

# GYDE

## Independent Assessment

REV23/0007 [DA/22/0213\_Southern Lot] – DA1

184 Lord Sheffield Circuit, Penrith

Prepared by Gyde Consulting  
on behalf of Penrith City Council

22 April 2024

[gyde.com.au](http://gyde.com.au)

## Acknowledgment of Country



Towards Harmony by Aboriginal Artist Adam Laws

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Report Version: Final

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## Contents

|           |  |           |
|-----------|--|-----------|
| <b>1.</b> | <b>Administrative Overview .....</b>   | <b>4</b>  |
| <b>2.</b> | <b>Introduction.....</b>   | <b>5</b>  |
| 2.1       | Site and Surrounds .....   | 5         |
| 2.2       | History of the Application .....   | 6         |
| 2.3       | Overview of Proposal .....   | 7         |
| 2.4       | Plans that Apply .....   | 8         |
| <b>3.</b> | <b>Assessment against the Environmental Planning &amp; Assessment Act 1979 (EP&amp;A Act).....</b> | <b>9</b>  |
| 3.1       | Section 2.12 – Sydney Western City Planning Panel (SWCPP) .....                                    | 9         |
| 3.2       | Section 4.15 - Evaluation .....  | 9         |
| 3.2.1     | Assessment of Panel's Reasons for Refusal.....   | 9         |
| 3.2.2     | Section 4.15(1)(a)(i) The provisions of any environmental planning instrument .....                | 29        |
| 3.2.3     | Section 4.15(1)(a)(iii) The provisions of any development control plan .....                       | 35        |
| 3.2.4     | Section 4.15(1)(a)(iiia) The provisions of any planning agreement.....                             | 37        |
| 3.2.5     | Section 4.15(1)(a)(iv) The provisions of the regulations.....                                      | 37        |
| 3.2.6     | Section 4.15(1)(b) The likely impacts of the development .....                                     | 37        |
| 3.2.7     | Section 4.15(1)(c) The suitability of the site for the development .....                           | 38        |
| 3.2.8     | Section 4.15(1)(d) Any submissions .....   | 38        |
| 3.2.9     | Section 4.15(1)(e) The public interest .....   | 43        |
| <b>4.</b> | <b>Conclusion .....</b>  | <b>44</b> |
| <b>5.</b> | <b>Recommendation for Approval.....</b>  | <b>45</b> |

## List of Figures

|           |  |    |
|-----------|--|----|
| Figure 1. | Subject site and Lots associated with subject DA (Source: Nearmaps, adapted by Gyde) .....   | 5  |
| Figure 2. | Section 8.2 Review - Proposed Floor Plan – Level 1 Tenancy (Recreation Facility (indoor) – Plans show indicative layouts (Source: Draft VPA Letter of Offer for Community Infrastructure –, dated 28 March 2024). .....  | 11 |
| Figure 3. | Location of Penrith Station Plaza (shaded in green) in relation to the subject site (shaded in red) (Source: Crone Architects, Section 8.2 Public Solar Studies submitted as part of REV23.0007, 20 December 2023) ..... | 25 |
| Figure 4. | Height of Buildings Map under the Penrith LEP – 32m height control (subject site is Lot 3003 outlined in red) (Source: eSpatial Planning Viewer, accessed February 2024) .....   | 26 |
| Figure 5. | Proposed Base Case envelope (Station Plaza highlighted in green and site subject to DA2 is highlighted in red) (Source: Crone Architects, December 2024) .....   | 27 |

## List of Tables

|          |   |    |
|----------|---|----|
| Table 1. | Timeline of events relating to REV23/0007 .....                                 | 6  |
| Table 2. | Assessment of REV23/0007 against SEPP 65's nine (9) key design principles. .... | 31 |
| Table 3. | Assessment of REV23/0007 against the ADG .....                                  | 31 |
| Table 4. | Assessment of REV23/0007 against Penrith LEP .....                              | 33 |
| Table 5. | Assessment of REV23/0007 against Penrith DCP .....                              | 35 |
| Table 6. | Summary of external referral responses relating to REV23/0007 .....             | 38 |
| Table 7. | Summary of public submissions relating to REV23/0007 .....                      | 38 |
| Table 8. | Summary of Council referral responses relating to REV23/0007 .....              | 41 |

## Appendices

### Appendix A Draft Conditions of Consent

## 1. Administrative Overview

|                                     |  |
|-------------------------------------|--|
| <b>SWCPP Ref. No.</b>               | PPSSWC-389   |
| <b>Original DA Number</b>           | DA22/0213  |
| <b>Section 8.2 Reference Number</b> | REV23/0007   |
| <b>Property Address</b>             | 184 Lord Sheffield Circuit, Penrith, NSW, 2750   |
| <b>Property Description</b>         | Lot 3003 of DP1184498  |
| <b>Zoning</b>                       | Zone E1 Local Centre (Penrith LEP – current)   |
| <b>Class of Building</b>            | Class 2, Class 6, Class 7a   |
| <b>Independent Assessor</b>         | Gyde Consultancy – Stephen Kerr (Executive Director), Tina Christy (Director) & Camilla Firman (Senior Associate). |
| <b>Recommendation</b>               | Approval – subject to conditions   |



## 2. Introduction

This Independent Planning Assessment Report (Report) has been prepared at the request of Penrith City Council (Council). This Report represents the culmination of independent evaluation and analysis undertaken in accordance with the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Through this Report, Gyde have aimed to provide a detailed examination of the submitted Section 8.2 Review (REV23/0007) pertaining to the land at Lot 3003 of DP1184498 (Figure 1) at 184 Lord Sheffield Circuit, Penrith, NSW, 2750. It addresses the concerns raised by the Sydney West Central Planning Panel (SWCPP) in their decision to refuse the original application (DA22/0213) on 7 November 2023.

This Report focuses its assessment on the key development thresholds that formed the grounds for refusal. The development would need to demonstrate compliance with these threshold matters prior to full assessment of the development application (DA).

This Section 8.2 Review has reviewed the DA, having regard to the matters for consideration detailed in Section 4.15 of the EP&A Act and other statutory requirements with the issues requiring attention and consideration being addressed within this Report. Of particular consideration were the key threshold controls which formed the original grounds for refusal.

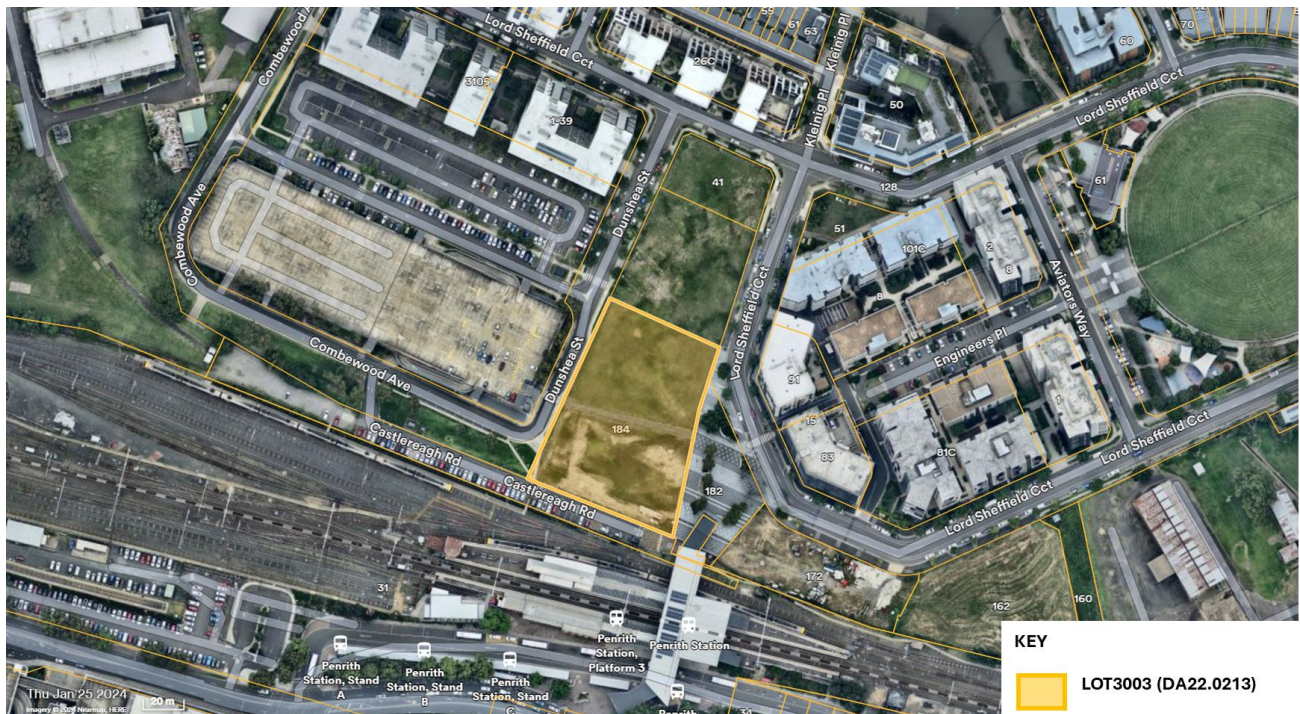


Figure 1. Subject site and Lots associated with subject DA (Source: Nearmaps, adapted by Gyde)

### 2.1 Site and Surrounds

The site has an area of 6,303sqm and is generally an irregular shaped rectangle. It has eastern frontage to Lord Sheffield Circuit and Station Plaza, a western frontage to Dunsha Street and a commuter carpark associated with the Penrith Station beyond. The northern boundary adjoins the site related to DA22/0214 (Lot 3004 of DP1184498) and the southern boundary to Castlereagh Road and Penrith Station.

The site is located within the Thornton Estate, previous called the 'North Penrith Defence Site' The Thornton Estate (including the site) is the subject of a Part 3A Concept Plan approval (Major Projects10\_0075) and a Stage 1 Project Application (Major Projects 10\_0078).

## 2.2 History of the Application

A key timeline of events in relation to the history of this application is outlined in Table 1 below.

Table 1. Timeline of events relating to REV23/0007

| Date              | Event   |
|-------------------|---|
| 9 November 2011   | Part 3A Concept Plan Approval (Major Projects 10_0075) was approved by Minister for Planning.   |
| 9 November 2011   | Stage 1 Project Application (Major Projects 10_0078) was Minister for Planning.   |
| 2015              | The site was subsequently subject to a planning proposal initiated by the applicant in 2015.  |
| 2017              | The Penrith LEP was amended to insert Clause 8.7. This amendment also identified the site as Key Site 11. Clause 8.7 and Key Sites 11 enables the applicant to seek additional height (above the mapped LEP height of 32m) and a maximum floor space ratio of 5:1, if the proposal includes Community Infrastructure. |
| 11 March 2022     | Original DA (DA22/0213) was lodged.   |
| 6 April 2023      | GANSW provided waiver for a design competition subject to conditions being fulfilled.   |
| 21 September 2023 | Applicant met with Design Integrity Panel (DIP) to discuss the proposed development as lodged with both DAs. The DIP provided views on design excellence, community infrastructure and sun access. Presentation of the current proposal to the DIP prior to determination was a condition of the Waiver.              |
| 7 November 2023   | Original DA (DA22/0213) was refused by the Sydney Western City Planning Panel (SWCPP). A review of each of the reasons for refusal by the SWCPP is addressed separately within this Report.   |
| 21 December 2023  | Section 8.2 Review (REV23/0007) was lodged.   |
| 29 January 2024   | Public notification commenced.  |
| 19 February 2024  | SWCPP Site Visit and SWCPP Briefing No. 1 attended by SWCPP, Council, Gyde and Applicant  |
| 26 February 2024  | Public notification concluded.  |
| 27 February 2024  | RFI 1 - Council issued Applicant a Request for Additional Information in response to the Referral Responses.  |
| 7 March 2024      | RFI 2 – Council issued Applicant a Request for Additional Information in regard to outstanding items to address Independent Assessment.   |
| 8 March 2024      | RFI 1 – Applicant uploaded documents in response to RFI on NSW Planning Portal.   |
| 11 March 2024     | RFI 1 – Council issued Gyde link to Applicant's response to RFI via SharePoint link.  |
| 11 March 2024     | SWCPP Panel Briefing No. 2 attended by SWCPP, Council, Gyde and Applicant.  |
| 12 March 2024     | Meeting with Gyde and Applicant at SWCPP request in SWCPP Briefing Meeting No. 2.   |
| 18 March 2024     | Follow up meeting with Gyde and Applicant at SWCPP request in SWCPP Briefing Meeting No. 2 regarding Solar Access   |

|                      |  |
|----------------------|--|
| <b>25 March 2024</b> | Follow up meeting with Gyde and Applicant at Applicant request regarding project status update and Community Infrastructure. |
| <b>4 April 2024</b>  | Follow up meeting with Gyde and Applicant at Applicant request regarding project status update and Community Infrastructure. |
| <b>15 April 2024</b> | SWCPP Panel Briefing No. 3 attended by SWCPP, Council, Gyde and Applicant.   |

## 2.3 Overview of Proposal

REV23/0007 relates to the Section 8.2 Review of DA22/0213 (also referred to within the Applicants' documentation as DA1) under the EP&A Act. REV23/0007 was lodged on the 21 December 2023.

The proposed application under REV23/0007 comprises the construction and operation of a new mixed-use development (the Proposal) at land comprising 41, (part) 184, and 192 Lord Sheffield Circuit Penrith (the site). The legal property description of the entirety of the site applying to both DA1 and DA2 comprises Lot 3003, Lot 3004, and Lot 3005 in DP1184498.

The proposed works originally sought under the Section 8.2 Review comprised:

- *“Demolition of all existing site features and improvements;*
- *Construction and operation of a new mixed use development, comprising:*
  - *One storey basement, containing a total of 85 x commercial car parking spaces, a click-and-collect facility, waste rooms, a retail lobby entry, plant rooms, and other ancillary back-of-house areas;*
  - *Five-storey podium comprising:*
    - *Retail tenancies, a mainline supermarket, residential and commercial lobby entries, a loading dock, vehicle access, and back-of-house areas at Ground Level;*
    - *A child care centre and community recreation facility (indoor) at Level 01;*
    - *Shared car parking at Levels 01 – 04 (providing a total of 327 x residential car parking spaces, 35 x commercial car parking spaces, and 2 x car wash bays);*
  - *A residential building (referred to as Tower A), with a maximum rise of 27 storeys (Level 05 – Level 31) containing a total of 241 x residential apartments;*
  - *A residential building (referred to as Tower B), with a maximum rise of 9 storeys (Level 05 – Level 13) containing a total of 75 x residential apartments;*
- *Creation of new east-west publicly accessible through-site link;*
- *New landscaping works and other public domain works; and*
- *Ancillary works, including site services and connections and stormwater infrastructure.*
- *The application includes community infrastructure as described elsewhere in this report.*
- *The Community Infrastructure (CI) Offer is made in connection with Thornton’s two development applications seeking consent for a mixed use development at Lots 3003, 3004, and 3005 in DP 1184498 and known as 41, 184 and 192 Lord Sheffield Circuit, Penrith (Land). The Land is identified as ‘Key Site 11’ on the Penrith Local Environmental Plan 2010 (LEP) Key Sites Map. The Offer is made in accordance with clause 8.7 of the LEP and Council’s Community Infrastructure Policy - Policy No CEP 001 adopted on 30 April 2018 (CI Policy) to satisfy the obligation to provide community infrastructure in connection with the described development.*
- *Specifically, as part of this DA (i.e. DA1) the following works in kind are proposed:*

**(a) On-site recreation facility (Indoor):** The CI offers as part of DA1 seek provision for a total of 631sqm (GFA) of tenancy space for a recreation facility (indoor) at Level 1 at the north-western corner of the southern portion of the block adjacent to the pedestrian through-site link and the public square will be delivered.”

(Source: Extract from 8.2 SEE, prepared by Urbis, dated December 2023)

The latest version of the CI offer is discussed elsewhere in this report.

## 2.4 Plans that Apply

Clause 1.8A of the Penrith LEP (current to date) states that:

**“1.8A Savings provisions relating to development applications**

(1) *If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has **not been finally determined** before that commencement, the application must be determined as if this Plan had not commenced”.*

(bolded for emphasis)

DA22/0213 (the original DA) was lodged on the 11 March 2022 and determined by way of refusal, by SWCPP on the 7 November 2023. REV23/0007, relating to Section 8.2, was lodged on the 21 December 2023. DA22/0213 is currently undergoing a Section 8.2 review, meaning it has not been ‘finally determined’.

During the period when DA22/0213 was under assessment, a number of environmental planning instruments (EPIs) underwent amendments and amalgamation. Pursuant to Clause 1.8A, as the DA was made (lodged) under the ‘old controls’, and had not been ‘finally determined’ before the commencement of the current Penrith LEP, the Section 8.2 Review is to consider those provisions under the Penrith LEP at the time the application was made (lodged).

NSW Government Zone Reforms - An exception to the above noted consideration is the land use zones and their objectives under the Penrith LEP. At the time of lodgment, the site was subject to a B2 Local Centre zone and as part of the revisions made to employment zones in December 2021, B2 was transitioned into an E1 Local Centre Zone under the *Standard Instrument (Local Environmental Plans) Order 2006*. The amendments were incorporated into the Penrith LEP in the version dated 26 April 2023. Penrith LEP is not listed under the ongoing savings and transitional provisions under Part 2 ‘Provisions consequent on Standard Instrument (Local Environmental Plans) Amendment (Land Use Zones) Order 2021’ and specifically Clause 6 regarding the ‘Continuation of business and industrial zones’ it is understood that the amendments took effect upon implementation in the Penrith LEP and therefore, the Penrith LEP’s E1 Local Centre Zone and its objectives are to be assessed in accordance with the latest amendments.

The following plans were in effect at the time of the lodgement of the DA22/0213:

- Penrith Local Environmental Plan 2010
- Penrith Development Control Plan 2014
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development



### 3. Assessment against the Environmental Planning & Assessment Act 1979 (EP&A Act)

#### 3.1 Section 2.12 – Sydney Western City Planning Panel (SWCPP)

The Sydney Western City Planning Panel (SWCPP) is the consent authority for the DA because the development is within the category of ‘General development over \$30million CIV’, therefore being ‘regionally significant development’.

In the SWCPP ‘Determination and Statement of Reasons’, dated 7 November 2023, The SWCPP determined unanimously to refuse DA22/0213 for the following reasons:

1. “DA22/0213 and DA22/0214 propose separate (although related) developments and each must include community infrastructure under Clause 8.7(3) of the Penrith LEP. The DA material presently submitted to the Panel does not contain a sufficiently resolved proposal for community infrastructure to satisfy the requirement.
2. Concurrence to the granting of consent is required by Section 2.99(3) of SEPP (Transport and Infrastructure) 2021 before development consent can be granted, but it has not been obtained.
3. The Panel is not satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause 4.6(3) of Perth LEP in relation to the variation of the requirements of Clause 8.2 of the LEP.”

On 21 December 2023, a Section 8.2 Review (REV23/0007) was lodged and on 19 February 2024 a site visit was undertaken with the SWCPP with follow up Briefing Meeting No.1 attended by SWCPP, Council, Gyde and the Applicant. A Follow up Briefing Meeting No.2 was held on 11 March 2024 and Briefing No. 3 was held on the 15 April 2024 and attended by SWCPP, Council, Gyde and the Applicant. At the request of the SWCPP, additional meetings were held between Gyde and the Applicant on 12 March 2024, 18 March 2024, 25 March 2024 and 4 April 2024 to further resolve RFI matters.

#### 3.2 Section 4.15 - Evaluation

This Report has considered those matters required to be considered by Section 4.15 of the EP&A Act.

##### 3.2.1 Assessment of Panel’s Reasons for Refusal

##### 3.2.1.1 Community Infrastructure

##### SWCPP Reason for Refusal

The SWCPP ‘Notice of Determination and Statement of Reasons’ (dated 7 November 2023) stated that first reason for refusal by the SWCPP was regarding community infrastructure on the following grounds:

*“1. DA22/0213 and DA22/0214 propose separate (although related) developments and each must include community infrastructure under clause 8.7(3) of Penrith LEP. The DA material presently submitted to the Panel does not contain a sufficiently resolved proposal for community infrastructure to satisfy that requirement.”*

##### Assessment

##### Statutory context

The Applicant has primarily based their proposal on Clause 8.7(3), which permits exceeding height limits "if the proposed development includes community infrastructure".

An extract of the relevant Clause 8.7 in question is provided below:

**“8.7 Community infrastructure on certain key sites**

(1) *The objectives of this clause are—*

- (a) *to allow higher density development on certain land in the City Centre where the development includes community infrastructure, and*
- (b) *to ensure that the greater densities reflect the desired character of the localities in which they are allowed and minimise adverse impacts on those localities.*

(2) *This clause applies to land identified as a key site on the Key Sites Map.*

**(3) Despite clauses 4.3, 4.4 and 8.4 (5), the consent authority may consent to development on land to which this clause applies (including the erection of a new building or external alteration to an existing building) that exceeds the maximum height shown for the land on the Height of Buildings Map or the floor space ratio for the land shown on the Floor Space Ratio Map, or both, if the proposed development includes community infrastructure.**

(4) *The consent authority must not consent to the erection of a building on land to which this clause applies if the floor space ratio for the building exceeds the following floor space ratio—*

...

**(c) in relation to development on land identified as “Key Site 4”, “Key Site 7” or “Key Site 11”—5:1,**

...

(5) *In deciding whether to grant development consent under this clause, the consent authority must have regard to the following—*

- (a) the objectives of this clause,**
- (b) whether the development exhibits design excellence,**
- (c) the nature and value of the community infrastructure to the City Centre.**

(6) *In this clause, community infrastructure means development for the purposes of recreation areas, recreation facilities (indoor), recreation facilities (outdoor), recreation facilities (major), public car parks or public roads.”*

(bolded for emphasis).

