

Our Ref: 13.06R

Your Ref: DA15/0026

3 December 2015

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Attn: Kate Smith, Senior Environmental Planner

Dear Kate

**Re: DA15/0026, Lot 3105, Lord Sheffield Circuit, Penrith
SEPP 1 variation and Response to Heritage Submission**

We refer to our recent discussions and correspondence in relation to the above matter. This letter provides a response to two issues raised concerning a breach in the height limit on the subject site, and the potential impacts on an adjoining heritage item, the Museum of Fire.

Breach of Height Limit

To clarify the recent re-submission of documents to Council, the proposed development exceeds the 30m height limit that applies to this development application. The following request to vary the height of building development standard in accordance with *State Environmental Planning Policy No 1 – Development Standards*, is submitted to Council for consideration

State Environmental Planning Policy No 1 – Development Standards (SEPP 1 variation)

SEPP 1 provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case be unreasonable or unnecessary.

The subject site that this SEPP 1 objection relates to is located at Lot 3105, Lord Sheffield Circuit, Penrith.

Relevant Development Standard

At the time of lodging this development application, *Penrith City Centre Local Environmental Plan 2008* (the LEP) applied to the site and it is under that instrument the development application was lodged. As identified in the LEP, the site is subject to a height of building control outlined in Clause 51.

The following control, detailed in Clause 51 of the LEP, is the subject of this SEPP 1 objection:

- (1) *The objectives of this clause are as follows:*
- (a) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*

- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,
 - (c) to minimise the adverse impact of development on heritage conservation areas and heritage items,
 - (d) to nominate heights that will provide a transition in built form and land use intensity.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The height of building map shows a height limit of 30m.

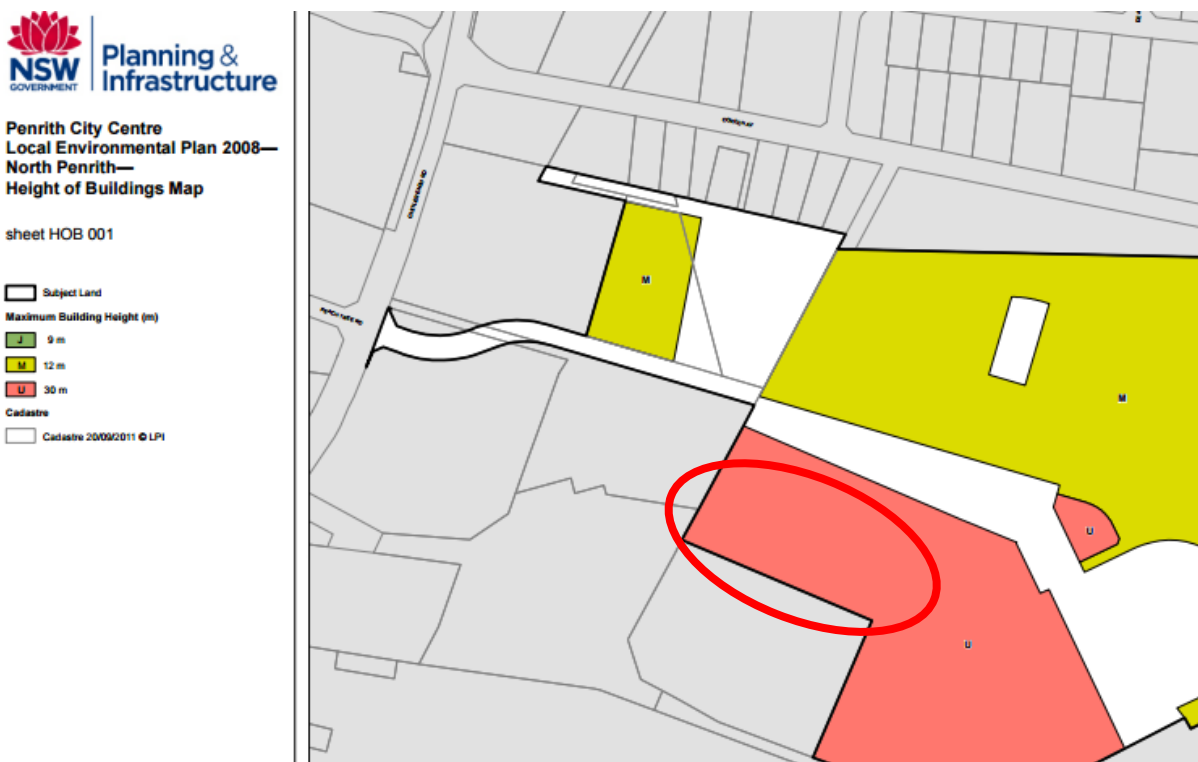


Figure 1 Location of subject site

The objectives for the B2 Local Centre zone were:

- to provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area,
- to encourage employment opportunities in accessible locations,
- to maximise public transport patronage and encourage walking and cycling.

