

# PENRITH CITY COUNCIL

## MAJOR ASSESSMENT REPORT

<b>Application number:</b>	DA19/0178
<b>Proposed development:</b>	Alterations and Additions to the south-west portion of the Westfield Penrith Shopping Centre known as the 'Mondo Precinct'
<b>Property address:</b>	569 - 595 High Street, PENRITH NSW 2750
<b>Property description:</b>	Lot 1 DP 1137699
<b>Date received:</b>	8 March 2019
<b>Assessing officer</b>	Kathryn Saunders
<b>Zoning:</b>	Zone B3 Commercial Core - LEP 2010
<b>Class of building:</b>	Class 6
<b>Recommendations:</b>	Refuse

## Executive Summary

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Council is in receipt of a development application for alterations and additions to the southern retail tenancies and building facades attached to the Penrith Westfield at 569-595 High Street, Penrith. Under Penrith Local Environmental Plan, the proposal is defined as alterations and additions to a commercial premises which is a permissible form of development within the B3 Commercial Core zone, with Council consent.

Key issues identified for the proposed development and site include:

- Satisfying the Design Excellence provisions under Part 8 Penrith City Centre of PLEP,
- Environmental impacts related to noise transmission, pedestrian circulation, removal or relocation of Westfield's smoking designated smoking area,
- Social and security impacts related to proximity of a bar or tavern to neighbouring sensitive land uses,
- Maintaining solar access to, and impacts of the development on the arrangement of seating, circulation and usability of the Mondo space,
- Impacts of tree and vegetation removal,
- Impacts of the proposal on view corridors into the Mondo,
- Clarity surrounding applicant's offer of Material Public Benefit (MPB),
- Lack of information related to the extent of works sought, architectural layouts, waste and services arrangements, toilet and lift access and locations, and vehicle and delivery manoeuvring and access.

The application has been notified to adjoining properties and was exhibited and advertised between 22 March and 5 April 2019 in accordance with relevant legislation. Six submissions were received and raise matters related to the potential loss of the existing Nepean Community Collage tenant due to its convenient location, community relationship and its accessibility for people with a disability, the limited need for more retail tenancies, crowding and overdevelopment, impacts on the recently renovated Mondo Precinct and its functionality as a community and family space, and impacts on the solar access available to the Mondo space.

Two of the submissions were received from the Joan Sutherland Performing Arts Centre and from the Nepean Community College. The College note the impacts that the proposal has had and their ongoing consultation with Westfield (as to their relocation) as being poor. The Joan PAC has raised issues related to impacts of noise (both during construction and ongoing) on the activities of the Joan which include music lessons, performances and theatre productions, impacts on their access and loading arrangements, impacts of noise and security from outdoor play areas, dining and alcohol in the Mondo area and the continuation of the use of the space as it relates to the arts and cultural precinct and the possibility of incorporating public art. The Joan PAC also note that their building was designed by Philip Cox and Stage 2 by Suturs and that the facility is a building of architectural merit thus, the Council should have regard to the proposal's architecture and design.

The development proposal was presented to Council's Access Committee and was also referred to the Roads and Maritime Services (RMS) due to the site's frontage to High Street. Access Committee and the RMS have not raised any objection to the proposal and have provided their comments for consideration in the assessment of the application. It is noted that the RMS identify an land at the intersection of High Street and Worth Street for future road works which impacts the Westfield basement carpark entry arrangement.

The applicant provided a revised scheme for the site under cover letter dated 4 June 2019. The Option included the deletion of tenancy R9 and more extensive alterations to the existing Westfield building, food court and also to the multi level car parking deck. The applicant was advised via correspondence dated 21 June 2019, that the although there were some merits to the new scheme, matters previously raised are not addressed and it was further advised that the application be withdrawn.

This application is to be determined under delegated authority by Council. It is noted that the applicant has confirmed that their offer of Material Public Benefit does not form part of this application and that works will be contained to the site and are not proposed on land owned by Penrith City Council.

An assessment under Section 4.15 of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for Refusal for the reasons provided at the end of this report.

## Site & Surrounds

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The subject site is an irregular shaped allotment which is legally described as Lot 1 in Deposited Plan 1137699 and has a site area of 90,325sqm's. The Site is currently occupied by Westfield Penrith and has frontage to Jane Street to the north, Riley Street to the east, High Street to the south and south-east and shares its most western boundary with a 6391sqm Council owned, public square known as 'The Mondo'.

The site is located in close proximity to the Penrith Railway Station and is within the Penrith City Centre.

Works proposed as part of this development application are limited to the southern retail tenancies and façade areas with frontage to the Mondo and include alterations and additions to the west facing façade of an existing elevated car park deck. The existing southern retail tenancies currently are comprised of the Heritage Café which includes an element of daytime outdoor dining, back of house areas and an education campus known as the Nepean Community College. The west facing multi level carpark deck is of open construction and is currently flanked by landscaped planting (hedging and trees), ground level pedestrian access points to the carpark and a double height, steel framed awning spanning north-south providing covered pedestrian access to the southern food court entry to Westfield. The strong design theme of the architecture of this area of the Westfield incorporates white painted steel circular hollow sections arranged in triangular trusses spanning between white circular concrete columns.

The design is considered to be complementary to that of the Joan Sutherland Performing Arts Centre (the Joan PAC)

### The Mondo

The Mondo area spans between Westfield, the Joan PAC and Penrith City Council Library and Civic Centre and serves as a circulation space providing connectivity between the neighbouring land uses, as a site for community events, markets and the like, and is also utilised as a 'break-out' space for the Joan and other adjoining uses.

Council's Penrith Night Time Economy Study and Strategy Final Report identifies the Mondo area as a Cultural and Civic Precinct as distinct from two other night time economy precincts which boarder the Westfield complex and include the Eat Street Precinct along Riley Street and the Riley and High Street Local Bar/Restaurant Precinct. The Cultural and Civic Precinct identifies Opportunities which include to *'Maximise linkages between the precinct and other night time areas'*, and to *'Activate the precinct at night, through extended opening hours, special events or outdoor events which attract people and create a "noisy buzz" which spills over into other precincts'*. The Strategy also identifies Priority Linked Actions for the area which include for *'Council and the Joan to work together to support late night activity prior and post programmed events'* and to undertake *'wayfinding improvements to allow greater access between night time precincts for mutual benefit'*.

