

SWCPP Ref. No.:	PPSSWC-65
DA No.:	DA20/0148
PROPOSED DEVELOPMENT:	Construction of Part 14 Storey, Part 37 Storey Mixed Use Development including One (1) Level of Basement Car Parking, Five (5) Storey Podium Containing Car Parking, Ground Floor Commercial, 356 Residential Apartments, New Public Road & Associated Site Works - Lot 300 DP 1243401,87 - 93 Union Road, PENRITH NSW 2750
APPLICANT:	Toga Penrith Developments Pty Ltd
REPORT BY:	Kathryn Saunders, Senior Development Assessment Planner, Penrith City Council

Assessment Report

Executive Summary

Development application no. DA20/0148 seeks approval for the construction of a part 14, part 37 storey mixed-use development including 356 units. Two residential towers are proposed to sit above a shared 5 storey podium inclusive of 4 levels of above ground built to boundary, unsleeved car parking. The proposal includes ground floor commercial space and one level of basement car parking and includes the construction of a new north-south road linking Union Road to High Street along the Site's eastern boundary and the completion of a road link to Union Lane, to be dedicated as public road at 87-93 Union Road, Penrith.

The land on which the development is proposed is legally described as Lot 300 in DP 1243401 which represents two parcels of land severed by John Tipping Grove which spans north-south and which terminates as a no through road, just south of High Street. The Site to which the development application relates is identified as Part Lot East of Lot 300 in DP 1243401, which has an area of 5407sqm's and which has a frontage to High Street to the north, John Tipping Grove to the west and Union Road to the south. The Site is identified by the red outline in **Figure 1** below. A site survey is included at **Appendix I**.



Figure 1 (above): Nearmap image of the Site (outlined in red) in the context of the western edge of the Penrith City Centre, Penrith Railway Station and Penrith Westfield.

An application (DA20/0167) for a part 8, part 46 storey mixed use development on the adjacent Key Site to the east (614-632 High Street) is also currently under consideration by Council. DA20/0167 is also recommended for Refusal based on a number of matters although largely owing to traffic impacts and the acceptability of the offer of Community Infrastructure (CI). The assessment reports for both DA20/0167 and the subject application under DA20/0148 are to be presented together at the same Regional Panel meeting owing to their interrelated infrastructure needs.

The applicant lodged a similar application under DA18/0264, which was approved and included a part 12 and part 15 storey mixed use development with a shared 3 storey podium and new public roadway. The applicant is not intending on pursuing the approved scheme which included an FSR of 3.3:1 and a maximum height of 52.8m, being 28.8m above the 24m Height of Building development standard under Penrith Local Environmental Plan 2010 (PLEP or the LEP). The application was approved having regard to clause 8.7 of the LEP.

Clause 8.7 of the LEP allows for an FSR of up to 6:1 and removes the applicability of the Height of Building development standard if the proposed development includes *Community Infrastructure*. *Community Infrastructure* is defined in the LEP clause. The approved Community Infrastructure under DA18/0264 was the northern section of a new public road and its connection to High Street.

The subject development application is lodged under clause 8.7 Community infrastructure on certain key sites, under the LEP and the development application was lodged with an offer of Community Infrastructure (CI) dated 19 February 2020, which includes the proposal ... *'to direct the calculated value of the additional floor space achieved in the new DA towards construction of a signalized intersection of the new north-south road contained in the DA with High Street'*.

The offer includes that *'...Toga is prepared to discuss with Council the potential for Toga to design and construct these works 'in-kind' as opposed to a cash payment subject to agreement on construction details, timing, landowners consent, RMS and other authority approvals. In the instance where the above in not achieved cash payment will be provided towards the construction of the signalised intersection'*.

The subject development proposal is permissible within the B4 Mixed Use zone under PLEP and the various components can be defined as residential accommodation, residential flat building, shop top housing, roads and commercial premises (which includes business, office and retail premises).

The application has been notified to nearby and adjoining owners and occupiers between 17 April and 1 May 2020. Nine submissions were received. The submissions were in opposition to the proposal and matters related to: overall height, impacts of overshadowing, overdevelopment, incompatibility of the development with Penrith landscape, traffic and parking impacts, undesirable precedence, oversupply of apartments, property value impacts, view and visual impacts, amenity impacts on nearby units at no. 4 John Tipping Grove, construction vibration, noise and dust, impacts of basement construction, impacts of exhaust from podium parking on nearby residential units, sustainability impacts, impacts on character, Probable Maximum Flooding extent and evacuation issues, electric vehicle charge points no being provided for, visual impact on Blue Mountains escarpment.

The Sydney Western City Planning Panel (SWCPP) is the consent authority for the development as the proposal is defined a Regionally Significant Development, having a Capital Investment Value greater than \$30 million under Schedule 3 of State Environmental Planning Policy (Stage and Regional Development) 2011.

The SWCPP was briefed of the application on 21 September 2020 with the following matters raised:

- *The new scheme for the site is substantially more dense than the previous proposal under DA18/0264. The additional density presents significant new issues which will require careful attention particularly having regard to the considerations identified for determination by the Panel as consent authority by clause 8.7(5).*
- *It was noted that the DA was presented to the Design Integrity Panel and design excellence was confirmed, noting that the assessment of the Panel will be ultimately determinative under clause 8.7(5).*

- Clause 8.4(4) requires certification in writing that the development is one for which an architectural design competition is not required. While clause 8.7 states that the DA may be approved "Despite clauses 4.3, 4.4 and 8.4(5)", it appears that clause 8.4(3) and (4) continue to apply, noting that addressing that clause caused delays with DA 18/0264.
- Detailed urban design issues remain for resolution which may be assisted by independent urban design input into Council's assessment, taking into account the integration of the proposal into the developing context with applications received for adjoining sites and ongoing design work for the adjoining public spaces. One important matter to be considered carefully is the fact that this proposal includes 4 levels of podium car parking on a key site.
- Other issues requiring consideration include height, the context created by the permissible and proposed development for adjoining key sites, whether sufficient articulation and/or visual interest is incorporated into the building facades, and the desirability of activating the street fronts particularly the New Road and High Street.
- An integrated solution is required for the three new buildings on adjoining key sites in relation to traffic design for the New Road and its intersection with High Street and parking. The Panel would hope to see communication between the proponents or owners of the adjacent sites on that subject.
- If the floor plates fronting the New Road are not to be at grade (with that outcome to be avoided if possible) then creative design might assist in maintaining street activation with the proposed future "eat street" as the area develops. The double height commercial frontages proposed for the pending DA for the key site on the opposite side of the New Road (614-632 High Street) is one example of a creative design approach to that issue that might be looked at.

Key issues identified during the assessment for the proposed development include the following:

1. Height, FSR, Key Site Provision & Community Infrastructure

The maximum Height of Buildings and FSR for the site identified on Council's LEP maps are 24 metres and 3:1, respectively. The development proposal is for an FSR of 6:1 as the application is lodged under clause 8.7 *Community infrastructure on certain key sites*, of Council's LEP and is accompanied by an Offer of Community Infrastructure document (**Appendix D1**) prepared by Urbis.

Clause 8.7 identifies specific Key Sites within the Penrith City Centre as being suitable for additional density above that which would otherwise be permissible under clauses 4.3 *Height of buildings*, 4.4 *Floor Space Ratio* and 8.4(5) *Design Excellence*, subject to the development including Community Infrastructure (CI) and the proposal being acceptable having regard to the relevant subsections of the clause. Council's Community Infrastructure Policy is to be utilised as a guide in preparation of development proposals seeking to apply for development consent under the LEP clause.

Community infrastructure is defined under Clause 8.7, subsection (6) as ...'*development for the purposes of recreation areas, recreation facilities (indoor), recreation facilities (outdoor), recreation facilities (major), public car parks or public roads*'. Clause 8.7 requires that the consent authority must not consent to the erection of a building on land to which this clause applies if the floor space ratio for the building exceeds 6:1 on either Key Site 3 or Key Site 10. The clause also states that in deciding whether to grant development consent under the clause the consent authority must have regard to the objectives of the clause, whether the development exhibits design excellence, and the nature and value of the community infrastructure to the City Centre.

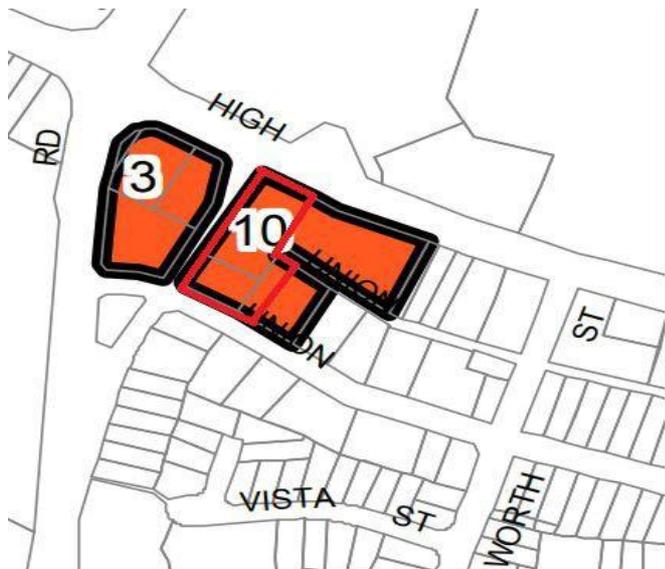


Figure 2 (above): Excerpt from PLEP Key Sites Map, subject site indicated by red outline being part of Key Site 10.

An assessment of the proposal having regard to the above mentioned aspects is included within this Report and it is assessed that the offer of Community Infrastructure (CI) cannot be supported for the reasons outlined which include:

- That the nature and value of the CI is not agreed;
The applicant's offer of Community Infrastructure cannot be supported by Council. The CI Offer does not demonstrate how proposed traffic and intersection works as part of the CI Offer represent a fair and agreed apportionment of the minimum traffic infrastructure 'needs' of the development versus the 'over and above' provision being for the benefit of the City Centre and which is in the public interest.
- That there remains significant uncertainty and risk related to the delivery of the CI as offered; and
- Issues surrounding land ownership and dedication timing are unresolved.

Council's CI Policy establishes a CI Panel who were briefed on the applicant's offer and concluded that the offer of Community Infrastructure could not be supported. The applicant was provided with the CI Panel's advice.

The applicant includes within their Community Infrastructure Offer that the value of the CI is \$150 per square meter of additional gross floor area over 3.3:1. The applicant's CI Offer identifies that FSR up to 3.3:1 includes the maximum permissible floor space ratio expressed for the site under the LEP Floor Space Ratio map of 3:1 plus 10% greater than 3:1, as the design of the building is the result of an architectural design competition. The applicant states that the 10% additional FSR available under Section 8.4 *Design excellence* of the LEP remains applicable.

The Offer of Community Infrastructure is detailed under the LEP section of this report and is not supported. Council does not agree that 100% of the signalised intersection is 'over and above' the needs of the development. Further Council does not agree that circa 67% of the new road spanning between Union Road and High Street is 'over and above' the needs of the development.

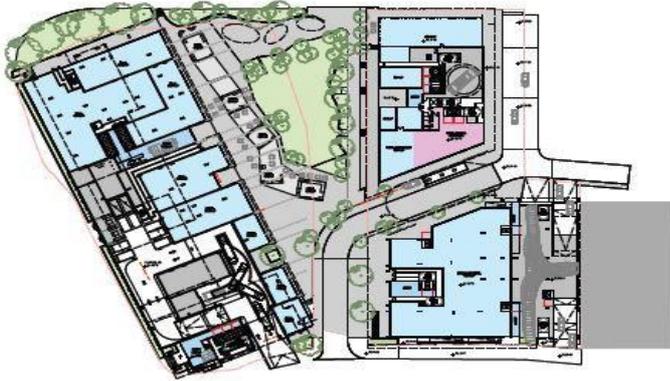
Each applicant was advised not to lodge their respective development applications without having first secured in principle agreement with Council on any offer of Community Infrastructure which has not occurred.

2. Architectural Design Competition

As is required under Clause 8.4 *Design excellence*, subsection (3) of the LEP an architectural design competition was held as the development is greater than 24 metres in height or 6 storeys and has a CIV more than \$1,000,000 on a Key Site (Key Site 10). The competition design brief outlined the requirements and was for a master planned mixed use development over the entire Lot being both part lots east and west of John Tipping

Grove. As the Penrith LEP Key Sites provision for Key Site 3 (part Lot east) and Key Site 10 (Part lot West) had not been gazetted at that time, the competition design brief outlined that entrants were to provide a design for both a 3:1 and a 6:1 scheme.

The architectural competition design brief required each entrant team to comprise of an established and an emerging architect. The winner of the design competition was the team of SJB (established) and Architect Prineas (emerging). Details in relation to the SJB/Architect Prineas scheme are included within the SJB Post Competition Design Review document at **Appendix A9. Figure 3** below includes excerpts from the winning ground floor scheme and typical podium level design and includes sleeving, it is noted also that the winning scheme included two levels of basement car parking.



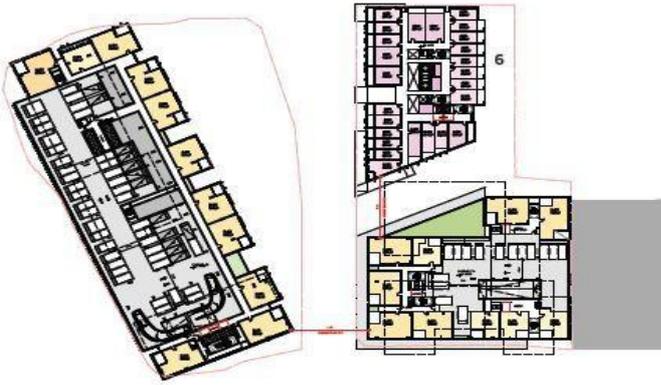


Figure 3 (above): Excerpts from the winning ground floor scheme and typical podium level design indicating sleeving from SJB Post Competition Design Review document.

Although several requests were made by the Planning Delivery Unit and Council, the NSW Government Architect has not provided its concurrence to the application as is required by clause 8.4(5) of PLEP which presents as a barrier to consent being issued.

Council also does not agree that the design of the development demonstrates design excellence and has re-engaged with the Government Architect as is detailed further below and within this report.

3. Design Excellence and SEPP 65

Under consent no. DA18/0264 the applicant sought endorsement from the NSW Government Architect through an established Design Integrity Panel (DIP) for a significant amendment to the design competition winning scheme which included alterations to the position of the proposed new north-south link road and to the residential tower designs and locations, to the podium design and which resulted in the abandonment of a master plan for the Lot (both parts east and west).

The applicant sought the same endorsement from the NSW Government Architect through the DIP although with an increased 5 storey podium and an increase in the height and to the FSR to 6:1 (from 3 storey podium and 3.3:1 FSR under DA18/0264).

The applicant met with the Design Integrity Panel (DIP) on seven occasions and the DIP provided its endorsement and stated that a new architectural design competition was not required and that continued design excellence was present. Although Council's nominated external urban design consultant was one member of the three DIP Panel members, Council's development services team was not present at any of the DIP sessions.

After the lodgement of the application Council has met with the applicant numerous times and has provided several advice letters outlining the reasons as to why the design and CI offer amongst other matters are not supported. Matters Council has raised include negative impacts on the ability of the Precinct to be developed as is envisaged by the Penrith DCP owing largely to the abandonment of the master plan and uncertainty surrounding overall densities and the resultant infrastructure requirements including access, traffic and parking to service the needs of development in the Precinct. Council has also raised the issue of traffic generation and density.

Council has also raised that it does not support the proposed 5 storey podium with 4 levels of built to boundary, unsleeved car parking as it does not comply with Council's DCP requirements related to the requirement for car parking to be located within the basement and for sleeving of car parking. The design does not satisfactorily mitigate the negative impacts of the scale and extent of the >100m long podium; or the bulk of the residential towers owing to the lack of upper level setbacks in the built form amongst other matters.

