

<b>SWCPP Ref. No.:</b>	2016SYW236
<b>DA No.:</b>	DA16/1083
<b>PROPOSED DEVELOPMENT:</b>	Eight (8) Storey Serviced Apartments Building containing 58 Serviced Apartments, Related Facilities, Three (3) Ground Floor Commercial Tenancies & Two (2) Levels of Basement Car Parking - Lot 106 DP 1236304, 21 Woodriff Street, PENRITH NSW 2750
<b>APPLICANT:</b>	Morson Group Pty Ltd
<b>REPORT BY:</b>	Paul Anzellotti, Senior Environmental Planner, Penrith City Council

## Assessment Report

### Executive Summary

Council is in receipt of a development application from Morson Group Pty Ltd proposing the construction of an eight (8) storey serviced apartments building containing fifty eight (58) serviced apartments, related facilities, three (3) ground floor commercial tenancies and two (2) levels of basement car parking at 21 - 25 Woodriff Street, Penrith.

The site is located within the Penrith Central Business District area and is zoned B4 Mixed Use under Penrith Local Environmental Plan 2010 (PLEP). Under the PLEP, serviced apartments are defined as a type of tourist and visitor accommodation. Serviced apartments as well as commercial premises are permissible within the zoning.

In accordance with Section 2.12 and 2.15 (previously Section 23G) of the *Environmental Planning and Assessment Act, 1979* the Sydney Western City Planning Panel (SWCPP) is the determination authority as the Penrith City Council is the owner of the subject site and the proposal is provided with a capital investment value of more than \$5 million.

The development application was advertised in the local newspaper and notified to owners and occupiers of adjoining and nearby properties pursuant to the requirements of the Regulations and in accordance with Council's Development Control Plan. Affected property owners and occupiers were notified in the surrounding area and invited to make a submission on the proposal during the exhibition period from 4 to 18 November, 2016. During this period, two (2) submissions were received including a submission from Telstra who currently maintain infrastructure services on the subject site. Following discussions with the applicant, the submission from Telstra was withdrawn subject to appropriate consultation being provided for with Telstra prior to any occupation of the building. In this regard, should the application be approved, an appropriate condition of this nature will also be provided for.

As the subject site is also presently owned by Penrith City Council, a peer review of the report prepared for determination of the application by the Sydney Western City Planning Panel was conducted. This review concurred with the findings and recommendations of the draft Council report.

Key issues identified for the proposed development include:

#### Design Excellence

As the proposal will provide for development in respect to a building that is greater than 24 metres and 6 storeys

in height, under Clause 8.4(3) of the PLEP, development consent must not be granted unless an architectural design competition has been held in relation to the development. While so, the application has been accompanied by a 'Design Excellence Competition Request for Waiver' under Clause 8.4(4) of the PLEP. As a condition of this waiver, it is noted that the Penrith City Urban Design Review Panel was required to provide for a continual review of the application and any design modifications. In this regard, it is noted that this was conducted throughout the history of the application with the final design and supporting architectural documentation considered to demonstrate a positive response to the LEP's 'design excellence' considerations and was deemed acceptable.

Pursuant to the 'Design Excellence' requirements, the application was returned for the concurrence of the NSW Government Architect following the receipt of final UDRP comments noting the updated variations to the overall design including the varied floor space and height. A response from the Government Architect was provided dated 10 September, 2018 granting concurrence.

### **Non compliance with maximum floor space ratio and height requirements**

The application is provided with numerical non compliances in relation to floor space ratio and maximum building height with an exceedance respectively above the maximum permissible floor space ratio by 11% and building height by 15%. In this regard, the application has been accompanied with a 4.6 Variation request prepared by Stimson and Baker Planning requesting a variation for each development standard. The accompanying Variation request has been reviewed and taking into consideration the circumstances of the case is considered acceptable in this instance.

### **Access to subject site via existing right of carriageway also servicing Judges Car Park**

The proposal will provide for a combined use of an existing right of carriageway which currently services the adjoining Judges Car Parking facility. The application is considered to allow for a continual movement of vehicles to the existing and proposed use noting right of way will be provided to exiting vehicles from the Judges Car park. The location of a round-a-bout on Woodriff Street allowing for access onto the subject site is also considered to minimise traffic congestion concerns associated with this area of the Penrith CBD.

### **Treatment of Public Domain**

The application will provide for the treatment of the public domain which subject to appropriate conditions included with any determination granted is considered to provide for appropriate means of access to the ground floor commercial uses, maintain pedestrian circulation paths for this part of the Penrith CBD while also maintaining an acceptable level of safety for users. The proposal will also provide for the provision of street planting which is considered will enhance the public domain and the presentation of the building.

### **Building Form and Presentation**

The built form is considered to provide for appropriate articulation to each frontage with the proposal maintaining a strong podium base, well proportioned balcony layout and window openings and architectural features serving to diminish scale and bulk and provide depth to each façade.. In this regard, the building is considered an acceptable addition to the Penrith CBD noting that the nature of the corner subject lot will allow for the proposal to be viewed from a number of public areas.

An assessment under Section 2.12, 2.15 and 4.15 of the EP&A Act 1979 (as amended) has been undertaken and the application is recommended for approval subject to appropriate conditions.

## Site & Surrounds

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The subject site is known as 21 - 25 Woodriff Street, Penrith and is legally known as Lot 106, DP 1236304. The subject site is a corner allotment with frontages to both Woodriff Street along its eastern side and to Union Lane along its northern side. The allotment is irregular in shape with a total area of 2,417m<sup>2</sup>. The subject site is provided with a frontage of 49.62m onto Union Lane, a western boundary dimension of 86.93m to Judges carpark (including right of carriageway to the car park) and an irregular frontage of 42.5m along Woodriff Street excluding the entry to Judges carpark. A 8m splay is also provided to the intersection of Woodriff Street and Union Lane.

The subject site is relatively level and is provided with three large mature brushbox trees along its perimeter fronting Woodriff Street as well as a number of gum trees (mostly Eucalyptus microcorys and Corymbia maculate) adjacent to the adjoining multi level carpark along its western boundary. The allotment is currently used for at grade car parking accessed from the existing right of carriageway from Woodriff Street which also services Judges Carpark.

The owner of the subject site is Penrith City Council.

Directly adjoining the subject site to the west is a three level Council owned public car parking facility known as Judges Carpark. This car parking facility is accessed from an existing right of carriageway off a roundabout on Woodriff Street. To the north of the subject site along the opposite side of Union Lane are a number of attached single or two level commercial tenancies (with frontages primarily onto High Street) provided also with three (3) walk through arcades to High Street in the vicinity of the subject site. Directly opposite the site on the intersection of Union Lane and Woodriff Street is Memory Park which also maintains a frontage onto High Street.

To the east of the subject site along the opposite side of Woodriff Street are a variety of commercial tenancies of varying scale including a two storey building directly opposite Union Lane and a motor vehicle tyre repair station on the intersection of Woodriff Street and the north side of Tindale Street. To the opposite side of this intersection (along the southern side of Tindale Street and Woodriff Street) is a two storey commercial building maintaining a number of tenancies including a restaurant on the street corner.

## Proposal

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The development application is for the construction of an eight (8) storey serviced apartment building including:

- Two (2) levels of basement car parking each containing 41 parking spaces on each level for an overall total of 82 parking space. These parking spaces are broken down as follows: 60 accommodation spaces, 12 visitor spaces, 6 disabled spaces and 4 service vehicle spaces;
- Ground floor consisting of a reception area to the serviced apartment building, two (2) retail tenancies each provided with an identified north facing outdoor dining area, commercial tenancy, toilet facilities and waste rooms to service the proposed building. The proposed retail tenancies are provided with respective areas of 79m<sup>2</sup> and 128m<sup>2</sup> with the proposed commercial tenancy provided with an area of 215m<sup>2</sup>;
- Vehicular access to the proposed basement levels is provided within the subject site via an internal driveway accessed from the existing right of carriageway off Woodriff Street which also services the adjoining Judges Carpark to the west of the subject site. Vehicles will exit the subject site via a basement ramp onto Union Lane;
- Waste collection is proposed from Union Lane via the use of a proposed 'waste indentation bay' for service vehicles;
- The provision of a total of fifty eight (58) serviced apartments from level 1 (podium level) to level 6. The serviced apartments are broken down as follows: fifty four (54) two bedroom apartments and four (4) three bedroom apartments;
- A common outdoor seating area is proposed to the podium level along the western side of the subject site

incorporating a terrace area and landscape features. This podium area is to be provided above the entry to Judges Carpark; and

- Level 7 consisting of conference room, gymnasium, toilets and outdoor swimming pool with associated servery, general seating area and bbq area.

The accompanying Statement of Environmental Effects has also provided the following discussion in relation to management, hours of operation and employee numbers as follows;

*It is expected there will be a small number of managers on site at any one time (2-3 expected) and that cleaning staff will be onsite when required.*

*The operation of the serviced apartments will be 24/7, with check-ins expected in the afternoon and check-outs expected in the mornings.*

*Any future use of ground floor tenancies is expected to be subject of future and separate development applications.*

The application will provide for the removal of all existing trees on the subject site. The construction of the proposal will also provide for the temporary closure of the existing right of carriageway to the adjoining Judges Car Park which is expected to be up to a period of 12 months. In this regard, the application has been accompanied by a temporary alternate access plan to Judges Car Park through an existing at grade Council car park adjoining the subject site to the south which would also provide for a new opening to the southern elevation of Judges Car Park.

## **Background**

Development Application DA16/1083 was originally provided to Lot 101, DP 1031340 (maintaining an area of 2009m<sup>2</sup>) and also over part of Lot 105, DP 1215261 (maintaining an area of 1, 298m<sup>2</sup>) for a total site area identified for the development of 2,732m<sup>2</sup>. Lot 105, DP 1215261 (also owned by Penrith City Council) primarily served as a road reserve area to the front of Lot 101, also the access to Judges Car park as well as being positioned in part to the front of the adjoining southern Lot (No. 27-33 Woodriff Street). Discussions were held with the applicant in regard to either consolidating the lots as a result of the proposal or alternatively providing for an adjustment to these lot boundaries so that the entire proposal would be only over a single allotment.

In this regard, DA17/0890 was received by Penrith City Council and granted Development Consent on the 15 November, 2017 providing for Torrens title subdivision x 2 residue lots and road widening to Lot 101, DP 1031340 and Lot 105, DP1215621. DA17/0890 provided for the securing of a legal right of access to the Judges Car Park by way of an extension to the road reserve and easements for access. In this regard, Lot 105 was severed to allow for the creation of 2 x residue lots either side of the resulting road reserve.

This in turn has provided for the creation of Lot 107, DP 1236304, which will remain as residue land and Lot 106, DP 1236304 (subject of this development application replacing Lot 101, DP 1031340) with a revised overall site area of 2,471m<sup>2</sup>.

The application has also been subject to a pre-lodgement meeting held with relevant Council staff members on the 21 October, 2014. In addition, the application has been subject to a number of Urban Design Review Panel Meetings (UDRP) held with Council dating back to October, 2014, May 2016, July 2016 and August 2016 prior to the formal lodgement of the Development Application proper. In addition, the application has been subject to a number of UDRP meetings since the receipt of the application as part of the provided Design Excellence Competition Waiver under Clause 8.4 of the Penrith Local Environmental Plan 2010.

## Plans that apply

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- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy No 64—Advertising and Signage
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

## Planning Assessment

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- **Section 23G – Sydney Western City Planning Panel (SWCPP)**

Under Section 2.12 and 2.15 (previously Section 23G) of the Environmental Planning and Assessment Act, 1979, a regional panel is taken to be the Council whose functions are conferred on a regional panel.

A regional panel has the function of determining applications for a Council related development that has a capital investment value (CIV) of more than \$5 million as well as when Council is a party to any agreement or arrangement relating to the development.

The proposal is provided with a CIV of \$15,000,000. In addition, the applicant and Council have been subject to ongoing discussions in relation to a response to a call for expressions of interest in the development of the subject site. In this regard, the Sydney Western City Planning Panel is required to determine the current application.

- **Section 79C - Evaluation**

The development has been assessed in accordance with the matters for consideration under Section 4.15 (previously Section 79C) 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 No 55—Remediation of Land**

Clause 7 of State Environmental Planning Policy No. 55 (SEPP 55) outlines the following requirements that a consent authority consider prior to the issue of a consent for any development:

*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.*

In light of the above requirements, the application was accompanied by a 'Detailed Contamination Assessment and Remedial Action Plan' (DCA) referencing and summarising the findings of a Preliminary Contamination Assessment (PCA) that had been undertaken on the subject site. In this regard, the following comments were provided by Council's Environmental Management Staff in relation to contamination,

*The DCA includes sampling and analysis of an area of the site identified as "Area 1". This same area was also the subject of the PCA. The DCA states that a recommendation of the PCA was "sampling and testing of soil in the southern portion of the site (a right of carriageway and easement for services), as this was outside the current assessment". The DCA does not include an assessment outside of "Area 1" and does not further discuss or address this recommendation. As sampling outside of Area 1 was a recommendation of the PCA, the DCA is required to address this aspect of the site contamination investigation and remediation works.*

*The PCA identified elevated nickel, TPH and PAH concentrations and the detection of friable asbestos. The DCA included further soil sampling and analysis in accordance with NSW EPA guidelines and found friable asbestos in one fill sample (TP9) and bonded asbestos in another fill sample (TP8). The DCA states "Area 1 contains PHA and asbestos contaminated fill materials elevated TPH and metals concentrations" and that disposal of the contaminated fill materials at a NSW EPA licensed landfill facility is considered the most appropriate remediation option for the site. The application includes a Remedial Action Plan (RAP) and no objection is raised to the proposed method of remediation (excavation, removal for off-site lawful disposal and validation of the site). This remediation strategy is consistent with the proposed development which includes extensive excavation for basement level car parking.*

*The applicant has submitted an addendum contamination report, assessing the soil of Area 1 by Geotechnique PTY LTD (date 22 June 2018). Council is satisfied the report has been conducted and reviewed against current applicable guidelines, with all test results being below relevant Ecological Investigation levels and Health Investigation levels for residential use with minimal opportunities for soil access (high density living). Therefore, the site is deemed suitable for the proposed residential development with basement parking.*

As a result, it is considered that the proposed development is compliant with the provisions of SEPP 55.

## **State Environmental Planning Policy No 64—Advertising and Signage**

The application has been accompanied by elevation plans which have identified the provision of signage to the façade of the eastern elevation in the form of 'Astina' wording to Level 7. While so, the application has not been accompanied with an assessment of the proposed signage as required by *State Environmental Planning Policy No. 64 - Advertising and Signage* which sets out planning controls for advertising and signage in New South Wales.

Noting the above, should the application be granted Development Consent, a condition is to be included with any determination requiring a separate development application for the erection of a sign or advertising structure (other than an advertisement listed as exempt development) complying with the requirements of SEPP 64 and the Penrith Development Control Plan 2014.

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

*Sydney Regional Environmental Plan No. 20 - Hawkesbury-Nepean River (No. 2 - 1997)* (SREP 20) integrates planning with catchment management to protect the Hawkesbury-Nepean river system, requiring the impact of future land use to be considered in a regional context. The plan covers water quality and quantity, environmentally sensitive areas, riverine scenic quality, agriculture and urban and rural-residential development. It controls development that has the potential to impact on the river environment. The plan applies to all parts of the catchment in the Sydney region (15 local government areas, including Penrith), except for land covered by *Sydney Regional Environmental Plan No. 11 - Penrith Lakes Scheme*. SREP 20 is supported by an Action Plan which includes actions necessary to improve existing conditions.