## Proposal

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The development application seeks approval for the following works:

- Extension of the southern and western building and multi deck carpark footprints to accommodate additional retail tenancies from 1 to 3 storeys,
- Works to the roof level including the addition of a roof plant, balcony and licensed food and beverage tenancy,
- Landscaping works at the southern vehicular entrance from High Street,
- Alterations to existing car parking and servicing arrangements to cater for the proposed tenancies,
- Installation and relocation of south facing façade and associated glazing,
- Tree and vegetation removal, paving and ancillary civil and public domain works.

The applicant has noted in their development application that an offer of Material Public Benefit will be separately submitted to Council for proposed works in the Mondo community space. It is noted that this application does not seek consent for these works and the applicant has clarified that all works are contained within the boundaries of the site.

## Plans that apply

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- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

## Planning Assessment

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### • Section 4.15 - Evaluation

The development proposal 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 79C(1)(a)(i) The provisions of any environmental planning instrument**

## State Environmental Planning Policy (Infrastructure) 2007

The proposal has been assessed as being acceptable having regard to the applicable provisions of the SEPP (Infrastructure) as follows:

### Clause 101 Development with frontage to classified road

The objectives of this clause include:

- (a) to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and*
- (b) to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.*

Although it is unlikely that the proposed retail tenancy works would compromise the effective and ongoing operation and function of High Street in this area and in this respect the objectives of the clause are satisfied, the application is being refused on other grounds, some of which are related to site suitability and the location and impact of tenancy 9 in particular. Tenancy 9 is will be located in close proximity to lands identified by the RMS as being subject to a future upgrade. It is not certain as to how these works which are related to the northern side of the signalised traffic lights at the intersection of Worth and High Street, would impact the streetscape, setbacks and landscaping attached to proposed tenancy 9.

Clause 101(2) states that:

*The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*

- (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
  - (i) the design of the vehicular access to the land, or*
  - (ii) the emission of smoke or dust from the development, or*
  - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land,**and*
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

The development proposal is satisfactory having regard to the requirements of clause 101, although as discussed above, is recommended for refusal based on other matters.

### Clause 104 Traffic-generating development

The development proposal is assessed to be traffic-generating development as the proposal involved alterations and additions to a retail development which will result in the creation of greater than 300sqm's of floor area, and as the site has frontage to a classified road (western section of High Street).

The development application was referred to the Roads and Maritime Services (RMS). The RMS have not objected to the proposal and have provided standard conditions of consent. In addition, the RMS have noted their interest in a portion of land identified to be the northern side of the signalised intersection at the corner of Worth and High Streets. As detailed above, the development will not impact on these future RMS works. As the DA is recommended for Refusal, there is not requirement to include the RMS conditions in the consent.

## State Environmental Planning Policy No 55—Remediation of Land

The Application was submitted with a Preliminary Site Investigation (PSI) report, prepared by JBS&G, dated 26 February 2019. The PSI notes that due to the limited ground disturbance and landscaping proposed and that the use of the site will be for commercial purposes, the site is suitable for the use. No site sampling has been undertaken as part of the PSI.

The application was referred to Council's internal Environmental Management unit who have advised that owing to the known presence of contaminated fill in close proximity to the site that a Remediation Action Plan will be required. The application is not supported in the absence of greater certainty that the site can be made suitable. A RAP will give the confidence needed to ensure the site can be made suitable. It is noted upon closer inspection of previous reports on remediation, referenced in the submitted PSI that some of the contaminated land was remediated and that some was capped and remains in-situ.

The development proposal has been assessed against the applicable provisions of the State Environmental Planning Policy No. 55 - Remediation of Land, as follows:

Clause 7 Contamination and remediation to be considered in determining development application  
Clause 7 requires that the 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.*

With regard to (a) above, Council is aware through the recent development of the adjacent land that the subject site is highly likely to contain asbestos contaminated fill. With regard to (b) it is considered that the site can be made suitable, after remediation for the purpose for which the development is proposed to be carried out. Although it is considered that the site could be made suitable after remediation, the application was not submitted with a Remediation Action Plan, which would outline how remediation works would be undertaken and confirm that the site can be made suitable.

With regard to (c) above, as the site is likely to require remediation and no Remediation Action Plan (RAP) has been submitted with the application, Council, as the consent authority, is not satisfied that the land will be remediated before the land is used for the purpose proposed. It is not considered appropriate or satisfactory to apply a condition of consent to require the preparation of a RAP as the implications of the RAP findings or recommendation cannot be assumed and the Policy makes clear, under clause 7 *'that the consent authority must not consent'* (emphasis added) to an application unless, in the case where remediation is required, that the site can be made suitable.

Sydney Regional Environmental Plan No. 20 - Hawkesbury Nepean River requires, under clause 11(4) that remediation of contaminated lands requires development consent. State Environmental Planning Policy No.55 - Remediation of Land defines Category 1 remediation work: work needing consent, under Clause 9 and at 9(d) clarifies that Category 1 remediation works are those that another SREP or SEPP identifies as needing consent. Remediation works that are likely to be required and undertaken are assessed to be Category 1.

The development application must be accompanied by a Remediation Action Plan and must be re-advertised, exhibited and notified having regard to these works. A RAP was not submitted with the development application.

In this regard, the development application would need to be amended to include this description and re-exhibited in accordance with the relevant legislation. With the above in mind, the application is recommended for refusal.

## Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the development proposal against the relevant criteria with Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997) and the proposal is considered to be generally satisfactory, notwithstanding the proposal is recommended for refusal based on other matters.

Further, as the site is likely to be contaminated and its remediation required (refer discussion under SEPP 55), Sydney Regional Environmental Plan No. 20 - Hawkesbury Nepean River requires, under clause 11(4) that remediation of contaminated lands requires development consent. State Environmental Planning Policy No.55 - Remediation of Land defines Category 1 remediation work: work needing consent under Clause 9. Clause 9(d) of the SREP clarifies that Category 1 remediation works are those that another SREP or SEPP identifies as needing consent.

In this regard, the development application must be accompanied by a Remediation Action Plan and must be re-advertised, exhibited and notified having regard to these works. A RAP was not submitted with the development application.