Proposed Non-Compliance

The only non-compliance with relevant development standards relate to the height of building control cited above.

With natural ground level being RL26.8, and the highest point on the building being RL58.92, the height of the building is 32.12m – a breach of 2.12m.

In respect of this matter, the proposed development has been arrived at as a result of considering the following aspects:

- The objectives of the new, amended LEP and zone objectives.
- The increased height limit of 32.0m in the new LEP.
- The approved building heights of other similar residential flat buildings in the North Penrith locality.
- The negligible impact that arises as a result of the breach and the imperceptible nature of the built form when viewed from the public domain.
- The inclusion of on-site capacity to accommodate a large garbage truck and the increased floor to ceiling heights that are required to accommodate same.
- Consideration of the emerging character across the locality, including the type of scale that is now achievable under the LEP.
- The presence of several existing multi dwelling developments in the locality
- The achievement of generally satisfying the adopted North Penrith Design Guidelines in respect of the provision of open space, street front activation, building separation and therefore the achievement of a high degree of amenity

The purpose of this development is to provide additional housing stock (with an affordable component) in an area where there is significant demand. Whilst the utmost effort has been made to comply with all planning controls on the site, the height of building control is the only one in which a variation is sought. This is considered acceptable on the basis that the development satisfies all other development standards and controls, as well as the fact that there would be no perceptible impact on nearby or adjoining sites.

Attached to this submission are Height Plane Plans showing the extent of breach of the 30m height of building control. IN the context of the overall development on the site the extent of potential impacts arising from the breach is minimal. Importantly it is noted that there is no residential development to the south of the subject site.

Also attached to this submission are Height Plane Plans showing the extent of breach when considered against the current 32m height of building control in the current LEP. The extent of breach in that scenario is only 100mm.

In numerical terms, the proposal would see an approximate 7% variation of the control – a figure that could be considered as acceptable.

SEPP 1 Considerations

Lloyd J, in *Winten Property Group Ltd v North Sydney Council* (2001) 130 LGERA 79 at 89, posed five questions to be addressed in SEPP 1 objections, as follows:

1. *Is the planning control in question a development standard?*
2. *What is the underlying object or purpose of the standard?*
3. *Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP & A Act?*
- 4(a). *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?*

- 4(b). *Is a development which complies with the development standard unreasonable or unnecessary?*
5. *Is the objection well founded?*

These questions are addressed below.

Is the planning control a development standard?

The planning control referred to above is clearly a development standard rather than a prohibition. This is so because it does not prohibit such development under any circumstances, but instead specifies numerical requirements in relation to the development.

What is the underlying object or purpose of the standard?

The objectives of the zone are listed above in this response. These objectives include the intent to ensure that new development harmonises with existing development and that impacts on adjoining properties are minimised. The development standard is in place to attempt to achieve those objectives. The proposed variation is minor in the context outlined above, given the current height of building controls and other approved residential flat buildings in the locality, and as such the variation is considered acceptable.

Is compliance with the standard consistent with the aims of the Policy and would strict compliance hinder the objects 5(a)(i) and (ii) of the Act?

The aims of SEPP 1 are noted in clause 3 thereof, which provides:

3. *This policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable and unnecessary or tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the Act.*

Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979 provide:

The objects of this Act are:

- (a) *to encourage:*
- (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) *the promotion and co-ordination of the orderly and economic use and development of land,*

These overarching objectives of the LEP facilitate the development of an appropriate built form on the site. The development now, unlike its first iteration, is able to maintain a healthy yield, but with a vastly improved design that accommodates increased building utility – for example, waste collection trucks are, in this current design, able to enter the site manoeuvre to collect rubbish, then leave in a forward direction. However this requires increased floor to ceiling heights in order for the appropriate vehicles to enter the site. As a result, the current scheme now represents a more efficient use of the anticipated building envelope, without compromising the amenity or utility of the building, whilst also vastly improving its architectural presentation and contribution to the locality. Development standards and controls within the LEP and Design Guidelines have largely been satisfied by the proposed design. The impacts arising as a result of the variation are imperceptible when viewing the development from both the public domain and adjoining properties.

