

SWCPP Ref. No.:	PPSSWC-124
DA No.:	DA20/0858
PROPOSED DEVELOPMENT:	Construction of a part nine storey and part five storey mixed use building comprising a public car park with 686 spaces, four storeys of office premises with a ground floor lobby and associated car parking, a multi-purpose community space on part of the ground floor, a public park on level 5, subdivision of a residual lot and associated demolition, tree removal, public domain and road works.
PROPERTY ADDRESS:	99a Henry Street, Penrith, Penrith (Soper Place Carpark)
PROPERTY DESCRIPTION:	Lot 1 Deposited Plan (DP) 1265105 Part of Lot 11 DP854412 Soper Place, public road
ZONING:	B3 Commercial Core
CLASS OF BUILDING:	Class 5 and 9
ASSESSING OFFICER:	Stephen Kerr, Consultant Planner, Gyde Consulting
APPLICANT:	Think Planners
DATE RECEIVED:	21 December 2020
REPORT BY:	Stephen Kerr, Consultant Planner, Gyde Consulting
RECOMMENDATIONS:	<p>Deferral, pending:</p> <ul style="list-style-type: none"> (a) Provision of owner's consent in respect of Lot 1 DP1265105 (the Penrith Community Health Centre); (b) Additional contamination testing as noted in the report and the provision of a Remedial Action Plan if necessary to make the land suitable for the proposed development. (c) An updated Services Management Plan which: <ul style="list-style-type: none"> • Resolves the conflicts with the proposed on-street loading bays no.2 and no.3 identified in the swept path diagrams. • Provides satisfactory servicing arrangements for the Penrith Community Health Centre. • Demonstrates how a 9.7 metre long truck exiting the proposed carpark will achieve adequate pedestrian view lines, noting that the truck is not shown perpendicular to the exit point in the current design. • Demonstrate in a swept path analysis that once leaving the site, the truck is able to do so at an appropriate speed and straighten its wheels. (d) Demonstrate that satisfactory vehicle access can be provided to facilitate the future development of the northern development lot (residue lot), having regard to the issues raised in this report.

Executive Summary

Overview

Development application number DA20/0858 seeks approval for construction of a part nine storey and part five storey mixed use building including 686 public car parking spaces, of which 277 spaces for public short-term parking, 372 spaces for public long term parking, 37 commercial spaces, 14 accessible spaces and 34 motorcycle spaces, multi-use community space, public rooftop garden, four storeys of commercial floor space (levels 5-8). In addition, related demolition works, removal of 18 trees, ground level and streetscape public domain works, realignment of Soper Place, extension of Woodriff Street North, the reconfiguration of Soper Lane/Woodriff Street intersection as a priority-controlled intersection, reconfiguration Soper Lane/Lawson Street intersection as a priority-controlled intersection, with a channelised right turn lane proposed along Lawson Street as part of the Soper Place proposal, the provision of a roundabout, part situated on Lot 1 DP1265105 (Soper Place Carpark) and Lot 11 DP854412 (Penrith Community Health Centre), various traffic control measures and subdivision/boundary realignment.

The Site

The site is known as Soper Place Carpark. The site's address is 99a Henry Street, Penrith. The development is proposed on two lots and one public road as follows:

- Lot 1 Deposited Plan (DP) 1265105
- Part of Lot 11 DP854412 (Penrith Community Health Centre)
- Soper Place, public road

Zoning and Permissibility

The site is zoned B3 Commercial Core pursuant to the Penrith Local Environmental Plan 2010 (LEP). The proposed land uses are permissible with development consent in the C3 zone.

Design Excellence

The proposal was the subject of a design excellence competition. The competition Jury confirmed the proposal achieves design excellence in accordance with Clause 8.4 of the Penrith LEP 2010. Having regard *Toga Penrith Developments Pty Ltd v Penrith City Council* [2022] NSWLEC 117, it is also noted that the proposal is substantially the same as the development that won the architectural design competition.

Community Infrastructure

Clause 8.7 of the Penrith Local Environmental Plan 2010 allows for an FSR of 5.5:1 and removes the applicability of the height development standard if the proposed development includes community infrastructure. The subject DA is lodged with a community infrastructure offer under clause 8.7 – being the public carpark, community facility and the public park. Having regard to clause 8.7(5):

- The objectives of clause 8.7(1) are achieved
- The development exhibits design excellence (refer to above discussion)
- The nature of the CI is consistent with the definition in clause 8.7(6)

- The nature and value of the community infrastructure to the City Centre is more than commensurate with the additional 0.86:1 floor space proposed above the mapped standard of 4:1 under the subject DA

Calculation of FSR

A maximum FSR standard of 4:1 applies under clause 4.4. Despite clause 4.4, the provisions under clause 8.7 allow a maximum FSR of 5.5:1. The total GFA is 26,567m². Based on the land area of the proposed parent lot (5,470m²), the resulting FSR is 4.86:1. The objectives of clause 4.5 is to define FSR and set out rules for the calculation of the site area for the purpose of applying permitted FSRs, including rules to:

- Prevent the inclusion in the site area of an area that has no significant development being carried out on it; and
- Prevent the inclusion in the site area of an area that has already been included as part of a site area to maximise FSR in another building; and
- Require community land and public spaces to be dealt with separately.

The site area of the proposed northern development lot, on which no significant development is proposed, and which will only be subject of subdivision as part of this DA, has been excluded for this reason.

Formal Owners Consent

Works are proposed on part of Lot 11 DP854412 which is known as Penrith Community Health Centre. While there is agreement in principle, formal owners consent has not been obtained from the relevant landowner. This item is a matter of deferral requiring addressing.

Contamination

A detailed assessment against Section 4.6 of the RHSEPP is provided later in this report. In summary, the applicant has prepared two detailed site investigations (DSIs); one for the parent lot on which the development is proposed and one for the subdivided northern development lot (residue lot) on which no development is proposed. The latter DSI identified contaminated material in BH21 within the northern development lot. However, no development is proposed on the northern development lot, hence is considered suitable subject to implementing the Environmental Management Plan prepared by JBS&G dated 21 September 2021.

It is unclear on comparison of the boreholes undertaken in the parent lot DSI whether the contaminated material (asbestos and lead) in BH21 in the northern development lot DSI trails south into the parent lot, as there is untested space in between BH21 on the northern residue lot and BH5, BH06 and BH07 on the parent lot. Further information is required to confirm whether the parent lot is partially contaminated and if so, how the land can be made suitable for the proposed development in accordance with Section 4.6 of the RHSEPP.

Traffic and Access

Soper Place

The DA proposes to realign and narrow Soper Place. A key consideration of this realignment is the ongoing servicing of the properties on the southern side of Soper Place being 19- 21 Lawson Street and 81- 93 Henry Street. The existing loading arrangements are as follows:

- 19- 21 Lawson Street: on-street loading bay adjacent to the southern footpath of Soper Place
- 81 Henry Street: on-street loading bay adjacent to the southern footpath of Soper Place at the rear of 81 Henry Street, and on-site basement parking able to accommodate a B99 vehicle.
- 83- 85 Henry Street: two vehicular driveways accessible from Soper Place providing access to an open on-grade carpark. Accommodates medium ridge vehicle (MRV).
- 87- 89 Henry Street: bins stored on footpath, kerbside waste collection and one on-site loading bay accessible from Soper Place accommodating an MRV.

Ason Group have conducted swept path analysis of the above existing servicing arrangements for the properties on the southern side of Soper Place in the Services Management Plan dated 29 September 2022 and swept path analysis of the proposed servicing arrangement for the subject development in the Transport Assessment dated 29 September 2022.

The proposed development of Soper Place carpark is serviced within the ground floor of the proposed carpark by a 9.7 metre heavy ridge collection vehicle as per Council's standards. Vehicle's would enter at the carpark entrance and exit onto Soper Place.

The applicant has proposed three additional on-street loading bays on the southern side of Soper Place, known as loading bays 1, 2 and 3. The applicant states the intent of the kerbside loading bay are:

- *"To provide a kerbside loading arrangement that is shared between the properties of concern to fulfil servicing needs to each of the properties concerned, until such a time where the properties are developed with on-site loading facilities;*
- *To provide kerbside loading spaces for use by waste collection contractors to conduct waste collection activities kerbside; and*
- *Introduce parking restrictions that allow for a shortened timeframe of when commercial vehicle can use the kerbside loading area to minimise heavy vehicle access during peak periods of the Soper Place carpark."*

The swept path analysis provided in the Services Management Plan indicates service vehicles exiting the proposal conflicts with loading bay 2, while service vehicles exiting the existing loading bay of 87- 89 Henry Street conflicts with proposed loading bay 3.

The applicant undertook consultation with the tenants on the southern side of Soper Place. This consultation is detailed in the Services Management Plan dated 29 September 2022. The outcomes are summarised as follows:

- Existing bin storage areas: 81- 85 Henry Street on site and 87- 93 Henry Street Soper Lane footpath (latter is inconsistent with Council's waste policy)
- Deliveries and truck size:

- 19 Lawson Street: Bateman Battersby Lawyers - typically vans and 8.8 metre MRV for stationary
- 19 Lawson Street: Okami - typically Coles delivery trucks being 6.4 metre small ridge vehicle (SRV)
- 21 Lawson Street: Studio 1000 Photography Australia - did not respond to consultation call.
- 81 Henry Street: Lower Russell & Farr Accountants - up to 8.8 metre MRV
- 81 Henry Street: Job Quest - did not respond
- 83- 85 Henry Street: Uniting Counselling and Meditation - no regular deliveries
- 83- 85 Henry Street: Bonds Outlet Penrith - approximately 8 metre truck
- 87- 93 Henry Street: Blackman Cycle – daily delivery 6.4 metre SRV, large deliveries approximately 8.8 metre MRV, major delivery once a year being a semi-trailer kerbside delivery
- 87- 93 Henry Street: Inside Fitness - no deliveries
- 87- 93 Henry Street: Breathless – no deliveries

Loading bay 1 accommodates a 10 metre truck and the proposal maintains the existing driveway/basement at 81 Henry Street. Loading bay 1 is supported and addresses the loading arrangements for 19- 21 Lawson Street and 81 Henry Street.

The Services Management Plan prepared by Ason Group dated 29 September 2022 identifies loading bay 2 is required for waste collection for 83- 85 Henry Street and loading bay 3 for waste collection for 87- 93 Henry Street. It is noted there is no guarantee these bays would not already be occupied.

However, Table 1 of the Services Management Plan identifies that for 83- 85 Henry Street waste bins are stored within the on-grade car park and collection occurs within the carpark. The 87- 93 Henry Street existing arrangements accommodate an 8.8 MRV and for majority of the year supports the servicing requirements of this property, noting the once-a-year semi-trailer delivery is required to Blackman Bicycles, currently this occurs kerbside. Table 1 of the Services Management Plan identifies bins for 87- 93 Henry Street are stored on the footpath and collection occurs kerbside. The swept path analysis identifies a conflict with loading bay 2 and 3. As a matter for deferral this conflict is to be resolved, including clarifying whether in fact loading bays 2 and 3 are required for waste collection for the affected properties.

The following additional amendments are required to the Services Management Plan:

- Demonstrate how the 9.7 metre truck, not being perpendicular on the exit swept path as it leaves the subject site, will mitigate safety concern for sight distance to pedestrians.
- Swept paths to show the vehicle once it has continued further down Soper Place toward Woodriff Street and straightened its wheel. Clarify the speed at which the swept path is modelled, noting modelling swept path by turning wheel on the spot is not acceptable).

Servicing Penrith Community Health Centre

The Services Management Plan fails to identify satisfactory servicing arrangements for the Penrith Community Health Centre should the development proceed.

Intersection Impacts

As discussed later in this report in detail, to maintain an acceptable level of service in the surrounding network, the Transport Assessment prepared by Ason Group dated 29 September 2022 identifies the following upgrades:

- Optimise signal timing at Henry Street/Lawson Street
- Implement no stopping restriction to the westbound lane of Henry Street and optimise signalling at the Henry Street /Evan Street intersection; and
- Provide grade separated pedestrian crossing to remove pedestrian signal timing and improve safety at the Belmore Street/Station Street/Jane Street intersection.

There is no indication, however, when these upgrades will be implemented. TfNSW outlined in their referral that the Penrith CBD is undergoing significant change and growth. TfNSW recommends further review of the Penrith CBD town planning and network traffic assessment be undertaken, noting that network upgrades required are not just solely associated with any single development, rather the CBD as a whole. In this regard TfNSW do not object to the proposal, but note for the benefit of Penrith Council the increasing need to undertake a broader assessment of the Penrith CBD town planning and network traffic.

Subdivision

As discussed earlier in this report, the DA seeks consent to subdivide the land, creating a parent lot and northern development lot (residue lot). While development consent is not sought for the future development on this lot, the applicant was requested to demonstrate how the northern residual lot may be redeveloped in the context of the subject proposal. A key concern which has not been resolved at this point is the ability to provide vehicle access to this site given road and site constraints as follows:

- Proximity of any access on Lawson Street to the roundabout intersection of Belmore Street and Lawson Street which would necessitate left-in left-out access and create undesirable traffic movements on immediate approach to the roundabout and pedestrian refuge facility.
- Future upgrade of the intersection of Belmore Street and Lawson Street to traffic signals and the resulting proximity of any access on Lawson Street to signals.
- Existing median island and raised threshold on Lawson Street which would need to be retained as part of the high pedestrian activity area.
- The swept paths provided fail to demonstrate satisfactory access and manoeuvring and account for existing infrastructure and site conditions including the narrow lot frontage on Lawson Street.

Public Exhibition

The proposal was publicly exhibited on two occasions as follows:

- First public exhibition period was 18 January to 16 February 2021 (mail out letter to owners and occupiers, and local newspaper advertising)
- Second public exhibition period was 22 August to 5 September (mail out letters to owners and occupiers only)

Seven unique submissions were made. The issues raised in the submissions pertaining to access, traffic, servicing, built form, landscaping, dust, tree removal and noise have all been addressed.