### 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	Complies
Clause 4.4 Floor Space Ratio	Complies - See discussion
Clause 7.1 Earthworks	Complies
Clause 7.2 Flood planning	Complies
Clause 7.4 Sustainable development	Complies - See discussion
Clause 7.6 Salinity	Complies
Clause 7.7 Servicing	Complies
Clause 7.8 Active street frontages	Complies
Clause 7.12 Maximum gross floor area of commercial premises	N/A
Clause 8.1 Application of Part	Complies
Clause 8.2 Sun access	N/A
Clause 8.3 Minimum building street frontage	Complies
Clause 8.4 Design excellence	Does not comply - See discussion
Clause 8.5 Building separation	Complies
Clause 8.6 Serviced apartments	N/A

#### Clause 1.2 Aims of the plan

Aims of Penrith Local Environmental Plan 2010 include:

*(a) to provide the mechanism and planning framework for the management, orderly and economic development, and conservation of land in Penrith,*

The proposal is considered to be inconsistent with (a) above, in that submitted plans identify that future works proposed by Westfield are likely to incorporate an extension of the multi level carpark deck towards south. It is also further identified in the RMS response provided, that the RMS will be undertaking future intersection works on the northern side of the Worth Street and High Street intersection in the area of the Westfield basement carpark entry. In this regard, the applicant was advised in letter dated 3 May 2019, that proposed works related to tenancies R6 and R9 which are proposed to flank the west facing carpark deck and extend south toward the Worth and High Street intersection, were not supported ahead of the development of a southern retail masterplan or strategy for development in this area. This is considered essential to avoid ad hoc public domain works and undesirable built form outcomes.

#### **Clause 2.3 Zone objectives**

The B3 Commercial Core zone objectives include the following:

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To strengthen the role of Penrith City Centre as the business, retail and cultural centre of the region.*

Although elements of the proposed development are identified as being supportive of the zone objectives, the proposal overall is not considered to be appropriate in the context of the site. The proposal which incorporates a three storey tenancy and licensed areas in close proximity to the Joan Sutherland Performing Arts Centre (Joan PAC) is not considered to be a suitable land use that will serve the needs of the local and wider community in the selected location.

The location is noise sensitive in that the Joan PAC provides for activities related to theatre and musical production and education which rely on minimum external noise interference. The design and orientation of the Joan PAC does not provide ready opportunity for the building to be retrofitted to provide acoustic amelioration works in response to the introduction of a noise generating activity in such close proximity.

It is considered that the location and design of proposed retail tenancy 9 in particular, will result in detrimental impacts on the ability of the Joan to continue its current operations. and the impacts of smoking related to the proposal to remove the Westfield dedicated smoking area and provide for outdoor dining and licensed areas adjoining the Mondo and the Joan PAC have not been addressed in the application.

#### **Clause 4.4 Floor Space Ratio**

The Statement of Environmental Effects prepared by Urbis, states that the proposal, which includes an increase in gross floor area of 1,583.9sqm's will remain compliant with the maximum permissible floor space ratio (FSR) expressed for the site under PLEP 2010, of 1.5:1. The proposal is for an FSR of 1.263:1 (114,100.9sqm).

#### **Clause 7.4 Sustainable development**

It is considered that adequate information could be provided in satisfaction of this clause of the LEP at the DA stage for each of the tenancies. Notwithstanding, the proposal is being refused on other grounds.

#### **Clause 8.4 Design excellence**

Clause 8.4 Design Excellence (1) states that development consent must not be granted for development involving the construction of a new building, or external alterations to an existing building, on land to which this part applies unless, in the opinion of the consent authority, the proposed development exhibits design excellence. Clause 8.4(2) provides 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.*

With regard to (a), (b) and (c) above, it is considered that the development application has not adequately demonstrated that the proposal exhibits design excellence. Materials and finishes and the locations and extent of glazing, have not been adequately documented to allow a thorough assessment of the proposal, particularly having regard to the impacts design quality may have on the Mondo area, and the architecture of the Joan PAC. Architectural sections provided do not explain which elements of the existing building will be retained and how the alterations and additions will connect or relate to the existing architecture, or what the finished building will look like. Elevations and sections are too conceptual and limited detailing is provided.

Tree and vegetation removal around the southern Westfield tenancies is significant and will negatively impact on important view corridors and internal views, in particular the western elevation is insufficiently resolved and plans do not allow an understanding of what is proposed. Tree removal at the western end of the site will result in poor views into the Mondo from the Council Civic Centre carpark and a loss of significant amenity in the vicinity.

With regard to (e) above, inadequate information is provided to allow an assessment of how the architecture of the proposed building alterations and additions, will relate to the architecture of the Joan PAC which is identified as having high architectural merit and significance as a Phillip Cox design. Further the plans do not adequately describe how lifts, fire egress, internal amenities, back or house or kitchen and waste areas will be provided for and integrated into the design. The environmental impacts of exhaust, air conditioning and grease traps are not known.

Solar access to the Mondo area will be negatively impacted by the height and bulk of the nominated roof top plant machinery, and the associated screening and climbing plants.

The proposal involves relocating and narrowing the external circulation spaces associated with access around the Westfield building. To facilitate minimum circulation widths, (comparable to that which is existing), the proposal appears to require the relocation of seating within Council's Mondo area. Areas of seating, shading and circulation within the Mondo precinct have been thoughtfully positioned as part of the recent Council upgrade, and provide areas of sun and shade throughout the seasons. The seating, turf and landscaping arrangements are also placed in support of the design's particular focus on delivering a utilitarian community space that can facilitate the needs of the surrounding uses.

Matters related to the development achieving the principles of environmentally sustainable design are not addressed in the application. The location and impacts of the provision of stairs, lifts, lift overruns, amenities, fire stairs and services associated with the operational requirements of food and beverage tenancies has not been shown or addressed by the application. Rainwater tanks proposed as part of the WSUD Strategy are not indicated on plans and their visual impact cannot be assessed.

## **Section 79C(1)(a)(ii) The provisions of any draft environmental planning instrument**

### **Draft State Environmental Planning Policy No. 55 - Remediation of Land**

The application has been assessed against the provisions of Draft State Environmental Planning Policy No. 55 - Remediation of Land and is considered to be unacceptable. Refer to discussion under SEPP 55.

### **Draft Environmental State Environmental Planning Policy**

The application has been assessed against the applicable provisions of the Draft Environmental SEPP. The Draft Policy is a consolidated plan which will incorporate aspects of current and separate existing environmental policies related to conservation of bushland and waterways, protected areas, canal estates and catchment and heritage areas. The heads of consideration identified within the associated Explanation of Intended Effect include:

- Water quality and flows within watercourses,
- Native plants, animals, habitats and ecosystems, and
- Recreational, scenic and environmental amenity.

