

SWCPP Ref. No.:	PPSSWC-329
DA No.:	DA23/0281
PROPOSED DEVELOPMENT:	Staged Construction Of A Mixed Use Re-Development (Caddens Corner) Involving The Construction Of 18 Buildings, 469 Residential Apartments, Five (5) Commercial Premises, Basement Car Parking & Associated Demolition, Tree Removal, Construction of Roads, Earthworks, Landscaping & Stormwater Drainage Works
PROPERTY ADDRESS:	68-80 O'Connell Street, Caddens, NSW, 2747 Lot 2 DP 1268507 & Lot 1 DP 1268507
PROPERTY DESCRIPTION:	Caddens Corner
ZONING:	E1 Local Centre, R4 High Density Residential
ASSESSING OFFICER:	Consultant Planner – Nicholas Cavallo (Knight Frank Town Planning)
APPLICANT:	Caddens Estate Pty Ltd C/- Think Planners
DATE RECEIVED:	27 April 2023
REPORT BY:	Knight Frank Town Planning on behalf of Penrith City Council's Development Services
RECOMMENDATIONS:	Refusal

Assessment Report

Executive Summary

Council is in receipt of a Development Application no. DA23/0281 which seeks approval for the construction of mixed used development comprising 18 Buildings, 469 Residential Apartments, Five (5) Commercial Premises, Basement Car Parking & Associated Demolition, Tree Removal, Construction of Roads, Earthworks, Landscaping & Stormwater Drainage Works. Building heights are principally between 4-6 storeys.

The site is 68-80 O'Connell Street, Caddens (**the site**), legally described as Lot 2 DP 1268507 & Lot 1 DP 1268507. The site is identified and outlined in green in **Figure 1**. The site forms part of the Caddens Release Area within the Werrington Enterprise Living and Learning (WELL) Precinct.

The development application (DA) has an estimated cost of construction of \$257,725,718.00 (excl GST). Accordingly, in accordance with Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021, the development is categorised as regionally significant development being general development with an estimated cost of work greater than \$30 million. Accordingly, the consent authority for the development is the Sydney Western City Planning Panel (SWCPP).



Figure 1: Nearmap image of the site (outlined in green)

The application was notified to occupiers and owners of surrounding properties, advertised in the local newspaper and publicly exhibited between 15 May 2023 and 29 May 2023. A total of 22 submissions were received in response to the public exhibition process. Key matters raised in the submissions include the increase in density in the locality; adequacy of the local and State infrastructure to cater for the increased density including roads, schools, child care centre, medical centre; building height; environmental impacts; amenity impacts; and construction impacts.

A kick off briefing with the Sydney Western City Planning Panel was held on the 19th of June 2023 (Council only) and 26th of June 2023 (Council / Applicant). A number of key permissibility issues were discussed including: the status of a concept approval; permissibility of buildings within the then E1 Local Centre zone; use of clause 5.3 Development near zone boundaries provision and hence permissibility; significance of the height exceedance sought and documentation requirements; TfNSW comments; and clause 4.6 request regarding the commercial floorspace cap.

A request for information letter was issued to the applicant on 2 August 2023 raising the threshold issues with the development application including proposed density and existing infrastructure; permissibility; Clause 4.6 Variation – Building Height; Cumberland Plain Woodland (CPW); TfNSW Comments and Intersection Functionality; and status of the Concept Approval. A technical addendum was included with the request for information which outlined more technical and detailed matters that would need to be addressed should the threshold matters be considered capable of resolution.

The applicant provided an initial response on 15 September 2023 to the request for information and addressing the key threshold issues. A social impact assessment report was submitted; Building A was suggested to be deleted; Buildings Q & P were proposed to be consolidated and proposed commercial premises at the ground level to address its permissibility as shop top housing; and an increase in recreational opportunities.

A meeting was held between the applicant, Council staff and Knight Frank Town Planning on 7th November 2023. An agenda was issued reiterating the threshold issues raised in the assessment so far and other more technical matters. Given the variations sought with regard to the height of building and commercial floorspace cap, permissibility matters raised including the use of the flexible zone provisions, and density proposed it was considered that those matters were best addressed via a more holistic strategic planning exercise, such as a planning proposal.

The Urban Design Review Panel was convened on a number of occasions including on the 20th July 2022 (prior to lodgement) and most recently on 24th November 2023 to consider the development application as lodged. It is noted that the UDRP reviewed the application as originally lodged and not as amended. A further letter to the applicant was issued on 8 December 2023 detailing that the threshold issues raised throughout the assessment process remain unresolved and which would require resolution to enable the application to progress and more detail specific matters to be assessed.

Further briefings of the Sydney Western City Planning Panel were held on 13 November 2023 and 11 December 2023. It was considered reasonable and appropriate to allow the applicant to submit an amended application to address the threshold matters that had been raised throughout the assessment process.

The applicant submitted an amended Development Application with documentation submitted between 29 February 2024 and 8 March 2024 and which provided for the following key amendments:

- Removal of Building A;
- Consolidation of Building P & Q (now Building P) an inclusion of a retail tenancy at ground floor to address its permissibility;
- Reduction in the overall number of apartments from 564 to 469;
- Reduction in height for buildings with Buildings F, H & R reduced by three levels and other more minor changes.

A review of the amended application was undertaken, and a letter issued to the applicant dated 5th April 2024 reaffirming that despite the amendments made that the threshold issues remained as follows:

- Building height
- Density and Infrastructure
- Permissibility
- Commercial floorspace cap
- Consistency with the concept approval

While the applicant has submitted an amended application that reduces the number of apartments and overall height of the development the key threshold matters remain as have been raised throughout the process including that at least part of the development is prohibited. The amended scheme continues to significantly exceed the planning density and expected dwelling yields for the site and Caddens Release Area. That the use of clause 4.6 to exceed both the building height and maximum commercial floorspace is not the appropriate mechanism in this

circumstance nor is the use of the flexible zone provisions. That a more holistic strategic consideration is required, and which is more appropriately dealt with through the Planning Proposal process.

The applicant uploaded documentation to the Planning Portal on 22nd April 2024 and which was not the result of a request from Council. This submission contained the following: planning response letter prepared by Think Planners; Revised Concept Site Plan; Revised Height Analysis Diagram; Revised Social Impact Assessment Letter; Subdivision Administration Sheet; and Subdivision Plan. Noting that there was insufficient time with which to assess the suggested amendments.

It was confirmed that the Planning Panel would not accept the documentation in accordance with Division 3, Clause 113(4) of the *Environmental Planning and Assessment Regulation 2021* and that there is no expectation that this information will be considered by Council's consultant and incorporated in their assessment report and recommendation/s to the Panel.

The applicant again uploaded further documentation to the Planning Panel on 22 May 2024. This comprises amended architectural plans and amended landscape plans. The applicant was similarly advised in writing that the documentation would not be accepted.

Background

DA17/0995 (2017SWT014) – Caddens Corner Subdivision

Development consent was granted by the Sydney Western City Planning Panel for the 'Staged Concept Development Comprising Stage 1 Works Involving the Construction of Commercial Shopping Centre Development, Shop Top Housing and Associated Bulk Earthworks, Road Works, Car Parking, Landscaping, Drainage Works and Advertising Signage; and Stage 2 Concept Development for Future Commercial/Retail Tenancies'.

Condition 3 of the development consent provides further context of the nature of the consent granted:

This development consent relates to Stage 1 of the development only. A separate development application shall be submitted to Penrith City Council for future stages of the development.

Given the description of the development consent and the conditions of consent that were imposed it was raised with the applicant the status of the application being a concept approval within the meaning of the EP&A Act 1979. That any future development application for the site, which would appear to be the subject of a concept development application, cannot be inconsistent with the concept proposal.

It is noted that the applicant has lodged a modification application to remove reference from the description of the concept development and from the conditions of consent. However, the application has been made pursuant to s4.55(1) of the EP&A Act 1979 which is not considered to be the inappropriate mechanism to consider such a modification. That a s4.55(2) modification application would be more appropriate given the nature of the modifications sought.

Caddens Release Area

The site is located within the Caddens Release Area and which forms part of the broader Werrington Enterprise Living and Learning (WELL) Precinct. The WELL Precinct comprises parts of the suburbs of Kingswood, Werrington and Claremont Meadows. The WELL Precinct Strategy was adopted by Council in November 2004.

The WELL Contributions Plan (the Plan) was prepared in response to the need for coordinated infrastructure planning in the Precinct. The key expected outcomes of the Plan were stated as follows:

- an additional 2,463 dwellings being erected primarily in the Caddens, South Werrington and Werrington Mixed Use Area sub-precincts, with an associated anticipated population of 6,650 residents;
- an additional 664,000 square metres of employment floor space, with an associated population of over 8,700 workers;
- additional development of the education campuses, with an associated additional 5,124 student enrolments;
- a development horizon in excess of 30 years.

The Plan required that population generated by new development make a reasonable contribution toward the provision of new and/or augmented facilities to meet this additional demand. Public services and amenities required under the Plan included: transport management facilities; water cycle management facilities; open space and recreation facilities; and community facilities.

The Caddens Release Area forms part of the WELL Precinct and was planned to provide for 1,247 dwellings of the total and 10,000m² of the retail / commercial floor space. The development site forms both the Caddens Release Area and the Precinct Centre as outlined in Figure 2.

As part of the suite of planning documents, The Penrith Development Control Plan was amended to include area specific chapters for the sub-precincts, and which includes E1 Caddens. This provides for the expected density and overall dwelling yield for the Caddens Release Area.

