

General Manager
Penrith City Council
PO Box 60
Penrith NSW 2751

Attention: Wendy Connell

6 October 2023

**STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021
DEVELOPMENT APPLICATION – DA22/1086 (CNR-48934)
160, 162 and 172 Lord Sheffield Circuit, North Penrith
“Mayfair at North Penrith”**

Dear Sir/Madam,

I refer to Council’s referral requesting concurrence for the above development application in accordance with Section 2.99 of the *State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP)*.

Council is advised that TfNSW (Sydney Trains), via Instruments of Delegation, has been delegated to act as the rail authority for the heavy rail corridor, including infrastructure, and to process the concurrence for this development application.

As such, TfNSW (Sydney Trains) advises that the proposed development has been assessed in accordance with the requirements of Section 2.99(4) of the Transport and Infrastructure SEPP being:

- a) *the potential effects of the development (whether alone or cumulatively with other development or proposed development) on:*
 - i) *the safety or structural integrity of existing or proposed rail infrastructure facilities in the rail corridor, and*
 - ii) *the safe and effective operation of existing or proposed rail infrastructure facilities in the rail corridor, and*
- b) *what measures are proposed, or could reasonably be taken, to avoid or minimise those potential effects.*

TfNSW (Sydney Trains) has taken the above requirements into consideration and has decided to grant its concurrence to the development proposed in development application **DA22/1086** subject to Council imposing the operational conditions as written in Attachment A that will need to be complied with.

Should Council choose not to impose the operational conditions as written in Attachment A, then concurrence from TfNSW (Sydney Trains) has not been granted to the proposed development.

In the event that this proposed development is the subject of a Land and Environment Court appeal, Council's attention is drawn to Section 8.12 of the Environmental Planning and Assessment Act 1979 which requires Council to give notice of that appeal to a concurrence authority. TfNSW (Sydney Trains) therefore requests that Council comply with this requirement should such an event occur.

Council is also advised that this concurrence is not to be amended, replaced, or superseded by any concurrence issued by any other rail authority, without further agreement from TfNSW (Sydney Trains).

Please contact TfNSW (Sydney Trains) Town Planning Management via email to DA_sydneytrains@transport.nsw.gov.au should you wish to discuss this matter. Finally, it is requested that when the proposed development's Determination is issued by the Council, a copy of the Notice of Determination and conditions of consent are provided.

Sincerely,

Steven Heapy

Director Land and Maritime Planning
Transport for NSW

ATTACHMENT A

- A1.** The development being constructed (in relation to the rail corridor and easements) in accordance with the following plans which illustrate the required clearances from the Transport Asset Holding Entity (TAHE) easement:
- i. Detailed Section – Sheet 1** reference **6626** drawing no. **A-1601** revision **3** prepared by **SJB Architects** dated **29 March 2023**.
 - ii. Detailed Section – Sheet 2** reference **6626** drawing no. **A-1602** revision **3** prepared by **SJB Architects** dated **29 March 2023**.

The Certifier is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains/TAHE confirming the amendment of the existing easement benefitting TAHE along the southern boundary of the subject site, to accommodate the development and associated balconies above that easement. The measures detailed in the above mentioned plans are to be incorporated into the construction drawings and specifications to Sydney Trains satisfaction prior to the issuing of the Construction Certificate.

- A2.** The easement amendment clearance process must be completed, and any necessary commercial agreements entered into between the Applicant/Developer and Transport Asset Holding Entity (TAHE), prior to the commencement of any works.
- A3.** The existing TAHE electrical easement **over Lots 3001 and 3002 DP 1184498** is to be released and a new amended easement is to be created on the subject lots providing the same and continued benefit to Sydney Trains/TAHE. The responsibility of amending the easement shall be the Applicants and at their cost. A Plan of Survey and associated S88B defining the new extent of the easement is required to be submitted to Sydney Trains prior to Construction Certificate. Once determined that the new Plan and S88B is to the satisfaction of Sydney Trains/TAHE, then registration with the NSW Land Registry Services is to be completed prior to the issuing of the Construction Certificate. The Certifier is not to issue any Construction Certificate until written confirmation has been received from Sydney Trains confirming its endorsement of the amended easement, and confirmation that the Applicant has registered the new easement on title.