It is therefore concluded that the design as proposed represents the most efficient and orderly development of the land for the type of development proposed.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The increased height on the site will not create a form of development that would be considered offensive or unacceptable in terms of scale and development. Indeed it is largely consistent with other nearby approved residential flat buildings. Potential impacts have been mitigated on adjoining properties through achieving compliance with the setback and private open space requirements of Council's Design Guidelines. In this regard it is noted that the property to the south is a commuter car park. From a SEPP 65 consideration, the current proposal is significantly improved on what was originally submitted.

It is also noted that the height limit on the site under the current LEP is 32m and whilst a breach would still arise as part of this proposal, that breach would only be 100mm.

Compliance is considered unreasonable in the circumstances of the broader objectives sought under the LEP, zoning and Design Guidelines. Compliance is considered unnecessary given the low potential for adverse impacts to arise as a result of the non-compliance.

Is a development which complies with the development standard unreasonable or unnecessary?

It is submitted that compliance with the development standard for this proposal is unnecessary given that compliance is achieved with all other development standards and controls applicable to the subject site. Compliance would not represent the best design and functional outcomes of the site.

Accordingly, Council is respectfully requested to acknowledge this and support the application in its current form.

Is the objection well founded?

It is considered that the SEPP 1 objection is well founded, given that the outcome of supporting the variation would not result in a negative impact, and that the broader objective of creating additional housing in an area where it is needed can be achieved through approval of the proposal.

Recommendation

The proposed development satisfies the five SEPP 1 tests established by the Land and Environment Court.

For the reasons set out above, the proposed departure from the development standard is relatively minor and also well founded.

Compliance with the development standard is therefore unreasonable and unnecessary in the circumstances of the case, and refusal of the development application on these grounds is not warranted.

Response to Heritage Submission

The following concerns were raised in submissions.

The development is in close proximity to the Museum of Fire which is listed as a local heritage item. The application has not considered the potential impacts that the 9 storey development may have on the Museum of Fire.

Comment

We submit that the site is not in close proximity to the Museum of Fire and that there will not be any significant impacts on it as a result of the proposed development. Figure 2 shows an approximate

separation distance **from the rear** of the Museum of Fire to the location of the proposed development of some 76m. It is also noted that there is a colorbond shed of generous size located in between, presumably providing storage space for the Museum.

The suggestion that the proposed development will significantly impact on the heritage item is unreasonable. The Thornton estate was the subject of a significant master planning exercise and as a result, the 30m height limit was established on the subject site. A comprehensive heritage assessment formed part of that body of work. Subsequently, the Council has adopted an increased height limit of 32m on the subject site so we submit that the issue of potential impacts on the Museum of Fire were not considered to be so significant, so as to ensure a specific response in built form in this part of the estate. The proposed development is of a scale and bulk that would be reasonable expected within the planning controls that apply.