**Proposed community infrastructure under REV23.0007 (DA22/0213 – Stage 1) - On-Site Level 1 Tenancy - Construction, Fit-Out and Dedication of public recreation facilities (indoor)**

A draft VPA Letter of Offer, prepared by Thornton North Penrith Pty Limited (dated 28 March 2024) seeks to provide the following:

*“Prior to the issue of the Occupation Certificate for the Development approved by the First Development Application, Thornton will construct and fit-out a tenancy on the northern portion of the Land (identified in the concept plans provided at Annexure A and itemised fit-out works as specified in the cost calculations at Annexure B) at no cost to Council for use by the public as a recreation facility (indoor) in perpetuity (with suitable relocation clauses subject to mutual agreement between the Building Owner and Council if required).*

*Thornton anticipates that the development consent for the First Development Application would be granted subject to a condition of consent requiring Thornton, prior to issue of an occupation certificate for the development approved by the First Development Application, to:*

- (a) *stratum subdivide the Land to create the tenancy as a separate stratum lot;*
- (b) *grant a restrictive covenant to Penrith City Council over the tenancy stratum lot which prevents the use of that lot for any purpose other than a public recreation facility; and*
- (c) *enter into a lease (or a management agreement) with a third-party operator in respect of the tenancy stratum lot. Such lease or management agreement will require the operator to use the tenancy for a public recreation facility, insure and maintain the tenancy.”*

It is noted that this draft VPA Letter of Offer proposes the inclusion of the following:

- In perpetuity use of space as indoor recreation
- 2 x parking spaces
- 20 years rent free
- 20 years outgoings and maintenance
- Fit-out included

## On Site L1 Tenancy

Example layouts in different modes:



Diagram 1: Example Monday Layout (Martial Arts focus)



Diagram 2: Example Tuesday Layout (Gymnastics Arts focus)

Figure 2. Section 8.2 Review - Proposed Floor Plan – Level 1 Tenancy (Recreation Facility (indoor) – Plans show indicative layouts (Source: Draft VPA Letter of Offer for Community Infrastructure –, dated 28 March 2024).

## Review of Clause 8.7 ‘Community infrastructure on certain key sites’

- **Clause 8.7(2)** states that Clause 8.7 only applies to land identified as a key site on the Key Sites Map. The site is identified in the Penrith LEP as ‘Key Site 11’ and therefore the control applies to the subject site.
- **Clause 8.7(3)** permits development to achieve greater building height than the mapped height or FSR at Clause 4.3 height of buildings and Clause 4.4 floor space ratio, “if the proposed development **includes** Community Infrastructure”. The word ‘includes’ is bolded for emphasis.

The Initial SWCPP commented in their 7 November Report that:

*“As the applicant has consent to divide the development into two separate sites, each the subject of a separate DA, the LEP would seem to require each respective development to include community infrastructure”.*

The Initial SWCPP Report also went on to state that their concluding reason for refusal was that:

*“DA22/0213 and DA22.0214 propose separate (although related) developments and each must include community infrastructure under clause 8.7(3) of the Penrith LEP. The original material*

*presented by the panel was not sufficient or resolved in regard to the provision of community infrastructure.”*

Gyde upholds the opinion by the initial SWCPP that each respective DA is to include community infrastructure. In the first instance and pursuant to the initial SWCPP position, the Applicant, as part of the Section 8.2 submission, has proposed an offer of Community Infrastructure under each of the respective DAs.

A detailed assessment of the draft VPA Letter for Offer of CI and its assessment against Clause 8.7 and whether it meets the definition of CI and the key objectives is discussed in the subsections below.

- **Clause 8.7(4)(c)** requires that the consent authority must not consent to the erection of a building on land to which this clause applies if the floor space ratio for the building exceeds the following floor space ratio of 5:1 in relation to development on land identified as “Key Site 11”. The proposed FSR on site is 5:1 consistent with Clause 8.7(4).
- **Clause 8.7(5)** - The inclusion of CI as part of the proposed development is written in Clause 8.7 as a pre-condition to granting the consent. In particular, Clause 8.7(5) states that:

*“In deciding whether to grant development consent under this clause, the consent authority **must have regard** to the following....*

*“(a) the objectives of this clause,*

*(b) whether the development exhibits design excellence,*

*(c) the nature and value of the community infrastructure to the City Centre.”*

(bolded for emphasis)

In this case, the consent authority is the SWCPP. The evaluation of these key considerations and their assessment is elaborated upon in the subsections below.

#### (a) Objectives of this clause

- *To allow higher density development on certain land in the City Centre where the development includes community infrastructure, and*

To determine whether the DA satisfies the above objective and that they ‘include’ community infrastructure - firstly, the term ‘community infrastructure’ needs to be defined and secondly, the proposed offer needs to be assessed whether it meets the definition of ‘community infrastructure’.

#### Establishment of definition

Pursuant to Clause 8.7(6) ‘community infrastructure’ is defined in the Penrith LEP as:

*“(6) In this clause, community infrastructure means development for the purposes of recreation areas, **recreation facilities (indoor)**, recreation facilities (outdoor), recreation facilities (major), public car parks or public roads.”*

(bolded for emphasis)

The Penrith LEP defines ‘recreation facilities (indoor)’ as:

*“**recreation facilities (indoor)** means a building or place used predominantly for indoor recreation, whether or not operated for the purposes of gain, including a squash court, indoor swimming pool, gymnasium, table tennis centre, health studio, bowling alley, ice rink **or any other building or place of a like character used for indoor recreation**, but does not include an entertainment facility, a recreation facility (major) or a registered club.”*

(bolded for emphasis)



### Assessment

Council's CI Panel reviewed the original offer and, in their Memorandum (dated 6 March 2024), commented that:

*"The application has not demonstrated that the proposed use of the nominated space can be categorised as a recreation facility (Indoor). Based on the provided information, the Panel are unable to support the proposal.*

#### *Comment*

- *The proponent has not demonstrated that the proposed works and use represent a recreation facility (Indoor) and that it is 'fit for purpose'. The suitability of the facility and its proposed use are critical to assessing the applicability of Clause 8.7 and the nature of the proposal.*
- *The design appears to be compromised by pillars, which will affect functionality of the proposed facility.*
- *There is an irregular floor shape for a recreation facility, which in Councils experience, may compromise programming and longevity of the space.*
- *The submitted plans do not show the layout and capacity of the space in relation to any proposed equipment, courts, boxing rings or the like.*
- *The submitted plans do not provide allowances for toilets, showers, office spaces, entrance/foyer etc., which will reduce the activity space.*
- *Whilst the submitted documentation indicates that the proposal is 'purpose fit in collaboration with PCYC' and that a 'new bespoke fit out included', details of the fit out have not been provided in the application for assessment."*

The above CI Panels comments were relayed to the Applicant on the 7 March 2024 via a Request for Information (No. 2). The matters raised by the CI Panel were also discussed in the SWCPP Briefing meeting on 11 March 2024. A number of separate meetings have since been held between Gyde and the Applicant at the request of the SWCPP in their briefing session on 12 March 2022 to further work through the CI offer and required level of information to support assessment. In response to these discussions, the applicant has provided supplementary documentation to assist assessment on whether the proposed space can be categorised as a recreation facility (indoor).

It is noted that at the time of preparing this Report, Councils' CI Panel had not re-reviewed the additional information to provide a revised comment or position.

Gyde's Independent Assessment is as follows:

- 'Recreation facility (indoor)' is permissible with consent in the E1 Local Centre zone and is consistent with the uses listed under the definition of 'Community Infrastructure' under Clause 8.7(6) of the Penrith LEP.
- The proposed use is described by the Applicant as comprising a 631sqm air-conditioned space, including fit-out, within the podium level for a PCYC tenancy (no cost to Council or the PCYC) for use by the public as a 'recreation facility (indoor)' for 20 years.
- The proposed space is tailored for a number of activities under the umbrella of PCYC. Such activities include gymnastics, mini-movers, youth services and afterschool care. Such uses are consistent with the definition of 'recreation facility (indoor)' by providing a place of like character (to those uses listed in the definition) for indoor recreation. The proposed use is not an 'entertainment facility', a 'recreation facility (major)' nor is it a 'registered club' per the LEP.

- The proposed use is generally consistent with the recommendation of the initial SWCPP comment in their 'Determination and Statement of Reasons Report' (dated 7 November 2023) that:

*"The Panel considers that (subject to a resolved proposal) the applicant's recent proposition to include a community facility within the development proposed to be licensed to a suitable not for profit organisation at no cost would be an appropriate way to address the community infrastructure requirement."*

- Adequate information including updated indicative Level 01 Plans have been provided by Crone Architects (dated 20 March 2024, Rev C) and the 'Thornton Central Village – Delivering Community Infrastructure' document prepared by Hoyne Placebook (Version 2) to demonstrate proposed internal configuration fit out including, test fit out plans for various activities consistent with the provided PCYC weekly program as well as PCYC Plan of Management to demonstrate that the floorplate and pillars will not impede or affect the functionality of the space. The Applicant has also noted that any pillars also provide opportunities for mirrors, tv screens, equipment anchor points, signage, art and other notification signage associated with the PCYC.
- The Applicant has also submitted details of the locations of two bathrooms (including shower and toilet), reception office space, entrance and foyer areas as well as kitchenette, store area within the proposed Recreation Facility (indoor) space. It is considered that the integration of these facilities does not significantly reduce the activity space or functionality of the area. It is also acknowledged that the proposed space compliments the other proposed uses in the development including childcare centre, supermarket, residential apartments and part of the recreation area in the form of a playground within the through site link.
- The application is also accompanied by letters of support regarding the recreation facility (indoor) from both PCYC and Gymnastics NSW (dated 16 November 2023 and 22 March 2024, respectively).
- At the expiry of 20 years, the premises will continue to be burdened by restrictive covenant, restricting the use to that of a public 'recreation facility' or 'community facility' (recommended). Rental would be negotiated with the owner of the premises.

In our opinion, the proposed use of the nominated space provides an adequate space, good and complementary community benefits and will support a range of activities under the umbrella of PCYC. The proposed use meets the definition of 'recreation facility (indoor)'.

- *To ensure that the greater densities reflect the desired character of the localities in which they are allowed and minimise adverse impacts on those localities.*

This objective is two-fold – firstly, examination of whether the greater densities reflect the desired character of the localities in which they are allowed. Secondly, whether the greater densities minimise adverse impacts on those localities.

#### Densities reflective of the desired character of the localities

Chapter E11 Penrith Part B outlines the precinct specific controls for the site. Pursuant with these controls, the proposed development is considered consistent with the densities and desired character of the locality as well as the vision of North Penrith on the following grounds:

- The refined proposal with recreation facility (indoor) creates well-designed spaces that enable the engagement and activation of the space for the community, contributing to their living and working.
- The development accommodates connections and linkages, nodes and destinations.

- The refined proposal creates diverse, yet cohesive, housing products that allow capability to ever changing household needs and formations.
- The proposal includes business and employment uses that are complementary to an extension to the Penrith CBD and are highly accessible.
- The proposed development provides a residential density, urban structure and parking that is consistent with a transit-oriented development model and includes pathways to encourage pedestrian and cyclist activity to and from the train station.
- Includes a mix of complimentary land uses that contributes additional housing in an accessible location that can support a growing and aging population and changing household needs whilst also including commercial and retail spaces that are complementary and an extension to the Penrith CBD.

Whether the greater densities minimise adverse impacts on those localities

REV23/0007, as part of the Section 8.2 Review process, has been re-referred to the relative internal and external entities and departments. Council's internal referral feedback provided Conditions where there remain any outstanding issues or additional information required to be submitted in order to satisfy their concerns (refer to the draft Conditions of Consent in Appendix A).

**(b) Whether the development exhibits design excellence**

Clause 8.4 of the Penrith LEP relates to Design Excellence and comprises two requirements. Firstly, is for an architectural design competition in relation to the proposed development. The second is whether, in the opinion of the consent authority, the proposed development exhibits design excellence.

On 23 February 2023, the Applicant sent a letter to Government Architect NSW (GA NSW) requesting a waiver of the design competition requirement for this project under Clause 8.4 of the Penrith LEP. GA NSW, in their letter dated 6 April 2023, under delegation from the Secretary of the NSW Department of Planning (now Department of Planning, Housing and Infrastructure), granted the design competition waiver under Clause 8.4(3) of the Penrith LEP, subject to three conditions being:

1. *"Consult with council to address the remaining threshold issues impact the assessment of the development applications."*
2. *Present the current proposal to the DIP prior to determination.*
3. *Submit a detailed written report from any future Design Integrity Panel (DIP) meetings to Council's Assessment Team to inform and assist the assessment process."*

Assessment

- **Condition 1** – As detailed in this Report, the threshold issues are considered resolved, subject to conditions.
- **Conditions 2 and 3** - DIP Meeting was held on 21 September 2023 and the Applicant arranged for the DIP to reconvene on 29 February 2024 to address revised Section 8.2 scheme.

The Applicant has provided a letter, prepared by GANSW (dated 12 October 2023) and signed by Rory Toomey (DIP Chair and Principal Design Advisor GANSW), stating that:

*"Since April 2023 further work has been undertaken by the project team in relation to all three of these conditions. I understand that the applicant has consulted with Council on the remaining threshold issues, satisfying Condition 1. I can confirm that the requirement set out in Condition 2 has been satisfied; the project team presented to the DIP on September 21, 2023. It is my understanding that the signed minutes of this*

*meeting will be provided to Council's team by the applicant, satisfying Condition 3 above".*

Accordingly, and consistent with this above-noted documentation provided by the Applicant, Gyde is satisfied that all three (3) GANSW Conditions, and therefore design excellence has been met.

### (c) The nature and value of the community infrastructure to the City Centre

The initial SWCPP in their Determination and Statement of Reasons Report (dated 7 November 2023) stated:

*"The adequacy of the "nature and value of the community infrastructure to the City Centre" is an essential matter for the Panel to weigh up and assess under clause 8.7(5) of the LEP. The Panel agrees with the reasoning in Council Policy that the public contribution of the infrastructure is to be included in the proposal and **should be proportionate to the floor space uplift permitted by the bonus**. However, the Panel does not consider itself bound by the rates in the Policy.*

*The Panel considers that (subject to a resolved proposal) the applicant's present proposition to include a community facility within the development **proposed to be licensed to a suitable not for profit organisation at no cost would be an appropriate way to address the community infrastructure requirement**.*

*However, as the applicant has chosen to divide the development into two separate sites, each the subject of a separate DA, the LEP would seem to require each respective development to include community infrastructure...the DA does not include such a proposal resolved sufficiently that the Panel can now approve the DA..."*

#### Nature

In Council's CI Panel Memorandum (dated 6 March 2024), which reviewed an earlier offer, the CI Panel concluded that in regard to nature of the proposed CI to the City Centre:

*"The application does not demonstrate that:*

- *the facility is in the interest of the general public,*
- *contributes to the city centre, and*
- *the proposal demonstrates long-term economic viability and that ongoing maintenance costs can be managed in an economically viable and socially responsible manner.*
- *Based on the information provided, the Panel is not satisfied that the nature of the proposal is in the public interest and contributes to the City Centre.*

#### Comments:

- *Justification provided by the proponent that the delivery of the proposed facility aligns strongly with the Penrith Sport and Recreation Strategy 2020 is not accepted. The strategy identifies that there is a low provision of public indoor recreation centres, but a good supply of health and fitness centres.*
- *Indoor recreation centres in the strategy references facilities with indoor court space. The strategy recognises that there is a large gap in indoor court space. The Strategy does not state that there is a particular need for facilities for 'unstructured activities', rather it states that social recreation is an emerging trend. 'Unstructured activities' currently operate at a number of community and commercial facilities across Penrith LGA. A demand assessment has not been submitted to demonstrate that the proposal is going to contribute to the city centre and be in the public interest.*



- *The proponent has not provided sufficient information for the panel to determine the availability and accessibility of the facility to the general public. The Policy requires that the infrastructure is to be able to be interpreted as public rather than private. The inherent nature of the location of the facility on the first floor and the leasing arrangements may be perceived by the public as a private facility.*
- *The proponent has not provided supporting information that demonstrates the long-term economic viability and ongoing maintenance costs can be managed in an economically viable and socially responsible manner. There is no evidence of a lease arrangement and costs to the future tenants, any impacts to the strata and how the tenancy is fit for purpose for long term viability.*
- *The panel notes that a restrictive covenant is proposed in favour of Council to prevent the lot being used for any other purpose. This places the onus on Council to be responsible for the ongoing monitoring of a private facility, which is not supported."*

As noted above, Council's CI Panel comments were relayed to the Applicant on the 7 March 2024 via a Request for Information (No. 2). The matters raised by the CI Panel were also discussed in the SWCPP Briefing meeting on 11 March 2024 as well as in a number of separate held between Gyde and the Applicant at the request of the SWCPP.

Since the receipt of comments from Council's CI Panel, the Applicant has submitted additional information to satisfy the raised concerns, notably an amended draft VPA Letter of Offer (dated 28 March 2024), a detailed 'Response to CI Panel Referral Comments' prepared by Urbis (dated 19 March 2024) addressing Council's CI Panels comments in detail, as well as an updated CI Supporting Submission prepared by Hoyne Placebook (Version 2).

It is noted that at the time of preparing this Report, Council's CI Panel had not re-reviewed the additional information in order to provide a revised comment or position.

### Assessment

Upon independent review of this additional documentation, Gyde is of the opinion that the nature of the proposed 'recreation facility (indoor)' is consistent with the locality and city centre on the following grounds:

- The Applicant commented that as noted on the Council's LEP Mapping and CI Policy, the subject site is located within Penrith City Centre.
- The DA proposes a 'recreation facility (indoor)', leased to PCYC (at no cost to PCYC or Council) for 20 years.
- It is considered that the proposed space will provide immediate public benefit in alignment with the key strategic ambitions and policies of Penrith through the programs provided by PCYC.
- The Penrith Recreation Strategy calls out the need for not-for-profit agencies to deliver opportunities to the community for recreation uses that "encourage social interaction".
- The Applicant has provided a detailed 'CI Strategic Alignment' response, prepared by Urbis, that demonstrates that the proposal responds to the Penrith DCP, *Penrith Sport and Recreation Strategy 2020*, and *GANSW Open Space Strategy*.
- The importance of the CI offer to the city centre is emphasised by the importance noted within Councils strategic document '*Penrith Progression - A plan for action*' (referenced specifically within the Ci policy) placed on the site. As the only site located in the city centre situated within three key city places, any community infrastructure ensuring the success of the site, by extension is a major contribution to the success of Thornton and the broader city centre.
- The mix of community facilities, retail, commercial and apartments adjoining Penrith Station aligns to Councils strategic aim of a 15-minute neighbourhood as identified in '*Penrith Progression - A*

*plan for action* for the specific location. Central to any successful high density urban community, is high quality and accessible community facilities.

- The additional information provided by the Applicant provides clarity of the availability and accessibility of the facility to the general public as follows:
  - PCYC are a not-for-profit entity which charges minimal fees for membership which we understand is typically discounted and PCYC provide support and membership assistance for those that are financially vulnerable.
  - PCYC have commented that while there is an existing PCYC facility in Penrith city centre at 100 Station Street, Penrith, (located some a 2.4km drive or 700m walk north from the subject site), this facility is continually at capacity, and they are always looking for additional space to respond to the needs of the local community that is highly accessible.
  - Well located facilities adjoining business have demonstrated continual benefits to retail trade providing visitors more reasons to stay in the city centre and avoid escape expenditure to other areas. This is a key differentiator the CI facility proposed in this scheme compared to existing monofunctional facilities located elsewhere in the city centre such as Ron McCulloch oval.
  - The site is located in close proximity to Penrith Train Station, parking, residential apartments, future supermarket and childcare centre.
  - The facility is set up as an adaptable and flexible multi-purpose space to ensure it can effectively evolve to suit the range of recreational activities required within the Thornton and broader Penrith Community.
- The applicant has provided sufficient information that the proposed 'recreation facility (indoor)' will help to fill a gap in the market for gymnastics studios. The proposed program (within the Hoyne Placebook (V2) and draft PCYC Plan of Management (dated March 2024)) provides an overview of all activities throughout a week. Some of the additional proposed complementary activities include mini movers, School Holiday Programs, Monthly u-nites, community recreation space and health and fitness studio.
- The application is also accompanied by letters of support regarding the recreation facility (indoor) from both PCYC and Gymnastics NSW (dated 16 November 2023 and 22 March 2024, respectively).
- The applicant has provided additional information detailing the long-term economic viability and that ongoing maintenance costs can be managed in an economically viable and socially responsible manner. The Applicant will construct and fit-out a tenancy and itemised fit-out works at no cost to Council for use by the public as a recreation facility (indoor) in perpetuity. Noting that at the end of the 20 year 'rent free' period a new lease will be entered into with an eligible tenant – eligible meaning that they provide a 'public recreation facility' or 'community facility' (recommended).
- The Applicant has provided a draft PCYC Lease Present between the Lessor and the Police Citizens Youth Clubs NSW Limited, prepared by Thomson Geer (reference TBD 4754573).
- It is acknowledged that the PCYC structure and timetable provides a degree of flexibility to accommodate additional uses depending on community needs into the future.
- The Applicant notes that Councils City Centre Strategy 2006, and the Civic Improvement Plan 2008 are out of date and fail to provide strategic guidance as to the role of the Thornton North Penrith precinct; having pre-dated all of the work in conceiving the Thornton Precinct.
- It is considered that the nature of activities proposed within the recreation facility (indoor) space, are to be able to be interpreted as public rather than private. The facility will include extensive glazing to enable the facility to be visible from the public domain and will also comprise a clear

entrance. The Plan of Management addresses the interaction of the facility with the ground level and proposes the hours of operation from 7am to 8pm, 7-days a week.

- The proposed restrictive covenant will merely limit the range of uses that could be permitted within the premises, with Council having the sole right to vary the permitted uses. Otherwise, responsibility for monitoring the facility will reside with the owner of the premises, and not the Council.

Overall, with the additional information provided, the nature of the proposed 'recreation area (indoor)' will be in the public interest and contribute to the City Centre.

## Value

### *Strategic Value*

The SWCPP in briefing No. 3 on the 16 April 2024 emphasised the importance of demonstrating that the CI offer must, per Clause 8.7(5) of the Penrith LEP, have regard to the nature and value of the community infrastructure to the City Centre. The proposed CI offer provides a benefit and strategic value to the City Centre as follows:

- PCYC in their letter of support (dated 16 November 2023) commented that though they have an existing facility in Penrith CBD (at 100 Station Street, Penrith), this existing facility is continually at capacity and note they are always looking for additional space to respond to the needs of the local community.
- Gymnastics Australia in their letter of support (dated 22 March 2024) noted that current AusPlay data indicates that gymnastics is the third most participated sport for children in NSW and there is an approximate latent demand of 4.39% of children in 5km of the Penrith PCYC location of those who would like to participate in Gymnastics and without adequate facilities, they will fail to meet this demand. Further, it states that Penrith LGA is well placed to acquire more facilities for gymnastics activities with only one other Gymnastics facility in the LGA. The other closest club is located outside of the LGA and over 40 minutes away. Both other facilities are noted to be unable to service the number of children wanting to participate with extensive waitlists for classes. The letter concludes that the proposed PCYC facility will complement the Thornton Gymnastics Hall.
- The Applicant has submitted a CI Strategic Alignment Document (dated 20 March 2024) which outlines the recreation facility (indoor)'s alignment with the *Penrith Sport and Recreation Strategy 2020* and comment that:
  - The proposed CI offer aligns with the Strategy which identifies that Penrith LGA (including the City Centre) has a low provision of public indoor recreation centres.
  - The Strategy identifies a large gap for indoor court facilities of 10 courts. The Applicant noted that such a use has not been proposed as this gap in indoor court facilities is being filled by the recently announced Multisport Claremont Meadows facility which will meet the demand for the 10 courts as required by the strategy.
  - The facility will include other activities that will provide an additional and complementary offering of youth activities to the City Centre.
- The Hoyne Placebook identifies that the PCYC programs align with the key themes of the *Penrith City Youth Action Plan: Connection, Wellbeing, Access, and Pathways*.
- Aligns with Planning Priority 7 *Penrith Local Strategic Planning Statement* which emphasises the importance of creating places that are inclusive of people of all ages and abilities, with a range of local experiences and opportunities for social interaction and connection.