The development proposal is in accordance with the general planning considerations set out in Clause 5 of SREP 20 and the relevant specific planning policies and related recommended strategies set out in Clause 6. In particular, provision will be made for adequate erosion and sediment control measures. Council's Development Engineers have reviewed the application and subject to recommended conditions of consent relating to stormwater, erosion and sediment controls have no objections to the proposal.

## Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Complies - See discussion
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies - See discussion
Clause 4.3 Height of buildings	Does not comply - See discussion
Clause 4.4 Floor Space Ratio	Complies - See discussion
Clause 4.6 Exceptions to development standards	Complies - See discussion
Clause 5.9 Preservation of trees or vegetation	Complies - See discussion
Clause 5.10 Heritage conservation	N/A
Clause 5.11 Bush fire hazard reduction	N/A
Clause 7.2 Flood planning	Complies - See discussion
Clause 7.4 Sustainable development	Complies - See discussion
Clause 7.6 Salinity	Complies - See discussion
Clause 7.7 Servicing	Complies
Clause 7.8 Active street frontages	Complies - See discussion
Clause 8.1 Application of Part	Complies - See discussion
Clause 8.2 Sun access	N/A
Clause 8.3 Minimum building street frontage	Complies - See discussion
Clause 8.4 Design excellence	Complies - See discussion
Clause 8.5 Building separation	Complies - See discussion
Clause 8.6 Serviced apartments	Complies - See discussion
Schedule 5 Environmental Heritage	Complies - see Appendix - LEP 2010

### Clause 1.2 Aims of the plan

The proposal has been assessed against the aims of the Penrith Local Environmental Plan 2010 and is found to be acceptable in that:

- (a) the development will provide opportunities for employment and services supportive of Penrith City Council's role as a regional city in the Sydney Metropolitan Region whilst supporting the established city centre.
- (b) the proposed use as serviced apartments is considered consistent with the future vision for activities within the penrith precinct;
- (c) The design and siting of the proposed development will contribute to the provision of a high quality streetscape and will provide safe pedestrian access arrangements along both Woodriff Street and Union Lane.

### Clause 2.3 Permissibility



The subject site is located within a B4 Mixed Use zone. The proposal is for the construction of an 8 storey serviced apartments building with commercial and retail tenancies and ancillary conference room, roof top swimming pool area and gymnasium. Serviced apartments as well as commercial premises are permissible within the zoning, with the consent of Council.

### **Clause 2.3 Zone objectives**

The proposal has been assessed against the objectives of the B4 Mixed Use zone and is found to be compliant. The application proposes a bulk and scale commensurate with the anticipated and desired built form for this area of the Penrith City centre and will provide opportunity for a range of employment options through the serviced apartments development and the ancillary commercial and retail spaces proposed at ground floor. Further, the development is found to be supportive of Penrith City Council's Short Term Accommodation Study which identifies an existing demand for short stay accommodation in close proximity to the city centre.

### **Clause 4.3 Height of buildings**

The subject site is provided with a maximum building height of 24m under the PLEP. The application is provided with a flat roof (RL55.40) for part of top level (accommodating a conference room, gymnasium and associated uses) and a lift overrun (RL56.40) which provide for a non compliance on the subject site of between 2.5m (overall height of 26.5m) and 2.7m (overall height of 26.7m) increasing due to a small fall in the existing site's gradient and 3.2m (overall height of 27.2m) respectively for each of these structures. In addition, a parapet feature wall is proposed to the exterior of the northern and western elevations (from RL54.80 to a maximum RL56.502) providing for a non compliant height ranging from 2m to 3.7m for this architectural feature.

In this regard, the application as amended was accompanied with a '*4.6 Exception to development standard*' which has discussed the nature of the height non compliance. Discussion in regard to the non compliance is provided for under a separate title within this report.

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

The subject site is provided with a maximum floor space ratio of 3:1. The original application received by Penrith City Council provided for a non compliant floor space ratio of 3.07:1. Following discussions with Council staff, an amended application was received providing for a numerically compliant floor space ratio of 2.97:1 on the original identified site area of 2,732m<sup>2</sup>.

DA17/0890 was granted Development Consent on the 15 November, 2017 providing for Torrens title subdivision x 2 residue lots and road widening to Lot 101, DP 1031340 and Lot 105, DP1215621 on the subject site. In this regard, the approved boundary adjustment provided for a reduced the overall site area of 2,471m<sup>2</sup>.

A reassessment of the application as amended has been provided (based upon the revised site area) and in this regard, the proposed floor space ratio is provided at 3.31:1, which is therefore non compliant with the maximum permissible floor space ratio for the subject site. In this regard, the application as amended was accompanied with a '*4.6 Exception to development standard*' which has discussed the nature of the non compliance. Discussion in regard to the non compliance is provided for under a separate title within this report.

### **Clause 4.6 Exceptions to development standards**

The application is non compliant with the height of building and floor space ratio development standards under *Clause 4.3 Height of building* and *Clause 4.4 Floor space ratio* respectively of the Penrith Local Environmental Plan 2010. The subject site is provided with a maximum building height of 24m and a maximum floor space ratio of 3:1 under the PLEP.

An assessment of the provided architectural plans in relation to overall height has identified that the application is provided with a flat roof for part of top level (accommodating a conference room, gymnasium and associated uses) and a lift overrun which provide for a non compliance on the subject site of between 2.5m (overall height of 26.5m) and 2.7m (overall height of 26.7m) increasing due to a small fall in the existing site's gradient and 3.2m (overall height of 27.2m) respectively for each of these structures. In addition, a parapet feature wall is proposed to the exterior of the northern and western elevations providing for a non compliant height ranging from 2m to 3.7m for this architectural feature. The proposed height will provide for an exceedance above the maximum permissible height by 15%

In relation to floor space ratio, an assessment of the architectural plans has identified that the proposed floor space ratio is provided at 3.31, which will provide for an exceedance above the maximum permissible floor space ratio by 11%.

Clause 4.6 of the Penrith Local Environmental Plan 2010 provides that development consent may be granted for development even though the development would contravene a development standard. This is provided that the relevant provisions of the clause are addressed, in particular subclause 3-5 which provide:

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

*(a) the consent authority is satisfied that:*

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

*(b) the concurrence of the Secretary has been obtained.*

*(5) In deciding whether to grant concurrence, the Secretary must consider:*

*(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

*(b) the public benefit of maintaining the development standard, and*

*(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The application has been accompanied by a revised Clause 4.6 Variation Request prepared by Stimson & Baker Planning dated September, 2018 in relation to the building height and floor space ratio non-compliances. In this regard, each non compliance is to be discussed separately below;

#### Building Height

The following commentary has accompanied the 4.6 Variation request in relation to how strict compliance

with the development standard is unreasonable or unnecessary in this particular case;

*The proposal meets the general intent of clause 4.3 Height of Buildings and complies with the objectives of this development standard and more generally the zone as follows:*

- *The proposal is compatible with the height, bulk and scale of the emerging and desired future character of the locality and with the surrounding development. This was demonstrated within the plans originally submitted with Council, showing the breach in height would not create any impacts on nearby or adjoining properties.*
- *The proposal does not impact on the visual amenity, reduces views or minimises loss of privacy or solar access.*
- *There is no heritage item on the site.*
- *The proposal provides a high quality urban form and provides a building that can contribute to a varying skyline given the recent increase in height limit in this area.*
- *The high-quality form of the proposal has been supported through the waiving of an Architectural Design Competition (see attached Design Competition Waiver from the NSW Government Architect). The development is able to achieve design excellence.*
- *It is unreasonable to apply the height limit across the site in this case as the proposal does not impact on the visual amenity nor does it reduce views or minimises loss of privacy or solar access. The orientation of the building, the stepping of the building and facade treatment minimises shadow impacts with the majority of the shadow falling on car park or open space to the south.*
- *The proposed development meets the objectives of the zone and the height of building clause, it contributes to the provision of necessary land uses within the Penrith City in locations in close proximity to services and facilities.*

*Given the spatial context of the building, the proposed encroachment will not present as a perceptible element. It is considered that the proposal is in the public interest and strict compliance with the standard in this instance is both unreasonable and unnecessary.*

#### Discussion in regard to building height non-compliance

It is considered that the commentary provided by the accompanying 4.6 Variation in relation to the non compliant height has adequately addressed why compliance with the development standard is unreasonable in this instance. The objectives for building height under Clause 4.3 of the PLEP are considered to have been maintained as it is not considered that the visual impact of the height non-compliance is of a nature which will create for instance a loss of privacy or an inappropriate impact upon solar access to adjoining properties. In addition, the proposed built form and design are considered to provide for an appropriate relationship with the adjacent heritage listed Memory Park. Taking into consideration the corner nature of the subject site, the proposed non compliant height is not considered will create an adverse bulk and scale relationship to future redevelopments of surrounding lots also maintaining the same B4 zoning and 24m height restriction, which is the case for allotments directly to the north, west and east of the subject site.

A departure from the height development standard is therefore considered acceptable in this instance. The section of the applicant's written request relating to height non compliance is considered to have provided for sufficient environmental planning grounds to justify contravening the development standard and is not inconsistent with the objectives of Clause 4.3.

#### Floor Space Ratio

The following commentary has accompanied the 4.6 Variation request in relation to how strict compliance with the development standard is unreasonable or unnecessary in this particular case;

*Strict compliance with the FSR control is both unnecessary and unreasonable in the circumstances of this application. It is unnecessary because of the same reasons cited for the breach of height limit;*

- The proposal does not impact on the visual amenity, reduces views or minimises loss of privacy or solar access.*
- There is no heritage item on the site.*
- The proposal provides a high quality urban form and provides a building that can contribute to a varying skyline given the recent increase in height limit in this area.*
- The high quality form of the proposal has been supported through the waiving of an Architectural Design Competition (see attached Design Competition Waiver from the NSW Government Architect). The development is able to achieve design excellence.*

*Requiring compliance would be unreasonable based on the history of the site area. In this regard the following is noted.*

- When lodged, the site area was indicated by the architect as being 2,732sqm. With some 8,391sqm of GFA being proposed, the resultant FSR was 3.07:1. It is noted that the current GFA proposed of 8,092sqm would have resulted in a compliant FSR of 2.96:1.*
- The site area had been determined by Council through the acquisition process.*
- At the time Council indicated they wished to proceed with the subdivision, and based on their draft subdivision plan, 8,092sqm of GFA was proposed on a proposed site area of 2,583sqm, the resultant FSR being 3.13:1.*
- The Council proceeded with the subdivision, despite the proponents requests to wait for the DA to be finalised, with a further reduced site area of 2,471sqm. The resultant FSR has been calculated as being 3.27:1.*
- Of particular interest is the version of the proposal that was approved by the Government Architects Office for the Design Competition Waiver, which based on the original site area of 2,732sqm, proposed an FSR of 3.1:1. The Design Competition Waiver was awarded on that scheme.*

*The final design of the proposed building that was acceptable to all relevant parties (UDRP, Council assessment staff at the time) has an FSR of 8,092sqm. On the original site area, as noted above, it would have been a complying FSR at 2.96:1. It is submitted that requiring compliance with the FSR standard is simply unreasonable given the current site area was determined by Council part way through the assessment process, and after the design and size of the building had been negotiated. The final site area determined by Council allows for areas of land that would have otherwise been required to be dedicated to Council post-consent (ie corner splay and splays around the entry to the existing roundabout), land that would have reasonably been considered as part of 'the site' in any other scenario. To require the proponent to redesign the development on this issue at this point in the process would result in considerable financial impact for the proponent and jeopardise the viability of the project, without any discernible improvement on the built outcome.*

#### Discussion in regard to floor space ratio non-compliance

Commentary provided by the accompanying 4.6 Variation request is correct in acknowledging that the original floor space ratio provided with an 'Excellence Design Waiver' was in excess of the maximum FSR permitted on the subject site. It is also acknowledged that following the approval of DA17/0890, the design as amended which provided for a compliant FSR was converted to a non-compliant FSR due to the loss of a portion of the overall site area. While so and as indicated within this report, 'Design Excellence' is considered to have been maintained for the application via comments provided on the final amended design as provided by Penrith Council's Urban Design Review Panel (UDRP). This is consistent with the waiver provided for design excellence which requested that the UDRP continue to review the application.

Noting the above, the bulk and scale of the proposal is considered consistent with the objectives for floor space ratio as provided by Clause 4.4 of the PLEP. This may be categorised via the design providing for a high quality development as provided by UDRP comments. In addition, the exceedance in floor space is not considered to detract from a built form which is not desired for the locality. The scale and presentation of the application is also not considered to detract from the adjoining Memory Park and its listed Heritage Significance under the PLEP. The amenity provided for future users is also considered to be of an appropriate standard which can also be contributed to the proposed floor space provided on each level. In addition, noting the nature of the application, the additional floor space provided is not considered to create an unacceptable impact on traffic generation to the existing road network for instance acknowledged by Council's Traffic Engineering Section's acceptance of the accompanying Traffic Impact Assessment Report.

### Conclusion

The application has been accompanied by a Clause 4.6 Variation request to both overall building height and floor space ratio which is considered acceptable in this instance. Taking into consideration the distinctive characteristics of the subject site, it is not considered that non-compliance with each development standard is unreasonable in the circumstances of the case. The built form is not considered to have generated an unacceptable environmental impact on its surrounds and is considered consistent with the objectives for building height and floor space ratio within the PLEP. In this regard, it is considered that the requirements of Clause 4.6(3) of the PLEP have been adhered to in this instance.

In addition to the above, the application is considered to have achieved consistency with the objectives of each respective development standard and also the objectives of the subject sites zone which allow the proposed development to be considered to be in the public interest. In this regard, it is also considered that Clause 4.6(4) of the PLEP have been appropriately adhered to.

Noting the above points, it is considered appropriate in this instance to see as appropriate Council's support for the request in PLEP height variation and floor space ratio.

### **Clause 5.9 Preservation of trees or vegetation**

The application was accompanied by a letter from Conzept Landscape Architects in relation to the proposed removal of a number of existing trees on the subject site. The correspondence identified the removal of trees affected by the proposal as well as trees to be retained and replacement trees. In this regard, the application was reviewed by Council's Tree Management Officer and Landscape Architect who have raised no objection subject to a number of conditions to be included with any determination granted.

### **Clause 7.2 Flood planning**

Clause 7.2 of the Penrith Local Environmental Plan provides that development consent must not be granted for development on land that is at or below the flood planning level unless the consent authority is satisfied that the development;

- (a) is compatible with the flood hazard of the land, and*
- (b) if located in a floodway, is compatible with the flow conveyance function of the floodway and the flood hazard within the floodway, and*
- (c) is not likely to adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- (d) is not likely to significantly alter flow distributions and velocities to the detriment of other properties or the environment, and*
- (e) is not likely to adversely affect the safe and effective evacuation of the land and the surrounding area, and*
- (f) is not likely to significantly detrimentally affect the environment or cause avoidable erosion, destruction of riparian vegetation or affect the restoration and establishment of riparian vegetation, or a reduction in the stability of river banks or waterways, and*
- (g) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding, and*
- (h) incorporates appropriate measures to manage risk to life from flood, and*
- (i) is consistent with any relevant floodplain risk management plan.*

An assessment of the application has identified that the subject site is affected by overland flows during the 1% Annual Exceedance Probability (AEP) storm event and in this regard was accompanied by an Overflow Assessment Report. The application as amended was referred to Council's Senior Development Engineer who has advised as follows;

*The amended overland flow flood assessment is acceptable. Flood levels for the 1% AEP local storm event were issued by Council and vary from RL 28.7m at the eastern boundary to RL 28.5m at the western boundary. Finished floor levels of the development are at RL 29.2m AHD providing 0.5m freeboard which is acceptable. Basement entry levels are at RL 29.0 which provides 0.5m freeboard to the western flood level and 0.3m freeboard to the eastern flood level which is also acceptable.*

Noting the above, the proposal is acceptable subject to the provision of appropriate conditions with any determination granted.