The proposal is acceptable having regard to the heads of consideration and the intended effects of the Draft plan.

## **Section 79C(1)(a)(iii) The provisions of any development control plan**

## Development Control Plan 2014

Provision	Compliance
DCP Principles	Does not comply - see Appendix - Development Control Plan Compliance
C1 Site Planning and Design Principles	Does not comply - see Appendix - Development Control Plan Compliance
C2 Vegetation Management	Does not comply - see Appendix - Development Control Plan Compliance
C3 Water Management	Does not comply - see Appendix - Development Control Plan Compliance
C4 Land Management	Does not comply - see Appendix - Development Control Plan Compliance
C5 Waste Management	Does not comply - see Appendix - Development Control Plan Compliance
C6 Landscape Design	Does not comply - see Appendix - Development Control Plan Compliance
C7 Culture and Heritage	N/A
C8 Public Domain	Does not comply - see Appendix - Development Control Plan Compliance
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Does not comply - see Appendix - Development Control Plan Compliance
C11 Subdivision	N/A
C12 Noise and Vibration	Does not comply - see Appendix - Development Control Plan Compliance
C13 Infrastructure and Services	Complies
D3.1. Bulky Good Retailing	N/A
D3.2. Sex Services Premises	N/A
D3.3. Restricted Premises	N/A
D5.1. Application of Certification System	Does not comply - see Appendix - Development Control Plan Compliance
D5.2. Child Care Centres	N/A
D5.3. Health Consulting Rooms	N/A
D5.4. Educational Establishments	N/A
D5.5 Parent Friendly Amenities	Does not comply - see Appendix - Development Control Plan Compliance
D5.6. Places of Public Worship	N/A
D5.7. Vehicle Repair Stations	N/A
D5.8. Cemeteries, Crematoria and Funeral Homes	N/A
D5.9. Extractive Industries	N/A
D5.10 Telecommunication Facilities	N/A
D5.11 Boarding Houses	N/A
E11 Penrith	Does not comply - see Appendix - Development Control Plan Compliance

## **Section 79C(1)(a)(iiia) The provisions of any planning agreement**

There are no planning agreements applying to this application.

## **Section 79C(1)(a)(iv) The provisions of the regulations**

### **Fire safety**

In accordance with Section 143 of the Environmental Planning and Assessment Regulation 2000, 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 is found to be acceptable, subject to conditions. Notwithstanding, the application is recommended for refusal based on other matters.

### **Regulations - General**

The proposed development is acceptable having regard to the requirements of the Regulations.

## **Section 79C(1)(b)The likely impacts of the development**

Likely impacts of the proposed development as identified throughout the assessment process include:

### ***Impacts raised in submissions***

Issues raised in the submission include those related to noise generation, loss of the Nepean Community College tenant, solar access to the Mondo and impacts on safety and security in the vicinity. It is considered that in particular, noise impacts on the Joan PAC and solar access are not successfully addressed or resolved by the proposal and are not such that could be addressed by way of any recommended conditions of consent. Matters raised in submissions are fully addressed in the Submissions section of this Report.

### ***Land contamination***

Council's Environmental Management unit have advised that contaminated fill was discovered in the immediate vicinity of the subject site, while works were being undertaken on the Mondo precinct. It is considered highly, likely given the known location of contaminated fill and from information on Council's records, that the contaminated fill will be encountered during the proposed works. In this regard, Category 1 remediation works are likely to be required.

Sydney Regional Environmental Plan No. 20 - Hawkesbury Nepean River requires, under clause 11(4) that remediation of contaminated lands requires development consent. State Environmental Planning Policy No.55 - Remediation of Land defines Category 1 remediation work: work needing consent, under Clause 9 and at 9(d) clarifies that Category 1 remediation works are those that another SREP or SEPP identifies as needing consent.

In this regard, the development application must be accompanied by a Remediation Action Plan and must be re-advertised, exhibited and notified having regard to these works. A RAP was not submitted with the development application.

### ***Impacts of design***

The development application was not submitted with sufficient information, having regard to the requirement under PLEP to exhibit design excellence and the matters for consideration under clause 8.4(2)(a)-(x).

### ***Amenity impacts & tree removal***

The extent of tree and vegetation removal is not supported. Several mature canopy trees are also proposed for removal which poorly impact on views and vistas into the site and on the overall amenity and shading provided for the Mondo. These larger trees in particular offer very high levels of amenity and act as a screen to the existing Westfield building edge and limited justification is provided for their removal.

No detail is provided as to where the existing Westfield smoking area will be relocated to. The deletion of the dedicated Westfield smoking area will relocate smokers to the Mondo to the detriment of its users, which include school children and families visiting the Joan PAC and the Library.

### ***Construction impacts***

The impacts of the development on circulation, wayfinding and through access will be significant. Minimal information was provided with the application although it is considered that this aspect could be dealt with via conditions of consent which may include staging of works, advance stakeholder notification of works commencing, signage, fencing and alternative temporary access or circulation access. No conditions are recommended as the application is recommended for refusal based on other factors.

## **Section 79C(1)(c)The suitability of the site for the development**

The site is assessed to be unsuitable for the development proposed, for the following reasons:

1. The development proposal does not support the observations and implications detailed within Council's Night Time Economy Strategy.

The Strategy details that the subject site is located within the Cultural/Civic Precinct. This Precinct is identified as benefiting from its close proximity to food and beverage areas on High Street and notes the Joan Sutherland Performing Arts Centre (Joan PAC) as a significant contributor with its extensive calendar of performance events. The Penrith City Library is also located in the Precinct.

Whilst the Strategy identifies issues related to the area's limited night time activity after 5pm, the Strategy notes that opportunities in addressing this would be to *'maximise linkages between the precinct and other night time areas', and 'active the precinct at night through extended opening house...and special or outdoor events'*. The "Priority Linked Actions" of the Strategy are to work with the Joan PAC to support late night activity prior and post programmed events, and to Integrate events and entertainment to activate the night time economy.

