

SWCPP Ref. No.:	PPSSWC-69
DA No.:	DA20/0167
PROPOSED DEVELOPMENT:	Construction of Part Seven (7) Storey & Part 46 Storey Mixed Use Development including Four (4) Storey Podium containing Basement Parking, Retail Premises & Car Parking, Office Premises, Serviced Apartments with 35 Suites, 272 Residential Apartments & Associated Site Works - Lot 10 DP 1162271,614 - 632 High Street, PENRITH NSW 2750
APPLICANT:	Urban Property Group
REPORT BY:	Kathryn Saunders, Senior Development Assessment Planner, Penrith City Council

Assessment Report

Executive Summary

Council is in receipt of a development application from Urban Property Group which proposes a part 7, part 46 storey mixed use development with a 4 storey podium inclusive of basement, ground and three levels of podium car parking at 614-632 High Street, Penrith also known as Lot 10 in DP 1162271. The mixed use development includes retail and office premises at ground and at the upper levels, 41 keyed serviced apartments and 272 residential apartments.

The proposal can be defined as serviced apartments, shop top housing, residential flat buildings and commercial premises (which includes business, office and retail premises), under the Penrith Local Environmental Plan 2010 (the LEP) and the development proposal is permissible with development consent in the B4 Mixed Use zone.

The design of the development has been granted a waiver to the PLEP 2010 architectural design competition requirements from the NSW Government Architect, instead forming a Design Integrity Panel (DIP) in relation to design excellence as is permitted under clause 8.4(4) of the LEP. A copy of the waiver letter issued by the NSW Government Architect is included at **Appendix E1** and minutes of the meetings held with the DIP are included at **Appendix E2**.

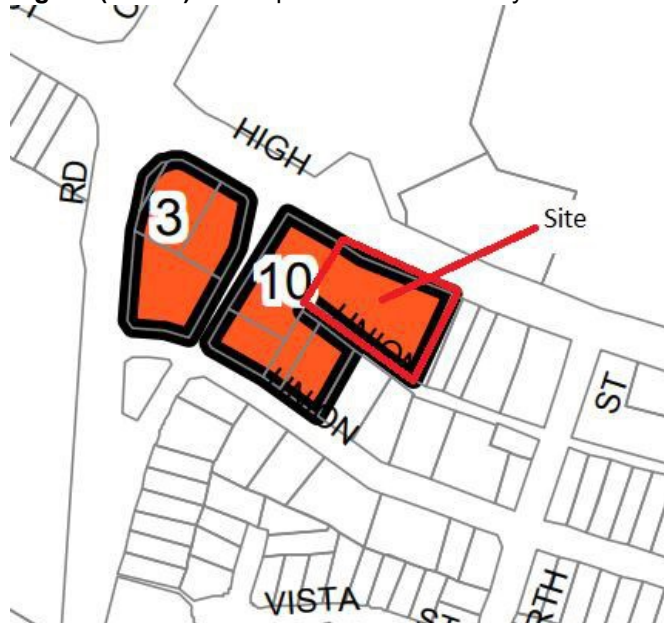
The subject site is identified on Council's maps as being within Key Site 10 and the proposal for a floor space ratio (FSR) of 6:1 is lodged with an offer of Community Infrastructure under clause 8.7 of the LEP. Clause 8.7 of the LEP states that despite clauses 4.3, 4.4 and 8.4(5) of the LEP which relate to Height of Buildings, Floor Space Ratio and the 10% bonus available for buildings having undergone a design excellence competition, the consent authority may grant consent for development on a key site which exceeds the LEP Height and FSR development standards. Clause 8.7(4) provides that an FSR of up to 6:1 is available on Key Site 10, subject to the development including community infrastructure.

The application was exhibited, advertised and notified to adjacent and nearby land owners and occupiers between 24 April and 8 May 2020. Nine submissions were received in objection to the development application. Matters raised in the submissions include traffic and parking impacts, amenity and overshadowing impacts, impacts of exhaust fumes, reduced outlook and impacts on views, compatibility with local character, height and economic impacts. The issues raised in submissions have been taken into consideration as part of the assessment of the application.

Figure (below): Nearmap image of the site in the context of High Street, Mulgoa Road and the Penrith CBD.



Figure (below): Excerpt from Council's Key Site LEP map



Key issues identified in the assessment of the application include:

- Unsatisfactory nature of the applicant's Community Infrastructure offer. The applicant's offer of Community Infrastructure (CI) is not 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' component, being for the benefit of the City Centre and which is in the public interest.
- Impacts of traffic generation in the locality and the proposal to rely on Union Lane as the primary entry and exit point for all traffic generated by the development. The applicant proposes this interim arrangement until such time as a signalised intersection is installed by the adjacent land owner to the west as part of their Community Infrastructure

offer attached to development application DA20/0148 which is separately reported to the Panel for determination,

- Building separation issues to the south and impacts on outlook, solar access and amenity related to elements of unsleeved car parking. Shadow diagrams conclude that additional overshadowing attributed to the proposal will be extensive, impacting apartment buildings which are located to the south of the development and which have frontage to Union Lane. The combination of the loss of outlook and the loss of solar access could be detrimental to some apartments and information provided with the application is insufficient to allow for a thorough assessment of the impacts.
- In relation to the Apartment Design Guide (ADG) additional information is required to explain which areas of common open space (COS) are accessible to residents as differentiated from COS accessible for the serviced apartments and commercial component of the development - security access surrounding the pool, indoor common areas and COS is also to be further explained.
- Concurrence of the Director General has not been obtained to the application as is required prior to consent being issued under clause 8.5(5)(b) of the LEP,
- Council's Environmental Management unit advise that additional information is required and that the application is not satisfactory having regard to State Environmental Planning Policy No. 55 - Remediation of Land, and
- Unsatisfactory engineering of stormwater and WSUD features including on-site detention, utilisation of cartridge filters and unsatisfactory internal parking, loading, ramp and aisle design.

The Sydney Western City Planning Panel (SWCPP) is the consent authority for the development which is identified in Schedule 3 of State Environmental Planning Policy (State and Regional Development) 2011 as Regionally Significant Development as the cost of works exceeds \$30 million.

The application was briefed to the SWCPP on 21 September 2020 and the following matters were included in the Record of Briefing:

The design presentation of the building includes attractive features to add interest to a building which will become a significant part of the Penrith skyline. The double height street front commercial spaces are likely to be a good contribution to the street activation. The Panel will be interested to see a more resolved design for the access and parking particularly as to how the intersection to High Street will work.

Consultation between the Applicant's consultants and the design team for the adjoining 87-93 Union Road development would seem to be essential particularly with regard to the pedestrianisation of New Road as well as the outcomes encouraged by Part E – 11 City Centre of Penrith DCP.

It appears that the level of density for this and the adjoining 87-93 Union Road development is likely to cumulatively require upgrades of the intersection of New Road and High Street under the Council DCP controls. A joint proposal to embellishment of the public space would likely assist in an outcome sufficient to justify the proposed density. The Panel would hope to see a collaborative resolution of this issue from the adjoining landowners. Ancillary infrastructure such as bicycle parking, conflict between likely truck and pedestrian movements and waste rooms may require attention.