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

The proposal has been assessed against the principles of sustainable development and is considered to be compliant. The proposal provides a site responsive design with quality solar access, opportunity for natural ventilation and is located in close proximity to Penrith Railway Station and bus routes.

#### **Clause 7.6 Salinity**

The subject site is affected by moderate salinity. While so, it is considered that appropriate measures can be taken to avoid or reduce any undesirable effects that may be created as a consequence of the proposed development via appropriate conditions of consent.

#### **Clause 7.8 Active street frontages**

An active street frontage has been identified as a necessary inclusion for the application in accordance with Clause 7.8 of the Penrith LEP. The accompanying *Active Street Frontage Map* has identified that Woodriff Street frontage is subject to this requirement with the Clause in part reading as follow;

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

*(4) Despite subclause (3), an active street frontage is not required for any part of a building that is used for any of the following:*

- (a) entrances and lobbies (including as part of mixed use development),*
- (b) access for fire services,*
- (c) vehicular access.*

*(5) In this clause, a building has an active street frontage if all premises on the ground floor of the building facing the street are used for the purposes of business premises or retail premises.*

An assessment of the accompanying architectural plans has identified that a retail tenancy is proposed to the Woodriff Street frontage adjoining the Union Lane intersection while a commercial tenancy is proposed adjoining the vehicular entrance off Woodriff Street. While described as a 'commercial tenancy', it is noted that this definition of a commercial premises within the Penrith LEP does also include a business or retail premises and in this regard, no concern is raised in relation to the proposed use. The application as amended will also provide for ramped access to each tenancy along the Woodriff Street frontage which is considered to allow for direct access from the proposed footpath area. Noting the above, compliance with this Clause is considered to be achieved.

#### **Clause 8.1 Application of Part**

The subject site is located within the area defined as "*Penrith City Centre*" on Council's Clause Application Map and as such, *Part 8 Local Provisions - Penrith City Centre* applies.

#### **Clause 8.3 Minimum building street frontage**

Clause 8.3 'Minimum building street frontage' of the Penrith LEP provides for the following requirement;

*(1) Development consent must not be granted for the erection of a building on land in Zone B3 Commercial Core or Zone B4 Mixed Use that does not have at least one street frontage of 20 metres or more.*

*(2) Despite subclause (1), development consent may be granted for the erection of a building on the land if the consent authority is satisfied that:*

*(a) due to the physical constraints of the site or an adjoining site or sites, it is not possible for the building to be erected with at least one street frontage of 20 metres or more, and*

*(b) the development is consistent with the aims and objectives of this Plan.*

As the subject site is located within a B4 Mixed Use zone, the above clause is applicable. In this regard, an assessment of the accompanying architectural plans have identified that the Woodriff Street is provided with a street frontage length greater than 20m with a separate retail and commercial tenancy proposed. In this regard, the proposal is compliant with this Clause.

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

Clause 8.4 of the PLEP 2010 stipulates that development consent must not be granted for a development involving the construction of a new building, or external alterations to an existing building, on land to which this clause applies unless Council is of the opinion that the proposal exhibits design excellence. An assessment as to whether the proposal exhibits design excellence must consider the following:

*(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) whether the development will detrimentally impact on any land identified as "Area 4" on the Height of Buildings Map,*

*(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.*

In addition to the above, development in respect of a building that is greater than 24m or 6 storeys (or both) in height and development that has a capital value of \$1,000,000 on a key site identified on the PLEP 2010 Key Sites Map, must be the subject of an architectural design competition. Notwithstanding the above, the applicant may seek a written exemption from the Director-General stating that an architectural design competition is not required.

Although the subject site is not identified on Council's Key Sites Map, the proposal is greater than 6 storeys and 24 metres in height and as such, the development must undergo an architectural design competition or seek a written exemption from the Director-General. In this regard, it is noted that correspondence was issued by the NSW Office of the Government Architect on 5 December, 2016 providing for a waiver to the design competition requirements pursuant to Clause 8.4 of the PLEP. In granting the waiver, a requirement was provided that the Penrith City Urban Review Panel (UDRP) continue to review the project, to ensure that design excellence for the project is maintained.

Noting the above, the application was provided to the UDRP on a total of 6 occasions during the assessment process with plans incorporating amendments in each instance. In this regard, the following commentary from the UDRP has been provided on the final set of plans accompanying this report;

*The proposed modification demonstrates a degree of design excellence which exceeds quality of the original concept and the development proposal dated September 2016 which received the GAO's design competition waiver in December 2016:*

- i 'Sculpted' articulation of building forms together with architecturally-refined compositions of facades would provide visually-superior backdrops to the CBD skyline as well as to surrounding public places.*
- ii Street and laneway frontages provide superior-quality public spaces which respond positively to the amenity and character of Memory Park and Woodriff Street next to the roundabout intersection with Tindale Street.*
- iii Back-of-house service areas have been consolidated and provide a less-intrusive backdrop to the eastern end of Union Lane which operates as a 'shareway'.*
- iv Communal areas have been refined and provide more-effective backdrops which overlook surrounding streets and parks, and which display visible activity.*
- v Proposed landscaping responds to the formal qualities of Memory Park as well as to the informal character of existing tree-plantings in Judges Park.*
- vii Sustainability has been addressed by additional design details which include balcony screens and podium-level landscaping.*
- viii Architectural documentation demonstrates how features of the proposed modification would contribute to design excellence.*

*With regard to considerations in relation to design excellence which are specified by subclause 8.4(2) of PLEP 2010:*

*i A high standard of architectural design, materials and detailing appropriate to the building type and location would be achieved:*

- *Plans include detailed sections together with finishes schedules which confirm the diversity and quality of proposed exterior materials and finishes*

*ii Form and external appearance of the development would improve the quality and amenity of the public*

domain:

- *A well-articulated building form together with carefully-composed facades respond positively to 'visibility in the round';*
- *In particular example, the north-eastern corner of the building provides a 'sculpted' backdrop to Memory Park, and an architecturally-dramatic façade which would be visible from the intersection of High and Woodriff Streets (the primary vantage points from which this building would be seen).*

*iii The development would not detrimentally impact any view corridor:*

- *The building would be located at the end of Tindale Street, but the existing council carpark to the west of the Site blocks scenic vistas along that street toward the lower mountains*

*iv The development responds to streetscape constraints which include the heritage-listed Memory Park:*

- *The proposed building form has a Y-shape which responds to the Site's irregular geometry, and comprises two narrow intersecting wings which inherently-moderate the building's mass and scale;*
- *At street level, the form of the building 'flows' along the eastern boundary as well as providing an indented forecourt and entrance opposite Memory Park;*
- *Landscape treatment of the Site's frontages provide green backdrops to Woodriff Street and forecourt which complements Memory Park.*

*v Form of the development demonstrates a positive relationship with other buildings (existing or future):*

- *The proposed development is surrounded by two storey buildings, and neighbouring properties currently have potential to accommodate seven storey buildings;*
- *In relation to future development, the proposed height is one storey taller but, due to effective articulation, that difference would not be apparent;*
- *In relation to existing neighbours, effective articulation of the proposed building form moderates scale and avoids a bulky appearance;*
- *For example, scale of the visually-prominent Woodriff Street façade would be moderated significantly by the proposed podium together with splayed and stepped wall-and-balcony elements which present heights of six and seven storeys, and which stand forward of the 'penthouse' element which comprises one-to-two storeys.*

*vi The building form demonstrates appropriate bulk, massing and modulation:*

- *Details of articulation and modulation were described in sub-paragraphs i, ii and v above;*
- *Due to effective articulation, the proposed building form would not display a bulky appearance, and would provide appropriate backdrops to surrounding public places*

*vii Street frontage heights are appropriate:*

- *Foreground elements of elevations that face Woodriff Street and Union Lane vary in overall height from five to six storeys, but overall heights are moderated by tiers of balconies which represent the dominant architectural elements of these elevations and which have heights of four or five storeys;*
- *Proposed street frontage heights are taller than the 20m control which is specified by chapter E11 of PDCP 2014, but this numeric non-conformity would not be inherently-inappropriate: the Site is an 'island' which would be visually-separated from future redevelopment of neighbouring properties and, due to the combination of separation and highly-effective articulation, the proposed street frontage heights would not present unacceptable contrasts with the form of numerically-conforming developments that might occur nearby*

*viii Form and design demonstrate appropriate consideration of sustainable design, overshadowing, wind and reflectivity:*

- *The proposed building form would not overshadow any significant public places that provide CBD focal points;*
- *Extensive glazed elements are protected by screened balconies, and facades do not incorporate finishes which are highly-reflective;*
- *Effective control of summer sunlight into the proposed building would be achieved by screening of extensive window elements, together with taller landscaping which is proposed along the eastern street frontage and upon the west-facing podium.*

*ix Principles of ecologically sustainable development are achieved:*

- *Design responses to principles of ESD were noted in sub-paragraph viii above*

*x The development responds positively to requirements for pedestrians, vehicles and service access:*

- *The proposed development has successfully accommodated complicated requirements for vehicle access to the Site and the neighbouring carpark, as well as providing appropriate ground level interfaces to Woodriff Street and Union Lane;*
- *Due to the effective arrangement of access for vehicles and servicing, street frontages have not been visually-dominated by back-of-house services or driveways;*
- *Form and design of the 'porte-cochere' vehicle entrance provides a high-quality semi-public space (rather than a utilitarian 'back door');*
- *Due to a highly-effective ground floor layout, pedestrian pathways from surrounding arcades, footpaths and parks have been woven 'seamlessly' into the proposed development.*

*xi The development includes positive improvements to the public domain:*

- *Positive public domain improvements were noted by sub-paragraphs iv and x in relation to frontages facing Woodriff Street and Union Lane, and to the public carpark entry.*

*In conclusion, it is considered that the modified proposal:*

*i Demonstrates design excellence according to considerations which are specified by sub-clause 8.4 of PLEP 2010.*

*ii Exceeds the level of quality which was achieved by plans dated September 2016 which were the subject of a design competition waiver that was granted by the GAO.*

*iii Meets requirements that were specified by the GAO's design competition waiver dated December 2016.*

Noting the comments provided above, the proposal has been assessed against the matters for consideration expressed within Clause 8.4(2)(a) through (e) and is found to satisfy those matters and exhibits design excellence. The design of the building is site responsive, includes active ground floor uses and is considered to be of an appropriate height, bulk and scale in the context of the site. The non-compliant height and floor space ratio under the LEP associated with the proposal is considered to still maintain an acceptable planning solution for the subject site, also noting that the subject site itself has been reconfigured with a reduction in its overall size via a previous boundary adjustment approval granted under Development Consent DA17/0890. The proposed built form is therefore considered an acceptable addition to the Penrith CBD, is considered to provide for an attractive façade and appropriate relationship with its surrounds including the heritage listed Memory Park to the north.

Pursuant to the 'Design Excellence' requirements, the application was returned for the concurrence of the

NSW Government Architect following the receipt of final UDRP comments noting the updated variations to the overall design including the varied floor space and height. A response from the Government Architect was provided dated 10 September, 2018 granting concurrence.

**Clause 8.5 Building separation**

Clause 8.5 of the Penrith LEP reads as follows;

*Buildings on land to which this Part applies must be erected so that the separation distance:*

- (a) from neighbouring buildings, and*
- (b) between separate parts or other separate raised parts of the same building,*

*is not less than that provided for in a development control plan made by the Council.*

As the application will provide for serviced apartments in association with commercial uses on the ground floor, the requirements of *State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development* are not applicable in this instance. While so, the separation distances provided from the proposed building, noting also its location on a corner allotment are considered compliant with the requirements of the Penrith Development Control Plan 2014.

**Clause 8.6 Serviced apartments**

The proposal complies with the Serviced Apartments clause in that no strata subdivision is proposed as part of this application.

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

There are no draft environmental planning instruments applicable to the subject site or to the proposed development.

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

### Development Control Plan 2014

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

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

There are no planning agreements applying to this proposal.

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

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 who have not raised any objection to the proposal subject to the recommended standard conditions of consent to be provided with any determination granted.

Further, the application was accompanied with an Access Assessment Report concluding that the proposal is capable of complying with the applicable provisions of the Building Code of Australia. In this regard, the proposed development complies with the applicable requirements of the Regulations.

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

### *Context and Setting*

The subject site is currently vacant and used for public car parking purposes in association with the adjoining Judges Carpark. In this regard, the proposal will provide for a significant transformation of this corner block and introduction to the Penrith CBD of a built form in line with the desired objectives of the subject site's B4 - Mixed Use zone. While providing for an overall building height and floor space ratio which is numerically non compliant with Council's LEP controls, the height encroachment is still considered to maintain an acceptable bulk and scale, noting the recessed nature of the upper floor and its positioning which is not considered to create an immediate visual impact on its surrounds when viewed from either Union Lane or Woodriff Street. In addition, the non compliant floor space ratio is not considered to create any identifiable impact on the proposed built form or create additional amenity impact upon its surrounds.

The proposal is considered to provide for appropriate setbacks, street activation with the selected materials also considered to be sympathetic to the local area as well as providing for an appropriate relationship to the adjoining Memory Park to the north noting its local significance as a heritage item under the PLEP. In addition and as described within a separate title within this report, the proposal is also considered to have appropriately demonstrated a positive response to the Penrith Local Environmental plan's design excellence considerations. The built form is appropriately placed on the subject site with a defined podium level. The proposed balconies are considered to provide for articulation to each public façade with the introduction of privacy louvres to these balconies adding a favourable horizontal proportion to these vertical elements. The proposed balcony balustrading, slotted windows and signature design elements to the north eastern facing entry opposite Memory Park is considered to allow for an attractive design which will enhance its surrounds.

The location of conference and recreation facilities to the top storey is also considered to make effective use of any available panoramic views while ground floor facilities is considered to stimulate pedestrian activity along Woodriff Street and Union Lane. Noting the above points, the proposal is considered to provide for an appropriate use of the subject site and acceptable relationship to its surrounds.

### ***Amenity***

Consideration is to be given to the impacts of the built form and operations of the subject site to future occupants and surrounding properties in the immediate vicinity as follows;

#### **(a) Solar Access**

The application will provide for 10 apartments each on levels 1 to 5 with a further 8 apartments provided to level 6. Of the overall 58 apartments proposed, 46 apartments (79% of the total) are provided with eastern, northern and western perspectives which are considered to allow for an appropriate level of solar access throughout the day. Comparatively, an application providing for a residential flat building under the requirements of State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development and accompanying Apartment Design Guide requires a minimum of 70% of units to receive a minimum of 2 hours solar access throughout the day. In this regard, the location of proposed apartments is considered to provide for an overall appropriate amenity for a majority of future occupants of the building.

#### **(b) Overshadowing**

The location of the proposed built form on the subject sites corner allotment is considered to maintain an acceptable restriction on the amount of overshadowing created to surrounding properties. The application was accompanied by an analysis of overshadowing created to adjoining properties. This analysis has identified that there will be no solar access loss for any commercial or residential properties until 12pm (midday) in which shadowing will then commence to be created over No. 12 Trindale Street which is provided on the intersection of Woodriff Street. It is noted that the two level building currently provided to

this opposite site is used for commercial purposes and in this regard, the proposal will not create any loss of solar access to any surrounding residential uses.