Overall, with the additional information provided, Gyde is satisfied that the CI offer provides an indoor recreation facility with program of activities that aligns with the relative strategic documents, will

complements existing facilities in the City Centre, fill a gap in the market and needs of the community and add value to the City Centre.

### *Monetary Value*

The CI Panels Memorandum (dated 6 March 2024) reviewed an earlier draft VPA Letter of Offer (dated 15 January 2024). Based on this version of the draft VPA Letter of Offer, the CI Panel commented that:

*“Further information is required to determine if the valuation method of the works and use is suitable.*

#### *Comments:*

- *A valuation for the tenancy has been provided by the proponent and is currently under internal review.*
- *A revised Community infrastructure contribution value for the community infrastructure proposal (Recreation Facility (Indoor)) has been provided at \$8,555,582. This has been reduced from the initial submitted offer of \$9,643,288.*
- *The value of the proposal has been calculated by the proponent based on the tenancy rental value, outgoing, utilities, parking spaces and fit out. Justification for this method of valuation has not been provided by the proponent. The suitability of this method of valuing the proposal is questioned. This is compared to where a facility was being dedicated to Council, where just the land value and building costs would be considered. At the least, the inclusion of the costs of parking spaces, outgoing and utilities should be reconsidered.*
- *The cost to the community to use the proposed space has not been included nor the value to the City Centre with regard to other Recreation Facilities (Indoor).”*

The following bullet points raised by the Council's Property Development Department were forwarded to the Applicant via email on the 27 March 2024 for comment.

- *“Car parking allocation has not been provided for this community space. Does the 631sqm space include parking, or would parking be additional space? If the tenancy has no car parking spaces, the overall value would be reduced further given the importance of this feature.*
- *\$125 per square meter for outgoing is very high, it should be closer to \$100-\$110 per square metre as a general guide.*
- *The only superior rental comparison provided in Parramatta Square office space. Parramatta Square is in a completely different scale of premium quality and location. It is simply not comparable to the proposed office in Thornton”.*

Meetings between Gyde and the Applicant have been held to further work through the above comments and concerns relating to valuation and contribution. The Applicant has since provided two other iterations of a draft VPA Letter of Offer, one being on 6 March and the latest iteration dated 28 March 2024.

The Applicant has also provided (but not limited to) additional information in the form of an addendum letter from Atlas Valuations trading as Ray White as well as calculation breakdowns to provide clarification of the value of their offer.

### *Assessment*

Council's CI Policy (review date November 2022) establishes that the CI Contribution Rate is \$150/sqm of additional Gross Floor Area (GFA). It is noted that the CI Policy does not outline the rate of annual indexation.



The applicant noted two methodologies for calculating the proposed CI policy. The CI Policy states that additional GFA is defined as any GFA above the maximum total Floor Area identified on the Floor Space Ratio map within the Penrith LEP 2010. The complication is that a baseline maximum FSR for the site has not been established through the applicable statutory controls of Clause 4.4 of the Penrith LEP.

Accordingly, and with the absence of a baseline FSR on the FSR map, and as not to rely on a hypothetical floor space outcome under a compliant building height arrangement, Gyde supports the base CI calculation method established by Council's DA team (in their email dated 22 September 2021 8:28AM) which suggests that CI contribution starting line should be based in the total GFA over the applicable maximum height limit line as established under Clause 4.3 of the Penrith LEP.

Pursuant to the calculation breakdown provided by the Applicant, the Applicant calculates that the GFA over the 32m height of building line is 19,356sqm for REV23/0007 whilst Council's CI Panel calculate the total GFA over the 32m height of building line to be 19,318sqm.

Based on the contribution rate proposed by the Applicant of \$158.71 (including indexation), the total required CI contribution is \$3,071,990 for the southern lot based on 19,356sqm of additional GFA. Based on Council's CI Panel rate of \$180/sqm (in their Memorandum dated 6 March 2023), Council's CI Panels determines that the required CI contribution is \$3,477,240. Gyde support the application of the Applicants' CI rate of \$158.71 (including indexation) which is consistent with the CI Contribution Rate published in Council's CI Policy and adjusted for inflation.

Despite the difference in calculation between the Applicant and Council, the latest draft VPA letter of offer (dated 28 March 2024) proposes a total CI contribution of \$8.5 million (inclusive of maintenance/outgoings) and otherwise \$6,051,400 (excluding maintenance and outgoings).

Excluding maintenance and outgoing costs or not and whether calculated on Council's CI Policy Rate of \$150/sqm (excl indexation), Applicant's Rate of \$158.71/sqm (incl indexation) or the CI Panel's rate of \$180/sqm, the proposed CI value exceeds Council's required \$3,477,240 (per CI Panel Memorandum).

Further, we note that the draft VPA Letter of Offer includes the payment of maintenance and ongoing and in our opinion should therefore be included in the value of the community infrastructure offer.

Council's Property Development Department Memorandum (dated 25 March 2024) commented also that at their high level review, the Ray White Valuation provided by the Applicant (dated 13 February 2024) indicated that tenancy values were inflated by roughly 26%. Council's Property Development Department also recommended that a secondary valuation report be completed on Council's behalf (independently of the Ray White Report), however Council declined. The Applicant provided an addendum letter from Atlas Valuations, trading as Ray White, to address Council's Property Development Department Memorandum.

The Applicant also provided (*marked strictly as commercial in confidence*) a Market Potential Assessment (2021) – Location IQ: which analyses in detail the future populations, trends and forecast area spend and the resulting occupancy cost (gross rents for 2024) for the development.

Gyde calculated that even if the tenancy value proposed (\$5,300,400) was reduced by 26%, the reduced tenancy value rate of \$3,922,296 will still result in a total CI value (excluding operational and maintenance costs); thus exceeding Council's requirements.

Finally, Council's CI Policy states that:

***"For the carrying out of works, delivery of Community Infrastructure must be provided prior to the release of the Subdivision Certificate or Occupation Certificate (whichever comes first)...It is only after a Planning Agreement has been executed that development consent will be granted."***

*(bolded for emphasis)*

This above wording establishes that a Planning Agreement is to be executed before consent can be granted. It is understood that this requirement is to ensure a level of certainty in relation to any obligations being fulfilled under the agreement and that the proposed works will constitute reasonable and orderly development.

Considering the time constraints associated with the Section 8.2 Review (requiring determination prior to 6 April 2024) and the time requirements required for Council's legal team to review (and further coordinate if required) the Applicants' draft VPA Letter of Offer (dated 28 March 2024), it is recommended that a Deferred Commencement consent be imposed on the basis that a VPA be formalised in accordance with the offer made by the applicant (to date) and subject to satisfying relevant terms that the consent be made operable.

Such a clause would allow a reasonable timeframe for any Planning Agreement to be adequately reviewed and resolved without jeopardising the ability to determine the application within the prescribed Section 8.2 timeframes for determination. This solution is considered to also ensure a reasonable level of certainty of outcome sought under Councils Community Infrastructure Policy. An example option of wording has been included in the Draft Conditions of Consent in Appendix A.

Overall, subject to the inclusion of Conditions of Consent relating to the execution of a Planning Agreement, Gyde considers that with the provision of additional information, that the value of the proposed 'recreation area (indoor)' is satisfactory.

### 3.2.1.2 Sydney Trains Concurrence

#### Reason for Refusal by SWCPP

The second reason for refusal by the SWCPP was:

*"2. Concurrence to the granting of consent is required by section 2.99(3) of SEPP (Transport & Infrastructure) 2021 before development consent can be granted, but has not been obtained."*

#### Assessment

##### Statutory context

Section 2.99 of the *State Environmental Planning Policy (Transport and Infrastructure) 2021* (T&I SEPP) relates to excavation in, above, below or adjacent to rail corridors. Section 2.99 applies to development that involves penetration of ground to a depth of at least 2m below existing ground level on land:

*"(a) within, below or above a rail corridor, or*

***(b) within 25m (measured horizontally) of a rail corridor, or***

*(c) within 25m (measured horizontally) of the ground directly below a rail corridor, or*

*(d) within 25m (measured horizontally) of the ground directly above an underground rail corridor."*

(bolded for emphasis)

Per the T&I SEPP, 'rail corridor' means land:

*"(a) that is owned, leased, managed or controlled by a public authority **for the purpose of a railway or rail infrastructure facilities**, or*

*(a) that is zoned under an environmental planning instrument predominantly or solely for development for the **purpose of a railway or rail infrastructure facilities**..."*

(bolded for emphasis)

Per the definition of 'rail infrastructure facilities' under the T&I SEPP, the adjoining rail line is within 25m and commuter carpark west of the subject site is considered as a 'public amenity for commuters' and is within 25m of the subject site and therefore triggers Clause 2.99(3) of the T&I SEPP which states:

*"2.99 Excavation in, above, below or adjacent to rail corridors*

*(3) Subject to subsection (5), the consent authority **must not grant consent** to development to which this section applies **without the concurrence of the rail authority for the rail corridor** to*

### Review of Sydney Trains documentation

The site subject to DA22/0213 is within 25m from the railway line, and corridor, and the site adjoins the commuter car park on the western boundary. *which the development application relates.*

(bolded for emphasis)

As detailed in the Geotechnical Report, prepared by Douglas Partners, (dated Nov 2021, Rev 3), the proposal will require bulk excavations to approximately 4m in depth (RL23m AHD).

According to Clause 2.99(3) of T&I SEPP, Council is advised that TfNSW (Sydney Trains), via Instruments of Delegation, has been delegated to act as the rail authority for the heavy rail corridor, including infrastructure, and to process the concurrence for this DA. Accordingly, consent for development cannot be granted without the approval of the rail authority, which was a threshold requirement for approval.

In their letter dated 28 March 2024, TfNSW (Sydney Trains) has taken the requirements of Section 2.99(4) into consideration and has decided to grant its concurrence to the development proposed in DA Rev 23/0007 subject to Council imposing the conditions as written in Attachment A that will need to be complied with. Consequently, this development threshold has been resolved.

### **3.2.1.3 Overshadowing to Public Open Space**

#### **SWCPP Reason for Refusal**

The third reason for refusal by the SWCPP was:

*“3. The Panel is not satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of Penrith LEP in relation to the variation requirements of clause 8.2 of the LEP.”*

#### **Assessment**

##### **Statutory context**

Clause 8.2 (wording as at time of lodgment) states that:

##### **“8.2 Sun access**

- (1) *The objective of this clause is to protect public open space from overshadowing.*
- (2) *(Repealed)*
- (3) *Despite clauses 4.3, 5.6 and 8.4, development consent may not be granted to development on land to which this Part applies if the development would result in overshadowing of public open space **to a greater degree than would result from adherence to the controls indicated for the land on the Height of Buildings Map.***
- (4) *This clause does not prohibit development that does not alter the exterior of any existing building.”*

(bolded for emphasis)

#### **Previous comments by both SWCPP and Council**

The initial SWCPP commented in their ‘Determination and Statement of Reasons’ (dated 7 November 2023) that:

*“The panel is persuaded that the requirements of clause 8.2 of Penrith LEP in relation to shadow impacts on public open space are a development standard as defined in Section 4 of the EP&A Act, such that they are amendable to variation through a properly made request under Clause 4.6 of the Penrith LEP.*

*The clause 4.6 request to accompany the DAs should be prepared to address the usual requirements. The panel accepted that there may be justification for the overshadowing of the northern forecourt adjacent to the station, but were not satisfied that the analysis of shadow impacts is presently sufficient.*

*The proposed development will cause additional shadow over the public open space at Station Plaza compared to shadow that would be cast by a height compliant scheme. In order for the Panel to understand this properly, detailed drawings are needed clearly identifying the specific aspect of the development that causes the contravention of the development standard (and the extent of that contravention,) as opposed to the development as a whole.*

*In addition, further work is required by the applicant to explain the quantitative and qualitative arguments whether the development would result in overshadowing of public open space to a 'greater degree' as set out in clause 8.2(3) of the LEP."*

Council commented in their 'Assessment Report' (dated September 2023) that:

*"From the information by applicant dated 4 August 2023, it appears the proposed development will cast shadow over station place, which is public open space, beyond the shadow that would be cast by a 32m mapped height compliant scheme.*

*The grounds of recommendation refusal were based primarily on the **lack of information submitted which was not clear on which parts of the proposed building would cast that shadow** (although it is more likely to be from Tower D in D/DA22/0214) the sun access assessment **is included in the assessment report for both DAs.***

*The sun access consideration at clause 8.2 is a threshold matter and would operate to deny the Panel the ability to grant consent. The applicant submitted a written request pursuant to clause 4.6 seeking to vary this control on 25 September 2023".*

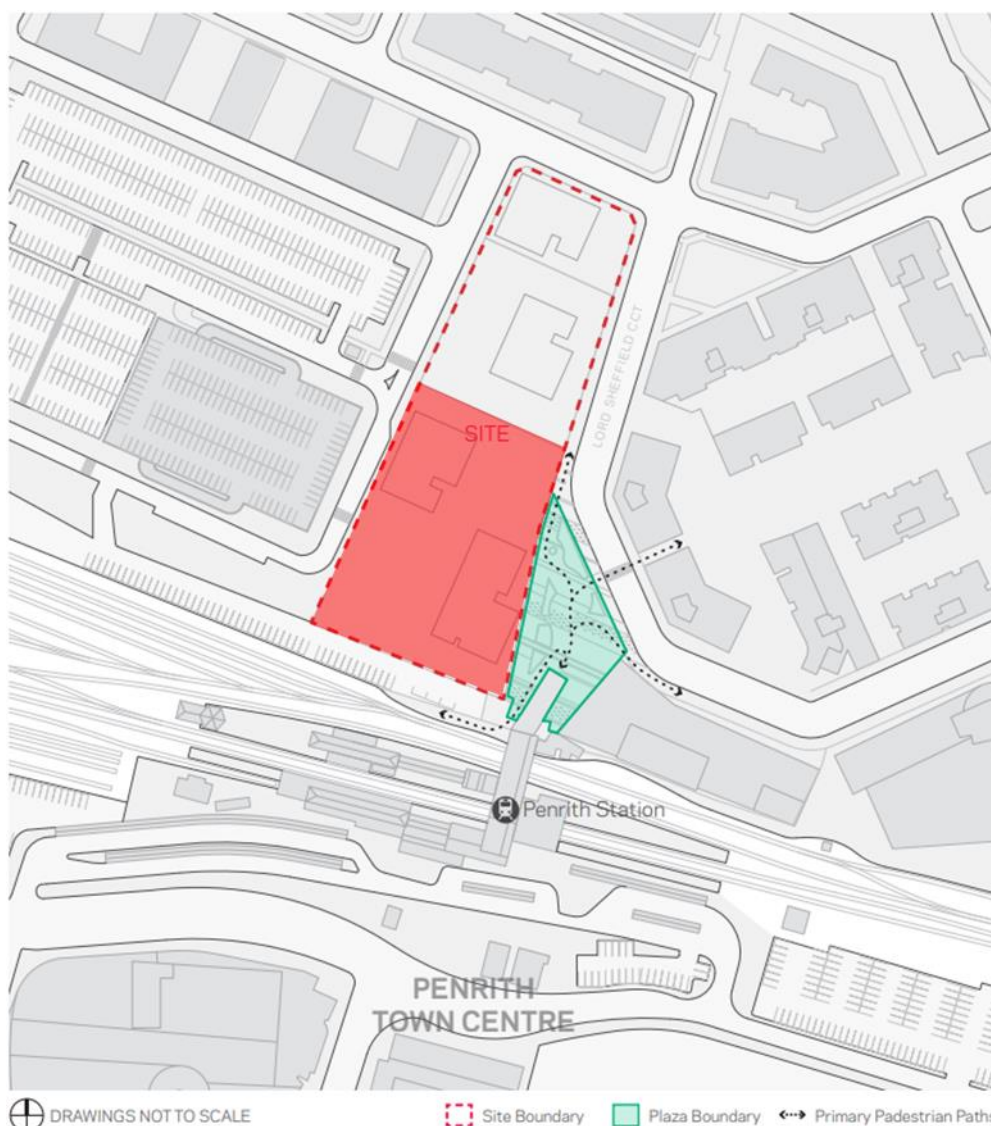
Council added that:

*"...there is a current lack of information about the overshadowing impact. The submitted shadow diagrams to date are not comprehensive. It is also unclear which parts of which proposed buildings will create the additional overshadowing. What does the percentage area equate to in square meters and how is that specific space used? It is also unclear what massing form was used for the 32m height compliant scheme. Is this a solid massing (block form) across the entire site? Would the expectation be that the building block would have a combination of solid/void (cutouts to be ADG compliant or provide modulation). Is a shadow analysis across four days of the year the most appropriate representation of the impact? Are the autumn and spring equinox days really the worst case scenario that represent the three months of those sessions."*

### Location of Station Plaza

The area of public space in question under the SWCPP 'Determination and Statement of Reasons' (dated 7 November 2023) and Council's 'Assessment Report' (dated November 2023) relates to the Penrith Station Plaza. Penrith Station Plaza is located at 182 Lord Sheffield Circuit and its proximity to the subject site is identified in Figure 3 below. Station Plaza is owned by Council, is used as public open space, is classified as Community Land, and is listed in Council's Public Lands Register.





**Figure 3.** Location of Penrith Station Plaza (shaded in green) in relation to the subject site (shaded in red) (Source: Crone Architects, Section 8.2 Public Solar Studies submitted as part of REV23.0007, 20 December 2023)

### Extent of overshadowing under revised Section 8.2 submission

As part of the Section 8.2 review, additional documentation has been submitted by the Applicant for REV23/0007 (DA22/0213) in the form of:

- 'Public Square Solar Studies,' prepared by Crone Architects (dated 20 December 2023),
- Legal Advice from Adrian Galasso SC regarding application and interpretation of Clause 8.2 (dated 19 February 2024 and 15 March 2024),
- Clause 4.6 Variation to Development Standard (dated 26 March 2024), and
- Independent Solar Analysis Expert Advice from Walsh Analysis (dated 14 February 2024).

Clause 8.2 (3) states that

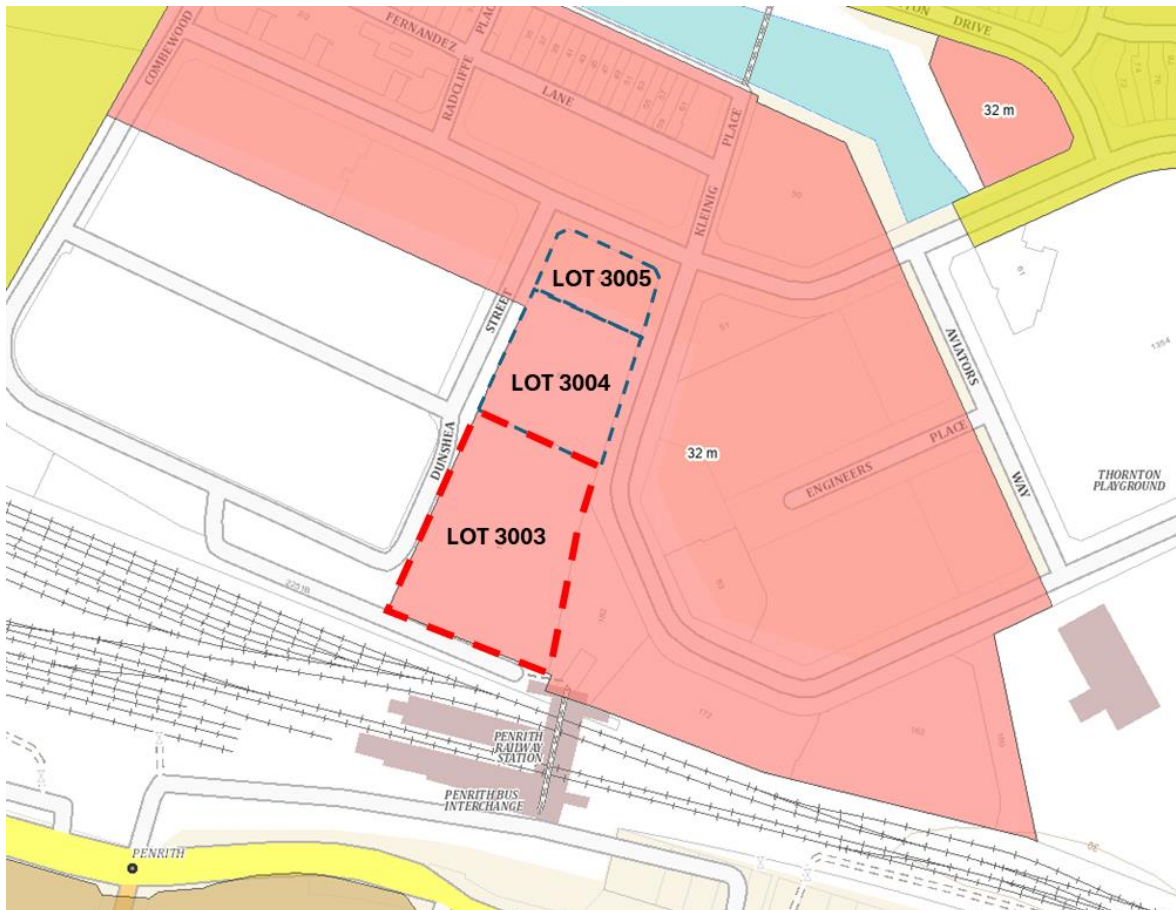
*"Despite clauses 4.3, 5.6 and 8.4, development consent may not be granted to development on land to which this Part applies if the development would result in overshadowing of public open space to a*

**greater degree than would result from adherence to the controls indicated for the land on the Height of Buildings Map.**

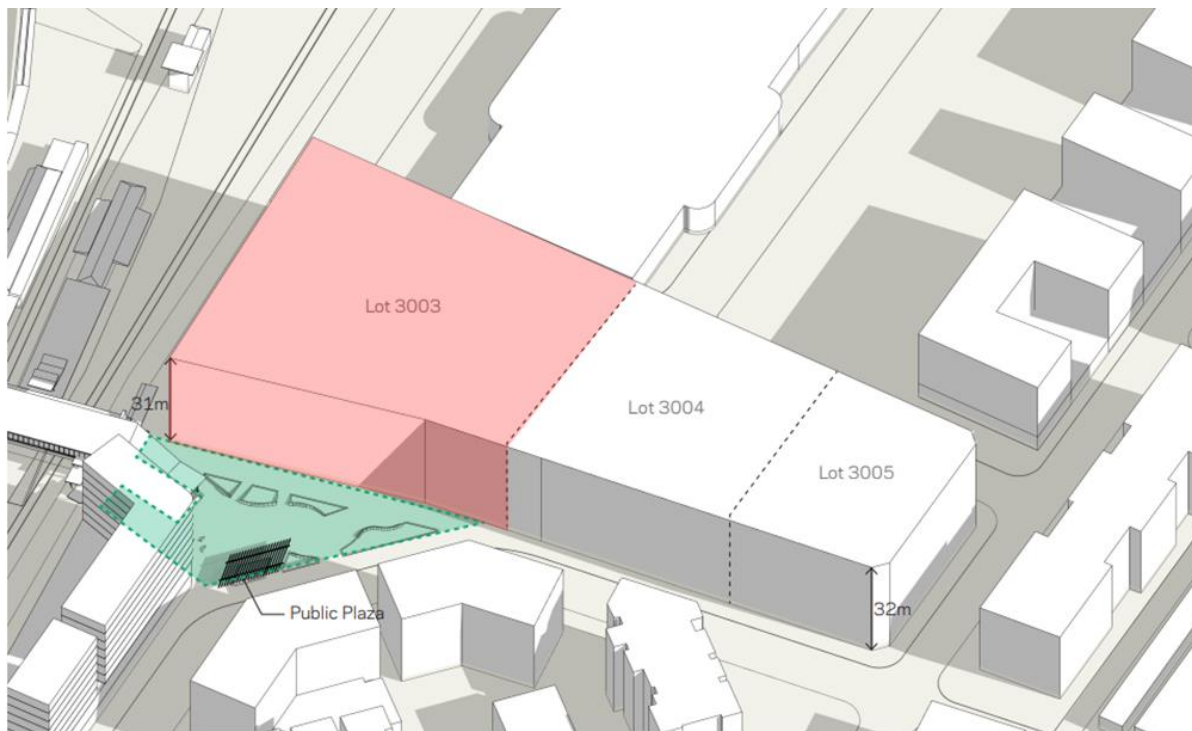
(emphasis bolded and underlined)

Clause 4.3 relates to Height of Buildings, Clause 5.6 relates to Architectural roof features and Clause 8.4 relates to Design excellence.