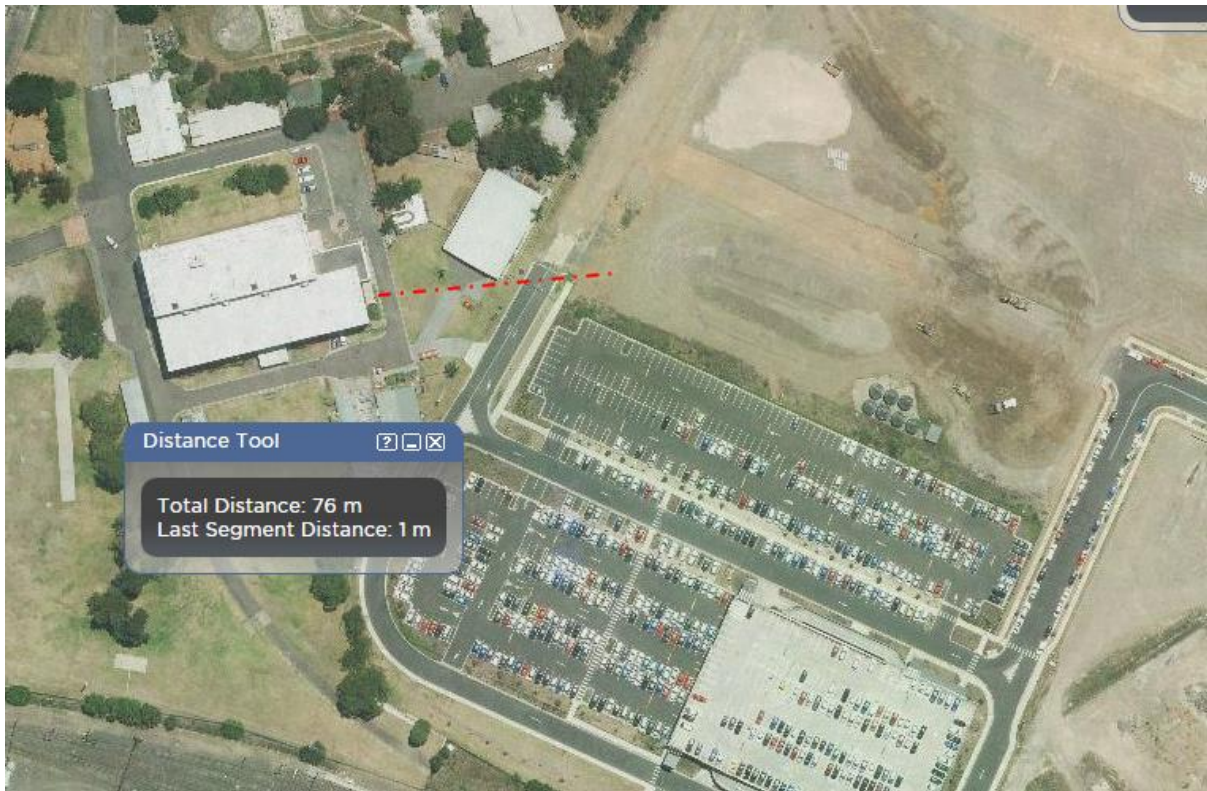


Figure 2 Showing the approximate 76m separation between the proposed development and the Museum of Fire

The application has been referred to Council's Heritage Consultant who has recommended the development have a greater landscape setback to Combewood Avenue in order to accommodate deep soil planting which will assist in reducing the developments bulk and scale and strengthen the relationship between the two sites.

Comment

The response to this concern is largely the same as the point above. However it is noted that the revised design of the development and the landscape plans submitted, show increased opportunity to provide 'screen planting' and this will contribute to reducing the bulk of the building, despite its reasonable side setbacks. Figure 3 shows a section of the landscape plan.

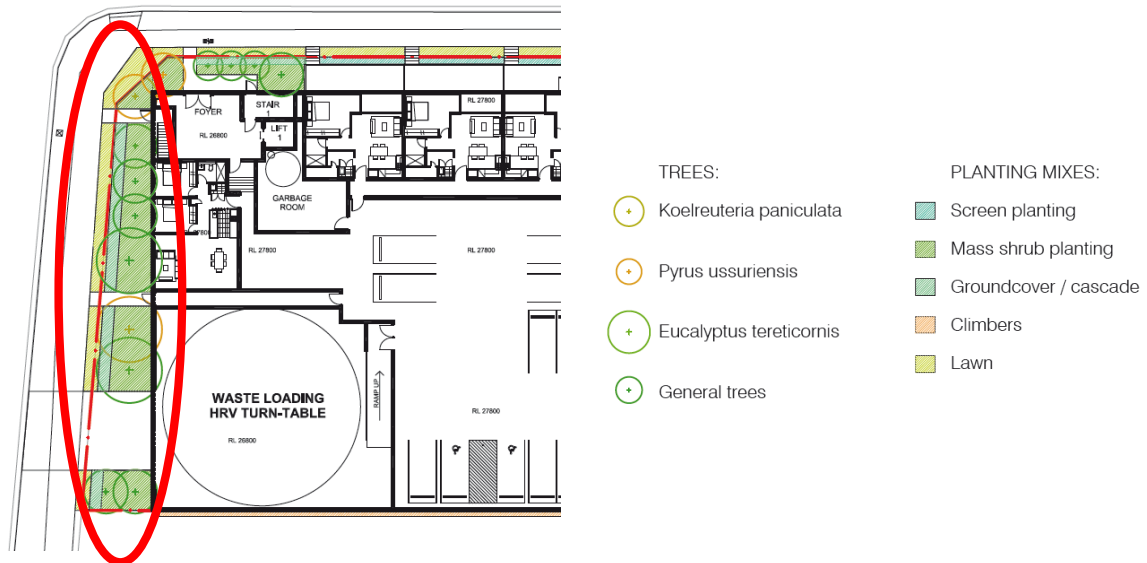


Figure 3 Western landscape area

In summary, the proposed treatment of the western end of the building is considered to be appropriate and one that does not negatively impact on the nearby Museum of Fire.

We trust this provides Council with the necessary information to finalise the assessment of this application. Please call me on 02 4731 2730 to discuss further or if you require any additional information.