Council met with the NSW Government Architect (GA) who have reconsidered the matters raised by Council and agree that the DIP is to be reconvened to address the Council's concerns. The GA have also advised that Council are to now attend all DIP sessions relating to proposals in the LGA to avoid circumstances where Council and the DIP conclusions on design excellence differ and to ensure technical aspects and perceived constraints of the site are sufficiently understood and acknowledged by all parties.

At the time of writing this report there has been an initial meeting with all three members of the DIP, Council and the developer present. A follow up meeting has been arranged for late April 2021. As the matters raised for resolution are not insignificant and the timing and nature of amendments are at present unknown, Council is recommending that any design amendments together with any new CI Offer and any accompanying VPA be lodged in support of a with a new development application.

The design currently before Council for assessment is not acceptable when assessed under clause 8.4 *Design excellence* of the LEP and the relevant provisions of the Penrith DCP, in particular Part E11 and the relevant Precinct provisions. Further, the application has been assessed having regard to the nine design quality principles outlined in Schedule 1 of State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP 65) and is not supported.

4. Independent Design Review

Further, Council sought independent advice from Council's alternate Urban Design Review Panel member Gabrielle Morrish of GMU Urban Design & Architecture due to the aspects raised in Council's assessment of the application and as raised with the GA. The Draft advice outlines that the current DA departs from the original design competition winning master plan in significant ways and that:

'The proposal includes major changes to the alignment of streets and quality of spaces as well as the disposition of built form. The height focus on the site appears to have shifted away from the prominent Mulgoa Rd and High St corner to the more subservient part of the site. This is a dramatic change that also impacts the strategic vision for this site and its role within the Penrith Centre'...

and also included that;

'No information is provided on the outcomes for the remainder of the site. The whole vision should be redefined and explained if such drastic changes are proposed or it is not possible to assess the full impact and whether the amended master plan can achieve excellence and the principle and goals of the original brief and winning scheme. Ideally a new master plan should be lodged and assessed before a detailed DA is considered'.

Matters related to the limitation of the business offerings at ground floor, the detached nature of the residential uses from the street, ramping and balustrading being parallel with the street blocking access, ADG non-compliance with separation distances (less than 18m to the north) and common open space provision, and the impacts of podium parking being the dominating element of the design are also raised, as is the absence of half of the design competition winning team being Architect Preneas. Refer also to further discussion under PLEP.

5. Traffic and Other matters

The application is suitable having regard to State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) as matters relating to site suitability and contamination including the demolition of existing structures are approved under related consent no. DA18/0654. Conditions of consent could be added to require these works to be undertaken prior to the issue of a Construction Certificate should consent be granted although the application is recommended for Refusal based on other matters.

The application was referred to Transport for NSW (TfNSW) as the development is identified as Traffic Generating Development under Schedule 3 of SEPP (Infrastructure). TfNSW raised concerns with the Sidra modelling, assumptions made and with the impacts of the development on the local network. It is further noted that as the DA does not propose a signalised intersection and no plans were provided or issued to

TfNSW which detail a signalised intersection in situ. Architectural and civil plans indicate an interim roadway connection to the existing round-a-bout.

The applicant responded with information which did not fully satisfy TfNSW concerns and it is noted that TfNSW note that it is a matter for Council as the road authority to be satisfied prior to determination. Council's traffic engineers have reviewed the proposal and object to the DA noting that insufficient information has been provided in relation to the traffic signals, that TfNSW would need to comment on the design of the signals and that apportionment issues and risks surrounding delivery and dedication remain unresolved. Refer to discussion under State Environmental Planning Policy (Infrastructure) 2007.

Drawing number AR-1-0102B/68 includes a staging plan indicating that the development will be constructed in stages with stage 01 being Building 01 (fronting Union Road and the 5 storey podium) and that Stage 02 will be the 37 storey residential tower fronting High Street. It is unclear how the podium will present to the surrounding area if Stage 02 is not constructed or what the interim treatment for common open spaces, car parking and lobby areas will be. Staging of the development as is proposed is not supported.

Relevant History

DA18/0654 - Approved the demolition of all structures on the site, the removal of underground fuel storage tanks, remediation works, site establishment works, the installation of site fencing and a site office, earthworks and minor excavation related to Aboriginal archaeology and select tree removal.

DA18/0264 - Approved a part 12 and part 15 storey mixed use development with a shared 3 storey podium, one level of basement car parking and new public roadway. The applicant is not intending on pursuing the approved scheme which included an FSR of 3.3:1 and a maximum height of 52.8m, being 28.8m above the 24m Height of Building development standard under Penrith Local Environmental Plan 2010 (PLEP or the LEP), as the application was approved having regard to clause 8.7 of the LEP. An offer of Community Infrastructure was submitted with the application.

Planning Delivery Unit

The NSW Government's Planning Delivery Unit (PDU), at the request of the applicant was invited to assist to in the timely determination of the application. The PDU was briefed on the proposal and several meetings were held discussing the threshold issues which included the applicant's CI offer and design excellence matters. The PDU was unable to assist in resolving these threshold issues and are no longer engaged with this application. Council had agreed with the PDU that Council would target the DA for determination at the earliest opportunity.

Site & Surrounds

The subject site legally described as Lot 300 in DP 1243401 which has a total site area of 1.203 ha. The lot is split by John Tipping Grove which spans north-south and is a two lane local road with on street parking, ending in a cul-de-sac to the north. Part Lot east to which the proposal relates (the Site) is 5402.1sqm in area and Part Lot west is 6617.8sqms in area.

The Lot 300 in DP 1243401 is bound by High Street to the north, Union Road to the south and Mulgoa Road to the west and is currently occupied by a property sales office and car sales yard which are located on the western part lot (western side of John Tipping Grove). The Part Lot located to the east of John Tipping Grove is largely vacant except for a single story older style building with frontage to High Street which is currently being used as a shop, however was historically a petrol station.

The Lot shares its most south-eastern boundary with a 9 storey residential flat building which has centrally located open space and a built to boundary western façade.

The site is approximately 680m south-west of Penrith Railway Station and is approximately 700m east of the Nepean River. Development in the vicinity includes a vacant site to the east and on the western side of Mulgoa Road, residential uses to the south and south-east and commercial uses to the east and north-east towards the Penrith City Centre.

The site is relatively flat with little significant vegetation contained within the site. A mature and significant Blackbean Tree is located at the intersection of High Street and Mulgoa Road (adjacent the western boundary of the subject Lot) and significant and sustained negotiations between Council and TfNSW have resulted in the tree being retained and protected throughout ongoing major road widening and intersection works which are currently being undertaken at the intersection of Mulgoa Road and High Street, and along Mulgoa Road toward the intersection with Union Road.

Proposal

The development application seeks approval for the following:

- Construction of a part 14, part 37 storey mixed-use development including 356 units,
- Two residential towers above a shared 5 storey podium inclusive of 4 levels of above ground built to boundary car parking,
- Ground floor business premises with vehicular access to podium and service areas off a new north-south public road,
- One level of basement car parking with cleaners room, visitor bicycle parking and residential storage cages with ramp access off Union Road,
- A 4m wide covered pedestrian arcade is proposed which provides access through to John Tipping Grove from the eastern side of the building,
- One common open space area at level 5 containing a swimming pool, outdoor communal area and two indoor common open space areas within the footprint of Building 02,
- Ancillary civil and landscaping works including public domain works along High Street, Union Road, John Tipping Grove and new street trees and awnings,
- Two pad mounted electrical substations along the eastern elevation of Building 01, and
- A building managers office is provided at ground floor Building 01 with staff toilets and two staff bicycle parking spaces.

Building 01 - Union Road

Building one has frontage to Union Road, is 14 storeys in height and contains 81 apartments. The building is 49.85m above natural ground level and has a maximum height of RL 77.15m to the top of the lift overrun. The residential lobby and mail room entry is via stairs and a ramp from Union Road. 230.2sqm of commercial floor area is proposed at ground floor and is

consolidated as one corner tenancy with access to its own amenities zone (corner of Union Road and John Tipping Grove).

Building 02 - High Street

Building two has frontage to High Street, is 37 storeys in height and contains 275 apartments. The building has a height of 121.65m above natural ground level and has a maximum height of RL148.95 to top of parapet. The residential lobby entry for Building 02 is along the eastern elevation and can be accessed via the new public road and a colonnade along the eastern elevation which also provides covered access to High Street. One ground floor business tenancy is proposed having an area of 780.9sqm with frontage to the new road to the east, High Street to the north and John Tipping Grove to the west. The plans indicate a possible conversion of this larger space into seven smaller tenancies. Male and female amenities are separated and have access off the eastern colonnade only.

New Public Road

A new public road is proposed to be dedicated to Council which includes:

- Construction of two lanes (3.5m wide carriageway) providing vehicular access between Union Road and Union Lane,
- Construction of one lane (3.5m wide carriageway) providing north bound only vehicular access between Union Lane and High Street,
- Seven marked on-street car parking spaces,
- Minimum 0.82m wide footpaths along the east and west sides of the new road reserve,
- Related civil works to allow the connection of the new road to High Street and Union Road,
- Associated civil works including although not limited to a landscaped traffic island, kerb and gutter, asphalt roads, street lighting connecting into existing grid, line markings, painted chevron, and road and street signage. A portion of the new road (from Union Lane heading north) is proposed to form part of the applicant's community infrastructure offer, refer also to discussion under clause 8.7 of the LEP.

The applicant's Statement of Environmental Effects include (p.28) that the new road will be delivered as part of the public benefit offer [community infrastructure (CI) offer]. The applicant has not proposed a signalised intersection as part of their development application and no plans are provided with the development application which detail and describe a Transport for NSW (TfNSW) endorsed signalised intersection design on High Street (intersection with new road). It is important to note that TfNSW have not been referred any proposal for a signalised intersection at High Street.

Figure 4 (below): Excerpt from the applicant's SJB Architectural Plan - Ground Floor Plan, AR-1-1010 rev 73.

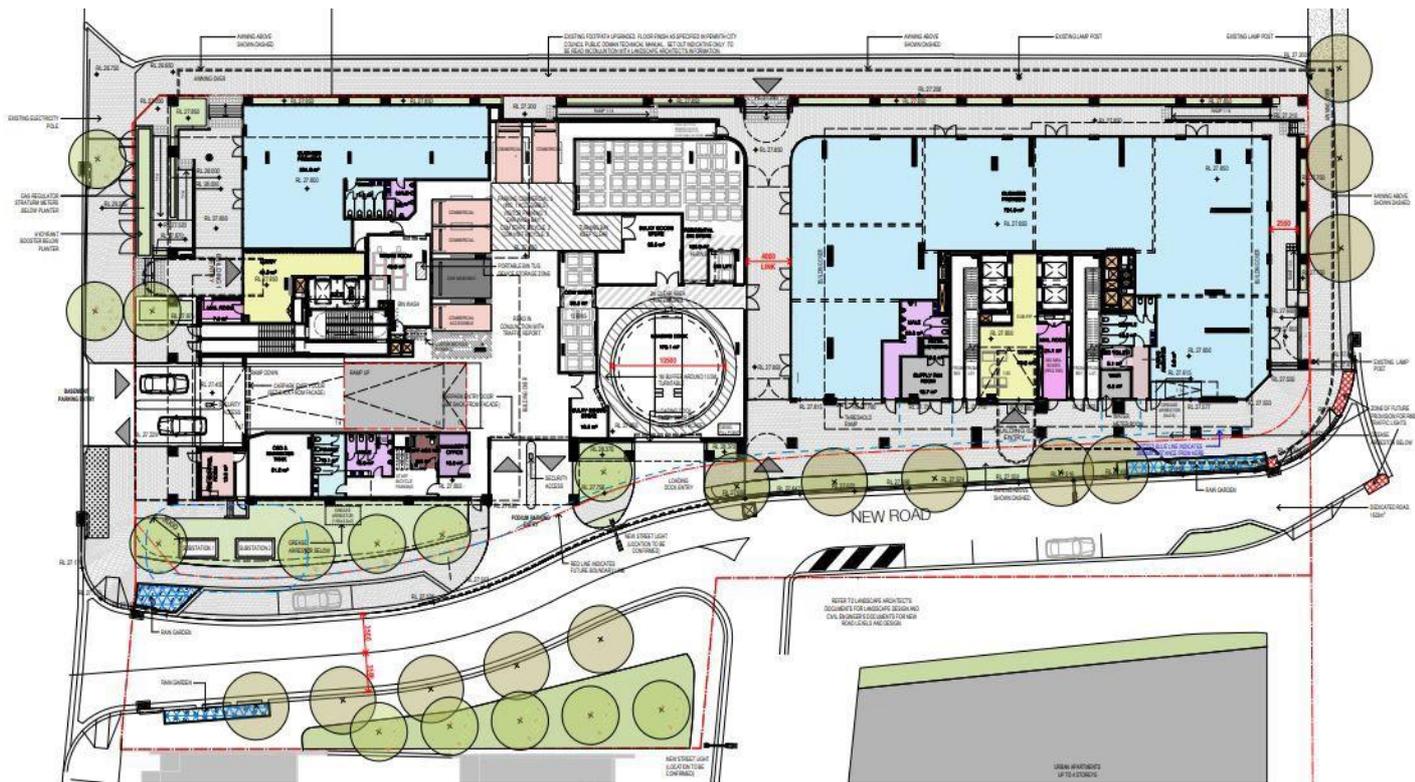
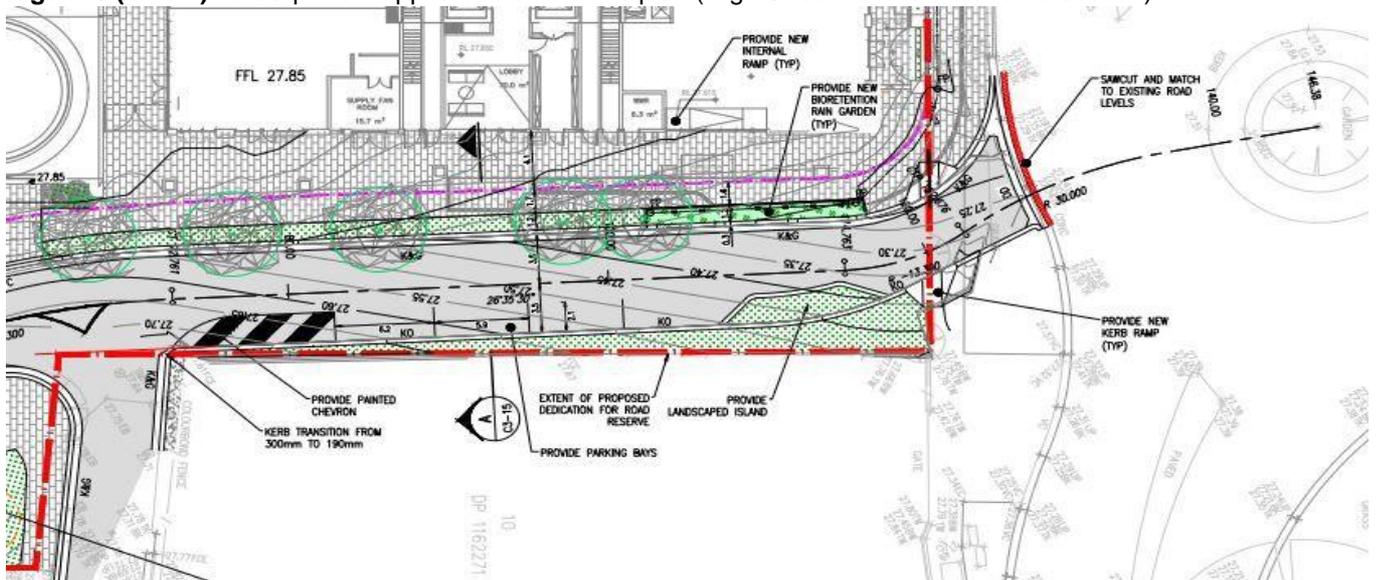


Figure 5 (below): Excerpt from applicant's civil works plan (High Street and new road intersection).



