

Appendix GG

Clause 4.6 Variation Request

Mayfair on North Penrith

160, 162 and 172 Lord Sheffield Circuit, North Penrith

Submitted to Penrith City Council

On behalf of UPG Lord Sheffield 162 Pty Ltd



'Gura Bulga'
Liz Belanjee Cameron

'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.

By using the green and blue colours to represent NSW, this painting unites the contrasting landscapes. The use of green symbolises tranquillity and health. The colour cyan, a greenish-blue, sparks feelings of calmness and reminds us of the importance of nature, while various shades of blue hues denote emotions of new beginnings and growth. The use of emerald green in this image speaks of place as a fluid moving topography of rhythmical connection, echoed by densely layered patterning and symbolic shapes which project the hypnotic vibrations of the earth, waterways and skies.

Ethos Urban acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We acknowledge the Gadigal people, of the Eora Nation, the Traditional Custodians of the land where this document was prepared, and all peoples and nations from lands affected.

We pay our respects to their Elders past, present and emerging.

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Working Draft V1	1 November 2022
Amended Draft V2	10 November 2022
Initial Final	11 November 2022
Updated Draft	7 March 2023
Updated Final Draft	23 March 2022

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1.0 Introduction

This Clause 4.6 Variation Request is submitted to Penrith City Council (Council) on behalf of UPG Lord Sheffield 162 Pty Ltd in support of a Development Application (DA) for a mixed-use development at 160-172 Lord Sheffield Circuit, North Penrith. This report seeks to address the proposed variation of the maximum height allowed by Clause 4.3 of the Penrith Local Environmental Plan 2010 (PLEP 2010). Clause 4.3 imposes a maximum permitted building height of 32m across the site.

This Clause 4.6 Variation Request demonstrates that the proposed height variation will achieve a better outcome for and from the proposed development, which is in the public interest, noting:

- The proposed height variation will not result in any unacceptable overshadowing to surrounding residential dwellings, or to the public domain, including the Station Plaza.
- The proposal is consistent with the objectives for the B2 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 locale.
- The proposal will develop a site that is currently vacant, and will maximise land use opportunities that are associated with the immediacy of Penrith Station.
- The proposed development presents a high quality outcome for the site that satisfies the objectives for Clause 4.3 of the PLEP 2010 and the B2 Local Centre Zone.
- The proposed height variation is necessary to achieve the best outcome for the site in lieu of less suitable alternative approaches, noting:
 - The proposal will offer a high-amenity outcome for future residential occupants, who will benefit from the delivery of two significant communal roof spaces with excellent solar access. In this regard, poor solar amenity would be experienced if these significant communal spaces were provided at the podium level.
 - The elongated form of the proposed development will function as a noise buffer between the south-adjacent rail corridor and surrounding residential buildings, in particular the residential apartment buildings to the immediate north of the site across Lord Sheffield Circuit.
 - Any reduction to the length of the proposed development would negatively impact the efficacy of its function as a noise buffer. Due to this, the delivery of communal open space(s) at ground level is much less viable than providing the principal communal offering across the tower rooftops.
 - The commercial and retail uses that are incorporated within the joint podium provide for the spatial separation of residential dwellings from the south-adjacent rail corridor.
 - Any communal space at ground or podium level towards the south site boundary would be burdened by poor acoustic amenity in addition to overshadowing, while the public interface to Lord Sheffield Circuit would not be a suitable location for communal spaces.
 - The development exhibits design excellence, which usually permits the application of a 10% height bonus under Clause 8.4(5) of the PLEP 2010. There is provision for a building height of 35.2m under Clause 8.4(5) of the PLEP 2010, however this is not the formal height standard to be varied. Aspects of the proposed built form that exceed 35.2m in height are restricted to the communal rooftop spaces. These spaces have contributed towards the achievement of Design Excellence.
 - As established by this Clause 4.6 Variation Request, complying with the maximum allowable building height of 32m under Clause 4.3 of the PLEP 2010 would compromise the above-listed benefits.
- Supporting technical studies which accompany this DA confirm that the environmental impacts associated with the proposed height variation will not give rise to any unacceptable adverse environmental impact. Further noting the above listed benefits, it would not be reasonable to limit residential uplift at the site through enforcing full compliance with the maximum allowable height limit of 32m.

This Clause 4.6 Variation Request demonstrates that compliance with the maximum permitted building height of 32m under Clause 4.3 is unreasonable and unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravention of the standard.

1.1 Background

1.1.1 Invited Design Competition

In accordance with Clause 8.4 of PLEP 2010, an architectural design competition was held in relation to the site at 160, 162 and 172 Lord Sheffield Circuit, Penrith. The applicant invited three architectural firms to participate in the design competition:

- Cox Architecture.
- Scott Carver Architecture.
- SJB Architects.

The architectural firms invited to participate were selected due to their demonstrated ability to design high-quality and sustainable transit orientated developments and commitment to timeless design and place making.

Each of the three competing design schemes provided a distinct and inventive response to the Competition Brief, with each Competitor presenting a high-quality written submission to address the complexities of the site and the importance of the site as a key gateway site for the North Penrith Town Centre.

The Competition Jury unanimously agreed that the scheme presented by SJB Architects was most capable of achieving design excellence in accordance with the LEP, subject to resolution of matters identified in the Jury Report.

Design Integrity Panel

As stated in the Endorsed Design Competition Report, the Jury have had an ongoing role throughout the design development process as the Design Integrity Panel (DIP) and have provided a letter of endorsement certifying design excellence, which has since been submitted to the consent authority for consideration.

1.1.2 Clause 8.4 of the PLEP 2010

As mentioned at **Section 1.1.1**, this DA presents a design outcome for the site that reflects the culmination of an extensive design development process undertaken to date, which included a Design Competition. The provisions of Clause 8.4 have been satisfied by this DA, as demonstrated at **Table 1** of this report.

As the proposed development has achieved Design Excellence, there is a maximum potential building height that is allowable at the site is 35.2m under Clause 8.4 of the PLEP 2010. However, Clause 4.6 of the PLEP 2010 does not relate to the variation of this potential height allowance. The formal height standard to be varied is the regular height limit of 32m that applies under Clause 4.3 of the PLEP 2010. This height variation must be considered with exclusive regard for the objectives of Clause 4.3, the B2 Local Centre Zone, and the provisions of Clause 4.6.

2.0 Development Standard to be Varied

2.1 Is the Planning Control in Question a Development Standard?

The maximum permitted building height of 32m that applies to the site under Clause 4.3 of the PLEP 2010 is a development standard in accordance with Section 1.4(c) of the EP&A Act.