The application was also referred to TfNSW (formerly RMS) as the development is defined under the Infrastructure SEPP as being traffic generating development and is in close proximity to several Classified Roads including Mulgoa Road and Great Western Highway. TfNSW are currently undertaking significant road works as part of the Jane Street upgrade and widening of Mulgoa Road. The current phase of works includes significant augmenting of the intersection at Great Western Highway, Mulgoa Road and High Street located to the immediate north west of the subject site. TfNSW have raised issues with the proposal as follows:

- TfNSW raise that issues previously raised by them which include matters related to Sidra modelling, cycle times for intersections and growth rates for traffic assumptions are not addressed by the response provided, although state that this is a matter for Council to consider. Council has requested that adequate regard is had to the RFI from TfNSW.
- TfNSW notes that should the development be completed before the new road connecting to Union Lane is constructed (part of a separate Development Application) all traffic for the development will be required to use the uncontrolled intersection of Union Lane and Worth Street. With the increased traffic generated raises concerns with the likelihood of an increase in cross traffic crashes. Consideration should be made to addressing these concerns.
- Having a mid-block pedestrian laneway connecting a high density residential area to Penrith Shopping Centre would promote pedestrians crossing at mid-block locations. Appropriate pedestrian safety infrastructure should be investigated along High Street where the laneway interacts.

TfNSW letters are attached at **Appendix F2 and F3**. Council's development and traffic engineers object to any interim traffic solution that relies on the uncontrolled intersection of Union Lane and Worth Street as it is considered that the scale of the development requires the installation of a set of traffic signals at High Street, replacing the existing round-about to address traffic management and pedestrian safety. Refer further discussion under LEP section 8.7 and discussions under Section C10 of Penrith Development Control Plan 2014 (DCP).

Council does not agree that 100% of a future signalised intersection is over and above the needs of the development.

There remain issues related to the method of calculating the value of Community Infrastructure under the Council's Community Infrastructure Policy which are a point of disagreement between Council and the applicant. The applicant was advised not to lodge their development application without having first secured in principle agreement with Council on any offer of Community Infrastructure which has not occurred.

Additional Information

Further to the above, the applicant has uploaded additional documents to the ePlanning Portal (upload dates 16 March and 13 April 2021) which include amended civil works plans and a transmittal prepared by SGC and a Preliminary Public Art Strategy prepared by DKO which have not formed part of the assessment of the development application in this report

Site & Surrounds

The proposed development is located on Lot 10 in DP 1162271 which has a total site area of 4715sqm and is also known as 614-632 High Street, Penrith.

The Site is bound by High Street to the north and Union Lane to the south and shares its eastern and western boundaries with vacant allotments.

Development in the vicinity includes vacant narrow sites to the east which are the subject of 5 storey mixed use development under DA20/0477 and a vacant site to the west which is the subject of a development application under DA20/0148 for a part 14, part 37 storey mixed use development, including a new road along the shared boundary.

The site is in close proximity to 9 and 6 storey existing residential apartment developments on the southern side of Union Lane and is relatively flat with little significant vegetation contained within the site and is vacant except for various hard stand areas and unused site sheds. The site is approximately 600m south-west of Penrith Railway Station and is approximately 800m east of the Nepean River.

Relevant site history

DA18/0264 - The vacant lot to the west benefits from a recent development approval under consent no. DA18/0264, which approved the construction of a part 12, part 15 storey mixed use development and included the construction and dedication of a new north-south public road, connecting High Street to Union Road with an interim connection to the nearby round-a-bout on High Street, located along the shared western side boundary of the subject site. It is envisaged through the DCP controls for the Precinct, and via the Key Site provisions of PLEP and accompanying Community Infrastructure Policy, that prior to the delivery of the densities expected by the development of the Precinct, the interim road and its connection to the High Street round-a-bout will be subject to augmentation, to enable the installation of a signalised intersection in place of the existing round-a-bout.

DA20/0148 - Council is also assessing a new development application on the western vacant allotment under DA20/0148 for a similar development and public roadway, noting the scale of the development now proposes a part 15, part 37 storey mixed use development and is lodged under Clause 8.7 of PLEP, taking advantage of the Key Sites provision.

DA20/0477 - The site shares its eastern boundary with Lots 2 in DP 525160 and Lots C and D in DP 153855 which are also the subject of a current DA under assessment for a 5 storey mixed use development with basement car parking and 41 apartments. These lots do not benefit from the Key Sites provision under PLEP and are subject to the maximum permissible LEP Height of Buildings and Floor Space Ratio which are 20m and 3:1 respectively.

Proposal

The development application seeks approval for the following:

- Construction of a part 7, part 46 storey mixed-use development including 272 units.
 - One residential and one commercial tower above a shared 4 storey podium inclusive of 3 levels of above ground partially sleeved car parking,
 - Serviced apartments are proposed spanning 5th to 10th floor with 41 keyed suites,
 - Ground floor parking (14 retail spaces), storage cages, bicycle storage and retail, amenities and service areas, Tower A and B lift lobbies and vehicular access to podium, basement and service areas off Union Lane.
 - One level of basement car parking (87 spaces) with ramp access off Union Lane and storage cages,
 - An open air pedestrian walkway is proposed along the eastern boundary which provides access through to Union Lane from High Street and provides access to the serviced apartments lift lobby and reception area and to the separated residential lift cores.
 - 5th floor enclosed communal room, commercial offices and common open spaces,
 - 6th floor commercial offices and pool with yoga deck and enclosed communal room,
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- 7th floor commercial offices with green roof over and common open space areas,
- 9th floor to 46th floor as single residential tower,
- Ancillary civil and landscaping works including public domain works along High Street, Union Lane including street trees and awnings.

Floor Space Ratio

The site area is 4,715sqm.

Proposed FSR is 6:1.

Unit mix is as follows:

104 x 1 bedroom units

134 x 2 bedroom units

34 x 3 bedroom units - Total: 272 Apartments.

Parking

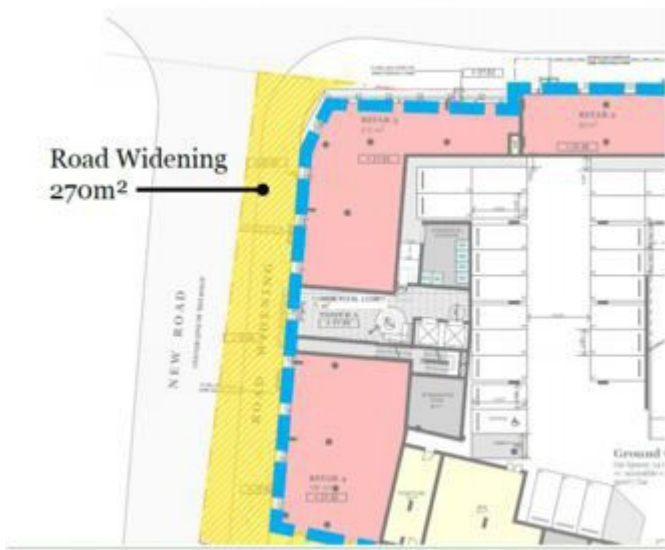
338 residential car parking spaces are provided within the basement ground and podium carpark areas.

Community Infrastructure

The DA is lodged under clause 8.7 Community infrastructure on certain key sites, of the LEP. Clause 8.7 states that despite clauses 4.3, 4.4 and 8.4 (5), the consent authority may grant consent to a development on land to which this clause applies that exceeds the maximum height shown for the land on the Height of Buildings Map or the floor space ratio for the land shown on the Floor Space Ratio Map, or both, if the proposed development includes community infrastructure.