(c) Overlooking

As the subject site is located within an existing B4 - Mixed Use zone, the potential for overlooking concerns created by the proposal is considered minimal. The proposal is provided with vistas to its western and southern boundaries to the existing Judges Car Park and to open space used for at grade car parking, therefore creating no loss of amenity. To the north of the subject site are either single or two level commercial built form. Therefore views will predominately be of existing roof forms creating no amenity loss to the opposite side of Union Lane. To the east of the subject side along the opposite side of Woodriff Street are a number of existing commercial uses which will not be impacted by overlooking concerns noting their current operations, the width of Woodriff Street and associated street planting.

It is also noted that architectural plans have been amended to also incorporate moveable horizontal privacy screens which will serve to restrict views of future occupants from public areas and adjoining properties.

(d) Light Spill

As the adjoining use to the west of the subject site is in the form of a public car park, it is noted that the potential may exist for the use of this facility during the evening period to create an impact upon the amenity of future occupants within the proposal via light spill. Judges Car Park currently operates from 6am to 10pm, with lighting maintained for a period after 10pm for safety purposes. In addition, it is acknowledged that the movement of vehicles would create the potential for car headlight intrusion to the subject site. In this regard, a number of apartments along the built forms western façade fronting Judges Car Park may be impeded. The application was accompanied by an Obtrusive Lighting Report prepared by 'Design by Bow' who have indicated that proposed landscaping to the boundary will assist in shielding the light trespass and headlight intrusion. The accompanying report was provided to Council's Environmental Management team for consideration who raised no objections to the findings subject to appropriate conditions being included with any determination granted.

Noting the above, should the application be approved, the accompanying Obtrusive Lighting Report is to be incorporated as part of the conditions of consent.

***Traffic and Car Parking***

The proposal will provide for a total of 82 car parking spaces which will exceed the minimum number of parking spaces generated by the proposed use. As a result of the proposal, it is expected that there will be some increase in the volume of traffic entering and exiting the site, however this is considered unlikely to impact negatively upon the existing local network noting that the site is currently used for car parking purposes which does facilitate the movement of motor vehicles. It is also noted that the application has been accompanied by architectural plans identifying the location of additional car parking spaces to the south of the existing Judges Car Park during the construction phase (which will also maintain access to and from Judges Car Park) which has been considered an acceptable design solution by Penrith Council.

The proposal will provide for the use of an existing right of carriageway facilitating Judges Car Park with vehicles entering the subject site via a right hand turn from this entry to an internal driveway which will then provide access to either the underground basement or to a pick up and drop off zone (incorporating also a vehicle waiting area). To minimise potential conflict to the existing Judges Car Park entry, signage is to be provided requiring vehicles accessing the proposal to give way to existing vehicles from Judges Car Park. This is not considered to create any noticeable traffic delays noting that vehicles will come from Woodriff Street from a round-a-bout rather than a signalised intersection which will allow for a continued movement

of vehicles in and out of the right of carriageway to either Judges Car Park or the proposal.

Vehicles will exit the site onto Union Lane either from the basement level or from an internal driveway leading from the drop off and pick up area. This is considered an appropriate design solution which will allow for a disposal of vehicular movements from the subject site. Vehicles exiting onto Union Lane will be provided with a right hand turn noting its one way nature. The accompanying Traffic Assessment Report has indicated that the proposal will generate during morning or afternoon peak periods an average trip every 3.3 minutes. In this regard, it is noted that this accompanying traffic report was also provided to Council's Traffic Engineering Section who raised no objection to the proposal subject to the provision of appropriate conditions to be included with any determination.

### **Noise**

The accompanying Statement of Environmental Effects has identified that the proposed serviced apartments are to operate on a 24 hour basis, 7 days a week with, '*check-ins expected in the afternoon and check-outs expected in the morning*'. The operation of the proposal on a 24 hour basis within this location of the Penrith CBD is not considered will create an immediate impact to adjoining and surrounding properties or their operation and is considered appropriate in this instance.

In addition, the application was supported by an Acoustic Impact Assessment report prepared by Rodney Stevens Acoustics, dated 4 June, 2018. This accompanying report has identified that the proposed gymnasium to the top level is not to be used between the hours of 10pm and 7am as well as further noise mitigation measures to minimise any potential disturbances to occupants in apartments directly below. The accompanying report was reviewed by Council's Environmental Management Section and considered acceptable. In this regard, appropriate conditions are to be provided with any determination granted.

The application will also provide for a swimming pool, recreation area and servery to Level 7, but while so has not identified the proposed hours of use for this area and pool. To minimise potential disturbances to surrounding properties and also noting that noise and vibration generated by the use of the swimming pool may cause an adverse acoustic impact to occupants of apartments directly below, it is considered appropriate to restrict its hours of use to between 8am to 9pm. It is noted that this pool would also not be highly populated during the cooler winter period with most users using this facility in the warmer periods of the year. In this regard, the proposed hours are considered appropriate to also align with the period of night fall in high summer.

Level 7 will also provide for a conference room, which has also has not been identified with hours of operation. In this regard, operational hours between 8am to 9pm is considered appropriate noting its commercial surrounds. It is also expected that proposed mechanical services may potentially create disturbances to either occupants of the building or adjoining properties. In this regard, any determination granted will be provided with an appropriate condition regulating offensive noise in accordance with the provisions of the Protection of the Environment Operations Act 1997.

### **Landscaping**

The application was accompanied by landscaping plans for various aspects of the proposal and an indicative planting schedule. The application has provided for a significant amount of deep soil zone to both the Woodriff Street and Union Lane frontages to provide for a number of new street trees as well as shrubs and other forms of vegetation. In addition, the proposal will provide for mass planting as well as climbers to the western boundary adjoining the existing Judges Car Park, plus vegetation via planter boxes to the podium level to a surrounding deck area to serve as common area for future occupants. The number and type of plants proposed is primarily in response to the removal of existing trees on the subject site noting current tree species provided along the Woodriff Street façade and adjoining the existing Judges Car



parking facility.

The nature of landscaping proposed is not provided to primarily screen the proposal from an adjoining use but rather to enhance the appearance of the proposal. In this regard, the location of planting to the perimeter of the site and especially along Woodriff Street is considered acceptable noting their placement within deep soil zones. The application has also identified a number of green walls with climbers, in particular to the main north eastern entry which is considered to enhance the building presentation as well as serving as a function to clearly define the buildings entry. Planting proposed along the eastern boundary to the ground and first floor will provide a visual barrier between the proposal and the adjoining car parking facility which is considered an appropriate design solution for the subject site.

In this regard, the proposed landscape design is considered to provide for an acceptable response to the subject sites surrounds especially along the western boundary via proposed street trees as well as attempting to enhance the existing pedestrian routes along Woodriff Street which subject to appropriate conditions provided with any determination granted is considered an acceptable addition to the public domain.

### ***Public Domain***

The application will provide for a refurbishment of existing public domain facilities to both the Woodriff Street and Union Lane frontages. Supporting documentation has indicated the location of new street tree planting and planting in garden beds separating the existing and proposed footpath along Woodriff Street as well as additional planting, public furniture and steps between the existing and proposed footpath to this frontage. It is also noted that the Union lane frontage has been identified as maintaining a pedestrian link from the site boundary, along the side of the proposed waste indentation bay to the north eastern corner of the subject site.

A review of the accompanying architectural and landscaping plans by Council's Landscape Architect have identified a number of issues which will require clarification including a reconsideration of the proposed street tree species, provision of compliant kerb ramps and compliance with the Penrith CBD Public Domain Technical Manual. In addition, the provision of steps to the road reserve area as well as a number of planter boxes is not considered an appropriate treatment for a commercial frontage and will require further design consideration in line with the identified treatment of this area in line with the requirements of the Penrith CBD Public Domain Technical Manual. In this regard, should the application be approved, appropriate conditions are to be included requiring a number of modifications and further information to be provided to the satisfaction of Penrith Council in relation to the public domain prior to its redesign.

### ***Accessibility***

The application was accompanied by an Accessibility Assessment Report prepared by 'Function Making Life Fit'. The report outlines that the proposal either complies with, or can comply with, the relevant accessibility provisions within the Building Code of Australia, Disability (Access to Premises) Standards (2010) and Penrith DCP 2014. In this regard, the accompanying report has provided recommendations to be included with any construction in relation to the proposed car parking, continuous accessible paths of travel to entrances, external paths of travel and landscaped area, retail / commercial tenancies, common areas, passenger lifts, stairways and internal accessible paths of travel on residential apartment levels. The report has also identified of the 58 serviced apartments to be provided that apartments 101, 105 and 201 are to be provided as accessible with apartments 301, 401 and 501 indicated to be adaptable apartments.

Noting the above, the recommendations contained in the accessibility report are to be included with any determination for inclusion in the detailed construction plans for the proposal.

### ***Construction/Noise Impacts***

The accompanying architectural plans have identified that the extent of the proposed basement levels will encroach upon the existing entry to Judges Car Park and in this regard, any construction works will require the closure of the existing access handle for an extended period of time. In this regard, the application was accompanied by a 'Temporary Traffic Diversion and Site Storage Location Plan' (DA29) which has identified that access to this car park will be provided by a new access point adjoining the subject site to the south at No. 27-33 Woodriff Street which also currently provides for at grade car parking. This will provide for a new entry to the southern side of Judges Car Park in turn temporarily removing four (4) existing parking spaces to facilitate for the new entry / exit. This plan was reviewed by Council Officers and considered acceptable and will be incorporated with any determination granted.

In addition to the above, it is considered that construction at the subject site will have a temporary affect on the amenity of the area due to noise and equipment/machinery. Standard conditions of consent are recommended with regard to hours of construction, noise and dust suppression and soil and sediment control.

### ***Social & Socio-Economic Impacts***

The development is not considered likely to result in any negative social impact in the area. The proposal has been assessed against the principles and objectives contained within the Penrith DCP specifically those related to safety and security and is compliant in this regard. The development of the site will facilitate the provision of short term or tourist and visitor accommodation and employment opportunities within the local government area in accordance with the aims of the Penrith LEP 2010.

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

The proposal is considered to have addressed the constraints of the subject site, in particular with the interface with the development to the west currently maintaining a three (3) level public car park building and in regard to the right of carriageway which currently facilitates this car park. Overall, the subject site is deemed suitable for the development for the following reasons:

- The site is zoned to permit the proposed use as serviced apartments;
- The use is considered compatible with surrounding and future adjoining land uses;
- Stormwater from the site is able to drain to Council's satisfaction;
- The grade and area of the site is capable of providing for, or connecting to the infrastructure required to service and maintain the development; and
- The proposal aligns with the desired future character of the Penrith CBD.
- The design is considered to maintain existing infrastructure services (for instance provided by Telstra) traversing the subject site.

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

### **Community Consultation**

The development application was advertised in the local newspaper and notified to owners and occupiers of adjoining and nearby properties pursuant to the requirements of the Regulations and in accordance with Council's Development Control Plan. Affected property owners and occupiers were notified in the surrounding area and invited to make a submission on the proposal during the exhibition period from 4 to 18 November, 2016. During this period, two (2) submissions were received including a submissions from Telstra who currently maintain infrastructure services on the subject site.

Following discussions with the applicant, the submission from Telstra was withdrawn subject to appropriate

consultation being provided for with Telstra prior to any occupation of the building. In this regard, should the application be approved, appropriate condition(s) of this nature will also be provided for.

The concerns raised in the outstanding submission is addressed below.

**Issue: The proposal will remove the existing amount of car parking currently on the subject site.**

**Comment:** The subject site currently provides for an informal at grade car parking arrangement on part of the subject site with access provided from the existing right of carriageway also serving Judges Carpark. While it is acknowledged that the construction of the proposal will remove the existing spaces from the subject site (estimated to be up to 50 spaces), it is noted that this arrangement, while maintained for an extended period of time is an informal arrangement with this site identified for redevelopment by Penrith Council.

The application has also been accompanied by a temporary traffic diversion and site storage location map which has identified that existing at grade car parking adjoining the existing Judges Carpark may be increased in size to accommodate additional car parking spaces. The proposed temporary measures are considered to allow for continued access to the Judges Carpark during construction with any determination granted to be conditioned to include temporary access arrangements prior to the commencement of any construction works.

**Issue: The construction of the proposal will create disruptions to the existing loading bays along Union Lane via these spaces being occupied by tradespersons during this period.**

**Comment:** The development will be subject to a condition requiring that prior to the commencement of any works associated with the development, that a Traffic Control Plan must be prepared in accordance with Australian Standard 1742.3 *"Traffic Control Devices for Works on Roads"* and the Roads and Maritime Services publication *"Traffic Control at Worksites"* and certified by an appropriately accredited Road and Maritime Services Traffic Controller. In addition to this requirement, Union Lane will be subject to normal inspection by Penrith Council's to determine if any illegal parking is occurring associated with construction works. Should Council receive complaints of illegal practices including the parking of tradespersons in loading bay areas, this will be appropriately investigated.

**Issue: Business along High Street will not survive the loss of the Loading Zone for the twelve month period of construction on the subject site.**

**Comment:** It is not considered that the proposal can be held responsible for the economic viability and continued operation of business' along High Street. It is noted that the application does not intend to alter the existing loading bay arrangements along Union Lane which will also be subject to regular inspections by Penrith Council's Rangers who will also respond to any complaints received in regard to activities along Union Lane.

**Issue: Concern in regard to proposed stop signage to be included into the exit lane from Judges car park onto Woodriff Street will give priority to traffic turning into the Astina hotel and also impact upon the orderly flow of traffic out of the carpark**

**Comment:** The application as amended has identified that motor vehicle traffic turning into the proposed serviced apartments from the existing right of carriageway (also servicing Judges carpark) will give way to traffic from vehicles leaving Judges car park. In this regard, any development approval granted will include a condition requiring appropriate signage to be provided prior to the occupation of the proposed building.

## **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	No objections - subject to conditions
Environmental - Environmental management	No objections - subject to conditions
Environmental - Waterways	No objections - subject to conditions
Environmental - Public Health	No objections - subject to conditions
Waste Services	No objections - subject to conditions
Traffic Engineer	No objection subject to conditions
Community Safety Officer	No objections - subject to conditions
Tree Management Officer	No objections - subject to conditions

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

The public interest is best served by the orderly and economic use of land for purposes permissible under the relevant planning regime and in accordance with the prevailing planning controls. In this regard, the proposed works are considered to be consistent with the relevant planning provisions. Subject to compliance with conditions of any development consent and modifications to the development design as outlined within this report, the proposal is considered worthy of support.

### Section 94 - Developer Contributions Plans

Section 7:11 (previously Section 94) contributions apply to the proposed development. The Penrith Development Control Plan 2014 contains a requirement that a maximum of 60% of commercial car parking be provided on site. The remainder of the spaces should be provided through public parking in the CBD funded by way of developer contributions. Council has no objection to the provision of greater than the 60% maximum being provided for onsite however the applicable contributions must still be paid. Given that a total of 10 commercial spaces are required by the commercial tenancy portion of the development, 4 public car parking spaces must be paid for by way of the adopted Section 7.11 contribution plan.

Serviced Apartments is defined as a type of *Tourist and Visitor Accommodation* under the Penrith Local Environmental Plan 2010. It is noted that while serviced apartments provide self-contained accommodation to tourists or visitors on a commercial basis, the use does not satisfy the definition of a commercial premises which is considered to be either a business, office or retail premises. In this regard, Section 7.11 contributions do not apply to the serviced apartments portion of the proposal.

Noting the above, the following development contribution plans apply to the proposed development;

- 422 square metres of commercial space @ \$186.00 = \$78,492.00
- Four (4) car parking spaces above the 60% of commercial car parking provided on site @ \$21,944.00 = \$87,776.00

The total Section 7.11 contributions applicable to the proposal is \$166,268.00. In this regard, appropriate conditions of consent will be provided with any Development Consent granted.