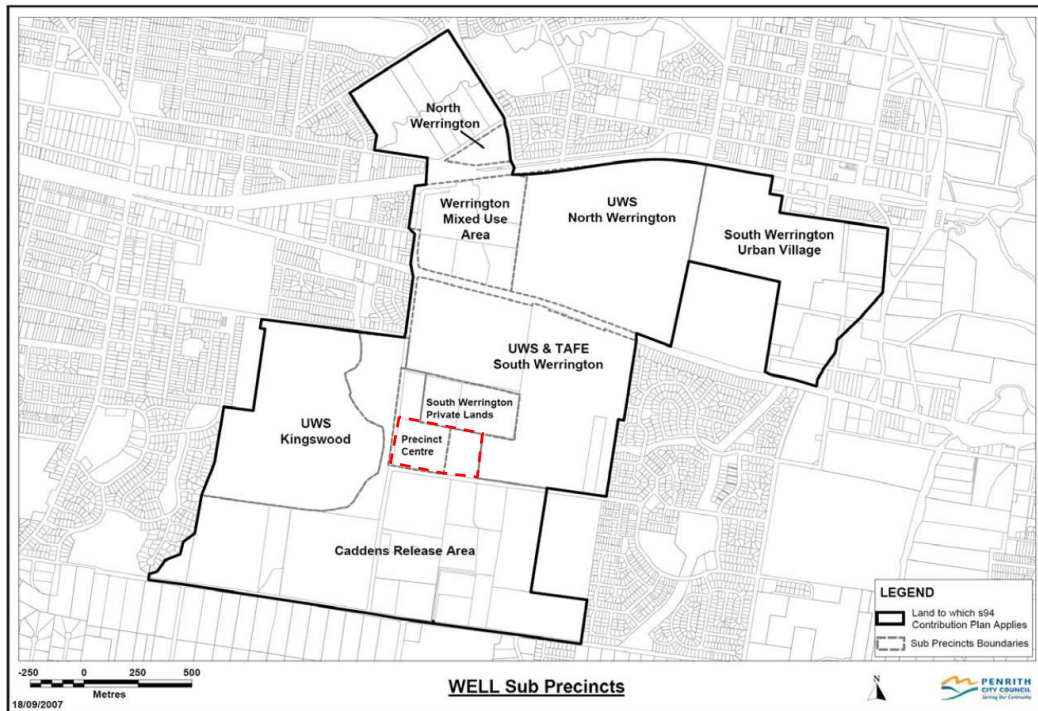


Figure 2.2 WELL Precinct sub precincts

Figure 2: WELL Sub Precincts (Source: WELL Precinct Contributions Plan)

Site & Surrounds

The site is legally described as Lot 2 DP 1268507 & Lot 1 DP 1268507. Both lots have a combined area of 8.128 hectares which includes the existing Caddens Corner shopping centre. Of the overall site the actual development site is circa 5.4 hectares.

The site is bound by O'Connell Street to the south and O'Connell Street to the west, vehicular access to the site is achieved from O'Connell Street to the south by way of two (2) separate access points. A further access is proposed from O'Connell Street to the west which will be provided through an extension of the existing Caddens Corner shopping centre.

The western property is currently occupied by the Caddens Corner shopping centre which is anchored by a shopping centre and a range of smaller commercial tenancies. It is a single storey structure containing pedestrian laneways that provide a village atmosphere. The use is benefitted by a large at grade car park to the east and which forms part of the development site. As part of the approved Caddens Centre there is a four (4) storey shop top housing building that was approved but not yet constructed under DA17/0995 and which would be located within the south western part of the site.

Located to the south of the site is a low density residential estate which is being delivered in stages. Located to the west is the University of Western Sydney Kensington Campus which is on a large campus with substantial green spaces, Werrington Creek transacts the site and remnant vegetation running north south.

Adjoining the site to the east is the Western Sydney University Werrington Campus. It forms part of a sprawling campus, and which is largely green space in proximity to the development site. The nearest building that forms part of the University is circa 270m to the north east.

Located to the north is an approved 119 lot community title subdivision that is to be completed in stages. This is expected to yield single dwelling houses and townhouse / dual occupancy typologies within a medium density setting.

Proposal

The development application seeks approval for the construction of a staged mixed use development comprising the following:

- Demolition of existing site improvements including the at grade car parking, excavation, and tree removal;
- Staged construction of 469 residential apartments and 5 retail premises across 18 buildings as described below;
 - A public plaza adjacent the existing shopping centre; three pocket parks; and 1,000sqm of open space comprising an open lawn, dog exercise area, play area, exercise area, and BBQ with amenities

Stage 1

- Road construction, bulk earthworks on this portion of the site and the construction of Buildings B, C, H & J within the north western corner of the site containing 174 basement car parking spaces (167 resident and 7 visitor spaces) and 103 apartments: 7 x 1 bedrooms; 53 x 2 bedrooms; 41 x 3 bedrooms; and 2 x 4 bedrooms.

Stage 2

- Bulk Earthworks on this portion of the site and the construction of Buildings D, E, F, G that are located in the northern portion of the site containing 202 basement parking spaces (195 resident and 7 visitor spaces) and contains 115 apartments comprising: 13 x 1 bedrooms; 45 x 2 bedrooms; 51 x 3 bedrooms; and 6 x 4 bedrooms.

Stage 3

- Bulk Earthworks on this portion of the site and the construction of Buildings K, L, M and N containing 180 basement parking spaces (173 resident and 7 visitor spaces) and contains 112 dwellings comprising: 6 x 1 bedroom; 77 x 2 bedrooms; 29 x 3 bedrooms

Stage 4

- Relocation of at grade parking spaces for the Caddens Corner shopping centre, bulk earthworks on this portion of the site and the construction of Buildings P, Q, R,S,T and U on the western portion of the site that contains 5 retail shops with 1,415m² of retail floor area that presents to a new internal open air plaza and contains 139 apartments comprising: 13 x 1 bedrooms; 88 x 2 bedrooms; 35 x 3 bedrooms; and 3 x 4 bedrooms. This stage contains 260 resident parking spaces (225 resident and 35 visitor spaces) within the basement and also provides for 501 retail spaces to both offset the at grade parking and the additional parking generated by the retail floor area.

Plans that apply

- Biodiversity Conservation Act 2016;
- Penrith Local Environmental Plan 2010 (Amendment 4);
- Penrith Development Control Plan 2014;
- State Environmental Planning Policy (Transport and Infrastructure) 2021;
- State Environmental Planning Policy (Planning Systems) 2021;
- State Environmental Planning Policy (Biodiversity and Conservation) 2021;
- State Environmental Planning Policy (Resilience and Hazards) 2021;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development;

Planning Assessment

Biodiversity Conservation Act 2016

Part of the site is mapped on the Biodiversity Values Map. In support of the supplication is a Biodiversity Development Assessment report prepared by Eco Logical Australia dated 28 February 2024; Arboricultural Development Impact Assessment report prepared by Birds Tree Consultancy dated 29 February 2024; Vegetation Management Plan and Fauna Management Plan prepared by Eco Logical Australia Pty Ltd both dated 28 February 2024.

The application was assessed by Council's Senior Biodiversity Officer who considered that the Biodiversity Development Assessment Report had addressed the previous concerns of Council and was considered to be satisfactory. However, while the application had been redesigned the proposal to avoid impacts on the patch of Cumberland Plain Woodland (CPW) within the northern part of the site, the proposal will still result in the removal of individual mature trees that are present. A key design requirement to be addressed in the assessment of the application is whether the development should be further amended to incorporate and retain trees within the development.

A further assessment was undertaken by Council Tree Management Officer who indicated that the application was not supported in its current form for the following reasons:

- It has not been demonstrated that construction works will not negatively impact trees (that are indicated as being retained)
- Works/markings on plans within the VMP have not been clarified, therefore impacts to trees cannot be assessed
- Installation of stormwater and the impacts on trees has not been assessed
- Trees with hollows can be appropriately retained and protected.

With regard to location of a kangaroo population within the area a Fauna Management plan has been prepared which lists the most appropriate management strategy as 'reduction of habitat suitability', implementing management measures to exclude Kangaroos from the development site in a staged manner. However, Council's Biodiversity Officer notes that this approach relies on the consent of Western Sydney Uni which was not provided with the documentation to Council. In the absence of owners consent from WSU, it cannot be determined that the management strategy can be implemented and is therefore unable to be deemed suitable to address the management of fauna on the site.

Section 2.12 - Sydney Western City Planning Panel (SWCPP)

In accordance with Section 2.12 and Section 2.15 of the *Environmental Planning and Assessment Act 1979* the application will be determined by the Sydney Western City Planning Panel as the development has a Capital Investment Value (CIV) of greater than \$30 million.

Section 4.24 – Status of concept development applications and consents

The development site is subject to a previous approval for the Caddens Corner shopping centre and associated works. The development consent that was issued contained reference in the description to a 'Staged Concept Development' and to which consent conditions were imposed referring to future stages that would require the submission of separate Development Applications.

While the future stages of the approved development are not abundantly clear there is sufficient detail which suggests that a concept development application was approved pursuant to s4.22 of the EP&A Act 1979.

Having viewed the development consent and approved plans relating to DA17/0995 it is considered that the proposed development, which seeks to redevelop the at-grade car park associated with Caddens Corner, is inconsistent with the concept approval which remains in force for the site. That the proposed development would be contrary to s4.24(2) of the EP&A Act 1979.

It is noted that a separate modification application has been received pursuant to s4.55(1) which is produced below in full:

- (1) **Modifications involving minor error, misdescription or miscalculation** A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify a development consent granted by it to correct a minor error, misdescription or miscalculation. Subsections (1A), (2), (3), (5) and (6) and Part 8 do not apply to such a modification.

Despite there being some questions raised regarding the form of the application as originally lodged, that a s4.55(1) is not the appropriate mechanism to modify the consent. That a s4.55(2) modification application would be a more appropriate pathway.

Section 4.15 – Evaluation

The 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 those matters, the following issues have been identified for further consideration.

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

Section 4.46 Integrated Development

Roads Act 1993

The development proposal is not identified as being integrated development under Division 4.8 of the Regulations and as per Section 138 of the *Roads Act 1993* in that the development does not include works in or adjacent to a classified road.

Water Management Act 2000

The submitted Report on Preliminary Geotechnical Investigation prepared by EI Australia and supplementary Geotechnical Opinion Letter on Groundwater, dated 29 February 2024, states that:

"observed groundwater levels for a majority of the proposed buildings are below or just above the assumed bulk excavation level, with the exception of Buildings P, Q, R, S, T and U where bulk excavation is 4.2 below observed groundwater levels"

The geotechnical engineer recommends that additional groundwater investigations are performed to investigate the drained basement feasibility for each building stage separately:

- Installation of additional monitoring wells
- Three months of continuous monitoring in the installed monitoring wells
- Seepage analysis
- Dewatering Management Plan

As it is not determined if the proposed development is integrated development under Part 3 Approvals, Sections 89, 90 and 91 of the Water Management Act 2000, a condition of consent could be imposed requiring the applicant to seek advice from the National Resource Access Regulator (NRAR) prior to the issue of a Construction Certificate noting that it does not preclude a Controlled Activity permit being pursued where deemed necessary by that Department

State Environmental Planning Policy (Planning Systems) 2021

The proposed development is identified as being Regionally significant development in Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021 (previously SEPP (State and Regional Development) 2011) as the proposal is general development with a Capital Investment Value of greater than \$30 million, per Schedule 6(2). Specifically, the Capital Investment Value is stated as \$257,725,718.00 (excl GST).

In accordance with the Section 2.15 of the Act the Sydney Western City Planning Panel is the consent authority for the development proposal.