2.2 Relevant Development Standard

The development standard in question is the maximum permitted building height (32m), exclusive of the potential height allowance that is provided by Clause 8.4(5) of the PLEP 2010. The proposed maximum building height of 40.54m exceeds the maximum allowable building height (32m) by 8.54m.

The extent of the proposed variation equates to 26.7% of the maximum allowable building height under Clause 4.3 of the PLEP 2010.

2.3 Variation Sought

The proposed development has a maximum building height of 40.54m, which exceeds the maximum permitted building height by 8.54m or 26.7%. The extent of this height variation is shown by the 3D diagram at **Figure 1** (over page). This diagram shows that elements of the building form that project above 32m in height are located above Level 9. While the bonus height allowance (35.2m) would reduce the extent of the proposed height variation, this height allowance cannot be referenced as the standard to be varied by this Clause 4.6 Variation Request.

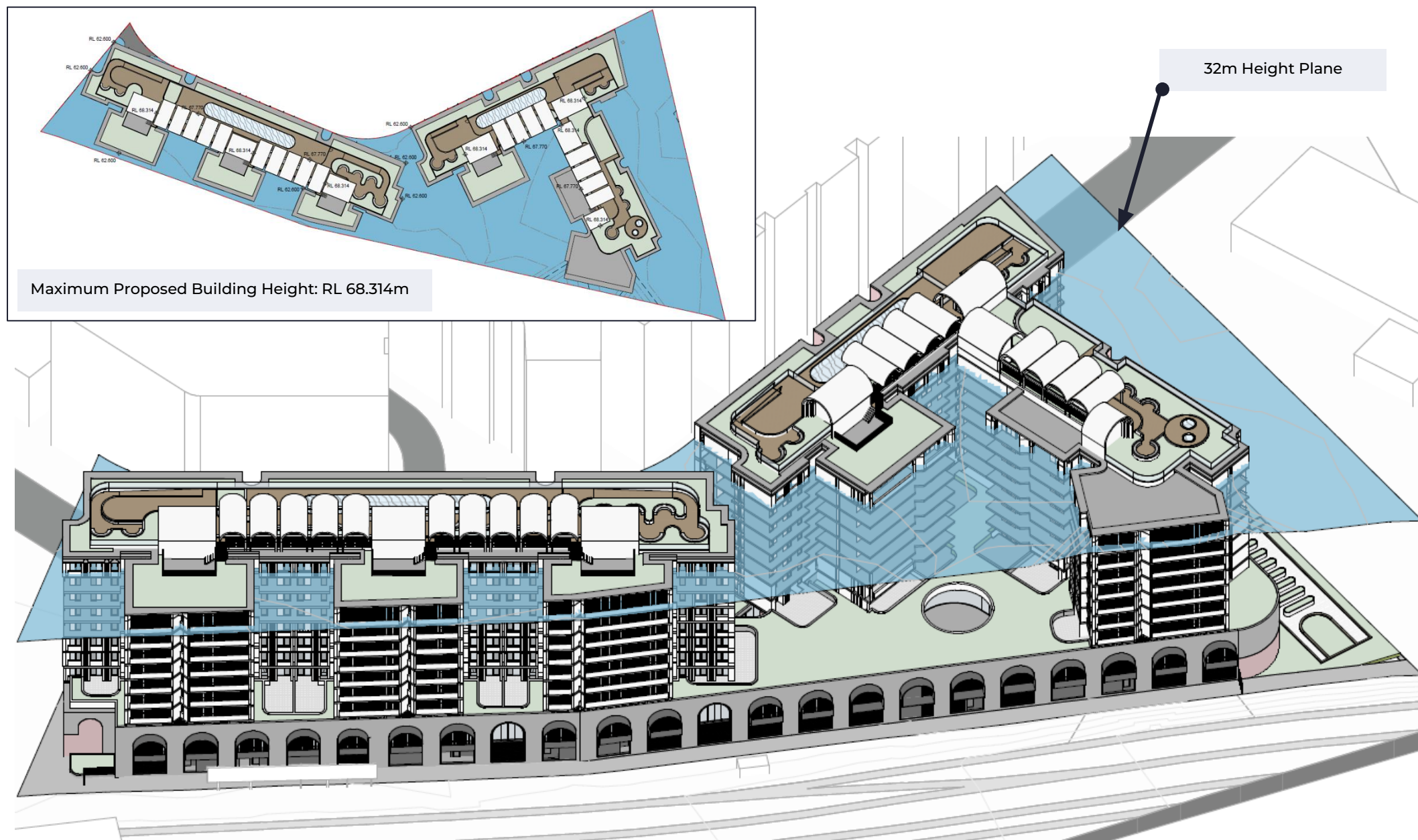


Figure 1 Extent of Protrusion Above 32m Height Plane (maximum allowable height under Clause 4.3 of the PLEP 2010)

Source: SJB

3.0 Justification for Proposed Variation

Clause 4.6(3) of the PLEP 2010 provides that:

4.6 – Exceptions to Development Standards

- 3) *Development consent must not be granted for 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.*

Further to the above, Clause 4.6(4)(a) of the PLEP 2010 provides that:

- 4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) the consent authority is satisfied that:*
 - i. the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - ii. the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed, and*
 - (b) the concurrence of the Secretary has been obtained.*

Assistance on the approach to justifying a contravention to a development standard can also be taken from applicable decisions of the NSW Land and Environment Court, including:

1. *Wehbe v Pittwater Council [2007] NSW LEC 827;*
2. *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;*
3. *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 (Initial Action);*
4. *Baron Corporation Pty Ltd v The Council of the City of Sydney [2018] NSWLEC 1552 (Baron Corporation); and*
5. *Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245 (Al Maha).*

The relevant matters contained in Clause 4.6 of the PLEP 2010, with respect to the height standard to be varied, are addressed from **Section 3.1** to **Section 3.6** of this report.

3.1 Role of the Consent Authority

The role of the consent authority in considering this Clause 4.6 Variation Request has been recently explained by the NSW Court of Appeal in *Initial Action* and in *Al Maha* to require that the consent authority needs to be satisfied in relation to two matters:

- That the applicant's request has adequately addressed the matters in Clause 4.6(4)(a)(i).
- That the proposed development will be in the public interest because of its consistency with the objectives of the development standard and the zone.

The consent authority is required to positively form these opinions first before it considers the merits of the DA, and it can only consider the merits of the DA if it forms the required state of satisfaction in relation to the matters. In particular, the consent authority needs to be satisfied that there are proper planning grounds to grant consent and that the contravention of the standard is justified. This report provides the basis for the consent authority to reach this state of satisfaction.