The precinct is distinct from the Strategies identified Eat Street Precinct, and the Riley & High Street, and Woodriff Street Local Bar/Restaurant Precincts in that the focus not to provide an eat street or bar and restaurant scene. The area is seen as supportive of these other precincts by facilitating safe and active linkages, wayfinding and events that consider and complement the activities of the Joan PAC.

The proposal which includes 2 and 3 storey components adjacent to the Joan PAC will detrimentally impact on the Joan's functions in terms of noise impact particularly having regard to the location of open air balconies and Council's understanding that Tenancy R9 is proposed to be a tavern or other licensed premises.

2. Council's records indicate that land in close proximity to the site is likely to be contaminated. The application has not been lodged with sufficient information having regard to the requirements under SEPP 55 and Council is not satisfied that the site can be made suitable for the use intended.

3. Inadequate information has been provided as to how solar access to the Mondo will be retained and protected. Roof top plant equipment, screening devices and rood top vertical planting is proposed to some tenancies and detail regarding the impact of these on solar access is not provided to Council's satisfaction.

4. Adequate information has not been provided related to how waste and deliveries will be managed and how these utilities will be integrated in to the existing and proposed architecture of the building.

5. The location of outdoor seating adjacent to the open carpark deck is inappropriate. The amenity of the outdoor pedestrian seating and circulation areas is unresolved.

6. No detail are provided as to the provision of additional amenities, fire egress and stairs for the tenancies with no internal connection to the existing Westfield complex.

It is for the above reasoning, that the development proposal is not suitable for the site.

## **Section 79C(1)(d) Any Submissions**

### **Community Consultation**

In accordance with the Act and Regulations, consideration has been given to any necessary referrals and any submissions made.

In accordance with Appendix F4 of Penrith Development Control Plan 2014, the proposed development was exhibited, advertised and notified to nearby and adjoining residents and was advertised between 22 March and 5 April 2019. Six submissions were received in response with two of the submissions being from the Board of the Joan Sutherland Performing Arts Centre and the Nepean Community Collage who currently tenant the Westfield complex.

<b>Issue Raised</b>	<b>Comments</b>
<i>Please don't close the Nepean Community Collage as it is easy to get to and is in a good location. We don't need any more restaurants.</i>	It is agreed that the location of the Nepean Community Collage is in good location and its educational use is supportive of the Arts and Cultural focus of the Precinct, although the tenancy use is a private matter between Westfield and the tenant.
<i>Please leave the Collage in Westfield as I have an intellectual disability and travel from Winmalee each week.</i>	Refer to the response above.
<i>I love the fact that it [Nepean Community Collage] is so central to all the transport. Penrith is getting so overbuilt and crowded do we really need more buildings in the middle of town.</i>	<p>The subject site is identified within Penrith Local Environmental Plan 2010 as being subject to the active street frontages clause. This clause anticipates that development along the southern façade of the Westfield complex (fronting the Mondo) and along the west facing façade of the multi level carpark deck will have an active frontage, being either retail or business. In this regard, the activation of these frontages has been considered as appropriate by PLEP.</p> <p>Notwithstanding, the development application is recommended for refusal based on other matters, including the proximity of the two and three storey tenancies in such close proximity to the Joan PAC, impacts on solar access, contamination matters and due to lack of information.</p>
<i>It was not so long ago that Penrith Council re-designed the Mondo area and created a family friendly area in what is a community space. Now it seems Westfield want to cash in on it by taking away community organisations like the Nepean Community Collage and replacing it with retail.</i>	It is acknowledged that Penrith City Council has recently invested in a comprehensive upgrade of the Mondo community area. Refer to the above response regarding the Nepean Community Collage tenancy.
<i>It's not going to be much of a community space if these additions go ahead considering the construction of the buildings that will occur and the reduced Mondo area that will be affected by multistorey building blocking out the sun.</i>	<p>Issues related to preserving solar access to the Mondo, the impacts of noise during construction, and impacts of the ongoing occupation of the proposed new retail spaces has been raised with the applicant.</p> <p>Insufficient information has been provided to satisfy Council that existing levels of solar access to the Mondo will be retained. Further, the submitted acoustic report was assessed by Council's environmental health team who have concluded that additional information needs to be provided to confirm the noise impacts of construction, and the ongoing operational noise impacts on the Joan PAC.</p>
<p><b>Submission from the Board of the Joan PAC</b></p> <p>- The Joan includes the Richard Bonyngne Concert Hall, Allan Mullins Studio, The Q Theatre venue and programs and the Penrith Conservatorium of Music.</p> <p>- The likely impact of the proposal on our business is significant, both</p>	<p>It is agreed that the proposal is unacceptable in terms of safety and acoustic impacts on the Joan PAC.</p> <p>As detailed above, the submitted acoustic report was assessed by Council's environmental health team who have concluded that additional information needs to be provided to confirm the noise impacts of construction, and the ongoing operational noise impacts on the Joan PAC.</p> <p>- The impacts of licensed venues and smoking on the</p>

during construction and following.

- Whilst the PP&VA welcomes activation of spaces adjoin the Mondo, we also note that there is a high risk of significant ongoing harm.

- Our facilities have been designed on the basis that they about a relatively quiet public space. Consequently the BMS relies on fresh air intakes through automated louvres on all three floors opening onto the Mondo.

- The Conservatorium music studios are not double glazed or sound proofed to the Mondo, they are designed so that the sound of music can float out and be heard by passers by. Out door noise easily penetrates in.

- Without remediation the sound bleed from outside as can be expected from a leisure precinct would render these purpose built tuition facilities unusable.

- Ongoing increased sound levels particularly in the evening (being both peak times for performances and bars and restaurants) would render the Q Theatre venue unusable.

- Previously concerns have been raised related to the proposal for children's play equipment in the Mondo due to noise impacts.

- The venue has a shared dock along High Street. Access to the area and the gate is critical to our operations. This needs to be protected.

- Instances of anti-social behaviour in the Mondo have been experienced. The Mondo has a no alcohol policy . We are concerned that adequate strategies would be required to ensure that the restaurants and bars do not lead to increased acts of public nuisance on out doorstep impacting patron (including young children) safety.

- It is critical to our users that this public amenity [the Mondo] continue and be enhanced rather than be diminished.

activities in and adjoin the Mondo community space are not adequately addressed in the application.

- The applicant was provided a copy of the Submission prepared by the Joan PAC and has not provided a response to the matters raised.

-Issues related to wayfinding through and after construction have been raised with the applicant and no further detail has been provided.