The subject site is located on Key Site 10 and is subject to a maximum floor space ratio of 6:1 under LEP clause 8.7 if the proposed development includes community infrastructure. The application as lodged with an offer of Community Infrastructure prepared by Think Planners. The offer is as follows (refer **Appendix C1**):

- The CI Offer is for a monetary contribution based on a site area of 4,715sqm and a floor area of 5,719.5sqm at \$150 per square metre (total 'over and above' GFA less all commercial and retail floor area (15,560sqm), and less additional floor area granted by way of the design competition (1,415sqm)).
- The applicant has identified in the CI offer document that the total contribution ... *'can be allocated to upgrades to the intersection treatments at High Street and Civic Centre – as listed under Clause 2.5 of the Council's Community Infrastructure Policy as well as improvements to pedestrian safety and connectivity along High Street'*. The CI Offer includes that the monetary contribution is toward the construction of a signalised intersection at the intersection of the approved although yet to be constructed new road and High Street. (under DA18/0264).
- The CI offer document states on page 10, that 'In future detailed discussions are to be entered into about off-setting Section 7.11 contributions for land dedication and works-in-kind which will include:
 - Land to be dedicated to the new road – land area of 270sqm...[Figure below], and
 - Construction of public domain – across the same area'..[Figure below]



Above: Excerpt from Urban Apartment's CI Offer Document

Refer to additional detailed CI discussions under PLEP Clause 8.7.

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)**

The application has been assessed in accordance with Section 2.12 of the Environmental Planning and Assessment Act 1979. The development application will be determined by the Sydney Western City Planning Panel as it has a Capital Investment Value of \$30 million or greater. The identified Capital Investment Value for the development is \$49,000,000.00

- **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 DA was submitted with an Additional Groundwater Investigation prepared by EI Australia, dated 30 January 2020, revision 1. The investigation states that the report was conducted to assess the nature and degree of any potential ground water contamination associated with current and former users of the property. The report concludes that, *'groundwater was observed to be present at approximately 5.5m below ground level and was visually observed to be of low turbidity with no odours or sheen, ground water was assumed to be flowing to the west and exceedances of the ANZG (2018) Fresh Water Criteria for copper, nickel, zinc and TRH F3 were reported, however the identified concentrations were considered to be at levels presenting a low environmental and human health risk'*.

The report notes that above ground parking is proposed and assesses that the ground water presents as a low risk in this regard. The report needs to be amended to confirm that the site is still suitable noting that the application was amended to include one level of basement car parking. Refer also to discussions under State Environmental Planning Policy No. 55 - Remediation of Land.

As it is not determined if the proposed development is integrated development under Part 3 Approvals 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. 1074657M dated 28 March 2020 was submitted with the application and is satisfactory.

State Environmental Planning Policy (Infrastructure) 2007

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 proposal does not demonstrate 'good design' outcomes as is required under 2(g). The development application does not confirm that the required area of land needed for the installation of the final traffic signals can be accommodated in the proposed location. Detailed design, civil and public domain plans are not provided.

The location of a future intersection, based on the location of an interim intersection design (as proposed under concurrent application number DA20/0148) is pushed eastward and results in more extensive works to Council's Civic Center entry point and the removal of a mature and significant tree.

Other impacts on trees adjacent to Council's carpark entry are not known. It is assessed that the intersection location should be moved westward to avoid the tree and significant augmentation of Council's

access driveway. Justification of the selected location of the intersection and new road is not provided.

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 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 applicant submitted an amended acoustic report prepared by White Noise, dated 22 February 2021, revision 1 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. A condition of consent requiring compliance with the report is not recommended as the application is recommended for Refusal 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 (SYD20/00454/01 CNR-6822) stating that the development proposal was not supported and listed the following information to be submitted for further consideration:

- 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.
- That the 2% growth rate nominated by Council appears low given the whole block of B4 Zone has an FSR

of 6:1.

- TfNSW advise that Council is to ensure that sufficient provisions for active transport and place making infrastructure is provided, as noted in the Greater Sydney Commission, Greater Penrith Collaboration Area place Strategy.
- TfNSW note issues surrounding the timing of the delivery of the new road and intersection (proposed under DA20/0148) and note that with the increased traffic generated by the development at this intersection TfNSW raises concerns with the likelihood of an increase in cross traffic crashes. Consideration should be made to addressing these concerns.
- TfNSW also noted that having a mid-block pedestrian laneway connecting a high density residential area to Penrith Shopping Centre would promote pedestrians crossing at mid-block locations. Appropriate pedestrian safety infrastructure should be investigated along High Street where the laneway interacts.

The applicant provided a response letter and Sidra files which was forwarded to TfNSW. TfNSW responded in letter dated 11 March 2021 and noted the following:

- *It is noted that the intersection of Union Street and Worth Street would operate worse in 2030 in both AM and PM Peaks. Also, the intersection operates at LOS E during PM peak which is in an unacceptable level. Mitigation measures should be proposed to bring the level of service to an acceptable level (LOS C or better).*
- *Reference is made to Item 4 and 5 in TfNSW (27 May 2020) response Attachment A. The response from the consultant does not adequately address these concerns raised. In this regard consideration should be given to addressing these safety concerns and any mitigation measures is to be provided for review.*
- *This area is considered to have high pedestrian activity due to its close proximity to the train station and commercial establishments (i.e Westfield), there should be provisions of infrastructure for vulnerable road users to ensure their safety and promote walking/cycling and*
- *In addition it is unclear if pedestrian protection has been included in the models provided. Electronic SIDRA modelling files need to be reviewed to ensure appropriate pedestrian protection is incorporated into the modelling.*

No further response was provided.

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 which is shown on the plans for the adjacent development under DA20/0148 is not proposed and 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 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.

Refer also to discussion under Penrith DCP Section C10.

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 proposal is identified as being Regionally Significant Development under the Policy as the proposal has a capital investment value which exceeds \$30 million.

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 is acceptable having regard to the Policy.

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 unacceptable.

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.*

Council's environmental management team have reviewed the documents submitted with the application and note that the application is unsatisfactory having regard to the following:

- Reports suggest there were underground storage tanks present at the site from 1958 and that these were removed in 1996. No validation reports were carried out to establish if soils were contaminated. An 'Additional Groundwater Investigation' was undertaken to assess potential groundwater contamination and found exceedances of some elements. The report did not address whether there were contaminated soils, as associated with these findings, remaining on the site.
- A RAP was submitted and states that "formal remediation is not deemed necessary". The RAP and the Additional Groundwater Investigation reference a Benviron 'DSI' that was carried out in December 2019 and the report is not provided to Council and is required so that the statements in the submitted reports can be validated.
- Contamination and ground water reports have not been amended to reflect the amendment of the application which introduced a new single level of basement.

Based on the above and having regard to Clause 7 of the Policy, the development application cannot be supported and is recommended for Refusal.

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

An assessment has been undertaken of the proposal against State Environmental Planning Policy No. 65 —Design Quality of Residential Apartment Development (SEPP 65) and the proposal is found to be largely satisfactory, with the exception of the rear lane (southern) setback to existing apartment buildings fronting Union Lane, where it is assessed that the extent of impact in term of solar access, overshadowing and potential for noise and light spill from podium parking has not been fully documented so that it can be understood and assessed and in this respect cannot be supported.

Further to this, the suspension of the Height of Buildings (HOB) development standard by virtue of clause 8.7 does not remove the need to consider the implications of the resulting building form with respect to height, orientation, siting and visual impact. There is still a need to demonstrate that the proposal, with the additional floor space allowance, is contextually appropriate which is currently of concern given its interface with land to the east, which is limited in height by a 20m HOB development standard.