The parcels affected by REV23/0007 (DA22/0213 – DA1) on Lot 3003 of DP1184498 are subject to a height control of 32m under the Penrith LEP (refer to Figure 4 and Figure 5 below).



**Figure 4.** Height of Buildings Map under the Penrith LEP – 32m height control (subject site is Lot 3003 outlined in red)  
(Source: eSpatial Planning Viewer, accessed February 2024)



**Figure 5. Proposed Base Case envelope (Station Plaza highlighted in green and site subject to DA2 is highlighted in red)**  
(Source: Crone Architects, December 2024)

Clause 8.2 is designed to ensure that the DA results in either no net change over a permissible envelope or enhance the sunlight exposure to public spaces. Clause 8.2(3) does not specify the time of year for demonstrating avoidance of additional overshadowing on public open space. We agree with the advice provided in the 'Memorandum of Opinion' prepared by Adrian Galasso SC (dated 19 February 2024) which stated that a comprehensive year-round solar impact analysis is required. Such a Solar Analysis Study was to consider the solar access impacts from the proposed development against the controls indicated for the land including prescribed 32m height limit under the Penrith LEP.

A Solar Analysis Study was prepared by Crone Architects and submitted by the Applicant for assessment as part of the Section 8.2 review. This information was therefore not available for review or assessment as part of previous Council Assessment Reports or SWCPP Determination and Statement of Reasons.

### Base case modelling

The Solar Analysis Study submitted included analysis of the developments year-round impact in accordance with Adrian Galasso SC's 22 September 2023 advice. The Solar Analysis Study used a 31m height on South East and 32m on North East to inform the base case height on REV23/0007 (DA1 over Lot 3003) and have taken the building mass from all boundaries of the site. Crone Architects have called the building envelope established under the provision as a 'base case'. The same terminology is used in this Report for consistency.

Gyde throughout our Section 8.2 review had previously questioned the calculation and interpretation of the proposed base case and requested additional legal advice from the Applicant. Specifically, Gyde questioned whether it is appropriate to apply solid massing (block form) across the entire site to the site boundary to represent the base case and whether the base case envelope should also consider the expected controls under the relative EPIs.

Upon review of the additional legal advice by Adrain Galasso SC (dated 15 March 2024), Gyde agrees with Galasso SC's advice that based on the wording of Clause 8.2, that:

*"The appropriate base datum is to be derived from the terms of the clause itself. That is, by reference to "...the controls indicated for the land on the height of building map..." That would involve, simply,*

*the attribution of a height limit onto the subject site from which the base case is to be derived, and against which the overshadowing of the proposed development is to be compared.”*

Further, the Solar Analysis Peer Review, prepared by Walsh Analysis (dated 14 February 2024) confirmed that the 31m would result in their analyzed base case actually providing more sun to the Public Plaza than strict compliance with a 32m height plain and is a more conservative analysis.

Overall, the interpretation and application of the methodology used to model the base case submitted by the Applicant is acceptable.

### Extent of overshadowing to public space

The objective of the Clause 8.2 is to ‘protect’ against, with the intention of prohibiting or significantly limiting, further overshadowing or disruptions to the public open space area.

The term ‘protection’<sup>1</sup> is defined in the Oxford English Dictionary as:

*“Defence against harm or danger: any activity (including insect and disease control, fire protection, and law enforcement) that reduces losses...”*

In this case, an activity would be applied as overshadowing to public open space.

The term ‘protected area’<sup>2</sup> is also defined in the Oxford English Dictionary as:

*“Land that is set aside, usually for conservation purposes, where development is banned or seriously restricted.”*

Notably, Clause 8.2 lacks the flexibility that would be available if it used the term ‘minimise’. While the controls allow for some acceptable impact on public open space up to the base case envelope permitted under Clause 8.2(3), Clause 8.2’s objective does not permit any additional impact beyond that. Its purpose is not to merely reduce or minimise impact but to ensure the protection of public open space. Any additional impact or overshadowing beyond the permissible envelope, whether assessed in aggregate or not, would not align with this protection objective. Furthermore, the clause does not account for the aggregate impact during assessment.

The Solar Analysis Study indicates the proposed development continues to cast shadow over public open space beyond the shadow that would be cast by a compliant enveloped scheme. In particular, DA1 (REV23/0007 / DA22/0213) results in overshadowing exceeding the permissible limit under the Penrith LEP base scheme from 1-3pm during the Summer Solstice.

Gyde agrees with the legal advice provided by Adrian Galasso SC (dated 15 March 2024) that Clause 8.2 is a development standard to which Clause 4.6 of the Penrith LEP can be applied. As the development fails to comply with Clause 8.2, it will therefore require a Clause 4.6 submission to justify any variation from the development standard.

To respond to this non-compliance, the applicant has submitted a Clause 4.6 Request for Variation (dated 26 March 2024). An assessment of the respective adequacy of the Clause 4.6 Report for determination by the SWCPP is provided below.

### Clause 4.6 assessment of adequacy

Clause 4.6 of the Penrith LEP includes provisions that allow for exceptions to development standards in certain circumstances.

<sup>1</sup> Park, C. (2007). protection. In A Dictionary of Environment and Conservation: Oxford University Press. Retrieved 28 Feb. 2024, from <https://www.oxfordreference.com/view/10.1093/acref/9780198609957.001.0001/acref-9780198609957-e-6469>.

<sup>2</sup> Park, C. (2007). protected area. In A Dictionary of Environment and Conservation. : Oxford University Press. Retrieved 28 Feb. 2024, from <https://www.oxfordreference.com/view/10.1093/acref/9780198609957.001.0001/acref-9780198609957-e-6463>.



The objectives of Clause 4.6 are as follows:

- “to provide an **appropriate degree of flexibility** in applying certain development standards to particular development,
- to **achieve better outcomes for and from development** by allowing flexibility in particular circumstances.”

(Emphasis added)

Clause 4.6 enables a variation to any development standard to be approved on consideration of a written request from the applicant that justifies the contravention in accordance with Clause 4.6.

Clause 4.6 provides flexibility in the application of planning provisions by allowing a Consent Authority to support a DA for approval, even where it does not comply with certain development standards where it can be shown that flexibility in the circumstances of the case would achieve better outcomes for the development.

In determining whether to grant consent for development that contravenes a development standard, Clause 4.6(3) and (4) requires that the Consent Authority consider a written request from the applicant, which demonstrates that:

- “Compliance with the development standard is **unreasonable or unnecessary** in the circumstances of the case, and
- There are **sufficient environmental planning grounds to justify contravening the development standard.**
- That the proposed development will be in the **public interest** because it is **consistent with the objectives of the particular standard** and the objectives for development within the **zone** in which the development is proposed to be carried out.”

(Emphasis added)

Clause 4.6 enables a variation to Clause 8.2(3) Sun access standard to be approved upon consideration of a written request from the applicant that justifies the contravention in accordance with Clause 4.6. The Applicant has prepared and submitted a Clause 4.6 variation (dated 26 March 2024) as a written request seeking to justify contravention of Clause 8.2 of the Penrith LEP.

The Applicant in the Clause 4.6 Variation Request originally relied on the aggregate and in their works ‘cumulative’ impact over an entire year. Council in their Assessment Report commented that it was their opinion that while the aggregate may be reasonably considered, it should be more closely related to the aggregate on a certain day, month or even season, and not across the whole year. Upon independent review of the documentation, Gyde upheld Council’s opinion that consideration of the aggregate across the whole year to demonstrate that the proposal meets the objective of the standard is not sufficient.

In response to the above, the Applicant submitted a detailed Solar Analysis Study as part of the Section 8.2 Review which includes further information to justify the cumulative impact for each solstice and equinox period, specifically indicating where non-compliant.

Overall, the revised submitted Clause 4.6 Variation Request, prepared by Urbis and dated 25 March 2024) is considered sufficient in its assessment against the Clause and can be accepted to justify the contravention to Clause 8.2(3) Solar Access under Clause 4.6 of the Penrith LEP and can be used by the SWCPP to inform its assessment and determination.

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

#### 3.2.2.1 State Environmental Planning Policy (Biodiversity and Conservation) 2021

The evaluation outlined in Council’s Assessment Report against *State Environmental Planning Policy (Biodiversity and Conservation) 2021* is upheld and remains valid. As the site lacks trees, there won’t be any



depletion of existing biodiversity. Any concerns regarding safeguarding the Hawkesbury / Nepean River could be addressed and managed through conditions if the application was supported.

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

The evaluation outlined in Council's Assessment Report against *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* is upheld and remains valid. The proposed development is able to comply with BASIX requirements.

### **3.2.2.3 State Environmental Planning Policy (Planning Systems) 2021**

The Sydney Western City Planning Panel (SWCPP) is the consent authority for the proposed development as the development is within the category of "General development over \$30million CIV", therefore being 'regionally significant development'.

### **3.2.2.4 State Environmental Planning Policy (Resilience and Hazards) 2021**

Council's Environmental Management Officer in their Referral Response 11 April 2024 is satisfied that the applicant has demonstrated that the site can be made suitable for the proposed development, subject to conditions of consent. Refer to Appendix A.

### **3.2.2.5 State Environmental Planning Policy (Transport and Infrastructure) 2021**

In accordance with the relevant clauses of this SEPP, the DA was referred to Transport for NSW (Roads), Transport for NSW (Sydney Trains) and Endeavour Energy. The referral responses are discussed in Chapter 3.2.8.1 and 3.2.8.3 of this Report.

### **3.2.2.6 State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development**

*State Environmental Planning Policy No 65: Design Quality of Residential Flat Development* (SEPP 65) applies the residential component of the DA. As detailed in Chapter 4.2.1 above, the documentation provided by the Applicant, demonstrates that the DA meets design excellence and has satisfied all three (3) GANSW Conditions.

#### Clause 2: Aims and Objectives

The aim of SEPP 65 is to improve the design quality of residential apartment development:

- " a) To ensure that it contributes to the sustainable development of New South Wales:*
  - (i) By providing sustainable housing in social and environmental terms, and*
  - (ii) By being a long-term asset to its neighbourhood, and*
  - (iii) By achieving the urban planning policies for its regional and local contexts*
- b) To achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define, and*
- c) To better satisfy the increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of people from childhood to old age, including those with disabilities, and*
- d) To maximise amenity, safety and security for the benefit of its occupants and the wider community, and*
- e) To minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions*
- f) To contribute to the provision of a variety of dwelling types to meet population growth*
- g) To support housing affordability*
- h) To facilitate the timely and efficient assessment of applications for development to which this Policy applies"*

The proposal is considered acceptable with regard to the aims of SEPP65.

### Design Quality Principles

Clause 30(2) of SEPP 65 requires the assessment of the application against the design quality principles in Schedule 1. The DA is accompanied by a Design Report, prepared by Crone Architects (dated 17 November 2021). A review of the Design Report as well as Architectural Plans, prepared by Crone Architects (V4, dated 20 March 2024) against the nine (9) key Design Quality Principle's is outlined in Table 2 below.

**Table 2. Assessment of REV23/0007 against SEPP 65's nine (9) key design principles.**

| Design Quality Principle                                     | Assessment   |
|--|--|
| <b>Principle 1: Context and Neighbourhood Character</b>      | Satisfactory<br>The non-compliance with Clause 8.2 Sun Access of the Penrith LEP is addressed in Chapter 4.2.1 and the accompanying Clause 4.6 Report. |
| <b>Principle 2: Built Form and Scale</b>                     | Satisfactory<br>The non-compliance with Clause 8.2 Sun Access of the Penrith LEP is addressed in Chapter 4.2.1 and the accompanying Clause 4.6 Report. |
| <b>Principle 3: Density</b>                                  | Satisfactory   |
| <b>Principle 4: Sustainability</b>                           | Satisfactory   |
| <b>Principle 5: Landscape</b>                                | Satisfactory   |
| <b>Principle 6: Amenity</b>                                  | Satisfactory   |
| <b>Principle 7: Safety</b>                                   | Satisfactory   |
| <b>Principle 8: Housing diversity and social interaction</b> | Satisfactory   |
| <b>Principle 9: Aesthetics</b>                               | Satisfactory   |

### Apartment Design Guide

An assessment of the proposal against the Apartment Design Guide (ADG) is summarised in Table 3 below, based on the Design Report, prepared by Crone Architects (dated 17 November 2021) and Architectural Plans, prepared by Crone Architects (V4, dated 20 March 2024).

**Table 3. Assessment of REV23/0007 against the ADG**

| Part of ADG                             | Assessment   |
|---|--------------|
| <b>Part 2F: Building Separation</b>     | Satisfactory |
| <b>Part 2G: Street setbacks</b>         | Satisfactory |
| <b>Part 2H: Side and rear setbacks</b>  | Satisfactory |
| <b>Part 3A: Site Analysis</b>           | Satisfactory |
| <b>Part 3B: Orientation</b>             | Satisfactory |
| <b>Part 3C: Public Domain Interface</b> | Satisfactory |

|  |  |
|--|--|
| <b>Part 3D: Communal and Public Open Space</b>   | Satisfactory   |
| <b>Part 3E: Deep Soil Zones</b>                  | Non-compliance – alternative solution provided.<br><br>7% deep soil zones are required. Significant alternative planting is provided within the deep soil zone of the village square and podiums. Proposed development provides 4,004sqm landscape across the site which is considered acceptable.   |
| <b>Part 3F: Visual Privacy</b>                   | Satisfactory   |
| <b>Part 3G: Pedestrian Access and Entries</b>    | Satisfactory   |
| <b>Part 3H: Vehicle Access</b>                   | Satisfactory   |
| <b>Part 3J: Bicycle and Car Parking</b>          | Satisfactory   |
| <b>Part 4A: Solar and Daylight Access</b>        | Satisfactory   |
| <b>Part 4B: Natural Ventilation</b>              | Non-compliance<br><br>60% of apartments require natural cross ventilation. Proposal provides 59% natural cross ventilation. Though a minor-non-compliance, it is observed that the proposed development aims to share amenity with concurrent DA22/0214 (REV23/0008), particularly with regard to the balance of solar access and ventilation. The 1% non-compliance is considered minimal and manageable considering the scale of the development and compliance when considering both DAs over the site in totality. Gyde considers this satisfactory.   |
| <b>Part 4C: Ceiling Heights</b>                  | Satisfactory   |
| <b>Part 4D: Apartment Size and Layout</b>        | Satisfactory   |
| <b>Part 4E: Private Open Space and Balconies</b> | Satisfactory   |
| <b>Part 4F: Common Circulation and Spaces</b>    | Non-compliance - Building A<br><br>Maximum number of apartments off a circulation core on a single level is 8. Building A has a maximum of 10 apartments off a circulation core. The Applicant justified that Building A has a maximum of 10 apartments off a circulation core to allow for a commercially viable development. They state that higher levels of amenity are provided with windows at corridor ends and incidental communal areas for seating providing opportunities for casual social interaction among residents assisting with social recognition. Gyde consider this satisfactory. |
| <b>Part 4G: Storage</b>                          | Satisfactory   |
| <b>Part 4H: Acoustic Privacy</b>                 | Satisfactory   |
| <b>Part 4J: Noise and Pollution</b>              | Satisfactory – Subject to Conditions proposed by Council's referral departments – Refer to Appendix A.   |
| <b>Part 4K: Apartment Mix</b>                    | Satisfactory   |
| <b>Part 4L: Ground Floor Apartments</b>          | Satisfactory   |
| <b>Part 4M: Facades</b>                          | Satisfactory   |

|   |   |
|---|---|
| <b>Part 4N: Roof Design</b>                       | Satisfactory  |
| <b>Part 4O: Landscape Design</b>                  | Satisfactory  |
| <b>Part 4P: Planting on Structures</b>            | Satisfactory  |
| <b>Part 4Q: Universal Design</b>                  | Satisfactory  |
| <b>Part 4R: Adaptive Reuse</b>                    | Satisfactory  |
| <b>Part 4S: Mixed Use</b>                         | Satisfactory  |
| <b>Part 4T: Awnings and Signage</b>               | Satisfactory  |
| <b>Part 4U: Energy Efficiency</b>                 | Satisfactory  |
| <b>Part 4V: Water Management and Conservation</b> | Satisfactory – Subject to Conditions proposed by Council's referral departments – Refer to Appendix A |
| <b>Part 4W: Waste Management</b>                  | Satisfactory – Subject to Conditions proposed by Council's referral departments – Refer to Appendix A |
| <b>Part 4X: Building Maintenance</b>              | Satisfactory - Subject to Conditions proposed by Council's referral departments – Refer to Appendix A |

### 3.2.2.7 Penrith Local Environmental Plan 2010 (Penrith LEP)

DA22/0213 was lodged on the 11 March 2022 and determined by SWCPP on the 7 November 2023. REV23/0007 relating to Section 8.2 was lodged on the 21 December 2023. Pursuant to the provisions under Clause 1.18A of the Penrith LEP, REV23/0007 is required to be assessed against the controls at the time DA/22/0213 was made (lodged). An exception is the consideration of the E1 Local Centre land use zone and its objectives which were subject to amendment under the *Standard Instrument (Local Environmental Plans) Order 2006*.

A high level assessment of the proposal against Penrith LEP is summarised in Table 4 below.

Table 4. Assessment of REV23/0007 against Penrith LEP

| Clause   | Assessment   | Compliance  |
|--|--|---|
| <b>Clause 1.2</b> – Aims of the Plan   | Complies   | Complies  |
| <b>Clause 1.8A</b> - Savings provisions relating to development applications | Refer to Chapter 2.4 of this report for discussion.  | Applies to all clauses excl Clause 2.3 relating to land use zones and their objectives. |
| <b>Clause 2.3</b> – Permissibility   | SEE notes application states the proposed mixed-use development comprises 'commercial premises', 'retail premises' and 'shop-top housing'.<br><br>Commercial and retail uses are permissible with consent in the E1 zone.<br><br>Proposed ground floor residential dwellings are contrary to the definition of shop top housing. Permissibility against Clause 2.3 relies on Clause 2.5 which permits residential flat | Does not comply – See Clause 2.5.   |

|  |   |   |
|--|---|---|
|  | buildings with development consent on land identified within "Use of Certain Land at Lord Sheffield".   |   |
| <b>Clause 2.3*</b> – Zone objectives                               | The proposed development generally complies with the objectives of the E1 Local Centre Zone.  | Complies  |
| <b>Clause 2.5</b> – Additional permitted uses for particular land  | Clause 2.5 permits residential flat buildings with development consent on land identified within "Use of Certain Land at Lord Sheffield".   | Complies  |
| <b>Clause 4.3</b> – Height of Buildings                            | <p>Clause 4.3 provisions a maximum building height of 32m. The proposal seeks to exceed this height relying on the additional height provisions under Clause 8.7(3) relating to Key Sites if the proposal includes CI.</p> <p>REV23/0007 has been accompanied by a Request to Vary the Development Standard in accordance Clause 4.6 of the Penrith LEP. Assessment against Clause 8.7 is discussed in detail in 3.2.1.1.</p> | Does not comply - Refer to Clause 8.7 for assessment.   |
| <b>Clause 4.4</b> - Floor Space Ratio                              | Clause 4.4 does not contain a maximum FSR for the site. Clause 8.7 in relation to Key Site 11 identifies a maximum permitted FSR of 5:1. Proposal comprises a maximum FSR of 5:1.   | Complies  |
| <b>Clause 4.5</b> - Calculation of floor space ratio and site area | Complies  | Complies  |
| <b>Clause 4.6</b> – Exception to development standards             | <p>REV23/0007 was accompanied by a Clause 4.6 Variation to Clause 8.2.</p> <p>Clause 4.6 reports are considered sufficient in their assessment and can be used by the SWCPP to inform its assessment and determination. See Chapter 3.2.1.3 of this Report for discussion.</p>  | Clause 4.6 Report is satisfactory for assessment and determination by the SWCPP   |
| <b>Clause 5.21</b> – Flood planning                                | Council's Development Engineer raised concern over the proposed flood planning levels. Any outstanding concerns have been addressed via Conditions of Consent.  | <p>Does not comply – Subject to Conditions of Consent</p> <p>The DA is accompanied by a Flood Emergency Response Plan, prepared by Northrop (dated 15 November 2021).</p> |
| <b>Clause 7.1</b> – Earthworks                                     | Complies  | Complies  |
| <b>Clause 7.4</b> – Sustainable development                        | Complies  | Complies  |
| <b>Clause 7.6</b> – Salinity                                       | Complies  | Complies  |
| <b>Clause 7.7</b> – Servicing                                      | Complies  | Complies  |
| <b>Clause 7.30</b> – Urban Heat                                    | Complies  | Complies  |
| <b>Clause 8.1</b> – Application of Part                            | Complies  | Complies  |



|  |  |   |
|--|--|---|
| <b>Clause 8.2</b> - Sun access                                     | Development results in overshadowing to public open space. DA is accompanied by a Clause 4.6 Report to justify variation. See Chapter 3.2.1.3 of this Report for discussion. | Does not comply. DA accompanied by Clause 4.6 Report.                             |
| <b>Clause 8.4</b> – Design Excellence                              | Design Excellence has been granted by GANSW – Refer to Chapter 4.2.1 for discussion.   | Complies  |
| <b>Clause 8.5</b> – Building separation                            | Complies   | Complies  |
| <b>Clause 8.7</b> - Community Infrastructure in certain key sites. | See Chapter 3.2.1.1 of this Report for discussion.   | Generally complies – Subject to deferred commencement conditions relating to VPA. |

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

#### 3.2.3.1 Penrith Development Control Plan 2014 (Penrith DCP)

This Report has considered those matters required to be considered by Section 4.15 of the EP&A Act, including an assessment of the proposal against Penrith DCP is summarised in Table 5 below.

