

SWCPP Ref. No.:	PPSSWC-236
DA No.:	DA22/0213
PROPOSED DEVELOPMENT:	Construction of a Part 13 and Part 31 Storey Mixed Use Development with One Level of Basement Car Parking, a Five Storey Podium with Above-Ground Parking for 453 Vehicles, Retail Tenancies, Supermarket, Child Care Centre, Medical Centre and Two Residential Towers above. Tower A has 241 Apartments and Tower B has 75 Apartments. Ancillary Works including a Through Site Link. Proposal includes an Offer for Community Infrastructure for Upgrade Works to High Street, Penrith (Concurrent Development Application DA22/0214)
PROPERTY ADDRESS:	184 Lord Sheffield Circuit, PENRITH NSW 2750
PROPERTY DESCRIPTION:	Lot 3003 DP 1184498,
ZONING:	Zone E1 – Local Centre - LEP 2010
CLASS OF BUILDING:	Class 2 , Class 6 , Class 7a
ASSESSING OFFICER	Sandra Fagan
APPLICANT:	The Trustee For The Thornton North Penrith Unit Trust
DATE RECEIVED:	11 March 2022
REPORT BY:	Sandra Fagan, Senior Development Assessment Planner, Penrith City Council
RECOMMENDATIONS:	Refuse

Assessment Report

Executive Summary

This development application seeks consent to construct two mixed use buildings, being a 31-storey and a 13-storey tower above podium development, containing 241 and 75 residential apartments respectively. The proposed building massing is for a five-storey common podium with Tower A and Tower B above. The podium will contain above-ground car parking, retail shops, a supermarket, a childcare centre, and a medical centre. One basement level is proposed for car parking and servicing. The ground floor includes a publicly accessible through-site link which is designed as an open space area and thoroughfare. This development has been referenced by the applicant as Stage 1, which will be the subject of the initial construction phase.

The development application is accompanied by a revised offer for Community Infrastructure, which relates to upgrade works to High Street, Penrith, referenced as Stage 3A (shown coloured blue on accompanying public domain plans). The site is identified as Key Site 11 and the proposed development relies on clause 8.7 of the Penrith LEP to achieve a height greater than that permitted by the mapped LEP height of 32m. Clause 8.7 also potentially affords the development a maximum Floor Space Ratio of 5:1.

Four threshold matters have been raised by Council staff and the Sydney Western City Planning Panel in relation to the development application. The threshold matters remain unresolved although the applicant has been working through them. The threshold matters have jurisdictional implications that would prevent the consent authority from granting development consent at this time. The threshold matters include:

- That the proposed development is inconsistent with the Part 3A Concept Plan approval granted by the Minister for Planning for North Penrith (now referred to as Thornton).
- That the proposed current offer for Community Infrastructure is unacceptable considering the nature of the offer against the uplift in height and floor space sought by the development.
- That the proposed development will cast additional shadow over public open space beyond the shadow that would be cast by a height compliant scheme.
- The condition of the waiver to carry out an architectural design competition for the proposed development requires the applicant to fulfil certain matters relating to design integrity.

In addition, the application fails to address the request for further information from Sydney Trains. In the absence of concurrence from the rail authority, as required by section 2.99(3) of the *State Environmental Planning Policy (Transport and Infrastructure) 2021*, the consent authority cannot grant consent to the development.

Although it is acknowledged that the applicant is working through these issues, the development application currently does not adequately address the threshold matters. In addition, resolution of these matters is likely to take an inordinate amount of time and will also require further amendments to the proposed development, as well as public re-exhibition and re-referral to external agencies.

Most of the threshold issues were communicated to the applicant at both the pre-lodgement phase and in the earlier stages of the DA planning assessment. The applicant has been requested by Council staff to withdraw the application on numerous occasions, and to continue resolving outstanding issues outside the realm of a 'live' development application. However, the application has not been withdrawn.

Therefore, given the complexity of the outstanding threshold matters, the time elapsed since DA lodgement on 11 March 2022, and the likely time required to resolve outstanding issues, this planning assessment report is provided for the Panel's consideration with a recommendation that the development application be refused.

The development application and offer for community infrastructure (relating to a previous offer for contributions towards City Park) were publicly exhibited between 12 September and 10 October 2022. 22 submissions were received. Two of these submissions are in support, with the remainder raising concerns.

The application has been made concurrently with a second development application, DA22/0214. Development application DA22/0214 relates to the immediately adjoining site and is referred to as Stage 2. The concurrent development application seeks consent for a five-storey common podium for mixed commercial and residential uses, with two residential buildings atop (Towers C and D). The offer for Community Infrastructure in DA22/0214 relates to upgrade works to High Street, Penrith, referred to as the Stage 3B works (coloured green on the accompanying public domain plans). The same outstanding threshold matters relate to DA22/0214, and this application is also recommended for refusal. In addition, the planning assessment report for DA22/0214 also concludes that the proposed scale, massing, and height of Tower D is not acceptable in context with the existing buildings in Thornton which are generally 8-10 storeys in scale.

Site & Surrounds

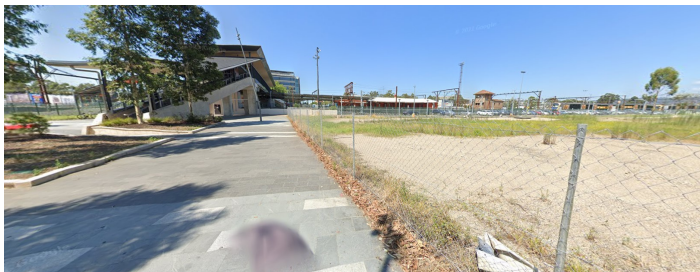
This site has an area of 6,303 sqm and is generally an irregular shaped rectangle. It has an eastern frontage to Lord Sheffield Circuit and Station Plaza, a western frontage to Dunshea Street and a commuter car park beyond, a southern frontage facing a commuter car park and the railway lines / Penrith Train Station, and a northern boundary adjoining the site related to the concurrent development application DA22/0214.



NearMaps Image of Subject Site



Site on Left Looking North towards Lord Sheffield Circuit



Site on Right Looking South towards Station Plaza



Site on Right Looking North in Dunshea Street

The site is located within the Thornton Estate, previously 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 Projects10_0078). The Concept Plan was approved by the NSW Minister for Planning

on 09 November 2011.

The site was subsequently the subject of a planning proposal initiated by the applicant in 2015. The Penrith LEP was amended in 2017 to insert clause 8.7. This also identified the site as Key Site 11. Clause 8.7 and Key Site 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 proposed development includes Community Infrastructure.

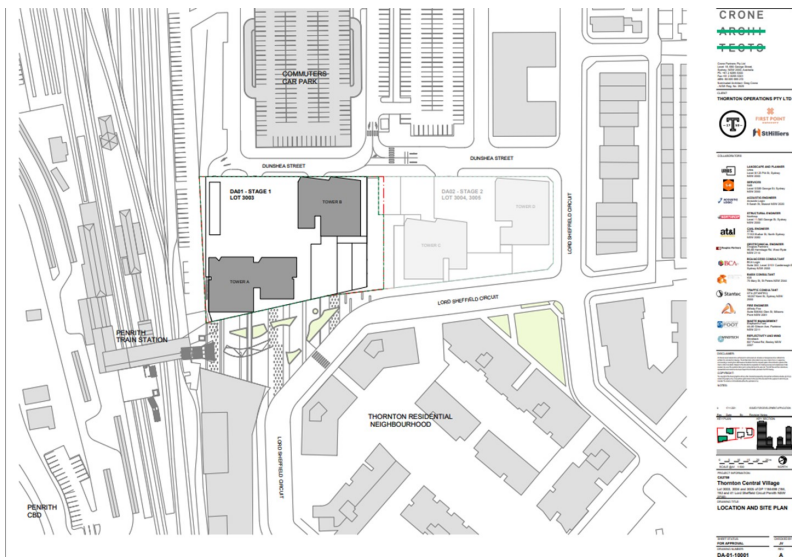
The Thornton area continues to be developed for a mix of residential development, dwellings, serviced apartments, public open space and commuter car parking. The Penrith CBD is positioned to the south of the site and is separated by the railway lines. Many of the developments in the Thornton Estate have a building mass of 8-10 storeys.

Proposal

DA22/0213 – Stage 1

This Development Application relates to the land at 184 Lord Sheffield Circuit (Lot 3003 in DP 1184498) which the applicant proposes to construct as the first development. The proposed development includes the following:

- Demolition of all existing features and site improvements.
- Excavation and construction of one basement level for 85 car park spaces for commercial use, a click-and-collect facility, waste rooms, retail lobby entry, plant rooms, and back of house.
- Construction of a five-storey common podium, containing ground level retail shops, a supermarket, loading area, and entry lobbies to commercial and residential uses. The first floor of the podium will contain a medical centre, a childcare centre, and car parking within levels 1-4 with 333 residential spaces, 35 commercial spaces, and 2 car wash bays.
- Construction of two residential flat buildings above the common podium.
- Tower A is 26-storey above the podium (107.4m / 31 storeys from ground) containing 241 residential apartments.
- Tower B is 9-storey above the podium (part of the residential tower is built at the top of the podium), (49.8m / 13 storeys from ground) containing 75 residential apartments.
- The floor space ratio is 5:1, comprising 4,443sqm of commercial/retail floor space and 27,072 sqm of residential floor space (total GFA of 31,515sqm).
- Total parking for 455 vehicles (333 x residential, 120 x commercial, 2 x car wash bays).
- Creation of an east-west through site link, landscaping, and associated site works.



Site Plan for DA22/0213 Towers A and B



Photomontage of Tower A from Station Plaza and Lord Sheffield Circuit



Photomontage of Tower B and Through Site Link

Community Infrastructure Offer

The development application includes an offer for community infrastructure. The offer is to carry out upgrade works (works in kind) to a section of High Street Penrith, between Woodriff Street and Lawson Street. The offer states that the works will include preliminaries; stormwater management; civil and road works; signage, traffic control, hoarding, fencing; and electrical, hydraulic and other services. A draft Planning Agreement and Letter of Offer accompanies the application.

The Statement of Environmental Effects (on pages 1 and 17) states that the upgrade works to be included in this development application, DA22/0213, include what is referenced as Stage 3A of the High Street works. The Stage 3A works are shown coloured blue on the accompanying plans. These works are proposed to be carried out prior to the Occupation Certificate for the development the subject of DA22/0213.

It appears that the remainder of the upgrade works to High Street, referred to as Stage 3B (the green coloured works) will occur as part of the second development application, DA22/0214. It is unclear what the proposed timing for the second development application would be, and how the applicant and/or Council would manage the interim period in terms of the public use of High Street.