3.2 Clause 4.6(3)(a): Compliance is Unreasonable or Unnecessary

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class.

In this instance, the application of the First Method is the most appropriate – namely:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).

3.2.1 Application of the First Method

This Clause 4.6 Variation Request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case. This is because the objectives of the height standard to be varied are achieved notwithstanding the non-compliance with the standard (**First Method**). This is demonstrated at **Section 3.2.2**.

3.2.2 Objectives of Clause 4.3 – Height of Buildings

The objectives of Clause 4.3 are achieved notwithstanding the proposed height variation, which equates to 26.7% of the maximum permitted building height (32m). This is demonstrated in relation to each objective for Clause 4.3 in the subsections below.

Objective (a)

“Ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality”

As outlined by the Design Report that is provided at **Appendix C**, 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 façade presentation to Lord Sheffield Circuit incorporates an appropriate ratio of solid to void, as a result of the recessed glazing. Other articulation elements, including vertical cuts into the façade, break down and provide relief from the scale of the proposed development. This site-specific built form approach, including the way it responds to and addresses unique site constraints, was fundamental to the achievement of a design outcome that exhibits Design Excellence, as endorsed by the Design Integrity Panel.

Further to the above, the proposed development has been designed to achieve an outcome that compliments the civic importance of the Station Plaza, which presents a sensitive public interface at the western site boundary. The civic importance of the Station Plaza will be complimented by the expression of the eastern façade, which has been designed to provide an arched pedestrian forecourt to the Station Plaza. The proposed development is considered to achieve a design outcome that promotes pedestrian amenity across the ground plane, including at the sensitive interface to the Station Plaza. This will be essential to supporting additional pedestrian activity within and around the Station Plaza, as necessary to elevate the profile of this space within the public realm.

This is consistent with provisions of Section 11.8.4 to Chapter E11 of the Penrith Development Control Plan 2014 (the PDSCP 2014), which contains fine-tuned development controls to support the desired function of the Station Plaza. These controls have an established focus on promoting pedestrian amenity, including in relation to providing for covered pedestrian passage alongside the northern aspect of the site to the Station Plaza. This has been addressed by the proposed delivery of an expansive double-height pedestrian colonnade that extends for the length of the site.

A summary visual of the overall design approach is provided at **Figure 2**.

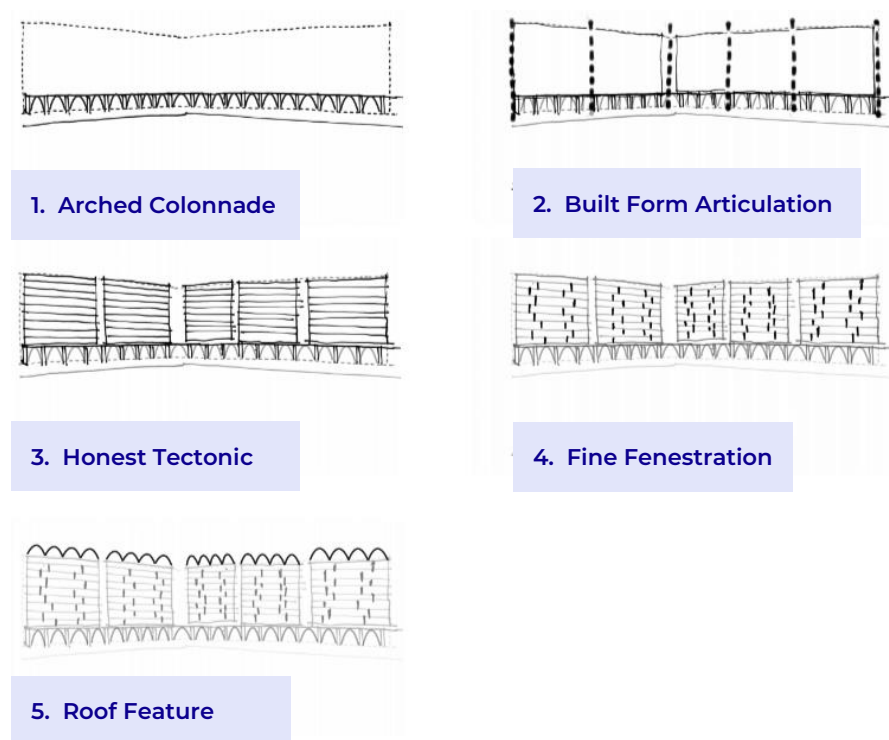


Figure 2 Summary Visual: Overview of Design Approach

Source: SJB

The Key Site to the immediate west of the proposed development is currently the subject of two concurrent DAs, which seek approval for towers that will introduce a separate high-rise height datum to the locale. In this regard, the proposal is considered to present an outcome for the site that is contextually appropriate with respect to the local character form.

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”

Whilst the proposed maximum building height of 40.54m exceeds the maximum allowable building height (35.2m) by 8.54m, the proposed height exceedance is largely attributed to elements of the built form within the bonus height allowance under Clause 8.4(5) of the PLEP 2010. Projections above this bonus height allowance are limited to roof structures and lift overruns. These elements are generally recessed back from the edge of the building façade, and will not be visually prominent, or visible at all in some instances, when observed from the public domain. This is shown at **Figure 3**.

Further noting the proposed development provides a visual barrier between the surrounding area and the rail corridor, which is not a visually desirable feature, the proposal compliments Objective (b) where it relates to views and visual amenity. The high-quality design of the proposed development, including the articulated expression of the northern façade, presents an amenable outcome with regard to private residential views from apartment buildings across Lord Sheffield Circuit. The level of amenity associated with these private residential views will improve with reduced visibility of the rail corridor.



Figure 3 Proposed Development: View from Lord Sheffield Circuit towards the Station Plaza

Source: SJB

Objective (b) also concerns the “loss of solar access to existing development”. This aspect of the objective should be considered with reference to the shadow diagrams that are appended to the Architectural Plans (**Appendix B**). These shadow diagrams show the extent of the shadow footprint that will be cast by the proposed development during Winter Solstice.

In particular, it is noted that there will be no additional overshadowing to any private residential dwelling or the Station Plaza. The extent of the shadow footprint that will be cast from the proposed development is generally restricted to the south-adjacent rail corridor, in addition to the station and the associated at-grade car parking lot on the southern side of the rail corridor. In this sense, there will not be any adverse reduction to solar amenity associated with the proposed height variation that would have any material impact to amenity of land use for .

An extract of the shadow diagram that was generated to reflect morning overshadowing (9:00 AM) during Winter Solstice is provided at **Figure 4** (page 14) for reference.