State Environmental Planning Policy (Transport and Infrastructure) 2021

The development proposal has been assessed against the applicable provisions of State Environmental Planning Policy (Transport and Infrastructure) 2021 (previously the State Environmental Planning Policy (Infrastructure) 2007) and that the proposal is considered to be traffic generated development pursuant to clause 2.122 – *traffic generating development*.

An assessment of the development against the relevant sections of the ISEPP are provided below.

Clause 2.122 Traffic generating development

This clause applies to development application as the proposal is identified in Schedule 3 of the Policy as Traffic Generating Development. The development proposes greater than 300 dwellings with access to a road (generally) per Column 2. The consent authority must give written notice to Transport for NSW (TfNSW) and take into consideration any submission made in accordance with the following:

- (4) Before determining a development application for development to which this section applies, the consent authority must—*
 - (a) give written notice of the application to TfNSW within 7 days after the application is made, and*
 - (b) take into consideration—*
 - (i) any submission that RMS provides in response to that notice within 21 days after the notice was given (unless, before the 21 days have passed, TfNSW advises that it will not be making a submission), and*
 - (ii) the accessibility of the site concerned, including—*
 - (A) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and*
 - (B) the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and*

(iii) any potential traffic safety, road congestion or parking implications of the development.

(5) The consent authority must give TfNSW a copy of the determination of the application within 7 days after the determination is made.

TfNSW has been given written notice of the application in accordance with the requirement of the clause.

TfNSW in response on 7 May 2024 states that “*TfNSW has reviewed the submitted information and advises that most of TfNSW comments have been addressed in the updated information.*” However those same comments outline key considerations for Council and the consent authority to further consider in assessing and determining the DA:

- *Gipps Street / Caddens Road intersection AM Peak performance, demonstrates a LoS of ‘F,’ which will need to be addressed and mitigated. Although the development does have an impact, the 2031 prediction without development shows the same LoS.*
- *Gipps Street / Sunflower Drive intersection queue length of the right turn lane on Sunflower Drive SIDRA results indicate that, indeed, the, already exceeding the limit, lengths will be increased by 2031 with or without development.*

TfNSW recommends that “*Council, as the relevant Roads Authority, consider implementing parking restrictions during peak periods on Caddens Road just to the approach to the Gipps Street traffic signals and Sunflower Drive on approach to Gipp Street traffic signals. This will improve the LoS to these roads but also result in improved performance of the signalized intersection.*”

The recommendations and outcome of the review by TfNSW has been undertaken by Council's Traffic Team. While the level of service is already at ‘F’ for Gipps Street / Caddens Road the impacts as a result of this development will be significant with a 27 second AM increase to queueing delay for the overall intersection of Gipps St/Caddens Rd. Council has not been provided with an appropriate solution for the intersection and the impacts generated by the development. Council as the roads authority also considers the additional queueing time to be a significant matter that has not been addressed by the application, and suggests that the proposal is not appropriate in the absence of suitable supportive infrastructure.

State Environmental Planning Policy (Resilience and Hazards) 2021

The development application has been assessed in accordance with the relevant matters for consideration under State Environmental Planning Policy (Resilience and Hazards) 2021 (previously SEPP No.55 Remediation of Land) and is considered to be acceptable as follows:

Clause 4.6 of the Policy stipulates that a consent authority must not consent to the carrying out of any development on land unless:

(a) it has considered whether the land is contaminated, and

(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

In support of the DA is a Detailed Site Investigation prepared by EI Australia, reference number E25834.E02.Rev1, dated 24 February 2023. The report confirms that the site is suitable for the proposed development subject to appropriate conditions should there be any unexpected finds. A review of those report was undertaken by Council's Environmental Health Officer who confirmed that on matters of potential land contamination that the application is able to be supported subject to the imposition of conditions of consent.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 Vegetation in non-rural areas

State Environmental Planning Policy (Biodiversity and Conservation) 2021 (previously SEPP (Vegetation in Non-Rural Areas) 2017) aims to protect the biodiversity values of trees and other vegetation in non-rural areas of the State and preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation. It applies to land in the City of Penrith and applies to development within the R4 High Density Residential zone and the E1 Local Centre zone.

The application was assessed by Council's Senior Biodiversity Officer who considered that the Biodiversity Development Assessment Report had addressed the previous concerns of Council and was considered to be satisfactory. However, while the application had been redesigned to avoid impacts on the patch of Cumberland Plain Woodland that it will still result in the removal of individual mature trees that are present within the site. That the development should be designed to incorporate and retain the trees within the development.

A further assessment was undertaken by Council Tree Management Officer who indicated that the application was not supported in its current form for the following reasons:

- It has not been demonstrated that construction works will not negatively impact trees (that are indicated as being retained)
- Works/markings on plans within the VMP have not been clarified, therefore impacts to trees cannot be assessed
- Installation of stormwater and the impacts on trees has not been assessed
- Trees with hollows can be appropriately retained and protected.

Chapter 6 Water Catchments

An assessment has been undertaken of the development proposal against the relevant criteria within the SEPP. The development proposal was assessed specifically against the general planning considerations, specific planning policies and recommended strategies. Details of particular clauses are discussed below. Clause 6.6 Water quality and quantity lists matters that the consent authority must consider in the assessment of an application.

Council's Environmental Health – Waterways team has reviewed the submitted documentation as relevant to their assessment and do not support the application.

That an updated stormwater management report is required that demonstrates that the post development has a neutral or beneficial effect on receiving waterways as compared to the existing / predeveloped site. The strategy is required to detail what conservation measures and irrigation uses are proposed as well as outline what treatment measures are required to achieve the measures listed in clause 6.6.

Pursuant to clause 6.6 (2)(a)&(b), on the information submitted development consent cannot be granted on land in a regulated catchment unless the consent authority is satisfied the development ensures:

(a) the effect on the quality of water entering a natural waterbody will be as close as possible to neutral or beneficial, and

(b) the impact on water flow in a natural waterbody will be minimised.

State Environmental Planning (Building Sustainability Index: BASIX) 2004

The BASIX SEPP applied to the development at the time of lodgement. It 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 1369175M, dated 13 March 2023, was submitted in support of the application demonstrating compliance with sustainability targets for water use, energy efficiency and thermal comfort. While a revised NatHERS Certificate was submitted with the amended application, it is however noted that a revised BASIX Certificate was not submitted and would be required to be submitted and assessed with regard to the sustainability targets prior to granting development consent.

State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development

State Environmental Planning Policy No.65 Design Quality of Residential Apartment Development aims to improve the design quality of residential apartment development in NSW. It requires consideration of the design quality of residential apartment development considered against the 'Design Quality Principles' of the SEPP and the Apartment Design Guide.

Design Quality Principles

Design Quality Principles	
Principle	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.	The development has not had sufficient regard to its context. Insufficient regard has been given to the topography and natural features including the ability to integrate substantial mature trees into the development.

<p>Responding to context involves identifying the desirable elements of an area's existing or future character.</p> <p>Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</p> <p>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</p>	<p>The building heights particularly on the fringe of the site do not adequately respond to existing and future character. As outlined in the review by the UDRP development around the sites periphery should be contained to a maximum 2-3 storey building form.</p> <p>The UDRP raised significant concern with the privatisation of front setback zones via private open space fencing, this includes those dwellings that address O'Connell St to the south. The setback zones from the road network to all residential flat buildings must be unimpeded, open style and landscaped to achieve the objectives of the setback requirements. All buildings with internal road frontage have not respected the front setback zone objectives with excessive paving eroding the landscaping opportunities that the space is established for.</p>
<p>Principle 2: Built form and scale</p> <p>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>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.</p> <p>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.</p>	<p>The development fails to achieve a scale, bulk and height appropriate to the existing and future desired character of the adjoining streetscape and buildings where established.</p> <p>The UDRP in their review consider that the <i>"variety of proposed building form, design, articulation etc between the various buildings throughout the development does not provide sufficient deference in architectural design expression given the size and scale of the development. Greater deference in architectural expression is encouraged to ensure each building, or sub precincts in the development, have individual design character."</i></p>

	<p>Specifically on the arrangement of Buildings N, M, L and K, the UDRP note that this was not supported as the resulting street wall length is excessive, with poor landscaping outcomes to ameliorate the size and scale of the development. This necessitates a spatial break in the building form and a reduction in building scale to better reflect the arrangement of buildings to the north.</p> <p>Further, the spatial break between building form fronting O'Connell St for these same buildings does not seem sufficient to achieve separation and management of scale and contextual integration with the development to the south.</p> <p>Concern is raised with the proposed building lengths across the development, most notably Buildings G and H and M & L having regard to ADG considerations, streetscape presentation, spatial break, overshadowing and landscaping;</p>
<p>Principle 3: Density</p> <p>Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</p> <p>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.</p>	<p>The development significantly exceeds the dwelling densities envisaged for the site and Precinct. The application provides for 469 dwellings and an estimated population of 992 people. Whereas the overall expected dwelling numbers envisaged is 1,247 dwellings within the entire Caddens Release Area.</p> <p>A planned residential density of 15 dwellings per hectare was expected for the Precinct whereas the proposed development would result in circa 87 dwellings per hectare.</p> <p>The considerable increased density will result in a greater demand for public infrastructure beyond what has been planned for within the WELL Precinct</p>

	Contributions Plan and which will adversely impact residents within the locality. These are matters that have been raised in the public submissions received during the exhibition process.
<p>Principle 4: Sustainability</p> <p>Good design combines positive environmental, social and economic outcomes.</p> <p>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.</p> <p>Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.</p>	<p>The documentation submitted confirms that the application achieves the minimum solar access and natural ventilation provisions as set by the ADG.</p> <p>Due to the extensive basement areas and the amount of above and below ground infrastructure there is limited uninterrupted deep soil planting provided within the development when considered outside of the retained CPW land and community park.</p> <p>A more holistic Environmentally Sustainable Development report has not been prepared for the application and which would detail the range of sustainability measures that have been implemented in the design and planning.</p>
<p>Principle 5: Landscape</p> <p>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.</p> <p>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.</p> <p>Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.</p>	<p>The Urban Design Report specifically identifies critical requirements for open space connectivity that aligns with pedestrian connectivity and provides meaningful landscape separation zones, and active and passive recreational opportunities.</p> <p>This is not reflected within the application lodged, with critical identified open space corridors compromised both in terms of dimensions and levels of embellishment, but also eroded by descending externalised driveways, hard stand areas and nil external connectivity.</p>