DA History - Critical Dates and Timeline

The following events and dates are relevant in relation to the development application, although the information below does not represent the full actions of Council and the applicant during the DA process:

- 12 October 2021 - Pre-lodgement meeting held with Council staff and applicant (PL21/0072).
- 19 October 2021 - Written pre-lodgement advice from Council sent to applicant outlining matters to be resolved prior to DA lodgement, including obtaining in-principle support for community infrastructure offer, obtaining design integrity report from jury, and addressing the sun access control.
- 11 March 2022 - Development application lodged on NSW planning portal.
- 23 May 2022 - Community infrastructure offer uploaded to planning portal. Offer includes construction and dedication of an indoor recreation facility onsite.
- 11 July 2022 - Amended community infrastructure offer uploaded to planning portal. Offer includes monetary contribution for works to City Park and Allen Place laneway.
- 22 August 2022 - Amended community infrastructure offer uploaded to planning portal. Offer includes monetary contribution to put towards specific works at City Park and Allen Place laneway.

- 12 September to 10 October 2022 - Development application and offer for community infrastructure publicly exhibited.
- 11 November 2022 - Council's planner wrote to applicant outlining three threshold matters that remain unresolved and preclude the granting of any development consent, with a request that the DA be withdrawn. This included the rejection of the CI offer by Council's CI Panel (relating to City Park).
- 15 November 2022 - Council's planner discussed the issues letter with the applicant via a telephone conversation. Issues relating to the CI offer were discussed with Council's planner stating their view that the CI should be within or in close proximity to the site, be included in the proposal, result in tangible community infrastructure, and be deliverable.
- 06 April 2023 - GANSW provides a waiver for a design competition subject to matters being fulfilled.
- 28 April 2023 - Council's planner wrote to applicant to reiterate outstanding issues and requesting DA be withdrawn.
- 06 July 2023 - Amended community infrastructure offer uploaded to planning portal. Offer includes embellishment works to Station Plaza and a portion of upgrade works to High Street Penrith (between Woodriff and Lawson Streets).
- 24 July 2023 - **Current** and amended community infrastructure offer uploaded to planning portal. Offer includes upgrade works referred to as Stage 3A (blue coloured works) to High Street Penrith (between Woodriff and Lawson Streets).
- 21 September 2023 - Applicant meets with the reconvened Jury members forming the Design Integrity Panel to discuss the proposed development as lodged with both DA's. The DIP provide views on design excellence, community infrastructure, and sun access.
- 22 September 2023 - Applicant sends legal opinion to SWCPP about Part 3A inconsistency.
- 25 September 2023 - Applicant uploads clause 4.6 variation request to the NSW planning portal.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- State Environmental Planning Policy No 65—Design Quality of Residential Flat Development

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

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

The SWCPP attended four briefings relating to the proposed development, where the threshold matters were discussed. These are, inconsistency with the Part 3A Concept Plan approval; the conditions of the competition waiver; the offer for Community Infrastructure; and the sun access control.

The briefing dates and Panel directions are summarised below:

- Briefing 1 occurred on 27 March 2023, attended by Council staff. The Record of Briefing was published on 20 April 2023. The Panel directed that another briefing should occur with the applicant present, to enable questions posed in the Record of Briefing to be discussed. The Panel sought a suitable timetable from Council to complete the assessment of the DA, and whether this timing would permit amendments to the DA.
- Briefing 2 occurred on 26 June 2023, attended by both Council staff and the applicant. The Record of Briefing was published on 03 July 2023. The Panel directed the applicant to provide a response to Council staff within 28 days, including feedback from the Department of Planning and Environment on the options to address the inconsistency with the Part 3A Concept Plan, and feedback from the commercial arm of Penrith Council on the revised community infrastructure offer.
- Briefing 3 occurred 07 August 2023, attended by both Council staff and the applicant. The Record of Briefing was published on 31 August 2023. The Panel raised concern about ongoing delay with the determination of the DA, stating that the Panel cannot defer the determination indefinitely. The Panel commented that the DA should either be withdrawn or determined, if a path to a final determination by the granting of an approval cannot be demonstrated.
- Briefing 4 occurred on 25 September 2023, attended by both Council staff and the applicant. The Panel requested that Council staff provide the members with a potential timeframe for the continued assessment of the two development applications.

• **Section 4.15 - Evaluation**

This planning assessment report has considered those matters required to be considered by section 4.15 of the Act, although a detailed merit-based assessment cannot be carried out in the absence of key threshold and jurisdictional issues remaining unresolved.

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

State Environmental Planning Policy (Biodiversity and Conservation) 2021

The site does not contain any trees and therefore there will be no loss of existing biodiversity. Matters relating to protection of the Hawkesbury / Nepean river could be managed by conditions if the application was supported.

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

The proposed development is able to comply with BASIX requirements.

State Environmental Planning Policy (Planning Systems) 2021

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

State Environmental Planning Policy (Resilience and Hazards) 2021

Council's Environmental Management Officer is satisfied that the applicant has demonstrated that the site can be made suitable for the proposed development. Conditions would be used to address remediation matters but are not required at this time given the recommendation is to refuse consent.

State Environmental Planning Policy (Transport and Infrastructure) 2021

In accordance with the relevant clauses of this SEPP, the development application was referred to Transport for NSW (Roads), Transport for NSW (Sydney Trains), and Endeavour Energy. The referral responses are discussed below in the section for 'Submissions'.

It is noted that the proposed development requires the concurrence of Sydney Trains pursuant to section 2.99(3) of the SEPP. Concurrence has not been granted and the consent authority cannot grant consent to the development in the absence of this concurrence.

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

Given that the proposed development is recommended for refusal because of unresolved threshold matters, a detailed merit assessment pursuant to SEPP 65 and the Apartment Design Guide has not been carried out at this time.

Regarding the nine Design Quality Principles in the SEPP, this planning assessment report addresses matters relating to context, neighbourhood character, and built form and scale.

Regarding the objectives and assessment criteria in the Apartment Design Guide, the development would meet most of these objectives. However, the proposed development 'borrows' amenity from the concurrent development application DA22/0214 and vice versa, specifically for solar access and cross ventilation compliance.

The natural cross ventilation compliance in DA22/0213 (for the first nine storeys) is 59% of apartments. This represents a shortfall of 1%. However, the applicant asks the consent authority to consider the sum of all the residential buildings, including those in the concurrent development application DA22/0214. Including the calculation for the concurrent development, the total percentage figure for cross ventilation compliance increases to 60.5%, which complies with the ADG design criteria of 60%.

In the same manner for DA22/0214, the second development application seeks to achieve solar access compliance by including the calculation for the residential component of DA22/0213. In particular, the residential component of DA22/0214 (on its own) achieves solar access to 68% of apartments (instead of 70% as per the design criteria of the ADG). The corresponding figure for the residential component of DA22/0213 is 72%, achieving an overall compliance of 70% if the two calculations are combined.

Although the individual non-compliance is relatively small numerically, the approach of 'borrowing' amenity is not acceptable. For DA22/0214, the solar access shortfall of 2% equates to five apartments. For DA22/0213, the cross ventilation non-compliance of 1% equates to 3 apartments. Each individual building should comply with the minimum design criteria for solar access and cross ventilation. There is also the expectation that the development could achieve more than the minimum criteria, taking into account the height uplift sought and the design excellence provisions that apply as a consequence of clause 8.4 and clause 8.7 of the Penrith LEP 2010.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Does not comply - See discussion
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Does not comply - See discussion
Clause 2.5 Additional permitted uses for particular land	Complies
Clause 4.3 Height of buildings	Does not comply - See discussion
Clause 4.4 Floor Space Ratio	Complies - See discussion
Clause 4.5 Calculation of floor space ratio and site area	Complies
Clause 4.6 Exceptions to development standards	Does not comply - See discussion
Clause 5.21 Flood planning	Does not comply - See discussion
Clause 7.1 Earthworks	Complies
Clause 7.4 Sustainable development	Complies
Clause 7.6 Salinity	Complies
Clause 7.7 Servicing	Complies
Clause 7.30 Urban Heat	Complies
Clause 8.1 Application of Part	Complies
Clause 8.2 Sun access	Does not comply - See discussion
Clause 8.4 Design excellence	Does not comply - See discussion
Clause 8.5 Building separation	Complies
Clause 8.7 Community infrastructure on certain key sites	Does not comply - See discussion

Clause 1.2 Aims of the plan

Given the matters raised throughout this planning assessment report, the proposed development is not considered to comply with the aims of the LEP, particularly at clause 1.2(2)(a), (b) and (c).

Clause 2.3 Permissibility

The site is zoned E1 Local Centre. The listed uses that are permitted with consent include; "*Commercial premises*"; "*car parks*"; "*Centre-based child care facilities*"; and "*medical centres*". Therefore, the proposed retail shops, supermarket, childcare centre, medical centre, and car parking areas are all permissible with consent.

With regard to permitted residential uses, the E1 Local Centre zone only permits "*Shop top housing*" with consent. The proposed development could technically fall within the definition of 'shop top housing'. However, further consideration of whether the development meets that definition is not required because clause 2.5 of the LEP calls up Schedule 1 which relates to 'Additional permitted uses'. Schedule 1 clause 23 relates to the "*Use of certain land at Lord Sheffield Circuit, Penrith*" and permits development for the purposes of residential flat buildings with development consent.

Therefore, the residential components of the proposal are permissible with consent.

Clause 2.3 Zone objectives

For the reasons outlined in this planning assessment report, the proposed development does not meet the objective of the E1 Local Centre zone whose objective includes "*to promote development that is of a size and scale that is appropriate to meet local needs and does not adversely affect the amenity or character of the surrounding residential neighbourhood*".

Clause 4.3 Height of buildings

The mapped height at clause 4.3 is 32m. The proposed development will exceed this height and is calling upon the additional height permitted by clause 8.7(3) of the LEP relating to Key Sites. Clause 8.7(3) permits the consent authority to grant consent to development on the site that exceeds the maximum height shown for the site on the Height of Buildings Map. Clause 8.7 does not specify another height limit.

In the absence of compliance with clause 8.7, the provisions of clause 4.3 must be complied with or a request to vary the development standard must accompany the application for assessment pursuant to clause 4.6. To date, clauses 8.7 and 4.3 have not been satisfied or complied with, and no variation request has been lodged.

Clause 4.4 Floor Space Ratio

Clause 4.4 of the LEP does not contain a maximum FSR for this site. The maximum permitted FSR of 5:1 is at clause 8.7 of the LEP in relation to Key Site 11. The proposed development has a maximum FSR of 5:1.