Conclusion and Recommendation

Before the application could be recommended for approval, the following matters require resolution:

- Additional contamination testing as described in this report to determine whether the parent lot is contaminated and if any work is required to make the land suitable having regard to Section 4.6 of the RHSEPP;
- Formal owners consent for the proposed works on Lot 11 DP854412 (Penrith Community Health Centre);
- Updated Services Management Plan which:
 - Resolves the conflict with loading bays no.2 and no.3, including confirming whether they are required for waste servicing of 83- 85 Henry Street and 87- 93 Henry Street, respectively.
 - Provides satisfactory servicing for Penrith Community Health Centre.
 - Demonstrate how the 9.7 metre truck, not being perpendicular on the exit swept path as it leaves the subject site, will mitigate safety concern for sight distance to pedestrians.
 - Swept paths to show the vehicle once it has continued further down Soper Place toward Woodriff Street and straightened its wheel. Clarify the speed at which the swept path is modelled, noting modelling swept path by turning wheels on the spot is not acceptable).
- Demonstrate how satisfactory vehicle access can be provided to the northern development lot (residue lot) having regard to:
 - Proximity of any access on Lawson Street to the roundabout intersection of Belmore Street and Lawson Street which would necessitate left-in left-out access and create undesirable traffic movements on immediate approach to the roundabout and pedestrian refuge facility.
 - Future upgrade of the intersection of Belmore Street and Lawson Street to traffic signals and the resulting proximity of any access on Lawson Street to signals.
 - Existing median island and raised threshold on Lawson Street which would need to be retained as part of the high pedestrian activity area.
 - Inadequate swept paths provided that fail to demonstrate satisfactory access and manoeuvring and account for existing infrastructure and site conditions.
 - If any access to Lawson Street were to be supported, there are still issues with internal circulation for waste collection and service vehicles due to the narrow lot frontage on Lawson Street.

Site & Surrounds

The site is known as Soper Place Carpark. The site's address is 99a Henry Street, Penrith.

The development is proposed on two lots and one public road as follows:

- Lot 1 Deposited Plan (DP) 1265105 (outlined red in Figure 1)
- Part of Lot 11 DP854412 (outlined blue in Figure 1)
- Soper Place, public road (outlined green in Figure 1)

Figure 1 below provides a cadastral map of the site with various land parcels identified.

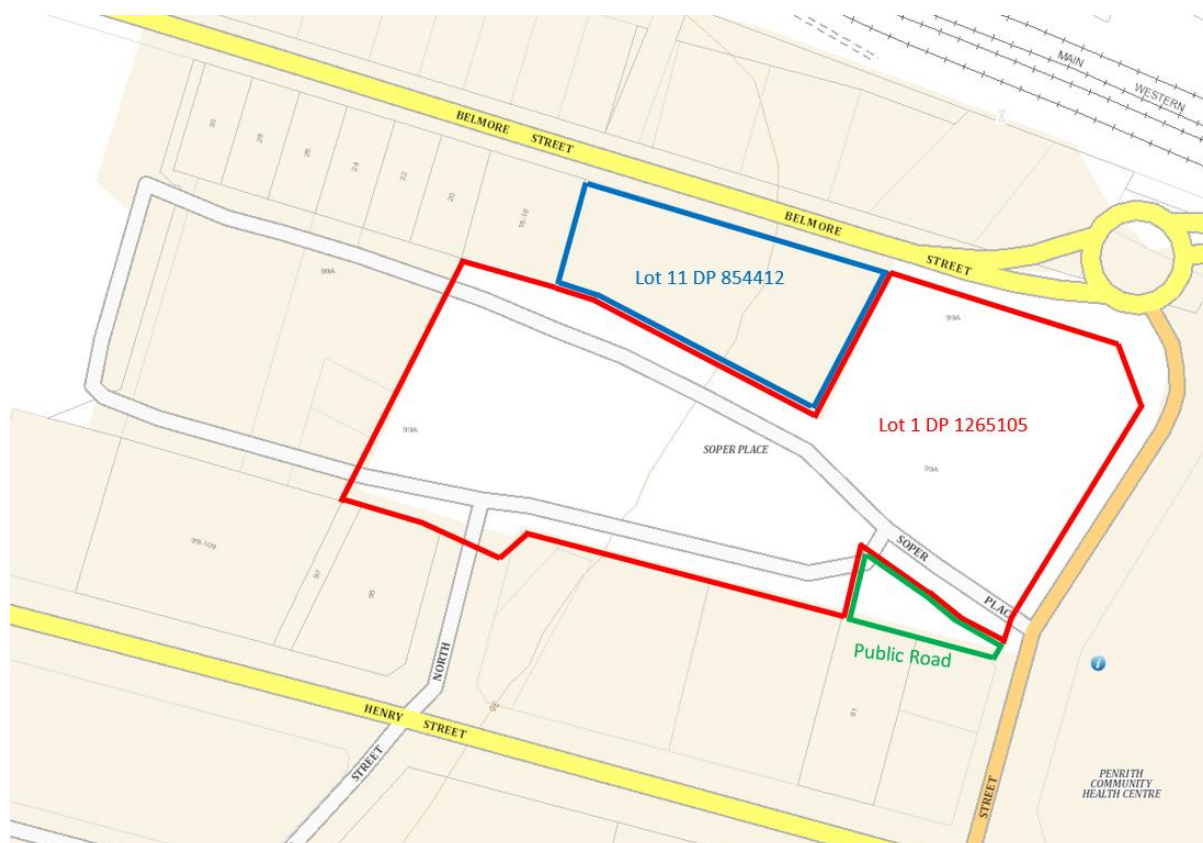


Figure 1: Extract of cadastral map, Lot 1 DP1265105 (Source: Six Maps)

Figure 2 provides an aerial photo of the existing site improvements, comprising:

- An at-grade carpark
- Road infrastructure being Soper Place, a loop road running east-west through Lot 1 DP1265105 and associated verge
- Penrith Community Health Centre
- Vegetation in the form of trees and small areas of grass groundcover

The site is bound by Lawson Street to the east, Penrith Community Health Centre and Belmore Road to the north, several commercial uses and Woodriff St North to the south and, at grade carpark and TAFE NSW Nepean Penrith to the west.



Figure 2: Aerial photo of the site (Source: Six Maps)

The following photographs depict the existing site improvements.



Figure 3: Eastern elevation of northern development lot
(Source: Gyde)



Figure 4: Existing loading bay at eastern edge of Soper Place
(Source: Gyde)



Figure 5: Existing loading bay at eastern edge of Soper Place
(Source: Gyde)



Figure 6: Existing Soper Place southern ringroad looking west
(Source: Gyde)



Figure 7: Existing Soper Place northern ring road looking west
(Source: Gyde)



Figure 8: Penrith Community Health Centre looking north
(Source: Gyde)



Figure 9: Soper Place carpark looking west (Source: Gyde)



Figure 10: Soper Place carpark looking south, location of Woodriff Street north extension (Source: Gyde)



Figure 11: Soper Place northern ring road looking east (Source: Gyde)



Figure 12: Soper Place southern ring road at western end, looking east (Source: Gyde)



Figure 13: Soper Place carpark looking north-east (Source: Gyde)



Figure 14: Lawson Street at intersection of Soper Place looking north (Source: Gyde)

The following table details the approximate site areas.

Table 1: Site area

Lot	Approximate total area	Comment
Lot 1 DP 1265105	10,950m ²	-
Part of Lot 11 DP854412	2,430m ²	As discussed later in this report, the proposed roundabout, providing

Lot	Approximate total area	Comment
		access to Penrith Community Health Centre, is proposed on a small part of the south-west corner of Lot 11 DP854412.
Soper Place, public road	421m ²	

The site is situated on the north-eastern edge of the Penrith City Centre. Penrith is identified in the Western City District Plan as a Metropolitan Cluster and Health and Education Precinct. The site is located approximately 800 metres walking distance from Penrith Railway Station. Several key services and educational establishment are in proximity of the site, notably:

- TAFE NSW Nepean Penrith (50 metres west of the site)
- Westfield Penrith (300 metres west of the site)
- Nepean Hospital (2.3km east of the site) and several private hospitals
- Western Sydney University Kingswood (3.7km east of the site)

The following photographs illustrate existing site improvements of the immediate surrounds of the site and development within the City Centre.



Figure 15: Woodriff Street north, south of Henry Streetm looking north (Source: Gyde)



Figure 16: Intersection of Woodriff Street north and Henry Street, looking north-east (Source: Gyde)



Figure 17: Lawson Street, north of Soper Place looking south (Source: Gyde)

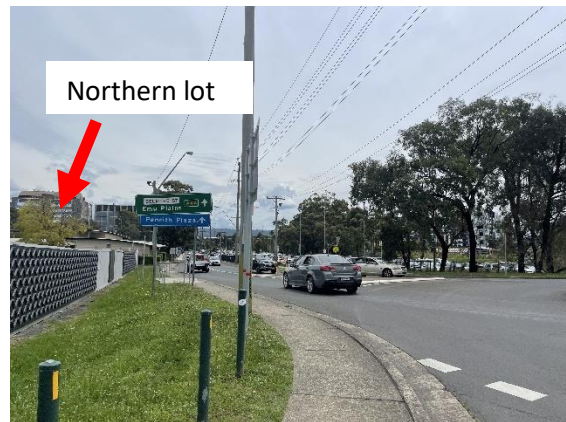


Figure 18: Belmore Road, north of the northern development lot, looking west (Source: Gyde)



Figure 19: Existing roundabout at intersection of Lawson Street and Belmore Road (Source: Gyde)



Figure 20: Median strip to east of northern development lot (Source: Gyde)



Figure 21: 87- 93 Henry Street shop fronts, looking west
(Source: Gyde)



Figure 22: 87- 93 Henry Street shop fronts, looking east
(Source: Gyde)



Figure 23: 83A- 85 Henry Street shop fronts, looking west
(Source: Gyde)



Figure 24: 83A- 85 Henry Street shop fronts, looking east
(Source: Gyde)



Figure 25: 25 Lawson Street looking west (Source: Gyde)



Figure 26: Intersection of Lawson Street and Henry Street,
looking south-east (Source: Gyde)



Figure 27: Development on Henry Street, looking west (Source: Gyde)



Figure 28: New development at 121 Henry Street (Source: Gyde)



Figure 29: Pedestrian thoroughfare on western ground floor edge of new development at 121 Henry Street (Source: Gyde)



Figure 30: Shared vehicular and servicing access 2-6 Station Street (Source: Gyde)



Figure 31: Westfield Penrith, looking west on Station Street (Source: Gyde)



Figure 32: Station Street looking south (Source: Gyde)

Proposal

The subject DA seeks development consent for:

- Demolition of the existing site structures
- Removal of 18 trees to accommodate the proposed works
- Construction of a part nine storey and part five (5) storey mixed use building comprising:
 - 686 Public Car Parking Spaces, of which 277 spaces for public short-term parking, 372 spaces for public long-term parking, 37 commercial spaces, 14 accessible spaces and 34 motorcycle spaces
 - Multi-Use Community Space
 - Public Rooftop Garden, including landscaping works
 - Four (4) Storeys of Commercial Floor Space (Levels 5- 8)
- Ground level and streetscape public domain works
- Realignment of Soper Place, comprising:
 - 1.5 metre southern footpath
 - 3 metres kerbside/parking lane, comprising three loading bays
 - 3 metre through lane
 - 1.5 metre northern footpath
- Extension of Woodriff Street North to the north, comprising:
 - 5.3 metre east side footpath and verge
 - 3 metre kerbside loading lane, which is the proposed loading bay for Penrith Community Health Centre *
 - 4.6 metre through lane
 - 3.9 metre west side verge
- Reconfiguration of Soper Lane / Woodriff Street intersection as a priority-controlled intersection
- Reconfiguration of Soper Lane / Lawson Street intersection as a priority-controlled intersection, with a channelised right turn lane proposed along Lawson Street as part of the Soper Place proposal
- Provision of a roundabout, part situated on Lot 1 DP1265105 (Soper Place Carpark) and Lot 11 DP854412 (Penrith Community Health Centre)
- Traffic control measures, specifically:
 - Optimising signal timing at Henry Street/Lawson Street intersection
 - Implement a no stopping restriction to the westbound lane of Henry Street and optimise signalling at the Henry Street/Evan Street intersection; and
 - Provide grade separated pedestrian crossing to remove pedestrian signal timing and improve safety at the Belmore Street/Station Street/Jane Street intersection.
- Subdivision and boundary realignment as illustrated in Figure 40 below to create:
 - A parent lot with an approximate area of 5,470m²
 - A northern development site “residue land”
 - Woodriff Street extension
 - Realigned Soper Place

*Page 58 of the Services Management Plan (SMP) prepared by Ason Group (dated 25 September 2022) includes drawing AG1491-26-v8. This illustrates *Option 2a – 11 metre waste truck reverse into existing bin storage area*. The SMP discusses waste servicing for the Penrith Community Health Centre from the proposed bay on the extended Woodriff Street North and is silent on Option 2a. Option 2a has accordingly not been assessed in this report as it is inconsistent with all other document that forms part of the DA.

The following figures depict the proposed works described above.

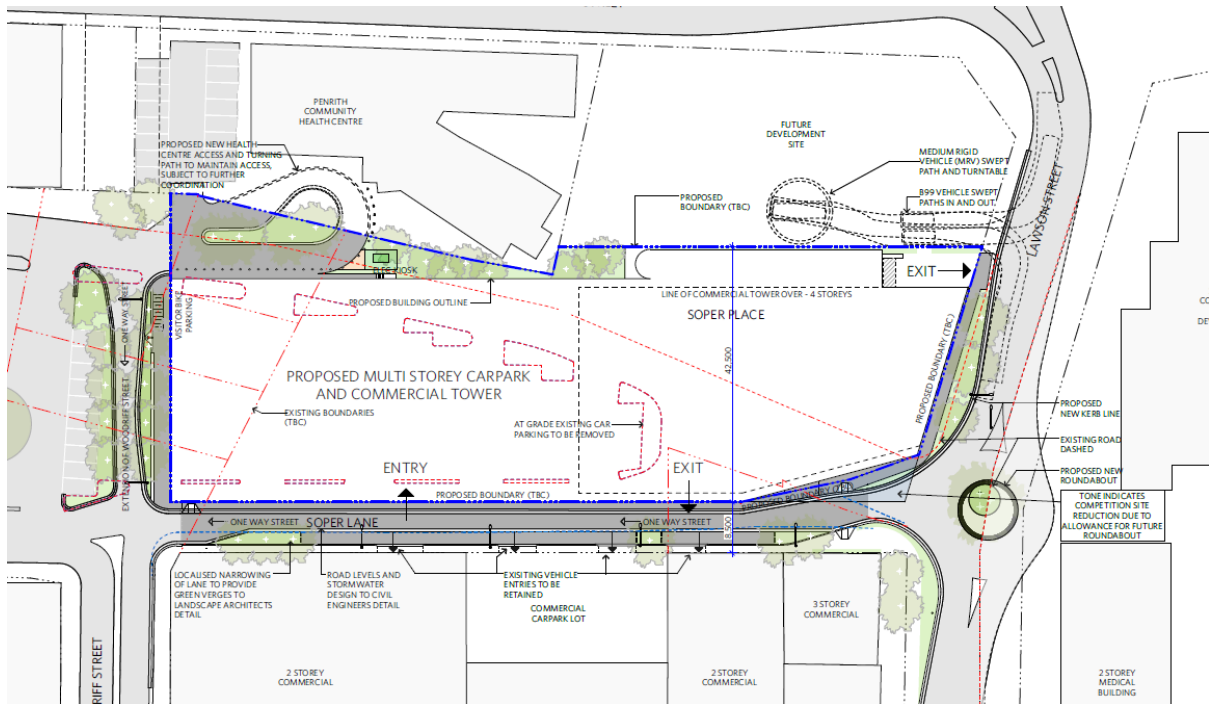


Figure 33: Extract drawing DA03 (Rev C) showing demolition in red dash (Source: DBJ)

It is noted that the site plan elements in Figure 33 is superseded by later drawing revisions. The above extract is provided for demolition purposes only.