A4. Unless amendments are required in order to obtain approval/certification/compliance from Sydney Trains in relation to any of the Sydney Trains related conditions of consent, all excavation and construction works are to be undertaken in accordance with the details, methodology, advice, undertakings, and recommendations as detailed in the following documents:

- i. **Rail Interface Report** prepared by **Macroplan** dated **8 November 2022**.
- ii. **Geotechnical Investigation Report** reference **E25358.G03_Rev1** prepared by **EI Australia** dated **4 November 2022**.
- iii. **Groundwater Take Assessment** reference **E25358.G12_Rev1** revision **2** prepared by **EI Australia** dated **4 November 2022**.
- iv. **Stormwater Management Plan** reference **0209** prepared by **Enscape Studio** dated **16 June 2023**.
- v. **Construction Management Plan** prepared by **Urban Property** dated **October 2022**.

The Certifier is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming which of the documentation listed in this condition are to **now apply** or are **superseded** as a result of the compliance with the Sydney Trains related conditions of consent. The measures detailed in the documents approved/ certified by Sydney Trains under this Condition are to be incorporated into the construction drawings and specifications prior to the issuing of the Construction Certificate. Prior to the commencement of works the Certifier is to provide verification to Sydney Trains that this condition has been complied with.

A5. Prior to the issuing of a Construction Certificate, the Applicant is to submit to Sydney Trains for review, comment, and written endorsement the following final version items:

- i. Piling Report including refined soil-structure analysis.
- ii. Noise and Vibration Report.

The Certifier is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

A6. Prior to the issue of a Construction Certificate, the Applicant shall provide an accurate survey locating the development with respect to the rail boundary and rail infrastructure. This work is to be undertaken by a registered surveyor, to the satisfaction of Sydney Trains' representative.

A7. No work is permitted within the rail corridor or any easements which benefit Sydney Trains/TAHE (Transport Asset Holding Entity), at any time, unless the prior approval of, or an Agreement with, Sydney Trains/TAHE (Transport Asset Holding Entity) has been obtained by the Applicant. The Certifier is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

- A8.** Prior to the commencement of any works a Registered Surveyor shall peg-out the common property boundary between the development site and TAHE (Transport Asset Holding Entity) land and easements. A copy of the survey report indicating the location of pegs must be provided to Sydney Trains prior to the commencement of works.
- A9.** Prior to the issue of a Construction Certificate, the Applicant shall undertake a services search to establish the existence and location of any rail services. Persons performing the service search shall use equipment that will not have any impact on rail services and signalling. Should rail services be identified within the subject development site, the Applicant must discuss with Sydney Trains as to whether these services are to be relocated or incorporated within the development site.
- A10.** Prior to the issue of a Construction Certificate, the Applicant is to engage an Electrolysis Expert to prepare a report on the Electrolysis Risk to the development from stray currents. The Applicant must incorporate in the development all the measures recommended in the report to control that risk. A copy of the report is to be provided to the Certifier with the application for a Construction Certificate. The Certifier must ensure that the recommendations of the electrolysis report are incorporated in the construction drawings and documentation prior to the issuing of the relevant Construction Certificate.
- A11.** Prior to the issuing of a Construction Certificate, the following final version rail specific items are to be submitted to Sydney Trains for review, comment, and written endorsement:
- Machinery to be used during excavation/construction.
 - Excavation and construction methodology (including staging).

The Certifier is not to issue the Construction Certificate until it has received written confirmation from Sydney Trains that this condition has been complied with.