Further and as discussed elsewhere in this report plans, sections and details for the west facing building edge, the property boundary interface with the western neighbour and the civil and public domain details of the north-south road are not provided and in this respect the application is not supported. These

details are required to be provided to ensure that street levels and the public domain are high quality and the conditions are known. The development cannot be supported without the delivery of a north-south new road and a signalised intersection in place of the existing round-a-bout on High Street. Refer to discussion under LEP clause 8.7.

Further to the above, additional information is required to explain which areas of common open space (COS) are accessible to residents as differentiated from COS accessible for the serviced apartments and the commercial component of the development - security access surrounding the pool and COS is also to be explained. Council's Waterways officer and traffic engineers object to the design of the waterways infrastructure and to the design of the shared loading bay. Refer to discussions under Penrith DCP.

The applicant has provided advice as to how the principles of Schedule 1 of SEPP 65 are addressed as is required by Schedule 1 of the Regulations.

The proposal is considered to be acceptable when assessed against the nine Design Quality Principles of Schedule 1 with the exception of the above matters and the development has been reviewed by the Design Integrity Panel through the issuance of the waiver to an architectural design competition by the NSW Government Architect (Delegate of the Secretary/Director-General) as provided for under clause 8.4 of PLEP. The DIP found the proposal to be of acceptable quality and representative of design excellence.

Conditions of consent could be recommended with regard to accentuation of residential entry points and clarification surrounding materials and having regard to some of the matters raised within this report in relation to waste infrastructure and compliance with Australian Standards for car parking space widths and the like, although are not recommended as the application is being Refused on other grounds.

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

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 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.	Awning heights to be reviewed and the awning's relationship to streetlight poles and trees. Direct access from the street is provided to the lobby areas and the cafe proposed at the end of the eastern edge open air walkway is a creative and valued destination highlight and an important book end to the lane.	Capable of compliance.
3B-2	Living areas, Private Open Space (POS) and Communal Open Space (COS) to receive compliant levels of solar access.	Refer discussion under Parts 3D and 4A.	n/a

	Solar access to living spaces and POS of neighbours to be considered.	<p>Shadow diagrams conclude that additional overshadowing attributed to the proposal will be extensive impacting the lower level apartments of apartment buildings which are located south of the development and which have frontage to Union Lane.</p> <p>The combination of the loss of outlook and the loss of solar access could be detrimental to some apartments and information provided with the application is insufficient to allow for a thorough assessment of the impacts.</p> <p>As the development application is recommended for Refusal based on other matters - additional solar access and overshadowing studies were not requested.</p>	No. Further detail required.
3C-1	Courtyard apartments should have direct street access.	No ground floor apartments are proposed.	n/a
	Upper level balconies and windows to overlook the street.	All apartments are provided with an outlook over the surrounding streets. Residential apartments are located above the serviced apartments and so will have little relationship to the street.	Yes.
	Length of solid walls should be limited along street frontages.	Each street frontage is designed to avoid areas of blank wall.	Yes.
	Opportunity for concealment to be minimised.	Entryways and thoroughfares are wide, straight and design to reduce opportunity for crime and concealment.	Yes.
3C-2	Mail boxes to be located, perpendicular to the street alignment or integrated into front fences where individual street entries are provided.	<p>Residential lift lobbies are accessed from within the ground floor retail and common walkways and are not readily identifiable from the street.</p> <p>Adequate area for the provision for mailboxes is provided within all lift lobbies.</p>	Yes.
	Ramping for accessibility should be minimised.	Ramping is minimised. Further detail is required in relation to public domain and civil levels and plans of the new north-south road and intersection are not provided.	Further information is required.

3D-1	Communal Open Space (COS) to have minimum area of 25% of site.	<p>The SEE states that the development provides for >25% of the site as common open space stating that the site area is 4,715sqm and 1,179sqm is communal areas. the areas used to calculate COS are not nominated and need to be.</p> <p>Common open spaces are provided at levels 4-6 of the podium.</p> <p>Further information is required as to the areas of common open space accessible to residents as differentiated from COS accessible for the serviced apartments and commercial component of the development - security access surrounding the pool and COS is also to be explained.</p>	Further information is required.
Design Criteria	Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on June 21.	The development complies with this requirement.	Yes.
Objective 3D-2	Facilities respond to microclimates, sun, winter, shelter, wind etc.	The design of the development responds to light and shade and to north.	Yes.
3D-4	Boundaries should be clearly defined between public open space and private areas.	The private open space areas of the development are clearly defined by the use of landscaping, walls, fencing and paving elements.	Yes.
3E-1	Deep soil is to be provided at a rate of 7% of site area with a min. dimension of 6m	The SEE states that 15.3% of site is provided as deep soil. Areas utilised to calculate deep soil are not nominated and dimensioned on plans.	Yes. Calculable areas and dimensions to be provided.

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> <p>9+ storeys - 12m habitable to habitable and 6m for non-habitable</p>	<p>The proposal is largely compliant with the building separation requirements with the exception of separation distances to the southern boundary where the separation distance between the subject development and the apartments at 83-85 and 79-81 Union Road are not nominated or dimensioned one plans.</p> <p>These apartments will be the most impacted through reduction in outlook, noise, privacy impacts and will have reduced solar access.</p> <p>The development itself appears to comply with the shared 6m and 9m separation requirements although overall built form separation is not nominated and it may be possible that the impacts of the development on the Union Road apartments requires a greater setback than the minimum noted in the ADG, to ensure minimum and reasonable levels of amenity are maintained.</p>	No. Further information required.
3G-1	Building entries to be clearly identifiable.	Lobby entryways are visible from streets and common areas. Mail boxes are located within lobbies which are accessible and paved to the street front.	Yes.
3G-2	Building access ways and lift lobbies to be clearly visible from the public domain and communal spaces.	The main pedestrian entryways are visible from the surrounding streets and communal open spaces.	Yes.
	Steps and ramps to be integrated into the overall building and landscape design.	Steps and ramps are integrated into the design.	Yes.
3H-1	Carpark access should be integrated with the building's overall façade.	<p>The car parking is adequately integrated into the design of the site. The car park entry is setback from the building façade at the street front and sleeved at the building's corners.</p> <p>Upper level car parking to the rear Lane is not sleeved and further detail is required to identify what the extent of noise and outlook impacts will be on apartments located opposite will be.</p>	No. Further Information Required.
	Clear sight lines to be provided for drivers and pedestrians.	Adequate sight lines are provided for drivers and pedestrians at the street frontage.	Yes.
	Garbage collection, loading and servicing areas are screened.	Waste areas are in the building at ground floor.	Yes.