Clause 4.6 Exceptions to development standards

On 25 September 2023, the applicant submitted a written request pursuant to clause 4.6 of the *Penrith Local Environmental Plan 2010*. This is discussed in the section below at 'The likely impacts of the development' in relation to the sun access control over public open space.

Clause 5.21 - Flood planning

Council's Development Engineer has raised concern about the proposed flood planning levels for the ground floor components of the development. This is discussed below in the 'Referrals' section of this planning assessment report.

In addition, the LEP clause requires consideration of the efficient evacuation of people in the event of a flood. Given the proposed number of apartments, the application was referred to the Department of Planning and Environment for a coordinated response from the SES and Infrastructure NSW regarding capacity and flood evacuation. Despite multiple attempts by Council staff to receive a referral response from the relevant authorities, an external response has not been received. This is discussed below in the 'Submissions' section of this planning assessment report.

Clause 8.2 Sun access

From the information more recently submitted by the applicant dated 04 August 2023, it appears that the proposed development will cast a shadow over Station Plaza, which is public open space, beyond the shadow that would be cast by a 32m mapped height compliant scheme.

Given that the information submitted is not clear on which parts of which proposed building will cast that shadow (although it is more likely to be from Tower D in DA22/0214) the sun access assessment is included in the planning assessment report for both development applications.

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. This is discussed below in the report at the section titled 'The likely impacts of the development'.

Clause 8.4 Design excellence

Clause 8.4 of the LEP relates to Design Excellence. It primarily contains two requirements. The first 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. These two matters, although inter-related, are not inter-dependent. That is, the consent authority must still be satisfied that the proposed development exhibits design excellence, regardless of whether a competition has been carried out, a waiver has been granted, or the outcome of any post-competition conclusions by the Jury. This was evident at paragraphs 92 and 93 of *Toga Penrith Developments Pty Limited v Penrith City Council [2022] NSWLEC 117* case, presided over by Preston CJ.

These matters shall be discussed in further detail below. It is also relevant to comment on the Planning Proposal that resulted in the site being identified as Key Site 11 and permitting a potential uplift in height and floor space, by the insertion of clause 8.7 into the Penrith LEP.

Design Competition

An architectural design competition was held in 2016, with Crone Architects having the winning scheme. Between 2018 to 2020, the applicant engaged with the Government Architect (GANSW) and the Jury, to discuss changes to the winning scheme, specifically four towers instead of two towers. The office of the GANSW issued a letter to the applicant, dated 29 August 2018, outlining design criteria moving through the post-competition phase. The applicant then engaged the Jury to discuss certain criteria expressed by the GANSW. This is outlined in more detail on page 10 of the Statement of Environmental Effects (SEE). The Jury met on three occasions, prior to the development application being lodged, to provide advice to the applicant about ongoing design changes to the winning scheme.

The proposed development that was then lodged with DA22/0213 (and the concurrent DA22/0214) appears to have been the culmination of those discussions. However, Council staff were not satisfied that the specific competition requirements as per clause 8.4(3) of the LEP were met. This is primarily because the competition winning scheme is different to the proposed development, namely two towers versus four towers. In addition, the wording of the LEP at clause 8.4(3) is very specific as it states, *"unless an architectural design competition has been held in relation to the development"*.

To address this, the applicant sought and received a waiver from the requirement for an architectural design competition for the proposed development. The waiver is from the NSW Government Architect and is in writing by letter dated 06 April 2023. The waiver goes on to outline three requirements the applicant must meet. The applicant has been working towards meeting these three requirements. In particular, the applicant met with the Design Integrity Panel (DIP) on 21 September 2023 to discuss the proposed development. This is discussed in further detail below in 'The likely impacts of the development' section of this planning assessment report.

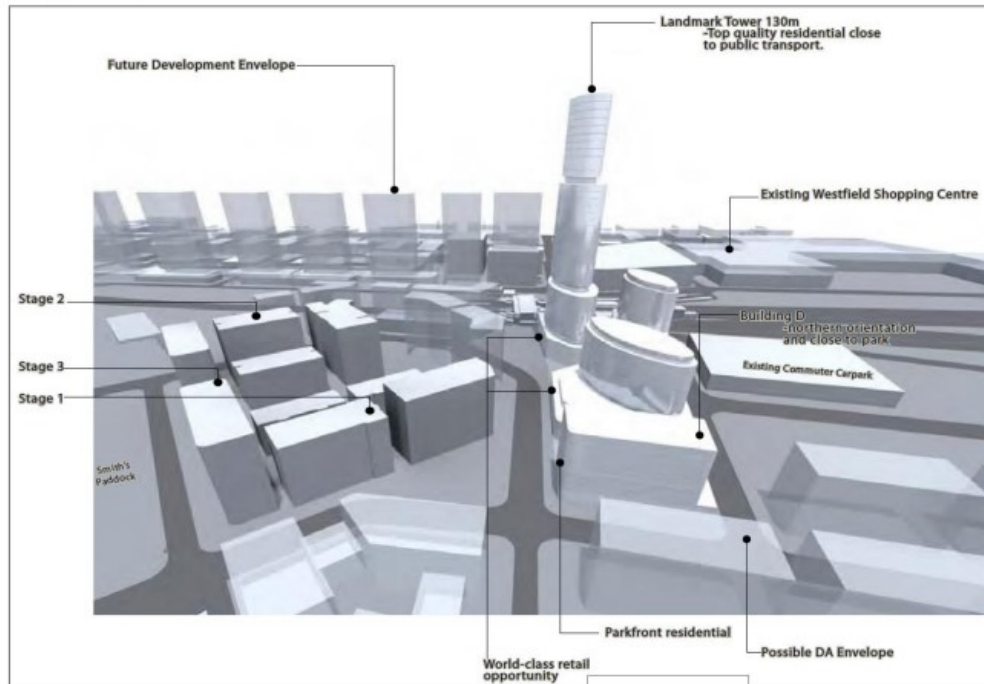
Approved Planning Proposal:

The applicant initiated a Planning Proposal to Council to include the site as a Key Site, allowing an incentives clause for additional height and floor space. A number of other non-related sites also sought a change to the LEP. Council staff considered the various proposals holistically. The matter was subsequently reported to Council on 07 December 2015. The Council staff report stated that *"it will enable development within Key Sites to depart from the prescribed building height and FSR controls where a departure is justified, where the development exhibits design excellence and where an agreed public benefit is offered in return for the additional development potential"*. The LEP was amended on 23 June 2017 to introduce clause 8.7 and include the site as Key Site 11.

The Planning Proposal included supporting information from the applicant regarding massing forms. Council also engaged their own Urban Design Analysis to test the submitted Planning Proposal.

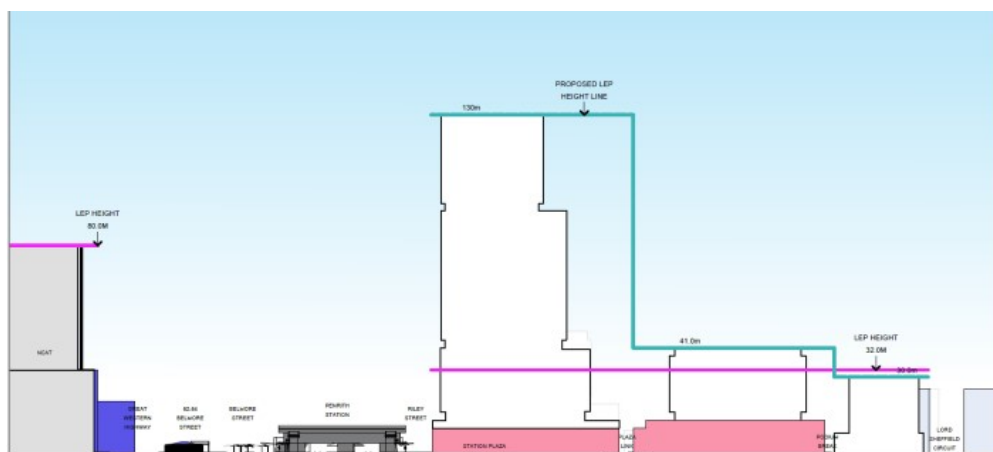
The 'Planning Justification Report - Thornton Signature Tower', dated November 2015 was submitted by the applicant in support of the Planning Proposal. The report presented four massing options with the desired Option 4 shown in the image below. It is noted that all options shown at this time included a smaller building at the northern end of the site fronting Lord Sheffield Circuit (in the position of the current proposed Tower D). The applicant's desired option included four buildings with the following heights, 130m / 41 levels (landmark tower), 32m / 13 levels, 41m / 14 levels, and 30m / 9 levels.

FIGURE 11 – DESIRED OPTION 4



Source: DKO Architects

Image from page 17 of Urbis Planning Proposal Report Showing Four Building Masses

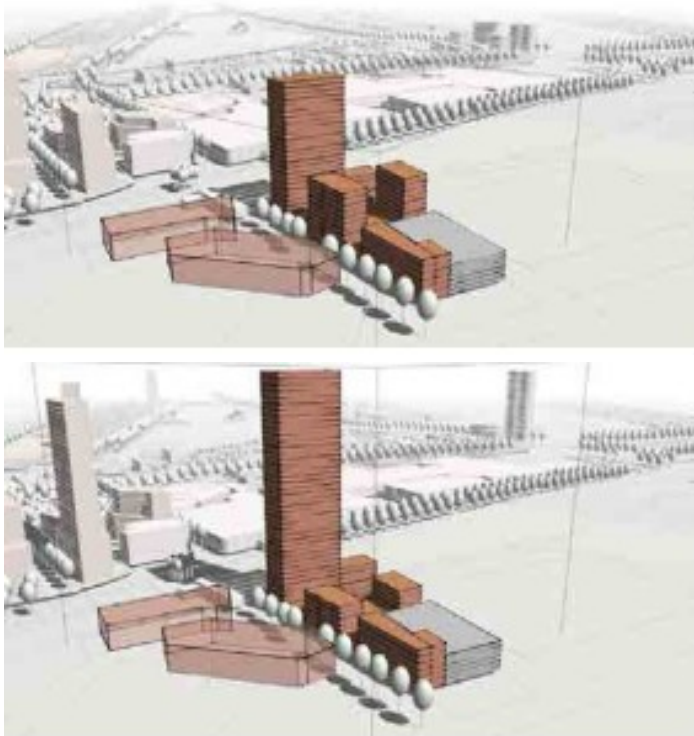


Source: DKO Architects

Image from page 18 of Urbis Planning Proposal Report Showing Side Elevation of Building Masses

Council's subsequent urban design analysis, prepared by external consultants to test the Planning Proposal, considered various massing options. For the preferred option, the analysis stated the following:

- "Increase height on this site to mark the gateway into Penrith.
- Transition into the adjoining development, and overshadowing, need to be taken into consideration. A single tower is recommended. (Option 1 & 3).
- Height response on Site 11 should complement built form on the other side of the railway (Sites 1, 2 and 9) to ensure a balanced cityscape into the future".