## Conclusion

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The proposed development has been assessed in accordance with the relevant provisions of the environmental planning instruments and Development Control Plan pertaining to the land. The provision of serviced apartments and ground floor retail and commercial tenancies is a permissible use under the site's B4 Mixed Use zoning. A regional panel has the function of determining applications for a Council related development that has a capital investment value (CIV) of more than \$5 million as well as when Council is a party to any agreement or arrangement relating to the development. As the proposal is provided with a CIV of \$15,000,000. and Council is the owner of the subject site, the Sydney Western City Planning Panel is required to determine the current application.

The proposal will provide for a built form which is considered to be consistent with the objectives of the Penrith CBD under the Penrith Local Environmental Plan 2010 (PLEP) and Part E11 of the Penrith Development Control Plan 2014. While the proposal has provided for a height of building and floor space ratio non compliance with each respective development standard under the PLEP (being Clause 4.3 and 4.4 respectively), it is considered that the application has been accompanied by a acceptable 'Exception to Development Standards' variation request as required under Clause 4.6 of the Penrith LEP.

As the proposal will provide for the development in respect to a building that is greater than 24 metres and 6 storeys in height, under Clause 8.4(3) of the PLEP, development consent must not be granted unless an architectural design competition has been held in relation to the development. Notwithstanding, the application has been accompanied by a 'Design Excellence Competition Request for Waiver' under Clause 8.4(4) of the PLEP. As a condition of this waiver, it is noted that the Penrith City Urban Design Review Panel was required to provide for a continual review of the application and any design modifications. In this regard, it is noted that this was conducted throughout the history of the application which has taken into consideration numerous modifications to the design. The final design and supporting architectural documentation forming part of this report is considered to demonstrate a positive responses to the LEP's 'design excellence' considerations and is supported by the Penrith City Urban Design Review Panel.

Pursuant to the 'Design Excellence' requirements, the application was returned for the concurrence of the NSW Government Architect following the receipt of final UDRP comments noting the updated variations to the overall design including the varied floor space and height. A response from the Government Architect was provided dated 10 September, 2018 granting concurrence.

The proposal is considered to provide for an appropriate response to the constraints of the subject site and allow for an appropriate addition to the Penrith CBD. The design will allow for an appropriate continuation of pedestrian movement along Union Lane and Woodriff Street and subject to appropriate conditions, it is considered that the public domain will be appropriately treated.

It is considered that the application has provided for an appropriate resolution of the use of the existing right of carriageway servicing Judges Car Park which will also allow for acceptable vehicular access to the proposed parking facilities serving the built form. In addition, the provision of a waste indentation bay along Union Lane is considered an appropriate design solution to allow for the removal of waste via service vehicles. The application is also considered to have provided for an acceptable temporary plan of access to Union Car park while construction on the subject site is underway.

While the proposed building will represent one of the first significant redevelopments for this part of the Penrith CBD, the design of the building is considered as discussed within this report to show design excellence separate to the non compliant building height and floor space provided. The bulk, scale and presentation of the building is considered an appropriate addition to the Penrith CBD, maintaining existing amenities to adjoining properties while providing for a positive relationship to surrounding buildings and public places.

The proposed development has been assessed against the relevant heads of consideration contained in Section 2.12, 2.15 and 4.15 of the *Environmental Planning and Assessment Act, 1979* and has been found to be satisfactory. The site is suitable for the proposed development and the proposal subject to compliance with conditions is in the public interest. The proposal is therefore worthy of support.

## **Recommendation**

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That DA16/1083 for an eight (8) storey serviced apartment building containing fifty eight (58) Serviced Apartments, related facilities, three (3) ground floor commercial tenancies and two (2) levels of basement car parking on Lot 106, DP 1236304 be approved subject to the attached conditions.

## CONDITIONS

### General

- The development must be implemented substantially in accordance with the following plans approved by the Sydney Western City Planning Panel, the application form and any supporting information received with the application, except as may be amended in red on the approved plans and by the following conditions.

Doc No.	Issue	Title	Prepared By	Date
<b>Architectural Plans</b>				
DA11	B	Demolition Plan	Morson Group	27 August, 2018
DA12	C	Floor Plan – Basement B1 & B2	Morson Group	13 April, 2018
DA13	E	Floor Plan – Ground Level	Morson Group	24 August, 2018
DA14	D	Floor Plan – Podium Level	Morson Group	24 August, 2018
DA15	D	Floor Plan – Typical Levels 2-5	Morson Group	24 August, 2018
DA16	D	Floor Plan – Level 6	Morson Group	24 August, 2018
DA17	C	Floor Plan – Level 7	Morson Group	6 August, 2018
DA18	C	Roof Plan	Morson Group	6 August, 2018
DA19	E	Elevations – North & South	Morson Group	27 August, 2018
DA20	D	Elevations – East & West 1	Morson Group	27 August, 2018
DA21	D	Elevations – West 2 & South 2	Morson Group	24 August, 2018
DA22	C	Overall Sections – Sheet 1	Morson Group	6 August, 2018
DA23	C	Overall Sections – Sheet 2	Morson Group	6 August, 2018
DA24	C	Façade Cross Section	Morson Group	13 October, 2016
DA25	C	Traffic & Footpath Planning	Morson Group	13 October, 2016
DA26	BP	Adaptable Apartments & Porte Cochere Details	Morson Group	
DA28	C	Window Schedule & Elevations	Morson Group	24 August, 2018
DA29	A	Council Easement Plan	Morson Group	4 May, 2018
DA29	A	Temporary Traffic Diversion & Site Storage Location	Morson Group	13 October, 2016
<b>Stormwater Plans all Job Reference No. E286341</b>				
D1	B	Details, Notes & Legend	Donovan Associates	2 March, 2018
D2	B	Stormwater Management Basement Level 2 Floor Plan	Donovan Associates	2 March, 2018
D3	B	Stormwater Management Basement Level 1 Floor Plan	Donovan Associates	2 March, 2018
D4	B	Stormwater Management Site / Ground Floor Plan	Donovan Associates	2 March, 2018
D5	B	Stormwater Management Podium Level Plan	Donovan Associates	2 March, 2018
D6	B	Stormwater Management Roof Plan	Donovan Associates	2 March, 2018
D7	B	Stormwater Management WSUD Plan	Donovan Associates	2 March, 2018
D8	B	Stormwater Details	Donovan Associates	2 March, 2018
D9	B	Sediment Control Plan	Donovan Associates	2 March, 2018
D10	B	Sediment Control Details	Donovan Associates	2 March, 2018
<b>Landscape Plans all Drawing No. LPDA 16 - 505</b>				
1	G	Landscape Plan (Ground Level)	Conzept Landscape Architects	21 August, 2018

2	E	Landscape Plan (Podium Level)	Conzept Landscape Architects	7 March, 2018
3	B	Specification & Detail	Conzept Landscape Architects	21 August, 2018

- Waste Management Plan prepared by Elephants Foot Recycling Solutions, Revision B, Copy No. 2, dated 27 September, 2016;
- Detailed Contamination Assessment and Remediation Action Plan prepared by Geotechnique Pty Ltd, Report No. 13704/2-AA, dated 14 July, 2016;
- Contamination Assessment of Soil prepared by Geotechnique Pty Ltd, Job No. 13704/3, Reference no. 13704/3-AA, dated 22 June, 2018;
- Acoustic Impact Assessment prepared by Rodney Stevens Acoustics, Report No. 170016R1, Revision 1, dated 4 June, 2018;
- Overland Flow Assessment prepared by Donovan Associates, Reference No. E286341, Issue C, dated 2 March, 2018;
- Water Sensitive Urban Design Strategy prepared by Donovan Associates, Job Reference No. E286341, Issue B, dated 2 March, 2018;
- Draft Site Specific Operations and Maintenance Manual prepared by Donovan Associates, Job Reference No. E286341, dated 12 October, 2016;
- Energy Efficiency Evaluation under Section J of the BCA 2016 prepared by Partners Energy, Reference 6030, dated 27 July, 2016;
- Access Review prepared by Funktion, Issue DA 02, dated 27 September, 2016;
- Refuse Collection Arrangements associated with proposed mixed use development prepared by Stanbury Traffic Planning, dated 10 April, 2018;
- Obtrusive Lighting Report prepared by Designbybow, dated 8 June, 2018; and
- Landscape Design letter prepared by Konzept Landscape Architects, dated 12 January, 2018.

2 The development shall not be used or occupied until an Occupation Certificate has been issued.

3 A **Construction Certificate** shall be obtained prior to commencement of any building works.

4 Mud and soil from vehicular movements to and from the site must not be deposited on the road during construction works.



5 Construction works will be restricted to the following hours in accordance with the NSW Environment Protection Authority Noise Control Guidelines:

- Mondays to Fridays, 7am to 6pm
- Saturdays, 7am to 1pm (if inaudible on neighbouring residential premises), otherwise 8am to 1pm
- No construction work is permitted on Sundays and Public Holidays.

In the event that the construction relates to works inside the building and do not involve external walls or the roof, and do not involve the use of equipment that emits noise then the construction works are not restricted to the hours stated above.

The provisions of the Protection of the Environment Operations Act, 1997 in regulating offensive noise also apply to all construction works.

- 6 Prior to occupation of the commercial tenancies within the building, separate Development Approval is to be obtained to use each tenancy within the building.
- 7 A separate Development Application for the erection of a sign or advertising structure, other than an advertisement listed as exempt development, is to be submitted to Penrith City Council, complying with the requirements of Penrith Development Control Plan 2014.
- 8 For the purpose of preserving the amenity of neighbouring properties, hours of operation (Monday to Sunday) for the following uses are to be restricted to between:-
- Serviced Apartments Reception: 24 hours
  - Gymnasium: 7am to 10pm
  - Swimming Pool and servery: 8am to 9pm
  - Conference Room: 8am to 9pm
- 9 **Prior to the issue of an Occupation Certificate**, correspondence is to be provided to the nominated Certifying Authority from Telstra indicating that the telecommunication facilities located upon the subject site have been maintained in a manner to the satisfaction of Telstra.
- 10 A temporary car park and access to Judges Car Park as shown on Drawing No. DA29, Issue A, 'Temporary Traffic Diversion & Site Storage Location', dated 13 October, 2016 prepared by Morson Group forming part of the consent is to be provided and operated during the construction period.
- 11 Strata subdivision of the building or part of the building to be used as serviced apartments is not permitted.
- 12 No approval is expressed or implied by this consent for the development to operate as a residential flat building.
- 13 **Prior to the issue of an Occupation Certificate**, evidence is to be provided to the certifying authority that the Torrens Title Subdivision x 2 Residue Lots & Road Widening provided by DA17/0890 has been registered with the NSW Land Registry Services.

- 14 The external walls of the building including attachments must comply with the relevant requirements of the National Construction Code (NCC). Prior to the issue of a Construction Certificate and Occupation Certificate the Certifying Authority and Principal Certifying Authority must:
- (a) Be satisfied that suitable evidence is provided to demonstrate that the products and systems proposed for use or used in the construction of external walls including finishes and claddings such as synthetic or aluminium composite panels comply with the relevant requirements of the NCC; and
  - (b) Ensure that the documentation relied upon in the approval processes include an appropriate level of detail to demonstrate compliance with the NCC as proposed and as built.
- 15 Prior to the commencement of the development's use and in perpetuity, the following community safety and crime prevention through environmental design (CPTED) requirements shall be satisfied:

#### **Lighting**

- Pedestrian pathways, laneways and access routes in outdoor public spaces should be lit to the minimum Australian Standard of AS 1158. Lighting should be consistent in order to reduce the contrast between shadows and illuminated areas. Lighting should be designed in accordance with AS 4282 – Control of the obtrusive effects of outdoor lighting.

#### **Graffiti/Vandalism**

- Graffiti resistant coatings must be used to external surfaces where possible, including signage, furniture, retaining walls etc.
- Procedures must be in place to ensure the prompt removal and/or repair of graffiti or vandalism to the buildings, fencing, commercial tenancies and common areas. This includes reporting incidents to police and/or relevant authorities.

#### **Letter Boxes**

- Any letterboxes provided must not be placed on an independent block separate from the main building envelope of the development.
- Consideration must be given to incorporating letterboxes within the main entry of the building with slots only facing to the street and having regard to Australia Post requirements.

## **Environmental Matters**

- 16 Erosion and sediment control measures shall be installed **prior to the commencement of works on site** including approved clearing of site vegetation. The erosion and sediment control measures are to be maintained in accordance with the approved erosion and sediment control plan(s) for the development and the Department of Housing's "Managing Urban Stormwater: Soils and Construction" 2004.
- 17 All waste materials stored on-site during construction works are to be contained within a designated area such as a waste bay or bin to ensure that no waste materials are allowed to enter the stormwater system or neighbouring properties. The designated waste storage areas shall provide at least two waste bays / bins so as to allow for the separation of wastes, and are to be fully enclosed when the site is unattended.

- 18 All excavated material and other wastes generated as a result of the development are to be re-used, recycled or disposed of in accordance with the approved waste management plan.

Waste materials not specified in the approved waste management plan are to be disposed of at a lawful waste management facility. Where the disposal location or waste materials have not been identified in the waste management plan, details shall be provided to the Certifying Authority as part of the waste management documentation accompanying the Construction Certificate application.

All receipts and supporting documentation must be retained in order to verify lawful disposal of materials and are to be made available to Penrith City Council on request.

- 19 The operating noise level of plant and equipment shall not exceed 5dB(A) above the background noise level when measured at the boundaries of the premises. The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.

20 No fill material shall be imported to the site until such time as a Validation Certificate (with a copy of any report forming the basis for the validation) for the fill material has been submitted to Council. The Validation Certificate shall:

- state the legal property description of the fill material source site,
- be prepared by an appropriately qualified person (as defined in Penrith Contaminated Land Development Control Plan) with consideration of all relevant guidelines (e.g. EPA, ANZECC, NH&MRC), standards, planning instruments and legislation,
- clearly indicate the legal property description of the fill material source site,
- provide details of the volume of fill material to be used in the filling operations,
- provide a classification of the fill material to be imported to the site in accordance with the Environment Protection Authority's "Environmental Guidelines: Assessment, Classification & Management of Non-Liquid Wastes" 1997, and
- (based on the fill classification) determine whether the fill material is suitable for its intended purpose and land use and whether the fill material will or will not pose an unacceptable risk to human health or the environment.

An appropriately qualified person/s (as defined in the Penrith City Council Contaminated Land Development Control Plan) shall:

- Supervise the filling works,
- (On completion of filling works) carry out an independent review of all documentation relating to the filling of the site, and shall submit a review findings report to Council and any Principal Certifying Authority,
- Certify by way of a Compliance Certificate or other written documentation that fill materials have been placed on the site in accordance with all conditions of this consent and that the site will not pose an unacceptable risk to human health or the environment. A copy of the Compliance Certificate or other documentation shall be submitted to Council and any Principal Certifying Authority.

The contact details of any appropriately qualified person/s engaged for the works shall be provided with the Notice of Commencement.

If the Principal Certifying Authority or Penrith City Council is not satisfied that suitable fill materials have been used on the site, further site investigations or remediation works may be requested. In these circumstances the works shall be carried out prior to any further approved works.

{Note: Penrith Development Control Plan 2014 defines an appropriately qualified person as "a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, soilscience, eco-toxicology, sampling and analytical procedures, risk evaluation and remediation technologies. In addition, the person will be required to have appropriate professional indemnity and public risk insurance."}

21 If any suspect materials are encountered during any stage of future earthworks/ site preparation, the Unexpected Finds Management Protocol (prepared by Geotechnique, Attachment E, date 22 June 2018, Reference No. 13704/3-AA) is to be complied with at all times during the excavation and construction phase of the development.