**Table 5. Assessment of REV23/0007 against Penrith DCP**

| Clause  | Assessment   | Compliance  |
|---|--|---|
| <b>B - DCP Principles</b>                       | For the reasons outlined in this Report, the proposal does not meet: <ul style="list-style-type: none"> <li>• Principle 4 '<i>Enable communities to minimise ecological footprint</i>' - Outstanding issues per Council's Waste Department and Environmental Health- Waterways Referral Responses to be resolved via Conditions of Consent. Refer to Appendix A.</li> <li>• Principle 5 '<i>Build on the characteristics of ecosystems in the development and nurturing of healthy and sustainable cities</i>' - Outstanding issues per Council's Waterways Referral Response to be resolved via Conditions of Consent. Refer to Appendix A.</li> <li>• Principle 9 '<i>Promote sustainable production and consumption, through appropriate use of environmentally sound technologies and effective demand management</i>' - Outstanding issues per Council's Waste Department Referral Response to be resolved via Conditions of Consent. Refer to Appendix A.</li> </ul> | Can comply – Subject to Conditions of Consent         |
| <b>C1 - Site Planning and Design Principles</b> | Generally complies   | Generally complies                                    |
| <b>C2 - Vegetation Management</b>               | Generally complies   | Generally complies.                                   |
| <b>C3 - Water Management</b>                    | Outstanding issues per Council's Environmental Health- Waterways and Development Engineering Referral Responses to be addressed via Conditions of Consent. Refer to Appendix A.  | Can comply – Subject to Conditions of Consent         |
| <b>C4 - Land Management</b>                     | Generally complies. Outstanding issues per Council's Environmental Management Referral Response to be addressed via Conditions of Consent. Refer to Appendix A.  | Generally complies - Subject to Conditions of Consent |

|  |   |  |
|--|---|--|
| <b>C5 - Waste Management</b>               | Outstanding issues per Council's Waste Department and Environmental Management Referral Responses to be addressed via Conditions of Consent. Refer to Appendix A.   | Can comply – Subject to Conditions of Consent  |
| <b>C6 - Landscape Design</b>               | Outstanding issues relating to On-Site Stormwater Detention per Council's Environmental Health- Waterways Referral Responses to be resolved via Conditions of Consent. Refer to Appendix A.                   | Can comply – Subject to Conditions of Consent  |
| <b>C7 - Culture and Heritage</b>           | Not applicable  | Not applicable   |
| <b>C8 - Public Domain</b>                  | Generally complies  | Generally complies   |
| <b>C9 - Advertising and Signage</b>        | Not applicable  | Not applicable   |
| <b>C10 - Transport, Access and Parking</b> | Outstanding issues per Council's Traffic Engineer Referral. Refer to Appendix A.  | Generally complies – Refer to Section 3.2.8.3 – Considered Acceptable  |
| <b>C11 - Subdivision</b>                   | Generally complies  | Generally complies   |
| <b>C12 - Noise and Vibration</b>           | Outstanding issues per Council's Environmental Health – Environmental Management Referral Response to be resolved via Conditions of Consent. Refer to Appendix A.   | Can comply – Subject to Conditions of Consent  |
| <b>C13 - Infrastructure and Services</b>   | Generally complies  | Generally complies   |
| <b>C14 - Urban Heat Management</b>         | Generally complies  | Generally complies   |
| <b>D2.5 - Residential Flat Buildings</b>   | Generally complies – ADG overrides.   | Generally complies   |
| <b>E11 – Penrith – Part B</b>              | The proposal generally complies with many of the controls under E11. The proposed development does not comply with Part E11 of the DCP in relation to the building height, as the DCP provides for 6 storeys. | Does not comply . Despite the non-compliance, it is noted that the proposal seeks to exceed this height relying on the additional height provisions under Clause 8.7(3) relating to Key Sites if the proposal includes Cl. The DA is generally compliant with Clause 8.7, subject to deferred commencement conditions relation to VPA. |

### 3.2.4 Section 4.15(1)(a)(iii) The provisions of any planning agreement

The DA to date has been accompanied by numerous iterations of draft offers. The latest draft Voluntary Planning Agreement (VPA) Letter of Offer (dated 28 March 2024) relates to the provision of CI. The details of the proposed CI are discussed in detail in Chapter 3.2.1.1 of this Report.

Council's CI Panel Memorandum (dated 6 March 2024), which previously assessed an earlier version of the draft VPA Letter of Offer, commented that they did not support the proposed Letter of Offer on the following grounds:

- *"The application has not demonstrated that the proposed use of the nominated space can be categorised as a recreation facility (Indoor). Based on the provided information, the Panel are unable to support the proposal.*
- *Further information is required to determine if the valuation method of the works and use is suitable.*
- *The application does not demonstrate that the facility is in the interest of the general public; contributes to the city centre; and the proposal demonstrates long-term economic viability and that ongoing maintenance costs can be managed in an economically viable and socially responsible manner.*
- *Based on the information provided, the Panel is not satisfied that the nature of the proposal is in the public interest and contributes to the City Centre.*
- *Council does not support the crediting of 'additional' CI contributions towards Development Contribution obligations of the proposal. Any contributions made under Clause 8.7 of Penrith LEP have no relationship to Councils contribution plan. Development Contributions made under 7.11 of the EP&A Act."*

Council's CI Panel comments were relayed to the Applicant on the 7 March 2024 via a Request for Information (No. 2). The matters raised by the CI Panel were also discussed in the SWCPP Briefing meeting on 11 March 2024 as well as in a number of separate meetings held between Gyde and the Applicant at the request of the SWCPP. In response, the Applicant has provided supplementary documentation to assist in addressing Council CI Panel's concerns. It is noted that at the time of preparing this Report, Council's CI Panel had not re-reviewed the additional information in order to provide a revised comment or position.

From the additional information submitted, and as discussed earlier in this Report, it is considered that the development now satisfies the CI Panel's comments in that:

- The DA now demonstrates that the proposed use of the nominated space meets the Penrith LEPs' categorisation as a 'recreation facility (indoor)'.
- The DA demonstrates long-term economic viability and that ongoing maintenance costs can be managed in an economically viable and socially responsible manner.
- The nature of the DA demonstrates the proposed 'recreation facility (indoor)' is in the interest of the general public and contributes to the City Centre.
- The Applicant has acknowledged and noted that Council does not support the crediting of 'additional' CI contributions towards Development Contribution obligations of the proposal. Any contributions made under Clause 8.7 of Penrith LEP have no relationship to Councils contribution plan. Development Contributions made under 7.11 of the EP&A Act."

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

This Section 8.2 review of DA22/0213 has been carried out in accordance with the relevant provisions of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation).

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

Through the submission of additional documentation and meetings, the proposed development considered to have resolved the key development thresholds. It is noted that a number of Council's referral departments have provided a number of conditions (included in Appendix A) in order to resolve their concerns, additional refinements and outstanding issues.

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

The site is suitable for the proposed development, as the site is serviced, has access to the required utilities, and is capable of accommodating greater densities in certain positions within the site. The site is capable of being developed, subject to conditions.

### 3.2.8 Section 4.15(1)(d) Any submissions

#### 3.2.8.1 External Referral Responses

Table 6 below provides an overview of the recommendation from each of the external referral agencies that were re-referred as part of the Section 8.2 Review (REV23/0007).

Table 6. Summary of external referral responses relating to REV23/0007

| Entity  | Response  |
|---|---|
| <b>Transport for NSW (Roads)</b><br><i>Clause 2.122 of T&amp;I SEPP</i>     | No objections - In TfNSW letter dated 6 February 2024, TfNSW commented that <i>"the proposed development will unlikely impact the surrounding classified network and as such has no further comment."</i>   |
| <b>Transport for NSW (Sydney Trains)</b> <i>Clause 2.99 of T&amp;I SEPP</i> | In their letter dated 28 March 2024, TfNSW (Sydney Trains) has taken the requirements of Section 2.99(4) into consideration and has decided to grant its concurrence to the development proposed in DA Rev 23/0007 subject to Council imposing the conditions as written in Attachment A that will need to be complied with.  |
| <b>Endeavour Energy</b>   | <p>No objections – Subject to conditions</p> <p>Reasons for refusal do not relate to conditions or advice in Endeavor Energy's submission to DA22/0213. Notwithstanding the proposed changes, additional information, the conditions and advice provided in Endeavor Energy's submission to DA22/0213 essentially remain applicable.</p> <p>Original referral (dated 5 August 2022) recommended approval subject to Conditions should consent be granted.</p> |

#### 3.2.8.2 Public Submissions

REV23/0007 was publicly exhibited from 29 January – 26 February 2024. Table 7 below provides an overview of the seven (7) objection submissions received during the public exhibition period.

Table 7. Summary of public submissions relating to REV23/0007

| Submission comment                     | Submission Details  | Gyde Assessment   |
|--|---|---|
| <b>Objection - Traffic and Parking</b> | <ul style="list-style-type: none"> <li>Increased traffic congestion and safety risks.</li> <li>Anticipated road improvements by 2025 won't address impact of new developments on traffic congestion.</li> <li>Impact to pedestrian safety.</li> <li>Fear of traffic chaos during peak times due to influx of residents entering and exiting Thornton precinct.</li> <li>Not everyone can rely on public transport for commuting or other activities.</li> </ul> | <p>The DA is accompanied by an updated Traffic Impact Assessment (dated 22 March 2024). This Traffic Impact Assessment responds to the submissions received and comments that:</p> <ul style="list-style-type: none"> <li>As part of the DA, it is proposed to update the existing zebra pedestrian crossings on the north-south section of Dunshea Street with raised zebra pedestrian crossings.</li> </ul> |

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|-----------------------------------|---|---|
|                                   | <ul style="list-style-type: none"> <li>Existing street parking already at capacity, additional apartments would exacerbate parking problems - existing parking spaces are limited to 2-hour parking.</li> <li>Castlereagh Rd, Coreen Avenue, Combewood Ave, Thornton Drive, Lord Sheffield Circuit, Empire Circuit, and surrounding backstreets experiencing saturation due to: <ul style="list-style-type: none"> <li>Multiple apartment blocks.</li> <li>Penrith Railway Station and car parks.</li> <li>Presence of Starbucks, Oporto, Zambrero (Cnr Castlereagh Rd &amp; Thornton Drive), and other establishments.</li> </ul> </li> <li>Increased ownership of oversized utility vehicles exacerbates parking and traffic problems.</li> <li>Each household/unit has multiple cars, exacerbating the problem.</li> <li>Unsatisfactory Transport Impact Assessment (TIA): <ul style="list-style-type: none"> <li>Reliance on outdated traffic surveys (2019 and 2020) predating recent developments like new apartment complexes and approved urban sites.</li> <li>Inadequate consideration of subsequent developments and traffic volumes.</li> <li>Exclusion of key intersections from modelling.</li> <li>Failure to account for future development in the area in modelling.</li> </ul> </li> <li>Lack of provision for off-street visitor parking.</li> </ul> | <ul style="list-style-type: none"> <li>Correspondence from TfNSW (dated 6 February 2024) confirms that no significant impact to the classified road network is expected from the development, which is located approximately 600m from the site, is expected from the development.</li> <li>The additional traffic generated by the proposed development is not expected to compromise the safety or function of the surrounding road network.</li> </ul> <p>Finally, the site is located in close proximity to Penrith Station. Section E11 of the Penrith DCP emphasise and supports the complementary use and benefit of public transport and non-motorised modes of transport such as bicycles and walking.</p> |
| <b>Objection - Public amenity</b> | <ul style="list-style-type: none"> <li>Lack of consideration for amenities such as a park for residents.</li> <li>Development impacts extend beyond individual projects, affecting broader community and infrastructure.</li> <li>Absence of a commitment to road intersection upgrades if the development proceeds.</li> <li>Lack of enforcement regarding street parking. Commuters, walkers, shoppers utilise Thornton Drive and surrounding streets for parking, often for extended periods without repercussions.</li> <li>Historical trend suggests increase in crime with each new development, requiring assessment and mitigation measures.</li> </ul>   | <p>The Applicant has made amendments to their CI offer (public recreation facility (indoor) and recreation area (children's playground located within through site link). Applicant has submitted additional information detailing the CI offer. The activated ground plane and CPTED conditions proposed will provide a safe environment for residents and users.</p>  |



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|---|--|--|
| <b>Objection - Residential amenity</b>  | <ul style="list-style-type: none"> <li>• Disruption of existing residents' quality of life.</li> <li>• Impact to noise levels.</li> <li>• Concern over 500 proposed apartments being excessive, especially considering recent approval for additional 300 apartments nearby.</li> </ul>  | Quantum of apartments comply with Council criteria and the intent of future vision of the area.  |
| <b>Objection - Increased density impacts</b>                                    | <ul style="list-style-type: none"> <li>• Increased pressure on infrastructure including: <ul style="list-style-type: none"> <li>○ Public transportation</li> <li>○ Public infrastructure</li> <li>○ Anticipated negative social impact from influx of new residents</li> </ul> </li> </ul>   | The development is located in close proximity to Penrith Station, complies with the intent of the future vision of the area (including encouragement of the use of public transport) and external referral agencies have deemed the DA satisfactory (subject to conditions).   |
| <b>Objection - Height, built form and scale</b>                                 | <ul style="list-style-type: none"> <li>• Concerns about the building's size and appearance, which are perceived as out of place.</li> <li>• Concern over 25-storey height, unprecedented for Penrith and altering skyline to resemble Parramatta.</li> <li>• Opposition to the proposed 25-storey building, viewed as incompatible and visually out of place for Thornton Estate.</li> <li>• Call for Penrith Council to cap building height at 15 storeys district-wide.</li> </ul> | Height, built form and scale are considered acceptable for reasons discussed in this Report.   |
| <b>Objection - Solar and view impact</b>  | <ul style="list-style-type: none"> <li>• Discrepancies in scale drawing of solar light reflectivity study.</li> <li>• Impact to sunlight and view obstruction.</li> </ul>  | Solar and view impacts are considered acceptable for reasons discussed in this Report.   |
| <b>Objection - Lack of significant changes from that of original DA refused</b> | <ul style="list-style-type: none"> <li>• New proposal resembles original proposal, maintaining previous concerns.</li> <li>• Continued use of outdated data despite changes in current conditions and future developments.</li> </ul>  | <p>Amendments to the built form and internal layouts have been undertaken by the applicant to improve sun access to the public open space and provide clarity to the CI offer (Level 1 tenancy).</p> <p>Improved information and additional detailed information have been provided to address the original threshold items that formed grounds for refusal and provide clarity to the CI offer.</p> |

### 3.2.8.3 Council Referrals

As part of the Section 8.2, the application was re-referred to the following stakeholders and their comments have formed part of the review. All referral responses were issued to the Applicant on the 27 February 2024 for consideration and response.

Table 8 below provides a summary of their recommendations. Refer to Appendix A.

Table 8. Summary of Council referral responses relating to REV23/0007

| Department   | Response  |
|--|---|
| <b>Building Surveyor</b><br>(12 February 2024)                     | No objections.  |
| <b>Development Engineer</b><br>(29 March 2024)                     | <p>Not supported, however conditions provided – See Appendix A.</p> <p>Council's Development Engineer noted ongoing concerns relating to:</p> <ul style="list-style-type: none"> <li><u>Flooding</u> – Council raised concern relating to Clause 5.21 and evacuation. The DA is accompanied by a Flood Emergency Response Plan, prepared by Northrop (dated 15 November 2021). This satisfies the criteria of Clause 5.21 of the Penrith LEP and all evacuation routes will be in accordance with the requirements of NSW SES.</li> <li><u>Easements</u> – Applicant Response to RFI (7 March 2024) shows an easement for electricity that differs from the submitted Site Survey Plan (3 February 2017) and the Civil Plans – Evidence of the easement amendment is to be submitted.</li> </ul>  |
| <b>Environmental – Environmental Management</b><br>(11 April 2024) | <p>Not supported, however conditions provided – See Appendix A.</p> <p>Council's Development Engineer noted ongoing concerns relating to:</p> <ul style="list-style-type: none"> <li><u>Noise</u> – Council view that at least, a high-level assessment should be provided in Noise Impact Assessment at the DA stage to guide both early and final design and subsequently construction. Council requires an updated Noise Impact Assessment be prepared that clearly demonstrates the residential receivers within the development itself are included in the assessment of noise and vibration impacts associated with all noise and vibration generating aspects.</li> </ul> <p><u>PCYC</u> – Council noted that the Noise Impact Assessment does not address PCYC element – primarily events and general use of the PCYC facility. Assessment is required to establish what construction and operational controls are required. Inclusion of conditions that require the provision of an updated Noise Impact Assessment as well as an updated Noise Impact Assessment prior to Construction Certificate of this subject DA have been provided.</p> <p>After review, Gyde consider the proposed child care centre and PCYC will not generate sufficient noise to warrant refusal of the project. Child care centres generally operate from 6am to 6pm Mon to Friday, thus within acceptable time-frames. The proposed PCYC use is situated within an enclosed area within the building and can be managed appropriately to contain noise. The imposition of a condition requiring a Noise Impact Assessment Report with the future application for the use is considered acceptable in the circumstances.</p> <ul style="list-style-type: none"> <li><u>Childcare Centre</u> – Condition that future childcare centre subject to separate DA with appropriate noise assessment from an operational aspect.</li> <li><u>Commercial and Retail Tenancies</u> - Potential impacts associated with retail, food and beverage and general commercial spaces need to be assessed. Such uses could be undertaken as complying development and therefore risk that noise impacts would not be appropriately considered. Council have included a condition requiring submission of an updated NIA that considers future potential or known tenancies and that provides recommendations to minimise potential noise and vibration impacts.</li> <li><u>Communal Open Space</u> - Referral notes detrimental impact of musical play equipment would occur to residents in close proximity. Referral recommends that musical play equipment not be included within outdoor communal areas. A condition is proposed by Council to prohibit installation of musical instruments</li> </ul> |

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|   | <p>in outdoor communal open space areas. Gyde notes that it this playground element is not proposed under REV23/0007 and has been addressed under the conditions of REV23/0008.</p> <ul style="list-style-type: none"> <li>• <u>Noise emissions from operation of loading docks, carpark and waste management areas</u> - Conditions have been included to address concerns.</li> <li>• <u>Construction noise and vibration</u> – Conditions have been included to address concerns.</li> </ul>  |
| <b>Environment – Waterways</b><br><i>(25 March 2024)</i>        | No objections – subject to conditions – See Appendix A.  |
| <b>Environment – Public Health</b><br><i>(13 February 2024)</i> | No objections – subject to conditions – See Appendix A.  |
| <b>Waste Services</b><br><i>(9 April 2024)</i>                  | <p>Not supported - however Conditions provided – See Appendix A.</p> <p>Council's Waste Engineer noted ongoing concerns relating to waste management requirements are to be complied with and details of compliance demonstrated to Council prior to the issue of a Construction Certificate.</p>  |
| <b>Traffic Engineer</b><br><i>(10 April 2024)</i>               | <p>Not supported – however conditions provided – See Appendix A.</p> <p>Council's Development Engineer noted ongoing concerns relating to:</p> <ul style="list-style-type: none"> <li>• <u>Parking</u> – The use of the commercial parking rate for proposed Indoor Recreation Facility use is not supported. A PCYC is considered to be more similar to a Fitness Centre/Gym which requires 7 spaces per 100m2 GFA which would require 44 spaces. Applicant is only proposing 8 spaces.</li> </ul> <p>Gyde have acknowledged Council's concern. The proposed recreation area (indoor) is not defined as a 'gym' in the true sense of the word. The PCYC and offers a gymnastics facility for youth however is not isolated to just gymnastics. It includes other activities hence relying on the parking generation for a "gym" is not a fair and reasonable expectation for the proposed use. Further, the facility caters for youth who are not anticipated to drive to the PCYC facility. Youth would typically be dropped off by a parent or guardian or would walk or catch public transport. It is also noted that the site is located in close proximity to Penrith Station and considering Council's Chapter E11 of the DCP relating to North Penrith which incentivises public transport usage, cycling and walking and that the ages targeted for the PCYC are youth (underage of driving) it is therefore considered that the parking spaces associated with the PCYC is considered satisfactory.</p> <ul style="list-style-type: none"> <li>• <u>External Access and Manoeuvring</u> - conditions have been included to capture outstanding Council requirements.</li> <li>• <u>Traffic Generation and Road Network Impacts</u> - Not satisfactorily addressed previously raised concerns raised by both Council and public with the proposed traffic generation and modelling.</li> </ul> <p>Gyde acknowledge that the DCP provides maximum parking rates for residential uses. The traffic generation rates used by the Applicant's Traffic Engineer were based on parking (not GFA/number of units which Council want). The quantum of parking proposed is less than the maximum rate provisioned in the DCP in response to the sites walkability and proximity to Penrith Train Station. Accordingly, expected from the residential component of the development would be less than that to which maximum provision allows under the DCP.</p> |

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|   | <p>The application is accompanied by a response to Council's Traffic Department concerns, prepared by Stantec (dated 22 March 2024). Due to concerns raised by Council and the public, Stantec have updated their traffic modelling to consider the following:</p> <ul style="list-style-type: none"> <li>– Change of land uses from medical to an indoor recreation facility</li> <li>– Post 10-year opening scenario.</li> <li>– 95th percentile queues rather than average queues.</li> <li>– Modelling rates used for recent adjacent development at 160-172 Lord Sheffield Circuit, Penrith, DA22/1086.</li> </ul> <p>This Stantec response also provides justification for the trip generation calculation rates used, which was noted as similar to the rates used for adjoining properties.</p> <p>Further, TfSNW have commented in their determination letter dated 6 February 2024 that:</p> <p><i>“TfNSW has reviewed the submitted information and advises that the proposed development will unlikely impact the surrounding classified network and as such has no further comment.”</i></p> <p>After consideration of the above, Gyde believe the DA is acceptable given the proximity to train station, the sites' walkability and the provided rate of parking is less than then maximum rate of parking stipulated in the DCP and ultimately what is encouraged in this area.</p> <p>Despite our view that the traffic is acceptable as discussed above; to alleviate the concerns raised by Council's Traffic Engineer and the public, a condition is imposed to require the Applicant to upgrade the intersection of Thornton Drive and Coombewood Avenue with the provision of a roundabout (at no cost to Council). This condition was imposed on a previous approval for the site, and the Applicant is aware of this impending condition.</p> |
| <b>Community Safety Officer</b><br>(13 February 2024) | No objections – subject to conditions - See Appendix A.  |
| <b>CI Panel</b>                                       | Not Supported – Refer to 3.2.1.1 for discussion.   |

### 3.2.9 Section 4.15(1)(e) The public interest

Through the submission of additional documentation and meetings, the proposed development considered to be in the public interest. It is noted that a number of Council's referral departments have provided a number of conditions (included in Appendix A) in order to resolve their concerns, additional refinements and outstanding issues.