Objective (c)

“Minimise the adverse impact of development on heritage items, heritage conservation areas and areas of scenic or visual importance”

A Non-Aboriginal Statement of Heritage Impact has been prepared by Artefact. This report, herein referred to as the Heritage Impact Statement (HIS), is appended to the SEE at **Appendix JJ**. The HIS provides an assessment of the proposed development that considers the potential for impacts to nearby heritage items (listed at Section 2.9.2 of the SEE).

The HIS confirms that the proposal will not have any adverse impact to surrounding heritage items. The primary reason for this conclusion was based on the physical appearance of the proposed development. Specifically, the proposed development was described to be visually consistent with surrounding development, and as such was not considered to present an outcome that was discordant with the character of the locale.

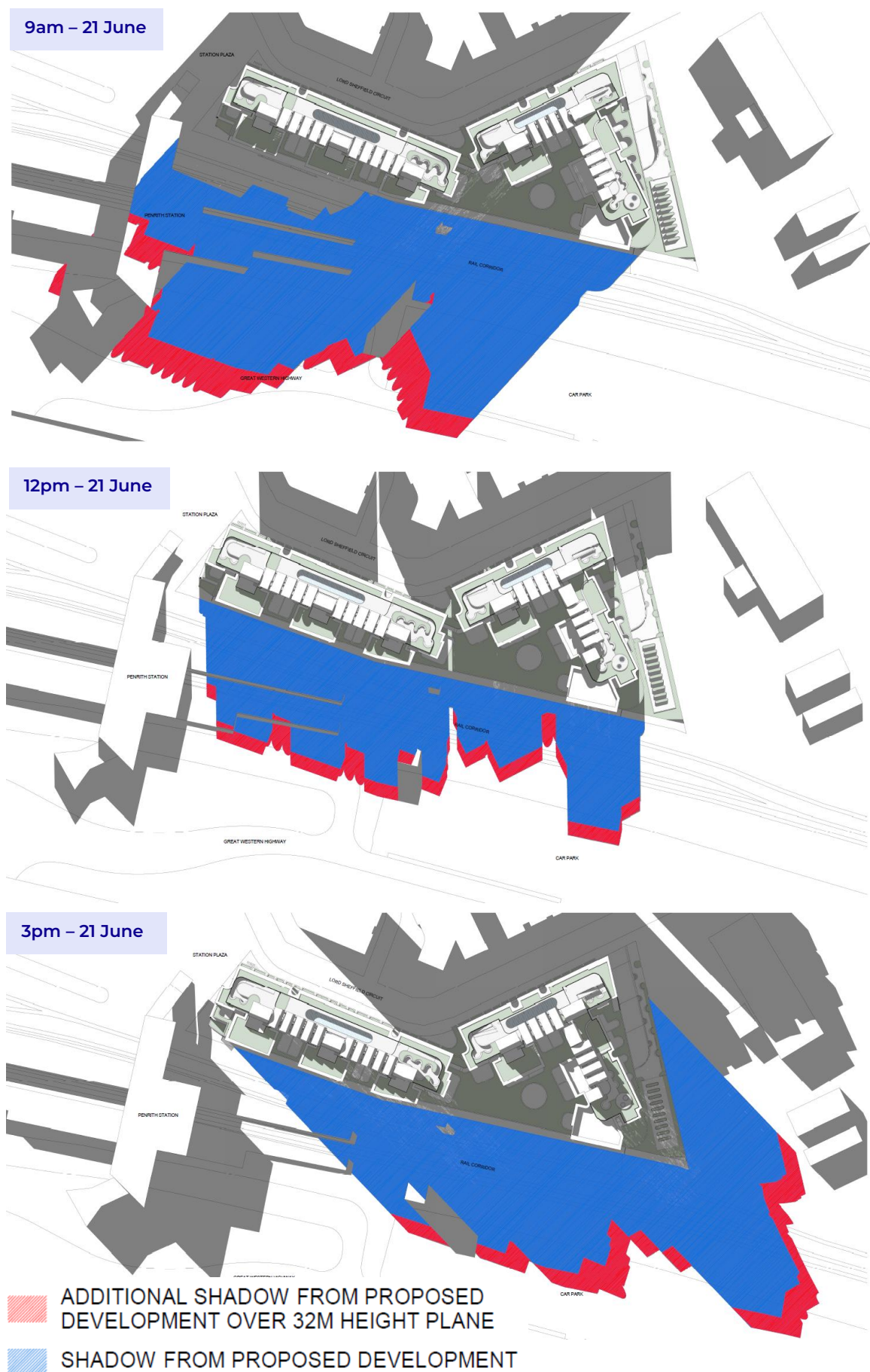


Figure 3 Shadow Diagram Extracts: 9AM (top right), 12PM (top left), and 3PM (bottom)

Source: SJB

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”

As mentioned, 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 (refer to **Appendix C** of the SEE). The Key Site to the immediate west of the proposed development is currently the subject of two concurrent DAs, which seek approval for towers that will introduce a separate high-rise height datum to the locale. The proposed development presents an outcome for the site that is reasonably anticipated in relation to the character and form of surrounding development, particularly given the context of nearby future developments. A photomontage that shows the proposed development in relation to the massing of development across Lord Sheffield Circuit to the immediate north is shown at **Figure 5**.

It is further noted that the proposed bulk and height of the East Tower and the West Tower is necessary to deliver an appropriate quantity and range of residential apartments at the site, given its immediacy to Penrith Station, the Station Interchange, and employment opportunities within the CBD. This is noted with regard to the strategic planning framework for the City of Penrith, which is guided by the Penrith Local Strategic Planning Statement (**the LSPS**). The LSPS has established the following Planning Priorities that are relevant to transit-orientated context for this DA:

1. Align development, growth and infrastructure.

Planning Priority 1 is relevant as it relates to the alignment of land use and infrastructure planning. This is relevant to the context of the site, which is serviced by a range of public transport services that operate from the Penrith Station Interchange.

3. Facilitate sustainable housing.

Planning Priority 5 emphasises that for areas where there are increased densities, it is important to ensure that these areas are well serviced by public transport and high-quality active transport infrastructures.

The site occupies a prominent location at the interface between Thornton North Penrith Precinct, Penrith Train Station, and the 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. Irrespective of this, it is reiterated that the proposed development is commensurate with the form of the existing buildings that front Lord Sheffield Circuit to the immediate north. The proposed development is considered to present a strong response to Objective (d) for Clause 4.3 of the PLEP 2010, notwithstanding the proposed height variation.