- A12.** Prior to the issuing of a Construction Certificate the Applicant must submit to Sydney Trains a plan showing all craneage and other aerial operations for the development and must comply with all Sydney Trains' requirements. If required by Sydney Trains, the Applicant must amend the plan showing all craneage and other aerial operations to comply with all Sydney Trains' requirements. The Certifier is not to issue the Construction Certificate until written confirmation has been received from the Sydney Trains confirming that this condition has been satisfied.
- A13.** A risk analysis, which shall determine the required level of derailment protection (if any), shall be carried out in consultation with Sydney Trains. This risk analysis will determine the redundancy requirements, or the minimum collision loads specified in Australian Standard AS5100 that needs to be complied with. The risk assessment is to be prepared in accordance with the Sydney Trains Safety Management System. The Certifier shall not issue the Construction Certificate until it has received written confirmation from Sydney Trains that the risk analysis has been prepared and the Certifier has also confirmed that the measures recommended in this risk analysis have been indicated on the Construction Drawings.

- A14.** Prior to the issue of a Construction Certificate, the Applicant is to engage with a suitably qualified consultant to prepare a Finite Element/Numeric Modelling Analysis which assesses the different stages of loading and unloading of the site and its effect on the rock mass surrounding the rail corridor. This report is to be submitted to Sydney Trains for review, comment and written endorsement demonstrating that the proposed works will not have any adverse impacts on the rail corridor. The Certifier is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
- A15.** No scaffolding is to be used facing the rail corridor unless prior written approval has been obtained from Sydney Trains. To obtain approval the Applicant will be required to submit details of the scaffolding, the means of erecting and securing this scaffolding, the material to be used, and the type of screening to be installed to prevent objects falling onto the rail corridor. Unless agreed to by Sydney Trains in writing, scaffolding shall not be erected without isolation and protection panels.
- A16.** The design, installation and use of lights, signs, and reflective materials, whether permanent or temporary, which are (or from which reflected light might be) visible from the rail corridor must limit glare, reflectivity, and illumination to the satisfaction of the rail operator. The Certifier is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
- A17.** Given the possible likelihood of objects being dropped or thrown onto the rail corridor from balconies, windows, and other external features (e.g., roof terraces and external fire escapes) that are within 20 metres of, and face, the rail corridor, the development must have measures installed, to the satisfaction of Sydney Trains (e.g., awning windows, louvres, enclosed balconies, window restrictors etc.) which prevent the throwing of objects onto the rail corridor. The Certifier is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
- A18.** There is a need to ensure that the roots and foliage of trees being planted beside the rail corridor do not have an impact on the rail corridor or rail operations. A final landscaping and planting plan demonstrating measures to ensure compliance with this condition must be prepared to the satisfaction of Sydney Trains. No construction certificate can be issued until written confirmation has been received from Sydney Trains confirming that this condition has been complied with.
- A19.** No metal ladders, tapes, and plant, machinery, or conductive material are to be used within 6 horizontal metres of any live electrical equipment. This applies to the train pantographs and catenary, contact and pull-off wires of the adjacent tracks, and to any aerial power supplies within or adjacent to the rail corridor.
- A20.** The Applicant/Developer shall not at any stage block rail related use of the existing easement benefitting TAHE at the rear of the site, to ensure continuous provision for easy and ongoing 24/7 access by rail vehicles, plant, and equipment to support maintenance and emergency activities.

