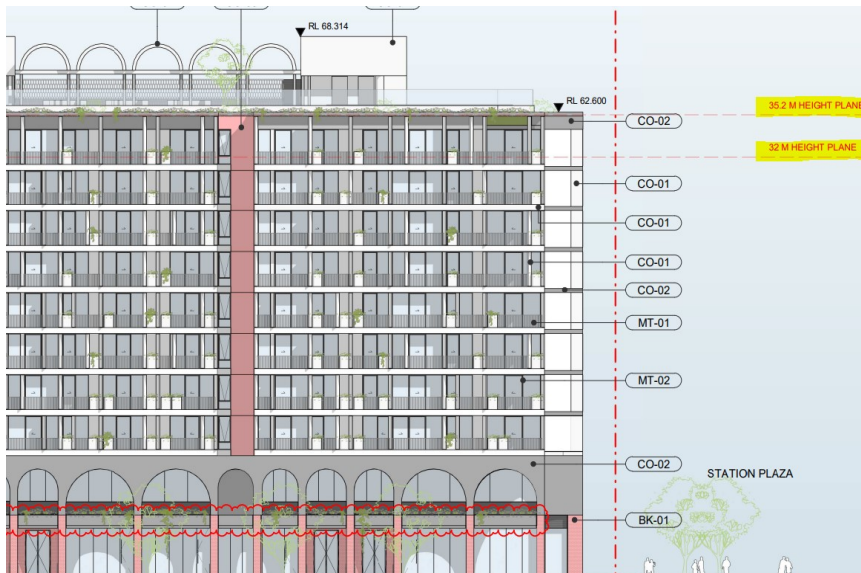
The proposal, despite the numerical non-compliance identified, remains consistent with the objectives

Objective (a) - Ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality.

- The bulk and height of the proposed development is commensurate with the form of the existing buildings that front Lord Sheffield Circuit to the immediate north.
- The design of the development includes a ratio of solid and void and other articulating elements to provide relief from the scale of the built form.
- The site specific design of the built form responds to site constraints and the desired interface outcomes to Station Plaza and pedestrian amenity across the ground plane.

Objective (b) - Minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas, including parks, streets and lanes.

- The height exceedance is largely attributed to elements of the building which fall within the bonus height allowance under Clause 8.4(5) of the LEP which allows a height up to 35.2m (see first figure below). Projections above this bonus height allowance of 35.2m are limited to roof structures and lift overruns, which are generally recessed back from the building facade and will not be visually prominent from the public domain (see second figure below).



Above - Elevation extract to show HOB and bonus height under Clause 8.4.



Above - View from Lord Sheffield Circuit towards Station Plaza.

- The development provides a visual barrier between the surrounding area and the railway corridor, which is not a visually desirable feature.
- There will be no additional overshadowing or reduction to solar amenity to any private residential dwellings or public open space (Station Plaza). The extent of the shadow footprint that will be cast from the development is generally restricted to the south adjacent to the railway corridor, the railway station and the associated at grade car park on the southern side of the railway corridor (see figure below).



Above - Shadow diagram extracts.

Objective (c) - Minimise the adverse impact of development on heritage items, heritage conservation areas and areas of scenic or visual importance.

- The submitted Heritage Impact Statement (HIS) supports the development proposal and provides an assessment of the development's potential impacts on nearby heritage listed items. The HIS confirms that the proposal will not have any adverse impact on surrounding heritage items based on the physical appearance of the development and consistency with surrounding developments.

Objective (d) - Nominate heights that will provide a high quality urban form for all buildings and a transition in built form and land use intensity.

- The bulk and height of the proposed development is consistent with the form of the existing buildings that front Lord Sheffield Circuit and is reasonably anticipated in relation to the character and form of

the surrounding developments, particularly given the LEP nominated Key Site immediately to the west.



Above - View from west of the site along Lord Sheffield Circuit.

- The bulk and height of the East Tower and the West Tower is necessary to deliver any appropriate quantity and range of residential apartments at the site, given its immediacy to Penrith Railway Station, the Station Interchange and employment opportunities in the CBD. This aligns with Penrith Local Strategic Planning Statement and its principles.
- The development site occupies a prominent location at the interface between the Thornton Estate, Penrith Railway Station and Penrith CBD. The scale, height and density of the proposed development responds to the transit context of the site, where an uplift in development yield is warranted and anticipated.

Environmental Planning Grounds

- The site is located along a sensitive residential interface between the Thornton Estate and the western railway corridor. The development presents a tactful and well considered design resolution to maintain residential amenity.
- The proposed height variation will not result in any unacceptable overshadowing to surrounding residential dwellings, or the public domain, including Station Plaza.
- The proposal is consistent with the objectives of the E1 Local Centre zone, and does not present an outcome for the site that is discordant with the height, bulk and scale of the existing and desired future character of the area.
- The proposal will develop a site that is currently vacant and will maximise land use opportunities next to Penrith Railway Station.
- The proposal development presents a high quality outcome for the site that satisfies the objectives of Clause 4.3 of the LEP and the E1 zone.
- The rooftop space has been designed to minimise the additional building mass associated with the proposed height variation, especially given no additional overshadowing of residential dwellings or public open space, no reduction in solar amenity and building elements at the roof level are recessed back from the edge of the building facade and therefore will not be prominent or visible when observed from the public domain.
- Technical information confirms no adverse environment impacts will result from the proposed height variation.

The proposed development and height variation is deemed satisfactory as the proposal aligns with the strategic objectives for the Thornton Estate. This is demonstrated by:

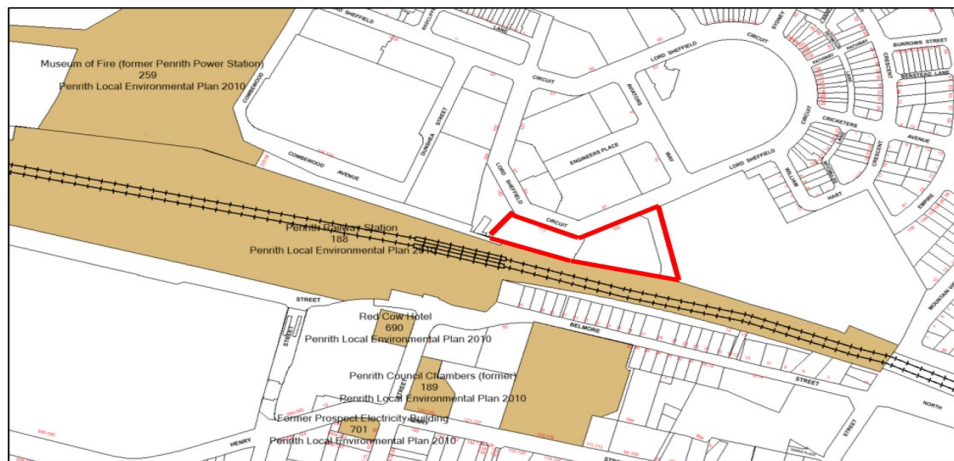
- Consistency with the higher density residential/commercial/retail floor space anticipated in the 'Town Centre' under the Major Projects Master Plan for the estate;

- Consistency with the Penrith LEP's anticipated density and land uses adjoining the railway corridor; and
- The height breach above the Clause 8.4 bonus generally relates to additional residential amenity of the roof top communal open space, being the inclusion of shade structures, and lift and stair overruns which are contained within the central section of the roof area and have minimal, if any, visual impacts from the public domain.

Overall, in considering the submitted Clause 4.6 variation request, it is concluded that the applicant's written request has adequately demonstrated that compliance with the applicable development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. Furthermore, the proposed development will be in the public interest as it is not inconsistent with the objectives of the standard or the E1 zone objectives.

Clause 5.10 - Heritage conservation

Clause 5.10 of the LEP provides policy direction on heritage conservation within the Penrith area. This clause applies as the site is adjacent to and in close proximity to a number of heritage items identified in Schedule 5 - Environmental heritage.



Above - Extract from Penrith LEP 2010, Schedule 5 (heritage items in the vicinity of the site).

State Items

- Penrith Railway Station Group (SHR 01222) (item 188)

Local Items

- Museum of Fire - Penrith Power Station (former) (item 259) - 1 Museum Drive, Penrith
- Red Cow Hotel (item 690) - 569-590 High Street, Penrith
- Penrith Council Chambers (former) (item 189) - 129-133 Station Street, Penrith
- Tafe Building (item 689) - 115-119 Henry Street, Penrith
- Former Prospect Electricity Building (item 701) - 59 Station Street, Penrith

The application was supported by a Heritage Impact Statement (HIS) prepared by Weir Phillips (dated 25 October 2022) which outlines the heritage significance of the surrounding items and concludes that the proposed development will not have a detrimental impact on the heritage significance on the adjacent items and items in the vicinity of the site.

Sub-clause (5) requires that the consent authority must, before granting consent, consider the effects of the proposed development on the heritage significance of the adjacent items and items in the vicinity of the site.

The subject site is in a landmark position being along the Penrith railway corridor and is surrounded by historic items, within significant historic vistas. The heritage features of the surrounds have been respected by the proposal. The proposal is of a contemporary design, which is suitable for the Thornton Estate, with features which do not compete with the heritage items adjacent. The built form has been appropriately sited and articulated to not obstruct views or vistas of heritage items, therefore conserving the curtilage.

The proposal was considered by Council's Heritage Advisor who was concerned in relation to the impact of the proposal on the 19th century railway station and station master's cottage as a result of the height and length of the development. A recommendation from Council's Heritage Advisor to mitigate impacts on the heritage items is for landscape screening (including canopy trees) along the southern boundary of the site, which may require a reduction to the podium size to allow for the required deep soil needed.

An assessment has been carried out of the development proposal and impacts on adjacent items and items in the vicinity of the site. Consideration has been given to the recommendation from Council's Heritage Advisor, however, given the site's constraints including a narrow lot width, rail corridor easement along the southern boundary and the limited availability of solar access for landscape screening, it was considered unreasonable in the circumstances.

As a compromise, the applicant has offered to provide public art along the southern exterior of the building. The public art offer was discussed with Council's Heritage Advisor who would prefer a green wall backdrop. Given the Sydney Trains restrictions along this edge of the site, this may not be possible. A condition of consent has been recommended that the treatment to the southern facade podium is to be designed in consultation with Council's Heritage Adviser and could include a green wall or a design treatment of the fabric of the wall or arched openings.

Clause 5.21 - Flood planning

The objectives of Clause 5.21 of the LEP are as follows:

- (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.*

Council's Development Engineer has reviewed the proposal and supporting information and raises no concerns with the proposal from a flooding perspective.

As per the Department of Planning and Environment's (DPE) guideline, any development application proposing to increase the capacity of a development by more than 150 dwellings, or 200 employee vehicles for a commercial development, requires referral to Infrastructure NSW (INSW) and the NSW State Emergency Service (SES) to determine if the development will exceed the capacity of evacuation routes.

The application was referred to DPE who coordinated referrals with SES and INSW for their review and comment. Both authorities raised no objections on flood evacuation grounds in their respective responses dated 23 December 2022 and 21 December 2022.

Clause 7.1 Earthworks

The proposed earthworks include site preparation works and excavation works required for the construction of the basement and relocation/installation of services and infrastructure.

Clause 7.1(3) of the LEP requires that prior to granting development consent for earthworks, the consent authority must consider the following:

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,*
- (b) the effect of the proposed development on the likely future use or redevelopment of the land,*
- (c) the quality of the fill or the soil to be excavated, or both,*
- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties,*
- (e) the source of any fill material and the destination of any excavated material,*
- (f) the likelihood of disturbing relics,*
- (g) the proximity to and potential for adverse impacts on any waterway, drinking water catchment or environmentally sensitive area,*
- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development,*
- (i) the proximity to and potential for adverse impacts on any heritage item, archaeological site, or heritage conservation area.*

The proposal is assessed not to be in conflict with any of the matters listed above. Council's Development Engineer has reviewed the proposal and raised no concerns with regard to drainage, soil stability or impacts on waterways. The proposed development will not result in negative impacts on likely future uses and does not include a proposal to introduce fill to the site.

The development application was lodged with a Geotechnical Report which concludes the site is suitable for the proposed development.

The Concept Plan Major Projects Approval also found the site suitable for development and assessed impacts related to waterways, heritage and likelihood of relics and archaeological potential at the site. Notwithstanding this, standard conditions of consent are recommended with regard to unexpected finds, validation and disposal of fill material, sediment and erosion control and dust suppression.

Furthermore, a condition requiring the submission of a dilapidation report surveying civil infrastructure in the locality is recommended to ensure that construction works, including those related to soil removal, will not result in damage to existing infrastructure, and where this occurs, this will enable it to be identified and rectified by the applicant/developer.

Clause 7.4 Sustainable development

The proposal has been assessed against the principles of sustainable development and is considered to be suitable in this regard. The proposal provides a site responsive design with suitable solar access and cross ventilation achieved, and is located in close proximity to Penrith Railway Station, CBD bus interchange and local bicycle networks.

Clause 7.6 Salinity

The objectives of Clause 7.6 of the LEP 2010 are:

- (a) to protect the natural hydrological systems by minimising soil disturbance and ensuring appropriate land use management,*
- (b) to avoid the adverse effects of rising salinity on land, including damage to infrastructure and buildings, loss of productive agricultural land and other adverse environmental effects.*

The consent authority must not grant consent to any development unless it has considered the following:

- (a) whether or not the proposed development is likely to have an impact on salinity processes, and*
- (b) whether or not salinity is likely to have an impact on the proposed development, and*
- (c) appropriate measures that can be taken to avoid or reduce any undesirable effects that may result from the impacts referred to in paragraphs (a) and (b).*

The development application was accompanied by a Geotechnical Investigation (GI) prepared by EI Australia (revision 1, dated 4 November 2022).

The GI has assumed an excavation depth up to 10.35m below existing ground levels (RL 17.80m). The investigation shows groundwater to be within the anticipated excavation depth.