3J-1	The site is located within 800m of a railway station and as such car parking rates are set by the RMS (formerly RTA) Guide to Traffic Generating Developments document.	Noted.	n/a
3J-2	Secure undercover bicycle parking should be provided for motorbikes and scooters.	Secure bicycle parking is proposed within the basement, ground floor and podiums of the building for the future residents.	Yes.
3J-3	A clearly defined and visible lobby area or waiting area should be provided to lifts and stairs.	Lobby areas are clearly defined and appropriately located with sufficient safe manoeuvring areas provided.	Yes.
	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 ground floor, basement and podium areas for car parking, bicycle parking, building manager and amenities. Service rooms are co-located and off the street.	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 areas via the surrounding streets and internal common open space areas.	Yes.
4A-1	Living rooms and private open spaces of at least 70% of apartments to receive 2 hours direct sunlight between 9am and 3pm mid-winter. A maximum of 15% of apartments to receive no direct sunlight between 9am and 3pm mid-winter.	Submitted documentation confirms that 74.4% of apartments are provided with compliant levels of solar access.	Yes.
4A-3	Sun shading devices are to be utilised.	Balconies are proposed to be covered by the levels over.	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 65.5% of apartments 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, 3.3m for ground and first floor of mixed use areas.	The proposal is for a minimum of 2.8m measured from finished floor to ceiling heights in the residential levels (300mm slab).	Yes.
4D-1	<p>Apartments are to have the following min. internal floor areas:</p> <p>1 bed – 50m² 2 bed – 70m² 3 bed – 90m²</p> <p>Additional bathroom areas increase minimum area by 5m².</p>	All proposed apartment sizes adequately comply with the ADG requirements.	Yes.
4D-2	In open plan layouts the maximum habitable room depth is 8m from a window.	All units comply with this requirement.	Yes.
4D-3	Master bedrooms to be 10m ² and other rooms 9m ²	All units comply with this requirement.	Yes.
	Bedrooms to have a minimum dimension of 3m.	All units comply.	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	<p>All units to have the following primary balcony areas:</p> <p>1 bed – 8m² (2m deep) 2 bed – 10m² (2m deep) 3 bed – 12m² (2.4m deep)</p> <p>Ground level units 15m² and minimum depth of 3m</p>	All units meet the minimum area required and provide a usable balcony space for future occupants.	Yes.

4E-3	Downpipes and balcony drainage are integrated with the overall facade and building design.	Able to comply.	Yes.
	Air-conditioning units should be located on roofs, in basements, or fully integrated into the building design.	Able to comply.	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 located with the basement and car park areas.	Yes.
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: 104 x 1 bedroom apartments (38.23%) 134 x 2 bedroom apartments (49.26%) 34 x 3 bedroom apartments (12.6%)	Yes.
4L-1	Direct street access should be provided to ground floor apartments.	n/a	na
4M-1	Building facades to be well resolved with an appropriate scale and proportion to the streetscape and human scale.	The proposal was subject to numerous reviews by the Design Integrity Panel. The design was supported.	Yes.
4O-1	Landscape design to be sustainable and enhance environmental performance.	The submitted landscape plan indicates a selection of trees, shrubs and ground covers appropriate for the site.	Yes, although further information is required in relation to WSUD and deep soil.

4Q-2	Adaptable housing is to be provided in accordance with the relevant Council Policy.	10% of units are required to be provided as adaptable.	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 Council's internal Environmental Waterways Unit with objections raised.	No. Further information is required.
4W-1	A Waste Management Plan is to be provided.	A Waste Management Plan has been submitted.	Waste unit has objected to the design of the shared loading area. Refer DCP discussion.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the proposal against the relevant criteria within Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997) and the proposal is considered to be satisfactory, subject to the recommended conditions of consent.

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 2.7 Demolition requires development consent	Complies
Clause 4.3 Height of buildings	Does not comply - See discussion
Clause 4.4 Floor Space Ratio	Does not comply - See discussion
Clause 4.6 Exceptions to development standards	N/A
Clause 7.1 Earthworks	Complies
Clause 7.2 Flood planning	Does not comply - See discussion
Clause 7.4 Sustainable development	Complies
Clause 7.6 Salinity	Complies
Clause 7.7 Servicing	Complies - See discussion
Clause 7.8 Active street frontages	Complies
Clause 7.12 Maximum gross floor area of commercial premises	N/A
Clause 8.6 Serviced apartments	N/A
Part 8 Local provisions Penrith City Centre	Complies
Clause 8.1 Application of Part	Complies
Clause 8.2 Sun access	Complies
Clause 8.3 Minimum building street frontage	Complies
Clause 8.4 Design excellence	Complies - See discussion
Clause 8.5 Building separation	N/A
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 which include:

- (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,*

The applicant's CI Offer is not supported. The CI Offer includes:

- The direction of the value of the applicant's Community Infrastructure toward the construction of a signalised intersection, and
- The value of land to be dedicated for the intersection.

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 or 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.

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 the development proposal is not accompanied by sufficient traffic and pedestrian safety infrastructure which enables the density of the development to successfully function and that would protect the amenity and streetscape character of the City Centre.

The applicant's offer of Community Infrastructure (CI) 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 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 represent the public interest.

It is for the above reasoning that the proposal is not considered to comply with the objectives of the B4 Mixed Use zone, including:

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

Clause 4.3 Height of buildings

The maximum height identified for the site under the LEP is 24m of the Height of Buildings (HOB) map.

The development application is lodged under clause 8.7 of PLEP and proposes a maximum height of 149.95m above natural ground level (NGL) taken as RL27.65m as per the submitted survey. The taller 47 storey tower has an RL of 177.70m to AHD to the top of the hidden parapet. The smaller tower is 7 storeys in height and is approximately 26.55m above NGL taken as RL27.65m as per the submitted survey and has a RL of 54.200 AHD at roof level.

The suspension of the Height of Buildings (HOB) development standard by virtue of clause 8.7 does not remove the need to consider the implications of the resulting building form with respect to height, orientation, siting and visual impact. There is still a need to demonstrate that the proposal, with the additional floor space allowance, is contextually appropriate which is currently of concern given its interface with land to the east, which is limited in height by a 20m HOB development standard.

Further, 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.

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 the LEP. The application is noted as being lodged under clause 8.7 of the LEP which allows the consent authority to allow for an FSR of up to 6:1 on Key Site 10 (in which the subject site is located), subject to the provision of Community Infrastructure.

As the offer of Community Infrastructure is not accepted by Council, the FSR of 6:1 cannot be supported. Refer also to discussion under clause 8.4 *Design Excellence* and 8.7 *Community infrastructure on certain key sites* of PLEP.

Clause 7.2 Flood planning

The development application is satisfactory having regard to the LEP clause with exception of the following matters which were raised in objection to the proposal by Council's Development Engineer:

The stormwater design for the site relies on the dedication of a new road proposed to be constructed by a third party between High Street and Union Road. DA18/0264 approved the road construction although it is noted that the developer being the beneficiary of this consent has decided not to go ahead with the development approved under DA18/0264 at this time and has lodged a similar proposal for the road as part of DA20/0148. This DA is currently under assessment.

- *At present*

there is not a legal point of discharge for the area of the site draining west towards Mulgoa Road and this will remain the case until the proposed road between High Street and Union Road is constructed.

DA approval cannot be issued for the proposed development until a legal point of discharge exists for all stormwater generated by the site.

- A HGL analysis is also required for the above mentioned line to demonstrate that the downstream system has the capacity to take flows generated by the portion of the development draining to the existing system in Mulgoa Road.

- Mulgoa Road is a classified Road and as such the connection of stormwater to the existing system within this road will require approval from TfNSW.

- A shelter in place strategy in the Probable Maximum Flood (PMF) mainstream flooding event is not supported as an alternative to evacuation. An evacuation strategy is required to be developed in consultation with the SES for the potential occurrence of this event.

- Some elements of the design do not provide the minimum 1% grade required under AS 3500.3. Invert levels are to be reviewed.

- Dimensions are required for the OSD so that the volume of the tank can be assessed and a standard engineering sheet is required with the concept plans.

- The crest level for the basement s to be nominated on plans.

Amended plans were received 23 March 2020 and included SGC Stormwater plans, SCG WSUD Strategy and a MUSIC model addressing water quality and the related electronic files, these were reviewed and the following matters were raised by Council's engineer:

- The minimum level of the OSD tank being 500mm is not supported and 900mm is needed.