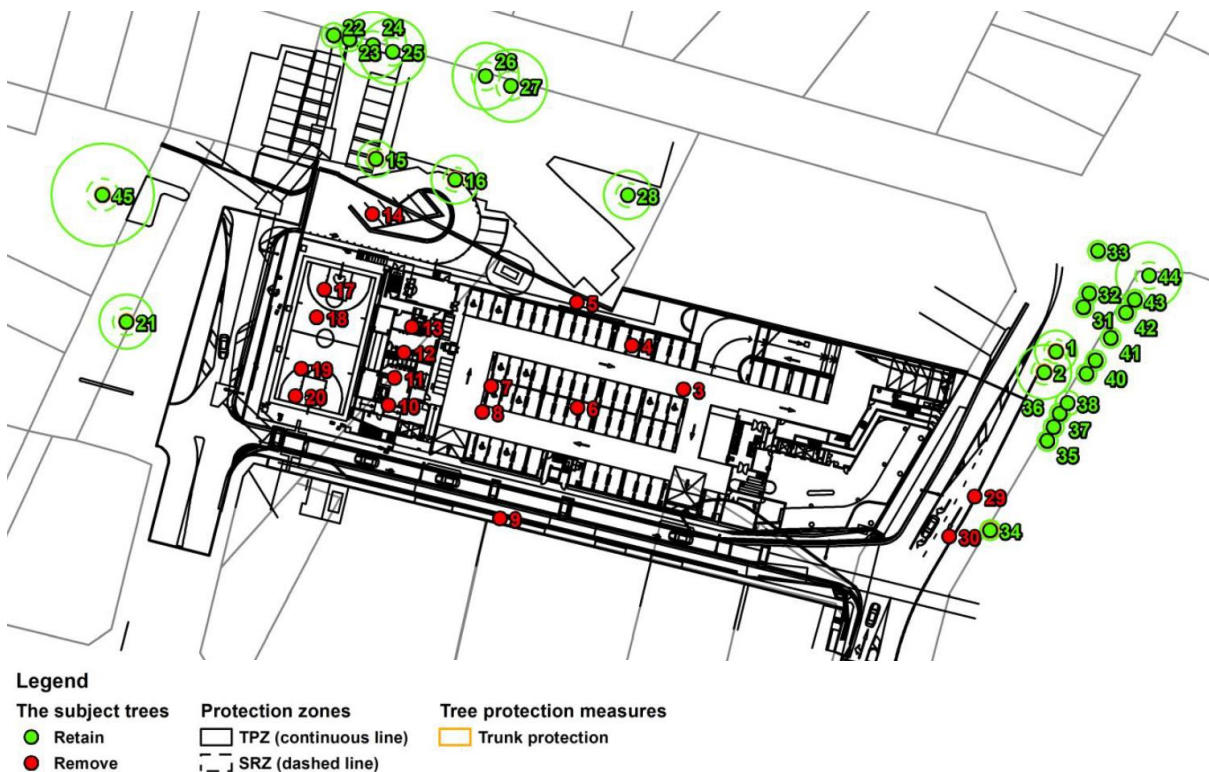


Figure 34: Extract of tree removal plan (Source: Tree Survey, Applicant Arborist)

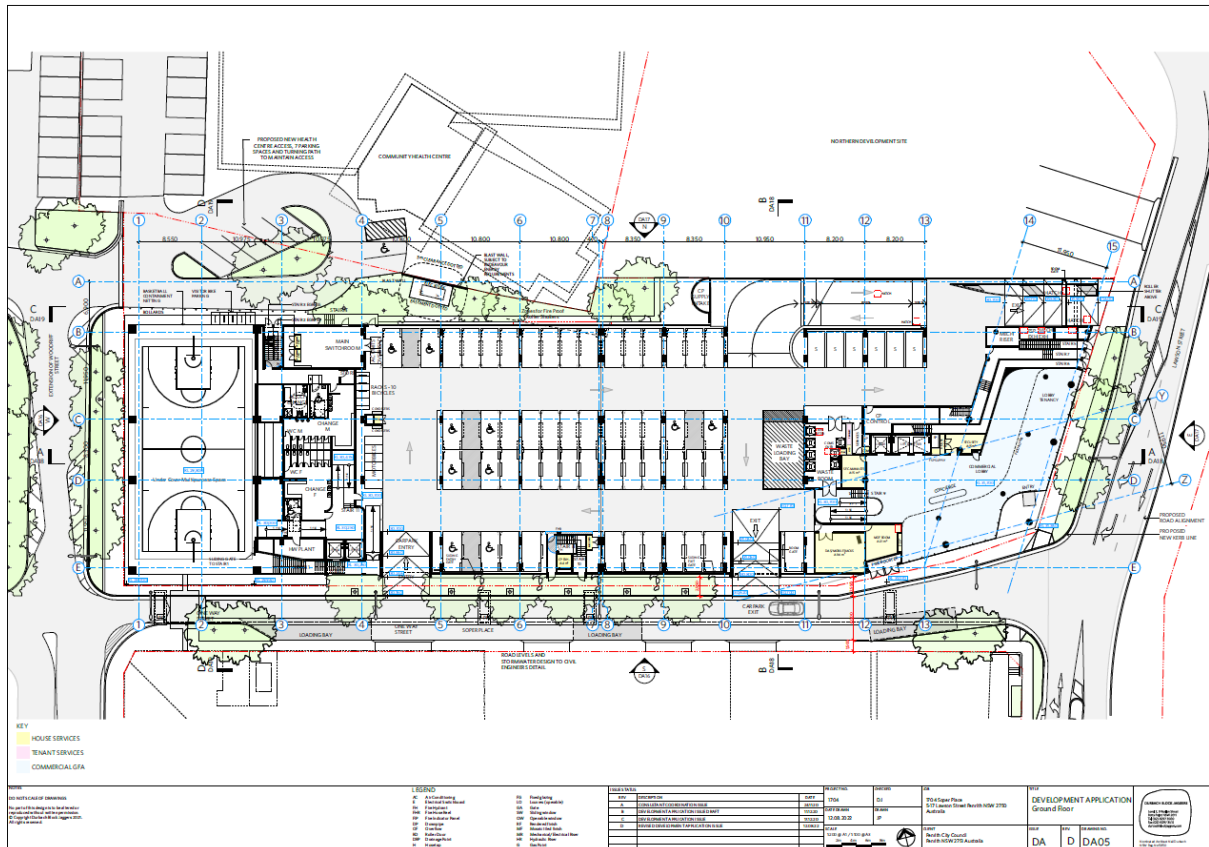


Figure 35: Extract of proposed ground floor plan (Source: DBJ, Applicant Architect)

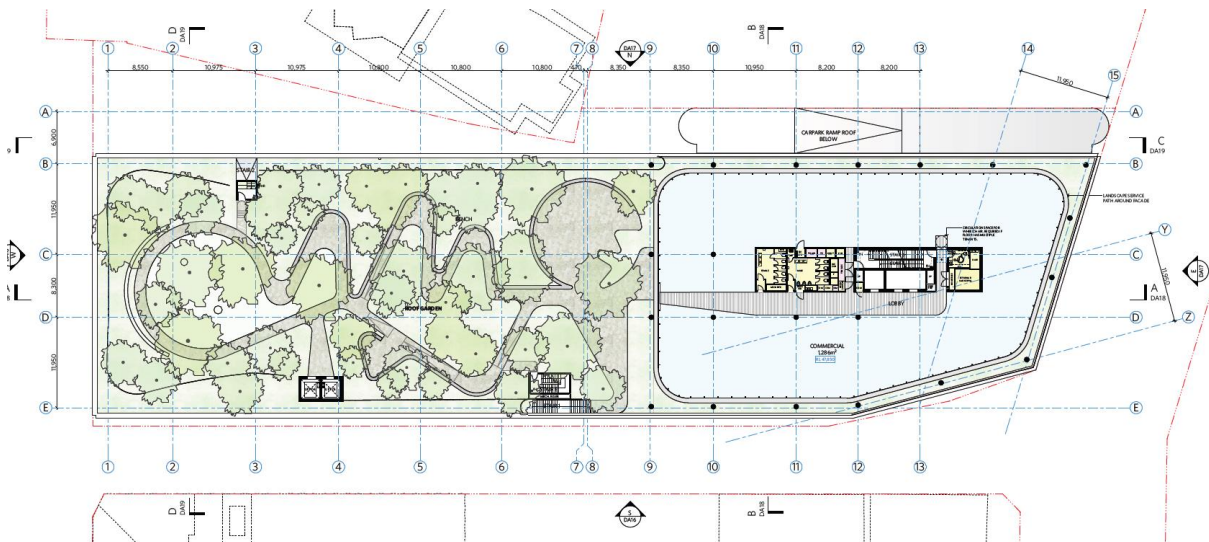


Figure 36: Extract of level 5 plan (Source: DBJ, Applicant Architect)

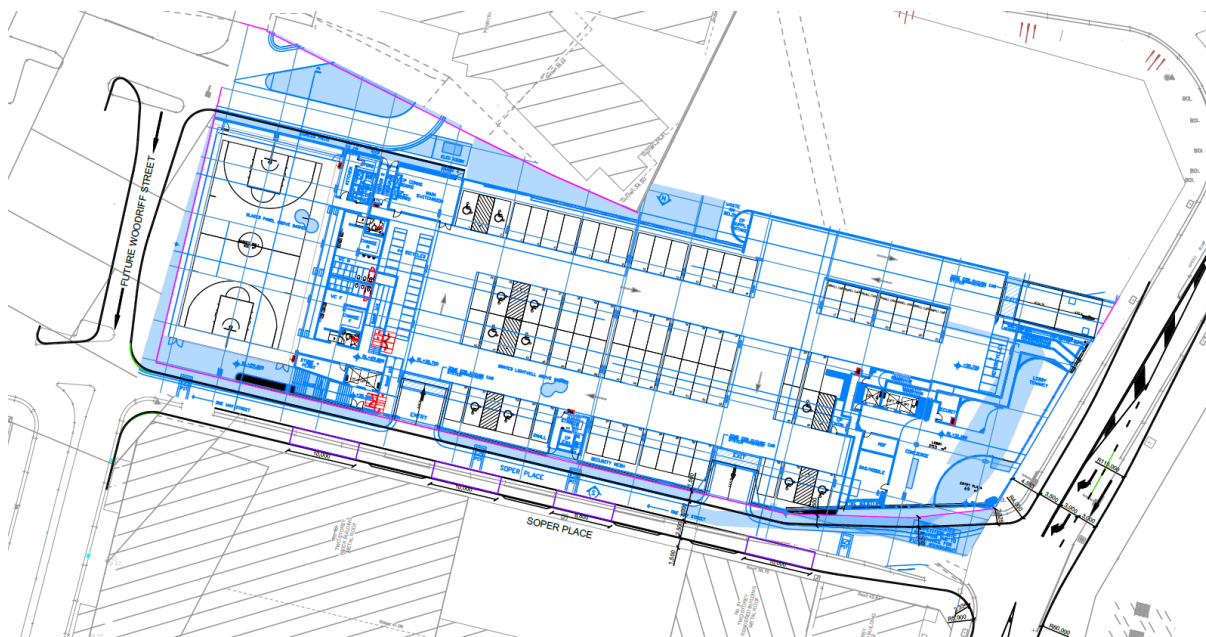


Figure 37: Extract of realigned Soper Place design (Source: Ason Group, Applicant Traffic Engineer)