The GI notes that the site is affected by acid sulfate soils. The results of the pH, chloride and sulfate content and electrical conductivity of the soil provided the following exposure classifications:

- 'Moderate' to 'Mild' for buried concrete structural elements; and
- 'Severe' to 'Moderate' for buried steel structural elements.

The GI outlines the dewatering licence requirements that may be needed along with ground water quality testing, particularly with regard to acidity generated as a result of acid sulfate soils.

The GI has not identified any anticipated environmental impacts as a consequence of the development and results found from investigations carried out.

The proposal is therefore satisfactory having regard to the matters for consideration as listed above, subject to recommended conditions.

Clause 7.7 Servicing

The development proposal is assessed to comply with Clause 7.7 of the LEP in that the site is capable of being connected to services including water, sewer, electricity and other essential infrastructure.

The following referrals to servicing authorities were made during the assessment of the proposal:

- Sydney Water - letter dated 23 January 2023 raised no objection to the proposal.
- Endeavour Energy - letters dated 7 February 2023 and 29 November 2023 raised no objection to the proposal.

Conditions of consent are also recommended in relation to servicing requirements for the proposal.

Clause 7.30 Urban Heat

The objectives of Clause 7.30 of the LEP are to:

- (a) ensure development incorporates planning and design measures to reduce the urban heat island effect in Penrith, and*
- (b) ensure buildings and outdoor spaces are thermally comfortable for people living and working in Penrith, particularly during summer, and*
- (c) promote the cooling benefits of green infrastructure and water in the landscape.*

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that planning and design measures are incorporated to reduce the urban heat island effect that:

- (a) maximise green infrastructure, and*
- (b) retain water in the landscape, and*
- (c) use design measures to ensure the thermal performance of the development achieves a high degree of passive cooling, and*
- (d) use building, paving and other materials that minimise heat impacts, and*
- (e) reduce reliance on mechanical ventilation and cooling systems, to conserve energy and to minimise heat sources.*

The proposal has been assessed to achieve the above objectives and has incorporated design elements to reduce the urban heat island effect. This is demonstrated by the following:

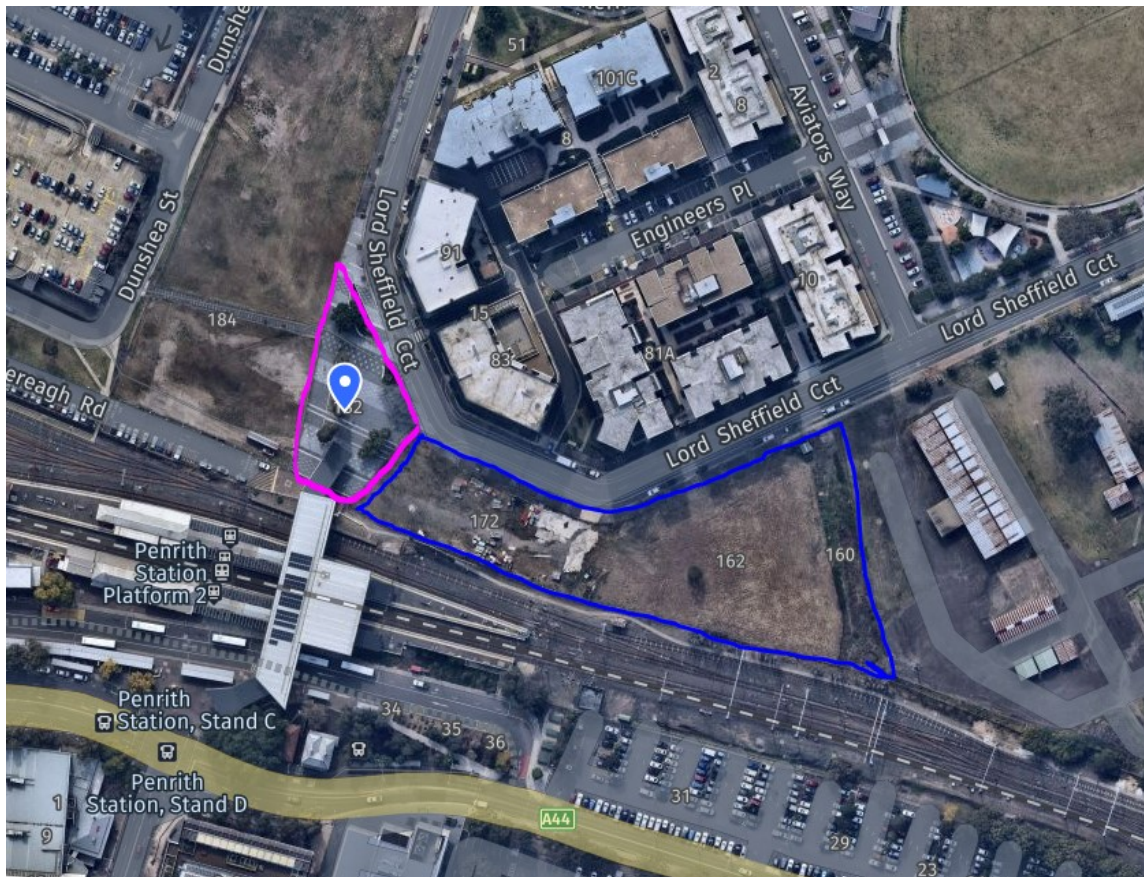
- The orientation of the building form, being the narrowest point with minimal glazing to the west;
- Glazing is setback and the northern facade is used as a brise soleil which reduces heat gains within the building;
- A colonnade is provided along the northern edge providing shading and relief from the summer heat for pedestrians and retail users;
- Cross ventilation is achieved to 60% of apartments;
- Landscaping is provided at the roof top, podium roof top and along the colonnade and facades; and
- A swimming pool is provided within a landscape setting on the roof top.

Clause 8.2 Sun access

The objective of Clause 8.2 of the LEP is to protect public open space from overshadowing, despite the provisions of Clauses 4.3, 5.6 and 8.4, if the development would result in overshadowing of public open space to a greater degree than would result from adherence to the controls indicated for the land on the Height of Building map.

The maximum building height for the site under the LEP is 32m and a written request has been made seeking a variation to the maximum building height provision.

As seen in the image below, outlined in pink and adjoining the development site is public open space known as Station Plaza. Station Plaza is an arrival/departure point for the northern side of Penrith Railway Station.



As demonstrated through the solar analysis detailed below, the additional building height proposed above the maximum height of building standard of 32m to 40.54m (8.54m) will not result in overshadowing of public open space, being Station Plaza.



Clause 8.4 Design excellence

Clause 8.4(1) of the LEP prevents development consent from being granted for development involving the construction of a new building on the subject site unless, in the opinion of the consent authority, the proposed development exhibits design excellence.

A design excellence competition commenced for the subject site on 21 March 2022. Following careful

consideration by the Design Jury, the SJB scheme was unanimously selected as the winning scheme in May 2022. The Design Jury concluded that the SJB scheme had the greatest potential to achieve design excellence primarily due to:

"..the strengths of an elegant building form, constructive responses to environment constraints which are demonstrated by the linear building form, by effectiveness of the residential layout, by the design of facades as passive and fully integrated 'environmental filters', and by the consolidation of communal recreation areas upon the rooftop. The conscious design of the colonnade integrating built form, landscape, programmable pavement zones and opportunities for personalisation of shopfronts creating the most successful pedestrian experience of all the considered schemes."

The Design Jury identified a number of minor design amendments that would be required prior to the lodgement of a development application. An outline of the the Design Jury's feedback and required amendments are provided in the *Design Competition Jury Feedback on Winning Scheme Report* and Section 3.1.2 of the *Design Integrity Process Report* prepared by Ethos Urban.

The Design Integrity Panel (DIP) was established to review and provide advice in regard to the architectural design outcome for the scheme during design refinement. The DIP met on four (4) occasions prior to the lodgement of the development application, with final DIP endorsement provided in December 2022.

The DIP is to be maintained throughout all development stages. The DIP will be reconvened at the following stages:

- Prior to the issue of a Construction Certificate;
- Prior to the issue of an Occupation Certificate;
- Prior to the lodgement of any Section 4.55 modification applications.

In *Toga Penrith Developments Pty Ltd v. Penrith City Council [2022] NSWLEC 117*, Preston CJ outlined two matters with respect to architectural design competitions and design excellence:

1. A consent authority considering a development against requirements in a design excellence clause must articulate the assessment against all the relevant requirements in the clause, and
2. In order for the requirement for an architectural design competition to be satisfied, the development application must be in relation to the development for which an architectural design competition has been held. In order for this test to be satisfied, the two developments will need to be the same or substantially the same.

In respect to point 1, the following table provides a response to the matters detailed in Clause 8.4 of the LEP.

Matter	Comment
<i>(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,</i>	Achieved. The scheme achieves design excellence in relation to architectural form and materials.
<i>(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,</i>	Achieved. The built form and external appearance of the development will improve the quality and amenity of the public domain.
<i>(c) whether the development will detrimentally impact on view corridors,</i>	Achieved. The proposal will not have a detrimental impact on any view corridors.
<i>(d) (Repealed)</i>	

<i>(e) how the development will address the following matters -</i>	
<i>(i) The suitability of the land for development,</i>	Achieved. The site is suitable for the development given it is a permissible land use in the E1 zone and that compliance is achieved with the majority of development standards and controls.
<i>(ii) Existing and proposed uses and use mix,</i>	Achieved. The site is one of the last sites to be developed within the Thornton Estate and is compatible with existing newly built developments surrounding, existing development to the north and with the western railway line to the south.
<i>(iii) Heritage issues and streetscape constraints,</i>	Achieved. The site has a number of heritage items adjoining to the south and this has been discussed in detail in this report in relation to Clause 5.10 of the LEP. The site has three active sides (Station Plaza, retail frontage and community garden edge). The Design Jury stated the scheme provided the most successful pedestrian experience of all schemes reviewed due to the integrated colonnade, landscape treatment, pavement zones and personalised shopfronts. This has been maintained, if not improved, through design refinement.
<i>(iv) The relationship of the development with other buildings (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity, and urban form,</i>	Achieved. Appropriate building setbacks are provided to Station Plaza and the adjoining site to the east. Amenity impacts are not expected to arise as a result of the proposed development. The urban form has been reviewed in detail as part of the design excellence competition and refinement process.
<i>(v) Bulk, massing and modulation of buildings,</i>	Achieved. Bulk, massing and modulation of the built form has been reviewed in detail as part of the design excellence competition and refinement process.
<i>(vi) Street frontage heights,</i>	Achieved. Street frontage heights have been reviewed in detail as part of the design excellence competition and refinement process.
<i>(vii) Environmental impacts such as sustainable design, overshadowing, wind and reflectivity,</i>	Achieved. Technical documentation has been provided to demonstrate that the proposal will achieve an acceptable outcome in regard to wind and reflectivity.

<i>(viii) The achievement of the principles of ecologically sustainable development,</i>	Achieved. A variety of ESD initiatives are incorporated into the development and this has been discussed in detail in this report in relation to Clause 7.4 of the LEP.
<i>(ix) Pedestrian, cycle, vehicular and service access, circulation and requirements,</i>	Achieved. This has been discussed in detail in this report in relation to DCP compliance.
<i>(x) The impact on, and any proposed improvements to, the public domain.</i>	Achieved. The built form and external appearance of the development will improve the quality and amenity of the public domain.

In respect to point 2, while there has been further design development as a result of recommendations from the DIP, the scheme retains essentially the same essence and is '*substantially the same*' development as the development that won the architectural design competition.

Clause 8.7 Community infrastructure on certain key sites

This clause is not applicable as the subject site is not identified as a Key Site and therefore the proposal not required to deliver community infrastructure as part of the proposed development.

Section 4.15(1)(a)(ii) The provisions of any draft environmental planning instrume

There are no draft environmental planning instruments specifically relevant to the proposal.

Section 4.15(1)(a)(iii) The provisions of any development control plan

Development Control Plan 2014

Provision	Compliance
DCP Principles	Complies - see Appendix - Development Control Plan Compliance
C1 Site Planning and Design Principles	Complies - see Appendix - Development Control Plan Compliance
C2 Vegetation Management	Complies
C3 Water Management	Complies
C4 Land Management	Complies
C5 Waste Management	Complies
C6 Landscape Design	Complies - see Appendix - Development Control Plan Compliance
C7 Culture and Heritage	Complies
C8 Public Domain	Complies - see Appendix - Development Control Plan Compliance
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Complies - see Appendix - Development Control Plan Compliance
C11 Subdivision	N/A
C12 Noise and Vibration	Complies - see Appendix - Development Control Plan Compliance
C13 Infrastructure and Services	Complies
C14 Urban Heat Management	Complies
E11 Penrith	Does not comply - see Appendix - Development Control Plan Compliance

Section 4.15(1)(a)(iiia) The provisions of any planning agreement

There are no planning agreements applying to the site or proposal.

Section 4.15(1)(a)(iv) The provisions of the regulations

Section 29 - Residential Apartment Development

The application was accompanied by a SEPP 65 design verification statement from a qualified designer, being registered architects from SJB Architects.

Section 61(6) - Residential Development in Penrith City Centre

The 'Development Assessment Guideline: An Adaptive Response to Flood Risk Management for Residential Development in the Penrith City Centre' provides an overview of the Adaptive Management Framework to manage the development of flood-affected areas in the Penrith City Centre located below the Probable Maximum Flood (PMF) level. The staged nature of the adaptive management approach allows for

development to continue based on ongoing flood risk management, where ongoing development in the Penrith City Centre is considered in line with evacuation capacity and capacity to recover.