- 22 The gymnasium floor is to be entirely covered with A1 Rubber flooring system and EVA foam flooring (flooring material outlined in the Acoustic Report prepared by Rodney Stevens Acoustics, date 9 June 2018, Ref: 170016R1, Revision 1).

With the exception of the designated treadmill area, this area is to be covered in accordance with the approved Acoustic Report by Rodney Stevens Acoustics, date 9 June 2018, Ref: 170016R1, Revision 1.

A certificate is to be obtained from a qualified acoustic consultant certifying that the gymnasium flooring has been constructed to meet the noise criteria in accordance with the approved acoustic report. This certificate is to be submitted to the Principal Certifying Authority **prior to the issue of an Occupation Certificate**.

- 23 Site remediation works shall be carried out generally in accordance with the approved Detailed Contamination Assessment and Remedial Action Plan prepared by Geotechnique Pty Ltd. dated 14 July 2016 (Report. No. 13704/2-AA) as well as Penrith Development Control Plan 2014, the ANZECC and NHMRC Guidelines (1992) and applicable NSW Environment Protection Authority Guidelines.

On completion of the site remediation works, the following documentation is to be submitted for approval to the Principal Certifying Authority and Penrith City Council, if Council is not the Principal Certifying Authority:

- Written notification that the site remediation works have been completed is to be submitted within 30 days of the said works having been completed.
- Prior to the commencement of works, a Validation Report, prepared by an appropriately qualified person as defined in Penrith Development Control Plan 2014, is to be submitted before any building work can commence on the remediated site. The report shall certify that the remediation works have been carried out in accordance with the approved Remedial Action Plan, relevant NSW Environment Protection Authority requirements and Penrith Development Control Plan 2014.

- 24 No public address systems will be used in the gymnasium at this site.
- 25 **Prior to commencement of remediation**, a site plan is to be provided to Council for approval that shows key site locations during the remediation works, including the proposed locations of the truck entry/exit, the loading area, the decontamination zone and those areas that may be used for stockpiling of contaminated materials.
- 26 The recommended landscaping details to reduce intrusive light from neighbouring developments, as detailed in the Obtrusive Lighting Report prepared by Design by Bow, dated 8 June 2018 are to be undertaken **prior to the issue of any Occupation Certificate**.
- 27 The on-waste infrastructure provided within the development is to be built in accordance with configurations specified in the plan Drawing No. DA13 - Floor Plan-Ground Level, Revision E, dated 24 August, 2018 prepared by Morson Group. On-site waste infrastructure is permissible to change only in accordance with conditions stipulated by Council's Waste Service Department.

28 The following waste management requirements must be complied with and details of compliance demonstrated **prior to the issue of an Occupation Certificate**:

- All on-site waste collection infrastructure, doors and access points (Waste Chute Room, Waste Collection Room, Commercial Waste Room and Bulky Waste Room) are to be locked through an Abloy Key System to permit access to the respective Collection Contractor.
- All on-site waste collection infrastructure (Waste Chute Room, Waste Collection Room, Commercial Waste Room and Bulky Waste Room) are to provide wash facilities through the use of a centralised mixing valve and hose cock. Respective drainage and water proofing to be installed to support the use of hose facilities.
- The provision of regulatory signage labelled "No Parking - Waste Collection and Removalist Vehicles Excepted" (R5-445 or R5-447 modified) is required to be installed along the frontage of the building (Union Lane) to accommodate a 10.5m Heavy Rigid Waste Collection Vehicle (22.5m long loading bay). A sign plan is to be submitted identifying the location of the parking restrictions to be endorsed by Council's Local Traffic Committee and adopted by Council prior to implementation.
- All on-site waste collection infrastructure (Waste Chute Room, Waste Collection Room, Commercial Waste Room and Bulky Waste Room) is to have 1.8m outwards opening (180 degrees) dual doors to permit access of 1100L bins.

29 **Prior to the issue of an Occupation Certificate** the following is to be submitted to and approved by Penrith City Council:

- For the internal movement of 1100L bins, a bin tug device is required to be provided and stored within the development in accordance with section 3.6 of the 'Residential Flat Building Guideline' document. Device specifications, use and operational requirements are required to be submitted to Council for approval.

## BCA Issues

30 The owner of a building, to which an essential fire safety measure is applicable, shall provide Penrith City Council with an annual fire safety statement for the building. The annual fire safety statement for a building must:

(a) deal with each essential fire safety measure in the building premises, and

(b) be given:

- within 12 months after the last such statement was given, or
- if no such statement has previously been given, within 12 months after a final fire safety certificate was first issued for the building.

As soon as practicable after the annual fire safety statement is issued, the owner of the building to which the statement relates:

- must also provide a copy of the statement (together with a copy of the current fire safety schedule) to the Commissioner of New South Wales Fire Brigades, and
- prominently display a copy of the statement (together with a copy of the current fire safety schedule) in the building.

31 All aspects of the building design shall comply with the applicable performance requirements of the Building Code of Australia so as to achieve and maintain acceptable standards of structural sufficiency, safety (including fire safety), health and amenity for the on-going benefit of the community. Compliance with the performance requirements can only be achieved by:

- (a) complying with the deemed to satisfy provisions, or
- (b) formulating an alternative solution which:
  - complies with the performance requirements, or
  - is shown to be at least equivalent to the deemed to satisfy provision, or
- (c) a combination of (a) and (b).

It is the owner's responsibility to place on display, in a prominent position within the building at all times, a copy of the latest fire safety schedule and fire safety certificate/ statement for the building.

## Utility Services

32 A Section 73 Compliance Certificate under the Sydney Water Act 1994 shall be obtained from Sydney Water. The application must be made through an authorised Water Servicing Coordinator. Please refer to "Your Business" section of Sydney Water's website at [www.sydneywater.com.au](http://www.sydneywater.com.au) then the "e-developer" icon, or telephone 13 20 92.

The Section 73 Compliance Certificate must be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

33 **Prior to the issue of a Construction Certificate**, a written clearance is to be obtained from Endeavour Energy stating that electrical services have been made available to the development or that arrangements have been entered into for the provision of services to the development.

In the event that a pad mounted substation is necessary to service the development (as identified on the provided architectural and landscaping plans), Penrith City Council shall be consulted over the proposed location of the substation before the Construction Certificate for the development is issued as the location of the substation may impact on other services and building, driveway or landscape design already approved by Council.

## Construction

- 34 Stamped plans, specifications, a copy of the development consent, the Construction Certificate and any other Certificates to be relied upon shall be available on site at all times during construction.

The following details are to be displayed in a maximum of 2 signs to be erected on the site:

- the name of the Principal Certifying Authority, their address and telephone number,
- the name of the person in charge of the work site and telephone number at which that person may be contacted during work hours,
- that unauthorised entry to the work site is prohibited,
- the designated waste storage area must be covered when the site is unattended, and
- all sediment and erosion control measures shall be fully maintained until completion of the construction phase.

Signage but no more than 2 signs stating the above details are to be erected:

- at the commencement of, and for the full length of the, construction works onsite, and
- in a prominent position on the work site and in a manner that can be easily read by pedestrian traffic.

All construction signage is to be removed when the Occupation Certificate has been issued for the development.



35 Prior to the commencement of construction works:

(a) Toilet facilities at or in the vicinity of the work site shall be provided at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be:

- a standard flushing toilet connected to a public sewer, or
- if that is not practicable, an accredited sewage management facility approved by the council, or
- alternatively, any other sewage management facility approved by council.

(b) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with the appropriate professional standards. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

(c) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:

- must preserve and protect the building from damage, and
- if necessary, must underpin and support the building in an approved manner, and
- must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished. The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land (includes a public road and any other public place).

(d) If the work involved in the erection or demolition of a building is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or involves the enclosure of a public place, a hoarding or fence must be erected between the work site and the public place:

- if necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place,
- the work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place, and
- any such hoarding, fence or awning is to be removed when the work has been completed.

36 The recommended construction details to meet indoor design sound levels, as detailed in the report prepared by Rodney Stevens Acoustics, dated 4 June 2018, Report Reference: 170016R1, Revision 1 are to be undertaken during construction. **Prior to issue of an Occupation Certificate**, a qualified acoustic consultant shall certify that the development has been constructed to meet the indoor design sound levels in accordance with the approved acoustic report.

37 An alternate ventilation system is required, as windows and doors on all facades need to be closed to achieve internal noise level criteria. The alternate ventilation system details are to accompany the **Construction Certificate** application.

**Prior to issue of an Occupation Certificate**, a qualified acoustic consultant shall certify that the approved ventilation system has been installed with the acoustical attenuation measure.

- 38 The construction and operation of the public swimming pool/s and spa pool/s and associated premises shall comply with the Public Health Act 2010, Public Health Regulation 2012 and any relevant standards, guidelines or codes of practice published or endorsed by the NSW Ministry of Health.

## Swimming Pools

- 39 When the swimming pool construction has reached a stage where the pool is capable of holding water, the pool area shall be restricted from access in accordance with AS 1926 "Swimming Pool Safety". Restriction of access to the pool area shall also comply with the Swimming Pools Act, 1992.
- 40 The swimming pool is to be surrounded at all times by a child-resistant barrier that:
- separates the swimming pool from the serviced apartments and associated uses situated on the premises and from any place (whether public or private) adjoining the premises, and
  - is located immediately around the swimming pool, and
  - contains within its bounds no structure apart from the swimming pool and such other structures (such as diving boards and pool filtration plants) as are wholly ancillary to the swimming pool, and
  - is designed, constructed, installed and maintained in accordance with the standards prescribed by AS 1926 "Swimming Pool Safety".
- 41 A sign must be erected in a prominent position in the immediate vicinity of the swimming pool and must:
- be erected in accordance with the provisions relating to instructional posters of the document entitled "Policy Statement No. 9.4.1: Guidelines for the Preparation of Posters on Resuscitation" published by the Resuscitation Council. (A copy may be purchased from Penrith City Council's Civic Centre, 601 High Street, Penrith), and
  - bear a notice that contains the words "YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS SWIMMING POOL", together with details of resuscitation techniques (for adults, children and infants) set out in the relevant provisions of the document entitled "CardioPulmonary Resuscitation" published by the Australian Resuscitation Council. (A copy may be purchased from Penrith City Council's Civic Centre, 601 High Street, Penrith).
- 42 The swimming pool must be registered on the NSW Swimming Pool Register when it is capable of holding water and before the issue of an Occupation Certificate. The swimming pool is to be registered at [www.swimmingpoolregister.nsw.gov.au](http://www.swimmingpoolregister.nsw.gov.au) or in person at Penrith City Council (a \$10 fee applies when registering at Council).
- 43 All backwash from the swimming pool shall be directed into the mains sewer.
- 44 The occupier of any premises at which a public swimming pool or spa pool is situated must notify Council using the NSW Ministry of Health Notification Form available from [www.health.nsw.gov.au](http://www.health.nsw.gov.au) prior to the pool or spa being used. The occupier of the premises must notify Council within 7 days of any change of details.

## Engineering

- 45 All roadworks, stormwater drainage works, associated civil works and dedications, required to effect the consented development shall be undertaken at no cost to Penrith City Council.
- 46 An Infrastructure Restoration Bond is to be lodged with Penrith City Council for development involving works around Penrith City Council's Public Infrastructure Assets. The bond is to be lodged with Penrith City Council prior to the issue of any Construction Certificate. The bond and applicable fees are in accordance with Council's adopted Fees and Charges.

An application form together with an information sheet and conditions are available on Council's website.

Contact Penrith City Council's City Works Department on (02) 4732 7777 or visit Penrith City Council's website for more information.

- 47 **Prior to the issue of any Construction Certificate**, a Section 138 Roads Act applications, including payment of application and inspection fees, shall be lodged with and approved by Penrith City Council (being the Roads Authority for any works required in a public road). These works may include but are not limited to the following:
- a) Vehicular crossings (including kerb reinstatement of redundant vehicular crossings)
  - b) Concrete footpaths and or cycleways
  - c) Road opening for utilities and stormwater (including stormwater connection to Penrith City Council roads and other Penrith City Council owned drainage)
  - d) Road occupancy or road closures
  - e) The placement of hoardings, structures, containers, waste skips, signs, etc in the road reserve
  - f) Temporary construction access

All works shall be carried out in accordance with the Roads Act approval, the development consent, including the stamped approved plans, and Penrith City Council's specifications, guidelines and best engineering practice.

Contact Penrith City Council's City Works Department on (02) 4732 7777 or visit Penrith City Council's website for more information.

Note:

- a) Where Penrith City Council is the Certifying Authority for the development, the Roads Act approval for the above works may be issued concurrently with the Construction Certificate.
- b) All works associated with the Roads Act approval must be completed prior to the issue of any Occupation Certificate.

- 48 **Prior to the issue of any Construction Certificate**, the Certifying Authority shall ensure that a Section 138 Roads Act application, including payment of application and inspection fees, has been lodged with, and approved by Penrith City Council (being the Roads Authority under the Roads Act), for the provision of road works, landscaping works, path paving works in Woodriff Street and Union Lane, the relocation / reconstruction of the existing raised threshold within the right of carriageway and provision of pram ramps in Union Lane.

Engineering plans are to be prepared in accordance with the development consent, Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Developments, Engineering Construction Specification for Civil Works, Austroads Guidelines, and best engineering practice.

Contact Penrith City Council's Development Engineering Department on (02) 4732 7777 or visit Penrith City Council's website for more information.

Note:

- a) Where Penrith City Council is the Certifying Authority for the development, the Roads Act approval for the above works may be issued concurrently with the Construction Certificate.
- b) All works associated with the Roads Act approval must be completed prior to the issue of any Occupation Certificate.

- 49 **Prior to the issue of any Construction Certificate**, the Principal Certifying Authority and/ or Certifying Authority shall ensure that an application under Section 68 of the Local Government Act, including payment of application and inspection fees, has been lodged with, and approved by Penrith City Council for provision of the temporary car park access to Judges Place car park, additional car parking spaces along with any associated works that are located on the adjoining Council owned land being Lot 104, DP 1031340.

Engineering plans are to be generally in accordance with the plan prepared by Morson Group, Drawing No. DA29, issue A, dated 13 October, 2016, and shall be prepared in accordance with the development consent, Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Developments, Engineering Construction Specification for Civil Works, Austroads Guidelines, and best engineering practice.

Contact Penrith City Council's Development Engineering Department on (02) 4732 7777 or visit Penrith City Council's website for more information.

Note:

- a) All works associated with the Section 68 Local Government Act approval must be completed **prior to the issue of any Occupation Certificate**.

- 50 The stormwater management system shall be provided generally in accordance with the concept plan/s lodged for development approval, prepared by Donovan Associates, Job Reference Number E286341, Drawing Numbers D1 to D10, all Issue B, all dated 2 March, 2018.

Engineering plans and supporting calculations for the stormwater management systems are to be prepared by a suitably qualified person and shall accompany the application for a Construction Certificate.

**Prior to the issue of a Construction Certificate** the Certifying Authority shall ensure that the stormwater management system has been designed in accordance with Council's Stormwater Drainage for Building Developments and Water Sensitive Urban Design Policy.