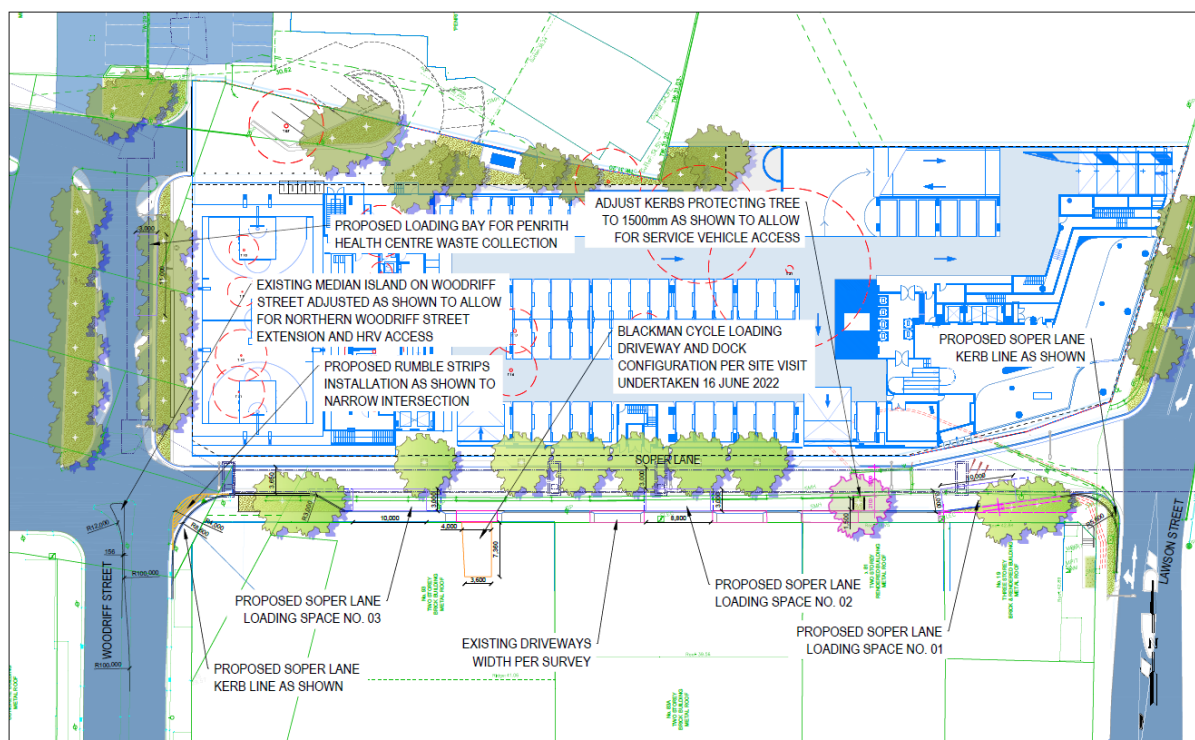


Figure 38: Extract of Soper Lane Service Management Strategy (Source: Ason Group, Applicant Traffic Engineer)

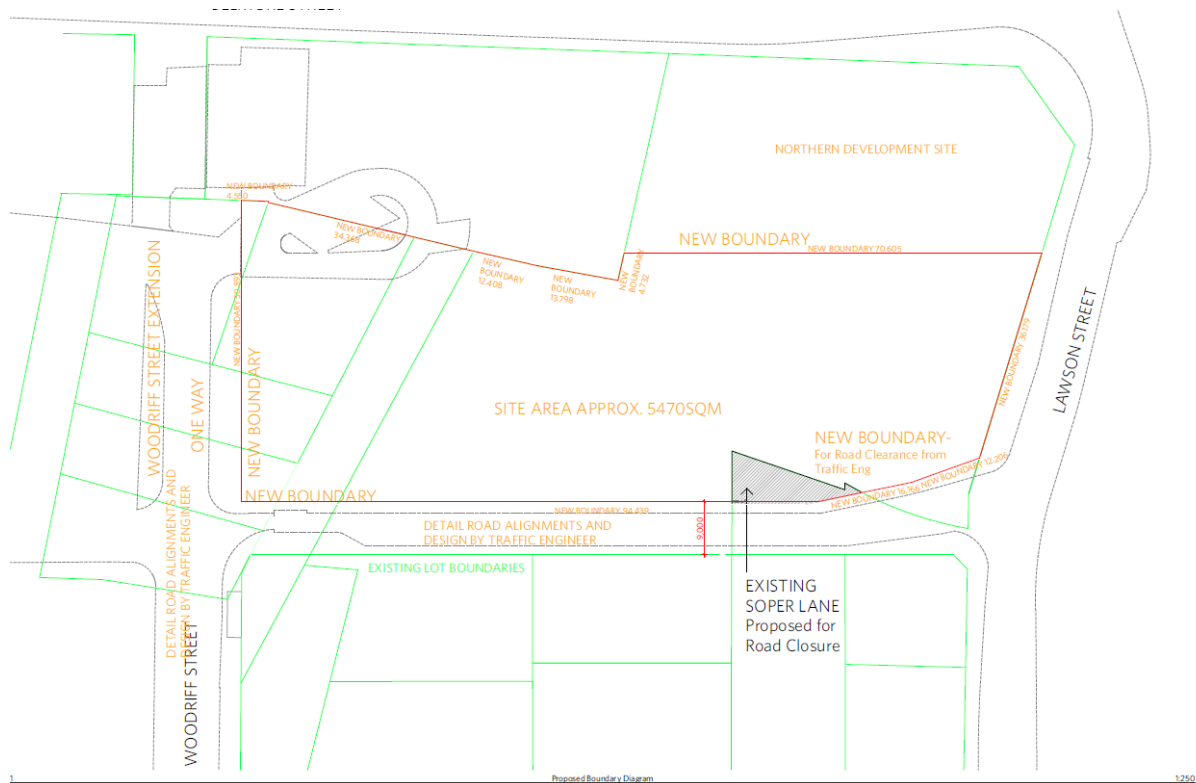


Figure 39: Extract of boundary realignment plan (Source: DBJ, Applicant Architect)

Whilst this DA was being considered, the applicant registered a Lot Consolidation Plan with NSW Land Registry. This involved the consolidation of the following lots which previously comprised the site:

- Lots 1 and 2 DP1982253
- Lot 1 DP198453
- Lot 10 DP849474
- Lot 1 DP859369
- Lot 10 DP859371
- Lot 1 DP995047
- Lots 1, 2 and 3 DP1159119

The Plan was registered on 3 May 2021 and is known as DP1265105. Refer to the below figure.

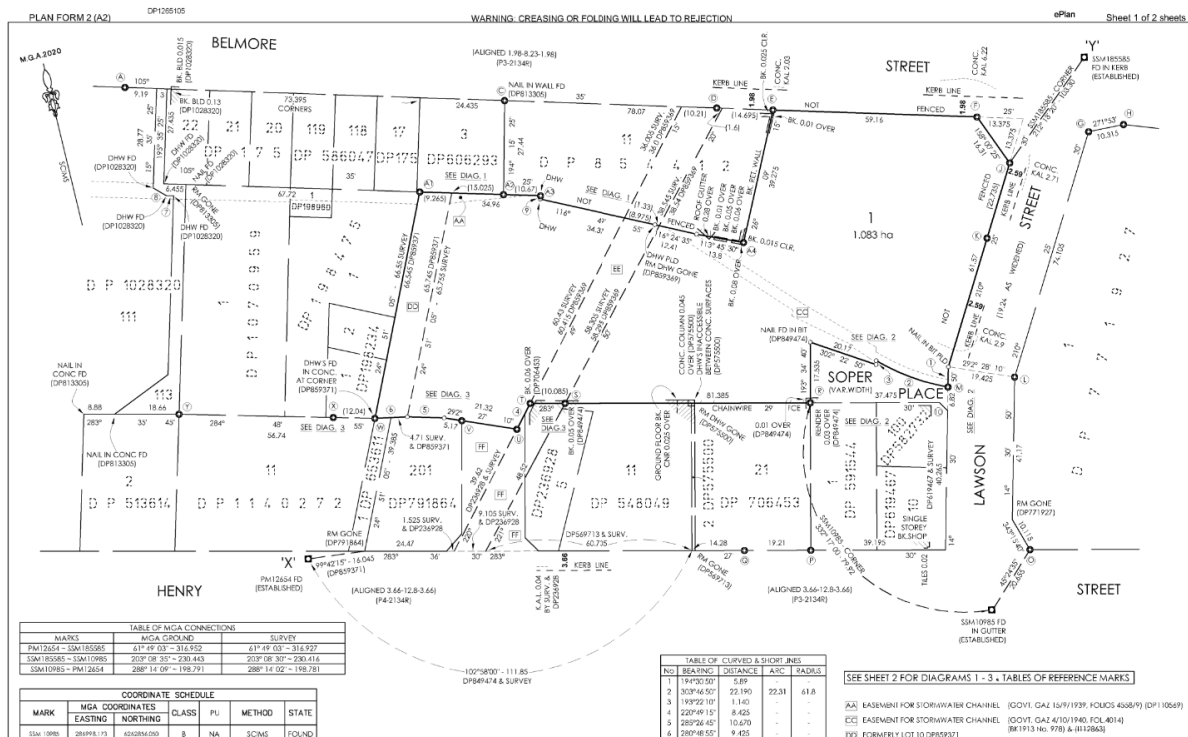


Figure 40: Extract of registered lot consolidation plan (Source: Lot Consolidation Plan, Wayne Edmund Stoeckl)

The lots on which the development is proposed reflects the above Lot Consolidation Plan and have been referenced as the site earlier in this report. The application, as described above, seeks development to subdivide and realign boundaries to create various parcels reflective of the development proposal and shown in Figure 39.

Plans that apply

- Penrith Local Environmental Plan 2010
- Penrith Development Control Plan 2014
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Industry and Employment) 2021
- State Environmental Planning Policy (Precincts – Western Parkland City) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021

Planning Assessment

Section 2.12 – Sydney Western City Planning Panel (SWCPP)

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

Section 4.15 – Evaluation

The DA has been assessed in accordance with the matters for consideration under Section 4.15 of the Act, and having regard to those matters, the following issues have been identified for further consideration.

Section 4.46 – Integrated Development

Roads Act 1993

The development proposal is not identified as integrated development. The development will require a Section 138 approval under the *Roads Act 1993* to carry out the proposal works, clause 4.46(3) of the Act states:

“development is not integrated development in respect of the consent required under section 138 of the Roads Act if, in order for the development to be carried out, it requires the development consent of a council and approval of the same Council”.

As Council is the relevant consent authority for the Section 138 approval, the proposal is therefore not considered integrated development for the purposes of the Roads Act.

As discussed later in this report, the proposal is identified as traffic generating development in accordance with Schedule 3 of State Environmental Planning Policy (Transport and Infrastructure) 2021 (TISEPP). As the proposal includes a car park for 50 or more cars and is within 90 metres of a road that connects to a classified road, being Belmore Road (Great Western Highway).

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

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 Vegetation in non-rural areas

In accordance Section 2.3 of the BCSEPP, Chapter 2 of the BCSEPP applies as the site is in the City of Penrith LGA and is zoned B3 Commercial Core.

The policy requires that a person must seek a permit from council to clear vegetation. A person must also not clear native vegetation in any non-rural area of the State that exceeds the biodiversity offsets scheme threshold without the necessary authority. An authority, however, is not required for the removal of vegetation that the Council or the Native Vegetation Panel is satisfied is dying or dead and is not required as the habitat of native animals, or that the Council is satisfied is a risk to human life or property. This application seeks consent to remove 18 trees in accordance with BCSEPP and Chapter C2 of the Penrith DCP. These trees are trees: 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 17, 18, 19, and 20, see below plan.

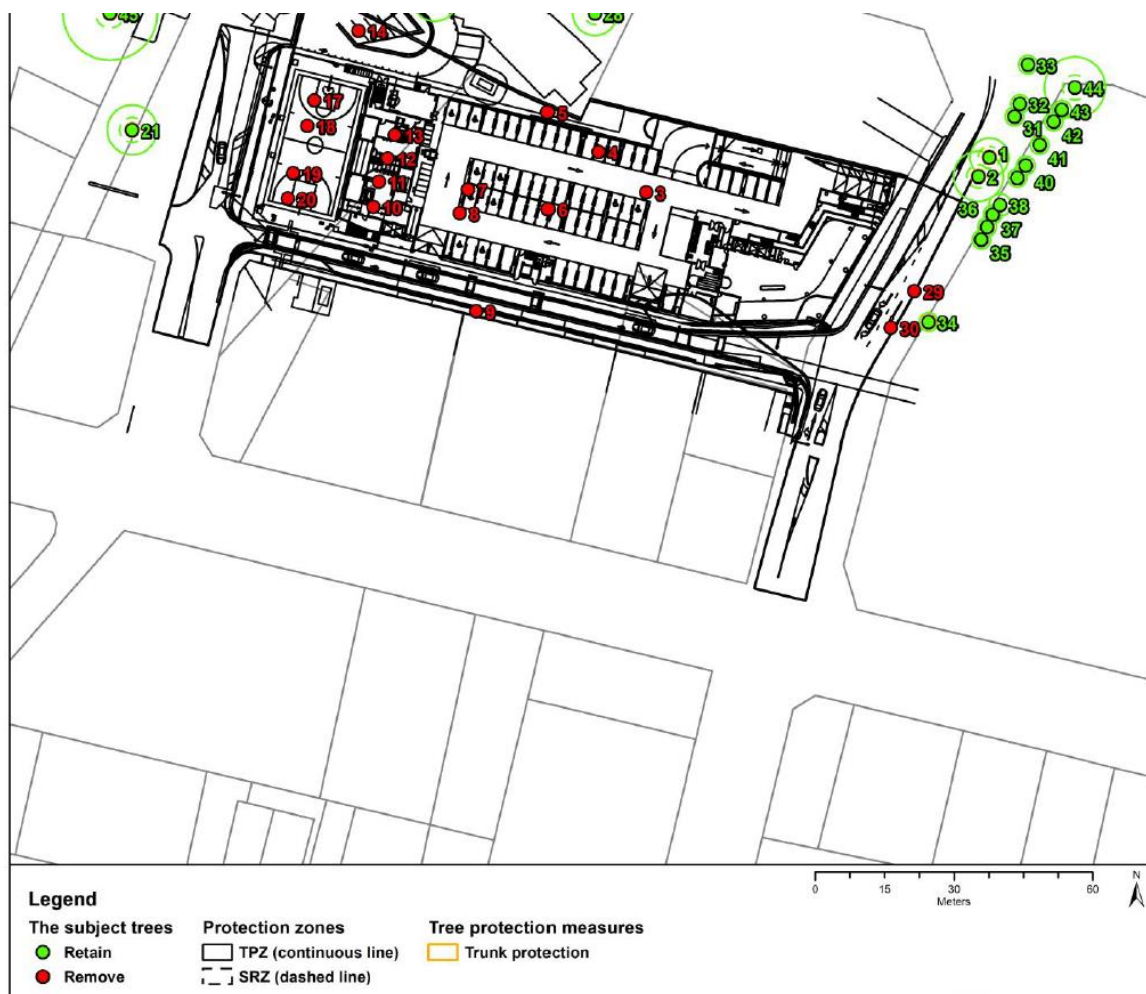


Figure 41: Extract of tree removal plan (Source: Tree Survey)

The proposal is consistent with the aims of Chapter 2 of the BCSEPP in that:

- The biodiversity values of the trees are assessed in the Arborist Report prepared by Tree Survey dated 4 August 2022. 6 trees (nos 8, 9, 10, 12, 13, 18) proposed for removal are low retention, 9 trees proposed for removal are medium retention (nos 4, 5, 6, 7, 11, 14, 17, 19 and 20) and one tree is assessed as having a high retention value (no. 3). All trees experience major building encroachment and hence are unable to be retained with the proposal.
- The amenity of the site and immediate surrounding area is preserved with a comprehensive landscape scheme.