Options 1 and 3 of Council's Urban Design Report for Key Sites Planning Proposal

The information above is relevant to provide the background to why the site was accepted as being able to accommodate additional height and floor space. It is also relevant when considering whether the proposed building scale and massing is appropriate in context as discussed below.

Clauses 8.4(1) and 8.4(2) Does the Proposed Development Exhibit Design Excellence:

Clause 8.4(1) is written as a prerequisite to the granting of development consent. It requires the consent authority to form the opinion that the proposed development exhibits design excellence. Clause 8.4(2)(a), (b), (c), and (e) then go on to qualify the matters that the consent authority must have regard to, in order to decide whether the proposed development exhibits design excellence.

Given that the recommendation of this planning assessment report is to refuse consent, based on the unresolved threshold issues, a detailed assessment relating to design excellence is not required at this time. There are many aspects of the proposal which are satisfactory in terms of design excellence. These include the proposed architectural language, facade detailing, materials, location and design of communal open space for the residents, as well as the retail and commercial uses proposed.

However, there are other aspects of the proposed development within both development applications, for which the assessing officer is of the view do not exhibit design excellence. This primarily relates to the bulk and massing of Tower D (DA22/0214) and the additional overshadowing of Station Plaza. Further, the current offer for community infrastructure, being upgrade works to High Street, is not considered to contribute to the design excellence of the proposed development. Community infrastructure is discussed below.

It is also acknowledged that these comments must be balanced with the comments from the GANSW in their competition waiver letter, which states *"it is the opinion of GANSW that the proponent and their design team have worked earnestly towards achieving Design Excellence in accordance with the LEP throughout the period since the 2016 competition. Further, it is the opinion of the Design Integrity Panel that the updated scheme as lodged for assessment is of high quality and is capable of achieving design*

excellence".

In addition, the Design Integrity Panel at their meeting on 21 September 2023 stated that the proposed development was capable of achieving design excellence. A DIP report is understood to be forthcoming but not yet received, noting that the DIP requested further information relating to overshadowing impacts.

Clause 8.7 Community infrastructure on certain key sites

Clause 8.7 relates to community infrastructure on certain key sites. The clause has two objectives:

"(1)(a) to allow higher density development on certain land in the City Centre where the development includes community infrastructure, and

(1)(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".

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) objectives of this clause.

(b) whether the development exhibits design excellence,

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

The assessment relating to community infrastructure is discussed below in the section titled 'The likely impacts of the development', as this is a threshold matter that remains unresolved.

With regard to the objective at clause (1)(b) 'whether the development exhibits design excellence', the assessment of the resulting greater densities should occur in a comprehensive manner looking at the site as a whole, including both development applications.

The two images below are taken from the 'views from the sun' drawing in the architectural package and from the shadow analysis. The images show the overall scale of the proposed development in context with the massing of the surrounding buildings. Tower A (DA22/0213) is the taller tower adjoining the railway line, shown to the right in the first image and to the left in the second image. Tower D (DA22/0214) is the next tallest tower which is on the northern boundary of the site to Lord Sheffield Circuit.



Western Facade - Tower A on Right



Eastern Facade - Tower D on Right

The proposed height of Tower A is acceptable, although the current proposal does not include appropriate community infrastructure. Tower A is located on the southern edge of the site and adjoins the railway lines. It would form the western gateway to Penrith, as referenced in the urban design analysis carried with for the Planning Proposal.

However, the assessing officer is of the view that the massing and scale of Tower D is not appropriate for its position on the site, being located on the northern boundary fronting Lord Sheffield Circuit. The context in which Tower D is positioned is different to that of Tower A. Tower D sits within the physical and visual urban catchment of existing developments in Thornton, most of which are approximately 8 to 10 storeys in scale. Therefore, the existing urban form near Tower D has a medium-density scale, with 8-10 storeys closer to the mapped LEP height of 32m. The massing of Tower D, combined with the common podium to Towers C and D which occupies the whole of that site, results in excessive building mass which is not relieved by open space voids. Therefore, although the site can accommodate greater densities through additional height and floor space in recognition that it is Key Site 11, the resulting scale and mass of Tower D does not reflect the desired character of the locality and will have an adverse impact on the area.

The Design Integrity Panel have not raised any concerns with the massing and scale of Tower D.

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

Development Control Plan 2014

Provision	Compliance
DCP Principles	Does not comply - see Appendix - Development Control Plan Compliance
C1 Site Planning and Design Principles	Does not comply - see Appendix - Development Control Plan Compliance
C2 Vegetation Management	Complies
C3 Water Management	Complies
C4 Land Management	Complies
C5 Waste Management	Does not comply - see Appendix - Development Control Plan Compliance
C6 Landscape Design	Complies
C7 Culture and Heritage	N/A
C8 Public Domain	Complies
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Does not comply - see Appendix - Development Control Plan Compliance
C11 Subdivision	Complies
C12 Noise and Vibration	Does not comply - see Appendix - Development Control Plan Compliance
C13 Infrastructure and Services	Complies
C14 Urban Heat Management	Complies
D2.5 Residential Flat Buildings	Complies
E11 Penrith	Does not comply - see Appendix - Development Control Plan Compliance

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

The development application includes a voluntary planning agreement that relates to the provision of community infrastructure to carry out upgrade works to High Street Penrith. The details of the proposed community infrastructure are discussed throughout this planning assessment report. At the time of writing this report, Council's CI Panel are considering the offer put forward by the applicant.

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

The processing of this development application has been carried out in accordance with the relevant provisions of the Regulation, including section 61(6) which requires the consent authority to consider the *Development Assessment Guideline: An Adaptive Response to Flood Risk Management for Residential Development in the Penrith City Centre*. This guideline relates to the safe occupancy and efficient flood evacuation of people. This has been discussed throughout this planning assessment report.

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

The proposed development raises five key issues which are threshold and/or jurisdictional matters. These are summarised below and four of these matters are discussed further under the individual headings. The Record of Briefing's from the Sydney Western City Planning Panel (the Panel) also provide commentary on four of these key matters.

The five threshold issues are:

1. The proposal is inconsistent with the Part 3A Concept Plan approved for North Penrith.
2. The accompanying offer for Community Infrastructure is not of an acceptable nature to warrant the additional height sought by the proposed development.
3. Parts of the proposed development that exceed the LEP mapped height create additional overshadowing onto public open space at Station Plaza.
4. The conditions of the competition waiver require further steps to be carried out.
5. The application does not have concurrence from Sydney Trains as required by section 2.99 of the *SEPP (Transport and Infrastructure) 2021*. This matter is discussed below in the 'External Referral Responses' section of this planning assessment report.

1. Inconsistency with Part 3A Concept Plan for North Penrith

The site is part of the North Penrith Concept Plan (Major Projects 10_0075) which was approved on 04 November 2011 by the Minister for Planning under (the then) Part 3A of the *Environmental Planning and Assessment Act, 1979*. The approved concept plan was modified on 11 and 23 January 2013. The Plan covers 40.1 hectares of land in what is now known as Thornton. This includes the subject site. The modified approved concept plan allows a specified quantum of residential dwellings, retail, commercial, and light industrial floor space, open space, and drainage areas. The approved concept plan includes Design Guidelines and requires contributions for the provision of open space and community facilities.

The Panel's Record of Briefing dated 29 March 2023 outlines in more detail the implications of the approved North Penrith Concept Plan for the current proposed development. While these details do not need to be repeated in this planning assessment report, as they are readily and publicly available from the Record of Briefing, the conclusion is that the consent authority could not grant consent to the proposed development because the proposal is inconsistent with the approved North Penrith Concept Plan.

The amendment to the Penrith LEP that resulted in the insertion of clause 8.7 and the site being identified as 'Key Site 11', does not derogate from the requirement for the proposed development to be consistent with the approved Concept Plan.

The relevant wording is in Schedule 2, clause 3B of the *Environmental Planning (Savings, Transitional & Other Provisions) Regulation 2017* (Stop Regulation), which relates to development yet to be granted consent for which a concept plan has been approved under Part 3A, before or after the repeal of Part 3A. Clause 3B(2)(d) and (f) read as follows:

- "3B(2)(d) - a consent authority must not grant consent under Part 4 for the development unless it is satisfied that the development is generally consistent with the terms of the approval of the concept plan"
- 3B(2)(f) - the provisions of any environmental planning instrument or any development control plan do not have effect to the extent to which they are inconsistent with the terms of the approval of the concept plan".

It is evident that the proposed development is **not** generally consistent with the terms of the approval of the Concept Plan. Although the applicant has not provided specific information responding to the five questions posed by the Panel at paragraph 10(a) to (e) of the Record of Briefing dated 29 March 2023, it is evident that the proposed development does not accord with certain conditions of the Concept Plan.

The applicant has sought to address this by contemplating a partial surrender of the approved Concept Plan, in so far as the approval relates to the subject site. The applicant has advised that discussions have occurred with the Department of Planning about this issue. However, it is not clear whether a partial surrender can be achieved, given that part of the land to which the concept plan relates has been subdivided and sold to retail purchasers, thereby raising consequent owners consent issues. The Panel also raised a concern that the height and density of one part of a Part 3A concept approval might have been raised in consideration of lowering heights in another part of the site/plan and that development consent conditions, and infrastructure contributions could have been conceived with reference to an entire development.

In any event, the applicant has not provided evidence of a partial surrender. Another option suggested is to apply to the relevant consent authority to modify the approved Concept Plan. The Panel noted that obtaining owners consent to lodge a modification application is the subject of schedule 4 clause 8F(1)(e) of the Transitional (Stop) Regulation. To date, no such modification application has been lodged.

On 21 September 2023, the applicant directly gave the Panel a legal opinion that it is understood the Panel and the Department of Planning and Environment are considering.

However, the contemplation of any of the possible avenues for dealing with this issue have not yet reached an accepted solution. Therefore, progression of any of these options regarding the approved Concept Plan is likely to result in a further delay of the development application, which was lodged with Council in March 2022. Consequently, the consent authority cannot be satisfied that the proposed development is generally consistent with the terms of the approved Concept Plan and therefore '*must not grant consent*' having regard to Schedule 2 clause 3B(2)(d).