Floor space ratio

The site area is 5,407sqm.

Gross floor area is 32,314.4.

Proposed FSR is 5.98:1.

Unit mix is as follows:

114 x 1 bedroom units (77 with study)

201 x 2 bedroom units (68 with study)

41 x 3 bedroom units

Total: 356 Apartments.

Parking

342 residential car parking spaces are provided within the basement and podium carpark areas (including 36 accessible spaces)

18 Residential visitor bicycle parking spaces are provided within the basement

51 residential car parking spaces are provided (including one accessible space)

40 tandem residential spaces are included.

5 commercial car parking space are proposed at ground floor (accessible from the new public road)

1 loading space, 1 service space and 1 car wash bay are proposed.

Two staff bicycle spaces and staff toilets are provided within the ground floor to support ride to work.

Demolition and Remediation

Demolition of existing structures, select tree and vegetation removal, minor excavation works related to archaeological investigations, site establishments works including fencing and site office installation, and site remediation works including the removal of underground fuel storage tanks are approved under separated related consent no. DA18/0654.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (State and Regional Development) 2011
- State Environmental Planning Policy (Vegetation in non-rural areas) 2017
- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy No 65—Design Quality of Residential Flat Development
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

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

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

- **Section 4.15 - Evaluation**

The development has been assessed in accordance with the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration:

- **Section 4.46 - Integrated development**

Roads Act 1993

The development proposal is not identified as being integrated development under Division 4.8 of the Regulations and as per Section 138 of the Roads Act 1993 in that the development does not include works in or adjacent to a classified road. No connections to a classified road are proposed.

The proposal is identified as traffic generating development within Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007 as the proposal includes car parking for 50 or more cars and is within 90 metres of a road that connects to a classified road, being Mulgoa Road and Great Western Highway. The proposal is also identified as traffic generating development as it includes the construction of 75 dwellings or more and proposes shops at ground floor with a GFA of greater than 500sqms.

In this respect, the development application was referred to the Transport for NSW (TfNSW) for their review. TfNSW and Council's Traffic Engineers have raised objections to the development and the proposal is not supported on these grounds. Refer discussion under State Environmental Planning Policy (Infrastructure) 2007.

Water Management Act 2000

The submitted Report on Preliminary Geotechnical Investigation prepared by Douglas Partners, dated February 2020, Revision 2 (26 February 2020) states under section 7.4 that:

"Based on the groundwater levels at RL20.5 to RL18.3 measured during the investigation and groundwater monitoring program, the bulk excavation for the single level basement at RL24.4. will be above the measured water table. There is potential for groundwater levels to rise by at least 3m during and following prolonged heavy rainfall and possibly higher during floods and this should be considered.

The need to tank the basement will depend on discussions with Water NSW. Water NSW may approve a partially tanked basement consisting of water tight basement walls socketed into the bedrock, with the basement floor being drained'.

The report recommends further investigation and analysis of the ground water quality prior to detailed design and planning and also recommends that levels should be monitored during construction.

As it is not determined if the proposed development is integrated development under Part 3 Approvals, Sections 89, 90 and 91 of the Water Management Act 2000, a condition of consent could be recommended requiring the applicant to seek advice from the National Resource Access Regulator (NRAR) prior to the issue of a Construction Certificate noting that it does not preclude a Controlled Activity permit being pursued where deemed necessary by that Department. As the application is recommended for Refusal based on other matters, no such condition is recommended.

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

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

An assessment has been undertaken of the application against relevant criteria within State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. The application is accompanied by a list of commitments within the submitted BASIX Certificate as to the manner in which the development will be carried out. BASIX Certificate no. 1072682M dated 02 March 2020 was submitted with the application and is satisfactory.

State Environmental Planning Policy (Infrastructure) 2007

Proposed Roadway and Infrastructure Works

The DA proposes a new north-south public road that spans from Union Road through to High Street and includes the completion of the western end of Union Lane so that it will connect to the new road and will allow for both right and left hand turns. Submitted architectural, landscape and civil plans indicate that an interim road connection, being a one-way single lane from Union Lane north-bound connecting to an existing round-a-bout on High Street is proposed.

In addition to the above, the application was lodged with an offer of Community Infrastructure dated 19 February 2020 under clause 8.7 of PLEP. The Offer includes the following:

- *'...Toga offers to direct the calculated value of the additional floor space achieved...towards construction of a signalised intersection of the new north-south road contained within the DA with High Street. Toga is prepared to discuss with Council the potential for Toga to design and construct these works 'in kind' as opposed to a cash payment subject to agreement on construction details, timing, land owners' consent, RMS and other authority approvals. In the instance where the above is not achieved cash payment will be provided towards the construction of the signalised intersection'.*
- Toga advise that subject to Council feedback, Toga intends to offer to enter into a Voluntary Planning Agreement (VPA) which defines details of the proposed offer of Community Infrastructure; and detail the value of the Offer(s), offsets for Section 7.11 contributions and cost of works. No Offer to enter into a VPA has been provided.

No plans of any future signalised intersection are provided as part of the applicant's Community Infrastructure Offer. The applicant's civil, architectural or landscape plans do not overlay a possible future signalized intersection and there is little detail provided as to how the interim round-a-bout connection indicated on the plans will overlay on a final signalised intersection design which is reference in the applicant's CI Offer.

Importantly the application as was referred to TfNSW indicates an interim road connection. TfNSW have not as part of the assessment of this development application been requested to comment on a possible future signalised intersection design for the intersection of the new north-south road and High Street.

Assessment under ISEPP

The development proposal has been assessed against the applicable provisions of State Environmental Planning Policy (Infrastructure) 2007 [I SEPP] and is found to be unsatisfactory. An assessment of the development against the relevant sections of the ISEPP are provided below.

Clause 2 - Aim of the Policy

The development proposal does not support the aims of the Policy in that the roadway design does not demonstrate good design outcomes. Pedestrian safety is not adequately designed for and the traffic and parking needs of the development are not met. The proposal does not demonstrate how the interim roadway connection to High Street will be suitably augmented to adapt to a future signalised intersection and it is not understood that the required area of land needed for the installation of the final traffic signals can be accommodated in the required location.

Clause 101 - Development with frontage to classified road

Clause 101 of the I SEPP relates to development with frontage to a classified road. The Site, being the eastern part of the lot does not have frontage to a classified road. Clause 101 does not apply to the proposed development.

Clause 102 - Impact of road noise or vibration on non-road development

The clause has been considered in the assessment of the development proposal. Clause 102(2) states that prior to determining a development application to which this clause applies ... *the consent authority must take into consideration* any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette. Clause 102(3) states that the consent authority must not grant development consent for the purposes of residential accommodation unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:

- (a) *in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,*
- (b) *anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

The application was submitted with an acoustic report prepared by Acoustic Logic, dated 12 February 2020, revision 0 which has been prepared in consideration of the NSW Department of Planning's Development Near Rail Corridors and Busy Roads - Interim Guidelines document. The report has been reviewed by Council's Environmental Management unit and is considered to be acceptable subject to an amendment to the acoustic report to address noise and vibration impacts of the pool and residential gymnasium.

It is assessed that the development can achieve compliance with the applicable ISEPP noise and vibration criteria, subject to a condition requiring that the development comply with the recommendations of the report. Relevant conditions and an amended report are not recommended/requested as the development is recommended for Refusal based on other grounds.

Clause 104 - Traffic generating development

This clause applies to development application as the proposal is identified in Schedule 3 of the Policy as Traffic Generating Development. The site is located within 90m of a Classified Road (Mulgoa Road and Great Western Highway) and has 50 or more car parking spaces and 75 or more dwellings. Clause 104(3) states that before determining a development application for development to which this clause applies, the consent authority must:

- (a) *give written notice of the application to RMS within 7 days after the application is made, and*
- (b) *take into consideration:*
 - (i) *any submission that RMS provides in response to that notice within 21 days after the notice was given, and*
 - (ii) *the accessibility of the site concerned, including:*
 - (A) *the efficiency of movement of people and freight to and from the site and the extent of multi-purpose*

trips, and

(B) the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and

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

The development application was referred to Transport for NSW (TfNSW) for their assessment. TfNSW provided written advice in letter dated 27 May 2020 (SYD20/00453/01 CNR-6303) stating that the development proposal was not supported and listed the following information to be submitted for further consideration:

- That SIDRA Modelling was to be revised and resubmitted for the reasons provided in their Attachment A **(Appendix G)**
- That the cycle times of all intersections should be modelled at worst case scenario this is achieved by using the maximum cycle time for the intersection. TfNSW provided a list for intersection cycle times to be adopted.

The applicant provided a response letter and Sidra files from PTC dated 29 June 2020 which was forwarded to TfNSW. TfNSW responded in letter dated 24 August 2020 and noted the following:

- Based on the comments provided TfNSW raises concerns with Council that it is unclear at this stage what the proposed development impacts to the surrounding local and State road network will be. The response provided by the proponent regarding TfNSW modelling concerns requires further refinement in order to understand the implications of the additional traffic expected to be generated by this development.
- TfNSW note that notwithstanding the above and noting the scale of the development, as the consent authority for the development, Council is to determine if the development risks raised by TfNSW are satisfactorily addressed by the applicant.
- TfNSW provided an Attachment (Attachment A) to their 24 August advice which provides a detailed review of outstanding issues.

TfNSW was provided with an additional response letter from the applicant's traffic consultant PTC dated 12 October 2020.

Council's traffic engineers have reviewed the TfNSW and applicant responses and do not support the proposed development as the matters TfNSW have not been satisfactorily responded to. Council's traffic engineers further note the following:

- The proposed interim new north-south road connection to the existing round-a-bout on High Street is not acceptable and will not suitably meet the traffic needs of the development,
- It is essential that the developer(s) shall provide detailed civil works, intersection and roadway design plans and itemised cost estimates for the traffic control signals which indicates two north bound lanes and one south bound lane for the northern section (north of Union Lane) of the new north-south public road. This is to include design and costs for land acquisition and road works along the eastern side (being the land in the ownership of Urban Apartments). Toga and Urban Apartments are to be advised that their developments trigger the requirement for a signalised intersection and this is ought to form the basis of the respective Community Infrastructure offers and the Traffic Control Signals (TCS) and new public roadway are to be dedicated and operational prior to the issue of any Occupation Certificate for either development.
- A monetary contribution for Council to construct the intersection or new roadway will not be supported.
- The development will be a significant attractor and a generator of pedestrian traffic. The interim road connection to the round-a-bout does not provide a safe crossing point for pedestrians and is also not supported on these grounds. Safety fencing is not a suitable alternative and does not restrict crossing at intersections and can be a safety hazard in itself.

The development proposal is unsatisfactory when assessed against the applicable provisions of the ISEPP and is recommended for Refusal.

State Environmental Planning Policy (State and Regional Development) 2011

The proposed development is identified as being Regionally significant development in Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2010 as the proposal is General development and has a Capital Investment Value (CIV) of greater than \$30 million.

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

State Environmental Planning Policy (Vegetation in non-rural areas) 2017

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 aims to protect the biodiversity values of trees and other vegetation in non-rural areas of the State and preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation. It applies to land in the City of Penrith and applies to development within the B4 Mixed Use Zone.

The application was lodged with an Arboricultural Impact Assessment which provides an assessment of existing trees. In addition, select tree removal on the site was approved under consent no. DA18/0654. Conditions of consent are not recommended in relation to tree removal and retention as the application is recommended for removal based on other matters.

State Environmental Planning Policy No 55—Remediation of Land

The development application has been assessed in accordance with the relevant matters for consideration under SEPP 55 and is considered to be acceptable as follows:

Clause 7 of the Policy stipulates that a consent authority must not consent to the carrying out of any development on land unless:

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

Development application (DA) DA18/0654 was approved by Council in December of 2018 and included the demolition of existing structures, site establishment, select tree removal and the installation of fencing and a site office, remediation works and the removal of underground fuel storage tanks. The approved Remediation Action Plan (RAP) was reviewed as part of the assessment of that DA and it is considered that after remediation has been undertaken, the site will be suitable for the works as described in this development proposal. No further remediation works are proposed as part of the subject proposal.

Conditions of consent could be recommended to require the submission of a Validation Certificate confirming that the approved remediation works have been undertaken in accordance with the approved RAP. This would ordinarily be required prior to the issue of any Construction Certificate as part of this development application although the development application is recommended for Refusal based on other matters.

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

An assessment has been undertaken of the proposed development against the relevant criteria within the State Environmental Planning Policy No. 65—Design Quality of Residential Apartment Development. The proposal is found to be unsatisfactory when considered having regard to the below Design Quality Principles of Schedule 1 largely for the reasoning provided in Section 8.4 of this report.

The table below provides an assessment against the applicable provisions of the accompanying Apartment Design Guide (ADG).

Table 1: Assessment Against the Apartment Design Guide (ADG)			
Part 3	Required	Discussion	Complies
3A-1	Each element in the Site Analysis Checklist should be assessed.	A Site Analysis plan was submitted with the application and identifies applicable elements as required within the Checklist. A written description of the proposal and subject site are also included in the submitted Statement of Environmental Effects and accompanying plans and reports.	Yes.
3B-1	Buildings to address street frontages and streetscapes and optimise solar access.	<p>Most elevations of the development adequately address the street frontages, noting direct access is provided to the retail/business tenancies on ground floor.</p> <p>The common entry and foyer areas are of an appropriate design and location, and are direct and open to the street.</p>	Yes.
3B-2	Living areas, Private Open Space (POS) and Communal Open Space (COS) to receive compliant levels of solar access.	Refer to discussion under Parts 3D and 4A.	No.
	Solar access to living spaces and POS of neighbours to be considered.	Unacceptable levels of solar access are achieved between the primary daylight hours during the winter solstice to adjoining properties. Major overshadowing attributed by the proposal will impact to the south, across Union Road, and the new proposed road. In particular, the open space area associated with the neighbouring residential flat building will be significantly impacted.	No.
	If the proposal will significantly reduce the solar access of neighbours, building separation should be increased.	The overshadowing impacts are further exacerbated due to the limited building separation provided, being 13m.	No.

3C-1	Courtyard apartments should have direct street access.	The proposal is for a mixed use development with business tenancies located on the ground floor. No ground floor and courtyard apartments are proposed.	N/A
	Upper level balconies and windows to overlook the public domain.	All apartments are provided with an outlook over the surrounding streets, public domain and communal open spaces.	Yes.
	Length of solid walls should be limited along street frontages.	Unarticulated brick walls are provided to the ground level facade fronting the proposed new road.	No.
	Opportunities should be provided for casual interaction between residents and the public domain.	The height of the podium results in a disconnect between apartments, common and private open spaces, the street below and pedestrians. The height difference between residential uses and the street does not allow the activities at the street or those within dwellings, on balconies or as part of the common open spaces to interact.	No.
3C-2	Substations, pump rooms, garbage storage areas and other service requirements should be located in basement car parks or out of view.	Two (2) large substations are proposed within the public domain at the intersection of the new road and Union Road, and is not appropriately integrated with the built form.	No.
	Ramping for accessibility should be minimised by building entry location and setting ground floor levels in relation to footpath levels.	Building A (01) is approximately 1.1m above Union Road and John Tipping Give, thereby resulting in the dominance of the streetscape by ramps and stairs. Furthermore, all ramps and stairs are oriented parallel to the footpath, thereby visually blocking and separating the ground level activation from the street.	No.

3D-1	Communal Open Space (COS) to have minimum area of 25% of site.	<p>The subject site is 3,783m² in total land area. The proposed communal open space provided is 1011m² (including indoor and outdoor areas), thereby equating to 26.7% on the podium between the two towers.</p> <p>However, the due to the size of the towers, the provided COS area is not considered to be sufficient due to the number of future residents. Additional breakout communal open space areas should be provided within the upper levels of each tower.</p>	Yes - minimum achieved.
	Achieve a minimum of 50% direct sunlight to the principal useable part of the communal space for a minimum of 2 hours between 9am and 3pm on 21 June.	In adequate direct sunlight is provided to the communal open space located on the podium due to the significant overshadowing resulting from the northern tower.	No.
3D-2	Communal open space designed to allow for a range of activities, be attractive and inviting.	The communal space area includes an outdoor pool, pergolas and seating areas, and with minimal breakout areas.	Yes.