## 4. Conclusion

Pursuant to the provisions of Section 8.2 of the EP&A Act 1979, the amended proposal is considered to have addressed the reasons of refusal outlined by the SWCPP in the Determination Notice dated 7 November 2023. The proposed development is now consistent with the relevant sections of the EP&A Act 1979, relevant State environmental planning policies, Penrith LEP and Penrith DCP, subject to conditions. The amended proposal will also not result in any significant impacts on the natural, social, and economic environments.

The following additional information and planning responses have been provided by the Applicant in support of the application under Section 8.2:

- Concurrence from Sydney Trains has been obtained as required by Section 2.99(3) of the T&I SEPP. Refer to Chapter 3.2.1.2 of this Report for detailed discussion.
- Supplementary legal advice and a Solar Peer Review has been provided to demonstrate the proposed 'base case' has been modelled per the wording of Clause 8.2 of the Penrith LEP and that the extent of shadowing impact adequately identified and assessed. Refer to Chapter 3.2.1.3 of this Report for detailed discussion.
- A Clause 4.6 Report has been prepared to address the parts of the proposed development that exceed the Penrith LEP mapped height create additional overshadowing onto the public open Space at Station Plaza.
- An amended draft VPA Letter of Offer relating to the recreation facility (indoor) which achieves the relevant objective, definition of CI and constitutes a nature and value that justifies the additional height and floor space sought by REV23/0007 and DA22/0213. Refer to Chapter 3.2.1.1 of this Report for detailed discussion.
- A submission that demonstrates that the conditions of the GA NSW Waiver have been satisfied and that, pursuant to GANSW, the development achieves achieve design excellence under the provisions of Clause 8.4.
- Additional information has been provided to address concerns previously raised by Councils internal assessment staff and conditions of consent have been recommended to be imposed and are incorporated in the Schedule B conditions.

Consequently, the site is suitable for the proposed development and will be in the public interest. Accordingly, the DA is worthy of support and is recommended for approval subject to recommended conditions.

Given the time constraints associated with a Section 8.2 Review and the additional time likely required to resolve the outstanding VPA and Council referral matters, it is recommended that the SWCPP determine the application by Deferred commencement approval.



## 5. Recommendation for Approval

**THAT** the South Western City Planning Panel (SWCPP), exercising the functions of Council, being satisfied that Concurrence to the granting of consent has been obtained from TNSW pursuant to Section 2.99(3) of *SEPP (Transport and Infrastructure) 2021*.

**THAT** the South Western City Planning Panel (SWCPP), exercising the functions of Council, being satisfied that the community infrastructure requirements under Clause 8.7(3) of the Penrith LEP 2010 have been satisfactorily resolved.

**THAT** the South Western City Planning Panel (SWCPP), as the consent authority, is of the opinion that the variation request submitted under Clause 4.6 to vary the Sun Access development standard in Clause 8.2 of Penrith Local Environmental Plan 2010 has met the requirements of Clause 4.6(3). The Panel is also of the opinion that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the variation to the development standard.

**THAT** the South Western City Planning Panel (SWCPP), exercising the functions of Council, being satisfied that the proposed development would be in the public interest, grant deferred commencement development consent to REV23/0007 (relating to DA22/0213) for the construction of a mixed-use development over Lot 3003 of DP1184498, on land at 184 Lord Sheffield Circuit, Penrith, NSW, 2750, subject to the terms provided in Appendix A. Upon satisfaction of Schedule A, the conditions in Schedule B will apply Pursuant to Section 4.53 of the EP&A Act 1979, this development consent lapses if the approved works are not physically commenced within five years of the date on which the development consent becomes operable.

That those individuals that made a submission be advised of the decision.

### **PURSUANT TO SECTION 4.53 THIS CONSENT LAPSES IF:**

1. The deferred commencement terms are not satisfied within 5 years of the date of determination; and,
2. The approved works are not physically commenced within five years from the date on which the development consent becomes operable.

**The conditions of the consent are set out as follows:**

### **SCHEDULE A: Deferred Commencement – Terms to be satisfied prior to the consent becoming operable:**

The following deferred commencement terms must be complied with to the satisfaction of Council within five (5) years of the date of issue of this deferred commencement consent:

In order for the consent to become operable.

A Voluntary Planning Agreement is to be entered into with Council (at no cost to Council) and executed, for:

#### **A SPECIAL (VOLUNTARY PLANNING AGREEMENT)**

Prior to the operation of the consent, a Voluntary Planning Agreement is to be entered into with Penrith City Council (at no cost to Council) and executed, in accordance with the offer made by the applicant pursuant to Clause 8.7 of the *Penrith Local Environmental Plan 2010*.

**Reason:** Statutory requirement.

Once the development consent becomes operable, the conditions in Schedule B will apply.

Upon written receipt from the Council that the deferred commencement terms in Schedule A have been satisfied, the following conditions will apply:

### **SCHEDULE B - The standard conditions of consent are set out in Appendix A below.**

# **Appendix A**

## **Draft Conditions of Consent**

**Prepared by Gyde Consultancy**

**GYDE**

|                                       |  |
|---------------------------------------|--|
| <b>SWCPP Ref. No.</b>                 | PPSSWC-389   |
| <b>Application Number</b>             | DA22/0213 (REV23/0007)   |
| <b>Independent Assessor</b>           | Gyde Consultancy – Stephen Kerr (Executive Director), Tina Christy (Director) & Camilla Firman (Senior Associate). |
| <b>Land to be developed (Address)</b> | 184 Lord Sheffield Circuit, Penrith, NSW, 2750 (Lot 3003 of DP1184498)   |

**PART A: SCHEDULE A: Deferred Commencement – Terms to be satisfied prior to the consent becoming operable:**

- A1** The following deferred commencement terms must be complied with to the satisfaction of Council within five (5) years of the date of issue of this deferred commencement consent.

**Prior to the operation of the consent**, a Voluntary Planning Agreement is to be entered into with Penrith City Council (at no cost to Council) and executed, in accordance with the offer made by the applicant pursuant to Clause 8.7 of the *Penrith Local Environmental Plan 2010*.

Once the development consent becomes operable, the conditions in Part B will apply.

Upon written receipt from Penrith City Council that the deferred commencement terms in Schedule A have been satisfied, the following conditions will apply:

**PART B - The standard conditions of consent are set out as follows:**

- B1** The development must be implemented substantially in accordance with the following stamped approved plans and supporting documents received with the application, except as may be amended in red on the approved plans or by the following conditions in this consent:

Plans

| Plan Title                        | Plan No.    | Prepared By            | Version | Dated            |
|-----------------------------------|-------------|------------------------|---------|------------------|
| Cover Sheet                       | DA-01-00001 | Crone Partners Pty Ltd | Rev D   | 20 March 2024    |
| Survey Plan                       | DA-01-10000 | Crone Partners Pty Ltd | Rev A   | 17 November 2021 |
| Location and Site Plan            | DA-01-10001 | Crone Partners Pty Ltd | Rev A   | 17 November 2021 |
| Site Analysis                     | DA-01-10002 | Crone Partners Pty Ltd | Rev A   | 17 November 2021 |
| Proposed Floor Plan – Level B1    | DA-01-10509 | Crone Partners Pty Ltd | Rev B   | 6 March 2024     |
| Proposed floor plan -ground floor | DA-01-10510 | Crone Partners Pty Ltd | Rev C   | 6 March 2024     |
| Proposed Floor Plan – Level 01    | DA-01-10511 | Crone Partners Pty Ltd | Rev C   | 20 March 2024    |
| Proposed Floor Plan – Level 02    | DA-01-10512 | Crone Partners Pty Ltd | Rev B   | 6 March 2024     |
| Proposed Floor Plan – Level 03    | DA-01-10513 | Crone Partners Pty Ltd | Rev B   | 14 December 2023 |

|   |                            |                        |       |                  |
|---|----------------------------|------------------------|-------|------------------|
| Proposed Floor Plan – Level 04                      | DA-01-10514                | Crone Partners Pty Ltd | Rev B | 14 December 2023 |
| Proposed Floor Plan – Level 05                      | DA-01-10515                | Crone Partners Pty Ltd | Rev B | 14 December 2023 |
| Proposed Floor Plan – Level 06 to Level 32          | DA-01-10516 to DA-01-10542 | Crone Partners Pty Ltd | Rev A | 17 November 2021 |
| North Elevation                                     | DA-01-21501                | Crone Partners Pty Ltd | Rev B | 14 December 2023 |
| South Elevation                                     | DA-01-21502                | Crone Partners Pty Ltd | Rev A | 17 November 2021 |
| East Elevation                                      | DA-01-21503                | Crone Partners Pty Ltd | Rev B | 14 December 2023 |
| West Elevation                                      | DA-01-21504                | Crone Partners Pty Ltd | Rev A | 17 November 2021 |
| Section A   | DA-01-31501                | Crone Partners Pty Ltd | Rev A | 17 November 2021 |
| Section B   | DA-01-31502                | Crone Partners Pty Ltd | Rev A | 17 November 2021 |
| Section C   | DA-01-31503                | Crone Partners Pty Ltd | Rev A | 17 November 2021 |
| Section D   | DA-01-31504                | Crone Partners Pty Ltd | Rev A | 17 November 2021 |
| Elevation & Section Details – Tower A               | DA-01-40001                | Crone Partners Pty Ltd | Rev A | 17 November 2021 |
| Elevation & Section Details – Tower B               | DA-01-40002                | Crone Partners Pty Ltd | Rev A | 17 November 2021 |
| Elevation & Section Details - Shopfronts            | DA-01-40003                | Crone Partners Pty Ltd | Rev A | 17 November 2021 |
| Elevation & Section Details - Supermarket           | DA-01-40004                | Crone Partners Pty Ltd | Rev A | 17 November 2021 |
| Shopfronts Moodboard Sheet 1 and Sheet 2            | DA-01-40005 to DA-01-40006 | Crone Partners Pty Ltd | Rev A | 17 November 2021 |
| GFA Sheet 1 to Sheet 4                              | DA-01-70501 to DA-01-70504 | Crone Partners Pty Ltd | Rev A | 17 November 2021 |
| Shadow Analysis Sheet 1 & Sheet 2 – Winter Solstice | DA-01-70520 to DA-01-70521 | Crone Partners Pty Ltd | Rev A | 17 November 2021 |
| Communal Open Space                                 | DA-01-70522                | Crone Partners Pty Ltd | Rev A | 17 November 2021 |

|                                      |                                |                        |       |                  |
|--------------------------------------|--------------------------------|------------------------|-------|------------------|
| Cross Ventilation                    | DA-01-70530                    | Crone Partners Pty Ltd | Rev A | 17 November 2021 |
| Solar Access Sheet 1 to Sheet 3      | DA-01-70540 to DA-01-70543     | Crone Partners Pty Ltd | Rev A | 17 November 2021 |
| Views from Sun - Sheet 1 and Sheet 2 | DA-01-70544 & DA-01-70545      | Crone Partners Pty Ltd | Rev A | 17 November 2021 |
| Adaptable Apartments - TA            | DA-01-70561                    | Crone Partners Pty Ltd | Rev A | 17 November 2021 |
| Adaptable Apartments - TB            | DA-01-70562                    | Crone Partners Pty Ltd | Rev A | 17 November 2021 |
| Silver Apartments                    | DA-01-70563 to DA-01-70564     | Crone Partners Pty Ltd | Rev A | 17 November 2021 |
| Schedules Sheet 1 to Sheet 2         | DA-01-A-70565 to DA-01-A-70566 | Crone Partners Pty Ltd | Rev B | 14 December 2023 |

### Documents

| Document Title  | Reference  | Prepared By                           | Version | Dated            |
|---|--|---------------------------------------|---------|------------------|
| Flood Emergency Response Plan                           | SY210649   | Northrop Consulting Engineers Pty Ltd | B       | 15 November 2021 |
| Noise Impact Assessment (Stage 1)                       | 20210908.1/1911A/R1/AS                             | Acoustic Logic Pty Ltd                | REV 1   | 19 November 2021 |
| Solar Light Reflectivity Study                          | WD459-07F04(REV1)- SR Report - Stage 2             | Windtech Consultants                  | Rev 2   | 6 December 2021  |
| Pedestrian Wind Assessment                              | WD459-07F01(REV1)- WS Report – Stage 1 1.DOCX      | Windtech Consultants                  | Rev 1   | 10 December 2021 |
| Transport for NSW (Sydney Trains) Determination Letter  | -  | Transport for NSW (Sydney Trains)     | -       | 28 March 2024    |
| Endeavour Energy – Letter and General Terms of Approval | -  | Endeavour Energy                      | -       | 9 February 2024  |
| Stormwater Management System Concept Plans              | Project number 17-450, drawing numbers DAC101-111, | AT&L                                  | Issue E | 30 November 2021 |
| Stage 1 Civil and Stormwater                            | Project number 17-450                              | AT&L                                  | V5      | 30 November 2021 |



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| Management Report |  |  |  |  |
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- B2** **Prior to the issue of any Occupation Certificate or Subdivision Certificate**, a reference to the executed Voluntary Planning Agreement must be recorded on the title of the affected allotments.
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- B3** **Prior to issue of any Occupation Certificate**, the applicant must deliver the community infrastructure works as detailed in the Voluntary Planning Agreement as part of the development.
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- B4** **Prior to the commencement of any works and prior to the issue of a Construction Certificate (whichever comes first)**, the Principal Certifier is to ensure that a letter has been received from Penrith City Council's Development Services Manager attesting that the development is consistent with the Adaptive Management Framework and dwelling thresholds detailed in the Development Assessment Guideline: An Adaptive Response to Flood Risk Management for Residential Development in the Penrith City Centre, published by the (then) NSW Department of Planning and Environment on 28 June 2019, in accordance with Section 61(6) of the *Environmental Planning and Assessment Regulation 2021*. The abovementioned letter is to be dated no earlier than three (3) months prior to the issue of a Construction Certificate or commencement of works.
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- B5** **Prior to the occupation of all tenancies (other than residential dwellings) within the building**, a separate approval via a development consent or complying development certificate is to be obtained for each tenancy for their fit out and use.
- A Noise Impact Assessment carried out by an appropriately qualified acoustic consultant is be required and a Noise Impact Assessment report is required to be submitted as part of any future development application(s) associated with the tenancies within the building, to comply with accepted industry standards for uses adjoining residential development.
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- B6** **Prior to the issue of an Occupation Certificate for Stage 1**, and where Stage 2 is yet to commence or is yet to be completed, a Staged Construction Management Plan is to be prepared, submitted and approved by the Certifying Authority.
- This Plan is required to address construction and site management measures that ensure that works associated with Stage 2 construction will not adversely impact on the residential components and open space areas of the Stage 1 development. The Plan must address, but is not limited to, the following:
- a) Noise mitigation and management measures between Stage 1 and Stage 2 works
  - b) Security and safety fencing which ensures that the function and embellishment of the podium open space constructed in Stage 1 is not adversely impacted by Stage 2 works
  - c) Site management measures including contact details for incident reporting and a response protocol - Suitable management of construction lighting from Stage 2 works on the residential units within Stage 1
  - d) Construction vehicle management that does not impact access and circulation of traffic associated with Stage 1 component of the development.
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- B7** No signage is permitted to be fixed to the awning fascia. No signage is to be positioned above the awning or to the colonnade brickwork or residential building. All signage is to be located under the awning and is to be 'hamper style' perpendicular to the elevation of the building, to which it is attached.
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**B8** A separate development approval for the erection of a sign or advertising structure, other than an advertisement listed as exempt development, is to be obtained.

**B9** **Prior to the issue of a Construction Certificate**, a signage strategy is to be submitted to Council for approval in accordance with Clause E11.8.4.13 of *Penrith Development Control Plan 2014*. The strategy is to:

- Identify the preferred locations and quantum of all building identification and business identification signage;
- Include a palette of preferred materials, signage types and graphic style;
- Outline any illumination requirements and/or restrictions so as to consider its impact on adjacent properties and uses;
- Promote a high quality, co-ordinated approach to signage within the Village Centre and minimise visual clutter; and
- Include details of any way-finding signage.

**B10** **Prior to the issue of an Occupation Certificate**, a lighting system is to be installed for the development to provide uniform lighting across common areas and driveways. Exterior lighting is to be located and directed in such a manner so as not to create a nuisance to surrounding land uses. The lighting is to be the minimum level of illumination necessary for safe operation. The lighting must be in accordance with *AS 4282 - Outdoor Lighting Obtrusive Effects*.

**B11** **Prior to the issue of a Construction Certificate**, evidence of compliance with the *Design and Building Practitioners - Particulars for Regulated Designs Order 2022* is to be provided to the satisfaction of the Certifying Authority, for any excavation, shoring and anchoring works that traverse a property boundary.

**B12** **Prior to the erection of any crane or any temporary construction structure** at a height greater than the roof of the subject development, written notice must be provided to Council and the Nepean Blue Mountains Local Health District at least 21 days prior to the erection, indicating at least the following:

- Name of responsible company and relevant contact details.
- Dimensions (height, length, etc).
- Position and orientation of boom/jib and counter boom/jib.
- Length of time that such a crane or structure will be erected on the site.
- The management plan and measures that will ensure that the crane or structure will be of least possible impact on flight operations for Ambulance NSW.

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

- Be equipped with medium intensity steady red lighting positioned at the highest point and both ends of the boom/jib and counter boom/jib, such that the lighting will provide an indication of the height of the crane and the radius of the crane boom/jib. Such lighting, which should be displayed at all times of the day and night, should be positioned so that when displayed it is visible from all directions.
- When a crane is unattended for an extended period of time ensure the crane's boom is retracted and lowered as far as possible.

- No part of the crane or structure is to extend beyond the boundaries of the subject development site unless approved by Penrith City Council in consultation with the Nepean Blue Mountains Local Health District. Any encroachment beyond the boundaries of the subject site is to be the minimum amount required to facilitate construction and access to all parts of the construction site.

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**B13** A minimum of thirty-two (32) apartments is to be constructed as adaptable apartments and sixty-four (64) 'silver' apartments' to meet the requirements for persons with a disability and in accordance with the stamped approved plans. The adaptable units must each be allocated an accessible car parking space compliant with *AS 2890.6 Parking facilities – Off-street parking for people with disabilities* and must be evenly distributed throughout the building and not be concentrated in any one area or level.

**The Construction Certificate application must be accompanied by certification** from a person suitably qualified by the Association of Consultants in Access Australia confirming that the adaptable dwellings are capable of being modified, when required by the occupant, to comply with *the Australian Housing Standard (AS 4299-2009)*. A Compliance Certificate in this regard, is to be provided **prior to the issue of an Occupation Certificate**.

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**B14** **Prior of the issue of a Construction Certificate**, a final Materials and Finishes Schedule is to be submitted to and approved by the Manager of Development Services at Penrith City Council.

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**B15** The surface treatment of all car parking areas is to be a brushed or matte surface to reduce the impact of noise from the turning movements of vehicles.

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**B16** **Prior to the issue of a Construction Certificate**, the Principal Certifying Authority is to be provided with written confirmation from the NSW Department of Primary Industry confirming that works approved under this consent do not require their advice or a Controlled Activity Approval (CAA).

Advisory Note:

In the case where site conditions vary from that identified within the Geotechnical Report, as a result of further investigations or during the construction works, the advice of the Department of Primary Industries is to be sought as to whether a CAA is required and if so, the necessary approvals are obtained and complied with throughout the works.

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**B17**

- a) The construction of the development must implement the recommendations in the Executive Summary of the approved Pedestrian Wind Assessment prepared by Windtech, dated 10 December 2021. Details are to be shown with the Construction Certificate plans prior to the issue of Construction Certificate.
- b) The construction of the development must implement the recommendations as outlined in the Executive Summary of the Solar Light Reflectivity Study prepared by Windtech, dated 6 December 2021. Details are to be shown with the Construction Certificate plans prior to the issue of Construction Certificate.

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**B18** All roof mounted plant, ducting or services infrastructure is to be screened from view. No approval is granted for the installation of ducting, conduit, plant or services infrastructure on the external facades of the building, unless it is indicated on the stamped approved plans.