- A21.** The Applicant/Developer shall not at any stage block pedestrian or vehicular access from Lord Sheffield Circuit to Penrith Station, to ensure the public and/or Sydney Trains' staff have continuous 24/7 access to the station and rail facilities.
- A22.** Prior to the commencement of any works appropriate fencing must be in place along the rail corridor to prevent unauthorised access to the rail corridor during construction works. Details of the type of fencing and the method of erection are to be to the satisfaction of Sydney Trains prior to the fencing work being undertaken.
- A23.** The development shall have appropriate fencing fit for the future usage of the development site to prevent unauthorised access to the rail corridor by future occupants of the development. Prior to the issuing of an Occupation Certificate the Applicant shall liaise with Sydney Trains regarding the adequacy of any existing fencing along the rail corridor boundary or design and construction of new fencing. Details of the type of new fencing to be installed and the method of erection are to be to the satisfaction of Sydney Trains prior to the fencing work being undertaken.
- A24.** The Applicant is to ensure that the development incorporates appropriate anti-graffiti measures, to the satisfaction of Sydney Trains.
- A25.** During all stages of the development the Applicant must take extreme care to prevent any form of pollution entering the rail corridor. Any form of pollution that arises as a consequence of the development activities shall remain the full responsibility of the Applicant.
- A26.** Excess soil is not allowed to enter, be spread, or stockpiled within the rail corridor (and its easements) and must be adequately managed/disposed of.
- A27.** The Applicant must ensure that all drainage from the development is adequately disposed of and managed and not allowed to be discharged into the rail corridor unless prior written approval has been obtained from Sydney Trains. Prior to the issuing of a Construction Certificate, the following rail specific items are to be submitted to Sydney Trains for review, comment, and written endorsement:
- Final version Civil Plans and Hydrology Report including stormwater calculations confirming the post-development flow rate and velocity, for any drainage from the development site to TAHE (Transport Asset Holding Entity) land and the rail corridor, is equal to or less than the pre-development flow rate and velocity up to and including during a 1 in 100-year event.

The Certifier is not to issue the Construction Certificate until it has received written confirmation from Sydney Trains that this condition has been complied with.

- A28.** As the proposed development is located adjacent to a rail heritage item (SHR 01222), the Applicant is required to retain the services of a heritage expert/architect to supervise works that are in close proximity to this heritage item in order to conserve heritage values.

- A29.** Prior to the issuing of any Occupation Certificate, the Applicant is to submit as-built drawings to Sydney Trains and Council. The as-built drawings are to be endorsed by a Registered Surveyor confirming that there has been no encroachment into TAHE (Transport Asset Holding Entity) property or easements, unless agreed to by TAHE (Transport Asset Holding Entity). The Certifier is not to issue the final Occupation Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

- A30.** Prior to the issuing of any Occupation Certificate, the Applicant must provide to Sydney Trains for review and endorsement a plan of how future maintenance of the development facing the rail corridor is to be undertaken. The Certifier is not to issue any Occupation Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied. The maintenance plan must be implemented for the life of the approved development.

- A31.** Prior to the issue of an Occupation Certificate (whether an interim or final Occupation Certificate), a report must be prepared and submitted to the Certifying Authority and Council certifying that the completed development meets the requirements of State Environmental Planning Policy (Transport and Infrastructure) 2021 and with the Department of Planning and Infrastructure's Development Assessment Guideline titled "Development Near Rail Corridors and Busy Roads - Interim Guidelines" as set down in the subject condition of this consent. Such a report must include external and internal noise levels to ensure that the external noise levels during the test are representative of the typical maximum levels that may occur at this development, and that internal noise levels meet the required dB(A) levels. Where it is found that internal noise levels are greater than the required dB(A) level, necessary corrective measures must be carried out to ensure that internal noise levels are compliant with the requirements of this consent.

- A32.** If required by Sydney Trains, prior to the issue of a Construction Certificate a Risk Assessment/Management Plan and detailed Safe Work Method Statements (SWMS) for the proposed works are to be submitted to Sydney Trains for review and comment on the impacts on rail corridor. The Certifier is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

- A33.** If required by Sydney Trains, prior to the commencement of works, a Hydrologic Assessment report demonstrating that the dewatering during construction will not have any adverse settlement impacts on the rail corridor is to be provided to Sydney Trains for review, comment, and written endorsement. No works are to commence until this report has been endorsed by Sydney Trains.

- A34.** If required by Sydney Trains, a monitoring plan (including instrumentation and the monitoring regime during excavation and construction phases) is to be submitted to Sydney Trains for review, comment, and written endorsement prior to the issuing of a Construction Certificate. The Certifier is not to issue a Construction Certificate until written confirmation has been received from Sydney Trains advising of the need to undertake the track monitoring plan, and if required, that it has been endorsed.