2. Nature and Value of Offer for Community Infrastructure

The site is identified in the Penrith LEP as Key Site 11. Clause 8.7 is titled '*Community infrastructure on certain key sites*'. Clause 8.7(3) permits development to achieve greater building height than the mapped height at clause 4.3 of the LEP, '*if the proposed development includes Community Infrastructure*'. The inclusion of Community Infrastructure as part of the proposed development is written in clause 8.7 as a precondition to the granting of consent.

The mapped height at clause 4.3 is 32 metres. The potential for additional height afforded by clause 8.7 is unspecified (unlimited). It is noted that the LEP contains no mapped FSR for the site, but that clause 8.7 potentially affords a maximum FSR of 5:1.

The development application has been accompanied by five formal offers for community infrastructure which the applicant has uploaded to the NSW planning portal. In addition to the five various offers, there have been discussions with Council staff about other possible community infrastructure works.

The five uploaded offers for Community Infrastructure are summarised below:

1. **23 May 2022** - Construction, fit-out, and dedication (by stratum lot) to Council of a 489sqm tenancy to be used as a '*recreation facilities (indoor)*' located on Level 1 with a ground floor lobby in Tower C. Tower C is located in the northern portion of the development and is associated with the concurrent application DA22/0214. The proposed delivery time was prior to the first Occupation Certificate related to Tower C - Stage 2.

2. **11 July 2022** - Monetary contribution to Council to offset cost of upgrade works to Allen Place laneway and Penrith City Park. Works to be carried out by Council. Works are already approved by the Panel on 20 September 2021 in Development Consent DA21/0047.
3. **22 August 2022** - Monetary contribution to Council to offset cost of specified works to Allen Place laneway and Penrith City Park. Works to be carried out by Council.
4. **06 July 2023** - A portion of upgrade works to High Street, Penrith (between Woodriff and Lawson Streets). These works will be delivered prior to the first Occupation Certificate associated with DA22/0213. This offer also included embellishment works to Station Plaza as part of the works for the concurrent application DA22/0214, with these works carried out prior to the Occupation Certificate for DA22/0214.
5. **24 July 2023** - Upgrade works, identified as Stage 3A to High Street, Penrith, between Woodriff and Lawson Streets. The Stage 3A works are shown coloured blue on the accompanying drawings. The blue area approximately relates to the roadway areas. This represents the applicant's **current offer** for Community Infrastructure. The upgrade works include: "*preliminaries; stormwater management; civil and road works; signage, traffic control, hoarding, fencing; and electrical, hydraulic and other services*".

The current offer (number 5) states that planning approval for the High Street works will be sought as part of the development application for DA22/0213 (this current DA). It is currently unclear whether this means that the DA has been amended to include the works or whether the applicant will request Council obtain approval for the works under Part 5 - Development Without Consent, through the Review of Environmental Factors process.

In addition, it appears that the remainder of the proposed upgrade works to High Street (referred to as Stage 3B and coloured green on the accompanying drawings) forms part of the offer for community infrastructure related to the concurrent development application DA22/0214. Given the applicant's staging of the two development applications, it is unclear how the timing will work for the proposed upgrade works to High Street.

Offer number 3, for a contribution to specified works in City Park, was formally rejected by Council's Community Infrastructure Panel. It is understood that the other offers were discussed with Council's commercial teams and were not pursued.

Notwithstanding the discussions to date around a suitable offer for Community Infrastructure, ongoing concerns have been reiterated about the nature of the offer in relation to clause 8.7. These specific concerns are about whether the proposed development includes community infrastructure, and if it does, is the nature and value of the offer commensurate with the additional height and 5:1 FSR sought by the proposed development.

The assessing officer shares the views put forward by the Panel in previous Briefings, being that the community infrastructure should be located on the subject site and "*the Panel would stand to be convinced that the provision can be met by funding community infrastructure outside the DA site*". In addition, the Panel expressed that notwithstanding Council's '*Community Infrastructure Policy*', the Panel is obliged to apply the LEP as gazetted, and that for the additional height under clause 8.7 to apply '*community infrastructure*' as defined by the clause would need to be part of the development proposed in each DA. The Panel also doubted whether the clause would allow for reliance upon community infrastructure on High Street Penrith on the other side of the railway, which would not seem to be relevantly 'included in the development'.

The community infrastructure should inform the proposed design of the development, particularly the spatial planning of the ground floor plane and the podium, which on the northern site (DA22/0214) occupies the whole site. For example, community infrastructure could include additional open space within the

development.

At the DIP meeting on 21 September 2023, the applicant presented Option 1 which was the first-floor indoor recreation room. The DIP stated that this concept could provide good community benefit and support a range of activities. The DIP felt that the position of the space was positive but questioned its connection to the ground floor through-site link, and whether the room was large enough to carry out a range of sporting activities. The DIP suggested the recreation room could be better integrated with the ground floor which could also increase the value of the through-site link. The DIP acknowledged that this would have to be further negotiated with Council.

In summary, the proposed development must include and demonstrate that there is a material public benefit for the additional height and floor space sought by the development. In addition, if the applicant wishes to pursue the development as two separate development applications, then each development respectively must include tangible community infrastructure as defined by clause 8.7 with clear timing for the completion of works. At this time, the current development application does not do this.

A continued discussion around community infrastructure can occur. However, the assessing officer questions whether the ongoing discussion and required amendments to the development should occur while the current DA is active, particularly given the date of DA lodgement (March 2022) and the additional timeframe to carry out the further negotiation, including processes with other Council teams (assets, property, recreation), Council's CI Panel, and the DIP, as well as the re-exhibition requirements.

3. Sun Access Control and Overshadowing of Public Open Space

Clause 8.2 states that development consent cannot be granted 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. The mapped height at clause 4.3 of the Penrith LEP is 32m.

The information submitted in August 2023 shows that a part of the proposed development, that exceeds the 32m mapped height, will cast additional shadows onto the adjoining public open space known as Station Plaza at 182 Lord Sheffield Circuit. 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.

The additional shadow from the development onto Station Plaza appears to be from Tower D (DA22/0214) although the applicant has not submitted detailed information to show which parts of the proposed building will cast the additional shadow. However, for ease of legibility the sun access assessment is included in this planning assessment report.

There is limited information submitted with the applications about the extent of overshadowing to the public open space. The information submitted by the applicant on 04 August 2023 provides a table (see below) showing the percentage of site area of Station Plaza that will receive sun at the winter and summer solstices, and at the spring and autumn equinoxes.

BASE CASE (32M)				
	Winter Solstice (JUN 21)	Summer Solstice (DEC 21)	Spring Equinox (SEP 23)	Autumn Equinox (MAR 20)
9:00 AM	3.9%	82.7%	70.1%	70.1%
10:00 AM	64.7%	88.8%	99.1%	99.1%
11:00 AM	94.2%	99.4%	99.4%	99.4%
12:00 PM	60.5%	94.3%	75.7%	75.7%
1:00 PM	24.7%	62.6%	41.8%	41.8%
2:00 PM	0.0%	40.3%	12.0%	12.0%
3:00 PM	0.0%	18.2%	1.5%	1.5%
AGGREGATE	41.3%	81.1%	66.6%	66.6%
63.9%				
DA PROPOSAL				
	Winter Solstice (JUN 21)	Summer Solstice (DEC 21)	Spring Equinox (SEP 23)	Autumn Equinox (MAR 20)
9:00 AM	3.9%	82.7%	70.1%	70.1%
10:00 AM	64.7%	88.8%	99.1%	99.1%
11:00 AM	95.0%	99.4%	99.4%	99.4%
12:00 PM	49.3%	91.9%	79.8%	79.8%
1:00 PM	39.9%	39.8%	45.6%	45.6%
2:00 PM	13.6%	10.2%	13.9%	13.9%
3:00 PM	0.0%	6.8%	1.5%	1.5%
AGGREGATE	44.4%	69.9%	68.3%	68.3%
62.7%				

Shadow Analysis to Station Plaza

The applicant states that during winter, spring and autumn the solar access is improved, compared to a 32m height compliant scheme. At the summer solstice the applicant says there is an overall negligible decrease of 1.2% of Station Plaza area that achieves solar access.

However, the applicant asks the Panel to consider the **aggregate** impact of shadows cast throughout the entire year, not just the aggregate on a single day. The overall figure of a 1.2% decrease in solar access is reached by taking the total percentage figures in the table above and using the calculation: 63.9% - year aggregate for a 32m height compliant scheme minus 62.7% - year aggregate for the proposed development.

The applicant seeks to demonstrate that although there may be additional shadows cast at certain times of the year, beyond the shadows that would be cast by a 32m height compliant scheme, there are other times of the year when there is more solar access as a result of the proposed development.

The applicant also states that the clause 4.6 request will reference that a height compliant scheme could have a permitted height of 35.2m, being the mapped height of 32m plus the 10% afforded by the design excellence clause. The shadow analysis carried out using a development with a height of 35.2m states that there would be improved solar access at all seasons. However, given the specific wording of clause 8.2 *"...adherence to the controls indicated for the land on the Height of Buildings Map"*, it is clear that the mapped height of 32m is the standard from which to make the assessment and not a height which is potentially 10% more than the standard (for the purpose of clause 8.2).

The question of whether to consider the aggregate impact stems from the wording of the clause in the LEP which states *"to a lesser degree"*. The Panel, in previous Briefings, have indicated that they would consider the aggregate approach. However, in one Record of Briefing the Panel referred to the *'aggregate across the day'*. In a subsequent Record of Briefing the Panel noted that the relevant inquiry involved a qualitative and quantitative assessment of the nature and duration of shadowing. The Panel stated that they were *"open to an argument that a building with some additional overshadowing might still not give rise to a 'greater degree of overshadowing' overall if there were countervailing aspects of the design which opened up public open space to additional sun during the day"*.

Considering the solar access figures quantitatively, the table states that on those four days of the year combined the total (aggregate) is 63.9% for a height compliant scheme and 62.7% for the proposed development. Therefore, strictly speaking the proposal does not comply with clause 8.2, and *"development consent may not be granted to development on land to which this Part applies"*.

However, Commissioner Horton C in *Urban Apartments Pty Ltd v Penrith City Council* [2023] (NSWLEC 1094) held clause 8.2 is a development standard that could be varied subject to a written request pursuant to clause 4.6 of the Penrith LEP.