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**B19** **Prior to the issue of a Construction Certificate**, the Principal Certifying Authority is to ensure that a set of stamped approved public domain plans and supportive documentation has been prepared for the site and has been reviewed and approved by the Manager of Development Services at Penrith City Council. The submitted public domain documents are to include the following:

Public Domain General

- a) The documents are to identify the extent of public domain works being undertaken and are to include pavement treatments, street trees and landscape elements, water sensitive urban design (WSUD) elements, lighting locations and any street furniture and public art adjacent to all boundaries of the site.
- b) Documents is to be accompanied by detailed sections through typical and non-typical thresholds and details of landscaping and planters and maintenance and irrigation details are to be provided,
- c) Details are to be provided as to any interim and final paving finishes proposed,
- d) All line marking and relevant roadwork and paving details are to be shown and plans are to be consistent with approved stormwater, architectural, landscape and civil plans.

#### Street Tree Planting

- e) The following street trees are to be planted in the following frontages at minimum:
  - i. Six (6) street trees are to be planted along the Dunshea Street frontage of the site,
  - ii. Ten (10) street trees are to be planted along the Lord Sheffield Circuit frontage of the site, and
  - iii. Three (3) street trees are to be planted in the through site link.

#### Advisory Notes:

- The public domain plans is to be prepared in consultation with Council's Landscape Architect and works are to be designed in accordance with the Public Domain Lighting Policy.
- The existing conditions along all frontages are to be upgraded as part of the development proposal and plans are to indicate that the overall design quality of the adjacent pubic domain is elevated.
- Penrith City Council reserves the right to request amendments to the submitted documentation which is to be elevated to Construction Certificate and/or For Tender quality.

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| <b>B20</b> | The development must be undertaken in accordance with the conditions issued by Transport for NSW (Sydney Trains) in its letter dated 28 March 2024.  |
| <b>B21</b> | The proponent is to comply with the applicable conditions of consent of Major Projects Approval No. MP10-0075 and the Statement of Commitments included in Schedule 3 of MP-10-0075, in particular those related to site contamination, unexpected finds and the discovery of unexploded ordnance.   |
| <b>B22</b> | In accordance with Schedule 3 (Statement of Commitments) of Major Projects Approval No. MP10-0075, evidence of the preparation of a Transport Access Guide that is to be made available to residents of the development, is to be provided to the Principal Certifying Authority <b>prior to the issue of an Occupation Certificate</b> .  |
| <b>B23</b> | <b>Prior to the issue of a Construction Certificate</b> , a design verification statement from a qualified designer is to be submitted. The design verification statement must verify that the Construction Certificate and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles set out in Part 2 of <i>State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development</i> . |
| <b>B24</b> | <b>Prior to the issue of an Occupation Certificate</b> , a design verification statement from a qualified designer is to be submitted. The design verification statement must verify that the development achieves the design quality shown in the approved Construction Certificate plans and   |

specifications, having regard to the design quality principles set out in Part 2 of *State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development*.

- B25** A written statement confirming consistency with the design quality/excellence demonstrated in the development consent plans is to be obtained from the project Design Integrity Panel (DIP) and provided to the certifier at the following stages:
- Prior to the issue of a Construction Certificate;
  - Prior to the issue of an Occupation Certificate; and
  - Prior to the lodgement of any Section 4.55 modification applications.

### Heritage/Archaeological relics

- B26** If any archaeological relics are uncovered during the course of the works, no further work must be undertaken until further directed by Penrith City Council or the NSW Heritage Office.
- The applicant is advised that depending on the possible significance of the relics, an archaeological assessment and an excavation permit under the *Heritage Act 1977* may be required before any further work can be recommenced in that area of the site.

### Building Survey

#### General

- B27**
- a) The development must not be used or occupied **until an Occupation Certificate has been issued.**
  - b) A Construction Certificate must be obtained **prior to commencement of any building works.**

#### BCA Issues

- B28** All aspects of the building design must comply with the applicable performance requirements of the Building Code of Australia so as to achieve and maintain acceptable standards of structural sufficiency, safety (including fire safety), health and amenity for the on-going benefit of the community. Compliance with the performance requirements can only be achieved by:
- a) Complying with the deemed to satisfy provisions, or
  - b) Formulating an alternative solution which:
    - Complies with the performance requirements, or
    - Is shown to be at least equivalent to the deemed to satisfy provision, or
  - c) A combination of (a) and (b).

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

#### Construction

- B29** Stamped plans, specifications, a copy of the development consent, the Construction Certificate and any other Certificates to be relied upon is to be available on site at all times during construction.
- The following details are to be displayed in a maximum of two (2) signs to be erected on the site:
- a) The name of the Principal Certifying Authority, their address and telephone number,



- b) The name of the person in charge of the work site and telephone number at which that person may be contacted during work hours,
- c) That unauthorised entry to the work site is prohibited,
- d) The designated waste storage area must be covered when the site is unattended, and
- e) All sediment and erosion control measures must be fully maintained until completion of the construction phase.

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

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

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

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**B30 Prior to the commencement of construction works:**

- a) Toilet facilities at or in the vicinity of the work site is to be provided at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be:
  - A standard flushing toilet connected to a public sewer, or
  - If that is not practicable, an accredited sewage management facility approved by the council, or
  - Alternatively, any other sewage management facility approved by council.
- b) All excavations and back filling associated with the erection or demolition of a building must be executed safely and in accordance with the appropriate professional standards. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
- c) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:
  - Must preserve and protect the building from damage, and
  - If necessary, must underpin and support the building in an approved manner, and
  - Must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished. The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land, (includes a public road and any other public place).
- d) If the work involved in the erection or demolition of a building is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or involves the enclosure of a public place, a hoarding or fence must be erected between the work site and the public place:
  - If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place,

- The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place, and

Any such hoarding, fence or awning is to be removed when the work has been completed.

### Certification

**B31** **Prior to the commencement of any earthworks or construction works on site**, the proponent is to:

- Employ a Principal Certifying Authority to oversee that the said works carried out on the site are in accordance with the development consent and related Construction Certificate issued for the approved development, and with the relevant provisions of the *Environmental Planning and Assessment Act 1979* and accompanying Regulation, and
- Submit a Notice of Commencement to Penrith City Council.

The Principal Certifier is to submit to Council an "Appointment of Principal Certifying Authority" in accordance with Section 81A of the *Environmental Planning and Assessment Act 1979*.

#### Information to accompany the Notice of Commencement

Two (2) days before any earthworks or construction/demolition works are to commence on site (including the clearing site vegetation), the proponent must submit a "Notice of Commencement" to Council in accordance with Section 81A of the *Environmental Planning and Assessment Act 1979*.

### Utility Services

**B32** A Section 73 Compliance Certificate under the *Sydney Water Act 1994* is to be obtained from Sydney Water. The application must be made through an authorised Water Servicing Coordinator. Please refer to "Your Business" section of Sydney Water's website at [www.sydneywater.com.au](http://www.sydneywater.com.au) then the "e-developer" icon, or telephone 13 20 92.

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

**B33** The development must be undertaken in accordance with the General Terms of Approval issued by Endeavour Energy in its letter dated 9 February 2024.

**B34** **Prior to the issue of a Construction Certificate**, a written clearance is to be obtained from Endeavour Energy stating that electrical services have been made available to the development or that arrangements have been entered into for the provision of services to the development.

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

**B35** **Prior to the issue of a Construction Certificate**, the Principal Certifying Authority is to be satisfied that telecommunications infrastructure may be installed to service the premises which complies with the following:

- The requirements of the *Telecommunications Act 1997*;
- For a fibre ready facility, the NBN Co's standard specifications current at the time of installation; and For a line that is to connect a lot to telecommunications infrastructure external to the premises, the line is to be located underground.

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

- B36** **Prior to the issue of an Occupation Certificate**, written certification from all relevant service providers that the telecommunications infrastructure is installed in accordance with the requirements above and the applicable legislation at the time of construction, must be submitted to the Principal Certifying Authority.

### Construction

- B37** The Construction Certificate must be accompanied by certification from an accredited access consultant confirming that the adaptable dwellings and allocated car parking spaces associated with the adaptable dwellings are capable of being modified, when required by the occupant, to comply with the Australian Housing Standard (AS 4299- 2009).

### Landscaping

- B38** All landscape works are to be constructed in accordance with the stamped approved plan and ensure compliance with Chapter C6 - Landscape Design and Section 2.9 of Appendix F4 - Technical Information of *Penrith Development Control Plan 2014*.

Landscaping must be maintained:

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

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

- B39** On completion of the landscape works associated with the development and **prior to the issue of an Occupation Certificate** for the development, a Landscape Implementation Report must be submitted to the Principal Certifying Authority attesting to the satisfactory completion of the approved landscaping works for the development. This report is to be prepared by a suitably qualified and experienced landscape professional.

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

- B40** All landscape works are to meet industry best practice and the following relevant Australian Standards:
- AS 4419 Soils for Landscaping and Garden Use,
  - AS 4454 Composts, Soil Conditioners and Mulches, and
  - AS 4373 Pruning of Amenity Trees.

### Development Contributions

- B41** This condition is imposed in accordance with Condition C4 (as amended) of MP10-0075 (Thornton Part 3A Concept Plan approval) and Penrith City Council's Section 7.11 Contributions Plan for District Open Space.

Based on the current rates applicable to contributions payable under this consent and plan, \$709,104 is to be paid to Council prior to the issue of a Construction Certificate for this development (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment based on the rate for the current quarterly period.

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

### Certification

- B42** An Occupation Certificate is to be obtained from the Principal Certifying Authority on completion of all works and **prior to the occupation of the building/tenancy and commencement of the approved use**. The Occupation Certificate must not be issued if any conditions of this consent, but not the conditions relating to the operation of the development, are outstanding, and/or if the development does not comply with the provisions of the Environmental Planning and Assessment Act and Regulation.

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

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

### Health Matters and OSSM installations

- B43** The construction, fit out and finishes of all food premises, including the childcare centre and food preparation areas within the level one indoor recreation facility, must comply with Food Safety Standard 3.2.3 of the *Australian and New Zealand Food Standards Code and AS4674-2004 Design, Construction and Fit out of Food Premises*. Detailed design plans and information must be provided to the Principal Certifying Authority for approval **prior to issuing of a Construction Certificate**.

### Environmental Health - Waterways

- B44** **Prior to the issue of a Construction Certificate**, an updated Stormwater report and plans that demonstrates compliance with Sections 3.1 of Council's WSUD Policy and BASIX Certificate is required. A minimum of 80% of non-potable water demands for the commercial elements of the development is to be serviced by harvested rainwater
- B45** **Prior to the issue of a Construction Certificate** a detailed Water Management Strategy is to be submitted to Council's Development Services Manager for approval. The Strategy must include details on how the central wetland and central water feature will be protected from pollutants and sediment arising during the building and construction stages of the development. The Strategy must include details of proposed treatment of water that will be discharged, as well as details of monitoring and reporting of water that is discharged off-site during the construction period.
- B46** The stormwater management system is to be provided generally in accordance with the concept plan/s lodged for development approval, prepared by AT&L, Project number 17-450 drawing numbers DAC101- 111, Issue E dated 30/11/2021, and commitments made in Stage 1 Civil and Stormwater Management Report prepared by AT&L, Project number 17-450 dated 30/11/2021.
- Engineering plans and supporting calculations for the stormwater management systems are to be prepared by a suitably qualified person and is to accompany the application for a Construction Certificate.

**Prior to the issue of a Construction Certificate** the Certifying Authority is to ensure that the stormwater management system has been designed in accordance with Council's *Stormwater Drainage for Building Developments and Water Sensitive Urban Design Policy*.

- B47** **Prior to commencement of any works associated with the development**, sediment and erosion control measures must be installed in accordance with the approved Construction Certificate or Subdivision Works Certificate and to ensure compliance with the *Protection of the Environment Operations Act 1997* and Managing Urban Stormwater series from the Office of Environment and Heritage.

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

- B48** **Prior to the issue of an Occupation Certificate**, works-as-executed drawings, final operation and maintenance management plans and any other compliance documentation must be submitted to the Principal Certifying Authority in accordance with Penrith City Council's Engineering Construction Specification for Civil Works, WSUD Technical Guidelines and Stormwater Drainage for Building Developments.

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

- B49** **Prior to the issue of any Occupation Certificate**, the Principal Certifying Authority is to ensure that the stormwater management system (including water sensitive urban design measures):

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

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

- B50** **Prior to the issue of an Occupation Certificate** a restriction as to user and positive covenant relating to the stormwater management systems (including water sensitive urban design measures) is to be registered on the title of the property. The restriction as to user and positive covenant is to be in Penrith City Council's standard wording as detailed in Penrith City Council's *Stormwater Drainage Specification for Building Development – Appendix F*.

- B51** The stormwater management systems is to continue to be operated and maintained in perpetuity to the satisfaction of Council in accordance with the final operation and maintenance management plan. Regular inspection records are required to be maintained and made available to Council upon request. All necessary improvements are required to be made immediately upon awareness of any deficiencies in the treatment measure/s.

### Public Domain Amenity & Safety

- B52** The following community safety and crime prevention through environmental design (CPTED) requirements are required to be implemented:

a) Lighting

- i. All outdoor/public spaces throughout the development (including the pedestrian through-link and building/car park entrances) must be lit to the minimum Australian Standard of AS 1158. Lighting must be consistent in order to reduce the contrast



between shadows and illuminated areas and must be designed in accordance with *AS4282 - Control of the obtrusive effects of outdoor lighting*.

b) Basement Car Parking

- i. A security system must be installed on any pedestrian and vehicle entry/exit points to the car park, including the lifts and stairwells, to minimise opportunities for unauthorised access.
- ii. All areas of the car park must be well-lit, with consistent lighting to prevent shadowing or glare.
- iii. Car park surfaces including walls and ceilings are to be light coloured with details included with the Construction Certificate application.
- iv. Resident storage facilities must be well secured and well-lit to minimise opportunities for theft.

c) Building Security & Access Control

- i. An electronic access and audio/video intercom system (with code or card locks or similar) must be installed for all entries to the buildings including the car parks and common areas intended for resident use only, **prior to the issue of an Occupation Certificate**.
- ii. User/sensor electronic security gates/doors is to be installed at the carpark entrances/exits.
- iii. *AS 220 – door and window locks* must be installed in all dwellings and retail/commercial premises.
- iv. Each individual apartment is to be clearly numbered and each level of the building is to be easily identifiable when viewed from the lift.
- v. CCTV is to be provided to cover communal public space areas, including basement parking entry/exit points. Cameras must be of sufficient standard to be useful for police in the event of criminal investigations. Lighting must be provided to support cameras at night (alternatively infra-red cameras are recommended). Signage must be displayed to indicate that CCTV cameras are in use.
- vi. CCTV is to be installed along all frontages of the site and in the location of the ground floor commercial vehicle entry points.
- vii. Public access to the interface between the rail corridor and the southern side of the development must be restricted.
- viii. Glazing to the ground floor entry lobby is to be clear and unobscured to allow a view to the street and is not to be controlled by gates or have shutters or security bars.
- ix. The pedestrian through site link is to be accessible 24/7 and not be controlled by gates or have shutters or security bars. Details are to be included in Plan of Management issued to Penrith Council **prior to the issue of a Construction Certificate**.
- x. The pedestrian through site link is to be patrolled by security after hours. Details, including but not limited to frequency of patrols and duties of Building Manager Duties, are to be included in the Plan of Management issued to Penrith Council **prior to the issue of a Construction Certificate**.

d) Graffiti/Vandalism

- i. The finishes of all structures and buildings are to be maintained at all times and any graffiti or vandalism immediately removed/repaired.
  - ii. Graffiti resistant coatings must be used to external surfaces where possible, including signage, furniture, retaining walls etc.
  - iii. Procedures must be in place to ensure the prompt removal and/or repair of graffiti or vandalism to the buildings, fencing, and common areas. This includes reporting incidents to police and/or relevant authorities details are to be outlined in the Plan of Management.
  - iv. Retailers must secure or store away all outdoor furniture after hours to minimise opportunities for loitering and vandalism.
- e) Landscaping
- i. All vegetation must be regularly pruned to ensure that sight lines are maintained.

### Engineering

**B53** All roadworks, stormwater drainage works, signage, line marking, associated civil works and dedications required to effect the consented development are to be undertaken by the applicant at no cost to Penrith City Council.

**B54** An Infrastructure Restoration Bond is to be lodged with Penrith City Council for development involving works around Penrith City Council's Public Infrastructure Assets. The bond is to be lodged with Penrith City Council **prior to commencement of any works on site or prior to the issue of any Construction Certificate**, whichever occurs first. The bond and applicable fees are in accordance with Council's adopted Fees and Charges.

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

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

**B55** Lodgement of relevant Section 138 Roads Act applications, including payment of application and Council fees together with any applicable bonds, is to be lodged with and approved by Penrith City Council (being the Roads Authority for any works required in a public road).

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

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

- a) Construction of driveways (including kerb reinstatement of redundant driveway crossings and reconstruction of any affected footpaths and/or cycleways)
- b) Temporary road reserve occupancies
- c) Road reserve openings for the installation of:
  - i. Utilities (water, sewer, power, telecommunications)
  - ii. Private stormwater connections to the kerb (including stormwater connection to Penrith City Council owned drainage)
  - iii. Reconstruction of concrete footpath and/or cycleways across the frontage

- d) Establishment of a construction work zone
- e) Establishment of road reserve hoardings and temporary structures/fencing etc.
- f) Operation of a tower crane over the road reserve
- g) Temporary ground anchors that encroach below the road reserve (for basement construction).

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

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

Note:

- Separate approval may be required from Transport for NSW for classified roads.
- All works associated with the Roads Act approval(s) must be completed prior to the issue of any Occupation Certificate or Subdivision Certificate as applicable.
- On completion of any awning over the road reserve, a certificate from a practicing structural engineer certifying the structural adequacy of the awning is to be submitted to Council before Council will inspect the works and issue its final approval under the Roads Act.

**B56** **Prior to the issue of any Construction Certificate**, the Certifier is to ensure that a Section 138 Roads Act application, including payment of application and inspection fees, has been lodged with and approved by Penrith City Council (being the Roads Authority under the Roads Act) for the following works:

- a) Relocation of existing southern pedestrian crossing within Dunshea Street further north to the frontage of Tower B.
- b) Upgrade of 2 x pedestrian crossings (one of which to be relocated) within Dunshea Street and 1 x pedestrian crossing within Lord Sheffield Circuit to be fully compliant raised threshold pedestrian crossings, including street lighting, signage and linemarking.
- c) Provision of pedestrian fencing within Dunshea Street, fronting the commuter car park directing pedestrians to the pedestrian crossings on Dunshea Street.

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

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

Note:

- Where Penrith City Council is the Certifier for the development, the Roads Act approval for the above works may be issued concurrently with the Construction Certificate or Subdivision Works Certificate.
- Separate approval may be required from the Transport for NSW for classified roads.
- All works associated with the Roads Act approval must be completed prior to the issue of any Occupation Certificate or Subdivision Certificate as applicable.

**B57** The stormwater management system is to be consistent with the plan/s lodged for development approval, prepared by AT&L, reference number 17450, drawing number DAC101 to DAC111, revision E, dated 30/11/21.

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

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

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**B58** **Prior to the issue of any Construction Certificate**, the Certifier is to ensure that the stormwater drainage system for the basement car park has been designed in accordance with the requirements for pumped systems in *AS3500.3 Plumbing and Drainage – Stormwater Drainage*.

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**B59** **Prior to the issue of any Construction Certificate**, the Certifier is to ensure that building works have been designed outside of the extent of the existing electrical easement or appropriate owners consent is obtained for the works.

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**B60** **Prior to the issue of any Construction Certificate**, the Certifier is to ensure that the proposed building works are adequately flood proofed in accordance with Penrith City Council's Development Control Plan relating to flood liable land to the adopted flood planning level of RL 27.4m AHD (flood level + 0.5m freeboard).

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**B61** **Prior to the issue of any Construction Certificate**, the Certifier is to ensure that vehicular access, circulation, manoeuvring, pedestrian and parking areas associated with the subject development are in accordance with:

- i. Penrith City Council's Development Control Plan 2014,
- ii. *AS2890.1 - Parking facilities: Part 1: Off-street car parking*,
- iii. *AS2890.2 - Parking facilities, Part 2: Off-street commercial vehicle facilities*, and
- iv. *AS2890.6 - Parking facilities, Part 6: Off-street parking for people with disabilities*.

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**B62** **Prior to the commencement of any works on-site (including demolition works)**, a Construction Traffic Management Plan (CTMP) must be submitted to Penrith City Council's Asset Management Department for endorsement. The CTMP is to be prepared by a suitably qualified consultant with appropriate training and certification from Transport for NSW. The CTMP is to include details of any required road closures, work zones, loading zones and the like. Approval of the CTMP may require approval of the Local Traffic Committee.

Please contact Council's Asset Management Department on 4732 7777 and refer to Council's website for a copy of the Temporary Road Reserve Occupancy Application Form.

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**B63** **Prior to the issue of a Roads Act approval**, a Performance Bond is to be lodged with Penrith City Council for upgrade of pedestrian crossings within Dunshea Street and Lord Sheffield Circuit.

The value of the bond is to be determined in accordance with Penrith City Council's adopted Fees and Charges.