	<p>The development proposes the removal of 16 trees from the site including mature trees that make a strong contribution towards the landscape. The applicant has not demonstrated whether there is an ability to retain and integrate the trees in a development of the site.</p>
<p>Principle 6: Amenity</p> <p>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident wellbeing.</p> <p>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.</p>	<p>Generally a good degree of amenity would be achieved through a design that complies with the ADG in terms of solar access, natural ventilation and other key design criteria.</p>
<p>Principle 7: Safety</p> <p>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.</p>	<p>The application is supported by a detailed Crime Prevention Through Environmental Design report that considers the relevant principles. This has been reviewed by Council's Community Safety Officer who does not object to the proposal subject to the implementation of the report's recommendations.</p>
<p>Principle 8: Housing diversity and social interaction</p> <p>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</p> <p>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.</p>	<p>The proposal achieves a mix of apartment sizes that will contribute towards housing choice. Complementing the apartments is a townhouse typology.</p> <p>Adaptable housing has been provided in accordance with the requirements.</p> <p>No affordable housing has been provided and which would be considered appropriate for a development of this scale.</p>

<p>Principle 9: Aesthetics</p> <p>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.</p> <p>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.</p>	<p>The UDRP recommended that greater difference in architectural design expression should be achieved between sub-precincts and buildings.</p>
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Apartment Design Guide

Only a high level assessment of the proposal against the Apartment Design Guide (ADG) has been undertaken as referred to against the design quality principles and as detailed elsewhere in this report. Given the significant permissibility and threshold issues that remain for the application a detailed assessment against the ADG was not deemed appropriate and as such, it cannot be determined that the proposal is compliant with the SEPP or the Apartment Design Guide, as it has not yet demonstrated sufficient levels of design quality

Penrith Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Does not comply
Clause 2.3 Permissibility	Does not comply
Clause 2.3 Zone objectives	Does not comply
Clause 2.7 Demolition requires development consent	Complies
Clause 4.3 Height of buildings	Does not comply
Clause 4.5 Calculation of floor space ratio and site area	Does not comply
Clause 4.6 Exceptions to development standards	Does not comply
Clause 5.3 Development near zone boundaries	Does not comply
Clause 5.10 Heritage Conservation	Complies
Clause 7.1 Earthworks	Does not comply
Clause 7.4 Sustainable development	Does not comply
Clause 7.7 Servicing	Does not comply
Clause 7.12 Maximum gross floor area of commercial premises	Does not comply
Clause 7.30 Urban Heat	Does not comply

Clause 1.2 Aims of the plan

The proposed development does not suitably align with the following aims of the plan including:

- (a) to provide the mechanism and planning framework for the management, orderly and economic development, and conservation of land in Penrith,*
- (b) to promote development that is consistent with the Council's vision for Penrith, namely, one of a sustainable and prosperous region with harmony of urban and rural qualities and with a strong commitment to healthy and safe communities and environmental protection and enhancement,*
- (c) to accommodate and support Penrith's future population growth by providing a diversity of housing types, in areas well located with regard to services, facilities and transport, that meet the current and emerging needs of Penrith's communities and safeguard residential amenity,*
- (h) to ensure that development incorporates the principles of sustainable development through the delivery of balanced social, economic and environmental outcomes, and that development is designed in a way that assists in reducing and adapting to the likely impacts of climate change.*

There are concerns with regard to the overall density of the development, matters of permissibility, significant exceedances of the maximum building height and the maximum commercial floor area. These issues are complex and have broader planning implications on the locality and adjoining sites. Some of the matters are intertwined and exacerbate the planning implications. It is considered that all these matters are best addressed via a more holistic strategic planning approach.

Clause 2.3 Zone objectives

The site has a split zoning with the western part of the site zoned E1 Local Centre, and which contains the existing Caddens Corner shopping centre. The eastern part of the site is zoned R4 High Density Residential. The objectives of the E1 zone are as follows:

- 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.*

Buildings P, R, S, T and U are wholly contained within the E1 zone and comprise shop top housing development which is permitted within the zone.

Furthermore, Buildings E, F & N are partly contained within the E1 zone and partly within the adjoining R4 zone. These are residential apartment buildings that are otherwise prohibited within the E1 zone. Rather the applicant is seeking to rely on the flexible zone provisions contained within clause 5.3 of the LEP. As outlined later in this report the proposed development does not satisfy the necessary preconditions to enliven the flexible zone provisions. Accordingly, Buildings E, F and N are prohibited within the E1 zone.

Furthermore, the development is not consistent with the zone objectives. Particularly the development is of a size and scale that is not appropriate and would affect the amenity and character of the locality. Commercial floor space has been provided in excess of that permitted within the precinct in accordance with clause 7.12 of the LEP and for which the applicant is seeking an exception pursuant to clause 4.6. In its current form, the development has not demonstrated that it would provide retail facilities for the local community “*commensurate with the centre’s role in the local and regional retail hierarchy.*”

The objectives of zone R4 are as follows:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that a high level of residential amenity is achieved and maintained.*
- *To encourage the provision of affordable housing.*
- *To ensure that development reflects the desired future character and dwelling densities of the area.*

Within the zone residential accommodation is permitted. Residential flat buildings are a subset of ‘residential accommodation’. The development does not reflect the desired future character of the area nor the planned density and expected dwelling forecast for the development site. Substantial exceedances are sought to the maximum permitted building heights, and which facilitate a density of development not envisaged for the precinct. Nor has it been demonstrated that a high level of residential amenity will be achieved for the future occupants, or the existing amenity maintained for adjoining residents.

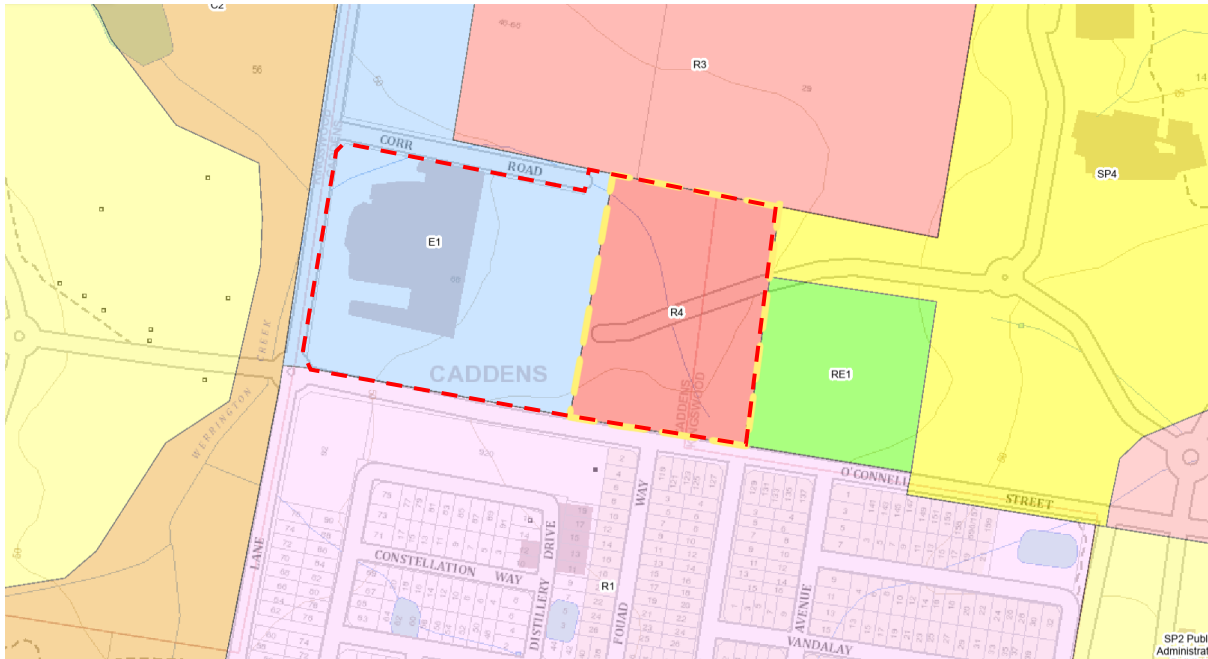


Figure 3: Land Use Zoning Map (Source: ePlanning Spatial Viewer)

Clause 4.3 Height of buildings

The site benefits from a mapped height of building of 15m. A written statement has been submitted with the application made pursuant to clause 4.6 seeking to vary clause 4.3.

In this instance the proposed building height as measured from existing ground level is between 17m and 24.3m as measured to the top of parapet or a percentage departure of between 13.3% and 62%. This increases to a maximum height of 26.4m or a 76% departure with regard to lift and stairwell overrun as it relates to Building R.

It is specifically noted that all of the buildings proposed are non-compliant with the building height development standard.

As outlined in the submitted urban design analysis and in the supporting clause 4.6 written statement the applicant has introduced a rationalised height plane that assumes what the natural ground levels were prior to the modification of the site for its historic use as a drive in theatre and current use as a shopping centre and at grade car park. The applicant acknowledges that the correct way to measure building height is not based on the rationalised height limit but provides this as context for the urban design response.

Using the 'rationalised height plane' approach the development results in 10 of the 18 buildings exceeding the permitted building height. An assessment against the provisions of clause 4.6 is undertaken below.

In essence this measurement projects the 15m height limit taken from O'Connell Street to the south rather than using the existing ground levels. The height then basically meets the existing ground levels within the northern part of the site. A review of historic aerial photos (see Figure 4) for the site suggests that the drive in theatre and Caddens Corner shopping centre was largely contained to the western part of the site (current Lot 1 DP1268507).

It may be considered reasonable to apply such an approach to the consideration of building heights however it is not considered appropriate to apply this methodology to justify the entirety of the site which was not subject to a historic use and specific disturbance.



Figure 4: Historic Aerial Photo 2009, site outlined in red (Source: Nearmap)

Clause 4.6 Exceptions to development standards

Clause 4.6 of the LEP allows the applicant to make a written request to vary the applicable development standard that is contravened.

The proposed development seeks to vary both the development standard for clause 4.3 Height of building and clause 7.12 Maximum of gross floor area of commercial premises.

The Department of Planning and Environment released the Guide to Varying Development Standards on November 2023. Within the Guide it is stated that Clause 4.6 should “*not be used as an alternative to the strategic planning powers under Part 3 of the EP&A Act. Clause 4.6 cannot be used to effect general planning changes throughout a local government area. If clause 4.6 is used as an alternative to a rezoning, the strategic studies typically required to justify a planning proposal may not be undertaken, and broader considerations such as consistency with state and regional planning strategies may not be considered*”.