The applicant submitted a written request pursuant to clause 4.6 on 25 September 2023. A copy has been provided to the Panel members. The applicant references the first method outlined in *Wehbe v Pittwater Council* to establish that the standard is unreasonable or unnecessary because the objective of the standard is still achieved. The applicant states that cumulatively, the proposed development improves solar access and reduces overshadowing on the identified open space in winter, spring and autumn. The applicant goes on to state that in the summer solstice there is a negligible reduction of solar access. The 4.6 request states that the shadow diagrams have not modelled that there is a large tree planting and vegetation area along a large portion of the north/south axis of the square which shades large parts of the square to the east. There is also a large, shaded bus stop which manages heat loads in summer periods.

However, 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 metres 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 (cut-outs 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 in each of those seasons?

The submitted table shows that the greatest decrease of Station Plaza site area receiving solar access occurs at the following times:

- Summer solstice - 12 noon - decrease of 2.4%, 1:00pm - decrease of 22.8%, 2:00pm - decrease of 30.1%, 3:00pm - decrease of 11.4% (total loss of solar access on 21 December will be 11.2% of the site area of Station Plaza).
- Winter solstice - 12 noon - decrease of 11.2%.

The impact at the winter solstice is potentially counterbalanced by other times of **that same** day (21 June). For example, at 1:00pm there will be 15.2% of area that receives additional sun and at 2:00pm there will be 13.6% additional area, which potentially counterbalances the loss of 12 noon.

Although summer in Penrith is hot, the assessing officer does not agree that the proposed loss of solar access to an existing and well-functioning public open space area, to the extent proposed by the development, is acceptable. Nor is it accepted that the somewhat slight increases in solar access on the three other days (March, June, and September) counterbalance the larger loss on 21 December. Nor are the increases on 21 June (3.1% increase), 23 September (1.7% increase), and 20 March (1.7% increase) significant in their own right. Therefore, the loss of solar access in December is greater than the gains made in March, June, and September.

While the aggregate might be reasonably considered, this should more closely relate to the aggregate on a certain day, month, or even season, not across the whole year.

Further, the applicant's shadow analysis references the measured heat in Penrith (48.9 degrees Celsius) in 2022 and Council's policies relating to 'urban heat' (clause 7.30 of the Penrith LEP) and the '*Cooling the City: Planning for Heat Issues Paper*'. These policies do not suggest that the solution to urban heat is building taller buildings to cast shadows as a means of reducing the urban heat island effect. Clause 7.30 of the LEP refers to planning and design measures that "*maximise green infrastructure*", "*retain water in*

the landscape", and *"use building, paving and other materials that minimise heat impacts"*. The issues paper refers to increasing tree canopy cover and larger verge widths for greenfield subdivisions in Western Sydney, requiring more landscaped areas for smaller lot residential development, more stringent building requirements to reduce heat in homes, a review of BASIX and the BCA, and amendments to relevant industry design guides.

In terms of a qualitative consideration is it relevant to consider which part of the development is likely to be causing the additional overshadowing. It appears that Tower D is creating some additional overshadowing, but from an image submitted with the clause 4.6 request (which has been submitted very late in the DA process) it appears that Tower A is causing the additional overshadowing at the summer solstice. The massing and scale of Tower D has been discussed elsewhere in this planning assessment report, particularly in terms of its poor contextual relationship with existing buildings in the area which make up the character of Thornton.

One of the objectives of the E1 Local Centre zone is *"To create opportunities to improve the public domain and encourage the integration of centres with public transport and pedestrian networks"*. Notwithstanding the applicant's argument for solar gain to Station Plaza, it is considered that the resulting overshadowing impact does not meet this zone objective.

The single objective of clause 8.2(1) states *"The objective of this clause is to protect public open space from overshadowing"*. It is considered that the resulting overshadowing impact does not meet this clause objective.

At the DIP meeting on 21 September 2023, the DIP asked the applicant to provide more detailed information about the overshadowing impact, to allow the DIP to provide further commentary to assist Council's planning assessment.

4. Design Competition Waiver Requirements

Clause 8.4(3)

Clause 8.4(3) states that development consent must not be granted unless an architectural design competition has been held in relation to the development. The proposed development would specifically trigger the requirement for a competition under clause 8.4(3)(a) *"development in respect of a building that is, or will be, greater than 24 metres or 6 storeys (or both) in height"* and under clause 8.4(3)(b) *"development that has a capital value of more than \$1,000,000 on a key site identified on the Key Sites Map"*.

Clause 8.4(4) provides an exception to the requirement for a design competition pursuant to clause 8.4(3) if a waiver has been granted.

An architectural design competition was held in 2016 with the winning scheme by Crone Architects being for two towers across the entire site (including the land the subject of the concurrent development application DA22/0214).

Given the differences between the competition winning scheme (two tower forms) and the proposed (combined) development (four tower forms) Council staff were not satisfied that the proposed development had been the subject of a design competition. This is particularly relevant given the judgement of Preston CJ in *Toga Penrith Developments Pty Limited v Penrith City Council [2022] NSWLEC 117*. In that ruling, Preston J held that to satisfy the requirement for a design competition, the proposed development must be *"the same or substantially the same"* as the competition winner. Council staff asked the applicant to address this.

Subsequently, on 06 April 2023 the NSW Government Architect provided a letter to the applicant that confirmed a competition waiver had been granted for the proposed development pursuant to clause 8.4(3) of the Penrith LEP. The waiver states that "*The design development and design integrity processes have led to development applications for a scheme that is substantially different to the original competition winning scheme from 2016*".

The waiver is subject to conditions as follows:

- The proponent's team must consult with Council to address remaining threshold issues impacting the assessment of the development applications.
- The proponent's team must present the current proposal to the Design Integrity Panel (DIP) prior to determination.
- The proponent's team must submit a detailed written report from any future DIP meetings to Council's Assessments Team to inform and assist the assessment process.

Since the date of the waiver the applicant reconvened the Jury members (now forming the DIP) on 21 September 2023. The DIP stated that they would prepare a report outlining their views relating to the proposed development. The DIP advised the applicant that the development is capable of achieving design excellence. The DIP stated that they would comment on overshadowing to Station Plaza (clause 8.2) after receiving further information from the applicant. The DIP also stated that a potential indoor recreation room on the first-floor would add to the design excellence of the development.

While this is a positive step forward, outstanding threshold issues remain and further time would be needed to resolve the matters comprehensively, including timeframes for further amendments to be received and reviewed by Council, the DIP, and external referral authorities.

Clause 8.4(5)

The Panel's Record of Briefing dated 29 March 2023 also questions the implications of clause 8.4(5) which the Panel state is a second cumulative requirement for a design competition. This clause prohibits the grant of consent unless "*the design of the building or alteration is the result of an architectural design competition where (i) a height is proposed of up to 10% greater than that allowed by clause 4.3*". Given that the proposed development does seek a height greater than the mapped height limit of 32m, the Panel state that this clause may also trigger the requirement for a design competition, and that the waiver afforded by clause 8.4(4) does not apply to the competition trigger in clause 8.4(5).

However, clause 8.7(3) permits additional height and floor space despite the 10% bonus afforded by clause 8.4(5). The applicant states that the additional height sought is indeed pursuant to clause 8.7(3) and not the design excellence clauses at 8.4.

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. Notwithstanding that the resulting mass and scale of Tower D is not acceptable, the site is capable of being developed.

Section 4.15(1)(d) Any Submissions

Community Consultation

External Referral Responses

Transport for NSW (Roads)

TfNSW responded by letter dated 16 September 2022 to state that they raise *"no objection to the development proposal as it is unlikely to have a significant traffic impact on the classified road network"*.

Transport for NSW (Sydney Trains)

Section 2.99 of the *State Environmental Planning Policy (Transport and Infrastructure) 2021* relates to excavation in, above, below or adjacent to rail corridors. The section applies to development that involves the penetration of ground to a depth of at least 2m below existing ground level on land that is within 25m of a rail corridor.

Subsection 2.99(3) states, *"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 which the development application relates"*. Subsection (5) relates to a rail corridor owned by or vested in ARTC, or if 21 days have passed since the referral to the rail authority and no response has been received.

In this case, Sydney Trains responded by letter dated 15 September 2022 stating that concurrence was denied, and that further information was required relating to engineering and technical documentation. The referral response was forwarded to the applicant on 16 September 2022. In a subsequent email from Sydney Trains, the rail authority also requested information about how pedestrians would access the commuter car park at the times when the ground floor through-site link was closed off after hours.

No further information to address the referral response has been forthcoming from the applicant nor sought from Council staff, in view of the outstanding threshold matters.

Therefore, given the wording of subsection 2.99(3) the consent authority must not grant consent to development without the concurrence of the rail authority. This is another threshold matter that prevents approval being granted.

Sydney Water Corporation

Sydney Water confirmed in letter dated 24 October 2022 that potable and wastewater servicing is available.

Endeavour Energy

Endeavour Energy responded by letter dated 25 August 2022 to provide advice and conditions should consent be granted.

Department of Planning and Environment (Flood Evacuation)

A referral was initiated by Council staff through the NSW planning portal to DPIE with a request for comments regarding flood risk and capacity for flood evacuation routes. In addition to this referral and in accordance with a request from DPIE relating to flood planning (by way of a general letter to Council dated 17 July 2021) Council's planner also emailed Resilience Planning seeking comments.

Despite further multiple requests from Council's Planner, including emails to Infrastructure NSW, Resilience Planning, and the SES, as well as a telephone conversation with the SES, to date no comments have been received. Given the attempts to obtain comments, and the recommendation for refusal, it is assumed that

the relevant agencies do not wish to comment on the proposal at this time.

Nepean Police

Council's Community Safety Officer forwarded an email referral to the Nepean Police Area Command inviting comments. No response was received.

Heritage

Council engages an external Heritage Advisor to review development applications near items or conservation areas. The Heritage Advisor has stated that they 'do not support' the proposal. The main concern raised is the potential negative impact of the proposed building forms in terms of their overall lack of cohesion with building forms in the Penrith CBD. The Heritage Advisor suggests the establishment of an urban planning control, a "pedestrian urban plinth control" that reflects the character of the existing predominant scale of the Penrith CBD, which would unify existing and proposed buildings.

Public Submissions

The development application and offer for community infrastructure that related to contributions towards City Park Penrith, were publicly exhibited. 22 submissions were received for DA22/0213 (this DA). 19 submissions were received for DA22/0214 (the concurrent DA). Many of the submissions were lodged against one DA but referenced both applications. Some submissions were reiterations of other submissions (in the form of forwarded emails to say an individual felt the same). Two submissions are in support of the development.

Therefore, for ease of legibility all of the matters raised in submissions relating to both development applications are collated and discussed below.