The Adaptive Framework Management provides for three stages in the framework that will be used to match development and greater resilience to flood management. Stage 1 sets out that planning and development for an additional 4,050 dwellings within the Penrith City Centre can be accommodated utilising existing infrastructure and State Emergency Service emergency capabilities:

- Council will develop a Masterplan for the City Centre, including resilient building controls, detailed traffic and transport assessment, and an updated contributions plan to support the increased development for the Penrith City Centre.
- Council monitors the development of new residential buildings in the affected area.
- Communication strategies will be explored to encourage commercial and employment activities in the Penrith City Centre to respond earlier to a risk of a severe to extreme flood event that may require evacuation.
- State agencies and Council will investigate all feasible complementary evacuation processes that could allow development above 4,050 dwellings within the existing planned infrastructure.
- Infrastructure NSW will continue to implement the Hawkesbury-Nepean Flood Risk Management Strategy 2017 and work with Council to build resilience and increased flood awareness.
- The Department of Planning and Environment will develop and implement the regional land use planning framework.

The matters set out above for Stage 1 are in progress and the cap for residential dwellings of 4,050 in the Penrith City Centre has not been reached. In this regard, the current approved dwelling numbers within the Penrith City Centre totals 655 dwellings.

Stages 2 and 3 set increased caps for when the outcomes of subsequent stages are achieved.

The development proposal is therefore consistent with the Adaptive Management Framework and Guideline, including the Stage 1 cap on residential development within the Penrith City Centre.

Section 69 - Compliance with Building Code of Australia

An assessment of the fire protection and structural capacity of the proposed development is necessary. The application was referred to Council's Building Surveyor for assessment in this regard and to ensure compliance with the Building Code of Australia and fire safety provisions. The proposal is deemed satisfactory in this regard subject to recommended consent conditions.

In addition, the application was submitted with an Access Report concluding that the proposal is capable of complying with the applicable provisions of the Building Code of Australia and relevant Australian Standards in this regard.

Section 75 - Fulfilment of BASIX Commitments

The application was supported by BASIX and NatHERs Certificates outlining sustainability commitments. A condition of consent has been recommended to ensure the commitments under these certificates will be fulfilled.

Overall, the proposed development complies with the applicable requirements of the regulations.

Section 4.15(1)(b) The likely impacts of the development

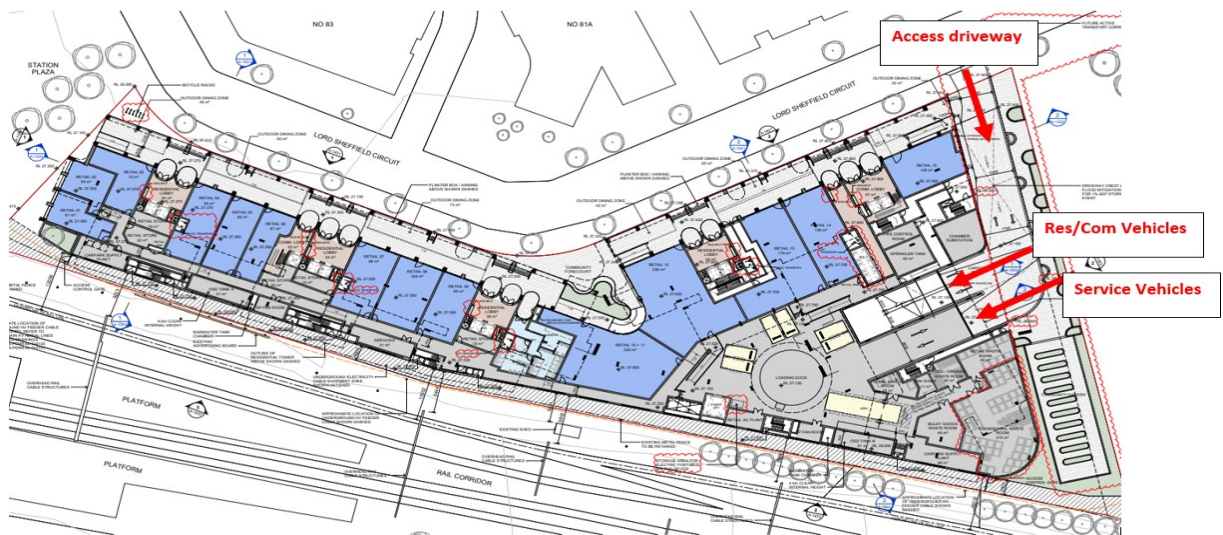
Context and Character

The subject site is currently vacant and the proposed development will introduce a ten storey mixed used development into the streetscape. The proposed building facades, uses and street activation, and overall building design and materials are assessed to be sympathetic with the local area and are supportive of the high quality desired character anticipated for the site under Penrith DCP and the Concept Plan for the Thornton Estate.

Traffic, Access and Servicing

As a result of the proposal, there will be an increase in the volume of traffic entering and exiting the site. Traffic modelling has been provided and Council's Traffic Engineer has undertaken a review and raised no concerns in this regard. This matter has been discussed further in this report in relation to DCP compliance.

The development proposes an acceptable number of car parking spaces to be provided on the site to accommodate residential and commercial parking needs. Access for parking and servicing is via a two way driveway along the eastern boundary (see image below). All servicing will be provided on site at grade and is separated from car parking and pedestrian areas. Residential and commercial parking is provided with the basement levels.



A traffic management system and convex mirrors will be provided at the driveway access to assist in driver awareness when service vehicles are on the site. Conditions of consent have been recommended with regard to compliance with applicable Australian Standards related to parking, manoeuvring and sight lines.

Solar Access

The development will not have adverse overshadowing impacts on surrounding residential developments or public open space. This is the result of the proposed the built form and site orientation being in an east/west direction.

Construction Impacts

Construction at the site will have a temporary impact on the amenity of the area due to noise from construction traffic, equipment and machinery. Conditions of consent are recommended with regard to hours of construction, noise, dust suppression, soil and sediment control and construction traffic management.

Social and Economic Impacts

The development is unlikely to result in any negative social or economic impacts in the area.

Section 4.15(1)(c) The suitability of the site for the development

The site is suitable for the proposal for the following reasons:

- The site is zoned to permit the proposed land use.
- The site is of a suitable size, shape and orientation, and is able to accommodate the proposed building and intensity of use.
- The proposed design achieves design excellence.
- The site is able to drain stormwater to Council's satisfaction.

Section 4.15(1)(d) Any Submissions

Community Consultation

In accordance with Council's Community Participation Plan, the application was notified to occupiers and owners of surrounding properties, advertised in the local newspaper and publicly exhibited between 5 December 2022 and 30 January 2023.

A total of two (2) individual submissions were received in response to the public exhibition process. A summary of submissions and responses to the matters raised is provided below. The matters raised have been considered in the assessment of the development proposal.

Issue raised	Response
<i>Inadequate local owner parking</i>	Developments in the Thornton Estate have on-site parking provision for residents and commercial premises. The current parking behaviour of local residents cannot be attributed to or form a reason for refusal of the development proposal being considered. The proposed development has been assessed to provide adequate parking numbers for the development given the close proximity to public transport. Visitor parking would be provided via public street parking. Given the proximity to the train and bus interchange, visitors would also utilise public transport options.
<i>Impacts on existing residents from increased traffic and parking demands during the construction phase</i>	A condition of consent is recommended requiring a Construction Traffic Management Plan (CTMP) to be approved by Council prior to the issue of a Construction Certificate. The CTMP is to address suitable arrangements for access routes, numbers of trucks, hours of operation, parking, access and circulation of all staff and construction vehicles during the excavation and construction of the development. The CTMP must include prohibition of the reversing of vehicles from the site into the public roadway and address pedestrian access into and around the site.

<i>Parking impacts expected from the additional retail premises proposed</i>	The site is zoned E1 Local Centre and is intended to provide a range of retail and business uses to service the the local community and generate employment opportunity and economic growth. The development provides the required on-site car parking as specified by Penrith Development Control Plan. The development site is in close proximity to Penrith train and bus interchange. It is expected that some people traveling to the commercial premises will use public transport such as buses or trains, or will utilise taxis and similar services. It is also expected that the retail offering will service local residents of the Thornton Estate and Penrith City Centre, and therefore walking or cycling would be another transport option for visitors.
<i>Allocated area for delivery vehicles</i>	The development proposes a shared loading and service vehicle dock on site at ground level. The service area is located off the access driveway along the southern boundary and is fully contained within the building.
<i>Traffic flows and sight lines for the Thornton Estate and surrounding roads</i>	The development will generate more traffic to the site than what is currently experienced. The application was supported by a Traffic and Parking Impact Assessment. Council's Traffic Engineer has assessed the proposal and has found there to be no unacceptable impacts on the local road network. Vehicle swept paths have been provided which demonstrate compliance with relevant standards for entry and exit of vehicles at the boundary of the site and via Lord Sheffield Circuit. Conditions of consent are recommended for compliance with applicable Australian Standards.
<i>Inadequate and inaccurate flood evacuation information</i>	Any development application proposing to increase the capacity of a development by more than 150 dwellings, or 200 employee vehicles for a commercial development, requires referral to Infrastructure NSW (INSW) and the NSW State Emergency Service (SES) to determine if the development will exceed the capacity of evacuation routes. The application was referred to the SES and INSW for their review. Both authorities raised no objections to the development as proposed in relation to flood evacuation. Council's Development Engineer has also reviewed the proposal and raises no concerns from a flood planning perspective. Neither the SES, INSW or Council's Development Engineer raised any concern with the accuracy of the flood information submitted with the development application.

<i>Inadequate and inaccurate assessment of heritage impacts, specifically in relation to Combewood and Woodriff</i>	The submitted Heritage Impact Statement (HIS) has adequately assessed impacts on surrounding state and local heritage items, being Penrith Railway Station (item 187), Station Master's House (item 188), Council Chambers (item 189), TAFE building (item 689) and the Red Cow Hotel (item 690). The extent of items reviewed is considered adequate given their proximity to the development site. Council's Heritage Advisor has reviewed the proposal and requested larger canopy landscaping along the southern boundary to provide a green buffer to heritage items 187 and 188. However, given the rail easement which runs along the length of the southern boundary, canopy landscaping is not possible. To compensate for the inability to plant canopy trees, a condition of consent has been recommended that the treatment to the southern facade podium is to be designed in consultation with Council's Heritage Adviser and could include a green wall or a design treatment of the fabric of the wall or arched openings. It is not anticipated that the development will have impacts on other listed heritage items, which are not in the direct vicinity of the development site (e.g. Combewood (item 163) which is over 600m away).
<i>Community garden</i>	The development proposal includes a community garden in the south-eastern corner of the site. The applicant has stated that the community garden is for the benefit of the broader Thornton Estate. It is recommended that the Thornton Community Group be in contact with the applicant regarding the community needs and expectations related to the community garden.
<i>Access to CBD/bus linkage</i>	Under the approved Concept Plan for the Thornton Estate, the Statement of Commitments (item 24) included the provision of transport related works including reserving land for a bus underpass of the western railway line to promote the future development of the CBD bus network. This land, known as Lot 3011, has been preserved to date. However, comments received from Transport for NSW (TfNSW) state that it does not have any plans over the subject site in terms of a bus underpass. TfNSW has also stated that it is undertaking a <i>Strategic Cycleway Corridors for Western Sydney Parklands</i> and in discussions with the applicant has given in-principle support to retain a 4m wide corridor for the full length of Lot 3011 that could be used to facilitate a future active transport crossing of the railway line should the outcome of the cycleway corridors work identify the need. The 4m wide corridor is proposed on the plans and a condition of consent is recommended for an appropriate easement.

Referrals

The application was referred to the following stakeholders and their comments have formed part of the assessment:

Referral Body	Comments Received
Building Surveyor	No objections - subject to conditions
Development Engineer	No objections - subject to conditions
Environmental - Environmental management	No objections - subject to conditions
Environmental - Waterways	No objections - subject to conditions
Environmental - Public Health	No objections - subject to conditions
Waste Services	No objections - subject to conditions
Traffic Engineer	Not supported, however conditions provided
Community Safety Officer	No objections - subject to conditions

Traffic Engineer

Council's Traffic Engineer does not support the proposed development on the basis that the development will prohibit the opportunity for the delivery of a bus underpass link connecting the north and south side of the Penrith City Centre.

Under the approved Concept Plan for the Thornton Estate, the Statement of Commitments (item 24) included the provision of transport related works including reserving land for a bus underpass of the western railway line to promote the future development of the CBD bus network. A separate lot (Lot 3011 DP 1184498) was subsequently created for the proposed bus underpass, which fulfilled this commitment.

Council's Traffic Team and senior leadership team have continued to advocate for the delivery of the bus underpass link as an important transport link for the Penrith City Centre as identified in the North Penrith Development Transport and Accessibility Plan, dated October 2010, by Parsons Brinckerhoff. Although the North Penrith Development Transport and Accessibility Plan identified that a bus underpass would improve bus access routes to Penrith Station from the north, the timing for delivery was also dependant on the level of congestion on the arterial road network and how that would impact bus reliability and speeds. It should be noted that TfNSW in a submission to the Department of Planning on 11 December 2011 regarding the Thornton Estate indicated that the bus underpass project was unfunded and warranted further investigation into its feasibility.

Landcom has since sold Lot 3011 to a private developer, who has lodged the subject development proposal. The proposal includes access to the development via Lot 3011 and a community garden over this part of the site. The design does not include a bus underpass or an intersection at Lord Sheffield Circuit for a future bus underpass.

A referral was sent to TfNSW during the assessment of the proposal specifically seeking comment on TfNSW's position regarding the bus underpass. TfNSW in its response letter dated 8 March 2023 raised no objection to the proposed development and provided the following information:

'TfNSW does not have any plans over the subject property from a bus perspective however TfNSW commenced work on a Strategic Cycleway Corridors for Western Sydney Parklands City and until that work was complete was reluctant to relinquish any land reservation.'