Council's tree management officer is supportive of the proposed tree removal, subject to conditions.

Chapter 8 Sydney drinking water catchment

The site is not located in the Sydney drinking water catchment.

Chapter 9 Hawkesbury-Nepean River

Chapter 9 of the BCSEPP aims to protect the environment of the Hawkesbury-Nepean system by ensuring that the impacts of the future land uses are considered in a regional context.

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

Section 9.5 details specific planning policies and recommended strategies and includes (3) Water quality, (6) Flora and fauna and, (10) Urban development.

The policy with regard to water quality states that:

“Future development must not prejudice the achievement of the goals of use of the river for primary contact recreation (being recreational activities involving direct water contact, such as swimming) and aquatic ecosystem protection in the river system. If the quality of the receiving waters does not currently allow these uses, the current water quality must be maintained, or improved, so as not to jeopardise the achievement of the goals in the future. When water quality goals are set by the Government these are to be the goals to be achieved under this policy.”

The strategies of the policy with regard to water quality include the following.

- “(a) Quantify, and assess the likely impact of, any predicted increase in pollutant loads on receiving waters.*
- (b) Consider the need to ensure that water quality goals for primary contact recreation and aquatic ecosystem protection are achieved and monitored.*
- (c) Approve development involving primary contact recreation or the withdrawal of water from the river for human contact (not involving water treatment), such as showers, only in locations where water quality is suitable (regardless of water temperature).*
- (d) Do not carry out development involving on-site disposal of sewage effluent if it will adversely affect the water quality of the river or groundwater. Have due regard to the nature and size of the site.*
- (e) Develop in accordance with the land capability of the site and do not cause land degradation.*
- (f) Consider the need for an Erosion and Sediment Control Plan (to be in place at the commencement of development) where the development concerned involves the disturbance of soil.*
- (g) Minimise or eliminate point source and diffuse source pollution by the use of best management practices.*
- (h) Site and orientate development appropriately to ensure bank stability. Plant appropriate native vegetation along banks of the river and tributaries of the river, but not so as to prevent or inhibit the growth of aquatic plants in the river, and consider the need for a buffer of native vegetation.*
- (i) Consider the impact of the removal of water from the river or from groundwater sources associated with the development concerned.*
- (j) Protect the habitat of native aquatic plants.”*

Council's Environmental Health: Waterways Officer has reviewed the proposal and is satisfied that development is supportive, as such is consistent with the abovementioned strategies.

The policy with regard to flora and fauna states that:

“Manage flora and fauna communities so that the diversity of species and genetics within the catchment is conserved and enhanced.”

Council's tree management and landscape officers are supportive of the proposal from a flora and fauna perspective, subject to conditions.

The policy with regard to urban development states that:

All potential adverse environmental impacts of urban development must be assessed and controlled.

For reasons outlined elsewhere in this report, the proposal is consistent with policy (10) urban development.

Section 9.9 ((4) Remediation of contaminated land) confirms that consent is required for the remediation of contaminated land under this Policy. Refer to discussion under State Environmental Planning Policy (Resilience and Hazards) 2021 (RHSEPP).

Section 9.9 ((14) Recreational facilities) confirms consent is required for development for the purpose of a building, work or place used (whether or not for commercial gain) for sporting activities, recreation or leisure activities, being a building, work or place that is situated within the river or on land that is flood prone. Development consent is sought for a recreation facility.

State Environmental Planning Policy (Industry and Employment) 2021

Chapter 3 Advertising and signage

Chapter 3 of State Environmental Planning Policy (Industry and Employment) 2021 (IESEPP) aims to ensure that signage is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of a high-quality design and finish.

The subject DA does not seek development consent for signage for the development. Notwithstanding the applicant has indicated future signage locations on drawings DA16 and DA17, refer to the below extracts.

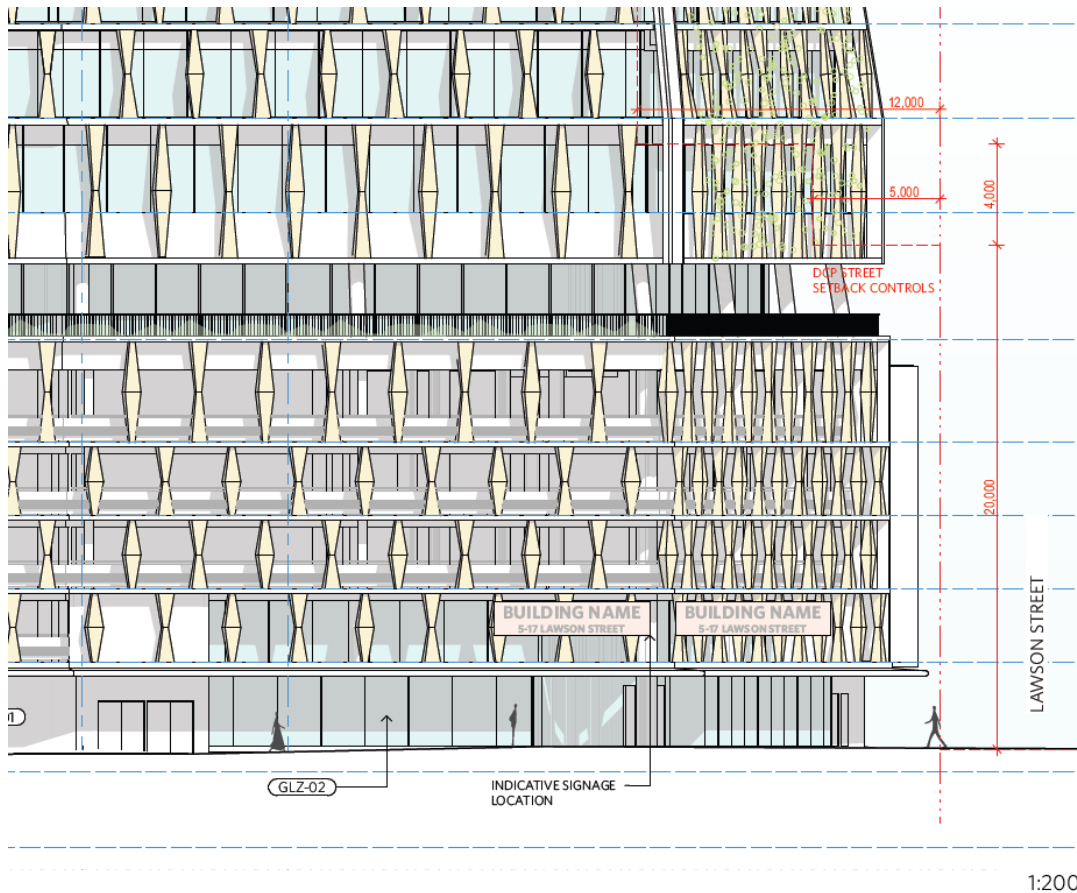


Figure 42: Extract of southern elevation indicating signage location (Source: DBJ)

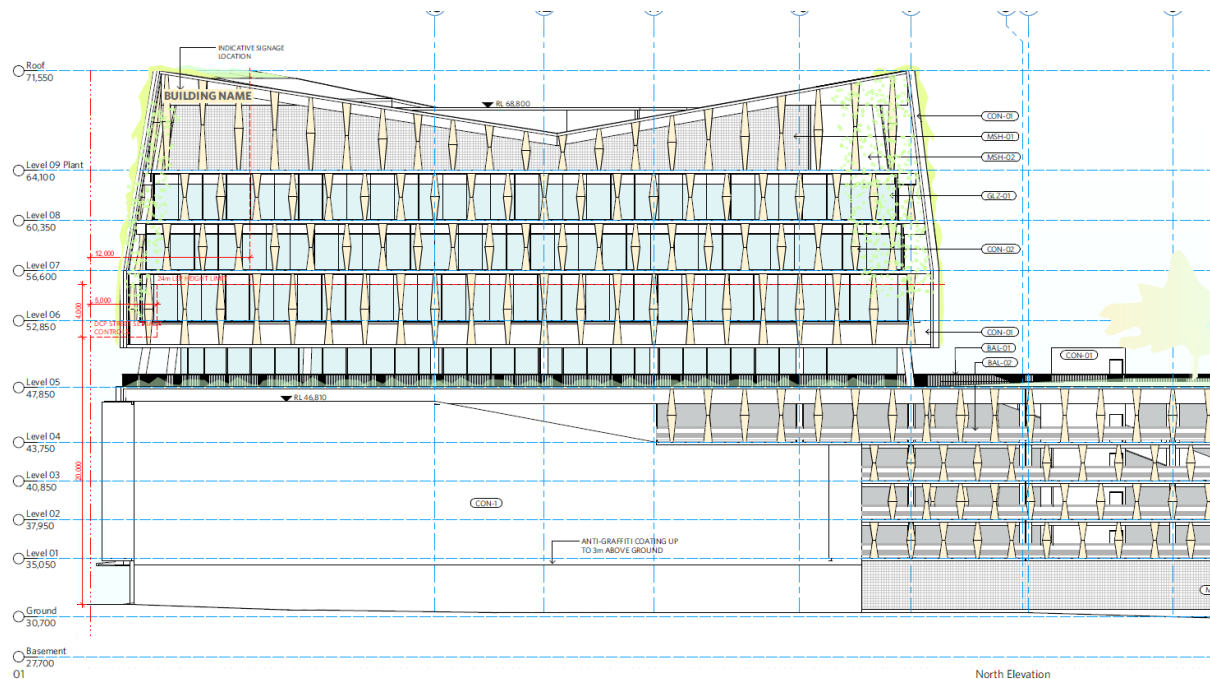


Figure 43: Extract of northern elevation showing indicative signage (Source: DBJ)

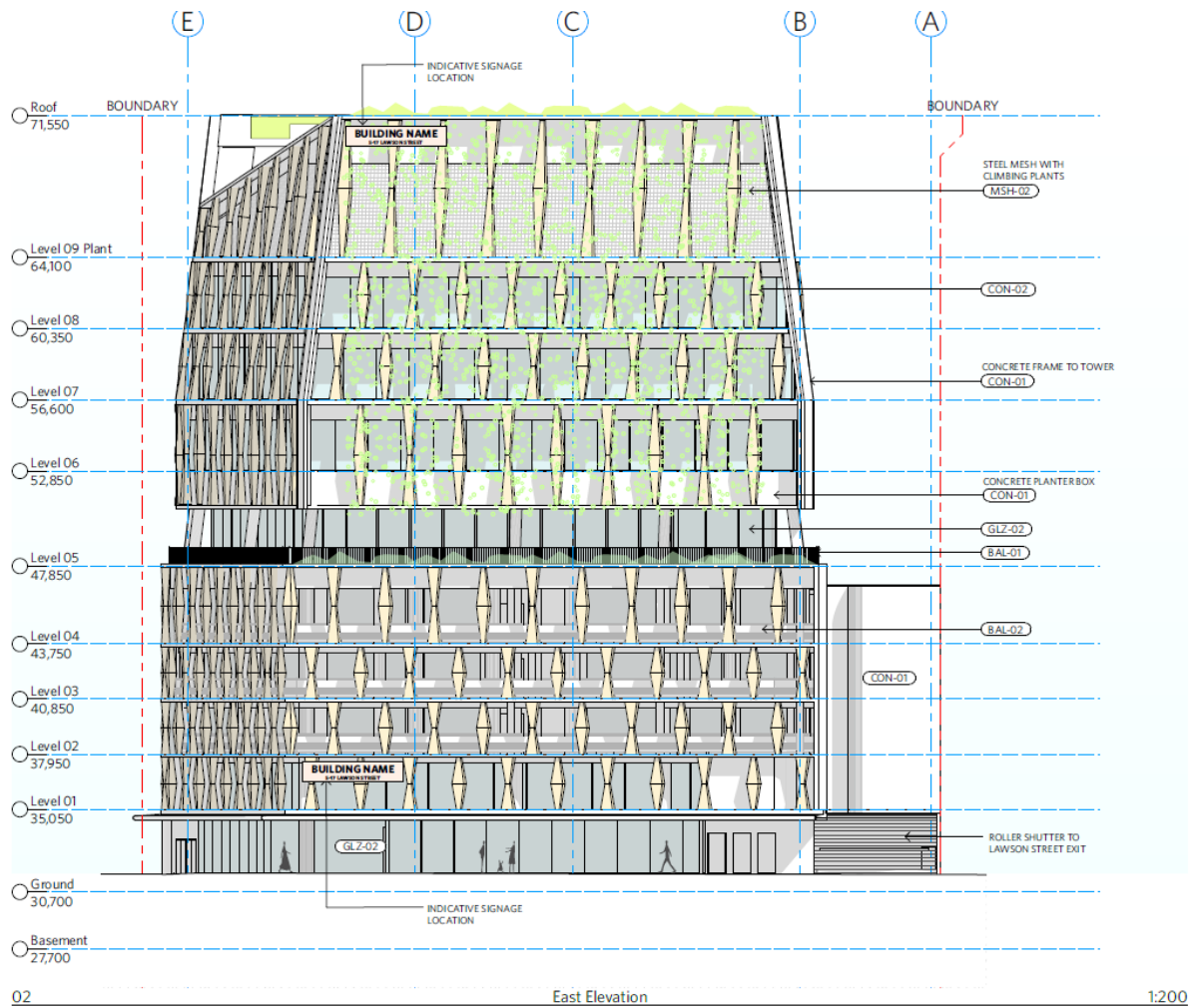


Figure 44: Extract of eastern elevation showing indicate signage (Source: DBJ)

Section 3.6 of the IESEPP states:

A consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied—

- (a) that the signage is consistent with the objectives of this Chapter as set out in section 3.1(1)(a), and*
- (b) that the signage the subject of the application satisfies the assessment criteria specified in Schedule 5.*

As the DA indicates signage locations, regardless consent is not sought for these signs, a detailed assessment against Section 3.6 of the IESEPP cannot be undertaken. Signage will be subject of separate assessment/approval. A condition of consent could be imposed to this affect.