- The inability of the design to satisfy the matters for consideration under clause 8.7 Design Excellence of PLEP is included as a reason for refusal.



<ul style="list-style-type: none"> <li>- The building has architectural merit being a Cox/Suters design. Thus architectural design considerations across the areas should be maintained.</li> <li>- Wayfinding to be addressed. A joint solution may be possible.</li> </ul>	
<p><b>Submission from the Nepean Community Collage</b></p> <ul style="list-style-type: none"> <li>- The has occupied the shop (115B since 1992 and (115A) since 2007.</li> <li>- Nepean Community Collage notes the breakdown in communications and a disappointing relationship with Westfield.</li> <li>- The Collage notes DA arrangements in place requiring the provision of a community space in the complex.</li> </ul>	<p>Information regarding the original approval was not available at the time of the completion of the assessment of the application.</p> <p>Westfield have not identified in their application that there is a consent condition related to the provision of a community space within their complex. Notwithstanding, the application is being refused on other grounds.</p>

The RMS and NSW Police have not objected to the proposal. Those making submissions have been advised of the recommendation for refusal.

## Referrals

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

Referral Body	Comments Received
Building Surveyor	No objections - subject to conditions
Development Engineer	No objections - subject to conditions
Landscape Architect	Not supported
Environmental - Environmental management	Not supported
Environmental - Waterways	Not supported
Environmental - Public Health	No objections - subject to conditions
Waste Services	No objections - subject to conditions
Traffic Engineer	Awaiting additional information
Community Safety Officer	No objections - subject to conditions
Social Planning	Not supported

## Section 79C(1)(e)The public interest

The proposed development is not in the public interest for the reasoning provided within this report. In particular, those matters related to negative noise, safety and solar access impacts on the area of the Mondo public domain and the Joan PAC, and having regard to the inability of the design to comply with PLEP standards related to design excellence, and matters related to land contamination.

## Section 94 - Developer Contributions Plans

Development contributions apply to the subject proposal although a related condition of consent is not recommended as the development application is recommended for Refusal based on other matters.

## Conclusion

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In assessing this application against the relevant environmental planning policies, including Penrith Local Environmental Plan 2010 (PLEP) and Penrith Development Control Plan 2010, the proposal does not satisfy the aims, objectives and provisions of these policies.

The proposal will have a negative and unacceptable impact on the surrounding amenity and character of the area in the immediate vicinity of the site, in terms of acoustic impacts, tree removal and amenity, circulation, solar access and safety. The proposal does not align with Council's Night Time Strategy, in particular the aims and objectives for the Precinct. Further, insufficient information has been provided related to access, provision of lifts and stairs, fire egress and waste management.

Insufficient information has been provided as to how the existing structures will be modified to accommodate the built form alterations proposed and the proposed development is not satisfactory having regard to, in particular, clause 8.4 Design excellence of PLEP.

The application is not accompanied with sufficient documentation having regard to the matters for consideration under State Environmental Planning Policy No. 55 - Remediation of Land.

The proposed design is not site responsive, does not comply with key development standards and is as such, not in the public interest. Therefore, the application is recommended for refusal for the attached reasons.

## Recommendation

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1. That DA19/0178 for alterations and additions to Westfield shopping centre at 569-595 High Street, Penrith, be Refused for the following reasons;
2. That the Roads and Maritime Services be provided a copy of the determination in accordance with the requirements of Part 3, Clause 104 of State Environmental Planning Policy (Infrastructure) 2007; and,
3. That those making submissions are notified of the determination.

## Health Matters and OSSM installations

### 1 [F028 - Staff toilets](#)

Where required by the Building Code staff toilets and customer toilets must be provided on the premises.

Where a toilet adjoins a food preparation area it must be separated by an air lock and its doors must be fitted with self closing devices. Toilets intended for customer use must not be accessed through areas where open food is handled, displayed or stored.

### 2 [F057 - Waste storage](#)

All garbage must be stored in accordance with the requirements of the Food Safety Standards of the Australian and New Zealand Food Standards Code and the *Protection of the Environment Operations Act 1997* to prevent the harbourage of vermin or generation of odours.

### 3 [F058 - Waste storage – surfaces](#)

Smooth and impervious surfaces (walls and floors) must be provided to all waste storage areas and rooms. Floor areas must be graded and drained to a floor waste gully connected to the sewer. Open waste storage areas must be appropriately covered and bunded to avoid stormwater entering the sewer. Waste storage rooms must be adequately ventilated and proofed against pests. The area or room must be provided with water service hose connectors to enable easy cleaning.

### 4 [F060 - Grease Arrestor](#)

Any grease arrestor must not be installed in any kitchen, food preparation or food storage area. The grease arrestor shall be installed in accordance with Sydney Water's requirements.

## Refusal

### 5 [X Special 02 \(Refusal under Section 79C\(1\)\(a\)\(i\) of EPA Act 1979\)](#)

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 following provisions of State Environmental Planning Policy No. 55 - Remediation of Land:

- Clause 7 Contamination and remediation to be considered in determining development application.

### 6 [X Special 02a \(Refusal under Section 4.15\(1\)\(a\)\(i\) of EPA Act 1979\)](#)

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 does comply with the following provisions of Penrith Local Environmental Plan 2010:

- Clause 2.1 Aims of the plan
- Clause 2.3 Zone objectives
- Clause 8.4 Design excellence

### 7 [X Special 03 \(Refusal under Section 79C\(1\)\(a\)\(ii\) of EPA Act 1979\)](#)

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 following provisions of Draft State Environmental Planning Policy N0. 55 - Remediation of Land:

- Part 3 Policy and provision changes.

8 [X Special 04 \(Refusal under Section 79C\(1\)\(a\)\(iii\) of EPA Act 1979\)](#)

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:

1. Part A DCP Principles

- Principle 6.

2. Part C - City-wide Controls

- C1 Site Planning and Design Principles
- C2 Vegetation Management,
- C3 Water Management,
- C4 - Land Management,
- C5 Waste Management,
- C6 Landscape Design,
- C8 Public Domain,
- C10 Transport, Access and Parking, and
- C12 Noise and Vibration.

3. Part D Land Use Controls

- D Other Land Uses, Section D5.5 Application of certification system and Section D5.5 Parent friendly facilities.

4. Part E11,

- Part A Penrith City Centre.