3E-1	Deep soil is to be provided at a rate of 7% of site area with a min. Minimum dimension of 3m.	<p>The subject site is exempt from the provision of deep soil as per Section E11.2.7 of the DCP which identifies the site may have 100% site cover and 0% of deep soil.</p> <p>In this regard, the proposal includes 0% of deep soil. Planters are proposed within boxes along the podium carpark elevations, and landscaping is proposed at the residential Level 5 and along the street fronts in planters. It is not understood that the planting will be sustainable given the limited soil volumes and west/north orientations with extreme high temperatures in summer.</p>	No.
3F-1	<p>Minimum required separation distances from the building to side and rear boundaries is to be achieved as follows:</p> <p>1-4 Storeys – 6m habitable to habitable and 3m for non-habitable.</p> <p>5-8 storeys – 9m habitable to habitable and 4.5m for non-habitable.</p>	Compliant building separation is provided between the two proposed towers and to other adjacent sites. However, the separation across the new street to the north of the site does not comply, being only 13m in certain areas. This does not comply with the 18m and 24m requirement, assuming 50% of per site from the road centre line (i.e. 12m from the road centre line).	No.
3G-2	Building access ways and lift lobbies to be clearly visible from the public domain and communal spaces.	The main pedestrian entry ways are visible from the street and public domain.	Yes.
	Steps and ramps to be integrated into the overall building and landscape design.	Due to the elevated ground floor plate of Building A (01), the streetscape of Union Road and John Tipping Grove is heavily dominated by ramps and stairs. No landscaping is provided within the public domain to integrate the accessibility infrastructure into the proposals overall design.	No.

3H-1	Carpark access should be integrated with the building's overall façade.	The car parking entry is adequately integrated into the design of the site and building.	Yes.
	Clear sight lines to be provided for drivers and pedestrians.	Adequate sight lines are provided for drivers and pedestrians at the street frontage through selected landscape species and architectural design.	Yes.
	Garbage collection, loading and servicing areas are screened.	The waste collection area is provided entirely within the building.	Yes.
	Traffic calming devices such as changes in paving material or textures should be used where appropriate.	In the absence of a signalised crossing point in the immediate proximity of the site, the application proposes the installation of pedestrian fencing along High Street. However, this does not appear on the submitted site plans and no further details are provided for Council's full assessment.	No.
3J-2	Secure undercover parking should be provided for bicycles, motorbikes and scooters.	Secure bicycle parking is proposed within the basement and ground floor levels of the buildings.	Yes.
3J-3	A clearly defined and visible lobby area or waiting area should be provided to lifts and stairs.	Lobby entry points are limited with restricted access in some areas. In particular, no lobby access for residents is provided to the west of the site.	No.
	Supporting facilities within car parks, including garbage, plant and switch rooms, storage areas, and car wash bays can be accessed without crossing car parking spaces.	The basement areas are provided with storage cages, bicycle parking and building manager amenities that are accessed from common areas or pathways.	Yes.
3J-6	Positive street address and active frontages to be provided at ground floor.	Wide and direct pedestrian access pathways are provided to the communal entries and lift lobby area via the surrounding streets and internal common open space areas.	Yes.
Part 4	Required	Discussion	Complies

4A-1	Living rooms and private open spaces of at least 70% of apartments to receive 2 hours direct sunlight between 9.00am and 3.00pm mid-winter.	Submitted documentation confirms that 70% of apartments receive at least 2 hours of direct sunlight. However, it is noted that some 1 bed units have a very poor configuration in regards to the living room and balcony relationship with very deep set slop balconies (e.g. A 509).	Yes.
4A-3	Sun shading devices are to be utilised.	Balconies are proposed to be covered by the levels over. A number of design features have also been incorporated to meet the requirements of the BCA and to achieve BASIX compliance.	Yes.
4B-3	60% of apartments are to be naturally ventilated and overall depth of cross-through apartments 18m maximum glass-to-glass line.	Submitted documentation confirms that 60% of units located within the first nine storeys of the development receive natural cross flow ventilation.	Yes.
4C-1	Finished floor to finished ceiling levels are to be 2.7m for habitable rooms, 2.4m for non-habitable rooms.	The proposal is for a minimum of 2.7 measured from finished floor to ceiling level for habitable rooms, and 2.4m for non-habitable rooms.	Yes.
4D-1	Apartments are to have the following min. internal floor areas: 1 bed – 50sqm 2 bed – 70sqm 3 bed – 90sqm Additional bathroom areas increase minimum area by 5sqm's.	All proposed units achieve the minimum areas required.	Yes.
4D-2	In open plan layouts the maximum habitable room depth is 8m from a window.	All units comply with this control.	Yes.
4D-3	Master bedrooms to be 10sqm's and other rooms 9sqm's.	All units are acceptable in regards to this control.	Yes.
	Bedrooms to have a minimum dimension of 3m.	All units are acceptable in regards to this control.	Yes.
	Living rooms to have minimum width of 3.6m for a 1 bedroom unit and 4m for 2 & 3 bedrooms.	All units comply.	Yes.

4E-1	All units to have the following primary balcony areas: 1 bed – 8sqm (2m deep) 2 bed – 10sqm (2m deep) 3 bed – 12sqm (2.4m deep)	All units are acceptable having regard to this control.	Yes.
4F-1	Daylight and natural ventilation to be provided to all common circulation spaces.	Natural light is provided to the central lobby and lift core circulation spaces.	Yes.
4G-1	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is to be provided: 1 bed – 4m ³ 2 bed – 6m ³ 3 bed – 10m ³ With 50% of the above to be provided within the Units.	Adequate storage is provided within each unit in addition to storage cages	Yes.
4J-2	Noise shielding or attenuation techniques for building design, construction and choice of materials are used to mitigate noise transmission.	The upper level car park will negatively impact the outlook and amenity of nearby residential apartments through the scale, noise and screeching of tyres and light spill. Insufficient regard has been provided in regards to improving public amenity.	No.
4K-1	Flexible apartment configurations are provided to support diverse household types.	The development proposes a range of unit sizes, configurations and number of bedrooms to accommodate change over time and cater for differing households. Unit mix is proposed as follows: 114 x 1 bedroom apartments (77 with study) 201 x 2 bedroom apartments (68 with study) 41 x 3 bedroom apartments Total = 356 units. Adaptable units and associated parking are also included.	Yes.

4M-1	Building facades to be well resolved with an appropriate scale and proportion to the streetscape and human scale.	Both the Stage 1 and Stage 2 towers lack setbacks from the street walls which significantly impacts the human scale of the ground floor plane, exaggerates the dominance of the towers and confuses the street wall scale. In addition, the 100m+ podium length and bulk of the residential towers, owing to the lack of upper level setbacks increases the dominance of the development to the streetscape with no visual relief to the human scale.	No.
4O-1	Landscape design to be sustainable and enhance environmental performance.	It is unclear whether the soil volumes will be sustainable over time or whether the proposed planters will survive and thrive noting the heat impacts from the location adjacent to the car park vents and the west and north facing orientation.	No.
4Q-2	Adaptable housing is to be provided in accordance with the relevant Council Policy.	The development includes the provision of adaptable units.	Yes.
4S	Mixed use development should be concentrated around public transport and centres.	The subject site is located within the Penrith City Centre and within close proximity to the Penrith Railway Station.	Yes.
4U-1	Adequate natural light is provided to habitable rooms.	All habitable rooms are provided with appropriate levels of natural light. Apartment depths and open floor plan arrangements allow light into kitchens, dining and living areas.	Yes.

4V-2	Water sensitive urban design systems to be designed by suitably qualified professional.	The application has been referred to a range of internal Council Departments including Council's Environmental Waterways Unit who objected to the proposal. The issues raised have not been addressed.	No.
4W-1	A Waste Management Plan is to be provided.	A Waste Management Plan has been submitted and is not considered acceptable. The issues relating to this are further discussed within the Appendix of this report.	No.
	Circulation design allows bins to be easily manoeuvred between storage and collection points.	Council's Waste unit has advised that the development cannot be serviced appropriately as insufficient area is provided for the manoeuvring of bins. This is further discussed within the Appendix of this report.	No.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the development proposal against the relevant criteria within Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997) and the application is considered satisfactory.

The development proposal was assessed specifically against the general planning considerations, specific planning policies and recommended strategies. Details of particular clauses are discussed below.

Clause 6 of the Policy lists specific planning policies and recommended strategies for the plan and includes (5) Cultural heritage. The Policy, with regard to cultural heritage states that:

The importance of the river in contributing to the significance of items and places of cultural heritage significance should be recognised, and these items and places should be protected and sensitively managed and, if appropriate, enhanced.

Strategies of the policy with regard to cultural heritage include the following:

- (a) Encourage development which facilitates the conservation of heritage items if it does not detract from the significance of the items.*
- (b) Protect Aboriginal sites and places of significance.*
- (c) Consider an Aboriginal site survey where predictive models or current knowledge indicate the potential for Aboriginal sites and the development concerned would involve significant site disturbance.*
- (d) Consider the extent to which heritage items (either identified in other environmental planning instruments affecting the subject land or listed in Schedule 2) derive their heritage significance from the river.*

Related consent no. DA18/0654 approved works related to Aboriginal cultural heritage and several investigations and test pits were carried out. Conditions of consent could be recommended related to finalising the approved Aboriginal Archaeological Report, complying with the recommendations of that report and liaising with the Office of Environment and Heritage. No such condition is recommended as the development application is recommended for Refusal based on other matters.

Clause 11 of the Policy confirms that consent is required for remediation of contaminated land under this Policy. Refer to additional discussion under State Environmental Planning Policy No. 55 - Remediation of Land.

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
Clause 2.3 Zone objectives	Does not comply - See discussion
Clause 2.6 Subdivision - consent requirements	Complies
Clause 2.7 Demolition requires development consent	Complies - See discussion
Clause 4.3 Height of buildings	Does not comply - See discussion
Clause 4.4 Floor Space Ratio	Does not comply - See discussion
Clause 4.5 Calculation of floor space ratio and site area	Complies - See discussion
Clause 4.6 Exceptions to development standards	N/A
Clause 7.1 Earthworks	Complies
Clause 7.2 Flood planning	Complies
Clause 7.3 Development on natural resources sensitive land	N/A
Clause 7.4 Sustainable development	Does not comply - See discussion
Clause 7.5 Protection of scenic character and landscape values	N/A
Clause 7.6 Salinity	Complies
Clause 7.7 Servicing	Complies - See discussion
Clause 7.8 Active street frontages	Complies - See discussion
Clause 8.1 Application of Part	Complies
Clause 8.2 Sun access	N/A
Clause 8.3 Minimum building street frontage	Complies
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

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

- (a) to promote development that is consistent with the Council's vision for Penrith, namely, one of a sustainable and prosperous region with harmony of urban and rural qualities and with a strong commitment to healthy and safe communities and environmental protection and enhancement,*
- (c) to accommodate and support Penrith's future population growth by providing a diversity of housing types, in areas well located with regard to services, facilities and transport, that meet the current and emerging needs of Penrith's communities and safeguard residential amenity,*
- (f) to protect and enhance the environmental values and heritage of Penrith, including places of historical, aesthetic, architectural, natural, cultural, visual and Aboriginal significance, and*
- (h) to ensure that development incorporates the principles of sustainable development through the delivery of balanced social, economic and environmental outcomes, and that development is designed in a way that assists in reducing and adapting to the likely impacts of climate change.*

The applicant's CI Offer is not supported. The CI Offer relates to the construction of a signalised intersection and part of a road that is assessed to be required by the development. Aspects of the CI Offer and proposed road and intersection works do not provide sufficient certainty surrounding the delivery of the required infrastructure, the timing of the delivery and do not include details allowing a breakdown of costs and apportionment (what components are required by the development to meet its own needs and what components are 'over and above').

Without the necessary infrastructure, the development is inappropriately scaled and located and does not protect and enhance the values of Penrith or contribute to local amenity or the health and safety of residents.

The residential towers are wide and square and do not incorporate a step in the upper level elevation and will impact views and visual amenity. The design of the development does not respond to the negative impacts of heat and solar access from the west and north facing elevations.

Justification of the location of the proposed intersection is not understood, the intersection could be moved west to align with the existing round-about to avoid dual land ownership issues and tree removal.

Clause 2.3 Zone objectives

The development application is not assessed to support the objectives of the B4 Mixed Use zone objectives under PLEP 2010 as follows:

The design, extent and scale of the 5 storey podium and the inclusion of 4 storeys of built to boundary car parking within the podium will detract from the amenity and visual character of the local area. The treatment of the car parking does not effectively reduce the bulk, scale or expanse of the podium which has a west facing elevation to John Tipping Grove of over 100 meters. The same treatment is proposed for each elevation with no sleeving incorporated into the design. It is not certain that the landscaped elements on the podium facade will be effectual or sustainable in the long term due to radiant heat impacts and the known heat island conditions of Penrith more broadly.

The upper level car parking will negatively impact on the outlook and amenity of nearby residential apartments through their scale, noise and light spill. Insufficient regard has been had of opportunities in the locality to improve public amenity. The treatment of the development where it fronts John Tipping Grove is unsuitable and has limited activation - or opportunity for future access and activation.

The residential towers are wide and square with large floor plates (between approximately 900 and 1000sqm) with no step in the facade of the upper levels which might provide for additional or secondary common open space or which would lessen view and overshadowing impacts. Council's DCP recommends floor plates of 750sqm maximum.

It is not clear how access to amenities will be provided for ground floor tenants should the large tenancy fronting High Street be broken up in smaller spaces as is indicated by the dashed lines. Patrons are required to walk around the outside of the building or through the arcade link to access the eastern amenities. Male and female amenities are separated and no parents room or baby change facility is noted. Amenities provided in the 204.3sqm tenancy for Building 01 indicate doors opening directly to the primary tenancy with no air lock provided. Staff amenities provided in Building 01 are inconvenient in that their access arrangements and location are not near where staff would be working.

Twin electrical pad mounted substations are located along the eastern elevation and will detract from the presentation of the development to the new public road and limit planting in this location. Planters along the western elevation limit pedestrian access and present as a barrier to the street. It is noted that the adjacent development proposal is design for internally located electrical substations.

It is for the above reasoning that the development proposal is considered to be contrary to the zone objectives including:

- To provide a mixture of compatible land uses,
- To minimise conflict between land uses within the zone and land uses within adjoining zones, and
- To create opportunities to improve public amenity.

Clause 2.7 Demolition requires development consent

Demolition, site establishment works, minor excavation, fencing and remediation works are approved under separate consent no. DA18/0654.

Clause 4.3 Height of buildings

The maximum height identified for the site under PLEP is 24m.

The development application is lodged under clause 8.7 of PLEP and proposes a maximum height of 49.85m for Building 01 and 121.65m for Building 02. As the Community Infrastructure offer has not been accepted by Council the proposed height exceedances cannot be supported and the application is recommended for Refusal. Further, as the CI Offer is not accepted, the LEP FSR and Height of Buildings standards remain in force with no ability to vary that standard in the absence of a clause 4.6 request which does not accompany the application.

Refer to discussion under Clause 8.7 of PLEP within this report.

Further and for the reasons provided in discussions under clause 8.4 and 8.7 of the LEP, the objectives of the height control are not considered to be satisfied and in particular it is assessed that the development is contrary to the objectives at 4.3(1)(a), (b), (c) and (d).