- A35.** If required by Sydney Trains, prior to the commencement of works or at any time during the excavation and construction period deemed necessary by Sydney Trains, a joint inspection of the rail infrastructure and property in the vicinity of the project is to be carried out by representatives from Sydney Trains and the Applicant. These dilapidation surveys will establish the extent of any existing damage and enable any deterioration during construction to be observed. The submission of a detailed dilapidation report will be required within 10 days following the undertaking of the inspection, unless otherwise notified by Sydney Trains.
- A36.** If required by Sydney Trains, prior to the issue of the Occupation Certificate, or at any time during the excavation and construction period deemed necessary by Sydney Trains, a joint inspection of the rail infrastructure and property in the vicinity of the project is to be carried out by representatives from Sydney Trains and the Applicant. These dilapidation surveys will establish the extent of any existing damage and enable any deterioration during construction to be observed. The Certifier is not to issue the final Occupation Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
- A37.** If required, prior to the issue of a Construction Certificate the Applicant is to contact Sydney Trains External Interface Management team to determine the need for public liability insurance cover. If insurance cover is deemed necessary, this insurance must be for a sum as determined by Sydney Trains and shall not contain any exclusion in relation to works on or near the rail corridor and rail infrastructure and must be maintained for the duration specified by Sydney Trains. The Applicant is to contact Sydney Trains External Interface Management team to obtain the level of insurance required for this particular proposal. Prior to issuing the Construction Certificate the Certifier must witness written proof of this insurance in conjunction with Sydney Trains' written advice to the Applicant on the level of insurance required.
- A38.** If required, prior to the issue of a Construction Certificate the Applicant is to contact Sydney Trains External Interface Management team to determine the need for the lodgement of a Bond or Bank Guarantee for the duration of the works. The Bond/Bank Guarantee shall be for the sum determined by Sydney Trains. Prior to issuing the Construction Certificate the Certifier must witness written advice from Sydney Trains confirming the lodgement of this Bond/Bank Guarantee.
- A39.** Sydney Trains or Transport for NSW, and persons authorised by those entities for the purpose of this condition, must be permitted to inspect the site of the development and all structures to enable it to consider whether those structures have been or are being constructed and maintained in accordance with the approved plans and the requirements of this consent, on giving reasonable notice to the principal contractor for the development or the owner or occupier of the part of the site to which access is sought.
- A40.** Copies of any certificates, drawings, approvals/certification, or documents endorsed by, given to, or issued by Sydney Trains or TAHE (Transport Asset Holding Entity) must be submitted to Council for its records prior to the issuing of the applicable Construction Certificate or Occupation Certificate.

- A41.** The Applicant must ensure that at all times they have a representative (which has been notified to Sydney Trains in writing), who:
- oversees the carrying out of the Applicant's obligations under the conditions of this consent and in accordance with correspondence issued by Sydney Trains;
 - acts as the authorised representative of the Applicant; and
 - is available (or has a delegate notified in writing to Sydney Trains that is available) on a 7 day a week basis to liaise with the representative of Sydney Trains, as notified to the Applicant.
- A42.** Unless advised by Sydney Trains in writing, all excavation, shoring, and piling works within 25m of the rail corridor are to be supervised by a geotechnical engineer experienced with such excavation projects and who holds current professional indemnity insurance.
- A43.** Without in any way limiting the operation of any other condition of this consent, the Applicant must, during demolition, excavation and construction works, consult in good faith with Sydney Trains in relation to the carrying out of the development works and must respond or provide documentation as soon as practicable to any queries raised by Sydney Trains in relation to the works.
- A44.** Where a condition of consent requires consultation with Sydney Trains, the Applicant shall forward all requests and/or documentation to the relevant Sydney Trains External Interface Management team. In this instance the relevant interface team is West Interface, and they can be contacted via email on West_Interface@transport.nsw.gov.au.
- A45.** Where a condition of consent requires Sydney Trains or Transport for NSW endorsement the Certifier is not to issue a Construction Certificate or Occupancy Certificate, as the case may be, until written confirmation has been received from those entities that the particular condition has been complied with. The issuing of staged Construction Certificates dealing with specific works and compliance conditions can be issued subject to written agreement from those entities to which the relevant conditions applies.