State Environmental Planning Policy (Precincts – Western Parkland City) 2021

Chapter 4 Western Sydney Aerotropolis

Chapter 4 aims to facilitate development in the Western Sydney Aerotropolis in accordance with the objectives and principles of the Western Sydney Aerotropolis Plan and promote sustainable, orderly and transformational development in the Western Sydney Aerotropolis.

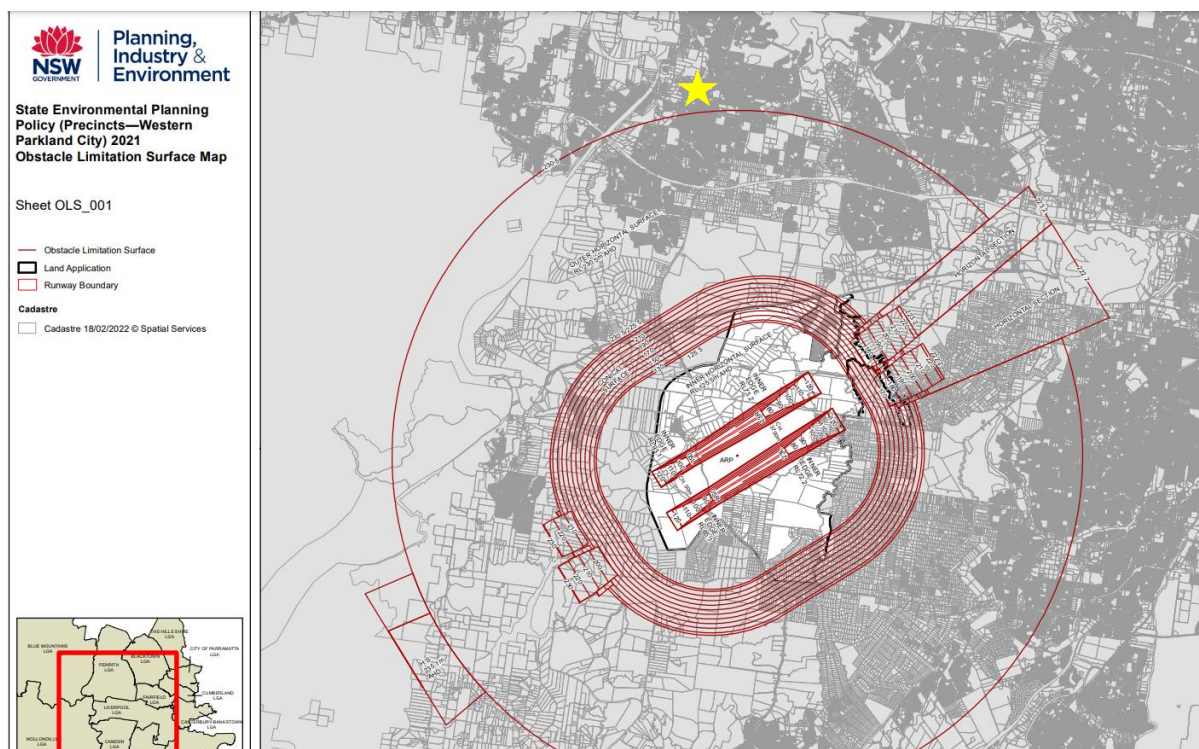


Figure 46: Extract of Western Sydney Precinct SEPP OLS map, approximate location of the site identified with a yellow star (Source: NSW Legislation)

As such, no further assessment is required under the Precinct - Western Sydney City SEPP.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 Remediation of land

The object of Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 (RHSEPP) is to provide a Statewide planning approach to the remediation of contaminated land. Pursuant to Section 4.6 of the RHSEPP, a consent authority must not consent to the carrying out of any development on land unless –

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

Council's Environmental Health Officer has reviewed the DA. Section 4.6 RHSEPP is addressed as follows.

GeoEnviro Consultancy Pty Ltd prepared a Geotechnical Investigation of the parent and northern development lot (residue land) dated 30 November 2017. An additional Geotechnical Investigation covering also investigating both lots was prepared by GeoEnviro Consultancy Pty Ltd dated May 2019. The investigation assesses and provides information on soil contamination and subsurface conditions and bedrock. The 2019 investigation involved six additional samples in accordance with relevant guidelines and compared results adequately against relevant criteria, with no exceedances in identified criteria.

JBS&G Australia Pty Ltd prepared a Detailed Site Investigation (DSI) for the parent lot, the most recent dated 9 June 2021.

JBS&G prepared a DSI for the northern development lot (the residue lot as described earlier in this report), dated 27 July 2022. The DSI for the northern development lot identified

- The adopted relevant criteria were exceeded for friable asbestos and lead.
- That remediation is required prior to the site being suitable for the proposed development.
- No Remediation Action Plan (RAP) has been prepared by the Applicant.

On 1 September 2022 the Applicant responded to the above concerns raised by Council's Environmental Health Officer stating:

"Whilst contaminants are below hardstand which is not proposed to be disrupted as part of the proposed development, and that the remaining concerns associated with land contamination can be addressed through implementation of an Environmental Management Plan."

The EMP demonstrates that the northern residue lot is suitable in its contaminated state in accordance with Section 4.6 of the RHSEPP (subject to conditions), as no development is proposed on the northern development lot.

Inadequate testing has been undertaken to conclude that the parent lot is not contaminated. The following plan provides an extract of the boreholes undertaken in DSI for the parent lot.

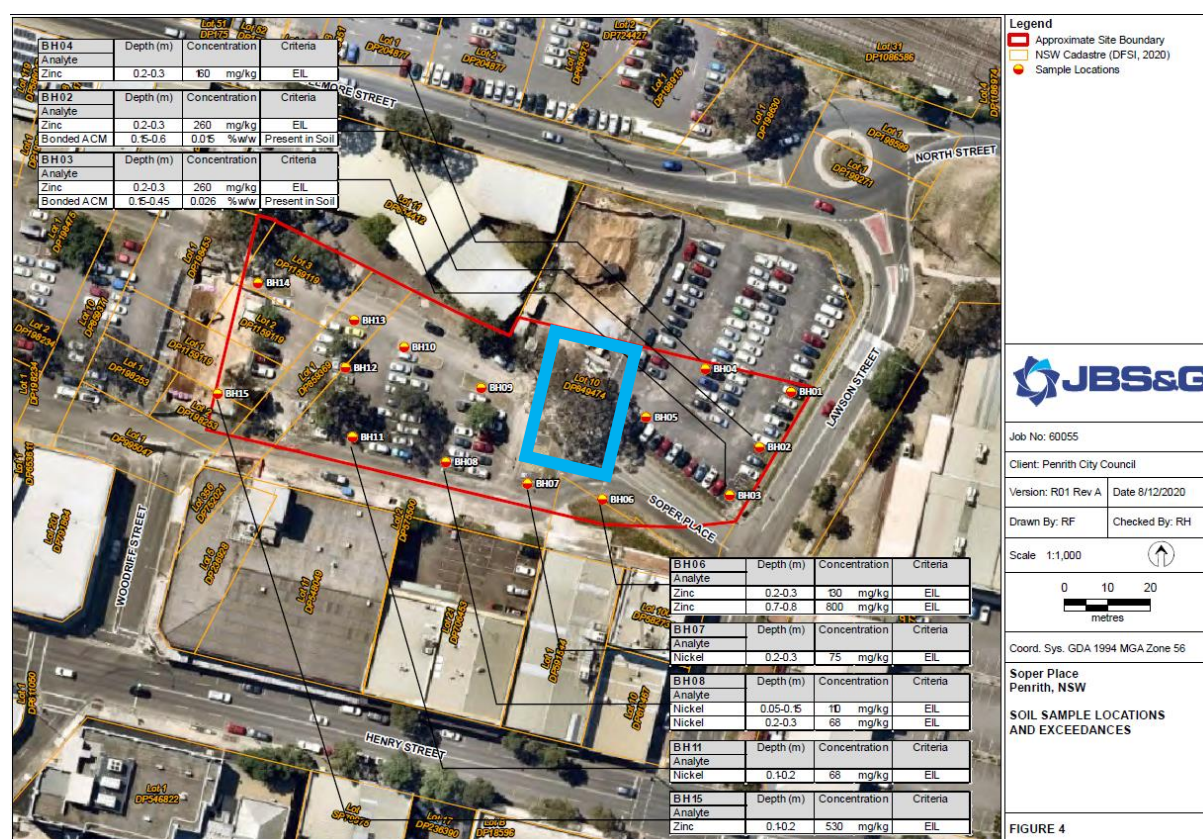


Figure 47: Extract of soil sample locations and exceedances for parent lot, untested area shown with a blue rectangle (Source: JBS&G DSI, Applicant Contamination Consultant)

Criteria Key

NEPM 2013 Table 1B(1-5)
Generic EIL- Comm/Ind

NEPM 2013 HSL Asbestos
in Soil Comm/Ind - HSL D

BH23 (0.2-0.3)	Date	Concentration (mg/kg)	Criteria
Analyte			
Lead	1/07/2022	3100	NEPM (2013)

BH21 (0.2-0.3)	Date	Concentration (% (w/w))	Criteria
Analyte			
Asbestos from FA & AF in Soil	1/07/2022	0.0016	NEPM HSL (2013)

Legend

- Approximate Site Boundary
- NSW Cadastre (DPSI, 2021)
- Approximate Sample Locations

Scale 1:900

Coord. Sys. GDA 1994 MGA Zone 56

Client: Penrith City Council

Version: R01 Rev A **Date:** 25/07/2022

Drawn By: LJ **Checked By:** JD

99A and 99B Henry Street Penrith, NSW

SOIL SAMPLE LOCATIONS AND EXCEEDANCES

FIGURE 2

The development site is located on the southern side of Belmore Street more than 25 metres from the rail corridor. Hence, Section 2.99 of the TISEPP does not apply.

Section 2.100 Impact of rail noise or vibration on non-rail development

While the development is not for the purpose of residential accommodation, a place of public worship, a hospital, an educational establishment or childcare facilities these uses (excluding residential accommodation) are permissible in the B3 Commercial Core zone with development consent. The applicant was requested to address this in the Acoustic Assessment, as the aforementioned uses could potentially be accommodated within the nominated commercial floor plates.

Before determining a DA for development to which Section 2.100 applies, the consent authority must take into consideration any guidelines that are issued by the Planning Secretary for the purposes of this section and published in the Gazette.

The applicant's Acoustic Consultant, Norman Disney & Young, prepared an Acoustic Report dated 11 August 2022. The assessment states in response to *NSW Development Near Rail Corridors and Busy Road – Interim Guidelines* dated December 2008 that the subject proposal is not a sensitive development likely to be adversely affected by rail noise or vibration (not comprising a residential use, place of worship, hospital, educational establishment or child care facility). While this is acknowledged, a place of worship, hospital, educational establishment or childcare centre could be accommodated within the commercial space proposed.

Change of use of the commercial space within the development will be subject of separate approval and will be required to address Section 2.100 of the TISEPP.

Section 2.119 Development with a frontage to classified road

While the proposed mixed-use development does not have frontage to a classified road (i.e. Belmore Street), the subject site and proposed northern development lot (residue land) does. A consent authority therefore must not grant consent to the development unless it is satisfied that the matters under this clause have been satisfied. It is noted that:

- The applicant has provided an indicative scheme for the northern development lot (residue lot), noting development consent is only sought to subdivide the land creating this lot however no consent is sought for development on the northern development lot (residue lot).
- This scheme demonstrates, having regard to s2.119 of the TISEPP, that vehicular access will need to be accommodated off Lawson Street. Noting a future application will need to consider in further detail the existing road conditions i.e. the speed hump and any required access arrangements.
- The safety, efficiency and ongoing operation of Belmore Road will not be adversely impacted by the proposed subdivision.
- S2.119(1)c) is not relevant, as no development consent is sought for works on the northern development lot (residue lot).

Section 2.120 Impact of road noise or vibration on non-road development

As per s2.100 above.

Section 2.122 Traffic-generating development

The proposal is identified as traffic generating development in accordance with Schedule 3 of State Environmental Planning Policy (Transport and Infrastructure) 2021 (TISEPP) as the proposal includes a car park for 50 or more cars and is within 90 metres of a road that connects to a classified road, being Belmore Road (Great Western Highway).

In accordance with Section 2.122 of the TISEPP, the DA was referred to Transport for NSW (TfNSW) for their review. TfNSW provided a written response dated 16 October 2022. Their comments are summarised as follows:

- In the future base case/2024 Future Base Case and proposed development scenario, the Lawson Street/Henry Street and Henry Street/Station Street intersections both exceed the maximum practical degree of saturation for a signalised intersection. Hence a number of upgrades are required (2024 and development or 2036 future base) to ensure there is sufficient capacity for traffic signal operation.
- TfNSW requested further information about optimising signal timing, considering the Penrith CBD may operate as a co-ordinated network.
- The intersection of Belmore Road/Station Street/Jane Street is operating worse than in the 2036 Future Horizon Case.

In summary, TfNSW comment that the Penrith CBD is undergoing significant change and growth. TfNSW recommends further review of the Penrith CBD town planning and network traffic assessment be undertaken, noting that network upgrades required are not just solely associated with any single development, rather the CBD as a whole. This referral advice does not prevent the progression of this subject DA, notwithstanding the requirement to undertake CBD traffic network assessment would be imposed as a general condition of development consent.

Penrith Local Environmental Plan 2010

Table 2: LEP compliance table

Provision	Compliance
Clause 1.2 Aims of the plan	The proposal complies with the aims of the plan.
Clause 2.3 Permissibility	The proposal is defined as a 'carpark', 'community facility' and 'commercial premises' and is permissible with development consent in the B3 Commercial Core zone.
Clause 2.3 Zone objectives	The proposal satisfies the zone objectives.
Clause 2.6 Subdivision – consent requirements	The DA seeks to subdivide the land. See detailed comments below.
Clause 2.7 Demolition requires development consent	The DA seeks consent for demolition. See detailed comments below.
Clause 4.1 Minimum subdivision lot size	Not applicable. The site is not subject to a minimum lot size requirement.
Clause 4.3 Height of buildings	The site has a split maximum permissible height standard of 24 metres and 80 metres under clause 4.3. The proposal has a maximum building height of 39.95 metres at the north-east corner of the development.