Following recent discussions with the applicant regarding the extent of landscaping and structures shown in the submitted landscaping plans as part of this development application, the applicant has provided amended concept landscaping plans within the easement which provides a 4m wide minimum clear width corridor that could be used to facilitate a future active transport crossing of the railway line. In this regard TfNSW provides in principle support for the amended landscaping plans but would require that the 4m corridor be constructed as a paved path without any landscaping encroaching into this area for the entire length between Lord Sheffield Circuit and the railway line.'

TfNSW has requested a condition of consent for a 4m wide corridor (held under easement) along the eastern boundary to serve as an active transport connection between Lord Sheffield Circuit and a possible future link across the railway line. While this can be accommodated based on the applicant's agreement in this regard, it is noted that there is no current restriction on the title of the land, nor an access easement, acquisition mechanism or land use zoning over Lot 3011 to reserve the land for a bus underpass link. In addition, there are no known studies or investigations into the need for, or feasibility of the bus underpass to warrant further pursuance of this matter and TfNSW has no plans to deliver a bus underpass link.

Section 4.15(1)(e)The public interest

The likely impacts of the proposal have been assessed as acceptable or have been addressed by way of recommended conditions of consent.

Matters raised in submissions received have been taken into consideration as part of the assessment of the proposal, and where appropriate, have been addressed by way of amended plans and information and/or recommended conditions.

The proposed development is not considered to be in conflict with the key aims, objectives and controls of the applicable planning instruments or Concept Plan for the estate. In the context of the site and having regard to the likely environmental impacts of the development, the proposal is assessed as being acceptable. In this regard, the proposal is considered to be in the public interest.

Section 94 - Developer Contributions Plans

Condition C4 of MP10-0075 (Part 3A Concept Plan approval), as amended, sets out the rates for development contributions for residential dwellings within the Thornton Estate. The condition states that:

1) Contributions shall be made payable to Penrith City Council for the purposes of District Open Space Facilities at a rate per dwelling type as shown below.

Development Type	Contribution
<i>Multi-Dwelling Housing and Shop-Top Housing</i>	<i>\$1,566 for each new dwelling</i>
<i>Dwelling Houses, Dual Occupancies and Subdivision</i>	<i>\$2,427.30 for each new dwelling or new lot</i>
<i>Housing for older people</i>	<i>\$1,174.50 for each new dwelling</i>

2) The contributions are to be paid to Council prior to Construction Certificate being issued for a dwelling.

3) Deferred or periodic payments may be permitted subject to agreement from Council. Council may require the applicant to provide a bank guarantee for the full amount of the contribution or the outstanding balance.

4) If not paid within the current quarterly period, the contribution will be reviewed at the time of payment in accordance with the adopted Section 94 plan.

Note: Section 94 Contributions are not required for the community facility or any other non-residential development.

Based on the above requirements, the following development contribution for district open space facilities (as indexed) is applicable to the proposed development:

287 dwellings (shop-top housing) x \$2,234 = \$641,158

A condition of consent is recommended to require the payment of this contribution prior to the issue of a Construction Certificate.

Conclusion

In assessing the proposed development against the relevant environmental planning instruments, in particular State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development, Penrith Local Environmental Plan 2010 and Penrith Development Control Plan 2014, the proposal suitably satisfies the aims, objectives and provisions of these planning instruments. The site is suitable for the proposed development, the proposal is in the public interest and impacts arising from the proposed development will be negligible.

Therefore, the proposal is worthy of support and the development application is recommended for approval, subject to recommended conditions.

Recommendation

1. That the submitted Clause 4.6 variation request in relation to the height of buildings development standard under Clause 4.3 of Penrith Local Environmental Plan 2010 be supported.
2. That DA22/1089 for the construction of a ten (10) storey mixed use commercial and residential development including two (2) storey podium containing 14 ground floor retail premises and first floor commercial floor space, two (2) x eight (8) storey residential towers containing 287 residential apartments, rooftop communal open space, three (3) levels of basement car parking and public domain works at 160-172 Lord Sheffield Circuit, Penrith, be approved subject to the following recommended conditions.
3. That the individuals who made a submission be advised of the decision.

CONDITIONS

General

- The development must be implemented substantially in accordance the following stamped approved plans and supporting documents received with the application, except as may be amended in red on the approved plans or by the following conditions in this consent:

Plans

Plan Title	Plan No.	Prepared By	Version	Dated
Floor Plan - Basement 3	A-1000	SJB Architects	10	29.03.2023
Floor Plan - Basement 2	A-1001	SJB Architects	14	29.03.2023
Floor Plan - Basement 1	A-1002	SJB Architects	13	29.03.2023
Floor Plan - Ground Level	A-1003	SJB Architects	17	29.03.2023
Floor Plan - Mezzanine	A-1003M	SJB Architects	6	29.03.2023
Floor Plan - Level 1	A-1004	SJB Architects	18	29.03.2023
Floor Plan - Level 2	A-1005	SJB Architects	17	29.03.2023
Floor Plan - Level 3	A-1006	SJB Architects	17	29.03.2023
Floor Plan - Level 4-9	A-1007	SJB Architects	17	29.03.2023
Floor Plan Communal Rooftop	A-1013	SJB Architects	10	29.03.2023
Floor Plan - Roof	A-1014	SJB Architects	13	29.03.2023
Elevation - North	A-1401	SJB Architects	9	29.03.2023
Elevation - South	A-1402	SJB Architects	9	29.03.2023
Elevation - East	A-1403	SJB Architects	10	29.03.2023
Elevation - West	A-1404	SJB Architects	10	29.03.2023
Sections - Sheet 1	A-1501	SJB Architects	8	29.03.2023
Sections - Sheet 2	A-1502	SJB Architects	6	29.03.2023
Sections - Sheet 3	A-1503	SJB Architects	4	29.03.2023
Sections - Sheet 4	A-1504	SJB Architects	2	29.03.2023
Detailed Section - Sheet 1	A-1601	SJB Architects	3	29.03.2023
Detailed Section - Sheet 2	A-1602	SJB Architects	3	29.03.2023
Apartment Type - Sheet 1	A-4401	SJB Architects	11	29.03.2023
Apartment Type - Sheet 2	A-4402	SJB Architects	11	29.03.2023
Apartment Type - Sheet 3	A-4403	SJB Architects	11	29.03.2023
Apartment Type - Sheet 4	A-4404	SJB Architects	7	29.03.2023
Apartment Type - Sheet 5	A-4405	SJB Architects	7	29.03.2023
Apartment Type - Sheet 6	A-4406	SJB Architects	1	29.03.2023
Apartment Type - Adaptable & Livable	A-4410	SJB Architects	4	01.11.2022
Stormwater Management Plan Ground Floor	C-05	Enscape Studio	D	23.03.2023
Stormwater Management Plan Level 1	C-04	Enscape Studio	C	23.03.2023
Stormwater Management - Details Sheet 1	C-10	Enscape Studio	C	23.03.2023
Stormwater Management - Details Sheet 2	C-11	Enscape Studio	B	23.03.2023
Landscape Legend	001	Arcadia	C	03.11.2022
Ground Floor Masterplan	100	Arcadia	C	03.11.2022
Level 01 Masterplan	101	Arcadia	C	03.11.2022

Level 02 Masterplan	102	Arcadia	C	03.11.2022
Rooftop Masterplan	103	Arcadia	C	03.11.2022
Plant Schedule	400	Arcadia	D	28.03.2023
Ground Floor Softworks	401	Arcadia	C	03.11.2022
Ground Floor Softworks	402	Arcadia	C	03.11.2022
Ground Floor Softworks	403	Arcadia	D	28.03.2023
Ground Floor Softworks	404	Arcadia	D	28.03.2023
Level 1 Softworks	405	Arcadia	C	03.11.2023
Level 1 Softworks	406	Arcadia	C	03.11.2023
Level 1 Softworks	407	Arcadia	C	03.11.2023
Level 1 Softworks	408	Arcadia	C	03.11.2023
Level 2 Softworks	409	Arcadia	C	03.11.2023
Level 2 Softworks	410	Arcadia	C	03.11.2023
Level 2 Softworks	411	Arcadia	C	03.11.2023
Rooftop softworks	412	Arcadia	C	03.11.2023
Rooftop softworks	413	Arcadia	C	03.11.2023
Rooftop softworks	414	Arcadia	C	03.11.2023
Rooftop softworks	415	Arcadia	C	03.11.2023
Landscape Typical Details	601	Arcadia	C	03.11.2023
Landscape Typical Details	602	Arcadia	C	03.11.2023
Landscape Notes	700	Arcadia	C	03.11.2023

Documents

Document Title	Reference	Prepared By	Version	Dated
BASIX Certificate	1334150M_02	-	-	10.11.2022
BASIX Assessment Report	-	Integrated Group Services	1	10.11.2022
Noise Impact Assessment	Report No. 220387	Pulse White Noise Acoustics	4	08.05.2023
Traffic Report	Ref. 222379	Varga Traffic Planning Pty Ltd	-	04.10.2023
Stormwater Management Plan	Project. 0209	Enscape Studio	-	16.06.2023
Flood Impact and Risk Assessment	-	Integrated Group Services	3	05.05.2023
Operational Waste Management Plan	Report No. 4351	Elephants Foot Company	C	28.03.2023
Arboricultural Impact Assessment	-	Advanced Treescape Consulting	-	03.11.2022
Accessibility Compliance Report	Report No. 22-105	Access Link Consulting	B	02.11.2022
Construction Management Plan	-	Urban Property	-	Oct. 2022
Groundwater Take Assessment	E25358.G12	EI Australia	1	04.11.2022
Geotechnical Report	E25358.G03	EI Australia	1	04.11.2022
Fire Engineering Statement	2022/1830	Fire Engineering Professionals Pty Ltd	2	04.11.2022
Heritage Impact Assessment	J5836	Weir Phillips Heritage and Planning	-	25.10.2022
Detailed Site Investigation	E25358.E02	EI Australia	-	31.10.2022
Rail Interface Report	-	Macroplan	1	08.11.2022
Solar Reflection Screening Analysis	Project. 2206353	RWDI Australia Pty Ltd	-	03.11.2022

Wind and Thermal Comfort Report	Project. 2206353	RWDI Australia Pty Ltd	-	03.11.2022
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- 2 **Prior to the issue of an Occupation Certificate**, Lots 3001, 3002 and 3011 in Deposited Plan 1184498 are to be consolidated. Evidence of lot consolidation and plan registration with NSW Land Registry Services is to be provided to the Certifying Authority and Penrith City Council.
- 3 Prior to the occupation of a retail or commercial tenancy within the building, a separate development approval is to be obtained for each tenancy. A Noise Impact Assessment carried out by an appropriately qualified acoustic consultant may be required and a Noise Impact Assessment report may be required to be submitted as part of any future development application(s) associated with specific retail/commercial tenancies within the building.
- 4 A **Construction Certificate** shall be obtained prior to commencement of any building works.
- 5 **The development shall not be used or occupied until an Occupation Certificate has been issued.**
- 6 A separate development approval for the erection of a sign or advertising structure, other than an advertisement listed as exempt development, is to be obtained.
- 7 **Prior to the issue of an Occupation Certificate**, a lighting system shall be installed for the development to provide uniform lighting across common areas and driveways. Exterior lighting shall be located and directed in such a manner so as not to create a nuisance to surrounding land uses. The lighting shall be the minimum level of illumination necessary for safe operation. The lighting shall be in accordance with AS 4282 - Outdoor Lighting Obtrusive Effects.
- 8 The finishes of all structures and buildings are to be maintained at all times and any graffiti or vandalism immediately removed/repaired.
- 9 **Prior to the issue of a Construction Certificate**, evidence of compliance with the Design and Building Practitioners - Particulars for Regulated Designs Order 2022 is to be provided to the satisfaction of the Certifying Authority, for any excavation, shoring and anchoring works that traverse a property boundary.

- 10 Prior to the erection of any crane or any temporary construction structure at a height greater than the roof of the subject development, written notice shall be provided to Council and the Nepean Blue Mountains Local Health District at least 21 days prior to the erection, indicating at least the following:
- Name of responsible company and relevant contact details.
 - Dimensions (height, length, etc).
 - Position and orientation of boom/jib and counter boom/jib.
 - Length of time that such a crane or structure will be erected on the site.
 - The management plan and measures that will ensure that the crane or structure will be of least possible impact on flight operations for Ambulance NSW.

Any crane or any temporary construction structure erected at a height greater than the roof of the subject development shall comply with the following:

- Be equipped with medium intensity steady red lighting positioned at the highest point and both ends of the boom/jib and counter boom/jib, such that the lighting will provide an indication of the height of the crane and the radius of the crane boom/jib. Such lighting, which should be displayed at all times of the day and night, should be positioned so that when displayed it is visible from all directions.
 - When a crane is unattended for an extended period of time ensure the crane's boom is retracted and lowered as far as possible.
 - No part of the crane or structure shall extend beyond the boundaries of the subject development site unless approved by Penrith City Council in consultation with the Nepean Blue Mountains Local Health District. Any encroachment beyond the boundaries of the subject site shall be the minimum amount required to facilitate construction and access to all parts of the construction site.
- 11 **Prior to the issue of the first Construction Certificate**, an Aquifer Interference Approval must be obtained from the relevant authority under the provisions of the Water Management Act 2000 for aquifer inference activities. This requirement does not need to be satisfied where written exemption to the Aquifer Interference Approval requirements is issued by the responsible authority. In the event that an Aquifer Interference Approval is issued that is contrary to or inconsistent with the plans and design details approved as part of this consent, a modification application is required to be submitted to Penrith City Council for assessment and determination prior to the issue of a Certification Certificate.
- 12 The development must be undertaken in accordance with the General Terms of Approval issued by Transport for NSW (Sydney Trains) in its letter dated 6 October 2023.
- 13 **Prior to the issue of a Construction Certificate**, the treatment to the southern podium facade is to be approved by Penrith City Council and the detailed treatment is to be incorporated in the construction plans, if applicable. The treatment to the southern facade podium is to be designed in consultation with Council's Heritage Adviser and could include a green wall or a design treatment of the fabric of the wall or arched openings.
- 14 **Prior to the issue of an Occupation Certificate**, an electronic access and audio/video intercom system is to be installed at all residential access points.
- 15 **Prior to the issue of a Construction Certificate**, an application to relocate Endeavour Energy's assets must be submitted and approved by Endeavour Energy's Customer Network Solutions Branch.