While the Guide was released after the application was lodged and concurrently with reforms to Clause 4.6, it is considered that these principles are relevant. As demonstrated in this report, the applicant is seeking substantial variations to the height of building development standard along with an exceedance of the commercial floorspace cap. Furthermore, while not directly relevant to this clause the application is seeking to rely on the flexible zone provisions pursuant to clause 5.3 to permit part of the development within the E1 zone, which would otherwise be prohibited.

Height of Building Development Standard

The proposed building height as measured from existing ground level is between 17m and 24.3m as measured to the top of parapet or a percentage departure of between 13.3% and 62% from the maximum permitted height of

15m. This increases to a maximum height of 26.4m or a 76% departure with regard to lift and stairwell overrun as it relates to Building R. All of the buildings are non-compliant with the building height development standard. The extent of non-compliance for the individual buildings and as it relates to the various building components is provided in greater detail in Figure 5.

Building	No of storeys	Ceiling of uppermost level	Extent of variation	Parapet	Extent of variation	Lift Overrun or stair height	Extent of variation
B	4	16.8m	12.8%	17m	13.3%	19.7m	31.3%
C	5	18.7m	21.9%	19.3m	28.6%	20.5m	36.6%
D	5	17.5m	16.6%	19m	26.6%	20.4m	36%
E	5	17.8m	18.6%	18.6m	24%	17.1m	14%
F	6	22.4m	49.3%	23.2m	54.6%	24.9m	66%
G	5	19.2m	28%	20.7m	38%	20m	33.3%
H	5	20.4m	36%	22m	46.6%	22.2m	48%
J	5	18m	20%	18.7m	24.6%	19.8m	32%
K	5	18.8m	25.3%	19.7m	31.3%	20.6m	37.3%
L	6	21.3m	42%	22.2m	48%	21.1m	40.6%
M	6	17.8m	18.6%	18.7m	24.6%	16.6m	10.6%
N	6	20.9m	39.3%	21.8m	45.3%	19.2m	28%
P	6	23.5m	56.6%	24.3m	62%	25.3m	68.6%
R	5	21.4m	35.1%	22.4m	49.3%	26.4m	76%
S	5	17.4m	16%	19.2m	28%	19.2m	28%
T	5	16.3m	8.3%	18m	20%	19.2m	28%
U	4	15.9m	6%	17.7m	18%	18.8m	22.4%

Figure 5: Summary of Height Exceedances (Source: Think Planners)

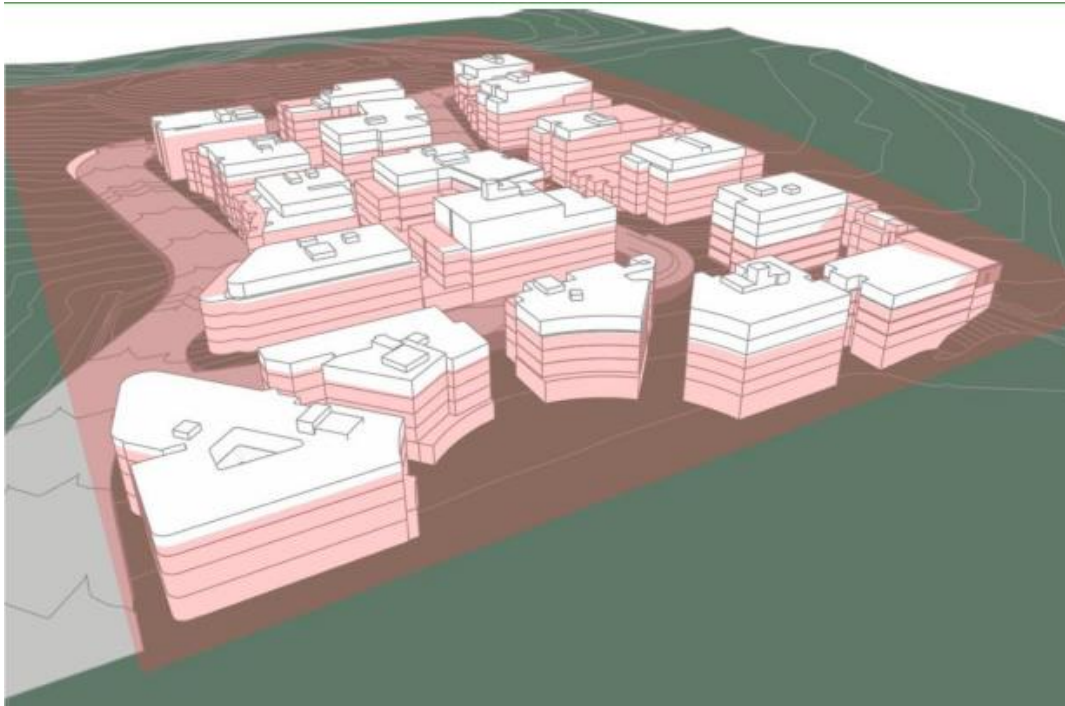


Figure 6: 3D Height Blanket Natural Ground Level (Source: Turner)

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 environmental 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 the following.

- (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 following is a consideration of the objectives of the development standard being varied:

- (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*

Comment: The development has not adequately considered and responded to the adjoining scale of development that informs the local context and character. There is the single storey Caddens Corner shopping centre to the west. To the north / north-east is an approved community title subdivision with a mapped building height of 8.5m and will comprise a mix of single dwelling houses, dual occupancy, and townhouse style development under a recently approved community title subdivision. Land to the south comprises low density residential development with single and two storey dwelling houses on individual lots. Land directly to the east is zoned RE1 Public Recreation and which is mapped for public acquisition under the LEP. Finally, the University of Western Sydney adjoins the site to the north-east and which comprises a sprawling open campus with the nearest building some 260m to the north-east.

Figure 7 is taken from the Urban Design Report prepared by Turner. There is principally a 4-5 storey form along the eastern edge of the site reducing to 2 storeys for a minor component addressing O'Connell St to the south and a minor 3 storey component as part of Building J. Along the northern edge the built form is 4-5 storeys with the perimeter road, open space and CPW land acting as a buffer to development beyond. Along the western edge the building height is between 4-6 storeys focused around a central plaza. On the southern edge of the development site the building height presents to O'Connell St as 2 - 4 storeys in height owing to the topography, whereas the actual building height is up to 6 storeys.

The building heights are not a contextually appropriate response. The Urban Design Review panel in their assessment of the detailed application recommended that *"Given the small low housing scale north and south, and the absence of any residential or high density development to the east, development forms limited to a 2 or 3 storey maximum height at these interface boundaries would be expected."*



Figure 7: Building Storeys (Source: Turner)

(b) to 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,

Comment: While a visual impact assessment was provided with the application as lodged an amended visual impact assessment was not submitted to Council. The visual impacts associated with the development remain a concern with insufficient detail provided to determine the visual impact of the proposal. The UDRP reviewed the application as originally lodged and with regard to the view analysis they note that the submission failed to provide meaningful analysis to inform the appropriateness of the proposed development. The analysis does not capture sufficient comparative views from the southern low density housing to the south or north (approved community title subdivision); the impact of views from within the WSU Campus (top of hill – RE1 Public Recreation zoned land)

toward the escarpment. There should also be a view from the existing shopping centre looking east to inform the scale relationship of the development to the existing built form.

Furthermore, the analysis does not clearly provide for a context around the block modelling indications of built form, or detail block modelling for an ADG compliant development form. The block modelling (and resulting development) does not sufficiently respond to the scale at the interface boundaries particularly to the north, south and east which warrant a lower built form.

(c) to minimise the adverse impact of development on heritage items, heritage conservation areas and areas of scenic or visual importance,

Comment: the site does not contain a listed heritage item. There is a site to the west which is a listed heritage item. The proposed development would not adversely impact on the listed heritage item.

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

Comment: the development does not achieve a transition to adjoining lands in built form and land use intensity. The building heights proposed do not respond to the existing context nor the future desired character of the locality. The built form along the eastern edge does not respond to any established built form (which is nil) and adjoins a public recreation zone and sprawling university land. The principally 4-5 storey built form at the interface to lower scale development is not considered contextually appropriate. Rather, the recommendations of the Urban Design Review panel is clear that development on the fringe should transition to a height of between 2-3 storeys.

Environmental Planning Grounds

- The proposed development is not considered to achieve the objectives of the land use zones E1 Local Centre and R4 High Density Residential.
- The development is of a size and scale that is not appropriate and would adversely affect the amenity and character of the locality.
- There is insufficient justification and explanation as to the planning grounds that have informed the locations of height exceedance. The use of the rationalised height plane has not been sufficiently justified in its current form.
- In its current form, the development has not demonstrated that it would provide retail facilities for the local community that are “*commensurate with the centre’s role in the local and regional retail hierarchy.*” While the applicant has submitted an Economic Impact Assessment with the application it fails to demonstrate that the extent of commercial floorspace sought is appropriate in the context of the centre’s role.
- The development does not reflect the desired future character of the area, nor the dwelling densities envisaged. The application provides for 469 dwellings and an estimated population of 992 people. Whereas the overall expected dwelling numbers envisaged by the Werrington Enterprise Living and Learning (WELL) Precinct s.94 Contributions Plan is an expected ‘additional’ 2,463 dwellings with 1,247 located in the Caddens Release Area.
- A planned residential density of 15 dwellings per hectare is expected for the Precinct whereas the proposed development would result in circa 87 dwellings per hectare.

- Substantial exceedances are sought with regard to the maximum permitted building heights, and which facilitate a density of development not envisaged for the precinct.
- The increased density will result in a greater demand for public infrastructure beyond what has been planned for within the WELL Precinct Contributions Plan that will adversely impact residents within the locality.
- It has not been demonstrated that a high level of residential amenity will be achieved by the development nor that a high level of residential amenity will be maintained for those established residents. Public submissions have been received raising privacy and streetscape concerns.
- Due to the extensive basement areas, amount of above and below ground infrastructure there is limited uninterrupted deep soil planting provided within the development when considered outside of the retained CPW land and community park. Without appropriate deep soil plantings being provided the landscape will not be able to sustain trees that will be in scale with the size and bulk of the proposed buildings.

The clause 4.6 variation request has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Nor that there are sufficient environmental planning grounds to justify contravening the development standard. As detailed in the assessment above, the proposed development would not be in the public interest as it is inconsistent with the objectives of the standard being varied and the objectives within the zone in which the development is proposed.