Provision	Compliance
	Despite clause 4.3, no maximum building height standard applies to the site given the proposal relies on clause 8.7 of the LEP.
Clause 4.4 Floor space ratio	<p>A maximum FSR standard of 4:1 applies under clause 4.4.</p> <p>Despite clause 4.4, the provisions under clause 8.7 allow a maximum FSR of 5.5:1.</p> <p>The total GFA is 26,567m². Based on the land area of the proposed parent lot (5,470m²), the resulting FSR is 4.86:1.</p>
Clause 4.5 Calculation of floor space ratio and site area	<p>The objectives of clause 4.5 is to define FSR and set out rules for the calculation of site area for the purpose of applying permitted FSRs, including rules to:</p> <ul style="list-style-type: none"> • Prevent the inclusion in the site area of an area that has no significant development being carried out on it; and • Prevent the inclusion in the site area of an area that has already been included as part of a site area to maximise FSR in another building; and • Require community land and public spaces to be dealt with separately. <p>The site area of the proposed northern development lot, on which no significant development is proposed, and which will only be subject of subdivision as part of this DA, has been excluded for this reason.</p>
Clause 4.6 Exceptions to development standards	The applicant relies on cl8.7 of the Penrith LEP, hence cl4.6 is not applicable.
Clause 5.10 Heritage conservation	<p>The development is located within the vicinity of local heritage items to the west and further south of the site.</p> <p>This matter was referred to Council's heritage advisor, who raised no objections, subject to recommended conditions.</p>
Clause 5.21 Flood planning	<p>Parts of the site are affected by flooding which presents as overland flow when flooding occurs during a 1% AEP event. Overall, the site is within a low hazard category. The flood characteristics of the site are accommodated by the proposed stormwater management plan.</p> <p>The application was referred to Council's development engineers, who raised no objection, subject to recommended conditions.</p>
Clause 7.1 Earthworks	<p>The DA seeks consent for minor excavation to accommodate lift and stair pits.</p> <p>There will be no unreasonable impacts as a result of the proposed earthworks.</p>
Clause 7.3 Development on natural resources sensitive land	<p>Not applicable.</p> <p>The site is not identified on the Natural Resources Sensitive Map.</p>
Clause 7.4 Sustainable development	The submitted Sustainability Report has provided the following sustainable building frameworks:

Provision	Compliance
	<ul style="list-style-type: none"> • Green Star Design & As Built v1.3 – 5 star certification • National Australian Built Environment Rating System (NABERS) – Energy Base Building 5 Star target aspiring to 5.5 Stars and Water Whole Building 4 Star target • EnviroDevelopment Certification <p>While the report acknowledges, the development targets the above, should the consent authority be of a mind to approve the application, a condition of development consent will be imposed requiring achievement of the above.</p>
Clause 7.5 Protection of scenic character and landscape values	<p>Not applicable.</p> <p>The site is not identified as being on land with scenic and landscape values.</p>
Clause 7.6 Salinity	<p>The insitu soils are none to slightly saline.</p> <p>There will be no likely salinity impacts.</p>
Clause 7.7 Servicing	<p>Services are available to the site. A condition of development consent can be imposed requiring provision of adequate servicing for the development.</p>
Clause 7.8 Active street frontages	<p>The south-east and south-west corner of the site are identified as requiring an “Active Street Frontage”. The proposal includes active uses at these corners of the building being the commercial lobby entry and south-west corner of the basketball court.</p>
Clause 7.30 Urban heat	<p>The objective of clause 7.30 is to ensure development incorporates planning and design measure to reduce the urban heat island effect in Penrith and promote the cooling benefit of green infrastructure and water in the landscape.</p> <p>The clause is triggered as the site is zoned B3 Commercial Core.</p> <p>The proposal incorporates planning and design measures to reduce the urban heat island effect, notably:</p> <ul style="list-style-type: none"> • Maximises green infrastructure through provision of ground plane landscaping and rooftop garden • Comprises a sufficient landscape design outcome • The proposed materiality minimises heat impacts • The development minimises reliance on mechanical ventilation
Clause 8.1 Application of part	<p>The site is located within the Penrith City Centre and hence Part 8 of the LEP applies.</p>
Clause 8.2 Sun access	<p>The applicant’s shadow diagrams (drawing DA20 dated 12 August 2020 rev D) confirm the RE1 land to the south of Henry Street is not overshadowed by the subject proposal.</p>
Clause 8.3 Minimum building street frontage	<p>The site has at least one street frontage of 20 metres or more and complies with clause 8.3.</p>
Clause 8.4 Design excellence	<p>Cl8.4 is satisfied refer below for detail discussion.</p>
Clause 8.5 Building separation	<p>Cl8.5 states that buildings on land to which Part 8 of the Penrith LEP apply must be erected so that the separation distance:</p>

Provision	Compliance
	<ul style="list-style-type: none"> • from neighbouring buildings; and • between separate parts or other separate raised parts of the same building is not less than that provided in a DCP made by Council. <p>As discussed later in this report. In accordance with Section 11.2.2 of the DCP, the development provides a 0 metre to Lawson Street in compliance with Figure E11.3 of the DCP and 0 metre setback to Soper Place in compliance with control 4. Any future development of the proposed northern development lot (residue lot) will require a minimum 12m setback to Belmore Street. This is to accommodate the future widening of Belmore Street.</p> <p>In accordance with Section 11.2.5 of the DCP, the required side/rear setbacks step away from shared boundaries, as the building height increases, with a 0m setback permitted for a building up to 20m in height, a 5m setback required above 20m and a 12m setback required above 24m.</p> <p>The proposal complies with the required setback to the western side boundary given that the building is less than 20m in height at this location. The setbacks to the proposed northern side boundary, however, are non-compliant, notably at the upper two commercial levels where the side setback should be 12m. A 0m setback is permitted to the eastern and southern boundaries as outlined under 11.2.2 above.</p>
Clause 8.7 Community infrastructure on certain key sites	<p>Cl8.7 is applicable to the proposal.</p> <p>Refer below for detailed discussion.</p>

Clause 2.7 Demolition requires development consent

The proposal seeks consent to demolish the existing site improvements. For completeness Council requested the Demolition Plan (Drawing DA03 Rev C) be updated to capture all improvements including those listed in the Waste Management Plan. The amended packaged dated 12 August 2022 did not include an updated drawing DA03 despite the RFI response table referring to drawing DA03. The demolition plan does not take into account all expected demolition works to accommodate the proposed development, including on Lot 11 DP854412 (Penrith Community Health Centre).

Clause 2.6 Subdivision – consent requirements

Consent is sought to subdivide the site as shown in the Proposed Boundary Diagram (rev C dated 17 December 2020). This subdivision plan results in a residual lot known as the 'northern development site'. While development consent is not sought for the future development on this lot, the applicant was requested to demonstrate how the northern residual lot may be redeveloped in the context of the subject proposal, including access to it.

The indicative scheme prepared by DBJ (drawings SK01 and SK02) dated 12 August 2022 illustrate one potential development outcome on the site. The applicant notes on these plans that:

- Site area is approximately 2,204m².
- The applicant has applied a 5.5:1 FSR in accordance with the bonus FSR applying the land in accordance with clause 8.7 of the LEP, with potential maximum GFA of 12,320m², no maximum height limit. The scheme comprises 9 storeys.
- The basement extends fully into the setback. Parking is accommodated within two basement levels in the scheme.
- The podium is setback 5 metre from Belmore Road.
- The tower form is setback 5 metres from the podium on all sides.

The following comments are made with respect to the indicative scheme, noting that consent is not sought for these works but having regard to the requirements to obtain development consent for subdivision under s2.6 of the Penrith LEP. The consent authority needs to be satisfied that the resulting lots are capable of being developed in accordance with the applicable planning controls:

1. Cl8.7 of the Penrith LEP can only be relied upon if the proposed development includes community infrastructure, otherwise the baseline FSR is 4:1.
2. The indicative scheme is non-compliant with the 12 metre setback required to Belmore Road in accordance with Section 11.2.2 and 11.2.5 of the DCP.
3. The indicative scheme has not had proper regard to the existing road conditions, notably the speed bump and medium strip. These remain unresolved traffic concerns as follows:
 - Proximity of any access on Lawson Street to the roundabout intersection of Belmore Street and Lawson Street which would necessitate left-in left-out access and create undesirable traffic movements on immediate approach to the roundabout and pedestrian refuge facility.
 - Future upgrade of the intersection of Belmore Street and Lawson Street to traffic signals and the resulting proximity of any access on Lawson Street to signals.
 - Existing median island and raised threshold on Lawson Street which would need to be retained as part of the high pedestrian activity area.
 - Inadequate swept paths provided that fail to demonstrate satisfactory access and manoeuvring and account for existing infrastructure and site conditions.
 - If any access to Lawson Street were to be supported, there are still issues with internal circulation for waste collection and service vehicles due to the narrow lot frontage on Lawson Street.

For the reasons outlined above and the absence of demonstrated development capability of the northern development lot (residue lot), the proposed subdivision is currently not supportable and warrants deferrals.

Clause 8.4 Design excellence

Clause 8.4(1) of the LEP prevents development consent from being granted for development involving the construction of a new building on the subject site unless, in the opinion of the consent authority, the proposed development exhibits design excellence.

A design excellence competition was held for the subject development on 31 October 2019.

Following further design development, the Design Excellence Jury was reconvened, and a Design Jury meeting held on 27 July 2022. The Jury made the following comments:

- *"The jury commends the evolution of the scheme including the enhanced public domain which has been achieved.*
- *The ground floor plan has delivered improvements with wayfinding into the lobby.*

- *The lobby appears to breathe in to provide space and refuge. It is also assisted by the space being two storeys.*
- *The public roof garden will be a key feature of the proposal and depending on future programming may need to consider amenities to this space.*
- *The jury said the refined scheme was a fantastic evolution that has been able to navigate the ground plane and build on all the principles that the design excellence scheme presented.*
- *The widening of Soper Lane and provision of street trees provides a fantastic reformation of Soper Place. The jury asked to confirm that direct movement of water from the ground into the tree volts is incorporated in the final scheme so that rainwater is brought to the trees.*
- *The jury commended the alignment with Woodriff Street as this ensures civic character is achieved.*
- *The jury supports the refined greening and cooling features of the scheme. A practical approach must be achieved that can be maintained by the council.*
- *Active uses are to be developed and programmed into the future.*
- *The direct visual connection created through the staircase provides sufficient width for this to become active and allow people to pass.*
- *The jury agrees the flexibility and adaptability now embedded within the scheme should be a prototype project for Sydney. The building offers the opportunity for the roof garden to be used for functions and perhaps even as a wedding venue in the future. The development achieves design excellence that will be enshrined in the memory of Penrith.*
- *The scheme has returned to the elegance of the competition scheme, ensuring that people are prioritised and not cars. The reinvention of the scheme provides beautiful layering of the project.*
- *The jury confirms the changes are achieving design excellence and great progress has been made. Overall, the refined scheme returns the critical design excellence features of the scheme."*

The Jury made two recommendations as follows:

- *Provide revised details of the proposed façade planting to the western façade. These species are to ensure that species can thrive in the local climatic conditions within Penrith.*
- *Details of the materiality and façade detailing are to be provided for the jury endorsement."*

The Jury subsequently reviewed the amended architectural and landscape plans dated August 2022. The Jury confirmed in the letter on Think Planners letterhead dated 23 September 2022 that the proposal exhibits design excellence subject to a condition of consent being imposed to have detailed landscape plans prepared prior to the commencement of CCC which revises the use of cultivars.

Design Integrity is to be maintained through all development approval stages. The Jury will be reconvened at the following stages:

- Prior to the issue of CC;
- Prior to the issue of OC;
- Prior to lodgement of any section 4.55 modification application.

In *Toga Penrith Developments Pty Ltd v Penrith City Council* [2022] NSWLEC 117 Preston CJ confirms two matters with respect to architectural design competition and design excellence:

1. A consent authority considering a development against requirements in a design excellence clause must articulate the assessment against all the relevant requirements in the clause, and
2. In order for the requirement for an architectural design competition to be satisfied, the DA must be in relation to the development for which an architectural design competition has been held. In order for this test to be satisfied, the two developments will need to be the same or substantially the same.

In respect to point 1, the following table provides a response to the matter detailed on cl8.4(2) of the Penrith LEP.

Table 3: Response to the matters in cl8.4(2) of the Penrith LEP

Matter	Achieved
(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,	(a) is achieved. The Design Excellence Competition Jury has confirmed the scheme achieves Design Excellence having regard to cl8.4 of the LEP.
(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,	(b) is achieved. As above.
(c) whether the development will detrimentally impact on view corridors,	(c) is achieved. The proposal will not detrimentally impact view corridors.
(d) (Repealed)	-
(e) how the development will address the following matters—	-
(i) the suitability of the land for development,	(i) is achieved. The site is suitable for the development.
(ii) existing and proposed uses and use mix,	(ii is achieved). The proposed uses are permissible with consent in the B3 zone.
(iii) heritage issues and streetscape constraints,	(iii) is not applicable. The site or the surrounding area is not heritage constrained.
(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,	(iv) is achieved as discussed elsewhere in this report.
(v) bulk, massing and modulation of buildings,	(v) is achieved as discussed elsewhere in this report.
(vi) street frontage heights,	(vi) is achieved as discussed elsewhere in this report.
(vii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,	(vii) is achieved as discussed elsewhere in this report.
(viii) the achievement of the principles of ecologically sustainable development,	(viii) is achieved. The development includes

Matter	Achieved
	appropriate ESD measures.
(ix) pedestrian, cycle, vehicular and service access, circulation and requirements,	(ix) is achieved as discussed elsewhere in this report.
(x) the impact on, and any proposed improvements to, the public domain.	(x) is achieved. The development has a positive impact on the public domain.

While there has been further design development this application retain essentially the same essence and is “*substantially the same development*” as originally judged by the competition Jury. At the request of the Competition Jury, the design was refined to:

- Remove the roundabout at the intersection of Soper Place and Lawson Street and as a result improved public domain outcome, including widening the northern footpath on Soper Place.
- Enhance spatial treatment of the northern portion of the parent lot which was previously dominated by vehicle movements and negatively impacting pedestrian experience and compromising landscape outcome.
- Provide planting which is compatible with the local climatic conditions of Penrith.
- Realign the extension of Woodriff Street North, creating a clear civic link on the west of the site.

The resulting proposal, however, retains essentially and materially the same essence as the development which won the architectural design competition.