- 16 The development must be undertaken in accordance with the General Terms of Approval issued by Endeavour Energy in its letter dated 29 November 2022.
- 17 The proponent is to comply with the applicable conditions of consent of Major Projects Approval No. MP10-0075 and the Statement of Commitments included in Schedule 3 of MP-10-0075, in particular those related to site contamination, unexpected finds and the discovery of unexploded ordinance.
- 18 **Prior to the issue of a Construction Certificate**, a signage strategy shall be submitted to Council for approval in accordance with Clause E11.8.4.13 of Penrith Development Control Plan 2014. The strategy is to:
- Identify the preferred locations and quantum of all building identification and business identification signage;
 - Include a palette of preferred materials, signage types and graphic style;
 - Outline any illumination requirements and/or restrictions so as to consider its impact on adjacent properties and uses;
 - Promote a high quality, co-ordinated approach to signage within the Village Centre and minimise visual clutter; and
 - Include details of any way-finding signage.
- 19 **Prior to the issue of a Construction Certificate**, the construction plans are to show storage as per the approved Storage Schedule an additional three storage cages in the basement, ensuring each residential apartment has access to storage within the basement.
- 20 **Prior to the issue of a Construction Certificate**, a right of carriageway easement shall be created for a future active transport link as required by Transport for NSW in its letter dated 8 March 2023 (Ref. SYD22/00793/04). The easement is to be 4m wide for the full length of the eastern boundary and benefit Transport for NSW.
- 21 In accordance with Schedule 3 (Statement of Commitments) of Major Projects Approval No. MP10-0075, evidence of the preparation of a Transport Access Guide that is to be made available to residents of the development, is to be provided to the Principal Certifying Authority **prior to the issue of an Occupation Certificate**.
- 22 **Prior to the issue of a Construction Certificate**, a design verification statement from a qualified designer shall be submitted. The design verification statement shall verify that the Construction Certificate and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles set out in Part 2 of State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development.
- 23 **Prior to the issue of an Occupation Certificate**, a design verification statement from a qualified designer shall be submitted. The design verification statement shall verify that the development achieves the design quality shown in the approved Construction Certificate plans and specifications, having regard to the design quality principles set out in Part 2 of State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development.

- 24 A written statement confirming consistency with the design quality/excellence demonstrated in the development consent plans shall be obtained from the project Design Integrity Panel (DIP) and provided to the certifier at the following stages:
- Prior to the issue of a Construction Certificate;
 - Prior to the issue of an Occupation Certificate; and
 - Prior to the lodgement of any Section 4.55 modification applications.
- 25 The following community safety and crime prevention through environmental design (CPTED) requirements are required to be implemented:
- (a) Lighting**
- All outdoor/public spaces throughout the development must be lit to the minimum Australian Standard of AS 1158. Lighting must be consistent in order to reduce the contrast between shadows and illuminated areas and must be designed in accordance with AS 4282 - Outdoor Lighting Obtrusive Effects.
- (b) Basement Car Parking**
- A security system must be installed on any pedestrian and vehicle entry/exit points to the car park, including the lift and stairwell, to minimise opportunities for unauthorised access.
 - All areas of the car park must be well-lit, with consistent lighting to prevent shadowing or glare.
 - Car park surfaces including walls and ceilings are to be light coloured with details included with the **Construction Certificate** application.
 - Storage cages within the car park must be well secured to minimise opportunities for theft.
- (c) Building Security and Access Control**
- Intercom, code or card locks or similar must be installed for all entries to the building and common areas intended for resident use only.
 - Australian Standard 220 door and window locks must be installed in all dwellings.
 - CCTV is to be provided to cover communal public space areas, including basement parking entry/exit points. Cameras must be of sufficient standard to be useful for police in the event of criminal investigations. Lighting must be provided to support cameras at night (alternatively, infra-red cameras are recommended). Signage must be displayed to indicate that CCTV cameras are in use.
 - Public access to the interface between the rail corridor and the southern side of the development must be restricted.
- (d) Graffiti/Vandalism**
- Graffiti resistant coatings must be used to external surfaces where possible, including signage, furniture, retaining walls, etc.
 - Procedures must be in place to ensure the prompt removal and/or repair of graffiti or vandalism to the buildings, fencing, and common areas. This includes reporting incidents to police and/or relevant authorities.
- (e) Landscaping**
- All vegetation must be regularly pruned to ensure that sight lines are maintained.

Heritage/Archaeological relics

- 26 If any archaeological relics are uncovered during the course of the works, no further work shall be undertaken until further directed by Penrith City Council or the NSW Heritage Office.

The applicant is advised that depending on the possible significance of the relics, an archaeological assessment and an excavation permit under the Heritage Act 1977 may be required before any further work can be recommenced in that area of the site.

Environmental Matters

- 27 No fill material shall be imported to the site until such time as a certificate demonstrating that the material is suitable has been submitted to, considered and approved by Council. This certificate may be in the form of a validation certificate, waste classification, or appropriate resource recovery order/exemption. A copy of a report forming the basis for the validation is also to be provided. The certification shall:

- be prepared by an appropriately qualified person with consideration of all relevant guidelines, standards, planning instruments and legislation (e.g. EPA, NEPM, ANZECC, NH&MRC),
- clearly state the legal property description of the fill material source site and the total amount of fill tested,
- provide details of the volume of fill material to be used in the filling operations,
- provide a classification of the fill material to be imported to the site in accordance with the NSW Environment Protection Authority's "Waste Classification Guidelines" 2014, and
- (based on the fill classification) determine whether the fill material is suitable for its intended purpose and land use and whether the fill material will or will not pose an unacceptable risk to human health or the environment

If the Principal Certifying Authority or Penrith City Council is not satisfied that suitable fill materials have been used on the site, further site investigations or remediation work may be requested. In these circumstances the works shall be carried out prior to any further approved works.

An appropriately qualified person is defined as a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, soil science, eco-toxicology, sampling and analytical procedures, risk evaluation and remediation technologies. In addition, the person will be required to have appropriate professional indemnity and public risk insurance.

- 28 All construction waste materials stored on-site during works are to be contained within a designated area such as a waste bay or bin to ensure that no waste materials are allowed to enter the stormwater system or neighbouring properties. The designated waste storage areas are to be fully enclosed when the site is unattended.
- 29 Waste materials associated with the construction phase of the development are to be classified and disposed of at a lawful waste management facility. Where the disposal location or waste materials have not been identified in the waste management plan, details shall be provided to the Certifying Authority as part of the waste management documentation accompanying the Construction Certificate application.

All receipts and supporting documentation must be retained in order to verify lawful disposal of materials and are to be made available to Penrith City Council on request.

- 30 The design and construction recommendations detailed in the Noise Impact Assessment prepared by Pulse White Noise Acoustics (Report No. 220387, Revision 4, dated 8 May 2023) are to be implemented and incorporated into the design and construction of the development, and shall be shown on plans accompanying the Construction Certificate application. This includes (but is not limited to) design and construction details of roof-top balustrading (including balustrade location, height and material) as well as all glazing, swimming pool and other required noise and vibration related construction details.
- 31 All vehicle washing conducted on-site shall occur only in approved vehicle wash bays connected to the sewer in accordance with Sydney Water's requirements.
- 32 Only clean and unpolluted water is to be discharged into Penrith City Council's stormwater drainage system.
- 33 Construction works shall be carried out in accordance with the NSW Department of Environment and Climate Change's "Interim Construction Noise Guideline" 2009 and Section 6 of the Noise Impact Assessment prepared by Pulse White Noise Acoustics (Report No. 220387, Revision 4, dated 8 May 2023).
- 34 **Prior to the issue of a Construction Certificate**, a final version Construction Management Plan is to be prepared by a suitably experienced/qualified person/consultancy and submitted to Penrith City Council for consideration and approval. Council approval of the final version Construction Management Plan is to be obtained prior to issue of a Construction Certificate. A copy of the Council approved Construction Management Plan is to be provided to the certifying authority (if Council is not the certifying authority).

The final version Construction Management Plan is to be in accordance with the 'Construction Management Plan' prepared by Urban Property and dated October 2022, and is to demonstrate consideration of applicable industry standards and best practice. The final version plan is to include (but not be limited to):

- Contact details of project and site managers and site supervisors;
- Detailed Waste Management Plan;
- Erosion and Sediment Control Plan;
- Groundwater Management Plan for managing groundwater quality and disposal during construction; and
- Unexpected Finds Protocol (UFP) prepared by an appropriately qualified person/consultancy and in accordance with Section 10 of the Detailed Site Investigation prepared by EI Australia Pty Ltd and dated 31 October 2022 (Ref. E25358.E02.Rev0). For the purpose of preparing an UFP, an appropriately qualified person is defined as a person who has a demonstrated experience, or access to experience in hydrology, environmental chemistry, soil science, eco-toxicology, sampling and analytical procedures, risk evaluation and remediation technologies. In addition, the person will be required to have appropriate professional indemnity and public risk insurance.

All construction activities on the site are to be implemented and carried out in accordance with the final version Construction Management Plan.

- 35 No amplification system or amplified music is to be used in outdoor communal areas within the development, including the roof-top outdoor communal area.

- 36 **Prior to the issue of a Construction Certificate**, further details on the type and location of all mechanical plant and equipment associated with the development is to be provided to Penrith City Council for consideration and approval. Suitable data and information assessed by a suitably qualified acoustic consultant is to be supplied to demonstrate compliance with the established noise criteria and the Noise Impact Assessment prepared by Pulse White Noise Acoustics (Report No. 220387, Revision 4, dated 8 May 2023).

For the purpose of this condition, a suitably qualified acoustic consultant means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustics Society, Institution of Engineers Australia or the Association of Australian Acoustic Consultants at the grade of member.

- 37 **Prior to the issue of an Occupation Certificate**, a Compliance Certificate, prepared by a suitably qualified acoustic consultant, is to be submitted to the Principal Certifying Authority. The certificate is to demonstrate that the development, inclusive of swimming pools and including all plant and equipment, balustrades, and acoustic related construction requirements have been installed to comply with the established noise and vibration criteria and the recommendations detailed in the Noise Impact Assessment prepared by Pulse White Noise Acoustics (Report No. 220387, Revision 4, dated 8 May 2023).

For the purpose of this condition, a suitably qualified acoustic consultant means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustics Society, Institution of Engineers Australia or the Association of Australian Acoustic Consultants at the grade of member.

- 38 The following restrictions apply to the ongoing operation of the development:
- External common areas are only to be used during the following hours:
 - Monday to Saturday: 7:00am - 10:00pm; and
 - Sundays and Public Holidays: 8:00am - 10:00pm.
 - Communal areas, including the outdoor roof-top area, are not to be used for high noise generating activities including large gatherings or parties.
 - Amplified music is not permitted in outdoor communal areas including the roof-top area, or in the common rooms at any time.
 - Signs must be installed within the communal areas including the outdoor roof-top area, outlining the above restrictions.
 - TVs, outdoor cinema screenings or the use of projector screens or the like is not permitted in the roof-top outdoor communal areas.

- 39 Should any "unexpected finds" occur during site excavation and earthworks including, but not limited to, the identification/finding of contaminated soils, buried building materials, asbestos, odour and/or staining, works are to cease immediately and Penrith City Council is to be notified. Any such "unexpected finds" shall be addressed by an appropriately qualified environmental consultant.

Remediation works within the Penrith Local Government Area are considered to be Category 1 works under State Environmental Planning Policy (Resilience and Hazards) 2021, Chapter 4 - Remediation of Land. Should contamination be found during development works and should remediation works be required, development consent is to be sought from Penrith City Council before the remediation works commence.

For the purpose of this condition, an appropriately qualified person is defined as a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, soil science, eco-toxicology, sampling and analytical procedures, risk evaluation and remediation technologies. In addition, the person will be required to have appropriate professional indemnity and public risk insurance.

- 40 All works that involve the use of heavy vehicles, heavy machinery and other equipment likely to cause offence to adjoining properties are restricted to the following hours in accordance with the NSW Department of Environment and Climate Change's "Interim Construction Noise Guideline" 2009:

- Mondays to Fridays, 7am to 6pm;
- Saturdays, 7am to 1pm if inaudible on neighbouring residential premises, otherwise 8am to 1pm;
- No work is permitted on Sundays and Public Holidays.

In the event that the work relates to activities inside the building and does not involve external walls or the roof and does not involve the interim use of equipment that emits offensive noise, then the works are not restricted to the hours stated above. The provisions of the Protection of the Environment Operations Act 1997 in regulating offensive noise also apply to all works.

- 41 Detailed plans and specifications of roof-top balustrades are to be submitted to and approved by Penrith City Council **prior to the issue of a Construction Certificate** and are to be in accordance with the recommendations of the Noise Impact Assessment prepared by Pulse White Noise Acoustics (Report No. 220387, Revision 4, dated 8 May 2023).

- 42 **Prior to the issue of a Construction Certificate**, design and construction details on the construction of the swimming pools is to be provided to Penrith City Council for consideration and approval. Suitable data and information assessed by a suitably qualified acoustic consultant is to be supplied to demonstrate compliance with applicable noise and vibration criteria and the Noise Impact Assessment prepared by Pulse White Noise Acoustics (Report No. 220387, Revision 4, dated 8 May 2023), and to demonstrate operation of the swimming pools will not cause adverse noise and vibration impacts to occupants of the development.