Maximum gross floor area of commercial premises

Clause 7.12 sets a maximum gross floor area for commercial premises within certain precincts in the Penrith LGA. The Caddens precinct is included in this clause referred to in Column 1 as '46–66 O'Connell Street, Caddens, being Lot 3, DP 1103503 and certain land at Western Sydney University, Great Western Highway, being Lot 100, DP 1194481' with a maximum GFA of 10,000m². As outlined in the assessment undertaken by the applicant in their clause 4.6 variation statement, Caddens Corner was approved via DA17/0995 with an approved retail GFA of 10,127m². However, an analysis of the existing tenancies reveals that two of the tenancies contained a medical centre and gym which are not defined as commercial premises for the purpose of this clause. This would therefore result in a current commercial premises GFA of 9,429m².

The proposed development proposes an additional 1,415m² of retail GFA across five (5) tenancies which would result in an overall GFA of 10,907m² on the land and which does not comply with the maximum. An exceedance of 907m² is proposed or 9.2%.

Clause 4.6(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 the following.

- (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 following is the objectives for the development standard which is being varied.

(1) The objective of this clause is to retain the existing hierarchy of Penrith's local commercial centres by imposing size limitations on certain commercial premises.

With regard to the stated objective the following is noted:

- The retail cap was informed by the WELL Precinct Centre Location and Viability Study, dated June 2004. The study indicated a town centre demand for 10,000sqm of floorspace. It is noted that this formed part of a broader study for the WELL Precinct which proposed an overall 664,000 square metres of employment floor space.
- There remains E1 Local Centre zoned land within the Caddens Release Area that is not yet developed. The potential commercial floorspace that could be achieved on this land has been considered in the economic impact assessment prepared by Atlas Economics. For the land to the immediate north the assessment considers the impact of a further theoretical increase in retail floorspace of 9,233m² should this land be developed.
- The assessment indicates in very broad terms across the Penrith LGA that there will be a significant shortfall of retail floorspace both across the short and long term. It is unclear how the shortfall at this scale can be used to inform the impact of the proposed development and demand for floor space within the Precinct.
- Without a holistic study of the Precinct and its role in the local and regional retail hierarchy it cannot be readily confirmed that the additional retail GFA will not have an unreasonable economic impact on any other local centres. Nor can it be confirmed that the increased retail GFA is needed to meet the demand from the Precinct, including the potential future increase in commercial GFA generated from currently undeveloped employment land.
- The economic impact assessment in assessing the impact of the additional floorspace has considered the proposed increase in dwellings and persons as a result of this development. As the development is varying other development standards, which is contributing towards an increase in the planned density for the Precinct, it is not then considered appropriate to utilise this as a means of justifying the retail demand.

Environmental Planning Grounds

The following is noted with regard to the environmental planning grounds that must be established in accordance with sub-clause (3)(a).

- The proposed development is not considered to achieve the objectives of the E1 Local Centre zone.
- In its current form, the development has not demonstrated that it would provide retail facilities for the local community that are “*commensurate with the centre's role in the local and regional retail hierarchy.*” While the applicant has submitted an Economic Impact Assessment with the application it fails to demonstrate that the extent of commercial floorspace sought is appropriate in the context of the centre's role.
- The development proposes five (5) retail tenancies across Buildings P, R, S, T & U. The tenancies are required at the ground level to satisfy the characterisation as shop top housing and therefore remain permitted within the zone.
- The location of the retail tenancy within Building P is somewhat disconnected from and does not relate well to the existing and proposed commercial uses. This is not a highly desirable location for a tenancy which will not benefit from good foot traffic or visibility.

The clause 4.6 variation request has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Nor that there are sufficient environmental planning grounds to justify contravening the development standard. As detailed in the assessment above, the proposed development would not be in the public interest as it is inconsistent with the objectives of the standard being varied and the objectives within the zone in which the development is proposed.

Clause 5.3 Development near zone boundaries

Clause 5.3 provides flexibility where at a zone boundary interface that there is a more 'logical and appropriate' development of the site for a use allowed on the other side of the zone boundary. That such a use must be compatible with the planning objectives and land uses for the adjoining zone. The application relies on the use of these flexible zone provisions for the purpose of permissibility.

A review of the architectural plans reveals that there are components of Buildings E and F located outside of the allowable 20m flexible zone provisions pursuant to clause 5.3(2) and which raises issues with regard to the permissibility of these buildings that the applicant has not addressed in their documentation.

The components located outside of the 20m relates both to the basement levels and the ground floor terrace/open space areas. It is noted that otherwise the built form is located within the 20m distance.

Beyond the 20m provision the consent authority must be satisfied of the following matters listed in sub-clause (4):

- (a) the development is not inconsistent with the objectives for development in both zones, and*
- (b) the carrying out of the development is desirable due to compatible land use planning, infrastructure capacity and other planning principles relating to the efficient and timely development of land.*

There are concerns with the overall density of the proposed development and the height of building exceedances proposed. That the proposed development would be inconsistent with the zone objectives of both the E1 Local Centre zone and the R4 High Density Residential zone. That the application has not demonstrated that the carrying out of the development would be desirable particularly with regard to compatible land use planning and infrastructure capacity.

The application has not satisfied the flexible zone provisions under the clause and Buildings E, F & N are therefore prohibited within the E1 zone.

Clause 7.7 Servicing

With regard to servicing the consent authority must be satisfied of the following matters pursuant to sub-clause (2) prior to granting development consent:

- (a) the development will be connected to a reticulated water supply, if required by the consent authority, and*
- (b) the development will have adequate facilities for the removal and disposal of sewage, and*

(c) if the development is for seniors housing, the development can be connected to a reticulated sewerage system, and

(d) the need for public amenities or public services has been or will be met.

It is considered that the proposed development will generate a significant demand for public infrastructure. The potential number of persons that could occupy the development remains substantial at 992 people. On the matter of the demand for public infrastructure and services generated by the development the submission of an amended Social Impact Assessment (SIA) and the DA documentation generally have not satisfactorily detailed how this can be satisfied. In particular, the matter of capacity of public transport to cater for the increased demand and the need to coordinate with local bus companies; the Impact Assessment Summary continues to outline there is no current vacancies in existing childcare facilities; and there has been no formal response from Schools Infrastructure NSW regarding the proposal which generates an additional demand for 73 high school places and for which there are existing capacity issues.

Council's City Planning Team note the following with regard to the demand for high school places generated by the development:

The SIA estimates that the development could result in approximately 73 new residents of high school age (12-17), increasing demand for secondary schools in the area. The SIA indicates that that the closest comprehensive secondary school (Kingswood High, 1.7km from site) is at enrolment capacity and recommends that engagement with School Infrastructure NSW be undertaken to discuss options to accommodate the expected increase in high school age students to be generated by the proposed development. It is considered that the planning proposal process would best facilitate this engagement.

With regard to requirement for open space, Council's City Planning Team note that the development would generate a demand for 0.2ha or Local Park to be located within 200m of 100% of dwellings. That the proposed includes employment land uses, increasing demand for open space by 10%, and resulting in the need for 0.22ha of local park. In addition, 1.1ha would be required in lieu of a District Park, resulting in an overall demand generate of 1.32 ha of open space.

Whereas the Social Impact Assessment identifies 0.4ha of Local Park within the development site comprising a village green (0.2ha), site of former building A (0.1ha) and pocket parks (0.1ha). Analysis has also been undertaken of nearby open space within a 400m radius. The analysis and review undertaken by Council's City Planning team suggests that the development results in a shortfall of open space of 0.7ha despite the location of some existing nearby open space, some of which has not been considered appropriate to consider.

With regard to the open space that has been provided within the development site City Planning concludes that:

The design of open space is considered inadequate in terms of land size and arrangement, being inconsistent with Council's Sport and Recreation Strategy. The proposed local parks are fragmented across the development site and do not meet the minimum land size of 0.3ha under Council's Sport and Recreation Strategy. Best practice for local reserves is a minimum 0.3ha in size to accommodate a range of recreation activities and needs, and flexibility of use.

...

the application has not been accompanied by open space calculation plans to clearly demonstrate what areas have been counted towards open space, which should be provided. Calculation plans should

exclude any inaccessible/non-usable area, such as retaining wall and footpath or nature strip that form part of the road reserve.

With regard to the requirement to connect to a reticulated water supply Council's City Planning team state that:

The application does not appear to be accompanied by advice from Sydney Water to demonstrate that the development can be serviced by Sydney Water. The application is accompanied by a Services Infrastructure Report prepared by Goldfish & Bay, which identifies that upgrade/extension to Sydney Water utilities will be required. In noting the significant uplift proposed, it is considered recommended that upfront advice from Sydney Water be obtained to confirm capacity for servicing.

Clause 7.30 Urban heat

Clause 7.30 was inserted into the Penrith LEP 2010 on 22 July 2022. The clause relates to measures to reduce the urban heat effect in Penrith when considering proposed development, applying to both residential and employment zones. Sub-clause (3) details the matters that the consent authority must be satisfied of that planning designed measures are incorporated to reduce the urban heat island effect.

(a) maximise green infrastructure, and

The proposed development would result in the removal of 16 trees throughout the site. Council's Tree Management Officer has further outlined that the application has not demonstrated that construction works will not negatively impact trees and that the extent of works within the VMP is not clear and so the extent of impact to trees cannot be assessed. That insufficient unobstructed deep soil planting areas have been provided to enable sufficient replacement canopy on the site to address Urban Heat requirements.

Council's Biodiversity Officer states that the development will result in the removal of individual mature trees and that it would be a better outcome if the development was designed to incorporate and retain these in the development. The applicant has not demonstrated whether the mature trees are able to be retained by a development of the site consistent with the provisions of the clause.

(b) retain water in the landscape, and

The development site contains a mapped 1st order Strahler stream as detailed in the submitted Biodiversity Development Assessment Report (BDAR). That the watercourse is part concrete along the north portion of the site and for the remainder is a grassy swale running south to north. That this stream would be removed and formalised by the proposed civil works. The applicant has not demonstrated whether the stream was capable of being retained and integrated within the development site.

(c) use design measures to ensure the thermal performance of the development achieves a high degree of passive cooling, and

The documentation submitted suggests that the development will achieve solar access and natural ventilation requirements with the Apartment Design Guide.

- (d) *use building, paving and other materials that minimise heat impacts, and*

The applicant has not demonstrated that measures have been taken to minimise heat impacts. The development proposes a significant quantity of basement levels and hardstand surfaces albeit with the retention of CPW land and provision of open space in the northern part of the site.

- (e) *reduce reliance on mechanical ventilation and cooling systems, to conserve energy and to minimise heat sources.*

Beyond compliance with the ADG in terms of solar access and natural ventilation and BASIX requirements the applicant has not demonstrated how the development has been planned and designed to reduce reliance on mechanical ventilation and cooling systems. For instance, the applicant has not submitted a more detailed Environmental Sustainable Design report with the application which would undertake a more detailed assessment of the measures that have been implemented for the development.