Note:

Contact Penrith City Council's Development Engineering Department on 4732 7777 for further information relating to bond requirements.

|            |  |
|------------|--|
| <b>B64</b> | <p><b>Prior to the issue of any Construction Certificate</b>, a geotechnical investigation report and strategy is to be submitted to the Certifier to ensure the stability of any adjoining Council owned infrastructure and surrounding developments. The technical direction GTD 2012/001 prepared by Transport for NSW is to be used as a guide for preparing the geotechnical investigation report and strategy.</p>   |
| <b>B65</b> | <p>The developer must undertake a dilapidation report for all surrounding buildings and Council owned infrastructure that confirms that no damage occurs due to the excavations associated with the development.</p> <p>If Council is not the Certifier for the development then the dilapidation report must be submitted to Council <b>prior to the issue of any Construction Certificate</b> and then updated and submitted prior to the issue of any Occupation Certificate confirming no damage has occurred</p>  |
| <b>B66</b> | <p><b>Prior to commencement of any works</b> associated with the development, a Traffic Guidance Scheme, including details for pedestrian management, is to be prepared in accordance with <i>AS1742.3 Traffic Control Devices for Works on Roads</i> and the Transport for NSW (TfNSW) publication <i>Traffic Control at Worksites Technical Manual</i>, and certified by an appropriately accredited TfNSW traffic controller.</p> <p>Traffic control measures must be implemented during the construction phase of the development in accordance with the certified plan. A copy of the plan is to be available on site at all times.</p> <p><u>Note:</u></p> <ul style="list-style-type: none"> <li>A copy of the Traffic Guidance Scheme is to accompany the Notice of Commencement to Penrith City Council.</li> <li>Traffic control measures may require road occupancy / road closure approvals issued under Section 138 of the Roads Act by Penrith City Council <b>prior to the issue of any Construction Certificate or Subdivision Works Certificate</b>.</li> </ul> |
| <b>B67</b> | <p><b>Prior to the issue of any Occupation Certificate</b>, the Principal Certifier is to ensure that all works associated with a S138 Roads Act approval or S68 Local Government Act approval have been inspected and signed off by Penrith City Council.</p>   |
| <b>B68</b> | <p><b>Prior to the issue of any Occupation Certificate</b>, Works As Executed drawings, final operation and maintenance management plans and any other compliance documentation for the stormwater management system must be submitted to the Principal Certifier in accordance with Penrith City Council's Engineering Construction Specification for Civil Works, Stormwater Drainage Specification for Building Developments and Water Sensitive Urban Design Technical Guidelines.</p> <p>An original set of Works As Executed drawings and copies of the final operation and maintenance management plans and compliance documentation is also to be submitted to Penrith City Council with notification of the issue of the Occupation Certificate where Penrith City Council is not the Principal Certifier.</p>  |
| <b>B69</b> | <p><b>Prior to the issue of any Occupation Certificate</b>, the Principal Certifier is to ensure that the flood control works have been satisfactorily completed in accordance with the approved Construction Certificate and the requirements of this consent; have met the design intent with regard to any construction variations to the approved design, and; Any remedial works required to be undertaken have been satisfactorily completed.</p> <p>Details of the approved and constructed system/s is to be provided as part of the Works As Executed drawings.</p>   |
| <b>B70</b> | <p><b>Prior to the issue of any Occupation Certificate</b>, a restriction on the use of land and positive covenant relating to the flood control works is to be registered on the title of the property. The</p>   |



restriction on the use of land and positive covenant is to be in Penrith City Council's standard wording as detailed in *Council's Stormwater Specification for Building Developments - Appendix F*.

- B71** **Prior to the issue of any Occupation Certificate** and installation of regulatory/advisory signage and line marking, plans are to be lodged with Penrith City Council and approved by the Local Traffic Committee.

Notes:

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

- B72** **Prior to the issue of any Occupation Certificate**, directional signage and line marking is to be installed indicating directional movements and the location of customer parking to the satisfaction of the Principal Certifier.

- B73** **Prior to the issue of any Occupation Certificate**, a Maintenance Bond is to be lodged with Penrith City Council for upgrade of pedestrian crossings within Dunshea Street and Lord Sheffield Circuit.

The value of the bond is to be determined in accordance with Penrith City Council's adopted Fees and Charges.

Note:

- Contact Penrith City Council's Development Engineering Department on 4732 7777 for further information relating to bond requirements.

## Waste

- B74** The following waste management requirements must be complied with and details of compliance demonstrated to Council **prior to the issue of a Construction Certificate**:

- a) Plans for installation of respective electrical requirements to operate each of the 23m<sup>3</sup> integrated auger compactor in accordance with section 3.12.2 of the 'Residential Flat Building Guideline Document' be provided to Council.
- b) Plans for Implementation of guide rails for each of the 23m<sup>3</sup> integrated auger compactors in accordance with section 3.12.4 of the 'Residential Flat Building Guideline Document' be provided to Council.
- c) Bin lifter specifications to be provided for each of the 23m<sup>3</sup> integrated auger compactors in accordance with section 3.12.5 of the 'Residential Flat Building Guideline Document' be provided to Council.
- d) Lease of the 23m<sup>3</sup> Compaction Unit including ongoing maintenance to be drawn up with Council's contractor in consultation with Council's Waste Manager for the provision of the compaction unit for waste servicing. Procurement of compaction unit to be commenced so as to allow for installation **prior to Occupation Certificate**.
- e) Along the route for the waste collection vehicles within the basement, unobstructed heights of 4.5m must be demonstrated including ramps (reference 2.3.1 of the *Residential Flat Building Development Waste Management Guidelines*).

- f) Updated swept path assessment to be provided to include the 10.2m truck with a width of 2.8m and additional clearance of 0.5m on either side of the truck to be included in the swept path. In addition, the integrated auger compactor rails to be included on the plan to allow for the swept path diagram to demonstrate the truck aligning with the integrated auger compaction unit guide rails for removal and replacement of the unit. See section 3.12.1 of the '*Residential Flat Building Guideline Document*' for truck specifications.
- g) A detailed plan showing the linear track systems and carousels to go under each chute for garbage and recycling bins (each linear track to hold 2 X 1100L bins and each carousel to hold 4 x 1100L bins) showing the chutes lining up with each "middle bin" on the linear track, required clearances for maintenance and a 1.8m clearance zone for manoeuvring of bins in front of the linear track systems/ carousels. The chute rooms will need to incorporate the following requirements into the design:
- i. Incorporate linear or circular carousel device under each individual chute (refer to section 3.8 of the "*Residential Flat Buildings Waste Management Guideline*" for design specifications).
  - ii. Minimum 0.9m clearance around the linear or circular carousel system to allow for manoeuvrability and system maintenance.
  - iii. 1.8m unobstructed clearance zone between the linear/circular track system and the entrance for access and manoeuvrability.
  - iv. The room to provide suitable dual door access for the service of bins with a minimum width of 1.8m and accessed by a 1.8m unobstructed access corridor.
  - v. Accommodate two (2) additional 1,100L service bins in each chute room with a minimum access clearance of 1.8m wide for the loading of 1100L bins onto the track system or carousel.
  - vi. The room is to be fully enclosed, walled and not permit through access to other on-site waste infrastructure. Separate unobstructed access is required.
  - vii. The floor is to be waterproofed, non-slip and sealed in accordance with the Building Code of Australia to permit the use of wash facilities. Weekly Waste Generation Volumes (L) 240L Bin Allocation 660L Bin Allocation 1100L Bin Allocation Residual 2 dwellings per bin 9 dwellings per bin 18 dwellings per bin Recycling 2 dwellings per bin 9 dwellings per bin 18 dwellings per bin.
  - viii. Floor is to be graded to a central drainage point connected to the sewer, enabling all waste to be contained and safely disposed of
  - ix. Partitioned and enclosed with a minimum 2.7m unobstructed internal room height in accordance with the Building Code of Australia.
  - x. The room is to be provided with an adequate supply of water through a centralised mixing valve and hose cock.
  - xi. The room to incorporate adequate lighting and natural/mechanical ventilation in accordance with the Building Code of Australia.
- Note: The room will need to allow for the permanent storage of 2 service bins per dual chute system, allowing residents access to all waste streams during Council's waste collection periods.
- h) Additional details in the Operational Waste Management Plan is required to demonstrate how caretakers will move full bins (using the tug device) from each chute room (in towers B, C and D) to the service lift at Tower A so as to be moved to Ground and emptied into the compaction

unit. The route of travel from Towers B, C and D Chute rooms to the service lift at Tower A to be indicated on plans showing the swept path of the bin tug device.

- i) All on-site waste collection infrastructure, doors and access points (Waste Chute Rooms, Residential Waste Collection Room, Residential Bulky Household Waste Collection Room, Retail Waste Room, Commercial Waste Room and Loading bay) are to be locked through Councils Abloy Key System. System specifications are outlined in section 3.5.5 of the '*Residential Flat Building Guideline*' document.
- j) All on-site waste collection infrastructure (Waste Chute Rooms, Residential Waste Collection Room, Residential Bulky Household Waste Collection Room, Retail Waste Room, Commercial Waste Room and Loading bay) are to provide wash facilities through the use of a centralised mixing valve and hose cock. Respective drainage and water proofing to be installed to support the use of hose facilities.
- k) The chute inlets on each residential level to be located within cupboards (maximum depth of 150mm) and incorporate the following; dual self-closing sealed doors, ventilation, waterproofing and permit accessible resident access.
- l) All on-site waste collection infrastructure (Waste Chute Rooms, Residential Waste Collection Room, Residential Bulky Household Waste Collection Room, Retail Waste Room, and Commercial Waste Room) are to provide:
  - i. Automatic lighting and mechanical ventilation.
  - ii. To incorporate 180-degree outwards opening doors with a latch open function.
  - iii. Unobstructed internal height clearances of 2600 free from external services and utilities.
  - iv. A 1800 unobstructed access pathway is required from the on-site collection infrastructure (waste collection and bulky goods collection rooms) to the rear of Councils standard waste collection vehicle.
  - v. The waste collection room to provide access of a minimum of 1.8m wide. The room to be line marked to showing the location of the proposed bin allocation with respective clearances.
  - vi. The Bulky Goods Collection Room to provide a minimum of 45m<sup>2</sup> area with a minimum access width of 1.8m.
  - vii. The turn table for the 10.5m heavy rigid waste collection vehicle to incorporate a hydraulic override system or similar assisted override system to ensure the turn table can be rotated in the event of a systems malfunction.
  - viii. The kerbside crossover and route to loading bay to be of sufficient width to permit Councils 10.5m HRV movements into the site to permit unobstructed access.

#### B75

**Prior to the issue of an Occupation Certificate** the following is to be submitted to and approved by Penrith City Council:

- a) The Developer is to draw up a Lease of the 23m<sup>3</sup> Compaction Unit including ongoing maintenance to be handed to Strata Management for the provision of waste servicing. Procurement of compaction unit to be commenced so as to allow for installation **prior to Occupation Certificate**.
- b) The developer is to enter into a formal agreement with Penrith City Council for the utilisation of Councils Waste Collection Service. This is to include Council being provided with indemnity against claims for loss and damage of property onsite and the compaction units during servicing.

Note:

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

- c) Councils Waste and Resource Recovery Department to conduct a site inspection of the on-site infrastructure with Councils collection contractors. The inspection to review the on-site waste collection infrastructure for the provision of a safe and efficient waste collection service in accordance with the stamped plans and Councils policy provisions.
- d) The assigned strata manager for the development and direct contact details to be provided to Councils Waste and Resource Recovery Department **prior to the issue of an Occupation Certificate.**
- e) Penrith City Councils' collection service will be provided/commenced for the development upon the completion of all on-site waste collection infrastructure and the attainment of an Occupation Certificate.

**Traffic**

- B76** **Prior to the issue of any Construction Certificate**, the Certifier is to ensure that a Waste Collection / Service / Delivery Vehicle Operational Management Plan is provided to the satisfaction of Council.

This is to include an operational management plan that must apply to all waste collection and service / delivery vehicles accessing the site heavy vehicle loading area and include:

- a) Coordinating all development site businesses and operators agreements and management of all waste collection / service/ delivery vehicles to the site and to all businesses at the site.
- b) Limiting and controlling waste collection / service / delivery vehicle arrivals to only one (1) vehicle arriving at any time and only at times when the site heavy vehicle loading area is clear.
- c) Limiting access to vehicles no larger than a heavy rigid vehicle up to 12.5 metres in length.

- B77** All parking spaces, loading zones, parking aisles and manoeuvring areas are to be kept clear of stored materials, products and waste materials such that these areas remain unobstructed and allow for the safe movement of vehicles.

- B78** Subleasing of car parking spaces is not permitted by this consent. No parking is permitted outside of marked parking spaces shown on the approved plans.

- B79** The required sight lines around the driveway entrances are not to be compromised by structures, landscaping, fencing or signage in accordance with AS2890.1.

- B80** **Prior to the issue of any Construction Certificate**, the Certifying Authority is to ensure that a Section 138 Roads Act application, including payment of application and inspection fees, has been lodged with, and approved by Penrith City Council (being the Roads Authority under the Roads Act), for provision for civil works for the construction of a roundabout at the intersection of Thornton Drive and Coombewood Avenue (at no cost to Penrith City Council).

Engineering plans are to be prepared in accordance with the development consent, Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Development, Engineering Construction Specification for Civil Works, Austroads Guidelines, and best engineering practice (with design, signage and line marking associated with the facilities to be subject to approval by Council's Local Traffic Committee).

Contact Penrith Council's Development Engineering Department on (02) 4732 7777 or visit Penrith City Council's website for more information.

Note:

- a) Where Penrith City Council is the Certifying Authority for the development the Roads Act approval for the above works may be issued concurrently with the Construction Certificate.
- b) Separate approvals may also be required from the Roads and Maritime Services for classified roads.

All works associated with the Roads Act approval must be completed **prior to the issue of any Occupation Certificate or Subdivision Certificate as applicable.**

## Environment Management

### General

- B81** **Prior to occupation** of a tenancy space within the building for use by PCYC (or other recreational indoor facility) and/or a childcare centre, and/or a supermarket, a separate development approval is to be obtained from Penrith City Council to use the building for each/any of those uses. Separate development applications are required for each of those uses and will require the submission of a Noise and Vibration Impact Assessment prepared by a suitably qualified acoustic consultant.

Note:

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

- B82** Prior to issue of a Construction Certificate, an updated Noise Impact Assessment (NIA) reflective of the proposed development, is required to be submitted to Penrith City Council for approval. The updated NIA is to be prepared by a suitably qualified acoustic consultant and is to:
- a) Make reference to, and consider, the 'Noise Impact Assessment (Stage 1) (document ref: 20210908.1/1911A/R1/AS)' prepared by Acoustic Logic and dated 19/11/2021.
  - b) Make reference to and be representative of the final proposed design and construction of the development.
  - c) Assess the cumulative noise and vibration impacts from the completed Thornton Central Village (both Stages 1 and 2).
  - d) Confirm glazing and all other construction elements required to ensure internal noise levels within the development are achieved in accordance with the criteria established in the NIA dated 19/11/2021.
  - e) Clearly demonstrate residential receivers within the development itself have been considered and assessed as nearby sensitive noise receivers, in addition to R1, R2, R3 and C1 as detailed in the NIA dated 19/11/2021.
  - f) Provide a noise and vibration impact assessment of the proposed PCYC tenancy (or other indoor recreational facility). The purpose of this assessment is to ensure the building structure is capable of achieving noise and vibration criteria and to guide a more detailed Noise and Vibration Impact Assessment prepared specifically for the PCYC/indoor recreational facility that will be the subject of a future separate development application.

- g) Provide a noise and vibration impact assessment of the loading docks, and waste collection facilities.
- h) Provide an assessment of noise and vibration generated from the operation of carpark areas upon residential units, where the carpark areas have potential to cause noise and vibration impacts, including but not limited to, those carpark areas immediately adjacent to residential units.
- i) Provide a noise assessment of the proposed childcare centre. The purpose of this assessment is to ensure the building structure is capable of achieving noise level criteria and to guide a more detailed
- j) Noise Impact Assessment prepared specifically for the childcare centre that will be the subject of a future separate development application provide recommendations (construction and/or operational) to minimise noise and vibration impacts from future potential and known retail and commercial tenancies, including but not limited to the supermarket.
- k) Provide recommendations (construction and operational) to minimise noise impacts from outdoor communal spaces to residential receivers.
- l) Include detail of the modelling data input and assumptions applied, for example, the location and distribution of noise sources and receivers applied in the modelling.

The updated NIA is to be approved by Council **prior to issue of a Construction Certificate**.

The recommendations provided in the Council approved updated NIA is to be implemented and incorporated into the design, construction and operation of the development and must be shown on plans accompanying the Construction Certificate application.

Note:

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

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**Environmental Matters**

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| <b>B83</b> | Dust suppression techniques are to be employed during all construction works to reduce any potential nuisances to surrounding properties.   |
| <b>B84</b> | <p>No fill material is to be imported to the site unless expressly approved as part of this consent, and not until such time as a certificate demonstrating that the material is suitable has been submitted to, considered and approved by Council. This certificate is to be in the form of a validation certificate, waste classification, or appropriate resource recovery order/exemption. A copy of a report forming the basis for the validation is also to be provided. The certification must:</p> <ul style="list-style-type: none"> <li>• Be prepared by an appropriately qualified person with consideration of all relevant guidelines, standards, planning instruments and legislation (e.g. EPA, NEPM, ANZECC, NH&amp;MRC),</li> <li>• Clearly state the legal property description of the fill material source site and the total amount of fill tested,</li> <li>• Provide details of the volume of fill material to be used in the filling operations,</li> <li>• Provide a classification of the fill material to be imported to the site in accordance with the NSW Environment Protection Authority's "Waste Classification Guidelines" 2014, and (based on the fill classification) determine whether the fill material is suitable for its intended purpose</li> </ul> |



and land use and whether the fill material will or will not pose an unacceptable risk to human health or the environment.

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

Note:

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

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**B85** All waste materials resulting from construction and stored on-site, are to be contained within a designated area such as a waste bay or bin to ensure that no waste materials are allowed to enter the stormwater system or neighbouring properties. The designated waste storage areas are to be fully enclosed when the site is unattended.

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**B86** Construction waste materials are to be classified and disposed of at a lawful waste facility, or, if suitable, reused / recycled. Such works are to be undertaken in accordance with the approved Waste Management Plan, where applicable.

Where the disposal location or waste materials have not been identified in an approved waste management plan, details is to be provided to the Certifier prior to those works commencing.

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

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**B87** Construction works must be carried out in accordance with the *NSW Department of Environment and Climate Change's "Interim Construction Noise Guideline" 2009*.

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**B88** **Prior to the issue of the Construction Certificate**, a Construction Environmental Management Plan (CEMP) is to be prepared by a suitably experienced / qualified person and submitted to Penrith City Council for approval.

If Penrith City Council is not the certifying authority, a copy of Council's approval is to be provided to the Principal Certifier.

The CEMP is to address the environmental aspects of the construction phase of the development and is to include details on the environmental management practices and controls to be implemented on the site.

The CEMP is to address, but is not limited to the following:

- Water quality management,
- Noise control and hours of operation,
- Dust suppression,
- Waste management (including solid and liquid waste),
- Erosion and sediment control,
- Air quality including dust control.

All construction activities on the site are to be implemented and carried out in accordance with the approved CEMP.

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- B89** **Prior to the issue of the Construction Certificate**, a Construction Noise and Vibration Impact Assessment and Management Plan, prepared by a suitably qualified acoustic consultant, is to be prepared and submitted to Penrith City Council for approval. This assessment is to consider (at minimum) the noise and vibration impacts associated with the construction phase, as well as details of the construction program, construction methods, equipment and vehicles in association with the *NSW Department of Environment and Climate Change's "Interim Construction Noise Guideline" 2009*.

The recommendations of the Council approved Management Plan are to be implemented and adhered to during the construction phase of the development.

Note:

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

- B90** **Prior to the issue of the Construction Certificate**, a plan for the interim management of the groundwater during the construction phase is to be provided to Penrith City Council for approval. This plan is to be prepared by a suitably qualified environmental consultant and is to detail:

- The circumstances where de-watering is required,
- The relevant approvals / licences that need to be obtained,
- The additional sampling and analysis of groundwater that is required,
- Demonstrating compliance with applicable guidelines and standards,
- The treatment measures that will need to be implemented prior to off-site disposal.

Should de-watering be required, this plan is to be implemented and adhered to, alongside any other conditions of development consent or an approval issued by the relevant regulatory authority.

- B91** **Twelve (12) months after the issue of the Occupation Certificate**, an Acoustic Compliance Report is to be submitted to and approved by Penrith City Council. The report is to be prepared by a suitably qualified acoustic consultant and is to address all noise generating activities on the site and the level of compliance with the noise criteria set within the 'Noise Impact Assessment (Stage 1)' (document ref: 20210908.1/1911A/R1/AS) prepared by Acoustic Logic and dated 19/11/2021, as well as the council approved updated Noise Impact Assessment required by condition number B82 of this consent. It is to consider the requirements of the *NSW Environment Protection Authority's Noise Policy for Industry*, other relevant guideline documents and the conditions of this development consent.

Should the Compliance Report identify any non-compliance issues, the report is to provide suitable recommendations for the mitigation of those issues. Any mitigation works are to be undertaken within thirty (30) days from the date of notice from Council, unless otherwise specified.

Note:

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

- B92** **Prior to the issue of the Construction Certificate**, further details on the type and location of all mechanical plant and equipment associated with the development is to be provided to Penrith City Council for consideration and approval. Suitable data and information assessed by a suitably

qualified acoustic consultant is to be supplied to demonstrate compliance with the established noise criteria detailed in the 'Noise Impact Assessment (Stage 1)' (document ref: 20210908.1/1911A/R1/AS)' prepared by Acoustic Logic and dated 19/11/2021.

Note:

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

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- B93** Wastewater from the washing of garbage bins and vehicles is not to enter the stormwater system.
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- B94** Waste collection activities and use of the loading docks is not to occur during the hours of 10pm-7am, unless otherwise approved in writing by Penrith City Council.
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- B95** The recommendations provided in the Council approved Noise Impact Assessment required by condition number B82 of this consent, is to be implemented and incorporated into the design and construction of the development, **and must be shown on plans accompanying the Construction Certificate application.**
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- B96** A certificate is to be obtained from a qualified acoustic consultant certifying that the development has been constructed to meet the noise criteria in accordance with the Council approved Noise Impact Assessment required by condition B82 of this consent. This certificate is to be submitted to the Principal Certifying Authority **prior to the issue of an Occupation Certificate.**

Note:

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

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- B97** Should any "unexpected finds" occur during site excavation and earthworks including, but not limited to, the identification/finding of contaminated soils, buried building materials, asbestos, odour and/or staining, works are to cease immediately, and Penrith City Council is to be notified. Any such "unexpected finds" must be addressed by an appropriately qualified environmental consultant.
- Should contamination be found during development works and should remediation works be required, Penrith City Council is to be notified prior to commencement of remediation. All remediation works are to be carried out in compliance with *State Environmental Planning Policy (SEPP) (Resilience and Hazards) 2021*, applicable *NSW EPA Contaminated Land Guidelines and the National Environment Protection (Assessment of Site Contamination) Measure 2013* [NEPC2013].
- For the purpose of this condition, an appropriately qualified person is defined as "a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, soil science, eco-toxicology, sampling and analytical procedures, risk evaluation and remediation technologies. In addition, the person will be required to have appropriate professional indemnity and public risk insurance."
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- B98** Mud and soil from vehicular movements to and from the site must not be deposited on the road during the construction phase.
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- B99** All construction works that involve the use of heavy vehicles, heavy machinery and other equipment likely to cause offence to adjoining properties, are restricted to the following hours in

accordance with the *NSW Department of Environment and Climate Change's "Interim Construction Noise Guideline" 2009*:

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

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

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