Clause 4.4 Floor Space Ratio

The proposal for an FSR of 6:1 does not comply with the 3:1 FSR permissible under Clause 4.4 of PLEP and any additional FSR up to 0.3:1 achievable for developments that have undergone an architectural design competition. Refer also to discussion under clause 8.4 Design Excellence and 8.7 Community Infrastructure on Certain Key Sites of PLEP.

It is noted that the land to which the development relates and land located on the western side of John Tipping Grove are amalgamated and are one allotment known as Lot 300 in DP 1243401 with a total site area of 1.203ha. For the purposes of calculating FSR 'the Site' is taken to be the part lot east of John Tipping Grove which has an area of 5402.1sqm and to which the development proposal primarily relates (no works are proposed under this consent on the Part Lot West of John Tipping Grove).

Should consent be granted a condition of is recommended which restricts the maximum achievable FSR of part lot west to 6:1 and which would prevent 'double dipping' through the inclusion of any area of land referred to under this development application, being part lot east of Lot 300 in DP 1243401. No condition is recommended at the development application is recommended for Refusal based on other matters.

Clause 4.5 Calculation of floor space ratio and site area

Refer to discussion under Clause 4.4 Floor Space Ratio of PLEP.

Clause 7.4 Sustainable development

Although it is noted that the application was submitted with a valid BASIX Certificate, the design of the development has not suitably addressed the matters for consideration under clause 7.3 Sustainability. Clause 7.3 states that in deciding whether to grant development consent for development, the consent authority must have regard to the principles of sustainable development as they relate to a "whole of building" approach by considering each of the following -

- (a) conserving energy and reducing carbon dioxide emissions,*
- (b) embodied energy in materials and building processes,*
- (c) building design and orientation,*
- (d) passive solar design and day lighting,*
- (e) natural ventilation,*
- (f) energy efficiency and conservation,*
- (g) water conservation and water reuse,*
- (h) waste minimisation and recycling,*
- (i) reduction of vehicle dependence,*
- (j) potential for adaptive reuse.*

Water tanks noted on the BASIX Certificate are co-located with OSD, these should be separated to allow for separate stormwater and rainwater use and disposal.

An Ecologically Sustainable Design (ESD) assessment or similar document was not submitted with the development application outlining how the development is designed to reduce reliance on mechanical air conditioning, water consumption or how the development will respond to the high summer temperatures noting the extent of north and west facing glazing. It is noted that a BASIX Certificate has been lodged with the application and that solar panels are provided on the roof of Building 02 fronting High Street.

Council's DCP 2014, Chapter C1 Site Planning and Design Principles, clause 1.2 Design Principles, subclause 1.2.3 states that building facades are to be designed to reflect the orientation of the site using elements such as sun shading, light shelves and appropriate glazing as environmental controls.

The sustainability of planters surrounding the upper level car park podium is not demonstrated and soil volumes are limited.

The proposal complies with the Apartment Design Guide (ADG) in term of natural cross flow ventilation and solar access targets.

Clause 7.7 Servicing

Clause 7.7 of PLEP states that before granting development consent for development on any land to which this Plan applies, the consent authority must be satisfied that:

- (a) the development will be connected to a reticulated water supply, if required by the consent authority, and
- (b) the development will have adequate facilities for the removal and disposal of sewage, and
- (c) if the development is for seniors housing, the development can be connected to a reticulated sewerage system, and
- (d) the need for public amenities or public services has been or will be met.

The development application was referred to Sydney Water. In letter dated 4 December 2020 Sydney Water advise that the site can be serviced for the purposes of potable water although note the following in relation to wastewater servicing:

- *The discharge from the proposed development to the nearby 150mm VC sewer main (laid 1940) does not meet the dry weather performance criteria and hence does not have capacity to service the development.*
- *The downstream 630mm sewer main does have the capacity in dry and weather conditions to accommodate the discharge from the proposed development.*
- *There are two servicing solutions the proponent can take: Augmentation of the 150mm sewer main to a 300mm sewer main up to the nearby 630mm submain; or alternatively, construct a new 225mm sewer main to the existing 630mm submain.*
- *A detailed planning study is required to confirm the final pipe size and route with the preferred option.*
- *The proponent should engage a Water Servicing Coordinator and lodge a Section 73 application with Sydney Water.*
- *The proponent should also submit a wastewater reticulation design for the proposed development within the Section 73 application.*

The application can be connected to the relevant services subject to services augmentation and installation, and subject to a Section 73 Certificate being issued. A condition of consent could be recommended to require that the Section 73 Certificate be issued prior to the issue of a Construction Certificate, however the development application is being recommended for Refusal based on other matters.

Clause 7.8 Active street frontages

Clause 7.8 Active street frontages of PLEP states under 7.8(3) that development consent *must not* be granted to the erection of a building, or a change of use of a building, on land to which this clause applies unless the consent authority is satisfied that the building will have an active street frontage after its erection or change of use.

The objective of this control is to promote uses that attract pedestrian traffic along certain ground floor street frontages in the B3 Commercial Core and B4 Mixed Use zones.

The clause applies to the subject development as it is located within the B4 Mixed Use zone and is identified as "Active Street Frontage" on the Active Street Frontages Map under PLEP. The ground floor plan indicates that a business tenancy is provided with frontage to High Street at the ground floor and in this regard, the proposal does not strictly comply although could be dealt with as a consent condition.

Clause 8.4 Design excellence

The design of the development is not assessed to achieve design excellence having regard to the matters for consideration under PLEP. Clause 8.4(2) states that in deciding whether development to which this clause applies exhibits design excellence, the consent authority must have regard to the following matters:

- (a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*
- (b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,*
- (c) whether the development will detrimentally impact on view corridors,*
- (d) (Repealed)*
- (e) how the development will address the following matters -*
 - (i) the suitability of the land for development,*
 - (ii) existing and proposed uses and use mix,*
 - (iii) heritage issues and streetscape constraints,*
 - (iv) the relationship of the development with other buildings (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*
 - (v) bulk, massing and modulation of buildings,*
 - (vi) street frontage heights,*
 - (vii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,*
 - (viii) the achievement of the principles of ecologically sustainable development,*
 - (ix) pedestrian, cycle, vehicular and service access, circulation and requirements,*
 - (x) the impact on, and any proposed improvements to, the public domain.*

As is required under Clause 8.4 (3) of PLEP an architectural design competition was held in relation to the building as the development is greater than 24 metres in height or 6 storeys, and has a CIV more than \$1,000,000 on a Key Site. The competition design brief outlined the requirements and was for a master planned mixed use development over the Lot being both part lots east and west of John Tipping Grove. As the Penrith LEP Key Sites provision for Key Site 3 (part Lot east) and Key Site 10 (Part lot West) had not been gazetted, the competition design brief outlined that entrants were to provide a design for both a 3:1 and a 6:1 scheme.

The Brief required each entrant team to comprise of an established and an emerging architect. The winner of the design competition was the team of SJB (established) and Architect Prineas (emerging). Details in relation to the SJB/Architect Prineas scheme is included at **Appendix A9**.

Prior to the lodgement of this application the applicant sought endorsement from the NSW Government Architect through an established Design Integrity Panel (DIP) for a significant amendment to the design competition winning scheme which included alterations to the position of the proposed new north-south link road and to the residential tower designs and locations, to the podium height and design, and which resulted in the abandonment of a master plan for the Lot (both parts east and west).

The applicant met with the DIP on seven occasions and the DIP provided its endorsement and stated that a new architectural design competition was not required and that continued design excellence was present.

Council has met with the applicant numerous times and has provided several advice letters outlining the reasons as to why the design is not supported having particular regard to the design excellence clause. Matters Council has raised include:

- Negative impacts on the ability of the Precinct to be developed as is envisaged by the Penrith DCP owing largely to the abandonment of the master plan and uncertainty surrounding overall densities, and the resultant infrastructure requirements including access, traffic and parking to service the needs of development in the Precinct.
- Negative environmental impacts related to the height of the 5 storey podium which includes 4 levels of built to boundary, unsleeved car parking,
- Unsleeved car parking not being compliant with Council's DCP requirements for the sleeving of car parking,

- That the design does not satisfactorily mitigate the negative impacts of the scale and extent of the >100m long podium, and
- visual and amenity impacts related to the bulk of the residential towers owing largely to the lack of upper level setbacks in the built form amongst other matters.

It is further noted that Architect Preneas who were the winning architect, has not been involved with this iteration of the scheme for the site and is in breach of the terms of the competition outcome.

Council met with the NSW Government Architect (GA) to discuss the difference in opinions. The GA reviewed the issues raised by Council and have agreed that the DIP is to be reconvened to address the Council's concerns. The GA have also advised that Council are to now attend all DIP sessions relating to proposals in the LGA to avoid circumstances where Council and the DIP conclusions on design excellence differ and to ensure that details surrounding non-compliances with Council's statutory plans and guideline policies are understood by all parties.

At the time of writing there had been an initial meeting with all three members of the DIP, Council and the developer present. A follow up meeting has been arranged and a summary of threshold matters emailed to the DIP. As the matters raised for resolution are not insignificant and the timing and nature of amendments are unknown Council is recommending that any design amendments together with a new CI Offer and any accompanying VPA be lodged with a new development application.

The design currently before Council for assessment cannot be supported when assessed under clause 8.4 *Design excellence* of the LEP and the relevant provisions of the Penrith DCP, in particular Part E11 and the relevant Precinct provisions.

In relation to the matters for consideration under 8.4(2) the following is noted:

The most visually dominant component of the development will be the five storey podium and the four levels of unsleeved built to boundary car parking. This design if approved will set an undesirable precedence in the City Centre (contrary to the DCP controls which require sleeving of car parking) and will detract from the Precinct objectives outlined in Part E11 of the DCP.

The residential apartments which are proposed from 5th floor and above are too far above the street to contribute in any meaningful way to social interactions and streetscape character. Meaningful contact with the ground level is possible only from the first few floors in a multi storey building. Everything above 5th floor will be out of touch with the street below. The design and any repetition of this style of development in the Precinct will be detrimental for the area and will not deliver an attractive, place based planning outcome and will inhibit community and social interactions between residents, the street and future open space and businesses impacting social wellness and coherence.

The car parking podium levels represent a 'dead zone' between the street and the residents, and the distance between dwellings and the street exceeds that which would allow for passive surveillance opportunities and connections to place.

Regard has also been had during the assessment of the development proposal of the NSW Government Architect's 'Better Placed - An integrated design policy for the built environment of NSW' and 'Evaluating Good Design - Implementing Better Placed design objectives into projects' documents.

The Better Placed document includes that *'New development has the potential to transform quality of life for people, stimulate the economy and enhance the environment. The design of the built environment shapes the places where we live, work and meet. The quality of design affects how spaces and places function, how they integrate, what they contribute to the broader environment, and the users, inhabitants*

and audiences they support or attract'. The Policy also establishes a baseline of what is expected to achieve 'good design', and includes that 'good design creates usable, user friendly, enjoyable and attractive places and spaces, which continue to provide value and benefits to people, the place and the natural environment over extended periods'.

The design does not align with the descriptions under 2.1 of the Better Placed policy which details what is a well-built environment. The design of the podium, its scale and length and the disconnect between component uses within represent a poor 'fit' in the locality. Owing to these attributes the future communities 'sense of place' will be devalued. The ground floor layout contains obstructions to pedestrians including landscaped planters, levels and stairs, indirect ramps, services and the like.

The ground floor arrangement does not encourage pedestrian permeability. The design makes use of balustrading, stairs, ramps and has narrow colonnade areas where passing would be difficult. The level difference between the finished floor of the development and the surrounding streets is not ameliorated by the utilisation of landscaped planters which flank the development's frontages and further restrict access points.

Further, Council's Waste unit advises that the development cannot be serviced efficiently as insufficient area is provided for the manoeuvring of the bins. Council's contractors will be unable to access all of the bins to empty them. Two pad mounted electrical substations are located on the street (southern end of the eastern elevation) and parking, service and waste rooms have frontage to John Tipping Grove and the new road at ground floor, which is not ideal and does not represent design excellence, particularly when some of these service areas could be relocated to below ground or elsewhere within the building.

Service cupboards and ventilation grills front Union Road and the ramp providing access to the entry lobby is indirect.

These aspects of the design are assessed as contrary to 8.4(2)(i), (ii), (iii), (iv), (v), (vi), (vii), (ix) and (x).

Clause 8.7 Community Infrastructure on certain key sites

The application is lodged under clause 8.7 Community infrastructure on certain key sites of PLEP. The clause applies to land identified as a key site on Council's LEP Key Sites map. The subject site is identified as being in Key Site 10 and as such the clause applies (Part of the Lot west of John Tipping Grove, not being the subject of this application and which does not form part of the subject Site is identified as being Key Site 3).

The application was submitted with an offer of Community Infrastructure (CI) prepared by Urbis, dated 19 February 2020. The details of the Offer are described below and a copy is included at Appendix D1.

The Offer has been prepared having regard to Council's Community Infrastructure Policy. The Policy details in the Definitions at Appendix 1 (of the Policy), that Community Infrastructure is valued at a rate of \$150p/sqm for additional floor area.

Proposed Community Infrastructure Offer - 19 February 2020

The proposed development is for an FSR of 6:1. The proposed value of the CI is calculated in the applicant's Offer at \$150 per square meter of additional gross floor area over 3.3:1 being the LEP base rate of 3:1 plus an additional 10% available under clause 8.4(5) of PLEP, as the design of the building is the result of an architectural design competition.

The Offer states at point 2, that obtaining development consent for the desired 6:1 FSR triggers a requirement for the payment of \$150 per square metre for additional GFA above 3.3:1 and that based on a site area of 5,402sqm this represents a maximum additional 14,585sqm of GFA at \$150 per square meter equating to a total CI value of \$2,187,810.

The Offer includes that the proposal's new north-south road (to be dedicated a public road) will be constructed and delivered consistent with that which was approved under consent number DA18/0264 (approved in October 2019 by the SWCPP).

DA18/0264 approved a significantly lesser scaled development comprising of a 3 storey shared podium, one level of basement car parking and two residential towers being 12 and 15 storeys. DA18/0264 also approved a compliant FSR of 3.3:1. Community Infrastructure was valued at \$150 per square metre of additional floor area over the maximum Height of Buildings development standard otherwise applicable to the site under clause 4.3 of PLEP. Ground floor commercial floor area was not deducted (at a 0\$ per sq/m) from the sum total of calculable residential floor area above 24m for the purpose of calculating CI value.

Under the CI Offer the applicant advises that their offer is monetary and is proposed to be directed toward the installation of a signalised intersection in place of the existing High Street round-a-bout. The applicant included that Toga are *'prepared to discuss the potential for Toga to design and construct these works 'in kind' as opposed to cash payment subject to agreement on construction details, timing, land owners consent, RMS and other authority approvals'* and also stated that *'in the instance where the above is not achievable cash payment will be provided towards the construction of the signalised intersection'*.

Finally, the Offer concludes that Toga intends to offer to enter into a voluntary planning agreement (VPA) accompanying the DA which:

- (a) Defines details of the proposed offer of Community Infrastructure, and
- (b) Seeks an 'offset' of the total value of contributions payable (both CI and s7.11s) reflecting (i) the agreed apportioned value of the construction, embellishment and dedication of the new public road provided in the DA and, (ii) in the case of agreement for Toga to construct the new signalised intersection, any difference in the costs of works above the CI value associated with the DA.

Council's Assessment of the Community Infrastructure (CI) Offer

It was confirmed to the applicant that it is Council's position that Toga undertake the Community Infrastructure works as part of the development as is intended by the LEP clause. The CI Offer and other documentation provided does not satisfactory confirm or detail that the required signalised intersection can be physically achieved in the locality.

As was discussed on numerous occasions with the applicant and with the Planning Delivery Unit (once engaged by the Applicant) and as was detailed in Council's pre lodgement advice, an interim intersection in the locality would not be accepted for a scheme of the density now sought. The vehicular and pedestrian traffic generated by the 6:1 scheme triggers the necessity for a signalised intersection in place of the existing round-a-bout.