Figure 4 Facing West to Site from Lord Sheffield Circuit

Source: SJB

3.2.3 Provisions of Clause 8.4

Under Clause 8.4(5) of the PLEP 2010, there is potential for an additional height allowance that equates to +10% of the maximum permitted building height (32m) that applies to the site under Clause 4.3. As mentioned, the maximum potential building height (35.2m) under Clause 8.4(5) **is not** the height standard that is relevant to this Clause 4.6 Variation Request.

Notwithstanding this, it is acknowledged that the achievement of a high-quality design outcome for the site is fundamental to delivering an outcome that responds to the objectives for Clause 4.3 of the PLEP 2010 and the B2 Local Centre Zone. As this must be considered under Clause 4.6 of the PLEP 2010, the achievement of Design Excellence is relevant to the assessment of the proposed height variation, however this must be considered without any regard for the maximum potential building height (35.2m) under Clause 8.4(5).

Further reference should be made to **Appendix G** and **Appendix H** of the Statement of Environmental Effects, which provide a breakdown of commentary that was received from the Design Competition Jury and the subsequent Design Integrity Panel. Notwithstanding the proposed height variation, this DA presents an outcome for the site that achieves Design Excellence, which has made a significant contribution towards addressing Clause 4.6 of the PLEP 2010.

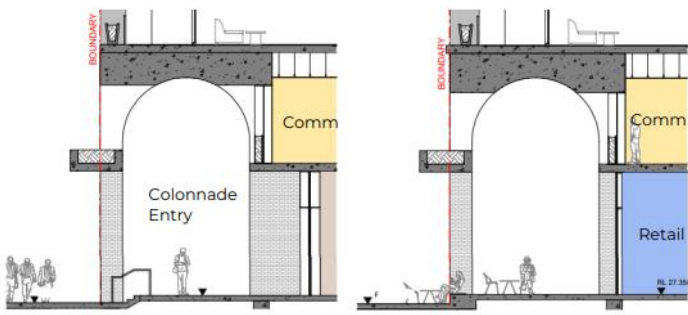
The provisions of Clause 8.4 have been satisfied by this DA, as demonstrated at **Table 1**. In light of the assessment that is provided at **Table 1**, it is clear that the achievement of a high-quality design outcome has mitigated the potential for environmental impacts outside of what would be reasonable to anticipate under a height-compliant development scenario. Further reference should also be made to discussion at **Section Error! Reference source not found.** of this Clause 4.6 Variation Request.

Table 1 Assessment of Provisions Under Clause 8.4

Provision		Assessment
Subclause (1) – Requirement for Design Excellence		
(1)	Development consent must not be granted for development involving the construction of a new building, or external alterations to an existing building, on land to which this Part applies unless, in the opinion of the consent authority, the proposed development exhibits design excellence.	<p>In accordance with Clause 8.4 of the PLEP 2010, an architectural design competition was held in relation to the site at 160, 162 and 172 Lord Sheffield Circuit, Penrith.</p> <p>The architectural firms invited to participate in this competitive design process were selected due to their demonstrated ability to design high-quality and sustainable transit orientated developments and commitment to timeless design and place making.</p> <p>The proposal achieves a high standard of design, and is supported by the Design Integrity Panel.</p> <p>Refer to Appendix H of the SEE.</p>
Subclause (2) – Matters to Consider in regard to Design Excellence		
(2)	In deciding whether development to which this clause applies exhibits design excellence, the consent authority must have regard to the following matters: [refer below]	
(a)	whether a high standard of architectural design, materials and detailing appropriate to the building type and	<p>Consistent.</p> <p>The proposed development has incorporated materials that are durable and timeless. The rationale for the selection of materials across the building exterior is outlined by the Design Report that is provided at Appendix C.</p>

Provision	Assessment
location will be achieved,	The proposed materials have been selected with regard for ESD matters, including (but not limited to) potential for reuse, as outlined by the Ecologically Sustainable Design (ESD) Framework and Options Report (Appendix O).
(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,	<p>Consistent.</p> <p>The form and external appearance of the development will improve the quality and amenity of the public domain, in particular the proposed colonnade to Lord Sheffield Circuit.</p> <p>In this regard, the proposal will deliver substantial public domain curtilage, which will be enhanced by a double-height pedestrian colonnade to the Lord Sheffield Circuit frontage.</p> <p>The arched elements within the colonnade are replicated by the proposed awning/overhang towards the Station Plaza that will create a forecourt.</p> <p>The façade design has included vertical inlets to break up the building mass. Articulation is also provided by recessed glazing, which further contributes to the appropriate ratio of solid to void that is achieved across the façade.</p> <p>The proposed frontage treatments present a strong and contextually appropriate design response. On this basis, the proposal is consistent with the intended effect of this control.</p> <p>As outlined by the Design Report (Appendix C), the proposal presents an outcome for the site that is not visually discordant with either the visual appearance of surrounding development or the desired future character of Thornton North Penrith towards the station plaza.</p> <p>It has also been established at Section 3.2.2 that any difference to the perceived bulk and height of the proposed development, compared to a height-compliant scenario, would be imperceptible.</p>
(c) whether the development will detrimentally impact on view corridors,	<p>Consistent.</p> <p>The proposal will not result in any impact to significant views or vistas. As above, the proposal presents an outcome for the site that is not visually discordant with the desired character of the immediate locale.</p> <p>Further to this, the proposal will provide a visual barrier between the public domain spaces to the north and the south-adjacent rail corridor, which is not considered to negatively influence the overall level of streetscape amenity observed at Lord Sheffield Circuit.</p>
(d) [Repealed]	<p>Not applicable.</p> <p>Refer left.</p>
(e) how the development will address the following matters: [refer below]	
(i) the suitability of the land for development	<p>Consistent.</p> <p>The proposed development is suitable for the site and in the public interest. Refer to Section 4.26 of the SEE. Further, the massing strategy for the proposed development addresses the immediacy of the south-adjacent rail corridor, through providing an acoustic barrier between the site and surrounding residential development.</p> <p>This aspect of the proposal was highly complimented by the Design Competition Jury and the Design Integrity Panel, and is further discussed at Section Error! Reference source not found. of this Clause 4.6 Variation Request.</p> <p>The discussion Section Error! Reference source not found. establishes the rationale for locating communal open space at the rooftop as it relates to the achievement of Design Excellence.</p>