9 [X Special 07 \(Refusal under Section 79C\(1\)\(b\) of EPA Act 1979\)](#)

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:

- Acoustic impacts of the development on nearby and adjacent sites,
- Visual and amenity impacts of tree removal, overshadowing and architectural impacts of the design on neighbouring developments and the on the community area known as the Mondo,
- Amenity impacts of unresolved waste, servicing, plant machinery and deliveries on the existing car park and on pedestrian amenity and safety.
- Negative impacts related to land contamination.
- Negative relationship with the Joan PAC.

10 [X Special 08 \(Refusal under Section 79C\(1\)\(c\) of EPA Act 1979\)](#)

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 due to matters related to site contamination and drainage design, and architectural design, sustainability, solar access, acoustic, circulation and amenity impacts.

11 [X Special 10 \(Refusal under Section 79C\(1\)\(e\) of EPA Act 1979\)](#)

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.

12 [X Special 9 \(Refusal under Section 79C\(1\)\(d\) of EPA Act 1979\)](#)

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:

- Negative and unacceptable architectural design, acoustic, safety and amenity impacts on neighbouring developments.

# Appendix - Development Control Plan Compliance

## Development Control Plan 2014

### Part B - DCP Principles

The development proposal is not considered to support the DCP Principles. Principle 6 includes to recognise and build on the distinctive characteristics of cities, including their human and cultural values, history and natural systems. In particular it is considered that the design of the development in its location will poorly impact the existing Arts and Cultural Precinct adjacent to the Joan PAC and in this respect it is not considered that the development proposal aligns with Principle 6.

### Part C - City-wide Controls

#### C1 Site Planning and Design Principles

##### *1.2.1 Application of Certification System*

The DCP requires that non-residential developments including mixed-use development with a construction cost of \$1 million or more are to demonstrate a commitment to achieving no less than 4 stars under Green Star or 4.5 stars under the Australian Building Greenhouse Rating system or National Australian Building Environment Rating System (NABERS). Although it is noted that this development application is for alterations and additions to an existing Westfield shopping centre, which may have an over arching sustainability strategy, no information has been provided with regard to this DCP requirement or how the additions may feed into an existing strategy.

##### *1.2.2 Built Form - Energy Efficiency and Conservation*

Insufficient detail is provided to enable an assessment of the ability of the design to provide for natural cross flow ventilation or to confirm that the design and location of building services and equipment will not result in poor amenity for tenants or the public. Negative amenity impacts relating to the locating of tenancies along the open carpark deck, such as fumes, locations of mechanical plant, waste areas and thermal loading from west facing elements have not been addressed in the application.

##### *1.2.5 Safety and Security (Principles of Crime Prevention Through Environmental Design)*

The development application was accompanied by a CPTED Report, prepared by Urbis, dated March 2019. The report provides recommendations which may be applied through recommended conditions of consent and include lighting and landscape maintenance strategies. Notwithstanding the application is recommended for refusal based on other matters.

#### C2 Vegetation Management

Objectives of this section include to preserve existing trees and vegetation for the benefits they provide and also to protect and enhance the landscape character and scenic qualities of the Penrith Local Government Area. The application proposed to remove 16 trees and all of the shrubs in the vicinity of the works including trees positioned between the Joan PAC and the most southern site boundary to High Street. Documents submitted with the application do not adequately address tree removal or options to retain significant trees.

An Arborist report was not submitted. It is unclear if the submitted Construction Impact Assessment and Management Plan which has provided a summary of trees which will be impacted was prepared by an arborist, and it does not address the matters required under Section C2, 2.1 Preservation of Trees and Vegetation (C)(3)(c) which require detail surrounding the aesthetic importance of the trees, the impacts of works on the trees and the general amenity of the surrounding area, including impacts on streetscape, whether pruning would be a more practicable or desirable outcome, whether the trees or vegetation is habitat, a source of food or shelter or used by fauna and importantly whether all alternatives to removing or pruning the tree or vegetation have been considered.

#### C3 Water Management

The development application is not compliant with the DCP requirement to provide adequate water saving devices under clause 3.1. The proposal does not adequately address the

requirements of Council's WSUD Policy as required by Clause 3.2 Catchment Management and Water Quality. The application was also referred to Council's internal Waterways unit who note that:

- *'Water conservation measures in the form of rainwater tanks are proposed but the demand requirements outlined in Council's WSUD Policy are not met.'* Additional supporting details would need to be provided.
- *'A range of stormwater treatment measures have been proposed and include 3 enviropods, a 690mm stormwater 360 cartridge device and a 35sqm planter box rain garden. However, in relation to the concept plans, there is a lack of details to assess against the MUSIC modelling.'*
- *'There are no cross sections of the rain gardens to show filter depth and the location of rainwater tanks and enviropods is unclear'.*

The Waterways team require the following additional information which was requested in correspondence dated 3 May 2019 and has not been submitted:

- (a) Location of enviropods and rainwater tanks and justification for deviation from the WSUD Policy's demand targets,
- (b) Revised stormwater concept plans prepared in accordance with the WSUD Policy requirements including cross sections, invert levels and extended detention depths,
- (c) A draft Operational and Maintenance Manual for all stormwater treatment measures, and
- (d) Updated plans and reports that correlate with the stormwater, architectural and landscape plans.

#### **C4 Land Management**

The proposal is not considered to comply with the DCP requirements in particular the controls under 4.4 Contaminated lands, 4.4.2 Triggers for Contamination Investigation and 4.4.3 Stages of Contamination Investigation. The application was not submitted with sufficient information related to the known presence of contaminated land in the immediate vicinity of the site. Refer discussion under SEPP 55.

#### **C5 Waste Management**

The proposal is not considered to comply with the applicable provisions of the DCP as they relate to Section 5.2.4 Non-Residential Development Controls. The location of the waste area adjacent to the outdoor café seating will result in poor amenity outcomes and will present poorly to the adjacent community plaza (the Mondo) which is contrary to the objectives of the Section and controls under 5.2.4(2), and (3)(b),(c) and (d). The design of the waste storage area and potential need for grease traps are not identified for the food and beverage tenancies as required by 5.2.4(4) and (5). Swept paths demonstrating adequate manoeuvring area for delivery and waste areas has not been indicated which is contrary to the control at 5.2.4(10).

The maintenance, siting and design requirements of sections 5.3.4 are not met by the proposal.