Under DA18/0264 the applicant chose to locate a new road (to be dedicated as public road) along its eastern boundary in an interim design. The applicant was advised that the future need to augment their interim design to facilitate the final or 'ultimate' signalised intersection (in support of further density in the Precinct) would result in the need to acquire land or otherwise address the issue of land ownership, as additional land needed for the delivery of the 'ultimate' signalised intersection is in the ownership of a third party.

No information is provided to enable an understanding or assessment of the extent of civil works required for the installation of the signalised intersection. No overlay of the physical final dimensional needs of the intersection have been provided on the architectural or civil plan sets or elsewhere, which would enable Council or TfNSW to be satisfied that traffic signals could be achieved and subsequently be supported. TfNSW have not been referred a development proposal that includes a signalised intersection.

The submitted civil plans show a possible future 'interim' intersection on the southern side of High Street. This arrangement is not supported.

Sufficient dimensional detail is not provided to confirm that a signalised intersection will not be hindered by the Urban Apartments proposal under DA20/0167 (currently under assessment) as it is not clear if the proposed building is setback sufficiently to allow for the required roadway verge inclusive of pedestrian pavement, and the intersection's required third lane (westbound left turn from High Street into the new road).

The offer assumes that the current approved roadway arrangements and agreements related to apportionment and 'over and above' CI value calculations associated with consent DA18/0254, do not need to be amended to respond to the proposed increase in density under DA20/0148. Current agreements under DA18/0264 related to CI value calculation and apportioned infrastructure needs of the development must be re-assessed and re-evaluated in the context of the additional density sought under this application - and have not been. The revisited infrastructure 'needs' of the development proposal are not clearly detailed and as such, the 'over and above' value attributed to an offer of Community Infrastructure not known.

Council also raised with the applicant that if it were to elect to consider acceptance of a solely monetary contribution for an agreed value of Community Infrastructure the following issues remain:

- (i) Submitted documentation does not satisfy Council that the required 'ultimate' signalised intersection can be physically achieved in the locality – no signal design or overlays in plan have been received.
- (ii) No owner's consent is provided for the intersection requirements on the adjacent land (Urban Apartments site).
- (iii) No detail is provided as to how and when (and through what mechanism) land in the ownership of a third party will be dedicated as roadway.

For pedestrian safety and traffic reasons the timing of the completion of the ultimate signalised intersection must be prior to the issue of the first Occupation Certificate for the development (as is required under consent DA18/0254) and therefore the applicant was advised that the Community Infrastructure works were to be undertaken and delivered by Toga. The offer does not address this issue.

The onus is on the applicant proposing an offer of Community Infrastructure under clause 8.7 to ensure the nature and value of their offer is achievable, measurable and deliverable. In this respect, no detail accompanies the application providing detail of any discussions or review of a preliminary or concept signalised intersection design from Transport for NSW.

The Offer includes that an 'offset' of development contributions payable under section 7.11 will be sought against the value of any works undertaken which may be in excess of those calculated under Council's CI Policy. In regard to this aspect of the proposal, it is possible for works-in-kind to be proposed as an offset to contributions which would be levied under Council's Civic Improvement Plan (in accordance with the provisions of the Plan), noting that this would need to be considered against an understanding and agreement on the apportioned minimum infrastructure 'needs' of the development. However, Council's Cultural Facilities and District Open Space contributions plans do not provide for contributions to be provided as works-in-kind as this is impractical and not in the public interest.

Further, Council's CI Policy requires that it be read in conjunction with Council's DCP. The proposed development overall does not adhere to the DCP design principles and outcomes for the Precinct as follows.

Part E11 - Clause 11.7.1.1 Precinct 1 of the DCP states that 'Development of the site must adhere to the following design principles: ... (2) Relocate redundant public street to provide north-south connectivity

and active 'eat street' adjoining the Civic and Cultural Precinct'. And '(3) Provide high quality and activity public domain interface with new and existing public streets'.

The Part also requires that 'Development of the site should provide the following outcomes:

- (a) Closure of John Tipping Grove between High Street and Union Road.
- (b) A new public street providing direct connections between High Street and Union Road
- (c) Replace existing roundabout on High Street with a signalised intersection at junction of High Street and the new street.
- (d) Potential extension of Union Lane to the west to provide access and additional street frontage.'

The proposal does not assist in delivering 3(a) and (c) and the outcome expressed at (c) is not cater for the traffic generated by the density of the development.

The development proposal is assessed to be contrary to the objectives of the clause as the application has failed to satisfy the matters for consideration under subsection (5). The submitted Community Infrastructure Offer has not been accepted by the Council owing to issues linked to:

- certainty of delivery,
- insufficient detail surrounding the extent of works,
- lack of detail identifying the area of land required for the delivery of the infrastructure, and
- owing to unresolved cost analysis and apportionment details.

Further, each applicant (Toga and the applicant for DA number DA20/0167) was advised not to lodge their respective development application without having first secured in principle agreement with Council on any offer of Community Infrastructure which has not occurred.

Summary

As the offer of Community Infrastructure is not agreed or accepted by Council, and the nature and value of the offer is not known (by virtue of the above outstanding matters) the proposal for a 6:1 FSR on the site cannot be supported and the application is recommended for Refusal.

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

Draft Environment State Environmental Planning Policy

The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018. This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property.

Changes proposed include consolidating a total of seven existing SEPPs being:

- *State Environmental Planning Policy No. 19 – Bushland in Urban Areas*
- *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011*
- *State Environmental Planning Policy No. 50 – Canal Estate Development*
- *Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment*
- *Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No. 2 - 1997)*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *Willandra Lakes Regional Environmental Plan No. 1 – World Heritage Property*

The proposed changes to State Environmental Planning Policy No. 19 – Bushland in Urban Areas (SEPP 19) are not considered to impact the proposed development. In addition, the amendments to Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No. 2 - 1997) do not impact the proposed development. In this regard, the proposal is not inconsistent with the provisions of this draft instrument.

Draft Remediation of Land SEPP

The Department of Planning and Environment has announced a Draft Remediation of Land SEPP, which will repeal and replace the current State Environmental Planning Policy No. 55—Remediation of Land. The proposed new land remediation SEPP will:

- Provide a state-wide planning framework for the remediation of land,
- Maintain the objectives and reinforce those aspects of the existing framework that have worked well,
- Require planning authorities to consider the potential for land to be contaminated when determining development applications and rezoning land,
- Clearly list the remediation works that require development consent, and
- Introduce certification and operational requirements for remediation works that can be undertaken without development consent.

It is also proposed that it will transfer the requirements to consider contamination when rezoning land to a direction under Section 9.1 of the Environmental Planning and Assessment Act 1979. The proposal is not inconsistent with the provisions of this draft instrument, owing to the matters detailed under the SEPP 55 discussion.

Planning Proposal - Planning Proposal to Resolve Deferred Matters from Penrith Local Environmental Plan 2010 (Amendment 4)

The Phase 1 amendments to the Penrith LEP were on exhibition between 1 May - 29 May 2020 and include alterations to lot sizes in residential zones, alterations to permissible uses in identified areas, changes in the zoning of particular allotments and minor housekeeping amendments. The amendments sought do not impact the subject proposal. Amendment 4 was made to PLEP on 28 January 2015. Certain areas were deferred from the LEP to enable further community consultation of the post exhibition changes, although none of the areas relate to the subject site.

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	Does not comply - see Appendix - Development Control Plan Compliance
C7 Culture and Heritage	Complies
C8 Public Domain	Does not comply - see Appendix - Development Control Plan Compliance
C9 Advertising and Signage	Complies
C10 Transport, Access and Parking	Does not comply - see Appendix - Development Control Plan Compliance
C11 Subdivision	Complies
C12 Noise and Vibration	Complies
C13 Infrastructure and Services	Complies
D2.1 Single Dwellings	N/A
D2.2. Dual Occupancies	N/A
D2.3 Secondary Dwellings	N/A
D2.4 Multi Dwelling Housing	N/A
D2.5 Residential Flat Buildings	Does not comply - see Appendix - Development Control Plan Compliance
D2.6 Non Residential Developments	N/A
D3.1. Bulky Good Retailing	N/A
D3.2. Sex Services Premises	N/A
D3.3. Restricted Premises	N/A
E11 Penrith	Does not comply - see Appendix - Development Control Plan Compliance

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

There are no Planning Agreements in place that apply to the subject development application. The development application was submitted with a Community Infrastructure offer under clause 8.7 of PLEP. Refer also to discussion under clause 8.7 of PLEP.

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

Section 25B

The Regulation requires under section 25B that a council that is negotiating, or entering into, a planning agreement must consider the relevant practice note (being that issued by the Planning Secretary). The application was not lodged with an Offer to enter into a VPA.

Section 92

Section 92 lists additional matters that for the purposes of section 4.15(1)(a)(iv) of the Act, are prescribed as matters to be taken into consideration by a consent authority in determining a development application. Regard has been had of the listed matters which include compliance with AS 2601, matters in relation to subdivision orders, the *Dark Sky Planning Guideline*, the *Low Rise Housing Diversity Design Guide for Development Applications* and more relevantly, 92(1)(f) in the case of a development application for development for the erection of a building for residential purpose on land in Penrith City Centre, the *Development Assessment Guideline: An Adaptive Response to Flood Risk Management for Residential Development in the Penrith City Centre*, published by the Department of Planning and Environment on 28 June 2019.

The *Development Assessment Guideline: An Adaptive Response to Flood Risk Management for Residential Development in the Penrith City Centre* notes that the guideline provides an overview of the Adaptive Management Framework to manage the development of flood-affected areas in the Penrith City Centre located below the Probable Maximum Flood (PMF) level. The staged nature of the adaptive management approach allows for development to continue based on ongoing flood risk management, where ongoing development in the Penrith City Centre is considered in line with evacuation capacity and capacities to recover.

The Adaptive Framework Management provides for three stages in the Framework that will be used to match development and greater resilience to flood management. Stage one sets out that planning and development for an additional 4,050 dwellings within the Penrith City Centre can be accommodated utilising existing infrastructure and State Emergency Services emergency capabilities. Stage one sets out the following activities to be undertaken:

- *Council will develop a Masterplan for the City Centre, including resilient building controls, detailed traffic and transport assessment, and an updated contributions plan to support the increased development proposed for the Penrith City Centre.*
- *Council monitors the development of new residential buildings in the affected area.*
- *Communication strategies will be explored to encourage commercial and employment activities in the Penrith City Centre to respond earlier to a risk of a severe to extreme flood event that may require evacuation.*
- *State agencies and Council will investigate all feasible complementary evacuation processes that could allow development above 4,050 dwellings within the existing planned infrastructure.*
- *Infrastructure NSW will continue to implement the Hawkesbury-Nepean Flood Risk Management Strategy 2017 and work with Council to build resilience and increased flood awareness.*
- *The Department of Planning and Environment will develop and implement the regional land use planning framework.*

The matters set out above for Stage one are in progress and the cap for residential dwellings of 4,050 in the City Centre has not been reached.

Stages 2 and 3 set increased caps for when the outcomes of subsequent stages are achieved.

The development proposal is consistent with the Adaptive Management Framework and guideline including the Stage one cap on residential development within the City Centre although the application is recommended for Refusal based on other matters.

Section 143

In accordance with Section 143, an assessment of the fire protection and structural capacity of the proposed building is necessary. The application has been referred to Council's Building Surveyors for assessment and standard conditions were provided although are not included as the application is recommended for Refusal.

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

Context and Character

The development of the site will have an unacceptable impact on the character of the area. The approval of the development will introduce a mixed use development with a podium containing 4 levels of unsleeved built to boundary car parking into the streetscape. The proposed building facades do not adequately mitigate the negative impact of the car parking and it is not expected that landscaped elements will thrive in the location, particularly given the west facing orientation and minimal planter soil volumes.

Residential levels are too far above the street (sitting at level 5 and above) to contribute to inner city character ambiance and passive surveillance. The north and west facing elevations of the development are not fully activated and pedestrian access is inhibited by the raised finished floor levels and through the use of balustrading and landscaped planters along the street fronts. Limited lobby entry ways and ground floor waste rooms and car parking restrict the activation of John Tipping Grove and the ground floor plan arrangement is impractical and cluttered. Overall the design is not considered to be sympathetic with the local area and are supportive of the high quality future desired streetscape character anticipated for the Precinct under the Penrith DCP 2014.

Solar Access

The development will have an unacceptable level of impact on the amount of solar access attributed to neighbouring sites particularly to the immediate south and south-east. Overshadowing attributed to the proposal will impact predominantly to the south with the shadow tracking across Union Road and the new north-south road and towards the east throughout the day. Importantly the open space attributed the neighbouring residential flat building will be significantly impacted.

Traffic and Parking

Traffic movements and increase in cars entering the site

As a result of the proposal there will be a significant increase in the volume of traffic generated as a result of the development. Owing to the scale of the residential towers and as only one level of basement parking is proposed, 4 levels of upper podium car parking are included which detract from the amenity and character of the City Centre and are resulting in a bulky and excessive podium scale. Council's traffic engineers confirm that the development triggers the need for traffic signals in place of the existing High Street round-a-bout and insufficient detail is provided as to how these will be delivered as detailed under section 8.7 of PLEP in this report.

Council's waste unit object to the development as the bin infrastructure at ground floor is too crowded to manoeuvre bins to allow for collection. Insufficient area is provided to allow Council's contractors to empty

bins.

Carpark lighting

It is identified that lighting within the upper level residential car parks may result in negative impacts on the amenity of residential units located on the northern side of the service lane. Impacts of light spill are not fully addressed by the use of louvres and planting.

Noise and Construction Impacts

Construction noise

Construction at the site will have a temporary effect on the amenity of the area due to noise from construction traffic, equipment and machinery. Standard conditions of consent could be recommended with regard to hours of construction, noise and dust suppression and soil and sediment control. Although the development application is recommended for Refusal based on other matters.

Noise from vehicles

It is identified that screeching noises from the tyres of cars manoeuvring around the elevated carpark may have a negative impact of the amenity of the residential apartments located in vicinity. In this regard, a condition of consent could be recommended to ensure that the surface of the carpark floor is a matt or rough finish and is not smooth or gloss. Although the development application is recommended for Refusal based on other matters.

Social & Socio-Economic Impacts

The predominant component of the podium will be the unsleeved built to boundary car parking. This design if approved will set an undesirable precedence in the City Centre (contrary to the DCP controls which require sleeving of car parking) and will detract from the precinct objectives outlined in Part E11 of the DCP.

The residential apartments which are proposed from 5th floor and above are too far above the ground floor to contribute in a meaningful way to social interactions and streetscape character. Meaningful contact with the ground level is possible only from the first few floors in a multi storey building. Everything above 5th floor will be completely out of touch with the street below. The design and any repetition of this style of development in the precinct will be detrimental for the area and will not deliver an attractive, place based planning outcome and will inhibit community and social interactions between residents, the street and future open space and businesses impacting social wellness.

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

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

Section 4.15(1)(d) Any Submissions

Community Consultation

The development application was notified to nearby and adjoining owners and occupiers between 17 April and 1 May 2020. Nine submissions were received and all were in opposition to the proposal. Issues raised are addressed below.

Matters raised in submission Council comment

Overall height.	The height of the development is compliant with the permissible
View and visual impacts.	height for developments lodged under clause 8.7 of PLEP. It is noted that the residential towers are wide and square rather
Visual impact on Blue Mountains escarpment.	than being slim and do not adopt a 'point tower' approach. There is no step in the upper level of the building which is creating bulk, view and overshadowing impacts as discussed within this report. The application is recommended for Refusal and the reasons include that the architectural design is unsatisfactory.
	The separation of the two residential towers will allow for some
	views to the Blue Mountains to be retained for some upper level
	north and north-east facing apartments - although as detailed above, the application is recommended for Refusal and the reasons include that the architectural design is unsatisfactory.
Impacts of overshadowing, solar access	It is expected through the controls relating to the site that there
	will be some impacts on the availability of solar access for nearby
	apartment developments, in particular those that currently enjoy
	solar access over their western side boundary. A the application
	is recommended for refusal, further detail with regard to impacts
	of the development by way of overshadowing were not requested.
Overdevelopment	Agreed. As detailed within this report the design of the proposal
	is considered to represent an overdevelopment of the site, in that
	the ground floor plate, waste areas and parking required to service
	the scale of the development are not able to be accommodated in
	the areas provided for.