Provision		Assessment
(ii)	existing and proposed uses and use mix,	<p>Consistent.</p> <p>The proposed development is sited within the B2 Local Centre Zone where the proposed mix of uses are permitted with consent.</p> <p>The proposed development will deliver 287x residential apartments, 15x ground level retail tenancies, 4280m² of commercial floorspace, and additional public space. The proposed mix of uses addresses the transit-orientated context of the site, including the needs of commuters.</p> <p>The proposed development responds to opportunities for retail uses that are presented by the location of the site. Refer to the Retail Market Report (Appendix Y), which is discussed at Section 4.25 of the SEE.</p> <p>In regard to the above, any approach to provide communal open space at ground level would compromise the desired presentation of active uses to the Lord Sheffield Circuit frontage under the PDCP 2014. Specifically, Figure E11.51 of the PDCP establishes the desired outcome of activated frontages to the Lord Sheffield Circuit and Station Plaza interfaces.</p> <p>This matter is further discussed at Section Error! Reference source not found. of this Clause 4.6 Variation Request.</p>
(iii)	heritage issues and streetscape constraints,	<p>Consistent.</p> <p>A Non-Aboriginal Statement of Heritage Impact has been prepared by Artefact. This report, which is referred to as the Heritage Impact Statement (HIS), is provided at Appendix JJ of the SEE.</p> <p>Under Clause 5.10 of the PLEP 2010, the consent authority must consider the effect of the proposed development on the heritage significance of the item or area concerned.</p> <p>The Non-Aboriginal Heritage Impact Statement (Appendix JJ) demonstrates that the proposal satisfies the relevant matters under Clause 5.10 of the PLEP 2010. On these grounds, no unacceptable reduction to historic values can be attributed to the proposed height variation.</p>
(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,	<p>Consistent.</p> <p>As outlined by the Design Report that is provided at Appendix C, 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. Refer to discussion that is made in relation to Objective (a) of Clause 4.3, which is provided at Section 3.2.2 of this report.</p> <p>It has also been established at Section 3.2.2 that any difference to the perceived bulk and height of the proposed development, compared to a height-compliant scenario, would be imperceptible.</p>
(v)	bulk, massing and modulation of buildings,	<p>Consistent.</p> <p>As above, the massing of the proposed development is appropriate in regard to the form of surrounding buildings.</p> <p>The façade design includes vertical inlets to break up the building mass. Articulation is also provided by recessed glazing, which further contributes to the appropriate ratio of solid to void that is achieved across the façade.</p> <p>The façade design incorporates a 2-storey or 'double height' pedestrian colonnade, an aligned street wall expression above the colonnade, and a number of arched elements.</p>

Provision	Assessment
	<p>Further reference should be made to the Design Report (Appendix C), which provides an exhaustive breakdown of the rationale for the proposal, including the adopted massing strategy. The discussion and visual material in the Design Report demonstrate that this consideration under Clause 8.4 of the PLEP 2010 has been satisfactorily addressed.</p>
<p>(vi) street frontage heights,</p>	<p>Consistent.</p> <p>The façade design incorporates a 2-storey or ‘double height’ pedestrian colonnade, an aligned street wall expression above the colonnade, and a number of arched elements. The façade design includes vertical inlets to break up the building mass. Articulation is also provided by recessed glazing, which further contributes to the appropriate ratio of solid to void that is achieved across the façade.</p> <p>The design rationale for the proposed façade design and street wall presentation is outlined in the Design Report (Appendix C).</p> 
<p>(vii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,</p>	<p>Consistent.</p> <p>A Solar Reflection Screening Analysis has been prepared by RWDI Australia. This report is provided at Appendix P, and is summarised at Section 4.18 of the SEE.</p> <p>A Wind and Thermal Comfort Design Review has been prepared by RWDI Australia. This report is provided at Appendix EE, and is summarised at Section 4.17 of the SEE.</p> <p>In deciding whether to grant development consent, the consent authority must have regard to the principles of sustainable development as they relate to the development based on a “whole of building”. This extends to the ESD measures that are outlined beneath Clause 7.4 of the PLEP 2010.</p> <p>In regard to the above, the proposal presents an outcome for the site that will satisfy all applicable ESD requirements, as demonstrated by the ESD Framework and Options Report (Appendix O). It is further noted that the uplift achieved by the proposed development responds to the transit-orientated context for this DA, which is considered to support the ESD objectives for this project.</p>
<p>(viii) the achievement of the principles of ecologically sustainable development,</p>	<p>Consistent.</p> <p>Refer above.</p>
<p>(ix) pedestrian, cycle, vehicular and service access, circulation and requirements,</p>	<p>Consistent.</p> <p>From conception, this project has responded to the transit-orientated context of the site. From the outset, the architectural firms that were invited to participate in the competitive design process for this project were selected due to their demonstrated ability to design high-quality and sustainable transit orientated developments.</p> <p>As demonstrated by the assessment that is provided at Table 7 of the SEE, the proposal is not traffic generating development.</p>

Provision	Assessment
	<p>As outlined by Section 2.8 of the SEE, it has since been confirmed by Transport for New South Wales that there is no intention to deliver a busway through Lot 3011. Refer to Appendix KK.</p> <p>The proposal is also generally consistent with the applicable parking and bicycle storage provisions, as demonstrated at Section 4.3 of the SEE.</p>
(x) the impact on, and any proposed improvements to, the public domain.	<p>Consistent.</p> <p>The proposal presents a number of improvements to the public domain, including (but not limited to):</p> <ul style="list-style-type: none"> • Additional public domain curtilage at ground level, including a pedestrian colonnade to the Lord Sheffield Circuit and Station Plaza interfaces. • Provision of additional street trees and retention of existing trees at the Lord Sheffield Circuit and Station Plaza interfaces. • A 2-storey or 'double height' pedestrian colonnade to the Lord Sheffield Circuit frontage. The pedestrian colonnade incorporates archways to facilitate through-movement and to deliver a 'grand public gesture' as referenced by the Design Report (Appendix C). • As outlined by the Landscape DA Design Report (Appendix F), the proposed development will make provision for the implementation of a Public Art Strategy, which will be the subject of ongoing development as design details for the project are refined. <p>The proposed development presents a high quality outcome that responds to the context for the site and the civic importance of the Station Plaza.</p>

3.2.4 Conclusion on Clause 4.6(3)(a)

The previous subsections demonstrate that compliance with the maximum permitted building height standard under Clause 4.3 of the PLEP 2010 is unreasonable and unnecessary in the circumstances of this case, and that the protrusion above the maximum allowable height limit of 32m is supportable. This conclusion is based on the following:

- The application of acceptable approaches for demonstrating that compliance with the standard to be varied is not reasonable or necessary, as established by *Wehbe*, Preston CJ of the Land and Environment Court.
- It has been demonstrated that notwithstanding the proposed height variation, that the proposed development is consistent with the objectives of Clause 4.3. Refer to **Section 3.2.2** and **Section 3.2.3**.
- While the maximum potential building height (35.2m) under Clause 8.4(5) **is not** the height standard that is relevant to this Clause 4.6 Variation Request, the achievement of a high quality design outcome that exhibits Design Excellence has made a significant contribution towards addressing Clause 4.6 of the PLEP 2010. This is noted with exclusive regard to the objectives for Clause 4.3 of the PLEP 2010 and the objectives for the B2 Local Centre Zone.