#### **C6 Landscape Design**

The submitted Construction Impact Assessment and Management Plan does not provide alternatives to tree removal across the site such as design alterations and pruning. The report concludes that the works improve both pedestrian and vehicular access to the site, as well as view lines and visual amenity throughout the site. It is not agreed that removing all of the trees on the subject site *'improve pedestrian and vehicular access to the site, as well as view lines and visual amenity throughout the site'*. Trees listed for removal do not currently obstruct vehicle access.

The proposal does not comply with section 6.1.4 site amenity, in that the landscape design does not screen the development, does not highlight architectural features, frame or filter views and is not site responsive. Trees that offer high amenity, canopy, shading and frame views into the area are proposed to be removed.

It is unclear if the proposal can comply with the DCP requirement under 6.1.4(7) to consider the location of utilities and their impacts on landscaping, as utilities to the isolated tenancies, in particular T6 and T9 are not indicated.

The proposal does not comply with the DCP requirement under 6.1.4(8) Utility areas, in that the bin areas are not located behind the building line. The proposal is contrary to the requirements under 6.1.4(8)(a) in that the waste and recycling facilities are adjacent to communal outdoor seating and recreation areas.

### **C8 Public Domain**

The proposed development does not comply with the general objectives of the chapter as the proposal will not enhance; the quality of the public domain, and the natural setting and landscape character of Penrith, does not ensure that the public domain is attractive, safe, interesting, connected, comfortable or readily understood and easily accessed. In this regard, the proposal includes the removal of all trees on the site, a reduction in the circulation spaces adjacent to all facades on the site, limited detail as to the extent of glazing or solid wall construction, no detail regarding the location of services such as fire stairs, internal stairs or lifts, toilets or amenities.

No detail is provided as to where the deleted Westfield dedicated smoking area will be relocated to. The absence of a dedicated replacement smoking area adjacent the southern retail and food court area will push smoking out into the Mondo.

The proposal does not ensure that the public domain is enhanced by the built form adjoining it. Insufficient detail is provided as to how the development will impact on existing solar access to the Mondo. Landscaped rooftop screening of plant is proposed and details related to plant and screening has not been provided. Existing pedestrian links to the ground floor car park are removed with no clear wayfinding identified.

A Crime Prevention Through Environmental Design (CPTED) report was submitted although the report does not address the impacts to safety in the carpark. The introduction of western tenancies flanking the car parking will reduce visual site permeability and isolate the entry to the Westfield from the Mondo area.

The outdoor seating areas do not comply with the DCP requirement under 8.4(C)(1)(d) which requires the dining area to be setback a minimum of 2m from the building to allow for people to shoreline. No detail is provided as to how outdoor furniture may be accommodated within each tenancy.

### **C10 Transport, Access and Parking**

The development proposal does not comply with the DCP requirement under 10.5.1 Parking (C)(g) in that the development does not provide adequate on-site loading facilities to accommodate the anticipated heavy vehicle demand for the site. The design of the loading area does not comply with the DCP control at 10.5.1 Parking (C)(5)(p) in that the loading dock is not adequately separated from the visitor parking and pedestrian areas, or (C)(5)(p) which requires that the loading area is to be integrated into the design of the development, separated from waste and car parking areas and located away from the circulation path of other vehicles.

The proposed loading area is positioned such that it clashes with the pedestrian access to the car park and is insufficient to accommodate the size of vehicle anticipated. The loading area will result in delivery vehicles and their load zones blocking the car park aisle.

### **C11 Noise and Vibration**

The submitted Acoustic report does not adequately address noise impacts on the Joan PAC, its design or programme of events. The submitted acoustic report was assessed by Council's environmental health team who have concluded that additional information needs to be provided to confirm the noise impacts of construction, and the ongoing operational noise impacts on the Joan PAC.

## **D5 Other Land Uses**

### 5.1 Application of Certification System

The DCP requires that non-residential developments, including mixed use developments, with a construction cost of \$1 million or more are to demonstrate a commitment to achieving no less than 4 stars under Green Star or 4.5 stars under the Australian Building and Greenhouse Rating (ABGR) system. The application was not submitted with adequate information as to how the proposal is supportive of this requirement and in this respect, does not comply.

### 5.5 Parent Friendly Amenities

The scale of gross floor area being increased as part of this proposal triggers an assessment of the development application against Part D5 Other Uses, 5.5 Parent Friendly Amenities. The application proposes a GFA increase of 2583.9sqm's and an increase in the number of food and beverage tenancies and outdoor dining opportunities at the south-western end of the Westfield complex. Internal tenancies do not include details of whether these tenancies will include their own amenities or customers and staff will be using the exiting facilities within the centre. It is assessed that an increase in GFA of the scale proposed at this end of the Westfield will require a renovation of the existing amenities and parent room. More isolated tenancies such as proposed tenancies R1, R2, R6 and R9 including the upper levels of R6 and R9 will need to be amended to provide their own internal amenities.

The proposal does not comply with the DCP requirement to provide amenities and parent friendly accessible toilets and change tables in accordance with the requirements of the BCA for the classification of the development. The proposal does not comply with clause 5.5(1)(c) Table D5.2 and the requirement to indicate compliant amenities and details on plans and within the application as per clause 5.5(e) and (f).

Further, inadequate detail has been submitted with the application to satisfy Council that the development proposal will achieve compliance with clause 5.5(2), in so far as the increase in floor area proposed may result in the requirement to provide for additional or expanded centre amenities and parent/carer rooms which are to be designed in accordance with the DCP requirements setout under Clause 5.5(2) - (5).

It is for the above reasoning that the development proposal is not considered to comply with this part of the DCP.

## **E11 Penrith**

The subject site is identified as being located with the Civic and Cultural Character Area under the Chapter. Controls applicable to the area include to retain remnant planting and to incorporate planting into accessible outdoor spaces. The proposal to remove the majority of trees on the site is contrary to this control.

The proposal is not consistent with the general objectives of section 11.4 Access, Parking and Servicing, in that the proposal does not facilitate development if building design excellence appropriate to a regional centre or provide for safe access. Loading and pedestrian access ways are compromised by the location of the carpark aisle and safety is impacted. The waste area is inappropriately located and will result in poor access, servicing and amenity issues. Limited and insufficient detail is provided having regard to the matters for consideration under clause 8.7 design excellence of PLEP.