- (4) *In this clause—*

green infrastructure means the network of green spaces, natural systems and semi-natural systems including waterways, bushland, tree canopy, green ground cover, parks and open spaces, that—

- (a) *supports sustainable communities, and*

- (b) *is strategically designed and managed to support a good quality of life in an urban environment.*

urban heat island effect is a result of conditions that contribute to higher temperatures in urban areas, including—

- (a) *use of roads, car parks, pavements, roofs, walls and other hard and dark surfaces, and*

- (b) *activities that generate heat, including waste air from mechanical cooling systems, and*

- (c) *reduction in green infrastructure.*

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

There are no draft environmental planning instruments of relevance to the development being considered.

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

Development Control Plan 2014

Provision	Compliance
DCP Principles	Does not comply - see Appendix 1- Development Control Plan Compliance
C1 Site Planning and Design Principles	Does not comply - see Appendix 1- Development Control Plan Compliance
C2 Vegetation Management	Does not comply
C3 Water Management	Does not comply

C4 Land Management	Does not comply - see Appendix 1- Development Control Plan Compliance
C5 Waste Management	Does not comply
C6 Landscape Design	Does not comply - see Appendix 1- Development Control Plan Compliance
C7 Culture and Heritage	Complies
C8 Public Domain	Does not comply
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Does not comply
C11 Subdivision	N/A
C12 Noise and Vibration	Complies
C13 Infrastructure and Services	Does not comply
C14 Urban Heat Management	Does not comply
D2.5 Residential Flat Buildings	Does not comply - see Appendix 1- Development Control Plan Compliance
D2.6 Non Residential Developments	N/A
E1 Caddens	Does not comply - see Appendix 1 - Development Control Plan Compliance

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

There are no Planning Agreements in place that apply to the subject development application.

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

The application is accompanied by a compliance report which confirms that the development can readily achieve compliance with the provisions of the BCA and Access to Premises Standards. The application was reviewed by Council's Building Surveyor who raised no concerns with the development subject to conditions of consent. The proposal is considered capable of complying the requirements under the *Environmental Planning and Assessment Regulation 2021*.

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

Local and State Infrastructure

The proposed development will result in a substantial increase in the population within the Precinct beyond what has been strategically planned for. The increase in population is well in excess of the density that was envisaged in both the WELL Precinct s.94 Development Contributions Plan and the Penrith DCP for the Caddens Release Area. It has been identified that the development will generate a demand for open space beyond what currently

exists and what is being provided for on-site; has demonstrated the increased demand for high school placements for which there is no capacity within the catchment; will increase the demand on the local road network which in some instance is already failing in terms of level of service; and increase the demand for public transport. The applicant has not demonstrated how this increased demand for infrastructure would be addressed by the development.

Character

The development of the site will have an unacceptable impact on the existing and future desired character of the area. It is not a contextually appropriate response and has not responded to existing and future potential built form.

Precinct Connectivity

The development does not provide adequate pedestrian connections through the site and to adjoining sites. The Urban Design Report identifies a connection from O'Connell Street that is beyond a singular access point in conjunction with public road intersection, but which has not been provided in the final design. This results in poor externalised connections and way finding.

Environment

The proposal results in the removal of mature trees and trees with hollows. The applicant has not demonstrated whether those trees could be retained and integrated into the development.

Traffic and Parking

Modelling undertaken for Gipps Street / Caddens Road intersection reveals that it performs at Level of Services 'F' with an average delay of 109.3 seconds during the AM. That the proposed development would result in a further 27 second AM increase to queueing. This represents an unacceptable impact particularly as the proposed development seeks a significant increase in density above that contemplated in the strategic planning for the Precinct.

A Stage 2 Road Safety Audit has been submitted with the application and which details a range of corrective actions with regard to the design and the surrounding road network. It is unclear whether the applicant has implemented the recommendations of the report. The report has suggested consideration be given to the road being a one-way directional road to minimise conflicts among other recommendations.

Insufficient detail has been provided with the application to determine the impacts during construction with the removal of the at grade car parking and how parking can be practically maintained for the Caddens Corner shopping centre.

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

The site is not considered to be suitable for the development for the reasons outlined within this assessment report.

Section 4.15(1)(d) Any Submissions

The development application was notified to nearby and adjoining owners and occupiers between 15 May 2023 and 29 May 2023. 22 submissions were received objecting to the proposal. Issues raised are addressed below.

Matters raised in submission Council comment

The following is a summary of the matters raised in the public submissions:

Matters Raised	Comment
Proposed housing density and impacts on infrastructure capacity	<p>There are concerns with the overall increase in population and the ability for the existing infrastructure including roads to cater for this increase. Public transport options were considered to be limited for the area and capacity issues raised around local schools, childcare centres, medical centres and open space.</p> <p>There are issues regarding the existing capacity of the road network particularly the intersections of Gipps St/Caddens Rd and Gipps St/Sunflower Dr. While these intersections are already failing with regard to the level of service that the development would exacerbate the existing issues and the applicant has not demonstrated how these impacts would be mitigated. With regard to the capacity of educational institutions this has been considered in the submitted Social Impact Assessment which confirms particularly that there are capacity issues with regard to high school placements.</p> <p>Concerns have also been raised regarding the existing capacity of the public recreational space and the impact of the development.</p>
Building height – clause 4.3 exceedance	<p>There is concern with the proposed height of building and the exceedance that is sought from clause 4.3. The rationale behind the request is not understood and it is not agreed with the view that the development achieves a transition to either the existing Caddens Corner shopping centre nor the adjoining low density residences. That the proposed development is the first high density development in this area and will set a precedent for this locality.</p>
High density development within a quiet suburban area	<p>The applicant has not demonstrated that the density of development that is sought is appropriate nor that it is a contextually appropriate response to the locality.</p>
Removal of at grade car parking from the shopping centre	<p>The proposed development will remove the car parking in the short term however it is proposed to provide for replacement car parking within the basement of the development. However, the applicant has not satisfactorily demonstrated how the development would provide for the replacement car parking without impacting upon the ongoing operation of the shopping centre during the demolition and construction phase.</p>

Relationship with adjoining development	<p>There is a need to further consider the matters listed below between the proposed development and the WSU Werrington campus:</p> <ul style="list-style-type: none"> • Relationship of building heights • Proposed road locations • Level changes • Opportunities for public access and permeability between the two sites • Maintaining adequate carparking during construction of basement. <p>With regard to the matters listed and as outlined in this report the applicant has not adequately demonstrated the relationship between</p>
Affordable housing	No affordable housing is proposed as part of the development. That a development of this scale could incorporate a minimum requirement of affordable dwellings.
Removal of nature and wildlife reserves. Impact on amenity for residents	<p>The proposed development seeks to remove 16 trees from the site and retain a patch of Cumberland Plain Woodland within the northern part of the site. The application is supported by the required technical assessments including a Biodiversity Development Assessment Report. It has not been demonstrated by the applicant whether there is a design that could retain and integrate the mature trees into the design consistent with the requirements of Council policy.</p> <p>With regard to location of a kangaroo population within the area a Fauna Management plan has been prepared which lists the most appropriate management strategy as 'reduction of habitat suitability' which implements management measures to exclude Kangaroos from the development site in a staged manner. However, Council's Biodiversity Officer notes that this approach relies on the consent of Western Sydney Uni, and which was not provided with the documentation to Council.</p>
Social impacts and crime	The applicant has submitted a Crime Prevention through Environmental Design Assessment report as part of the application. This has been reviewed by Council's Community Safety Officer who has raised no concerns with the proposed development subject to the imposition of the recommended strategic addressing surveillance, access control, territorial reinforcement, and space management. This could occur through the imposition of conditions of consent.
Impacts on ecology and wildlife	Concerns have been raised particularly with regard to a mob of kangaroos that reside in the area and the reduction in area they have to roam and graze. How the kangaroos will be managed and treated with the development of the site. Issues are also raised with the proposed removal of mature trees and whether they are able to be retained.

Flooding	Flooding has been considered by Council's Development Engineer – Major Developments. No concerns have been raised with regard to matters of flooding.
Impacts on temperature	There are concerns with the proposed development and impacts with regard to urban heat. This is exacerbated by the removal of existing mature trees and that green infrastructure has not been maximised.
Building setbacks to O'Connell St to the south – too close to street	Development along the southern boundary is generally setback 3m as measured to the building wall and with terraces effectively built to the boundary. The terraces appear to be fenced with a mixture of solid and permeable materials but will present a continuous edge to the street with opportunities for meaningful landscaping within the streetscape by way of street trees. That this will not provide for a positive public domain outcome.
Impacts on O'Connell St stability	Concerns that the proposed earthworks to facilitate the development within the southern part of the site will destabilise O'Connell St.
Development staging	Concerns are raised with Stage 4 of the development being that associated with Caddens Corner shopping centre. It is viewed that this would be a more orderly approach to the development of the site.
Privacy impacts	Substantive terraces on the second storey of the townhouse typologies are proposed facing south along O'Connell St. They appear to be circa 3m from the property boundary. While the road reserve provides a separation between the proposed townhouses and the established dwelling houses to the south there is limited detail as to how these terrace areas would be treated both internally within the development and in the context of the existing dwelling houses to mitigate privacy impacts.
Creation of an intersection in the south eastern part of the site with Starline Drive	The application has been reviewed by Council's Traffic Team and no concerns have been raised with regard to the proposed arrangement.
Pedestrian access	Safe pedestrian access is needed to the Caddens Corner shopping precinct from the Caddens residential estate. It is considered that the application does not provide sufficient pedestrian access through the development as envisaged by Council's planning controls.
Road safety	In support of the application is a Stage 2 Road Safety Audit which appraises the local road network and the proposed design. There are a number of design and technical recommendations made however it is unclear whether these have been implemented.

Construction and operational noise	<p>In support of the application is a Noise and Vibration Assessment prepared by Stantec. This has been reviewed by Council's Environmental Health Officer who has not objected to the proposed.</p> <p>Conditions of consent have been recommended including the preparation of a Construction Environmental Management Plan; management measures for the operations of plan equipment; and the implementation of the recommendations within the Stantec report.</p>
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Referrals

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

Referral Body	Comments Received
Building Surveyor & Fire Safety	No objections - subject to conditions
Development Engineer	Not supported – additional or amended information required
City Planning	Not supported – additional or amended information required
Tree Management Officer	Not supported – additional or amended information required
Environmental - Biodiversity	Not supported – additional or amended information required
Environmental - Environmental Management	No objections - subject to conditions
Environmental - Waterways	Not supported – additional or amended information required
Environmental - Public Health	No objections - subject to conditions
Waste Services	Not supported – additional or amended information required
Traffic Engineer	Not supported – additional or amended information required
Community Safety Officer	No objections - subject to conditions
City Activation Community & Place	Not supported – additional or amended information required
Transport for NSW	Recommendations for consideration by Council
Rural Fire Service	General Terms of Approval issued

Section 4.15(1)(e)The public interest

It is for the reasoning provided within, and the matters raised in the assessment particularly as it pertains to matters of permissibility, building height exceedance, commercial floorspace exceedance, overall density of development and infrastructure capacity to provide for the proposed increase, that the development application is not considered to be in the public interest and cannot be supported.