Submission Comment	Response
<p>Support:</p> <p>There is a demand for apartments in the area and for the retail offerings without having to cross the railway line.</p> <p>The proposal fits with the CBD rejuvenation. I support greater density of housing and more business opportunities. The proposal improves pedestrian links in the area and to the station.</p>	<p>Threse comments are noted. The retail and commercial uses proposed are supported and will contribute to the function and vitality of the area.</p>

<p>Inappropriate VPA:</p> <p><i>"an inappropriate proposal for the VPA in relation to the impacts of density and nexus for open space and public interest / community benefit of contributions versus additional height for the development".</i></p> <p>The offer results in no additional "\$\$" being contributed to Thornton despite additional developer benefit.</p> <p>This is unacceptable as there is a clear nexus between this proposed development and the local impacts on Thornton Estate particularly in relation to traffic impacts and there being no planned increase in open space for the increased density.</p>	<p>This comment is in relation to the offer for community infrastructure that related to the monetary contribution towards City Park, Penrith.</p> <p>However, the concerns expressed are also relevant for the current offer relating to upgrade works to High Street Penrith.</p> <p>The issue of community infrastructure has been discussed throughout this planning assessment report. The assessing officer and the Panel, in a series of briefings, have previously commented on the nature of the offer for community infrastructure.</p>
<p>Lack of Car Parking:</p> <p>The proposal represents a significant increase to the population in the area, equivalent to the combined occupancy of all four stages of Thornton Central. While this in itself is not an issue, street parking in the area is now saturated at all times of the day.</p> <p>The proposed development does not provide sufficient private parking for the number of proposed residents. The proposed 316 apartments would result in 536 occupants, assuming there is only one person per bedroom.</p> <p>Will the commercial parking be free for customers?</p>	<p>A total of 120 car parking spaces for commercial use and 333 car parking spaces for private residential use is included in the proposed development.</p> <p>The total number of apartments proposed is 316.</p> <p>The proposed number of private car parking spaces for the residential apartments <u>complies</u> with Part E11, clause 11.8.4.2 of the Penrith DCP. This part of the DCP relates to North Penrith (now Thornton).</p> <p>The parking rates in this chapter are expressed as maximums (not minimum numbers) as the parking controls reflect the principles of public transport and less reliance on private cars.</p> <p>The DCP control states that visitor parking is to be on-street only and sets a maximum number of car parking spaces per residential apartment depending on the number of bedrooms.</p> <p>However, it is also acknowledged that Council's Traffic Engineer has raised concerns about the number of car parking spaces proposed.</p> <p>Given that there remain unresolved threshold issues, the matter of parking is not pursued at this time.</p>

<p>Bulk / Height / Character:</p> <p>The proposed developments are significantly larger than the surrounding prior developments, particularly in height, with the shorter tower of each proposed development being equivalent in height to the highest tower currently in the area and the larger tower being approximately three times higher.</p> <p>The area is only zoned for mid-rise development. Most of the buildings in Thornton are 9-10 storeys high.</p> <p>Towers A and D do not fit with the established character of the area.</p> <p>Penrith's current height limit of 11 storeys is an appropriate height for buildings in the area.</p> <p>The proposed height will be a blot on the current view corridor to the Blue Mountains.</p> <p>There will be wind tunnel effects at ground level because of the height of the towers.</p> <p>Penrith is not Parramatta or Chatswood. This high-rise development will change the character of Penrith and will be an eye-sore.</p>	<p>Clause 8.7 of the Penrith LEP allows the consent authority to grant approval to a development that has a greater height than the mapped LEP height, which is 32m, if the proposed development includes Community Infrastructure. This matter has been discussed throughout this planning assessment report.</p> <p>It is agreed that Tower D, located on the northern side of the site adjoining Lord Sheffield Circuit is too bulky in scale and massing for its specific position and context.</p> <p>The scale and massing of Tower A could be considered acceptable if the proposal included satisfactory community infrastructure, given that Tower A is positioned adjacent to the railway line, at the southern end of the site.</p> <p>The application is accompanied by a wind report which reviews the impact of the development on the pedestrian / wind environment.</p> <p>The wind report makes some recommendations to mitigate the areas that have been identified as likely to be exposed to stronger winds. These areas include parts of the through-site link, the outdoor areas of the childcare centre, and the various communal open space areas for the residents. The type of mitigation measures include evergreen tree planting with dense foliage, hedging, and screening. However, the report also recommends that wind tunnel testing is undertaken at a more detailed design phase to quantify the wind aspects.</p>
--	---

<p>Traffic and Transport:</p> <p>The current roads and intersections are not wide enough to take the extra cars.</p> <p>There is no information about how local transport and road infrastructure would be adjusted to support incoming residents. Currently getting train to the city in peak hours is difficult. There is no information about a commitment to upgrade intersection and roundabouts, either from Council or the developer.</p> <p>The traffic survey data is old (relying on information from 2019 and 2020) all before Covid. The traffic survey data was also before other developments in the area, such as 2, 26, and 91 Lord Sheffield Circuit.</p> <p>Thornton is already densely populated and has a lack of safe crossings.</p>	<p>Council's Traffic Engineer reviewed the development applications and raised some concern about the method for calculating traffic generation. Those comments are discussed below in the 'Referrals' section of this planning assessment report.</p> <p>The comments acknowledge existing capacity issues in the area, planned road upgrade works, and further information required in relation to traffic generation.</p>
<p>Retail:</p> <p>Retail shops and a supermarket are welcomed additions to the area, but the supermarket should be an independent operator, and the retail should be smaller (more independent and unique) offerings.</p> <p>Five storeys of retail is unreasonable given the site's proximity to Westfields.</p> <p>How will shopping trolleys be managed?</p>	<p>The inclusion of retail uses, and the supermarket is welcomed and supported on planning grounds. These type of uses meet the zone objectives for the E1 Local Centre zone.</p> <p>The application is also accompanied by a Retail Impact Assessment that concludes that the site can support the retail uses proposed in the development.</p> <p>Although the podium is five storeys, the retail components are limited to the ground floor, with parking, a medical centre, and a childcare centre occupying the first floor space.</p> <p>Details relating to future uses, including trolley management are not pursued as part of this planning assessment given the recommendation.</p>
<p>Amenity Impacts:</p> <p>Increased heat load to surrounding buildings.</p> <p>Reduced privacy for proposed tenants.</p>	<p>The application includes reports relating to BASIX commitments, solar reflectivity, and ADG separation compliance. These matters are generally acceptable and would be further considered at this time if the proposed development was supported.</p>

<p>Inadequate Flood Evacuation Information:</p> <p>There have been Facebook posts and evacuation warnings from July 2022, although it is unclear if other properties in the area have a flood evacuation plan, flood wardens, or evacuation practices.</p> <p>The SES plan 2020 still shows Thornton Estate as industrial and includes the resident population.</p> <p>How does the proposal address the guideline that includes all land below the Probably Mean Flood?</p> <p>How many dwellings can safely evacuate the Thornton Estate currently?</p>	<p>The application includes a Flood Emergency Response Plan which is acceptable in principle.</p> <p>The <i>Environmental Planning and Assessment Regulation 2021</i> and the Penrith LEP require consideration of flood risk, including flood planning, safety and efficient flood evacuation.</p> <p>The application was also referred to the Department of Planning for comment about flood matters. This referral is discussed below.</p> <p>Notwithstanding that a referral response has not been received to date, given that the recommendation is to refuse consent, any flood related matters can be pursued by the applicant in consultation with Council's Engineers, the NSW SES, and Infrastructure NSW.</p>
<p>Crime:</p> <p>Thornton is already seeing relatively high crime levels.</p>	<p>Council's Community Safety Officer sent a notification of the application to Nepean Police, although a response was not received. Nevertheless, Council's Community Safety Officer also reviewed the proposal in relation to Crime Prevention Through Design and raised no objections subject to conditions. This is discussed below.</p> <p>If the proposal was to be supported, it is likely that that conditions would be imposed to require further details about crime prevention, such as lighting, way finding signage, security of the through-site link, and the like.</p> <p>There would also be the requirement for a Plan of Management for the publicly accessible areas, and it is likely that the future supermarket and/or retail areas would have private security and CCTV.</p>
<p>Inadequate Facilities in the Area:</p> <p>The current facilities in the area are not sufficient for many of the existing residents.</p> <p>The increase in residents from this proposal will place more pressure on services such as car parking, leisure space, and exercise space.</p> <p>The proposal does not include a playground.</p>	<p>It is acknowledged that Thornton is growing as an area and now serves many local residents.</p> <p>Although the proposed development did offer to construct and dedicate a recreation room on level 1 of the development (as part of the podium in DA22/0214) Council staff did not support that particular space.</p> <p>The matter of community infrastructure being located on or near the site has been raised with the applicant and warrants further consideration.</p>

Insufficient Utility Supply: There are already issues in the area with NBN and utilities and this will add more pressure to the demand.	Sydney Water and Endeavour Energy have confirmed that the site can be serviced. Conditions would be used to require other utilities to be provided.
Construction Impacts: The application states that construction will go on until 2028, which will be disruptive to residents. The area will be dusty, dirty, and noisy throughout this long construction period.	It is acknowledged that the construction phase is disruptive. A development of the size and nature proposed is also likely to take longer than a single building given the size of the site as well as the layout of the buildings. Any approval would be subject to conditions that mitigate construction impacts. These would include limits on construction hours, traffic management, dust, and noise.

Referrals

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

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

Community Safety Officer

Council's Community Safety Officer raised no objections to the proposal and commented that the design takes into account Crime Prevention through Environmental Design principles. Council's Community Safety officer notes that the pedestrian through-site link on the ground floor has the ability to be closed off after hours and that this option is supported as a measure to enhance resident and tenant safety as well as protect property after hours. Council's officer states that this is particularly pertinent given the proximity of the development to Penrith railway station and the pedestrian connectivity through the link to the commuter car park. This matter would require further consideration in terms of the comments from Sydney Trains about how commuters would access the commuter car park during hours when the pedestrian link was closed.

Development Engineer

Council's Development Engineer has raised issues relating to:

- Flood planning - The proposed bund wall does not protect potential flows coming down the adjoining lot of paved seating area, which slopes towards the subject site. The submitted survey indicates that the eastern boundary is under the 1% AEP for the site.
- The proposed retail has a level of RL 26.95 and under, which does not comply with the required 0.5m 1%AEP level of RL 27.4.
- There is a transmission easement along the southern boundary of the site. It appears that part of the proposed building will encroach this easement and written consent from Integral Energy (or the relevant party) should be obtained.
- Swept Paths - sheets 6, and 17-20 require further consideration and potential changes.