3.3 Clause 4.6(3)(b): Sufficient Environmental Planning Grounds

Clause 4.6(3)(b) of the PLEP2010 requires the contravention of a development standard to demonstrate that there are sufficient environmental planning grounds to justify the contravention. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole.

Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action at [24]*). Further, compliance with other planning instruments, such as SEPP65 and the Apartment Design Guide, does not justify non-compliance with the development standard and is not sufficient environmental planning grounds to justify contravening the development standard (*Baron Corporation at [58]*).

In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that Site at [60]. In this instance the variation to the building height development standard arises out of a well-considered and Jury endorsed design approach to maximise the opportunity to provide a better outcome for and from the development by providing

high quality open space to the rooftop of the building. Importantly, the location of where the building height non-compliance occurs is set back from the site boundaries and building parapet below part of the building that complies with the height of building control.

There are sufficient environmental planning grounds to justify contravention of the maximum building height development standard in this specific instance. A list-form summary of the key environmental planning grounds for the proposed height variation is provided below, however further reference should be made to the discussion that is provided throughout this Clause 4.6 Variation Request.

- The site is located along a sensitive residential interface between Thornton North Penrith and the western rail corridor. The proposed development presents a tactful and thoughtfully considered design resolution to maintain residential amenity. Specifically, it is noted that:
 - The elongated form of the proposed development will function as a noise buffer between the south-adjacent rail corridor and surrounding residential buildings, in particular the residential apartment buildings to the immediate north of the site across Lord Sheffield Circuit. The achievement of this outcome made a strong contribution to the overall achievement of Design Excellence.
 - Due to the continuous street wall to Lord Sheffield Circuit, the delivery of communal open space atop the podium form was not viable. Specifically, any communal open space at the podium rooftop would be adjacent to the rail corridor, and unable to offer an acceptable level of acoustic amenity.
 - Further to the above, commercial uses at Ground Level, Level 1, and public foot traffic across the ground plane would compromise the level of amenity afforded to any ground level communal open space towards the Lord Sheffield Circuit frontage.
 - Due to the above, the only viable location for communal open space with a reasonable level of solar and acoustic amenity was on the roof level of each tower. This has contributed to the extent of the proposed height variation, which would be largely offset by the Design Excellence height bonus if it did apply to this Clause 4.6 Variation Request.
- The proposed height variation will not result in any unacceptable overshadowing to surrounding residential dwellings, or to the public domain, including the Station Plaza.
- The proposal is consistent with the objectives for the B2 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 locale.
- The proposal will develop a site that is currently vacant, and will maximise land use opportunities that are associated with the immediacy of Penrith Station.
- The proposed development presents a high quality outcome for the site that satisfies the objectives for Clause 4.3 of the PLEP 2010 and the B2 Local Centre Zone.
- The rooftop space has been designed to minimise the additional building mass associated with the proposed height variation. Specifically, it is noted that:
 - There will be no additional overshadowing to any private residential dwelling or the Station Plaza. The extent of the shadow footprint that will be cast from the proposed development is generally restricted to the south-adjacent rail corridor, in addition to the associated at-grade car park that adjoins the southern boundary of the rail corridor.
 - Due to the above, there is no unacceptable reduction to solar amenity associated with the proposed height variation.
 - Built form elements that are provided across the roof level are recessed back from the edge of the principal building façade, and are therefore not visually prominent, or visible, when observed from the public domain.
- Supporting technical studies which accompany this DA confirm that the environmental impacts associated with the proposed height variation will not give rise to any unacceptable adverse environmental impact. Further noting the above listed benefits, it would not be reasonable to limit residential uplift at the site through enforcing full compliance with the maximum allowable height limit of 32m.
- While the maximum potential building height (35.2m) under Clause 8.4(5) **is not** the height standard that is relevant to this Clause 4.6 Variation Request, the achievement of a high quality design outcome that exhibits Design

Excellence has made a significant contribution towards addressing Clause 4.6 of the PLEP 2010. This is noted with exclusive regard to the objectives for Clause 4.3 of the PLEP 2010 and the objectives for the B2 Local Centre Zone.

- Based on the points above, the rooftop communal open space, and by association the proposed height variation, are necessary to achieve a high-amenity design outcome for future residential occupants that will not give rise to any adverse environmental impact.

3.4 Clause 4.6(4)(a)(i): Matters to be Addressed

This written request adequately addresses the matters required to be demonstrated by subclause (3).

3.5 Clause 4.6(4)(a)(ii): Public Interest

In *Initial Action* at [27], it was held that it is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. As outlined throughout **Section 3.5.2** of this report, the proposal is consistent with the objectives of the B2 Local Centre Zone. Notwithstanding this, further reference should also be made to Section 4.26 of the SEE.

3.5.1 Objectives of the Standard to be Varied

Please refer to **Sections 3.2.2**, **Section 3.2.3**, and **Section 3.5.2** of this report as to compliance with the objectives of the standard.

3.5.2 Objectives of the Zone - B2 Local Centre Zone

Overview

The land is zoned B2 Local Centre. A broad range of employment generating uses and shop-top housing are permissible on land zoned B2 Local Centre, including Commercial Premises. Under Schedule 1 (23)(1)(h), residential flat buildings, multi dwelling housing and seniors housing are also permitted with consent at the site. All of the proposed land uses are permitted with consent at the site.

It is further noted that the proposed development is sited at a location that is earmarked for high density residential development under the PLEP 2010 and the PDCP 2014. The proposal presents an outcome for the site that is consistent with what is anticipated in the context of the B2 Local Centre Zone and the physical location of the site at the periphery of Penrith CBD. In this regard, the proposed development compliments the function and purpose of the B2 Local Centre Zone.

A detailed analysis of compliance of the development with each of the objectives for the B2 Local Centre Zone is considered in the following Subsection.

Objectives of the B2 Local Centre Zone

Objective (a)

"Provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area"

The proposal comprises residential accommodation in the form of 287 dwellings, in addition to retail and commercial uses within the joint podium form beneath the East Tower and West Tower. In regard to Objective (a), the following is noted:

- **Retail Floorspace:**

The proposed retail floorspace quantum equates to 2,258m² in floor area. This is proposed in the form of 15x retail tenancies across the ground plane, which will be accessible to pedestrians at the activated site frontages to the Station Plaza and Lord Sheffield Circuit.