Sincerely

Stimson & Baker Planning



Warwick Stimson MPIA CPP

Director

Encl: Height Plane Plans and Sections for 30m height and 32m height



1 Height plane 01

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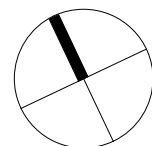
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THORNTON

TRUE NORTH



DRAWING TITLE
Height Plane 01

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1 Height plane 02

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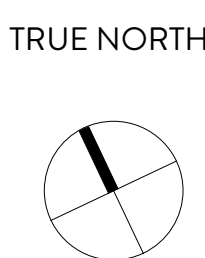
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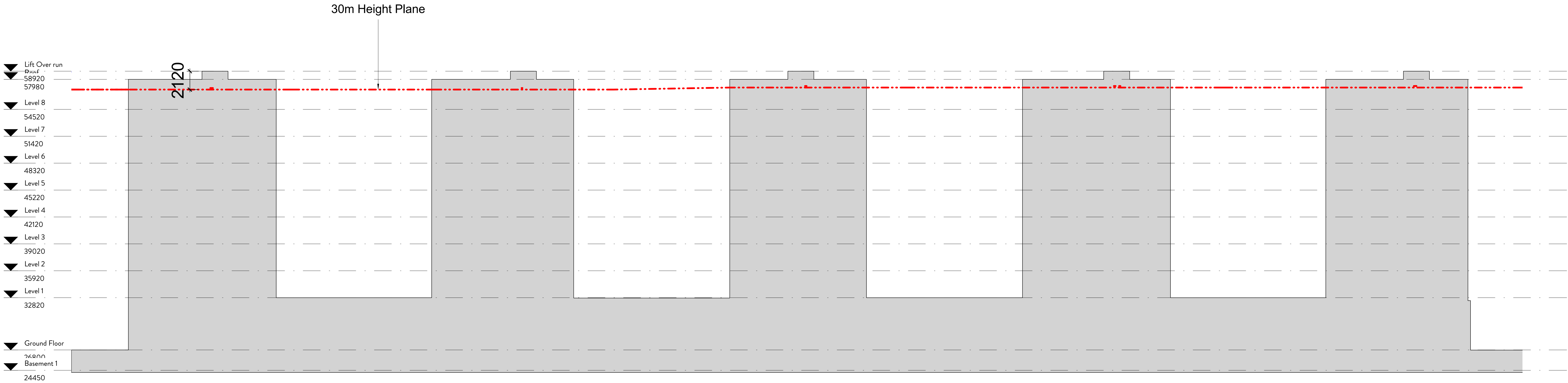


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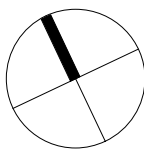
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1 32m Height plane 01

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100mm over
of height plane

1 32m Height plane 02

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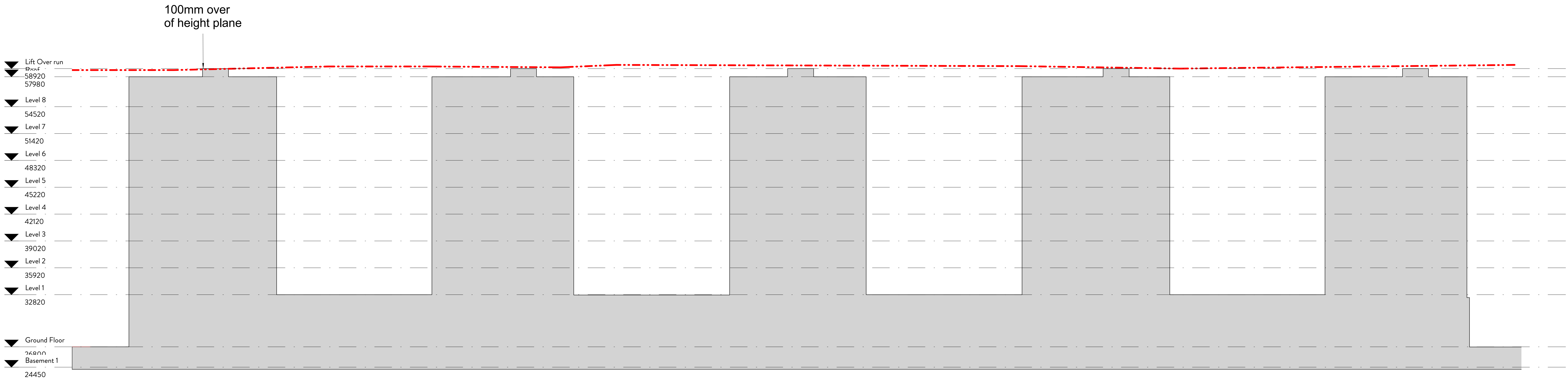
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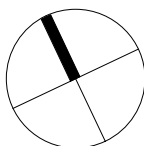
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