Given that the threshold matters remain unresolved, design changes and additional information have not been sought at this time.

Environmental - Environmental management

Council's Environmental Management Officer has raised issues relating to:

- The lack of a suitable noise assessment relating to the use of the outdoor common open space areas, including the childcare centre.
- The Noise Impact Assessment does not provide an adequate or detailed assessment of the potential noise impacts associated with the car parks, loading docks, waste management areas, retail shops, and childcare centre.

Given that the threshold matters remain unresolved, design changes and additional information have not been sought at this time.

Traffic Engineer

Council's Traffic Engineer has raised concerns about the number of car parking spaces proposed. Although acknowledging that the North Penrith DCP (Part E11) provides lesser parking rates than the City-wide controls (Part C10), by having maximum parking rates and encouraging public transport use, the Traffic Engineer has concerns about the lack of on-street parking in the vicinity of the site and the history of parking problems in the Thornton Estate.

Council's Traffic Engineer has also raised concerns about traffic generation, specifically stating that the Traffic Impact Assessment should address the following:

"The report has determined trip generation rates for the residential flat building based on the TfNSW Technical Direction TDT 2013/14a, however the Sydney Metropolitan traffic generation rates are not considered appropriate to Penrith LGA. The TfNSW traffic generation rates would under estimate the traffic impact by the proposed development on the road network. Council has developed the following localised traffic generation rates for RFBs that have been determined based on the TfNSW Technical Direction survey findings for similar suburbs and the rates provided in the Penrith Core Centre Transport Management Study and Plan: 0.30 vehicle trips per unit in the AM peak and 0.27 vehicle trips in the PM peak. The traffic generation rates and SIDRA modelling shall be updated accordingly in the report".

Council's Traffic Engineer has also raised concerns that the Castlereagh Road and Thornton Drive intersection is currently at capacity, with upgrade works expected to be completed by TfNSW. Council is also planning some upgrade works to local intersections. The timing of these works is not known at this point.

In addition, the following concerns were raised:

- Car wash bays shall be provided for the residential component in accordance with the Penrith DCP, E11, Part B.
- The maximum number of parking spaces for the medical centre shall be achieved.
- There appears to be a shortfall of bicycle spaces for customers/visitors. In addition, there should be alternative places for residents to park their bicycles in addition to the private storage cages proposed.
- The existing pedestrian zebra crossing fronting the stage 1 development should be relocated further north towards the front of Tower B rather than removed altogether, to facilitate pedestrian movements from the commuter car park.
- The two existing pedestrian crossings on Dunshea Street and one existing pedestrian crossing on Lord Sheffield Circuit should be upgraded.
- Pedestrian fencing should be provided in Dunshea Street fronting the commuter car park and extending around the southern corner to the bike parking, so as to direct pedestrians to the crossing. The footpath on the western side of Dunshea Street fronting the commuter car park should be widened to accommodate the fencing. The fencing and widening is a response to the proposed heavy vehicle loading area access adjacent to the commuter car park and concern about high pedestrian activity.
- The loading dock access for stage 1 has an insufficient width to cater for two-way movements for HRV and MRV (vehicles).
- The architectural plans show reconfiguration of the intersection of Dunshea Street and the exit from the at-grade commuter car park. This needs to be addressed in the Traffic Impact Assessment and detailed on the civil plans for clarity, including details of proposed line marking and infrastructure upgrades.
- Kerb adjustment is proposed on the eastern side of Dunshea Street between the stage 1 and stage 2 access points, which will create a deflection for vehicles heading southbound in Dunshea Street. The Traffic Impact Assessment and civil plans shall address the need for any line marking or treatment measures on Dunshea Street to provide adequate delineation for southbound vehicles.

Given that the threshold matters remain unresolved, design changes and additional information have not been sought at this time.

Waste Services

Council's Waste Team raised general matters relating to the detailed design of the waste collection infrastructure and (chute rooms, swept paths, height clearances, and the like). Given that the threshold matters remain unresolved, design changes have not been sought at this time.

Section 4.15(1)(e)The public interest

The proposed development in its current form is not in the public interest as the development does not include acceptable community infrastructure.

Conclusion

Notwithstanding the merits of the proposed development, at this current time the development application has a number of unresolved threshold issues which preclude the consent authority from granting development consent to the application.

The threshold matters are:

1. The proposed development is inconsistent with the Part 3A North Penrith Concept Plan approval and to date no clear resolution of this issue has been provided.
2. The proposed development does not include Community Infrastructure of an acceptable nature and value as required by clause 8.7 of the Penrith LEP and therefore additional height and a FSR of 5:1 cannot be given.
3. The conditions of the GANSW competition waiver are yet to be fulfilled in their entirety.
4. The proposed development overshadows Station Plaza which is contrary to clause 8.2 of the Penrith LEP. The clause 4.6 variation request is not supported.
5. The concurrence from Sydney Trains, pursuant to section 2.99 of the SEPP (Transport and Infrastructure) 2021 has not been obtained.

In addition, this planning assessment report includes concerns about the massing of Tower D and issues from other Council teams relating to flood planning, waste infrastructure and collection, the acoustic impact report, and traffic modelling.

It is acknowledged that the applicant has been working towards a comprehensive resolution of the outstanding threshold matters. However, given the time already lapsed since the development application was lodged, and the additional time likely to be required to resolve all of the outstanding matters, including further negotiation about community infrastructure, receiving amendments, and fulfilling the re-exhibition process, it is recommended that the Panel make a determination of the application.

The applicant is welcome to continue discussing the outstanding matters with Council staff and the relevant authorities to reach resolution prior to lodging any subsequent application.

Recommendation

It is recommended that the Sydney Western City Planning Panel:

1. Do not accept the written request pursuant to clause 4.6 of the Penrith Local Environmental Plan 2010 and do not vary the development standard at clause 8.2 relating to sun access to public open space; and
2. Refuse consent to Development Application DA22/0213 for the construction of a mixed-use development at 184 Lord Sheffield Circuit, Penrith, for the reasons outlined in this planning assessment report.

CONDITIONS

Refusal

- 1 Pursuant to Schedule 2, clause 3B(2)(d) of the *Environmental Planning (Savings, Transitional & Other Provisions) Regulation 2017*, development consent cannot be granted to the proposed development as the consent authority is not satisfied that the proposed development is generally consistent with the terms of the approval of the North Penrith Concept Plan (as modified).
 - 2 The proposed development does not include community infrastructure of an acceptable nature and value to warrant the additional height and floor space sought by the proposal. Therefore, development consent cannot be granted to the proposed development pursuant to clause 8.7 of the *Penrith Local Environmental Plan 2010*.
 - 3 The proposed development will cast additional shadow onto Station Plaza, located at 182 Lord Sheffield Circuit Penrith, to a greater degree than would result from adherence to the controls indicated for the land on the Height of Buildings Map. The non-compliance will result in an adverse impact to the public use and enjoyment of the public open space. Therefore, development consent may not be granted to the proposed development as it is contrary to clause 8.2 of the *Penrith Local Environmental Plan 2010*, and the request to vary the control pursuant to clause 4.6 of the Penrith LEP is not supported.
 - 4 The proposed development does not comply with clause 4.3 Height of Buildings in the Penrith Local Environmental Plan 2010, and no request to vary that development standard has been submitted in accordance with the statutory requirements of clause 4.6 of the Penrith Local Environmental Plan 2010.
 - 5 The proposed development fails to meet the requirements outlined in the competition waiver from the Government Architect NSW, dated 06 April 2023, specifically as follows:
 - "The proponent's team must consult with Council to address remaining threshold issues impacting the assessment of the development applications.
 - The proponent's team must submit a detailed written report from any future DIP meetings to Council's Assessments Team to inform and assist the assessment process."
- Failure to meet these requirements are contrary to the terms of the competition waiver and are therefore also contrary to clause 8.4(3) and 8.4(4) of the *Penrith Local Environmental Plan 2010*.
- 6 The development application fails to address the additional information request from Transport for NSW (Sydney Trains) in their letter dated 15 September 2022. Therefore, in the absence of the concurrence required pursuant to section 2.99(3) of *State Environmental Planning Policy (Transport and Infrastructure) 2021*, the consent authority must not grant consent to the development.

7 The proposed development fails to meet requirements relating to the following:

1. Natural cross-ventilation as per the Apartment Design Guide.
2. Flood planning levels.
3. Swept paths.
4. Acoustic impact assessment.
5. Traffic generation rates.
6. Potential impact on a transmission easement along the southern site boundary.
7. Civil details relating to footpath and kerb works, pedestrian crossings, and fencing.
8. Bicycle spaces for visitors/customers, and bicycle parking spaces for residents.
9. Waste collection design and waste infrastructure.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part B - DCP Principles

Part B - DCP Principles

For the reasons outlined in this planning assessment report, the proposal does not meet Principle 6 which is to "*recognise and build on the distinctive characteristics of cities, including their human and cultural values, history and natural systems*".

Part C - City-wide Controls

C1 - Site Planning and Design Principles

The proposed development does not meet the objectives of Part C1 that require that development address the key principles of site planning and urban design. The proposal does not adopt a height and massing that accords with an analysis of the site and its surrounding context.

C5 - Waste Management

Waste matters have been discussed in the body of the planning assessment report under the 'Referrals' section.

C10 Transport, Access and Parking

The deficiencies in the traffic report in relation to traffic generation have been discussed in the body of this planning assessment report under the 'Referrals' section.

C12 Noise and Vibration

The deficiencies in the acoustic report have been discussed in the body of this planning assessment report under the 'Referrals' section.

E11 Penrith

E11 - Part B - North Penrith

Chapter E11, Part B of the DCP relates to the Thornton Estate and includes the subject site. The DCP chapter was adapted from the North Penrith Design Guidelines, which were published by Landcom in 2013, and which supplement the North Penrith Concept Plan approval issued by the Minister for Planning on 09 November 2011.

The image below is from Figure E11.31 of the DCP. It shows the illustrative concept plan for Thornton. The concept for the subject site is different from the proposal in the development application. This is because Part E11 of the DCP does not reflect the additional height and floor space that is potentially afforded by clause 8.7 of the Penrith LEP.



Illustrative Concept Plan DCP Figure E11.31

Notwithstanding this, the proposed development does meet many objectives and controls in Part E11 of the DCP. This includes objectives to provide retail and employment uses, design language, on-site car parking spaces, and a through-site link. However, the proposed development does not comply with Part E11 of the DCP in relation to building height, as the DCP provides for 6 storeys.