Conclusion

The proposal has been assessed against the relevant environmental planning instruments and policies including State Environmental Planning Policy No.65-Design Quality of Residential Apartment Development; Penrith LEP 2010 and Penrith DCP 2014 and the proposal is found to be unsupportable. This assessment to the Panel has focused on the key threshold issues that remain unresolved.

The development application is unsatisfactory in relation to Penrith LEP 2010 specifically with regard to matters of permissibility; exceedances of the height of building development standard and commercial floor space cap which are not able to be supported; inconsistency with the zone objectives; overall density of the development and its impact on infrastructure capacity within the locality.

Further to the threshold matters, the applicant would be required to address a range of other detailed matters that remain outstanding.

The application is recommended for Refusal for the reasons provided.

Recommendation

1. That DA23/0281 for the Staged Construction Of A Mixed Use Re-Development (Caddens Corner) Involving The Construction Of 18 Buildings, 469 Residential Apartments, Five (5) Commercial Premises, Basement Car Parking & Associated Demolition, Tree Removal, Construction of Roads, Earthworks, Landscaping & Stormwater Drainage Works be Refused for the following reasons; and
2. That those making submissions and the relevant State agencies are notified of the determination

Reasons for Refusal

Refusal

1. Pursuant to Section 4.3 of the Environmental Planning and Assessment Act 1979 the development is prohibited within the zone and a person must not carry out the development on the land.
2. Pursuant to Section 4.24 of the Environmental Planning and Assessment Act 1979 the development is inconsistent with a concept development application that applies to the site.
3. The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with the provisions of State Environmental

Planning Policy No. 65 – Design Quality of Residential Flat Building Development and the Apartment Design Guide with respect to:-

- a) Context and character
 - b) Built form and scale
 - c) Density
 - d) Sustainability
 - e) Landscape Design and Arrangement
 - f) Internal and External Amenity
 - g) Housing design and Architectural diversity
 - h) Aesthetics
 - i) Overall Demonstration of Design Quality
4. The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with the provisions of Penrith Local Environmental Plan 2010 as follows:
- a) The proposal is inconsistent with Clause 1.2, Aims of Plan,
 - b) The proposal is inconsistent with Clause 2.3 Zone objectives and Land Use Table, and
 - c) The proposal is unsatisfactory having regard to the following provisions of PLEP:
 - Clause 4.3 Height of buildings
 - Clause 5.3 Development near zone boundaries
 - Clause 7.1 Earthworks
 - Clause 7.4 Sustainable development
 - Clause 7.7 Servicing
 - Clause 7.12 Maximum gross floor area of commercial premises
 - Clause 7.30 Urban heat
5. The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with the provisions of:
- a) State Environmental Planning Policy (Biodiversity and Conservation) 2021, specifically clause 6.6(2)
6. The application is not satisfactory for the purpose of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as the proposal is inconsistent with the following provisions of Penrith Development Control Plan 2014:
- (a) C1 Site Planning and Design Principles;
 - (b) C2 Vegetation Management
 - (c) C3 Water Management;
 - (d) C4 Land Management
 - (e) C5 Waste Management;
 - (f) C6 Landscape Design
 - (g) C10 Transport, Access and Parking;

- (h) C13 Infrastructure and Services
- (i) C14 Urban Heat Management
- (j) E1 Caddens.

7. The application is not satisfactory for the purpose of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 in terms of the likely impacts of the development including those related to:
 - a) Character and Context Integration;
 - b) Visual impacts
 - c) increased demand on local and State infrastructure;
 - d) Amenity for existing and future residents; and
 - e) traffic and transport impacts including the impact on the local and state road network;
8. The application is not satisfactory for the purpose of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 as the site is not suitable for the proposed development.
9. The application is not satisfactory for the purpose of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, as the proposal is not in the public interest.
10. The application is not satisfactory for the purpose of Section 4.15(1)(e\ d) of the Environmental Planning and Assessment Act 1979, due to matters raised in submissions which include:
 - a) Housing density
 - b) Impact on infrastructure capacity
 - c) Social impacts
 - d) Ecological impacts
 - e) Amenity impacts including overshadowing and privacy

Appendix 1 – PDCP 2014 Compliance

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
- Achieve long term economic and social security
- Recognise the intrinsic value of biodiversity and natural ecosystems, and protect and restore them
- Enable communities to minimise their ecological footprint
- Build on the characteristics of ecosystems in the development and nurturing of healthy and sustainable cities
- Recognise and build on the distinctive characteristics of cities, including their human and cultural values, history and natural systems

An assessment of the proposal against the DCP principles has been undertaken and the application is not considered to be consistent with those principles. While the application proposes a higher density of housing in proximity to the Caddens Corner shopping centre the density of development sought significantly exceeds that which was envisaged for the Caddens Precinct.

Part C – City-Wide Controls

C1 – Site Planning and Design Principles

The overall design and siting of the development is not consistent with the objectives and principles. The proposal does not adequately respond to the natural topography and landform of the site. While it is acknowledged that the site has been previously developed and has resulted in some challenging topography it remains that the design response is insufficient. That the height, massing and scale for the development, even though it has reduced from that originally lodged, does not sufficiently consider the existing and future desired character of the area.

C4 – Landform

The proposed development does not adequately consider the existing topography of the site. Significant earthworks are required to facilitate the development including up to 4.4m of fill to achieve the required grades for the road construction.

C6 – Landscape Design

The proposed development is inconsistent with the provisions of the chapter. Remnant native vegetation should be retained, managed and incorporated into landscape designs. Furthermore, that landscape design should reinforce the identified natural attributes of the site including significant trees. The proposal includes the removal of 16 trees

of which some are mature native trees and form part of an endangered ecological community. The applicant has not demonstrated whether it was possible to integrate those remnant trees into the design.

D2 – Residential Development

This chapter contains both general planning controls for residential development and specific planning controls for different residential typologies. This chapter has been considered both in terms of the general controls and those controls that relate to residential flat buildings.

There are minimum landscaped area requirements depending on the residential zone. In this instance within the R4 High Density Residential zone a minimum landscaped area of 35% is required. There are specific areas that can be included within the calculation which are detailed in the architectural plans. The plans suggests that 43.1% of the site area comprises landscaped area. The applicant has not included that part of the site which proposes residential apartment buildings within the E1 zone. Given that the application is relying on the flexible zone provisions to permit those buildings that it is appropriate to include these areas in the calculations and which would affect the ultimate figure. Furthermore, the pathways and hardstand areas proposed within the communal park appear to have been included in the calculation of landscaped areas.

Within established areas new development should be planned and designed to reflect the character of traditional established neighbourhoods. Predominant patterns of planning and design as displayed by local buildings and their gardens; setbacks and building separation; height, scale and bulk; garaging; and articulated forms and varied plantings.

Part E – Key Precincts

E1 Caddens

The site is subject of a site specific chapter that applies to the redevelopment of the land. The entirety of the site is located within the Caddens Release Area as detailed by Figure E1.1. The following are the objectives of the chapter:

- a) *To facilitate and promote the objectives of the Werrington Living and Learning Precinct (WELL Precinct Vision).*
- b) *To create a viable and vital community energised by the interactions of, and synergies with, adjacent education and employment activities.*
- c) *To enable a diverse range of housing forms and densities to meet the needs of diverse age groups, family types and income levels.*
- d) *To demonstrate a high standard of residential amenity and a high standard of urban and architectural design quality.*
- e) *To ensure all development achieves a high standard of environmental and social sustainability.*
- f) *To provide a Precinct Centre serving residents of Caddens and surrounding areas, as well as the WELL Precinct.*
- g) *To protect existing vegetation and views from hilltops and ridges.*

- h) To ensure development is sensitive to, and facilitates connections with, land and development adjoining Caddens.*
- i) To integrate all available modes of transport including walking, cycling and use of buses, and to ensure there are efficient links within and between open spaces, the Precinct Centre and adjacent residential areas*

The proposed development is inconsistent with the objectives for the precinct noting that the development:

- does not have sufficient regard to the existing adjoining uses and is not considered to be a contextually appropriate response;
- would not contribute towards a high standard of environmental and social sustainability;
- will remove mature trees from the site contrary to the objectives which seeks to protect existing vegetation and views from hilltops and ridges; and
- is not sensitive to and does not facilitate connections with the land and development adjoining the site.

The documentation has considered the planning controls for Caddens including the Structure Plan that details the urban structure and form for the future development of the land. Which considers the general layout of Caddens including road configuration, general location of uses, and passive open space. The applicant has undertaken a detailed urban design approach to the site with regard to site constraints namely the topography and the Cumberland plain woodlands in the northern part of the site. As such the road configuration and building layout differs from that envisaged in the DCP.

Part of the site is within the Precinct Centre, aligning with the E1 zone, which has further Character Area Design Principles. This envisages development with a maximum height of 15m, comprising 4 storeys plus roof element, with a commercial limit of 10,000m².

Dwelling yield targets are provided within the DCP, consistent with the WELL Precinct Contributions Plan, setting an objective of 1,247 dwellings overall. Subdivision application were to demonstrate that 15 dwellings per hectare were achieved contributing to the overall precinct minimum yields. The subject site was to comprise 102 dwellings within part of the site aligning with the now R4 High Density Residential zone. A further 134 dwellings was to be achieved across the Precinct Centre which aligns with the E1 zone. Whereas the proposed development seeks approval for 469 dwellings, and which does not take into account an already approved residential apartment building in the south west part of the site and the future development of the currently vacant land to the north. The proposed development results in a yield of 87 dwellings per hectare based on the development site only.

The maximum number of building storeys is mapped for the site at four (4) storeys. Whereas a building height of between 4-6 storeys is proposed with some minor components between 2-3 storeys.

Within the chapter there are specific controls for residential flat buildings within the precinct. Buildings are to *“not adversely impact upon the existing or future amenity of any adjoining land upon which residential development is permitted with respect to overshadowing, privacy or visual impact”*.