- 51 **Prior to the issue of any Construction Certificate**, the Certifying Authority shall ensure that the stormwater drainage system for the basement car park has been designed in accordance with the requirements for pumped systems in AS 3500.3 (or as amended) (Plumbing and Drainage – Stormwater Drainage).
- 52 **Prior to the issue of any Construction Certificate**, the Certifying Authority shall ensure that the proposed development is compatible with the recommendations of the Overland Flow Assessment prepared by Donovan Associates, Reference Number E286341, Issue C, dated 2 March 2018.
- 53 **Prior to the issue of any Construction Certificate**, the Certifying Authority shall ensure that all habitable floor levels are in accordance with the stamped approved plans with a minimum floor level of RL 29.2m AHD (standard flood level + 0.5m freeboard). Basement entry levels shall be at a minimum of RL 29.0m AHD.
- 54 **Prior to the issue of any Construction Certificate**, the Certifying Authority shall ensure that vehicular access, circulation, manoeuvring and pedestrian and parking areas associated with the subject development are in accordance with AS 2890.1, AS 2890.2, AS 2890.6 and Penrith Development Control Plan 2014.
- 55 **Prior to the issue of a Construction Certificate**, the Certifying Authority shall ensure that a Construction Traffic Management Plan (CTMP) has been submitted to and approved by Penrith City Council. Approval of the CTMP may require endorsement from the Local Traffic Committee. The CTMP shall include, but not limited to the following: vehicle routes, number of construction vehicles, hours of operation, access arrangements, pedestrian management, turning templates for narrow streets and intersections and parking management for workers. The CTMP shall be certified by an appropriately accredited person and/or RMS. The CTMP shall be certified by an appropriately accredited person and/or RMS Traffic Controller. The CTMP shall ensure that adequate parking is provided for the development and surrounding parking not severely impacted by the construction of this development.

The CTMP shall be supported by a traffic control plan, designed in accordance with the requirements of the Roads and Traffic Authority's Manual, Traffic Control at Work Sites Version 2, and the current Australian Standards, Manual of Uniform Traffic Control Devices Part 3, 'Traffic Control Devices for Works on Roads'.

The traffic control plan must be prepared by a suitably qualified and RMS accredited Work Site Traffic Controller.

- 56 Prior to the issue of a Roads Act Approval, a Performance Bond is to be lodged with Penrith City Council for any road works and landscaping works within Woodriff Street and Union Lane.

The value of the bond shall be determined in accordance with Penrith City Council's adopted Fees and Charges.

Note:

Contact Penrith City Council's Development Engineering Department on (02) 4732 7777 for further information relating to bond requirements.

- 57 **Prior to the issue of a Construction Certificate**, the Certifying Authority shall ensure that a Geotechnical investigation, report and strategy has been conducted to ensure stability of the Council infrastructure and surrounding developments. The geotechnical investigation, report and strategy shall comply with the recommendations contained in the technical direction GTD 2012/001 prepared by the Road and Maritime Services, as amended. The applicant shall undertake a dilapidation report for all surrounding buildings and Council owned infrastructure that confirms that no damage occurs due to the excavations associated with the development. If Council is not the Certifying Authority the dilapidation report shall be submitted to Council prior to Construction Certificate issue and then updated and submitted prior to any Occupation Certificate issue confirming no damage has occurred.
- 58 A certificate prepared by a registered surveyor verifying that all habitable floor levels are at or above RL 29.2m AHD (standard flood level + 0.5m freeboard) shall be submitted upon completion of the building to that level. No further construction of the building is to be carried out until approval to proceed is issued by the Principal Certifying Authority.
- 59 **Prior to the issue of any Occupation Certificate**, the Principal Certifying Authority shall ensure that all works associated with a Section 138 Roads Act approval or Section 68 Local Government Act approval have been inspected and signed off by Penrith City Council.
- 60 **Prior to the issue of an Occupation Certificate**, works-as-executed drawings, final operation and maintenance management plans and any other compliance documentation shall be submitted to the Principal Certifying Authority in accordance with Penrith City Council's Engineering Construction Specification for Civil Works, WSUD Technical Guidelines and Stormwater Drainage for Building Developments Policy.

An original set of works-as-executed drawings and copies of the final operation and maintenance management plans and compliance documentation shall also be submitted to Penrith City Council with notification of the issue of the Occupation Certificate where Council is not the Principal Certifying Authority.

61 **Prior to the issue of an Occupation Certificate**, the Principal Certifying Authority shall ensure that the:

- a) Stormwater management systems (including on-site detention and water sensitive urban design)
  - Have been satisfactorily completed in accordance with the approved Construction Certificate and the requirements of this consent.
  - Have met the design intent with regard to any construction variations to the approved design.
  - Any remedial works required to been undertaken have been satisfactorily completed.

Details of the approved and constructed system/s shall be provided as part of the works-as-executed drawings.

62 **Prior to the issue of an Occupation Certificate**, a restriction as to user and positive covenant relating to the:

- a) Stormwater management systems (including on-site detention and water sensitive urban design)

shall be registered on the title of the property. The restriction as to user and positive covenant shall be in Penrith City Council's standard wording as detailed in Penrith City Council's Stormwater Drainage for Building Development's Policy.

63 **Prior to the issue of any Occupation Certificate**, directional signage and linemarking shall be installed indicating required directional movements for vehicles and the location of customer parking to the satisfaction of the Principal Certifying Authority.

64 **Prior to the issue of any Occupation Certificate**, a Maintenance Bond is to be lodged with Penrith City Council for road works and landscaping works in Woodriff Street and Union Lane.

The value of the bond shall be determined in accordance with Penrith City Council's adopted Fees and Charges.

Note:

- a) Contact Penrith City Council's Engineering Services Department on (02) 4732 7777 for further information relating to bond requirements.

65 The stormwater management systems shall continue to be operated and maintained in perpetuity for the life of the development in accordance with the final operation and maintenance management plan.

Regular inspection records are required to be maintained and made available to Penrith City Council on request. All necessary improvements are required to be made immediately upon awareness of any deficiencies in the stormwater management systems.

66 All car parking and manoeuvring must be in accordance with AS 2890.1-2004; AS 2890.2- 2—2; AS 2890.6-2009 and Council's requirements.

- 67 All car spaces are to be dedicated for the parking of vehicles only and are not be used for storage of materials/products/waste materials, etc.
- 68 Subleasing of car parking spaces is not permitted by this Consent.
- 69 All vehicles are to enter/exit the site in a forward direction.
- 70 **Prior to the issue of an Occupation Certificate**, secure bicycle parking is to be provided at a convenient location(s) in accordance with *AS 2890.3:2015 Bicycle Parking Facilities*.
- 71 **Prior to the issue of any Occupation Certificate**, the following shall be provided as civil works in **Union Lane, Penrith** as follows:
- An indented on-street bay for waste/removalist vehicles, minimum 22.5m length, 2.5m width at the Union Lane frontage;
  - Regulatory signage at the bay indicating "No Parking - Waste Collection and Removalist Vehicles Excepted" (R5-445 or R5-447 modified);
  - The location of the bay is to be determined by complying sight distances from the driveway in accordance with AS 2890.1: 2004;
  - Pedestrian access **of 1.5m** is to be available on the southern side of Union Lane;
  - The concrete pedestrian blisters on the north side of Union Lane directly opposite the proposed indented bay are to be infilled/reconstructed as an island. RMS approved pedestrian fencing is to be installed on the island to restrict pedestrian access at this location, **generally as shown amended in red on the attached plan**.
  - All works, including relocation of necessary services, **are to be undertaken by the applicant and at no cost to Council**.

The engineering plans and associated parking restrictions are to be endorsed by Council's Local Traffic Committee and adopted by Council prior to construction. (The Local Traffic Committee sits once per month which may delay finalization of the plans.)

## Landscaping



- 72 All landscape works are to be constructed in accordance with the stamped approved plans as amended by the applicable conditions of this Development Consent and Sections C2 'Vegetation Management' and C6 'Landscape Design' of Penrith Development Control Plan 2014.

Landscaping shall be maintained:

- in accordance with the approved plans, and
- in a healthy state, and
- in perpetuity by the existing or future owners and occupiers of the property.

If any of the vegetation comprising that landscaping dies or is removed, it is to be replaced with vegetation of the same species and, to the greatest extent practicable, the same maturity as the vegetation which died or was removed.

- 73 The approved landscaping for the site must be constructed by a suitably qualified and experienced landscape professional.
- 74 The following series of reports relating to landscaping are to be submitted to the nominated consent authority at the appropriate time periods as listed below. These reports shall be prepared by a suitably qualified and experienced landscape professional.

i. Implementation Report

Upon completion of the landscape works associated with the development and prior to the issue of an Occupation Certificate for the development, an Implementation Report must be submitted to the Principal Certifying Authority attesting to the satisfactory completion of the landscaping works for the development.

An Occupation Certificate should not be issued until such time as a satisfactory Implementation Report has been received. If Penrith City Council is not the Principal Certifying Authority, a copy of the satisfactory Implementation Report is to be submitted to Council together with the Occupation Certificate for the development.

ii. Maintenance Report

On the first anniversary of the date of the Occupation Certificate issued for the development, a Landscape Maintenance Report is to be submitted to Penrith City Council certifying that the landscape works are still in accordance with the development consent and the plant material is alive and thriving.

- 75 All plant material associated with the construction of approved landscaping is to be planted in accordance with the Tree Planting Specifications prescribed in Penrith Development Control Plan 2014.
- 76 All landscape works are to meet industry best practice and the following relevant Australian Standards:
- AS 4419 Soils for Landscaping and Garden Use,
  - AS 4454 Composts, Soil Conditioners and Mulches, and
  - AS 4373 Pruning of Amenity Trees.
- 77 No trees are to be removed, ringbarked, cut, topped or lopped or wilfully destroyed (other than those within the proposed building footprint or as shown on the approved plans) without the prior consent of Penrith City Council and in accordance with Council's Tree Preservation Order and Policy.

- 78 An arborist's report/Tree Protection Plan must be submitted. The Plan must be included as part of the construction plans to be used on site and must include specifications for the implementation of tree protection measures for all trees on site.
- 79 All trees and landscaping must be maintained in perpetuity to enable maturity to their full potential in healthy growing conditions. This includes mature height, spread and form, consistent with the tree species. Pruning must not alter the natural form and height of trees.
- 80 **Prior to the issue of a Construction Certificate**, a revised landscape and public domain plan with details and sections in accordance with the Penrith CBD Public Domain Technical Manual is to be provided to the satisfaction of Penrith City Council addressing the following;
- Tree species along Woodriff Street are to be provided as *Lophostemon confertus*. The number and location of these trees are to be provided to the satisfaction of Penrith City Council's Design and Projects Section;
  - An alternate feature tree species is to be provided for the corner of Union Lane and Woodriff Street. The identified tree is to take into consideration the available vertical space (volume adjacent to the proposed building facade) to allow for a mature canopy and urban (paved) ground conditions;
  - Details of furniture paving including pattern and transition between paving types;
  - Details of how Tree No. 29 as indicated on the approved landscape plan is to be retained and maintained during the construction period;
  - The location of all Tactile Ground Surface Indicators;
  - Details of how landscaping will not obstruct proposed signage to Judges Car Park; and
  - Plans are to be amended so as to remove all steps within the road reserve area.
- 81 All trees approved by Council for removal shall be removed in a manner so as to prevent damage to those trees that are to be retained.
- 82 All precautions shall be taken to adequately protect trees on public property (i.e, footpaths, roads, reserves, etc) against damage during construction. No trees on public property shall be removed, pruned or damaged during construction. This includes the erection of any fences, hoardings or other temporary works. The placement of construction materials beneath the canopy of street trees is prohibited.

## Development Contributions

- 83 This condition is imposed in accordance with Penrith City Council's Section 7.11 Contributions Plan for Penrith City - Civic Improvement Plan. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$166,268.00 is to be paid to Council prior to a Construction Certificate being issued for this development (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 7.11 plan. The projected rates of this contribution amount are listed in Council's Fees and Charges Schedule.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The S7.11 invoice accompanying this consent should accompany the contribution payment. The Section 7.11 Contributions Plan for Penrith City - Commercial Office may be inspected at Council's Civic Centre, 601 High Street, Penrith.

## Payment of Fees

- 84 All roadworks, dedications and drainage works are to be carried out at the applicant's cost.
- 85 Prior to the commencement of any works on site, all fees associated with Penrith City Council-owned land and infrastructure shall be paid to Council. These fees include Road Opening fees and Infrastructure Restoration fees.

## **Certification**

- 86 An Occupation Certificate is to be obtained from the Principal Certifying Authority on completion of all works and prior to the occupation of the building and commencement of the approved use. The Occupation Certificate shall not be issued if any conditions of this consent, but not the conditions relating to the operation of the development, are outstanding, and the development does not comply with the provisions of the Environmental Planning and Assessment Act and Regulation.

Before the Occupation Certificate can be issued for the development, Fire Safety Certificates issued for the building are to be submitted to Penrith City Council and the New South Wales Fire Brigades.

A copy of the Occupation Certificate and all necessary documentation supporting the issue of that Certificate including the above mentioned documents shall be submitted to Penrith City Council, if Council is not the Principal Certifying Authority.

- 87 Prior to the commencement of any earthworks or construction works on site, the proponent is to:
- (a) employ a Principal Certifying Authority to oversee that the said works carried out on the site are in accordance with the development consent and related Construction Certificate issued for the approved development, and with the relevant provisions of the Environmental Planning and Assessment Act and accompanying Regulation, and
  - (b) submit a Notice of Commencement to Penrith City Council.

The Principal Certifying Authority shall submit to Council an "Appointment of Principal Certifying Authority" in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

### Information to accompany the Notice of Commencement

Two (2) days before any earthworks or construction/demolition works are to commence on site (including the clearing site vegetation), the proponent shall submit a "Notice of Commencement" to Council in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

# **Appendix - Development Control Plan Compliance**

## **Development Control Plan 2014**

### **Part C - City-wide Controls**

The proposal has been assessed against the applicable provisions of the Penrith Development Control Plan 2014, in particular those under Part C, City Wide Controls and is found to be generally compliant. Compliance with particular sections is discussed below:

#### **C1 Site Planning and Design Principles**

The proposal has been assessed against the key aims and objectives of this Section of the DCP and is considered to comply in that, the design of the serviced apartments building is considered to be of an acceptable bulk and scale in the context of the subject site and its surrounds. While the proposal will provide for a numerical non compliance in regard to both height and floor space ratio controls, the overall height provided is considered appropriate noting that the upper most level will be only marginally visible from street level. The built form and its placement on the corner allotment is also not considered to impact upon existing views, loss of privacy or create an adverse solar access impact for neighbouring sites.

It is also noted that adjoining properties on the opposite side of Union Lane to the north of the site are also provided with a 24m height control under the PLEP. While the future redevelopment of these sites are complicated by the numerous existing allotments and separate ownerships provided with them, should redevelopment of these lots occur in the future, the proposal is considered will compliment the expected adjoining building bulk. In regard to the proposed floor space provided, non compliance with the LEP control is considered a consequence in part of the previous application (DA17/0890) providing for an overall reduction in the total site area as discussed within this report. While so, the floor space provided is not considered to create a bulky building presentation due to the articulation of external façade features which provides for appropriate depth and separation to the provided architectural elements.

The built form is therefore considered an attractive addition to this portion of the Penrith CBD, noting that concurrence on the final design has been provided by the Penrith Urban Design Review Panel, while it is also considered that each elevation has been adequately articulated with a variety of high quality materials and finishes incorporated.

#### **C3 Water Management**

The subject site has been identified as being affected by overland flows during the 1% Annual Exceedance Probability (AEP) storm event and in this regard was accompanied by an Overflow Assessment Report. The report and accompanying plans were reviewed by Council's Development Engineering Section, who have advised that the proposal is acceptable subject to the provision of appropriate conditions with any development consent granted.

Noting the above, it is considered that the construction of the proposal will not create a scenario where there would be a potential risk to life and property resulting from future flood events.

#### **C5 Waste Management**

The Penrith Development Control Plan does not provide for specific controls in relation to a proposed serviced apartments development. While so, an assessment has been conducted of the proposal against applicable objectives and general waste controls relating to the practical and sustainable management of waste at the site.