- Parts of the OSD tank are under the building which is not supported,

- Technical aspects of the OSD tank are not compliant with Council's standards and are not supported,

- As detailed in the pre-lodgement advice an evacuation strategy is required to be developed in consultation with the SES for the potential occurrence of the PMF event and is not submitted.

Clause 7.7 Servicing

The application was referred to Sydney Water and in response received dated 29 June 2020, reference number 185508, Sydney Water (whilst not objecting to the proposal) note that there is limited capacity within the existing network to service wastewater and that an upgrade to the network would be required with detailed requirements provided at the Section 73 phase.

Sydney Water notes that the applicant is to submit the catchment plan, long section and flow schedule for the development. Adequate capacity is noted for water servicing. Conditions of consent could be included which relate to 'Tap in' service and the requirement for the submission of a Section 73 Compliance Certificate however these are not recommended as the application is recommended for Refusal based on other matters.

Clause 8.4 Design excellence

The design of the development is 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.*

Clause 8.4 (4) of PLEP states that clause 8.4(3) of the LEP does not apply if the Director-General certifies in writing that the development is one for which an architectural design competition is not required. The application was submitted with a waiver to a design competition from the NSW Government Architect, a delegate of the Director-General for the purposes of this clause.

The applicant met with a Design Integrity Panel (DIP) on several occasions and the Council was present at one of those meetings. The DIP provided its waiver letter and stated that design excellence was present.

Notwithstanding the above and having regard to (e)(viii) above, it is considered that the impacts of the development to the southern residential neighbours at 79-81 Union Lane and 83-85 Union Road will be significant and these properties will be most effected by the scale of the development.

Although it is clear that the design of the podium has had regard to how the development will impact solar access to residential uses to the south, the design of the podium will result in the northern outlook for all north facing apartments to be interrupted. The base controls for the site allow for a 24m high structure with an FSR of up to 3.3:1 and regard must be had of the known bulk and scale potential for the site when assessing solar impacts on surrounding properties - noting also that the impacted properties are oriented north-south and benefit from sun over the subject site.

The applicant has provided a solar study (drawing number DA403 revision B) which indicates that between 9am and 3pm the lower level apartments facing north will not be provided with any direct solar access. Further information could be requested, such as eye of the sun diagrams which might demonstrate more clearly what the impacts of overshadowing might be on each apartment however this has not been requested as the application is recommended for Refusal based on other matters.

Areas of unsleeved car parking are towards the rear lane and against side boundaries. The use of commercial and ground floor double height retail spaces assists to provide interest and screen car parking at podium levels. Services are neatly tucked away into the design of the building and all sides are activated.

The development proposal is considered to demonstrate design excellence although the matters above must be resolved prior to determination of the application and as such the application is recommended for Refusal - Refer discussions under SEPP 65, ADG and PLEP.

Clause 8.4(5) concurrence of the Director-General

It is noted that the concurrence of the Director-General has not been obtained to the development application as is required under Clause 8.4(5) which presents as an obstruction to the granting of consent.

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 within Key Site 10 and as such the clause applies.

The application was submitted with an offer of Community Infrastructure (CI) prepared by Think Planners dated 1 April 2020. The details of the Offer are described below and a copy is included at **Appendix C1**. 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 \$150 per square metre for additional floor area.

Proposed Community Infrastructure Offer - 1 April 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 a waiver has been issued for the development and the design of the building is not the result of an architectural design competition the applicant, as per the Council's CI Policy is not to discount floor area above an FSR of 3:1 which would ordinarily be calculable floor area for the purposes of CI at a rate of \$150 per square metre.

The CI Offer proposes the following:

- A monetary contribution which the applicant states could be allocated to upgrades and intersection treatments at High Street and Civic Centre as well as improvements to pedestrian safety and connectivity along High Street.
- The contribution is to be allocated to the construction of a signalised intersection at the intersection of the new north-south road and High Street, subject to agreement on construction details, timing, landowners' consent, RMS and other authority approvals.

Council advised the applicant that the offer could not be supported as it proposed to allocate the value of the Community Infrastructure to general street upgrades ordinarily required as part of any development proposal and which would benefit the applicant, and importantly that Council would not accept the value of the CI offer being directed toward an approved although yet to be constructed interim road layout under consent no. DA18/0264, which was in the ownership of another party.

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

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 do not detail the intersection. No detailed set of public domain plans are provided which indicate finished levels, noting that the approval under DA18/0264 indicates that the new north-south road link is raised, with the highest point being at its intersection with Union Lane.

Sufficient dimensional detail is not provided to confirm that a future signalised intersection will not be hindered by the adjacent proposal under DA20/0148 (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 does not address the infrastructure 'needs' of the development and as such the 'over and above' value attributed to an offer of Community Infrastructure is not known.

There remain issues related to the method of calculating the value of Community Infrastructure under the Council's Community Infrastructure Policy which are a point of disagreement between Council and each applicant. The applicant was advised not to lodge their development application without having first secured in principle agreement with Council on any offer of Community Infrastructure which has not occurred.

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 State Environmental Planning Policy No. 55 - Remediation of Land

Amendments to SEPP Remediation of Land were exhibited between 25 January and 13 April 2018. The proposal has been considered against the Draft Contaminated Land Planning Guidelines and the SEPP amendments and is not supportable. Refer to discussion under SEPP 55.

Draft Environment SEPP

The NSW government is working towards developing a new State Environmental Planning Policy (SEPP) for the protection and management of our natural environment. This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property. The consolidated SEPP was on exhibition from 31 October 2017 to 31 January 2018. Proposed changes include the consolidation of the following seven SEPPs:

- 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.

Changes are also proposed to the Standard Instrument – Principal Local Environmental Plan. Some provisions of the existing policies will be transferred to new Section 9.1 Local Planning Directions where appropriate.

The subject application has been considered against the draft Environment SEPP and is not considered to be in conflict with the provisions within.

Planning Proposal - Phase 1 Review of Penrith LEP 2010

The Phase 1 amendments to the Penrith LEP were on exhibition from between 1 May - 29 May 2020 and included 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 under the Phase 1 Review, do not impact the subject site or proposal.

Housekeeping amendments to the Penrith DCP 2014

The Draft amendments to the DCP were on exhibition from between 1 May - 29 May 2020. House keeping amendments include amendments to the vegetation management, boarding house, site planning and design principles, and outdoor dining and trading sections of the DCP and do not impact the subject proposal.

Draft Section 7.12 Citywide Development Contributions Plan for Non-Residential Development

Council has prepared a Draft Section 7.12 Development Contributions Plan. The Draft Plan was on exhibition from between 1 May - 29 May 2020 and will require the payment of a levy for commercial development with a value of works over a value of \$100,000 and under \$200,001 of 0.5%, outside the City Centre. Development with a cost of works being \$200,001 or greater will attract a levy of 1%.

The Plan will apply to all development outside of the City Centre, involving non-residential development, having a cost of works over \$100,000. This will include new buildings, additions and expansions, change of use and renovations. The Draft plan will not apply to the proposed development.

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

Development Control Plan 2014

Provision	Compliance
DGP 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	Does not comply - see Appendix - Development Control Plan Compliance
C4 Land Management	Complies
C5 Waste Management	Does not comply - see Appendix - Development Control Plan Compliance
C6 Landscape Design	Complies
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	N/A
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	N/A
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

Section 25B of the Regulation 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). An offer to enter into a Voluntary Planning Agreement has not been provided.

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 in relation to the rear podium car parking and the limited rear setback to Union Lane.