Incompatibility of the development with Penrith landscape, undesirable precedence.
Impacts on character.

Agreed. The five level podium is assessed to be unacceptable in terms of bulk, scale and streetscape and amenity impacts and the development application is recommended for Refusal.

In relation to character, it is agreed that the scale of the development in the Precinct will result in a significantly changed character. Notwithstanding, the applicable controls for the site do allow for a large scaled mixed use development of the height and FSR sought.

It is assessed however, that the design of the development has not had adequate regard to the site's context and insufficient regard has been had of how the development's residential population will engage with the ground floor plane and street.

The design of the ground floor is unsatisfactory, cramped and does not sufficiently address local character, amenity, pedestrian permeability and accessibility.

Traffic and parking impacts, Traffic impacts on Union Road Traffic impacts on Worth Street. Increased impacts on parking availability for workers on Union Road.

The development application has failed to demonstrate that the site is suitable for the scale of the development propose. Car parking proposed within the podium level is not sleeved and results in the residential levels being too far above the street to contribute to street life, ambiance, character and social interactions.

As is detailed within this report, the traffic impacts of the development are not supported in particular as insufficient detail has been provided as to the delivery and apportionment of a signalised intersection at the intersection of High Street and the required north-south link road.

Oversupply of apartments, property value impacts.

It may be possible that the development will contribute to an oversupply of apartments although this is not a planning matter which would warrant Refusal of the application. Impacts of apartment oversupply and any drop in value of other apartments is not a matter which would warrant Refusal of the development application.

Amenity impacts on nearby units at no. 4 John Tipping Grove.

It is agreed that it is possible that noise, light and other amenity impacts related to 4 levels of podium parking may impact nearby sensitive receivers. Further information in relation to this was not requested as the application is recommended for Refusal.

Amenity impacts of noise, light, exhaust.

Construction vibration, noise and dust, impacts of basement construction.

Issues related to the construction of the development could be addressed through conditions of consent and would be temporary. No such conditions are recommended as the application is recommended for Refusal based on other matters.

Sustainability impacts.

Although the application was lodged with a BASIX Certificate it is not clear how the design of the development addresses the impacts of heat and sun for the northern and western elevations. Additional information was not sought as the development application is recommended for Refusal based on other matters.

Electric vehicle charge points not being provided for

A condition could be imposed in relation to charge points although the application is recommended for Refusal based on other matters.

Possible Maximum Flood (PMF) and evacuation issues

Council's development engineers have reviewed the proposal and raise no objection to the finished ground commercial, residential and basement levels.

The development application complies with the relevant sections (including Section 92) of the Environmental Planning and Assessment Regulation 2000. Refer also to discussion under Regulations, within this Report.

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	No objections - subject to conditions
Heritage	Not supported
Environmental - Environmental management	Not supported
Environmental - Waterways	Not supported
Environmental - Public Health	No objections - subject to conditions
Waste Services	Not supported
Traffic Engineer	Not supported
Community Safety Officer	No objections - subject to conditions

Section 4.15(1)(e) The public interest

It is for the reasoning provided within, and the matters raised in the submissions in relation to poor amenity, character and traffic impacts, that the development application is not considered to be in the public interest and cannot be supported.

Section 94 - Developer Contributions Plans

The following Section 7.11 Development Contribution plans apply to the site:

- Penrith City Council District Open Space Facilities Development Contributions Plan
- Penrith City Council Local Open Space Development Contributions Plan
- Penrith City Council Cultural Facilities Development Contributions Plan
- Penrith City Centre Civic Improvements Plan 2008

A condition in relation to the payment of applicable contributions is not recommended as the development application is recommended for Refusal based on other matters.

Conclusion

The proposal has been assessed against the relevant environmental planning instruments and policies, including Penrith LEP 2010 and Penrith DCP 2014, including Part E11- Penrith City Centre. The proposal is not found to be satisfactory. The design of the development is unsatisfactory in relation to State Environmental Planning Policy no. 65 - Design Quality of Residential Apartment Development and clauses 8.4 and 8.7 of the LEP in particular.

Support for the proposal will result in an unacceptable and in some instances detrimental impact in the locality. Traffic and intersection issues are not adequately responded to. The offer of community infrastructure attached the application cannot be supported in relation to its nature and value.

The design of the development is not site responsive, does not exhibit design excellence and is contrary to the public interest. The application is recommended for Refusal for the reasons provided.

Recommendation

1. That DA20/0148 for a part 14, part 37 storey mixed use development containing 357 apartments at 87-93 Union Road be Refused for the following reasons, and
2. That those making submissions and the relevant State agencies are notified of the determination.

CONDITIONS

Refusal

- 1 The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the provisions of Penrith Local Environmental Plan 2010 as follows:
 - The proposal is inconsistent with Clause 1.2, Aims of Plan, and the objectives of the B4 Mixed Use zone, and
 - The proposal is unsatisfactory having regard to the following provisions of PLEP:
 - (a) Clause 4.3 Height of Buildings,
 - (b) Clause 4.4 Floor Space Ratio,
 - (c) Clause 7.4 Sustainable development,
 - (d) Clause 8.4 Design Excellence, and
 - (e) Clause 8.7 Community Infrastructure on Certain Key Sites.

- 2 The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the provisions of:
 - State Environmental Planning Policy (Infrastructure) 2007, specifically clause 104, and
 - State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development.

- 3 The application is not satisfactory for the purpose of Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, as the proposal is inconsistent with the following provisions of Penrith Development Control Plan 2014:
 - C1 Site Planning and Design Principles;
 - C5 Waste Management;
 - C6 Landscape Design;
 - C8 Public Domain;
 - C10 Transport, Access and Parking; and
 - C13 Infrastructure and Services.

- 4 The application is not satisfactory for the purpose of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in terms of the likely impacts of the development including those related to:
 - (i) negative and unsupportable streetscape and local character impacts;
 - (ii) unsatisfactory traffic, parking, access and related pedestrian safety impacts;
 - (iii) unsatisfactory and unsupportable impacts on views;
 - (iv) negative social impacts;
 - (v) unsatisfactory sustainability considerations;
 - (vi) inadequate landscaping provision;
 - (vii) unsatisfactory building design; and
 - (viii) unsupportable impacts of overshadowing.

- 5 The application is not satisfactory for the purpose of Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979* as the site is not suitable for the proposed development.

- 6 The application is not satisfactory for the purpose of Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*.

Assessment Act 1979, as the proposal is not in the public interest.

7 The application is not satisfactory for the purpose of Section 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979* due to matters raised in submissions which include:

- Impacts of the development on traffic, safety, access and parking,
- Impacts of the development on residential amenity and overshadowing, and
- Impacts of the development on local character and views.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part B - DCP Principles

The development proposal is not considered to be acceptable having regard to the Principles contained within Part B of the Penrith Development Control Plan 2014.

The design, scale and extent of the 5 storey podium which contains 4 storeys of built to boundary car parking is inconsistent with the future vision for Penrith being one of a sustainable, high amenity area which places high value on local character and culture.

Part C - City-wide Controls

C1 Site Planning and Design Principles

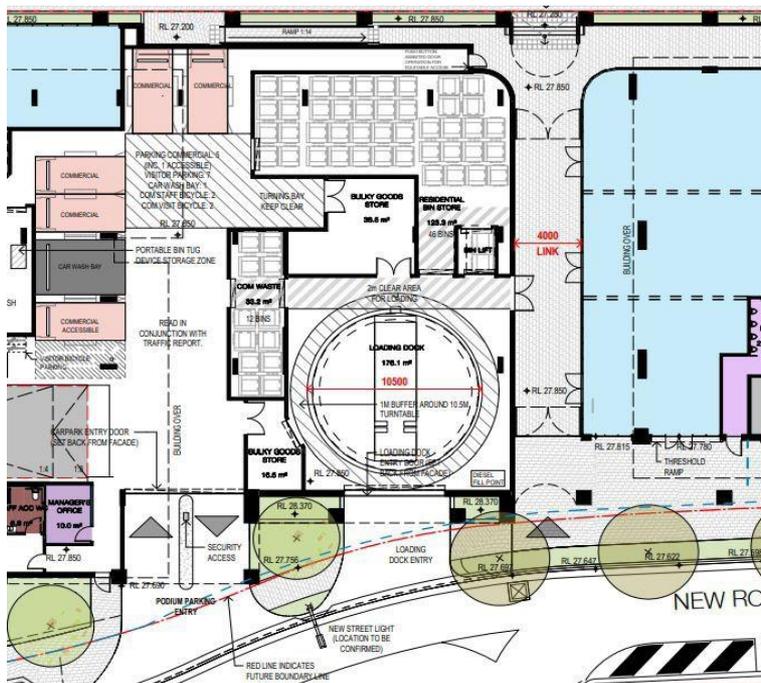
The design of the development does not satisfy the objectives of clause 1.2 Design Principles in that the development is not designed on a whole of building approach. The residential towers and 5 storey podium do not minimise bulk and scale or respond to the context of the site. The design of the development has not had adequate regard to the scale of development permissible in the surrounding nearby residential areas and the length of the podium particularly along the western elevation is not broken up such that the impact of its vastness is reduced.

C5 Waste Management

A Waste Management Plan has been submitted in support of the application as required by clause 5.1 of the DCP Section. It is not clear that the development proposal will provide for sufficient area in the waste storage zones at ground floor to enable the collection of bins, particularly those at the rear of each room. This is contrary to the objectives of 5.2 B. (d) Development specific controls, which includes that the development shall be serviced efficiently and effectively by Council's standard waste service. Bins are also stored in the basement and brought up for collection. It is possible that conditions could be recommended around waste area reconfiguration although these are not recommended as the application is recommended for Refusal based on other matters.

The development is supplied with dual waste chutes for each level of the development. The proposal does not provide for a bulky waste storage cupboard on each floor near the chutes. This is required to allow for residents to place bulky items like cardboard boxes so that the building manager can relocate these to the bin rooms rather and will avoid chutes being blocked.

Figure 8 (below): Excerpt from applicant's ground floor plan indicating bins stored at ground floor.



C6 Landscape Design

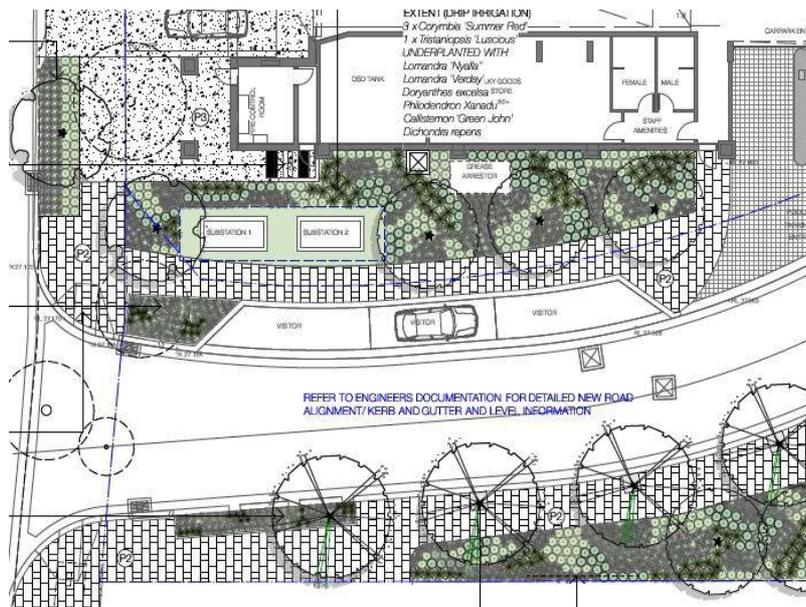
The landscape and architectural plans do not indicate any street landscaping for the western elevation. Architectural plans indicate landscaped planters along the development's edge within the site although no streetscape landscaping is provided for. Clause 6.1.3 Neighbourhood Amenity and Character requires that all sites make a contribution to the streetscape by way of the design of any landscaping works to ensure that the development integrates into and enhances the existing streetscape character. The DCP states that this could include street trees and other vegetation, pavement materials, setbacks, heritage items, links with other spaces, lighting, landscape style, street furnishings.

The proposal for no street planting along the western elevation cannot be supported. Awnings need to be designed to accommodate street tree planting and lighting.

The DA was accompanied by a Landscape Design Report prepared by Black beetle. The report does not address the requirements of the Section which states that proposals which include planting on structures are required to be accompanied by a Landscape Concept Plan which must outline how the area of planting on structures will be maintained for the life of the development.

The landscaping proposed adjacent to the eastern elevation (south end of new road) is dominated by services including two pad mounted electrical substations. These detract from the quality of the street and should be located within the design of the development in line with the high expectations of a design excellence winning scheme. It is noted that the adjacent development at 614-632 High Street (DA20/0167 also the subject of a design excellence waiver) is designed with internally located electrical substations.

Figure 9 (below): Excerpt from applicant's landscape plan indicating services located along street elevations.



C8 Public Domain

The design of ramps and stairs at ground floor do not assist pedestrian permeability and will result in excessive balustrades and narrow areas of colonnade.

The location of the entry ramp at the Union Road entry is indirect and in opposition to the able bodied access point.

Opportunities for passive surveillance of the street below is obstructed by the height of the residential units above. No lobby access for residents is provided to the west.

The proposed business uses will not active the street, these uses should be smaller scaled retail. The through arcade link is not active on both sides and is shared with a bin carting route. Awnings are provided in compliance with the section although street trees are not provided along the western street frontage to John Tipping Grove.

Section 8.5 Public Art requires that significant developments are to include place making and public art as an integrated component of the development. No public or public/private art is included. A Place making and Public Art strategy is required and is not provided.

C10 Transport, Access and Parking

The proposal is not supported as the design of the road infrastructure does not cater for the volume of traffic generated by the development. The applicant's plans to no include the required traffic signals and the interim roadway design indicated on plans is not supported for the density of development sought. The interim design does not address pedestrian safety as the development will be a significant generator of pedestrian traffic and also an attractor. The desire line for pedestrians is north and north-east toward the Westfield and Railway Station and in this respect a signalised intersection is required.

It is noted that although TfNSW provided in principle support to a signalised intersection at High Street, the design was not reviewed in detail and the advice is historical and was related to DA18/0264. As plans submitted with this application do not provide detail of how the design will support the future required signalised intersection, TfNSW have not provided advice on this aspect of the development.

The interim north-south roadway approved under DA18/0264 was designed only to support a smaller density of development which could be supported by a connection to the existing round-a-bout on High Street. The applicant was advised that a denser development would

require a signalised intersection and that if the interim road was to remain in the location selected, the fully signalised intersection would require land not in the ownership of the applicant. This has been the cause of much delay and discussion. Due to the land needed for an intersection being over two land holdings, issues surrounding owners consent, dedication of roadway and intersection and timing of delivery have resulted and have not been resolved.

It is owing to the limited detail provided in relation to the viability of the intersection referenced in the applicant's Community Infrastructure Offer and owing also to the matters discussed above, that the applicant's Community Infrastructure offer cannot be supported. The applicant's calculations of apportionment are also not agreed. Refer also to discussion under clause 8.7 of the LEP.

D2 Residential Development

D2.5 Residential Flat Buildings

The development is considered to be non-compliant with the overarching objectives of the DCP insofar as they relate to the development's contribution to or consideration of local character. Refer to discussions under State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Developments and Section 8.4 of Penrith Local Environmental Plan 2010.

The design of the podium in particular does not adopt a typical or predominant building width or complement the scale of nearby high density developments contrary to the urban design considerations of the Chapter. Energy efficiency measures in relation to heat and solar impact are not addressed in the design.