For the purpose of this condition, a suitably qualified acoustic consultant means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustics Society, Institution of Engineers Australia or the Association of Australian Acoustic Consultants at the grade of member.

- 43 The following waste management requirements must be satisfied and details of compliance demonstrated to Council **prior to the issue of a Construction Certificate**:

(a) A detailed plan shall be prepared outlining the linear track system to go under each chute for garbage

and recycling bins (each linear track is to hold 2 x 1,100L bins) showing the chutes lining up with each “middle bin” on the linear track, required clearances for maintenance and a 1.8m clearance zone for manoeuvring of bins in front of the linear track system. The chute room will need to incorporate the following requirements into the design:

- Linear or circular carousel device under each individual chute (refer to Section 3.8 of Council's "Residential Flat Buildings Waste Management Guideline" for design specifications).
- Minimum 0.9m clearance around the linear or circular carousel system to allow for manoeuvrability and system maintenance.
- 1.8m unobstructed clearance zone between the linear/circular track system and the entrance for access and manoeuvrability.
- The room is to provide suitable dual door access for the service of bins with a minimum width of 1.8m and accessed by a 1.8m unobstructed access corridor.
- Accommodate two additional 1,100L service bins in each chute room with a minimum access clearance of 1.8m wide for the loading of 1,100L bins onto the track system.
- The room is to be fully enclosed, walled and not permit through access to other on-site waste infrastructure. Separate unobstructed access is required.
- The floor is to be waterproofed, non-slip and sealed in accordance with the Building Code of Australia to permit the use of wash facilities.
- The floor is to be graded to a central drainage point connected to the sewer, enabling all waste to be contained and safely disposed.
- Partitioned and enclosed with a minimum 2.7m unobstructed internal room height in accordance with the Building Code of Australia.
- The room is to be provided with an adequate supply of water through a centralised mixing valve and hose cock.
- The room is to incorporate adequate lighting and natural/mechanical ventilation in accordance with the Building Code of Australia.
- The room will need to allow for the permanent storage of 2 service bins per dual chute system, allowing resident access to all waste streams during Council's waste collection periods.

(b) In Basement 2 and on the ground floor, plans for a bin tug device storage area are to be submitted and the route of travel indicated showing swept paths for the bin tug device demonstrating the movement of full bins from the chute rooms to the goods lift and back to Basement 2 and from the goods lift to the waste storage area (adjacent to the loading bay) and back.

(c) All on-site waste collection infrastructure (waste chute rooms, residential waste collection room, residential bulky household waste collection room, retail waste room, commercial waste room and loading bay) doors and access points are to be locked through Council's Abloy key system. System specifications are outlined in Section 3.5.5 of Council's "Residential Flat Buildings Waste Management Guideline".

(d) All on-site waste collection infrastructure (waste chute rooms, residential waste collection room, residential bulky household waste collection room, retail waste room, commercial waste room and loading bay) is to provide wash facilities through the use of a centralised mixing valve and hose cock. Respective drainage and waterproofing to be installed to support the use of hose facilities.

(e) The chute inlets on each residential level are to be located within cupboards (maximum depth of 150mm) and incorporate dual self-closing sealed doors, ventilation and waterproofing and permit accessible resident access.

(f) All on-site waste collection infrastructure (waste chute rooms, residential waste collection room, residential bulky household waste collection room, retail waste room and commercial waste room) is to provide:

- Automatic lighting and mechanical ventilation;
- 180-degree outwards opening doors;
- Unobstructed internal height clearances of 2600mm free from external services and utilities;
- An 1800mm unobstructed access pathway from the on-site collection infrastructure (waste collection and bulky goods collection rooms) to the rear of Council's standard waste collection vehicle; and
- 1.8m wide access to the waste collection room. The room is to be line marked showing the location of the proposed bin allocation with respective clearances.

(g) The bulky goods collection room is to provide a minimum area of 45m² with a minimum access width of 1.8m.

(h) The turn table for a 10.5m heavy rigid waste collection vehicle is to incorporate a hydraulic override system or similar assisted override system to ensure the turn table can be rotated in the event of a system malfunction.

(i) The kerbside crossover and route to the loading bay is to be of sufficient width to permit Council's 10.5m heavy rigid waste collection vehicle movements into the site to permit unobstructed access.

- 44 **Prior to the issue of an Occupation Certificate**, the developer is to enter into a formal agreement with Penrith City Council for the utilisation of Council's waste collection service. This is to include Council being provided with indemnity against claims for loss and damage.

By entering into an agreement with Council for waste collection, the development will be required to operate in full compliance with Penrith City Council's Waste Collection and Processing Contracts for Standard Waste Collection. The provision of Council's waste collection service will not commence until formalisation of the agreement.

Prior to the issue of an Occupation Certificate, Council's Waste and Resource Recovery Department is to conduct a site inspection of the on-site infrastructure with Council's collection contractors. The inspection is to review the on-site waste collection infrastructure for the provision of a safe and efficient waste collection service in accordance with the stamped approved plans and Council's policy provisions.

The assigned strata manager for the development and direct contact details are to be provided to Council's Waste and Resource Recovery Department **prior to the issue of an Occupation Certificate**.

Council's bin infrastructure and collection service will be provided/commenced for the development on completion of all on-site waste collection infrastructure and the attainment of an Occupation Certificate.

BCA Issues

- 45 All aspects of the building design shall comply with the applicable performance requirements of the Building Code of Australia so as to achieve and maintain acceptable standards of structural sufficiency, safety (including fire safety), health and amenity for the on-going benefit of the community. Compliance with the performance requirements can only be achieved by:
- (a) complying with the deemed to satisfy provisions, or
 - (b) formulating an alternative solution which:
 - complies with the performance requirements, or
 - is shown to be at least equivalent to the deemed to satisfy provision, or
 - (c) a combination of (a) and (b).

It is the owner's responsibility to place on display, in a prominent position within the building at all times, a copy of the latest fire safety schedule and fire safety certificate/statement for the building.

Health Matters and OSSM installations

- 46 The construction, fit-out and finishes of any food premises must comply with Food Safety Standard 3.2.3 of the Australian and New Zealand Food Standards Code and AS 4674-2004 Design, Construction and Fitout of Food Premises.

Utility Services

- 47 A Section 73 Compliance Certificate under the Sydney Water Act 1994 shall be obtained from Sydney Water. The application must be made through an authorised Water Servicing Coordinator. Please refer to "Your Business" section of Sydney Water's website at www.sydneywater.com.au then the "e-developer" icon, or telephone 13 20 92.

The Section 73 Compliance Certificate must be submitted to the Principal Certifying Authority **prior to the issue of an Occupation Certificate**.

- 48 **Prior to the issue of a Construction Certificate**, a written clearance is to be obtained from Endeavour Energy stating that electrical services have been made available to the development or that arrangements have been entered into for the provision of services to the development.

In the event that a pad mounted substation is necessary to service the development, Penrith City Council shall be consulted over the proposed location of the substation before the Construction Certificate for the development is issued as the location of the substation may impact on other services and building, driveway or landscape design already approved by Council.

- 49 **Prior to the issue of a Construction Certificate**, the Principal Certifying Authority shall be satisfied that telecommunications infrastructure may be installed to service the premises which complies with the following:
- The requirements of the Telecommunications Act 1997;
 - For a fibre ready facility, the NBN Co's standard specifications current at the time of installation; and
 - For a line that is to connect a lot to telecommunications infrastructure external to the premises, the line shall be located underground.

Unless otherwise stipulated by telecommunications legislation at the time of construction, the development must be provided with all necessary pits and pipes, and conduits to accommodate the future connection of optic fibre technology telecommunications.

- 50 **Prior to the issue of an Occupation Certificate**, written certification from all relevant service providers that the telecommunications infrastructure is installed in accordance with the requirements above and the applicable legislation at the time of construction, must be submitted to the Principal Certifying Authority.

Construction

- 51 Stamped plans, specifications, a copy of the development consent, the Construction Certificate and any other Certificates to be relied upon shall be available on site at all times during construction.

The following details are to be displayed in a maximum of 2 signs to be erected on the site:

- the name of the Principal Certifying Authority, their address and telephone number,
- the name of the person in charge of the work site and telephone number at which that person may be contacted during work hours,
- that unauthorised entry to the work site is prohibited,
- the designated waste storage area must be covered when the site is unattended, and
- all sediment and erosion control measures shall be fully maintained until completion of the construction phase.

Signage but no more than 2 signs stating the above details are to be erected:

- at the commencement of, and for the full length of the, construction works on site, and
- in a prominent position on the work site and in a manner that can be easily read by pedestrian traffic.

All construction signage is to be removed when the Occupation Certificate has been issued for the development.

52 Prior to the commencement of construction works:

(a) Toilet facilities at or in the vicinity of the work site shall be provided at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be:

- a standard flushing toilet connected to a public sewer, or
- if that is not practicable, an accredited sewage management facility approved by Council, or
- alternatively, any other sewage management facility approved by Council.

(b) All excavations and back filling associated with the erection or demolition of a building must be executed safely and in accordance with the appropriate professional standards. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

(c) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:

- must preserve and protect the building from damage, and
- if necessary, must underpin and support the building in an approved manner, and
- must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished. The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land (includes a public road and any other public place).

(d) If the work involved in the erection or demolition of a building is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or involves the enclosure of a public place, a hoarding or fence must be erected between the work site and the public place:

- if necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place,
- the work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place, and
- any such hoarding, fence or awning is to be removed when the work has been completed.

53 The Construction Certificate must be accompanied by certification from an accredited access consultant confirming that the adaptable dwellings and allocated car parking spaces associated with the adaptable dwellings are capable of being modified, when required by the occupant, to comply with the Australian Housing Standard (AS 4299- 2009).

Swimming Pools

54 The swimming pool is to be surrounded at all times by a child-resistant barrier that:

- separates the swimming pool from any residential commercial use situated on the premises and from any place (whether public or private) adjoining the premises, and
- is located immediately around the swimming pool, and
- contains within its bounds no structure apart from the swimming pool and such other structures (such as diving boards and pool filtration plants) as are wholly ancillary to the swimming pool, and
- is designed, constructed, installed and maintained in accordance with the standards prescribed by AS 1926 "Swimming Pool Safety".

- 55 To promote pool safety awareness in the City and ensure that pool owners are actively ensuring the safety of all users of their pool, the “Backyard Pool Safety” package was developed in conjunction with Penrith City Council and State government agencies.

It is the pool owner's responsibility to purchase and read the information package prior to using the swimming pool (the package is available for purchase from Council's Civic Centre, 601 High Street, Penrith).

- 56 A sign must be erected in a prominent position in the immediate vicinity of the swimming pool and must:
- be erected in accordance with the provisions relating to instructional posters of the document entitled “Policy Statement No. 9.4.1: Guidelines for the Preparation of Posters on Resuscitation” published by the Resuscitation Council (a copy may be purchased from Penrith City Council's Civic Centre, 601 High Street, Penrith), and
 - bear a notice that contains the words “YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS SWIMMING POOL”, together with details of resuscitation techniques (for adults, children and infants) set out in the relevant provisions of the document entitled “Cardio Pulmonary Resuscitation” published by the Australian Resuscitation Council (a copy may be purchased from Penrith City Council's Civic Centre, 601 High Street, Penrith).
- 57 The swimming pool must be registered on the NSW Swimming Pool Register when it is capable of holding water and before the issue of an Occupation Certificate. The swimming pool is to be registered at www.swimmingpoolregister.nsw.gov.au or in person at Penrith City Council (a \$10 fee applies when registering at Council).

- 58 All backwash from the swimming pool shall be directed into the mains sewer.

In areas where sewer is not available, the following requirements apply:

- The swimming pool shall be provided with filtration equipment that does not require a backwash facility (e.g. a cartridge filtration system).
- Overspill water shall be diverted away from the swimming pool and not directed onto adjoining properties.
- The frequency of emptying of the swimming pool water shall be minimised. Water resulting from the emptying of the pool shall be collected and disposed of by a private wastewater disposal contractor. Disposal by other means is not permitted.

Engineering

- 59 All roadworks, stormwater drainage works, signage, line marking, associated civil works and dedications required to effect the consented development shall be undertaken by the applicant at no cost to Penrith City Council.

- 60 An Infrastructure Restoration Bond is to be lodged with Penrith City Council for development involving works around Penrith City Council's Public Infrastructure Assets. The bond is to be lodged with Penrith City Council **prior to commencement of any works on site or prior to the issue of any Construction Certificate, whichever occurs first**. The bond and applicable fees are in accordance with Council's adopted Fees and Charges Schedule.

An application form together with an information sheet and conditions are available on Council's website.

Contact Penrith City Council's Asset Management Department on 4732 7777 or visit Penrith City Council's website for more information.

- 61 Lodgment of relevant Section 138 Roads Act applications, including payment of application and Council fees together with any applicable bonds, shall be lodged with and approved by Penrith City Council (being the Roads Authority for any works required in a public road).

You are required to lodge the applicable Section 138 Roads Act application for the below works that apply to your specific development prior to that work activity commencing. Please liaise with your builder to determine what applications are required for your development.

These works may include but are not limited to the following:

- a) Construction of driveways (including kerb reinstatement of redundant driveway crossings and reconstruction of any affected footpaths and/or cycleways)
- b) Temporary road reserve occupancies
- c) Road reserve openings for the installation of:
 - i. Utilities (water, sewer, power, telecommunications)
 - ii. Private stormwater connections to the kerb (including stormwater connection to Penrith City Council owned drainage)
 - iii. Reconstruction of concrete footpath and/or cycleways across the frontage
- d) Establishment of a construction work zone
- e) Establishment of road reserve hoardings and temporary structures/fencing, etc
- f) Operation of a tower crane over the road reserve
- g) Temporary ground anchors that encroach below the road reserve (for basement construction)
- h) Construction of any awning that encroaches above the road reserve. On completion of any awning over the road reserve, a certificate from a practising structural engineer certifying the structural adequacy of the awning is to be submitted to Council before Council will inspect the works and issue its final approval under the Roads Act.