Solar Access

The solar access diagrams provided do not sufficiently demonstrate the impacts of overshadowing on adjacent residential development to the south and a full assessment of the impacts to these apartments is not known.

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 in the Precinct. 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. Waste chutes for commercial and residential discharge into the same location and Council does not collect commercial waste.

Carpark lighting

It is identified that lighting and noise 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 Union Lane. Impacts of light spill and noise are not fully addressed by the use of louvres and planting. A proper assessment of these aspects of the development cannot be undertaken.

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.

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 24 April and 8 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. Non-compliance with LEP.	The height of the development is compliant with the permissible height for developments lodged under clause 8.7 of PLEP.
View and visual impacts.	The design of the development will impact on available views although is within in the permissible development standards applicable to the site.
Impacts of overshadowing, solar access	<p>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 northern boundary. As the application is recommended for refusal, further detail with regard to impacts of the development by way of overshadowing were not requested.</p> <p>It is agreed that the separation distance provided between the podium at levels 2,3 and 4 and the north facing facade of existing residential apartment buildings on the southern side of Union Lane is not detailed on plans and that further detail is required to demonstrate what outlook and solar access levels will be provided.</p> <p>It is agreed that many of the units of the apartment building to the south with the north facing aspect will be impacted by the development and that further information in relation to the solar impacts of the development is required.</p>
Wind tunnel and noise effects down Union Lane	The application is recommended for Refusal and as such further information on this aspect was not requested.

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.

Impacts of two way traffic on Union Lane.

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.

Privacy impacts on nearby units.	It is agreed that it is possible that noise, light and other amenity impacts
Amenity impacts of noise, light, exhaust.	related to 4 levels of podium parking may impact nearby sensitive
Amenity impacts on adjacent apartments due to the location of the vehicle entry point.	receivers. Further information in relation to this was not requested as the application is recommended for Refusal.
	An amended noise report is not requested to address references to Parramatta and Mallet Street as the application is recommended for Refusal.
	It is agreed that the location of the vehicle entry point along Union Lane will add to noise in the area. The applicant has not provided adequate detail or sections through the building's facade in the location of the vehicle entry point. Additional information has not been requested as the application is recommended for Refusal.
Construction impacts	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.
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.
Covid-19 Crisis	The development proposal is not required to address impacts of Covid 19 on circulation and open spaces.
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.
Impacts of flooding and the Hawkesbury-Nepean Valley	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	Not supported
Heritage	No objections - subject to conditions
Environmental - Environmental management	Not supported
Environmental - Waterways	Not supported
Environmental - Public Health	Not supported
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 impacts on amenity including on solar access to nearby apartment developments 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.

Conclusion

The proposal has been assessed against the relevant environmental planning instruments and policies including Penrith LEP 2010 and Penrith DCP 2014 and the proposal is found to be unsupportable.

The development application is unsatisfactory in relation to State Environmental Planning Policy No. 55 - Remediation of Land, in relation to contamination matters and in relation to the offer of Community Infrastructure provided under Clause 8.7 of the Penrith LEP. The development is assessed to be unsatisfactory having regard to State Environmental Planning Policy (Infrastructure) 2007 owing to the traffic impacts of the development.

Support for the proposal will result in an unacceptable and in some instances detrimental impacts in the locality. Traffic and intersection issues are not adequately responded to and the offer of Community Infrastructure attached the application cannot be supported in relation to its nature and value and having regard to the public interest.

The application is recommended for Refusal for the reasons provided.

Recommendation

1. That DA20/0167 for a part 7, part 46 storey mixed use development containing 272 apartments, serviced apartments and commercial and retail ground floor tenancies with basement and podium car parking at 615-632 High Street, Penrith 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 7.2 Flood Planning, in relation to a Flood Evacuation Plan,
 - (d) Clause 8.4 Design Excellence, in particular the concurrence requirement under (5)(b), 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.
 - State Environmental Planning Policy No. 55 - Remediation of Land, specifically clause 7.
- 3 The application is not satisfactory for the purpose of Section 4.15(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979*, as the proposal is inconsistent with the provisions of the Draft Remediation of Land Policy.
- 4 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;
 - C3 Water Management;
 - C5 Waste Management;
 - C8 Public Domain; and
 - C10 Transport, Access and Parking.
- 5 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) unsatisfactory traffic, parking, access and related pedestrian safety impacts; and
 - (ii) unsupportable impacts of overshadowing.
- 6 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.
- 7 The application is not satisfactory for the purpose of Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, as the proposal is not in the public interest.

8 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.

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 scale and density of the development is not suitable in the location having regard to the limitations of existing road and intersection infrastructure required to support the future needs of residents and visitors to the development. The offer of Community Infrastructure is not supported for the reasoning provided within this report and as it will not deliver required infrastructure, the proposed assessed as 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 tower and 4 storey podium do not sufficiently setback from the lower scale of development to the south. The plans and elevations do not adequately demonstrate what the outlook for residents in the north facing units of apartment blocks located on the opposite side of Union Lane will be.

It is acknowledged that the development's podium has been reduced by one level through the introduction of a single level of basement although the third and fourth floor unscreened podium parking elements facing south are not considered to be sufficiently separated such that light spill and noise from the parking areas will reasonably impact sensitive receivers.

The design of this element of the development has not had adequate regard to the scale of development permissible in the nearby residential area to the south.

Figure (below): Excerpt from DKO plan no. DA301 revision D.



C3 Water Management

Council's Waterways Officer has reviewed the relevant plans and Strategy and does not support the use of filter cartridges over the use of more passive water sensitive urban design measures. Vegetated solutions such as a rain garden should be incorporated as it is more in-keeping with Council's WSUD Policy and Cooling the City Strategy. Cartridge systems should only be used

in developments of this nature due to site constraints and justification should be provided in the WSUD Strategy.

Council's Waterways officer states that if the cartridges are to remain, additional details on how the proposed treatment measures should be provided. In this regard the engineering plans show that only one access point provided above the filter chamber. Given the depth of the OSD chamber is only about 500mm, additional details on how the filter chamber will be safely accessed for maintenance.

No details are provided on how the non-residential elements of the development areas comply with Council's WSUD Policy water conservation requirements. As such, additional details are required to demonstrate how the non-potable demands associated with the landscaping, rooftop garden etc. and commercial elements should be provided in regards to Council's WSUD Policy.

Additional information could be requested or amendments sought to address the above however the application is recommended for refusal based on other matters.

The development application is not considered supportable having regard to the design of the on-site Stormwater detention design which is not assessed as compliant with Council's DCP particularly having regard to 3.6 Stormwater Management and Drainage B.(b) and (g), and with regard to C.(3) (a) and the need for the design of stormwater and OSD to comply with Council's Stormwater Drainage Specification for Building Developments Policy.

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. Council's waste officer has objected to the waste arrangement on a number of grounds, it is assessed that matters related to the arrangement and layout of waste areas could be the subject of detailed conditions of consent to resolve the concerns however the application is recommended for refusal based on other matters.

It is unclear from the plans if the waste chutes for the commercial component of the development (serviced apartments) and the residential component of the development are separated or how waste is being managed for the serviced apartments if chutes are not available. Council does not collect commercial waste and in this respect, the two streams need to be separated which would involve a more than minor rearrangement of the ground floor bin and chute room layout.

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.

The application is recommended for Refusal having regard to the above.

C8 Public Domain

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. The applicant has noted where art could be implemented although has no plan or strategy for its implementation.