The application originally received by Council provided for a loading bay and associated waste room facilities fronting Union Lane demonstrating how a 10.5m service vehicle would reverse into the loading bay from Union Lane. A review of this manoeuvre indicated that the accompanying swept paths for the service vehicle were reliant on there being no vehicles parked in the existing 'Loading Zones' opposite the subject site along this portion of Union Lane. In this regard, this concept was not considered an acceptable solution.

Following discussions between the applicant and Council staff, an amended ground floor layout was provided allowing for the provision of an indented waste bay along the Union Lane frontage which would allow a service vehicle to pull up in this area, collect waste from a temporary bin storage room and back of house area and then further exit onto Union Lane in a forward direction towards Woodriff Street. The revised design was also accompanied by a Traffic Report prepared by *Stanbury Traffic Planning*, dated 10 April, 2018 which in part provided for the following conclusion;

*In consideration of the findings of the attached swept path analysis, it is concluded that vehicles are capable of entering and exiting the proposed indented bay within Union Lane in a safe and efficient manner and that the indented bay is not proposed to result in any unreasonable impedence to passenger vehicle development egress movements.*

*Existing pedestrian movements along the southern side of Union lane are proposed to be maintained through the diversion of the existing pedestrian footpath to the south around the indented bay.*

*The above assessment indicates that all manoeuvring between the development and Union lane can occur without unreasonable encroachment on existing on-street kerb blisters along the northern side of Union Lane, facilitating pedestrian crossing activity in the immediate vicinity.*

This amended scheme and supporting Traffic Report was reviewed by both Council's Waste Management and Traffic Engineering Section's and considered an acceptable design solution noting the retention of the existing loading bays opposite the site along Union Lane. In this regard, the amended scheme is considered will operate to no detriment to surrounding commercial tenancies.

Submitted plans indicate a 38m<sup>2</sup> waste chute room, 11m<sup>2</sup> bulky waste room, 26m<sup>2</sup> commercial bin storeroom and 21m<sup>2</sup> linen room to facilitate the proposed serviced apartments as well as the proposed retail and commercial tenancies on the ground floor and use of the conference room. While the proposed waste pick up will be via a private commercial arrangement, it is noted that the original application was accompanied by a Waste Management Plan (WMP) prepared by Elephants Foot Recycling Solutions, dated 27 September, 2016. This WMP was reviewed by Council's Waste Services who have indicated that the document is still applicable to the updated waste area and will be included with any determination granted.

## **C8 Public Domain**

The Penrith Development Control Plan indicates that 'public domain' comprises the shared urban spaces, the structures that relate to those spaces and infrastructure which would support and serve them. Public spaces include public owned or commonly used areas such as road verges, parks and squares and includes spaces in private property such as through site links and lobby areas. The following objectives are provided within this Section of the Development Control Plan:

- (a) enhances the quality of the public domain;*
- (b) enhances the natural setting and landscape character of Penrith;*
- (c) ensures that the public domain is enhanced by the built form adjoining it; and*
- (d) ensure that the principles of Universal Design are considered when designing the public domain.*

The main northern facing entry and lobby spaces are considered an acceptable design solution in that this feature is indented into the building and will be highlighted by landscaping features including a green wall to provide a 'sense of address'. Freedom of circulation is provided through to the lobby from this entrance which is considered to also maintain a key pedestrian route from Memory Park to the north as well as directing pedestrian movement from Union Lane and existing arcades from High Street to Union Lane. The placement of the proposed built form is also considered to appropriately align with the position of Memory Park to the north which is enhanced via the location of landscaping and outdoor features. This is considered to provide an appropriate presentation onto the intersection of Woodriff Street and Union Lane as well as providing an appropriate backdrop to Memory Park.

Noting the above, the proposal is considered to provide for an acceptable transition to the existing public space to the north of the subject site. The subject site has also been provided with appropriate pedestrian ramping to the front of the Woodriff Street façade to allow for either direct access to the building and associated proposed retail uses on the ground floor, or allow for the continuation of pedestrian movement from north to south along this part of Woodriff Street. The application has also identified the provision of a designated pedestrian footpath along the Union Lane frontage adjoining the proposed waste indentation bay which is considered will allow for the continued and safe movement of persons to the intersection of Union Lane and Woodriff Street or vica versa in the opposite direction.

The application will also provide for the refurbishment of the existing access carriageway to Judges Car Park during the construction phase as well as identifying the position of a substation to the adjoining Judges Park alongside this access handle. While provided plans have identified a pedestrian crossing in this location, the position of any crossing is to be subject to further discussions with Council during the construction phase to identify an appropriate and safe location for provide for a crossing if necessary. The provision of traffic islands in this area is considered may also assist in minimising pedestrian/vehicle conflict and shall be subject to further discussions with Council, any determination granted to be appropriately conditioned as required in relation to an applicable Roads Act application. In addition, the location of any substation, while identified on the plans will be subject to further discussions with Council to allow for the appropriate retention of existing vegetation and maintain safety for pedestrians and motorists.

### **C9 Advertising and Signage**

The application has been accompanied by an East Elevation plan which has identified the provision of signage in the form of 'Astina' wording to Level 7. While the provision of signage of this manner is not considered out of place for the Penrith CBD area, no details in relation to this signage including dimensions, materials and illumination has been provided for. In this regard, should the application be granted Development Consent, a condition is to be included with any determination requiring a separate development application for the erection of a sign or advertising structure (other than an advertisement listed as exempt development) complying with the requirements of SEPP 64 - Advertising and Signage and this section of the Penrith Development Control Plan 2014.

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

The proposal has been assessed against the provisions of this Section and is found to be acceptable. Compliance with particular clauses is detailed below;

#### ***Clause 10.1 Transport and Land Use***

The Penrith DCP requires that public transport use is to be enhanced by providing good pedestrian connections from places of residence or employment to transport networks or nodes. The development is located approximately 570m walking distance from Penrith Railway Station which is also located on

the T1 Western Line. In addition, the subject site is surrounded by a number of bus services on adjoining streets which will provide for regular operations throughout the week. In this regard, the proposal is considered to be readily accessible by public transport and complies with the DCP in this regard.

#### *Clause 10.5 Parking Access and Driveways*

The Penrith DCP 2014 does not provide specific car parking rates for serviced apartments noting that the closest comparative parking rate provided would be for hotel or motel accommodation with the following rate provided; *1 space per unit plus 1 space per manager plus 1 space per 6 employees* which would generate a requirement of 60 spaces noting the number of units proposed and the total of 2 to 3 staff to be provided including a manager. While so, the implementation of this rate is not considered applicable in this instance as the nature of the proposal not being a traditional hotel.

In this regard, the DCP provides that, *'In the absence of specific requirements relevant to particular developments, the parking requirements in the RTA's "Guide to Traffic Generating Developments" (as updated) and Australian Standard AS 2890.1 and 2 - 2004 should be referred to as a guide'*. The RMS provides the following suggested parking rates for 3 to 4 star hotels which is considered to more closely reflect the type of accommodation proposed by the serviced apartments:

- *1 space per 4 bedrooms for 3 and 4 star hotels*

The above parking rate is considered to provide for a compliant scheme (for the serviced apartment component of the application) as detailed within the table below:

Required Rate	Proposed	Compliances/Discussion
<b>Car Parking –</b> – 1 space per 4 rooms (3 & 4 star hotels)	58 rooms / 4 = 15	<b>Complies</b> 82 parking spaces proposed plus 4 service vehicle spaces

The DCP also provides the following parking rates for business and retail premises within the Penrith City Centre;

Commercial	
Business and office premises	Penrith City Centre – 1 space per 100m <sup>2</sup> GFA
Retail Premises	Penrith City Centre – 1 space per 30m <sup>2</sup> GFA

As the application will provide for a overall total of 207m<sup>2</sup> retail space and 215m<sup>2</sup> commercial space, the total number of spaces to be provided respectively for each use is 7 retail spaces and 3 commercial spaces (an overall total of 10 spaces). Following from the above table, a total of 25 spaces are required to be provided for the proposal, the number of spaces provided therefore exceeding this minimum rate and is therefore compliant.

Whilst it is noted that the proposed development provides for compliant car parking numbers, the DCP contains a requirement that a maximum 60% of commercial car parking spaces required by a development, other than for service vehicles, car washing bays and parking spaces allocated to people with a disability, are to be provided on site. In this regard, the remainder of the spaces should be provided through public parking in the Penrith CBD funded by way of developer contributions. While Penrith Council has no objection to the provision of greater than the 60% maximum being provided for onsite, the applicable contributions must still be paid.

In addition to the above, the application was accompanied by a detailed Traffic and Parking Report prepared by Thompson Stanbury Associates, dated October 2016 which has advised of the following;

- *The proposed development has been assessed to generate approximately 18 peak hour trips. The majority of the additional peak hour vehicle trips will comprise outbound movements in the morning peak and inbound movements in the evening peak, associated with journeys to/from work and return;*
- *The 18 veh/hr peak movements between the driveway to the development and driveway to Judges Car Park are expected to occur safely and efficiently, given the consistent vertical and horizontal alignment, and the existing roundabout where the driveway is proposed to connect. The roundabout will provide frequent gaps for traffic in/out of the proposed development;*
- *The additional 18 peak hour vehicle trips from the proposed development is not significant, represents less than one vehicle movement every 3.3 minutes. This additional traffic will not have any measurable impact on the operation of nearby intersections along Woodriff Street (particularly since the traffic will be dispersed between east and west along the street to the intersections of High Street/ Woodriff and Woodriff Street/Tindale Street intersection).*

The application was referred to Council's Traffic Engineering Section who have advised that the parking rate is acceptable in this instance following the RMS survey based guideline. It is also noted that this parking rate has also been used in relation to previous development applications for serviced apartments (DA17/0490 at No's. 10-12 Hargrave Street, Kingswood determined on the 26 April, 2018 and DA16/0357 at No. 15 Engineers Place, Penrith determined on the 19 September, 2016). In addition, it is considered that the proposed circulation from the subject site within and out of the proposed basement car parking is appropriate while the local road network is considered will be able to cater for the net increase of 18 vehicle trips in peak hour periods. The proposed one way access within the site is also considered to provide for an appropriate drop off-pick up area for vehicles which will not impede vehicles accessing the ramp to the basement level car parking.

## **E11 Penrith**

The proposal has been assessed against the applicable provisions of the Penrith Development Control Plan 2014, in particular those under Section *E11 - Penrith* and is found to be generally compliant. Compliance with particular sections is discussed below:

### *Building Form*

The application is provided with setbacks on the ground floor placing the envelope of the proposed building away from the existing street alignment with upper floor levels constructed to the boundary along Woodriff Street and maintaining setbacks to Union Lane. The uppermost level is provided with a setback to both frontages. While contrary to the identified street building alignment as indicated within this Section of the DCP which has identified buildings should be constructed to the boundary, the 1.9m setback along Woodriff Street on the ground floor is considered appropriate in this instance as it will allow for undercover entry to proposed tenancies to this frontage noting that a building awning is not required in this public domain location. The provision of a nil setback for levels 1 to 5 along Woodriff Street is considered to provide for a strong visual presentation to the built form above the ground floor. The setback provided to Union Lane also considered appropriate noting the breaking up of this façade with proportionally sized terrace and balcony areas which is considered in keeping with the desired future character of the area.

The application will provide for a variation to the identified street frontage heights for this part of the Penrith CBD, which has indicated a 16m to 20m street frontage height to be provided to each public



boundary, but while so, this variation is considered minor to the Woodriff Street frontage (noting the setback provided to the ground level) with the provided architectural features and projecting balconies to upper levels considered to allow for an attractive addition to the area. The setbacks for the proposal to Union Lane are also considered in keeping with the existing varied setback of the Judges Carpark and are not considered unacceptable noting the secondary nature of this frontage. The proposal is not considered to create an overbearing presence to Memory Park to its north with the treatment of these balconies via sliding louvres an acceptable vertical addition to their horizontal nature.

Noting the irregular nature of the subject site being a corner block, the application is considered to allow for a compliant depth for the proposed building bulk. In addition, the proposed design is considered to allow for acceptable separation distances as envisaged by this part of the DCP. The proposal is compliant with the minimum floor to ceiling heights for the ground floor (minimum 3.6m required) and levels above (minimum 2.7m required) which is considered to assist in providing for appropriate solar access for each level. It is also noted that while the DCP has identified a 100% maximum site coverage and 0% minimum deep soil area requirements, the application via the location of the basement levels and setbacks to each floor will provide for improved opportunities for the growth of vegetation which is considered to embellish the relationship that the development will maintain with the public domain. In addition, the provision of planting to the podium level (especially adjoining the western boundary) is considered to allow for a softening of the buildings bulk, an improved relationship with the adjoining Judges Carpark (which will also assist in maintaining amenity to occupants of the apartments) as well as providing future users of this building special relief via an opportunity to explore areas outside of the apartments rather than just venturing onto attached balconies.

#### *Pedestrian Amenity*

The application is considered to maintain and enhance important pedestrian routes within this part of the Penrith CBD. The application will provide for a line of visual interest for persons within the adjoining Memory Park with the proposed footpath areas subject to appropriate conditions included with any determination clearly identified. Pedestrian use of Union Lane is maintained via the proposals identification of footpath to the northern side of the site. While the application does include a waste indentation bay fronting Union Lane, continued pedestrian movement along this side of the laneway is considered to have been appropriately identified, while conflict with any truck movements associated with the collection of garbage for instance is not considered significant noting the infrequency of collections and time of day which there normally occur.

The building is considered to provide for an active street frontage to the ground floor which is also considered to assist in encouraging pedestrian movement in this area, while the location of outdoor seating areas to the corner of Union Lane and Woodriff Street an acceptable design feature associated with openable shop fronts. Comments provided by Council's Landscape Architect have indicated a number of necessary modifications to both the Woodriff Street and Union Lane ground floor presentations, to align the provision of vegetation and pedestrian connectivity in accordance with the Public Domain Manual for Penrith, but while so and subject to appropriate conditions included with any determination, an active street frontage and appropriate pedestrian connectivity is considered to be achieved with the proposal.

#### *Access, Parking and Servicing*

As the subject site also maintains the existing entry to the Judges Carpark via a right of carriageway from Woodriff Street, the provision of a safe entry to the basement level of the proposed development and minimal interference with the operation of Judges Carpark is considered a valid issue of consideration. In this regard, it is noted that the accompanying architectural plans have provided for traffic calming devices as well as signage indicating the requirement to give way to exiting traffic from

Judges Carpark as well as signage for the car park entry and also for a 'pick off and drop off' area to the proposed serviced apartment building. In this regard, the existing right of carriageway off Woodriff Street noting that the proposal will provide for the enclosure of this area, is considered to provide for appropriate indication of the entry to the proposed development.

The application will also provide for the exit of vehicles from the basement level of the proposed development onto Union Lane, which is considered an appropriate solution to separate the entry and exit points to the subject site and thus minimising potential traffic conflicts. Union Lane will also provide for the movement of service vehicles to an identified waste indentation bay fronting the subject site which is also considered an appropriate design solution in the collection of waste from the proposal. The provision of an indentation bay is considered to alleviate any unreasonable encroachment on existing on-street kerb blisters along the northern side of Union Lane and maintain safe pedestrian movement along this side.

#### *Sustainable Development*

The application has been accompanied by an Energy Efficiency Evaluation under Section J of the BCA which was provided to Council's Building Services Section for consideration and considered acceptable. In this regard, the application is considered to have appropriately demonstrated that the building will not create inappropriate reflection of sunlight to surrounding areas while providing for construction materials with a low environmental impact over the expected lifecycle of the building.