All works shall be carried out in accordance with the Roads Act approval and the conditions outlined in the Roads Act applications, the development consent, including the stamped approved plans, and Penrith City Council's Driveway and Road Reserve Restoration Works Specification, guidelines and engineering best practice.

Contact Penrith City Council's Asset Management Department on 4732 7777 or visit Penrith City Council's website for more information.

Note:

- All works associated with the Roads Act approval(s) must be completed prior to the issue of any Occupation Certificate.

- 62 **Prior to the issue of any Construction Certificate**, the Certifier shall ensure that a Section 138 Roads Act application, including payment of application and inspection fees, has been lodged with and approved by Penrith City Council (being the Roads Authority under the Roads Act) for provision of the proposed traffic blister islands and associated line marking in the Lord Sheffield Circuit road reserve.

Engineering plans are to be prepared in accordance with the development consent, Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Developments, Engineering Construction Specification for Civil Works, Austroads Guidelines and best engineering practice.

Contact Penrith City Council's Development Engineering Department on 4732 7777 to obtain a formal fee proposal prior to lodgement and visit Penrith City Council's website for more information.

Note:

- Where Penrith City Council is the Certifier for the development, the Roads Act approval for the above works may be issued concurrently with the Construction Certificate.
- All works associated with the Roads Act approval must be completed prior to the issue of any Occupation Certificate.

- 63 The stormwater management system shall be consistent with the plans lodged for development approval, prepared by Enscape Studio, project number 0209, revision E, dated 16/06/2023.

Prior to the issue of any Construction Certificate, the Certifier shall ensure that the stormwater management system has been designed in accordance with Penrith City Council's Stormwater Drainage Specification for Building Developments and Water Sensitive Urban Design (WSUD) Policy.

Engineering plans and supporting calculations for the stormwater management system are to be prepared by a suitably qualified person and shall accompany the application for a Construction Certificate.

- 64 **Prior to the issue of any Construction Certificate**, the Certifier shall ensure that any proposed stormwater drainage system for the basement car park has been designed in accordance with the requirements for pumped systems in AS 3500.3 Plumbing and Drainage - Stormwater Drainage.

- 65 **Prior to the issue of any Construction Certificate**, the Certifier shall ensure that the proposed development is compatible with the recommendations of the Flood Impact and Risk Management Report prepared by Integrated Group Services, version 03, dated 05/05/2023.

- 66 **Prior to the issue of any Construction Certificate**, the Certifier shall ensure that all habitable floor levels are no lower than those shown on the architectural ground floor plan prepared by SJB Architects, drawing no. A-1003, revision 17, dated 29/03/2023 and that each ground floor unit has a minimum 300mm freeboard above the adjoining top of kerb.

- 67 **Prior to the issue of any Construction Certificate**, the Certifier shall ensure that the structures below RL 28.0m AHD (adopted flood level + 0.5m freeboard) have been detailed with flood compatible building components in accordance with the publication 'Reducing the Vulnerability of Buildings to Flood Damage' produced by the Hawkesbury-Nepean Floodplain Management Steering Committee.

- 68 **Prior to the issue of any Construction Certificate**, the Certifier shall ensure that all electrical services associated with the proposed building works are adequately flood proofed in accordance with the Penrith Development Control Plan provisions relating to flood liable land. Flood sensitive equipment (including electric motors and switches) shall also be located above the adopted flood level of RL 28.0m AHD.
- 69 **Prior to the issue of any Construction Certificate**, the Certifier shall ensure that the crest in the access ramp to the basement car park is a minimum of RL 28.0m AHD.
- 70 **Prior to the issue of any Construction Certificate**, the Certifier shall ensure that vehicular access, circulation, manoeuvring and pedestrian and parking areas associated with the subject development are in accordance with Penrith Development Control Plan, AS 2890.1, AS 2890.2 and AS 2890.6.
- 71 **Prior to the commencement of any works on-site (including demolition works) or prior to the issue of any Construction Certificate, whichever occurs first**, a Construction Traffic Management Plan (CTMP) shall be submitted to Penrith City Council's Asset Management Department for endorsement. The CTMP shall be prepared by a suitably qualified consultant with appropriate training and certification from Transport for NSW. The CTMP shall include details of any required road closures, work zones, loading zones and the like. Approval of the CTMP may require approval of the Local Traffic Committee. Please contact Council's Asset Management Department on 4732 7777 and refer to Council's website for a copy of the Temporary Road Reserve Occupancy Application Form.
- 72 **Prior to the issue of a Roads Act approval**, a Performance Bond is to be lodged with Penrith City Council for provision of the proposed traffic blister islands and associated line marking in the Lord Sheffield Circuit road reserve.
- 73 **Prior to the issue of any Construction Certificate**, a geotechnical investigation report and strategy shall be submitted to the Certifier to ensure the stability of any adjoining Council owned infrastructure and surrounding developments. The technical direction GTD 2012/001 prepared by Transport for NSW can be used as a guide for preparing the geotechnical investigation report and strategy.
- 74 **Prior to the issue of a Construction Certificate**, the site must be serviced by a legal point of discharge including the required infrastructure drainage works. The drainage works may include inter-allotment drainage construction, upgrades and/or road drainage extensions located on lands owned by others.
- 75 A dilapidation report shall be prepared and submitted to the Certifier for all surrounding buildings and Council owned infrastructure that confirms that no damage occurs due to the excavations associated with the development. If Council is not the Certifier for the development, then the dilapidation report shall also be submitted to Council **prior to the issue of any Construction Certificate**.

Prior to the issue of an Occupation Certificate, the dilapidation report is to be updated confirming no damage has occurred. If Council is not the Certifier for the development, then the updated dilapidation report shall also be submitted to Council **prior to the issue of an Occupation Certificate**.

76 **Prior to the issue of a Construction Certificate**, the Certifier is to ensure that a letter has been received from the Manager of Development Services, Penrith City Council, attesting that the development is consistent with the Adaptive Management Framework and dwelling thresholds detailed in the Development Assessment Guideline: An Adaptive Response to Flood Risk Management for Residential Development in the Penrith City Centre, published by the Department of Planning and Environment on 28 June 2019, in accordance with Section 61(6) of the Environmental Planning and Assessment Regulation 2021. The abovementioned letter is to be dated no earlier than three (3) months prior to the issue of the Construction Certificate or commencement of works.

77 **Prior to commencement of works**, sediment and erosion control measures shall be installed in accordance with the approved Construction Certificate and to ensure compliance with the Protection of the Environment Operations Act 1997.

The erosion and sediment control measures shall remain in place and be maintained until all disturbed areas have been rehabilitated and stabilised.

78 **Prior to the issue of any Occupation Certificate**, the Certifier shall ensure that all works associated with any Section 138 Roads Act approval have been inspected and signed-off by Penrith City Council.

79 **Prior to the issue of an Occupation Certificate**, works-as-executed drawings, final operation and maintenance management plans and any other compliance documentation shall be submitted to the Principal Certifying Authority in accordance with Penrith City Council's Engineering Construction Specification for Civil Works, WSUD Technical Guidelines and Stormwater Drainage Specification for Building Developments.

An original set of works-as-executed drawings and copies of the final operation and maintenance management plans and compliance documentation shall also be submitted to Penrith City Council with notification of the issue of the Occupation Certificate where Council is not the Principal Certifying Authority.

80 **Prior to the issue of any Occupation Certificate**, the Principal Certifying Authority shall ensure that the stormwater management systems (including water sensitive urban design measures):

- Have been satisfactorily completed in accordance with the approved Construction Certificate and the requirements of this consent.
- Have met the design intent with regard to any construction variations to the approved design.
- Any remedial works required to be undertaken have been satisfactorily completed.

Details of the approved and constructed system/s shall be provided as part of the works-as-executed drawings.

81 **Prior to the issue of an Occupation Certificate**, a restriction as to user and positive covenant relating to the stormwater management systems (including water sensitive urban design measures) shall be registered on the title of the property. The restriction as to user and positive covenant shall be in Penrith City Council's standard wording as detailed in Penrith City Council's Stormwater Drainage Specification for Building Developments - Appendix F.

- 82 **Prior to the issue of any Occupation Certificate**, and installation of regulatory/advisory signage and line marking, plans are to be lodged with Penrith City Council and approved by the Local Traffic Committee.

Note:

- Contact Penrith City Council's Engineering Services Department on 4732 7777 for further information on this process.
- Allow eight (8) weeks for approval by the Local Traffic Committee.
- Applicable fees are indicated in Council's adopted Fees and Charges Schedule.

- 83 **Prior to the issue of any Occupation Certificate**, a Maintenance Bond is to be lodged with Penrith City Council for provision of the proposed traffic blister islands and associated line marking in the Lord Sheffield Circuit road reserve.

- 84 The stormwater management systems shall continue to be operated and maintained in perpetuity to the satisfaction of Council in accordance with the final operation and maintenance management plan. Regular inspection records are required to be maintained and made available to Council upon request. All necessary improvements are required to be made immediately upon awareness of any deficiencies in the treatment measure/s

- 85 **Prior to the issue of any Construction Certificate**, the certifier shall ensure that the basement has been designed to be fully waterproofed should the ground water level be determined by a geotechnical engineer to be higher than the excavated basement level. No ground water shall be permitted to discharge into Council's stormwater system.

- 86 **Prior to the issue of a Construction Certificate**, a detailed Water Management Strategy is to be submitted to Council's Asset Team for approval. The strategy must include details on how the central wetland and central water feature will be protected from pollutants and sediment arising during the building and construction stages of the development. This should include monitoring and reporting to demonstrate the measures are working to an acceptable standard.

- 87 **Prior to the issue of any Construction Certificate**, the Certifier shall ensure that all vehicles accessing the site can enter and exit from/to the public road access in a forward direction. Any turning movements must be in accordance with AS 2890 and Penrith Development Control Plan for the relevant vehicle.

- 88 **Prior to the issue of any Construction Certificate**, the Certifier shall ensure that secure bicycle parking is provided at a convenient location(s) in accordance with AS 2890.3 Bicycle Parking Facilities. The location of at-grade public bicycle racks shall be evenly distributed along the building's frontage.

89 **Prior to the issue of any Construction Certificate**, the Certifier shall ensure that:

- Off-street access and parking complies with Penrith City Council's Development Control Plan and AS 2890.
- Vehicular access and internal manoeuvring have been designed for a 10.5m Council waste collection vehicle in accordance with AS 2890.2 and Penrith Development Control Plan.
- The driveway width can accommodate swept path movements of the largest vehicle accessing the site and has been designed in accordance with AS 2890.2 and Penrith Development Control Plan.
- Sight distance requirements are in accordance with AS 2890.2, Figure 3.3 and Figure 3.4.
- Accessible pedestrian paths of travel from all car parking spaces to the lifts and stairs have been provided.
- Separate accessible pedestrian paths of travel from the fronting roadway footpaths to access the car park area have been provided.
- Car park ramp headroom clearances, including at grade transitions, are compliant with AS 2890.1 and AS 2890.2.

90 **Prior to the issue of any Construction Certificate**, a Traffic Management Plan is to be prepared and submitted for approval by the certifier. The plan shall include all details of the installation and management of any traffic control measures installed in relation to the loading dock operation and basement car park. The plan shall include, but not be limited to, the following:

- Details of security controls for access to the basement car park and loading dock.
- The product and its specifications (including signage and signal lantern dimensions and clearances, with any associated details of loop detectors, signal output controllers and the like).
- Details of swipe card/security/activation/trigger/trip/manual activation mechanisms and/or positional sensors and their operation (whether inground or surface-mounted for vehicle detection).
- Signal programming details with regard to "revert to" and "dwell" for green and red signals (for ingressing and egressing vehicles).
- Nominated system wait times and pre-set clearance timing.
- Instructions on the use of the system to be given to existing and new tenants.
- Installation and maintenance details from the installer (including a copy of the user operation manual, or the like).
- Contingencies in the event of a system failure.

91 Vehicles servicing the site shall be limited in size to a 10.5m Council waste collection vehicle.

- 92 **Prior to the issue of any Occupation Certificate**, the vehicle priority system is to be installed on the ground level to manage interaction between vehicles accessing the loading dock and basement car park. The system must incorporate, but not be limited to, the following:
- Security controls for access to the basement car park and loading dock.
 - Wall-mounted red and green traffic signal lanterns, positioned for optimal viewing and adequate clearance to manoeuvring vehicles (no less than 2000mm above floor level), at the top and bottom of the proposed single lane ramp, if required.
 - Line marking and signage (including hold-line and signage at the loading dock entry), as well as any additional line marking and/or vehicle waiting bays, if required.
 - “Stop Here on Red Signal” signage (minimum dimensions 225mm x 300mm), if required.
 - Following installation of the system, a commissioning certificate shall be provided to the Principal Certifier by a suitably qualified Traffic Engineer prior to the issue of any Occupation Certificate.
 - A copy of the relevant Traffic Management Plan (for the basement traffic signal system) is to be provided to the Principal Certifier for the purpose of assessment in providing a commissioning certificate prior to the issue of any Occupation Certificate.
 - A copy of the relevant Traffic Management Plan (for the basement traffic signal system) is to be provided to the Building Manager and kept on-site to be available at all times.
- 93 **Prior to the issue of a Construction Certificate**, in order to facilitate the anticipated increases in pedestrian movements associated with the development, particularly to/from Aviators Way and Ron Mulock Circle, the Certifying Authority shall ensure that a Section 138 Roads Act application, including payment of application and inspection fees, has been lodged with, and approved by Penrith City Council (being the Roads Authority under the Roads Act), for provision of civil works for the construction of pedestrian facilities (e.g. kerb extension islands, pedestrian refuge, etc) on Lord Sheffield Circuit, including street lighting, with design, signage and line marking associated with the facilities to be subject to approval by Council's Local Traffic Committee.
- Engineering plans are to be prepared in accordance with the development consent, Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Developments, Engineering Construction Specification for Civil Works, Austroads Guidelines and best engineering practice (with design, signage and line marking associated with the facilities to be subject to approval by Council's Local Traffic Committee).
- 94 All parking spaces, loading zones, parking aisles and manoeuvring areas are to be kept clear of stored materials, products and waste materials such that these areas remain unobstructed and allow for the safe movement of vehicles.
- No parking is permitted outside of marked parking spaces, as shown on the approved plans.
- 95 The required sight lines around the driveway entrances are not to be compromised by landscaping, structure, fencing or signage.
- 96 Sub-leasing of car parking spaces is not permitted by this consent.