E11 Penrith

The development proposal has been assessed against the applicable provisions of the section and is found to be non compliant with the key objectives and controls. Discussion with regard to particular objectives and controls is provided below.

11.1 Preliminary

The subject site is identified as being within the Penrith City Centre on Figure E11.1 and as such section E11 of the DCP applies.

Aims of the section include to contribute to the growth and character of Penrith, deliver balanced social, economic and environmental outcomes, protect and enhance the public domain and to promote high quality urban design and environmental sustainability in the planning, development and management of the City Centre. General objectives also include to encourage development within the Penrith City Centre that gives primacy to the public domain and creates an attractive and vibrant centre and to ensure that development in the City Centre is consistent with the desired future character of each City Centre precinct.

The design of the five storey podium and the built to boundary unsleeved car parking cannot be supported as this will inhibit good place based planning outcomes.

The podium height will result in a disconnect between dwellings, common and private open spaces and the street below. The height difference between residential uses and the street will not allow the activities at the street or those within dwellings, on balconies or as part of common open spaces to interact or positively influence local character and streetscape vibrancy - as is envisaged by the Precinct controls and objectives.

11.1.3 Penrith City Centre Precincts and Character Areas

There are 8 precincts in the City Centre, each with their own distinct characteristics. The subject site is identified as being within the City West (mixed use) Precinct. This precinct comprises the southern side of High Street, between Worth Street and the intersection to Mulgoa Road. The area is identified as being currently underdeveloped, with a number of apartment buildings having been approved behind High Street along Union Road.

The area is identified for redevelopment facilitating a high density residential precinct that will complement and bring additional activity to the adjoining civic and cultural precinct (including the Joan Sutherland Performing Arts Centre and the Penrith Civic Centre and Library and Westfield building). It is noted that the area currently has largely unobstructed views of the Blue Mountains towards the west and that redevelopment of the area will interrupt these views, although it is acknowledged that glimpses of the mountains will be retained due to the east-west orientation of Union Road and High Street and potentially by the built form of future buildings.

This clause of the DCP highlights that there are opportunities to locate an urban space in this precinct that affords an "eat street" environment with connection to the adjoining civic and cultural precinct. The design of the development is not considered to adequately address these opportunities with access to the western colonnade limited and insufficiently activated. Refer also to discussion under PLEP Design Excellence and discussion under SEPP 65.

11.2 Building Form

The development provisions of this clause are identified as being intended to encourage high quality design for buildings in the Penrith City Centre, resulting in a balance between contemporary innovation and creativity and acknowledging the local and essential character of Penrith. The clause identifies that the built forms are to contribute to an attractive public domain in central Penrith.

The form of the development is contrary to the aims above. Ground floor uses and layouts do not enable an acceptable level of connectivity to the western side and parts of the ground floor require further refinement to deal with level changes, colonnade widths and accessibility and also to allow for adaption over time.

11.2.1 Introduction

The controls of the section aim to:

- *Establish the scale, form and separation of buildings,*
- *Achieve an attractive and sustainable city,*
- *Provide strong definition of the public domain with good connections between buildings and the street,*
- *Ensure consistency with regard to frontages and accessibility and pedestrian comfort,*
- *Encourage mixed use development with residential components that activate street fronts and maintain good amenity, and*
- *Provide high quality landscaping, articulation and building finishes.*

The development as proposed is not considered to comply with the above mentioned aims and objectives for the reasons provided above and as discussed in Section 8.5 Design excellence of the LEP.

11.2.2 Building to Street Alignments and Street Setbacks

Controls of the section related to building form and boundary interface. Figure E11.3 identifies that the site's frontage to High Street is subject to a built to boundary street alignment control and that the site's frontage to Union Road is subject to a 2-3m average front setback. A 0m

built to boundary street alignment is proposed to High Street and a 4m setback is proposed to Union Road to the building line which complies with the controls of the clause.

Submitted perspectives and view analysis diagrams do not indicate that the 5 storey podium height will maintain any views towards west and the Blue Mountains in accordance with the DCP control at 11.2.2(C)(5). Additional information was not sought as the application is recommended for Refusal based on other matters.

11.2.3 Street Frontage Heights

The proposed development does not comply with objectives of the control relating to appropriate built form transition, view sharing toward the Blue Mountains and maintaining and providing comfortable, sustainable and high amenity pedestrian zones and public spaces for the above reasoning. The design of the development does not provide for an appropriate transition in building heights from key public places which include the Council's Civic Centre, the Joan Sutherland Performing Arts Centre and open spaces to the south and west, which are not subject to similar key site provisions or higher density controls.

The proposal complies with the relevant street frontage heights identified for the site in the DCP to High Street and Union Road. Refer Figure E11.5 Street Frontage Height Type A of Part E11 of the DCP which requires a 5m building setback between 16-20m. The proposal is for a setback of 5m at 18m which is 5th floor.

11.2.4 Building Depth and Bulk

Objectives of the clause are identified as including:

- *To promote design and development of sustainable buildings,*
- *To achieve good internal amenity and minimise the need for artificial heating, cooling and lighting,*
- *To have usable and pleasant streets and public domain at ground level and to achieve a city skyline sympathetic to the topography and context of the site, and*
- *To reduce the apparent bulk and scale of buildings through modulating form.*

The development proposal is assessed to be unacceptable having regard to the above objectives. The width and floor plate area of each of the residential buildings are excessive and the 5 storey podium is vast (over 100m long). The residential towers do not step in sufficiently as they rise and are bulky and repetitive. Building 02 which fronts High Street contains a step in plan along the eastern elevation at levels 34 and 35 for part of the elevation which does not assist in breaking up the bulk and scale of the tower and is not discernable from the northern, western or southern view points. The larger of the two towers will be most visible from the north, west and south.

The proposal does not comply with the DCP control under 11.2.4(C)(4) in that the DCP requires, for mixed use buildings, that residential uses above 20m in height are to have a maximum floor plate of 750sqm and a maximum depth of 18m. The proposal is for a building depth for buildings 01 and 02 of 32.5m and 39m respectively (measured from the High Street and Union Road respectively) and for floor plates greater than 750sqm's (being closer to 1030sqm for Building 02 and 984sqm for Building 01). Both buildings have limited modulation in plan, in relation to their overall height and floor plate area and the modulation proposed will not assist in sufficiently breaking up bulk.

It is noted that submitted calculations indicate acceptable levels of solar access to apartments and with regard to natural cross flow ventilation (refer also ADG assessment).

11.2.5 Boundary Setbacks and Building Separation

The development proposal complies with the applicable boundary setbacks under the DCP and building separation distances with the exception of the upper level car parking which is not supported for design and amenity reasons as detailed elsewhere in this report and does not comply with the requirement for sleeving of podium parking outlined in other sections of the DCP.

11.2.6 Mixed Use Buildings

The proposed development does not comply with the objectives of the mixed use buildings section for the reasons provided above. Owing to the scale and bulk of the design and the disconnect between the various component uses, the development will unlikely create lively streets and public spaces in the City Centre, will not enhance public spaces in the City Centre or enhance public safety by increasing activity in the public domain particularly along the western elevation and through the inactivity expected along the through link arcade. The residential uses are too far above the street to ensure that dwellings address the public domain and the street.

11.2.7 Site Cover and Deep Soil Zones

The DCP identifies that the site may have 100% site cover and 0% deep soil. Landscaping is proposed at the residential level 5 and along the street fronts in planters. Planters are also proposed within boxes along the podium carpark elevations. It is not understood that planting will be sustainable given the extent of planting and the limited soil volumes and majority west and north facing orientations/high temperatures. Deep soil is minimal.

11.2.8 Landscape Design and 11.2.9 Planting in Structures

Controls of the section include that:

- *Commercial and retail developments are to incorporate planting into accessible outdoor spaces, and that*
- *A long-term landscape concept plan must be provided for all landscaped areas and the plan must outline how landscaping areas are to be maintained for the life of the development.*

Plans indicate planting on structure at level 5 and planters adjacent to podium car parking grills/slats. It is not clear if the soil volumes will be sustainable over time or that these planters will survive and thrive noting the heat impacts from the location and the west and north facing orientation and possible radiant heat from the proposed materials.

11.3 Pedestrian Amenity

Objectives of this section are aimed at encouraging future through site links, ensuring awnings are provided to retail and pedestrianised areas, provision of activated street frontages and mitigating negative impacts on views, pedestrian safety and impacts related to advertising and signage. Refer discussion above related to the 5 storey podium and disconnect between residential levels and the street. Refer also to discussion under SEPP 65 and PLEP clause 8.4 Design Excellence.

11.3.1 Permeability

Controls of the section include to provide through links and connections as identified within Figure E11.18 and to extend existing dead end lanes through to the next street. The proposal complies with the above Figure in that a new north-south roadway is proposed to be constructed and dedicated and includes the proposal to extend the existing dead end lane (Union Lane) so as to link with the new roadway. A pedestrian through site link is also provided east-west through the centre of the development at ground floor. Concerns are raised that the pedestrian link will be utilised in majority for a bin carting route as it provides the only

means of access to the bin room at grade for commercial tenancies. The design of the arcade does not comply with the DCP requirement to have active uses along both sides of the arcade.

It is noted that the link does not have active frontages on both sides for its full length. Many of the arcades nearby are inactive and are similar in design - although they have more convenient and desirable destinations.

11.3.2 Active Street Frontages and Address

The subject development proposes a mixture of commercial and business uses at ground floor. The DCP defines active frontages as one of or a combination of street level retail, shop fronts, glazed entries to commercial and residential lobbies, receptions and entries to public buildings and in this respect the proposal for business uses fronting High Street and commercial uses elsewhere is acceptable.

The DCP states that active frontages are to be at ground floor and are to be at the same level of the adjoining footpath and be directly accessible to the street. Matters related to the finished floor levels and uses of the ground floor of the development were discussed with the applicant as part of the assessment of approved consent DA18/0264. The applicant has adopted the same amended finished floor level and opened up the colonnade along the new north-south roadway by pushing back the glazing and lowering the finished floor level (FFL) by 0.300m. Although the finished floor levels of the development are not at the same level of the pavement adjacent Council's engineers have confirmed that this is the lowest level the building can be designed to in order to allow adequate drainage for the new road adjacent.

The level differences between the FFL of the tenancies fronting High Street and the High Street pavement will vary between 0.630m (at the corner with John Tipping Grove) and 0.450m and will be between 0.450m at the corner of High Street and the new road and 0m, at the entry to the through site link. Landscaped planters and balustrades combined with some narrow areas of the colonnade are not supportable.

The difference in floor levels are acceptable along the new road as the glazing to shop fronts is pushed back to allow pedestrian circulation under the colonnade. This same relationship is not adopted around all sides of the development. The level differences between the street and the shops is not conducive to an activated frontage and combined with the proposal for planters along this frontage, balustrading and limited entry points, will limit future access points, adaptability and restrict pedestrian accessibility and circulation in conflict with the aims, objectives and controls of the DCP clause.

11.3.3 Awnings

The development proposal is considered to comply with the applicable awning controls, aims and objectives.

11.3.6 Building Exteriors

The proposal is considered to generally comply with the applicable building exterior controls, aims and objectives outlined within the DCP. Balconies are provided for each unit. External walls are proposed to be constructed of high quality and durable materials and finishes. Glazing and other highly reflective finishes are only proposed on the ground floor. Notwithstanding the design and modulation of the development does not address the scale, bulk and extent of the podium.

11.4 Access, Parking and Servicing

The proposed development is consistent with the access, parking and servicing controls

outlined in the DCP. The proposal allows for accessibility to buildings for all people regardless of age and physical condition. The proposal allows for podium level and basement car parking with site services and facilities integrated into the design. Some ramps are too narrow and the ramp to the Union Street lobby is indirect.

11.6 Controls for Residential Development

The development is assessed to be incompatible with the provisions outlined in *State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development* (SEPP 65) as previously discussed within this report. Refer to discussion under SEPP 65.

A mix of dwelling types and sizes are proposed that have the ability to meet the changing needs of residents over time. Adaptable units and associated parking are provided.

11.7.1.1 Precinct 1

The proposal is identified to be located in Precinct 1 which is the area generally bounded by High Street, Mulgoa Road and Union Road. The development does not comply with the design principles and outcomes outlined in the DCP. The development does propose a new road connecting Union Road and High Street and active street frontages to the northern section of the new road which is in line with the DCP although the traffic needs of the development are not met by the interim connection to the round-a-bout shown on plans and the offer of Community Infrastructure which includes to construct a signalised intersection is not refined such that the proposal can be accepted or such that it is clear that the infrastructure can be delivered. Refer to discussions under PLEP.

11.4.2 On-site Parking Options

Objectives include to encourage economic growth in the City Centre, to enable the conversion of above ground car parking to other uses in the future and to support the complementary use and benefit of public transport and alternative modes of transport. The DCP requires that parking be accommodated in the basement for this development. Above ground parking can be considered in the Block between Henry Street and Belmore Street as indicated in Figures E11.22 and E11.23 which indicates 16m deep sleeving to the public domain.

11.7 Controls for Special Areas

The clause applies to special areas that owing to the size and or strategic importance in the City Centre have specific design principles and development outcomes expressed for them. The DCP states that redevelopment of these sites are to implement the principles and outcomes expressed in the clauses and diagrams that are included in the DCP. The subject site is located in Precinct 1. Development in Precinct 1 must:

- 1. Rationalise the existing pattern of land ownership.*
- 2. Relocate redundant public street to provide north-south connectivity and active 'eat street' adjoining the Civic and Cultural Precinct.*
- 3. Provide high quality and activity public domain interface with new and existing public streets.*

and must provide the following outcomes:

- Close John Tipping Grove between High Street and Union Road,
- Provide a new public street between High Street and Union Road,
- Replace the existing round-a-bout on High Street with a signalised intersection at High Street and
- Complete Union Lane with a connection to the new north-south public road.

Figure E11.26: Precinct 1 Design Principles

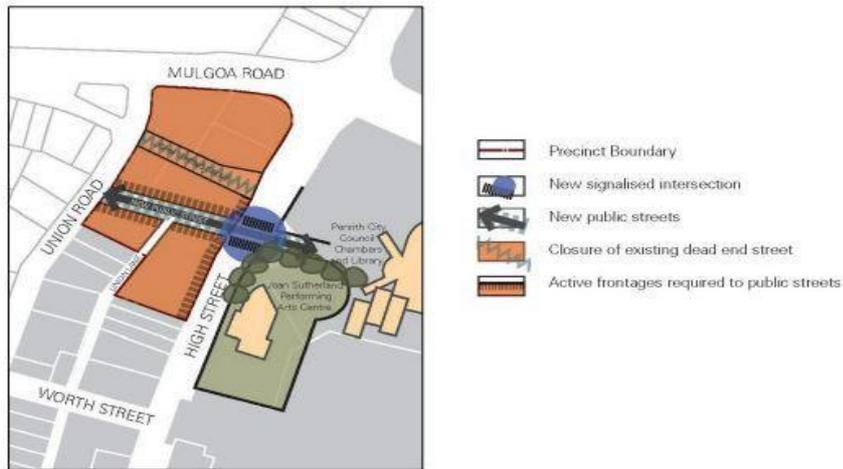


Figure 6 (above): Excerpt from PDCP 2014 - Precinct 1 Design Principles - Figure E11.26

The proposed development does not assist in the delivery of the above with the exception of an interim arrangement for the north-south link and an activated eastern edge fronting the new street. Insufficient detail is provided to satisfy Council that the signalled intersection proposed as part of an offer of Community Infrastructure can be delivered (refer to discussion under PLEP).

Further, the location of the interim design of the proposed north-south road - which when augmented to achieve a signalled intersection will impact large mature native trees near the Joan Sutherland performing arts centre, which should be retained and protected. No detail is provided as to the full extent of the impacts of the development on trees near the Joan Sutherland Performing Arts Centre.