A condition of consent could be recommended in this regard, although the development application is recommended for Refusal based on other matters.

Refer also to comments under C10 below in relation to required civil works details for areas of the public domain.

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 do not include the required traffic signals and the interim roadway design indicated on the adjacent development's plans (under DA20/0148) 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.

The applicant was provided with details of the required civil details for all public domain works as part of advice issued after the pre lodgement meeting and much of this information remains outstanding. The civil works plan layout needs to be clarified at the Union Lane and proposed new lane connection as two different overlays appear to be shown. All dimensions of pavements around the development are not provided.

Insufficient detail is provided related to the required road works including all relevant details of the new road to be constructed and its connections with High Street, Union Road and Union Lane and the civil and engineering details are to be consistent with the design for the same road provided in support of the adjacent development proposal under DA20/0148. The Civil Works Plans appear to indicate a kerb and gutter and road alignment that facilitates only a single lanewidth on Union Lane adjoining the proposed new link road. A single or one way arrangement for Union Lane is not supported.

Council's Traffic Engineer notes that there is existing Level of service 'F' for the traffic signals at the intersection of Worth and High Streets, and that the proposal will have further impacts on performance. The current plans do not ensure that appropriate footprint has been set aside for future signalised intersection and show only a hatched area designated as "Road Widening". A surveyed and plan of the proposed civil and works is required and has not been provided. Council's Traffic Engineers state that it is crucial to ensure that the plans are overlaid with the ultimate traffic signals layout. the same is required for the adjacent development proposed under DA20/0148.

The design of the vehicle entry points does not comply with table 3.2 of AS 2890.1. The design of some of the accessible spaces do not satisfy the requirements of AS 2890.6. The parking spaces provided for the serviced apartments are not the required minimum of 2.5m wide in accordance with AS 2890.1, which requires user class 2 dimensions for hotel/motel type use parking.

A redesign of the ground floor layout is required to address the non-compliances with Australian Standards, to resolve the requirement for a 6m minimum entry and 4-6m exit points required for private vehicles (with a 1 to 3metre separation between driveways) and to resolve the clash between the entry/exit lanes of private vehicles and the manoeuvring of a service vehicle accessing the loading bay.

It is re-iterated by Council's development engineer that the development cannot be serviced adequately without full construction of the proposed new road and its intersections. The development proposal does not comply with the relevant clause of the Section which relate to compliance with the Australian Standards and which relate to the provision of required road and

intersection treatments to Council's specifications.

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 development application has not been submitted with sufficient information to demonstrate that the traffic generated by the development can be accommodated through the provision of road and intersection works. Development of the Precinct to the scale proposed must deliver the precinct objectives. The CI Offer does not demonstrate that the additional floor area proposed under clause 8.7 provides a public benefit of an acceptable nature and value.

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. Impacts of the development on the amenity of nearby residential flat buildings has not been sufficiently documented and is assessed to be detrimental to some north facing units.

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 8.7 of the LEP. The infrastructure proposed as part of the applicant's CI offer is not shown on the plans and as such a proper assessment of the public domain surround the development cannot be undertaken.

11.2.2 Building to Street Alignments and Street Setbacks

Submitted perspectives and view analysis diagrams do not indicate that the height will not impact views towards west and the Blue Mountains detrimentally. Additional information was not sought as the application is recommended for Refusal based on other matters.

11.2.5 Boundary Setbacks and Building Separation

The development proposal generally complies with the applicable boundary setbacks under the DCP with the exception of the built form separation between existing Union Road apartment buildings and the upper level car parking, which is not sufficiently detailed and dimensioned. The DCP requires upper level car parking to be sleeved. Refer to relevant discussion under SEPP 65 and the ADG section of this report.

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. The development is assessed to comply with the above generally although the infrastructure proposed as part of the applicant's CI offer is not shown on the plans and as such a proper assessment of the public domain surround the development cannot be undertaken. The application is recommended for Refusal partly on this basis.

Other areas of the design including the eastern side open air through site like are recognised as being high quality and representative of design excellence, and provide a superior outcome in terms of streetscape quality, activation and place making.

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 DCP. An additional open air pedestrian through site link is also provided along the eastern side of the development and a cafe is a quality end destination to draw foot traffic and activation southward.

As is discussed elsewhere within this report, the infrastructure proposed as part of the applicant's CI offer is not shown on the plans and as such a proper assessment of the public domain surrounding the development and particularly to the west cannot be undertaken.

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 retail and lobby uses elsewhere are acceptable.

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.

11.4 Access, Parking and Servicing

The proposed development is consistent with the access, parking and servicing controls outlined in this section of the DCP with the exception of the above mentioned western side and new road civil and public domain details. The proposal allows for accessibility to buildings for all people regardless of age and physical condition. Compliance issues are raised in relation to the Australian Standards for car parking widths and accessible car parking spaces as is discussed under DCP section C10 within this report.

11.6 Controls for Residential Development

The development is assessed to be generally compatible with the provisions outlined in *State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development* (SEPP 65) with the exception of the limited detail provided regarding the infrastructure proposed as part of the applicant's CI offer as it is not shown on the plans and as such a proper assessment of the public domain surround the development cannot be undertaken.

Further detail is required in relation to built form separation along the southern boundary of the site and to existing residential apartments fronting the southern side of Union Lane and also having regard to noise, light spill and solar access and overshadowing.

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 in that the infrastructure proposed as part of the applicant's CI offer is not shown on the plans and as such a proper assessment of the public domain surrounding the development (in particular the western edge and interface with western neighbour) cannot be undertaken. Refer to discussion under PLEP clause 8.7.

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. Some podium parking areas are not sleeved and in this respect do not comply with the DCP.

Notwithstanding the above the DIP has agreed that the development proposal represents design excellence although Council assessed that should a non-compliance be supported further information in relation to the impacts associated with podium parking to the south, are required. Further information in relation to overshadowing, solar access, noise and light spill from podium parking is required to allow a full assessment of the impacts of the development on those southern neighbours.

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

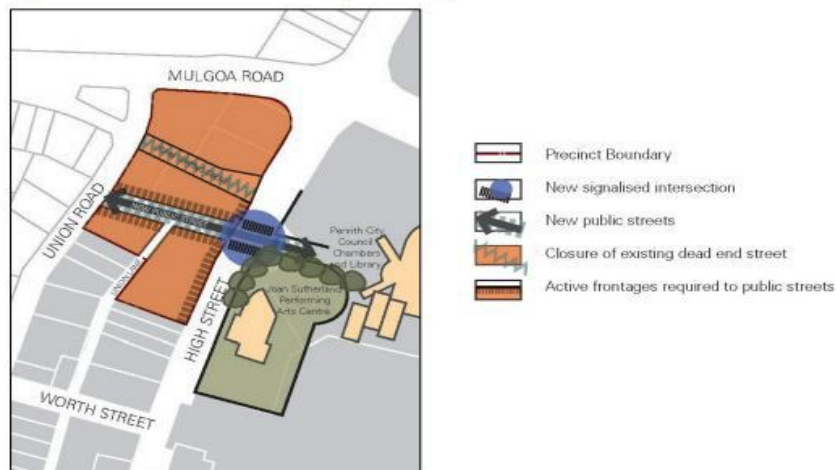


Figure 6 (above): Excerpt from PDCP 2014 - Precinct 1 Design Principles - Figure E11.26

The proposed development does not assist in the delivery of the above and the infrastructure proposed as part of the applicant's CI offer is not shown on the plans and as such a proper assessment of the public domain surrounds the development cannot be undertaken.