Landscaping

- 97 All landscape works are to be constructed in accordance with the stamped approved plan and ensure compliance with Chapter C6 - Landscape Design and Section 2.9 of Appendix F4 - Technical Information of Penrith Development Control Plan 2014.

Landscaping shall be maintained:

- in accordance with the approved plans, and
- in a healthy state, and
- in perpetuity by the existing or future owners and occupiers of the property.

If any of the vegetation comprising that landscaping dies or is removed, it is to be replaced with vegetation of the same species and, to the greatest extent practicable, the same maturity, as the vegetation which died or was removed.

- 98 On completion of the landscape works associated with the development and **prior to the issue of an Occupation Certificate** for the development, an Landscape Implementation Report must be submitted to the Principal Certifying Authority attesting to the satisfactory completion of the approved landscaping works for the development. This report shall be prepared by a suitably qualified and experienced landscape professional.

An Occupation Certificate should not be issued until such time as a satisfactory Implementation Report has been received and endorsed. If Penrith City Council is not the Principal Certifying Authority, a copy of the satisfactory Implementation Report is to be submitted to Council together with the Occupation Certificate for the development.

- 99 All landscape works are to meet industry best practice and the following relevant Australian Standards:
- AS 4419 Soils for Landscaping and Garden Use,
 - AS 4454 Composts, Soil Conditioners and Mulches, and
 - AS 4373 Pruning of Amenity Trees.

- 100 **Prior to commencement of works on the site**, the Tree Protection Plan and Tree Management Plan outlined in the Arboricultural Impact Assessment prepared by Advanced Treescape Consulting, dated 3 November 2022 are to be implemented. Tree protection measures are to remain in place for the duration of works on the site.

Development Contributions

- 101 This condition is imposed in accordance with Condition C4 (as amended) of MP10-0075 (Thornton Part 3A Concept Plan approval) and Penrith City Council's Section 7.11 Contributions Plan for District Open Space.

Based on the current rates applicable to contributions payable under this consent and plan, **\$641,158 is to be paid to Council prior to the issue of a Construction Certificate for this development** (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment based on the rate for the current quarterly period.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The Section 7.11 Contributions Plan for District Open Space is available on Council's website.

Certification

- 102 Prior to the commencement of any earthworks or construction works on site, the proponent is to:
- (a) employ a Principal Certifying Authority to oversee that the said works carried out on the site are in accordance with the development consent and related Construction Certificate issued for the approved development, and with the relevant provisions of the Environmental Planning and Assessment Act and accompanying Regulation, and
 - (b) submit a Notice of Commencement to Penrith City Council.

The Principal Certifier shall submit to Council an "Appointment of Principal Certifying Authority" in accordance with Section 6.6 of the Environmental Planning and Assessment Act 1979.

Information to accompany the Notice of Commencement

Two (2) days before any earthworks or construction/demolition works are to commence on site (including the clearing site vegetation), the proponent shall submit a "Notice of Commencement" to Council in accordance with Section 6.6 of the Environmental Planning and Assessment Act 1979.

- 103 An Occupation Certificate is to be obtained from the Principal Certifying Authority on completion of all works and prior to the occupation of the building/tenancy and commencement of the approved use. The Occupation Certificate shall not be issued if any conditions of this consent, but not the conditions relating to the operation of the development, are outstanding, and/or if the development does not comply with the provisions of the Environmental Planning and Assessment Act and Regulation.

Before the Occupation Certificate can be issued for the development, Fire Safety Certificates issued for the building are to be submitted to Penrith City Council and the New South Wales Fire Brigades.

A copy of the Occupation Certificate and all necessary documentation supporting the issue of the Occupation Certificate shall be submitted to Penrith City Council, if Council is not the Principal Certifying Authority.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part B - DCP Principles

This section of the DCP sets principles and corresponding objectives which are to be addressed as part of any development application. The principles include:

- Provide a long term vision for cities, based on sustainability; intergenerational, social, economic and political equity; and their individuality.
- Recognise and build on the distinctive characteristics of cities, including their human and cultural values, history and natural systems.
- Build on the characteristics of ecosystems in the development and nurturing of healthy sustainable cities.
- Enable communities to minimise their ecological footprint.
- Achieve long term economic and social security.

An assessment of the proposal against the above mentioned principles has been undertaken and the application is found to be acceptable.

The development is located in close proximity to a major public transport node and incorporates employment opportunities.

The development is found to be compliant with sustainability targets set by the NSW government including BASIX targets and energy saving design requirements set out under SEPP 65 and the related Apartment Design Guideline.

Part C - City-wide Controls

C1 - Site Planning and Design Principles

The design of the proposed mixed use building is of an acceptable bulk and scale in the context of the location. The building design is a design competition winning scheme that demonstrates design excellence. Each elevation is adequately articulated with a variety of high quality materials and finishes incorporated. A high quality and active public domain have been incorporated into the design of the development.

C6 - Landscape Design

Landscaping elements have been incorporated into the building and site design. The roof top communal space is provided with extensive landscaping, including non-trafficable green roof areas. The roof top design and landscaping creates various spaces for social gathering, relaxation and exercise.

Non-trafficable green roof space is also provided at the podium roof which wraps around the southern and eastern sides of the building. This provides a green outlook for apartments overlooking this space and softens the building from the public domain of Penrith CBD and Penrith railway station.

Landscaping is also provided within the ground floor pedestrian colonnade (colonnade planters at level 1), community forecourt and community garden area along the eastern boundary, as well as street tree planting.

Council's Landscape Architect is supportive of the proposed landscape design subject to recommended conditions of consent.

C8 - Public Domain

The DCP states that the public domain comprises the shared urban spaces, the structures that relate to those spaces and the infrastructure that supports and serves them. Public space includes publicly owned or commonly used areas such as road verges, parks and squares, outdoor trading areas and includes spaces in private property such as through site links and lobby entries. Objectives of the section of the DCP include:

- (a) enhance the quality of the public domain;*
- (b) enhance the natural setting and landscape character of Penrith;*
- (c) ensure that the public domain is enhanced by the built form adjoining it; and*
- (d) ensure that the principles of Universal Design are considered when designing the public domain.*

The proposal includes the construction of a pedestrian colonnade along the northern side of the building which will allow pedestrians to move along Lord Sheffield Circuit from Station Plaza to the east. The submitted plans show the colonnade with landscaping, seating and planter boxes. The colonnade is assessed to provide a visual transition from the public area at Station Plaza through to the central community forecourt and beyond. Retail tenancies are located along the colonnade to active the space.

The entry and lobby space is acceptable in design and complies with the applicable provisions of the DCP in that the entry lobby is glazed and located at ground floor and provides a sense of address.

C10 - Traffic, Access and Parking

The car parking rates in this section of the DCP do not apply to the subject site, with separate rates specific to the Thornton Estate contained in Chapter E11 of the DCP (as outlined below).

The application was supported by Traffic and Parking Impact Assessment. During the assessment period, Council's Traffic Engineer requested clarification or additional information in regards to a number of items. The applicant provided the required information in the form of appendices to the original report or via email communication. Council's Traffic Engineer has assessed the additional information and raised no objection to the development on traffic generation grounds subject to recommended conditions of consent.

All retail, commercial and residential parking is contained with the basement levels of the building. No above ground parking is proposed. A service area is proposed at ground level behind the retail tenancies and within the building. The service area has adequate space for a waste/removalist vehicle and seven service vehicles. The service area is separated from all other parking and circulation spaces.

The driveway access to the service area and basement is located along the eastern edge of the development. It is a shared driveway with separation occurring inside the building. A condition of consent has been recommended for a traffic management system to manage the merging of service vehicles at ground level and other vehicles from the basement.

All vehicles can enter and exit the site in a forward direction. Sight distances are assessed to comply with AS 2890 and this will be reinforced via recommended conditions of consent.

C12 - Noise and Vibration

The design of the proposal has given significant consideration to the noise impacts from the adjoining rail corridor. This is reflected in various elements of the design, including:

- A long north facing facade to act as a noise shield to surrounding development while living spaces of apartments can be oriented (north and east) away from the noise source.
- The use of a solid material to the external envelope of the building to protect the internal living area.
- Balconies and landscaping provide a buffer to the south.
- The use of passive plenums to windows of living rooms and bedrooms to the south which allow natural ventilation and provide acoustic benefits.

E11 Penrith

Part B - North Penrith

11.8.2.1 - Vision

The proposal is assessed to comply with the vision statements in that it is well designed and provides for an active public domain. It also provides a high density housing product within close proximity to the Penrith rail and bus transport interchange, and offers employment opportunities on the northern side of the Penrith CBD.

11.8.3.1 - Housing Density and Diversity

The proposal offers one, two and three bedroom apartments within a high density development close to public transport. No housing targets are set for the town centre however expectations of higher density development has been envisaged for the larger town centre lots. This is reflected in the permitted height of building standard (32m) and additional permitted land uses (residential flat buildings) under the LEP.

11.8.3.3 - Building Envelopes

The proposal does not comply with the applicable building envelope controls, in that Figure E11.37 identifies a six storey height limit. Notwithstanding, the LEP allows for a maximum building height of 32m. The proposal is for a ten (10) storey building with a maximum height, supported by a Clause 4.6 variation request, of 40.54m. It is noted that there is conflicting height controls related to the site and it is acknowledged that Part B - North Penrith (Chapter E11) of the DCP requires a housekeeping amendment to reflect the maximum heights expressed under the LEP.

11.8.3.10 - Specific Provisions - Residential Flat Buildings

Objectives of this clause include to establish high quality residential flat developments that have a good level of amenity. The proposed development complies this objective and with the minimum site requirement of 650sqm.

The following car parking rates override those rates outlined in Chapter C10 of the DCP.

Parking Rates	Proposed	Compliance
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<u>Residential parking</u> <u>(maximum rates)</u> 1-2 bedroom = 1 x space per dwelling 3+ bedrooms = 2 x spaces per dwelling Based on the parking rates, the total maximum residential spaces = 334 spaces <i>240 x 1-2 bedroom units = 240 spaces</i> <i>47 x 3 bedroom units = 94 spaces</i>	The proposal includes 320 residential car spaces, 4 car wash bays and 7 service vehicle spaces.	Complies
<u>Visitor parking</u> On street	No visitor spaces are required.	Complies
<u>Commercial parking</u> <u>(minimum rate)</u> 1 car space per 75sqm of commercial/retail floor area Retail floor space = 1,794sqm Commercial floor space = 4,331sqm Total = 6,125sqm of floor space Total commercial/retail spaces required = 82 spaces	The proposed number of car parking spaces for the commercial and retail uses is 84 including two accessible spaces.	Complies

Figure E11.44 nominates sites where residential flat building development is to occur and the subject site is partly identified in this figure (see figure below). The proposal seeks to redistribute land uses across all three lots vertically rather than horizontally from west to east (see below further discussion in this regard against the Village Centre controls).



LEGEND



Apartment Sites

Above - Figure E11.44 - Sites nominated for key residential flat development.

11.8.4 - The Village Centre

11.8.4.1 - Built Form Controls

1) Figure E11.47 nominates the preferred land uses within the Village Centre. As can be seen from Figure E11.47 below, land uses of retail, commercial and residential are intended to be distributed across the subject site from west to east.



Above - Figure E11.47 - Village Centre location of preferred land uses.

The proposed development is seeking to redistribute the same land uses vertically, stacked one above the other, being retail and commercial at the ground level and level 1 podium and 8 levels of residential above in two towers. This is assessed to be an appropriate outcome for the subject site given the delivery of a quality public domain outcome and interface along the Station Plaza edge and frontage along Lord Sheffield Circuit. The vertical nature of the proposal will result in an increase in activity at the ground level of the development throughout the day and night. Retail and commercial levels at the lower levels will provide an acoustic buffer from the railway corridor to the upper level residential uses.

2) The proposal exceeds the maximum building height control of 6 storeys. Notwithstanding, the LEP allows for a maximum building height of 32m. The proposal is for a ten (10) storey building with a maximum height, supported by a Clause 4.6 variation request, of 40.54m. It is noted that there is conflicting height controls related to the site and it is acknowledged that Part B - North Penrith (Chapter E11) of the DCP requires a housekeeping amendment to reflect the maximum heights expressed under the LEP.

3) The proposal exceeds the required minimum floor to ceiling heights. The architectural plans show floor to floor heights for the retail spaces of 5.1m, 4.5m for the commercial spaces and 3.1m for the residential units.

4) The building setback/build to lines outlined in Figure E11.48 below generally align with the preferred land uses shown in Figure E11.47. The proposal provides a better outcome for the subject site with retail edges along the western boundary and Lord Sheffield Circuit, which is supported by a pedestrian colonnade that will facilitate movement along an active retail edge.

The eastern edge will be setback a minimum of 4m and will also be an active space opening up to approximately 11.7m at the community garden in the south-eastern corner.



Above - Figure E11.48 - Village Centre build to lines.

5) The proposal has a consistent frontage treatment in its design. The facade design includes arched elements and a double height pedestrian colonnade built to the boundary along Lord Sheffield Circuit. The arch elements are continued along the western edge to Station Plaza and provide a retail frontage to this edge.