A Retail Market Report has been prepared to demonstrate the viability of the retail uses that are proposed at ground level. This report is appended to the SEE at **Appendix Y**. The Retail Market Report identifies several opportunities for retail uses to be established at the site. These opportunities are associated with market trends, the local worker population and the immediacy of Penrith Station.

The retail uses within these tenancies will be known when tenants are confirmed, however it is tentatively expected that there will be food/beverage, retail shops and other potential retail uses accommodated within these tenancies. Notwithstanding this, the proposal has demonstrated that future retail uses are more than capable of addressing the needs of people who live and work in the locale, as emphasised by Objective (a).

- **Commercial Floorspace:**

The proposal will deliver 4,280m² of commercial floorspace at Level 1. This floorspace can be readily configured to accommodate a range of potential commercial uses, including commercial office floorspace. Approval for the fit out of commercial tenancy(ies) is not sought by this DA, and will be addressed as necessary by a subsequent DA once tenants are confirmed.

The proposed commercial floorspace across Level 1 presents a significant contribution to the many and varied long-term employment opportunities that will be provided by the proposed development into the future. The presence of commercial floorspace at the site is appropriate in regard to the location of the site at the periphery of Penrith CBD, including the needs of people who work in this area.

Objective (b)

“Encourage employment opportunities in accessible locations”

The site is well serviced by public transport, with close proximity to Penrith Railway Station and Penrith CBD. Future workers that will be employed at the site of the proposed development will benefit from ready access to public transport, local services and facilities, and employment opportunities.

The proposal responds to Government's objectives to provide new employment floor space towards Penrith CBD, and to deliver more residential dwellings within 30 minutes of employment centres. In this regard, the site is eminently suitable for the proposed development. As previously noted, this also supports the local strategic planning framework, inclusive of the LSPS.

Objective (c)

“Maximise public transport patronage and encourage walking and cycling”

Objective (c) correlates with several areas of emphasis across the local strategic planning framework. As above, the proposed development is sited at a location that responds directly to this objective.

Objective (d)

“Provide retail facilities for the local community commensurate with the centre's role in the local and regional retail hierarchy”

Reference is to be made to the Retail Market that is appended to the SEE at **Appendix Y**. As discussed at our response in relation to Objective (a), the proposal has demonstrated that future retail uses are more than capable of addressing the needs of people who live and work in the locale. The size of the proposed retail tenancies is appropriate in regard to the immediacy of Penrith Station, and the need for activated interfaces to the Station Plaza and Lord Sheffield Circuit.

The range of retail uses that are viable at the site are not unanticipated in relation to the transit-orientated context for the proposed development. The proposal does not present a retail offering that is not commensurate with the local and regional retail hierarchy.

Objective (e)

“Ensure that future housing does not detract from the economic and employment functions of a centre”

The proposed development will deliver 287x residential apartments. The East Tower will contain 152x residential apartments, while the West Tower will contain 132x residential apartments. None of the proposed residential apartments will be provided within the podium form, which will accommodate commercial and retail uses only.

The podium form extends across the majority of the site length. In this regard, opportunities for the delivery of employment-generating floorspace have been maximised so far as practical in the context of the site, which is located at the periphery of Penrith CBD. In this regard, the proposed mix of uses satisfies Objective (e).

Objective (f)

“Ensure that development reflects the desired future character and dwelling densities of the area”

The proposed development is sited within the B2 Local Centre Zone where the proposed mix of uses are permitted with consent. As demonstrated throughout this Subsection, the proposed mix of uses supports the intended function of the B2 Local Centre Zone as it relates to the context of the site.

The HIS (**Appendix JJ**) confirms that the proposal will not have any adverse impact to surrounding heritage items. The primary reason for this conclusion was based on the physical appearance of the proposed development. Specifically, the proposed development was described to be visually consistent with surrounding development, as discussed below.

The urban context of the site is characterised by recently approved and constructed development associated with Thornton Estate, including several residential apartment buildings to the immediate north of the site across Lord Sheffield Circuit. As outlined by the Design Report (**Appendix C**), the proposal presents an outcome for the site that is not visually discordant with either the visual appearance of surrounding development, or the desired future character of Thornton North Penrith towards the station plaza. The high quality design of the proposed development was enabled through the achievement of Design Excellence, which has been fundamental to delivering a satisfactory outcome at the site that responds to the objectives for the B2 Local Centre Zone.

3.6 Clause 4.6(4)(b): Planning Secretary Concurrence

Under Clause 4.6(4) of the PLEP 2010, consent must not be granted unless concurrence, has been obtained from the Director-General. Given Planning Circular PS-20-002, concurrence can be assumed by the consent authority (being the Sydney West Planning Panel) under that circular.

4.0 Conclusion

This Clause 4.6 Variation Request demonstrates that compliance with the maximum permitted building height that applies to the site under Clause 4.3 of the PLEP 2010 as influenced by clause 8.4(5) of the PLEP 2010 is unreasonable and unnecessary in the circumstances of the case, and that the justification is well founded. The variation allows for the orderly and economic use of the land in an appropriate manner, and will provide for a better outcome in planning terms.

In summary, the proposed variation to Clause 4.3 of the PLEP 2010 presents an acceptable outcome for the site, noting:

- The proposed variation will not result in any unacceptable overshadowing to surrounding residential dwellings, or to the public domain, including the Station Plaza.
- The proposal is consistent with the objectives of Clause 4.3 and for the B2 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 locale.
- The proposal will develop a site that is currently vacant, and will maximise land use opportunities that are associated with the immediacy of Penrith Station. Under a scenario where the proposed development complied with the maximum permitted building height control, the potential to maximise these land use opportunities would reduce.
- The proposed development presents an outcome for the site that exhibits design excellence. This has been fundamental to delivering a satisfactory outcome at the site that responds to the objectives for Clause 4.3 of the PLEP 2010 and the B2 Local Centre Zone.
- Supporting technical studies which accompany this DA confirm that the environmental impacts associated with the proposal are generally positive and will not give rise to any unacceptable adverse impacts.
- The proposed development is consistent with the Greater Sydney Region Plan and does not raise any matter of significance for State or regional planning.

Therefore, the consent authority can be satisfied that there is sufficient justification for the proposed variation, which presents an acceptable outcome for the site in accordance with the flexibility allowed under Clause 4.6 of the PLEP 2010.