Clause 8.7 Community infrastructure on certain key sites

Clause 8.7 of the Penrith LEP is triggered as the site is identified as a key site number ‘9’ on the Key Sites Map. Clause 8.7 is extracted below.

- (1) *The objectives of this clause are—*
 - (a) *to allow higher density development on certain land in the City Centre where the development includes community infrastructure, and*
 - (b) *to ensure that the greater densities reflect the desired character of the localities in which they are allowed and minimise adverse impacts on those localities.*
- (2) *This clause applies to land identified as a key site on the Key Sites Map.*
- (3) *Despite clauses 4.3, 4.4 and 8.4 (5), the consent authority may consent to development on land to which this clause applies (including the erection of a new building or external alteration to an existing building) that exceeds the maximum height shown for the land on the Height of Buildings Map or the floor space ratio for the land shown on the Floor Space Ratio Map, or both, if the proposed development includes community infrastructure.*
- (4) *The consent authority must not consent to the erection of a building on land to which this clause applies if the floor space ratio for the building exceeds the following floor space ratio—*
 - (a) *in relation to development on land identified as “Key Site 1”, “Key Site 2”, “Key Site 8” or “Key Site 9”—5.5:1,*
- (5) *In deciding whether to grant development consent under this clause, the consent authority must have regard to the following—*
 - (a) *the objectives of this clause,*
 - (b) *whether the development exhibits design excellence,*

(c) the nature and value of the community infrastructure to the City Centre.
(6) In this clause, community infrastructure means development for the purposes of recreation areas, recreation facilities (indoor), recreation facilities (outdoor), recreation facilities (major), public car parks or public roads.

The following assessment is undertaken having regard to cl8.7(5) of the Penrith LEP.

(a) the objectives of this clause,

The proposal is consistent with the objectives of cl8.7 in that:

- The proposal comprises community infrastructure being a recreation area, recreation facilities (indoor), public car park and public roads.
- The proposed additional density (0.86:1) is representative of the desired future character of the Penrith Town Centre and minimises impacts on the surrounding locality.

(b) whether the development exhibits design excellence,

As discussed in Table 3 above, the proposal exhibits design excellence.

(c) the nature and value of the community infrastructure to the City Centre.

The nature of the community infrastructure is consistent with the definition in cl8.7(6) of the Penrith LEP.

The following assessment is made with respect to the value of the proposed community infrastructure.

The applicant submitted a Community Infrastructure Offer dated 26 September 2022. The memo seeks to provide Council with the details to demonstrate how the provisions of cl8.7 of the Penrith LEP and adopted Community Infrastructure Policy (CI Policy) dated 30 April 2018 have been achieved.

The intent of the CI policy is to allow additional FSR in exchange for provision of CI. The CI Policy establishes a CI contribution rate that seeks a reasonable share of the increase in the residual land value arising from the additional floor area only. The CI policy relates to the provision of CI that is 'over and above' the base level that is being provided via development contributions.

The applicant references Section 2.4 of the Policy that "all non-residential development is excluded from the calculation of community contribution". Given the proposal is entirely non-residential, the applicant contends that there is no relevant community infrastructure contribution.

Notwithstanding, the applicant references the CI Policy residential development rate of \$150 per m² attributable to CI, which results in a contribution of \$662,160. The applicant's method for the CI calculation has regard to the additional FSR of 0.86:1 above the 4:1 control, noting no maximum building height standard applies to the site given the proposal relies on clause 8.7 of the LEP. The applicant notes the monetary assets as per the QS Report prepared by Altus Group Cost Management Pty Ltd costs the construction of parking and provision of access at greater than \$32 million, hence the contribution is more than 48 times the required contribution for CI. Accordingly, the applicant states the principles set in the CI policy have been achieved and accordingly the objectives of cl8.7 are met.

In accordance with Section 2.2 of the CI policy, the following principles must be met:

- 1. Community Infrastructure must be in the public interest and to the satisfaction of Council*
- 2. Community Infrastructure must be over and above current development standards and Council policies*
- 3. Community Infrastructure must contribute to the City Centre or to nearby locations and facilities likely to be used by City Centre occupants*
- 4. Community Infrastructure must be achievable, measurable, economically viable and socially and environmentally sustainable*
- 5. Community Infrastructure must be consistent with the themes within Council's Strategic Planning framework*

The following table provides an assessment against each principle.

Table 4: CI principles assessment

Principle	Assessment
1	The proposed CI are public facilities and accessible to all members of the community. Principle 1 is achieved.
2	There is no applicable CI rate for non-residential development. The QS Report prepared by Altus Group Cost Management Pty Ltd dated 12 August 2022 indicates the cost of constructing the proposed community infrastructure is \$40,348,832 and is over and above current development standards and policies.
3	The proposed CI will directly contribute to the City Centre and provide facilities that will be used by City Centre occupants.
4	The proposed CI is achievable and measurable as outlined in principle 2 above.
5	Pursuant to the Civic Link Improvement Plan – Penrith City Centre there is a \$76 million (indexed) allocated to multi-storey car park, noting the demand for multi-storey car parks is based on projections, albeit dependent on the extent to which new commercial developments opts to provide parking on-site or pay a Section 7.11 contribution towards a multi-storey carpark. The DA provides CI in accordance with Council's strategic planning framework, notably the Civic Link Improvement Plan, adopted by Council on 1 December 2008.

Clause 8.7 is therefore satisfied allowing for the suspension of the height of building development standard within PHLEP 2010.

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

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

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

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

Penrith Development Control Plan 2014

Table 5: Penrith DCP compliance table

Provision	Compliance
C1 Site planning and design principles	<p>The DA is accompanied by site analysis.</p> <p>The site is not affected by any gateways or areas of visual sensitivity in Figure C1.1 of the PDCP.</p> <p>The DA is targeting a 5 star Green Star in accordance with Design & As Built v1.3. This commitment would be conditioned to achieve Section 1.2.1 of the DCP, which requires a minimum 4 star for non-residential development with a CIV greater than \$1 million.</p> <p>The proposal responds to the site's topography and is compatible with the desired future character of the town centre.</p> <p>Council's public domain and amenity safety officer has reviewed the proposal, notably the Crime Prevention Through Environmental Design Report prepared by Harris Crime Prevention Services dated August 2022. The officer raised no objections to the proposal subject of conditions, including refinement at detailed design prior to CC.</p>
C2 Vegetation management	<p>As discussed earlier in this report, consent is sought for removal of 18 trees. Council's tree management officer has reviewed the proposal specifically the Arboricultural Impact Assessment and Tree Protection Plan prepared by Tree Survey dated 4 August 2022. Support is provided for the proposed tree removal, subject to conditions including roof protection for existing street trees.</p> <p>The site is not affected by biodiversity values nor is bushfire affected.</p>
C3 Water management	The proposal is consistent with section C3 of the PDCP, subject to condition.
C4 Land management	Refer to RHSEPP comments above.
C5 Waste management	Council's waste officer has reviewed the proposal. The development accommodates a 9.7 metre waste vehicular as agreed with Council. As discussed below in further detail, the servicing arrangement are satisfactory subject to removing loading bays 2 and 3 on the realigned Soper Place.
C6 Landscape design	<p>Having regard to Section 6.1.1 of the DCP, the development is categorised as 'Category 3' development, hence is accompanied by site analysis, arborist report and landscape plans.</p> <p>The development incorporates ESD measures.</p> <p>The proposed sediment and erosion control plan is deemed satisfactory, subject to conditions of consent.</p> <p>GeoEnviro Consultancy Pty Ltd assessed the salinity of the site. the laboratory test results indicate the insitu soil to be non to slightly saline with EC values ranging from 0.52 to 3.92 dS/m. The subsurface soil was found to have low concentrations of sulphate, notwithstanding an</p>

Provision	Compliance
	<p>in environment with the lowest pH of 5.8, the soil was considered to be non-aggressive to buried concrete structures.</p> <p>The landscape design positively reinforces the natural attributes of the site and surrounds of the site. The design activates the ground plane, notably the street edge and visually enhances the quality of the site.</p> <p>Council's landscape officer has reviewed the proposal and supports the proposal subject to conditions.</p>
C7 Culture and heritage	The proposal complies with C7 of the DCP.
C8 Public domain	The proposal complies with C8 of the PDCP. The development enhances the quality of the public domain, provides active street frontages to the three street frontages, creates pedestrian permeability across the site and the DA is accompanied by an Art Strategy prepared by Overton Creative dated July 2022.
C9 Advertising and signage	See IESEPP discussion earlier in this report.
C10 Transport, access and parking	The proposal complies with C10 of the DCP. Refer to detailed assessment below in 'likely impact of the development'.
C11 Subdivision	<p>The DA seeks consent to subdivide the land. The DA is accompanied by <i>Potential Development Area Plan</i> in accordance with Section 11.1(B)(2)(e) of the PDCP.</p> <p>Refer to discussion under RHSEPP regarding contamination of the northern development lot 'residue land'.</p> <p>Refer to discussion on Clause 2.6 of the LEP regarding subdivision impacts.</p>
C12 Noise and vibration	<p>Norman Disney & Young has prepared an Acoustic Report dated 11 August 2022. The Acoustic Report identifies the following sensitive receivers:</p> <ul style="list-style-type: none"> • To north – Penrith Community Health Centre (5 metre away), The Crescent residential street (northern side of the railway line and Belmore Road/radial distance of 124 metres from the site) • To east – Penrith Medical Centre (35 metres from site), B4 mixed use zone (100 metre east of the site) • To south- Commercial uses on southern side of Soper Place • To west – 101 Henry Street (140 metres from site) <p>Council's environmental health officer has reviewed the proposal and deems the development satisfactory from an acoustic perspective, subject to adherence with the recommendations in the Norman Disney & Young report</p>
C13 Infrastructure and services	The proposal complies with C13 of the DCP.
C14 Urban heat management	The proposal complies with C14 of the PDCP.
D3 Commercial and retail development	Not applicable.
C5 Other land uses	Not applicable. The fit-out and use of the commercial tenancies will be subject of separate approval.
E11 Part A Penrith City Centre	The proposal does not comply with several DCP building form controls as outlined below, however on merit is considered satisfactory.

Provision	Compliance
	<p><u>11.2.2 Building to Street Alignment and Street Setbacks</u> The development provides a 0m setback to Lawson Street in compliance with Figure E11.3 and a 0m setback to Soper Place in compliance with control 4. Any future development of the proposed northern development lot (residue lot) will require a minimum 12m setback to Belmore Street. This is to accommodate the future widening of Belmore Street. Refer to comments under Clause 2.6 of the LEP above.</p> <p><u>11.2.3 Street Frontage Heights</u> The proposal has a maximum height has a maximum building height of 39.95 metres at the north-east corner of the development and is therefore non-compliant with the street frontage height controls.</p> <p>As required by Figure E11.5 a street frontage height of 16m-20m is required to Lawson Street. The building should then step back a minimum of 5 metres, with the maximum overall height of the building being identified as 24m. Control 4 under Section 11.2.2, specifies that the same street frontage height controls should also apply to Soper Place.</p> <p><u>11.2.4 Building Depth and Bulk</u> The maximum building depth well exceeds 25m and the maximum building length well exceeds 50m and is therefore non-compliant with the DCP requirements.</p> <p>The commercial building above 24m (i.e. Levels 7 and 8) also exceeds the maximum 1,200sq.m floorplate size, with the floorplates ranging from 1,286sq.m to 1,411sq.m. There are also points of the commercial floor space that are more than 12.5m from a window.</p> <p><u>11.2.5 Boundary Setbacks and Building Separation</u> The required side/rear setbacks step away from shared boundaries, as the building height increases, with a 0m setback permitted for a building up to 20m in height, a 5m setback required above 20m and a 12m setback required above 24m. The proposal complies with the required setback to the western side boundary given that the building is less than 20m in height at this location. The setbacks to the proposed northern side boundary, however, are non-compliant, notably at the upper two commercial levels where the side setback should be 12m. A 0m setback is permitted to the eastern and southern boundaries as outlined under 11.2.2 above.</p> <p><u>11.2.6 Mixed Use Buildings</u> The ground floor level of the car park has a floor to ceiling height of 4.3 metres and therefore complies with the minimum DCP requirements of 3.6m. The above ground levels provide a floor to floor height of 2.9m. The proposal enables future adaptability and flexibility should it be required.</p> <p><u>11.2.7 Site Cover and Deep Soil Zones</u> The development complies with the maximum 100% site coverage and minimum 0% deep soil area requirements of the DCP.</p>

Provision	Compliance
	<p><u>11.2.8 Landscape Design and 11.2.9 Planting on Structures</u> The landscape proposal is acceptable, subject to conditions.</p> <p><u>11.3.1 Permeability</u> The extension of Woodriff Street North is expressed in Fig E11.18. The site connecting through to Belmore Street, however, is currently not in Council ownership and the connection therefore cannot be provided. All vehicles utilising the western end of the existing car park (i.e. the retained at grade spaces to the west of Woodriff Street North), will therefore have to exit via Woodriff Road North. This is because the proposed realigned Soper Place laneway will be a one-way street in a westerly direction only and will no longer accommodate east bound vehicles to Lawson Street. The DCP does not identify any existing or proposed pedestrian links through the site.</p> <p><u>11.3.2 Active Street Frontages and Address</u> The proposal includes active uses at the south-west corners of the site as required by the DCP.</p> <p><u>11.3.3 Awnings</u> The proposal includes an awning along the Lawson Street and Soper Place frontages.</p> <p><u>11.3.4 Vehicle Footpath Crossings</u> Refer to discussion in 'likely impacts of development' below.</p> <p><u>11.3.5 Pedestrian Overpasses and Underpasses</u> Not applicable.</p> <p><u>11.3.6 Building Exteriors</u> The proposal is consistent with s11.3.6.</p> <p><u>11.4.1 Pedestrian Access and Mobility</u> The BCA and DDA Compliance Statement prepared by Blackett Maguire and Goldsmith dated 12 August 2022 that compliance can readily be achieved with AS1428.2009.</p> <p><u>11.4.2 On-Site Parking Options</u> The subject site has been identified as a site where above ground carparking would be permissible adjacent to a lane, subject to appropriate screening being provided to reduce the impact on the public domain.</p>

Provision	Compliance
	<p>The green façade of the building is proposed to provide appropriate screening of the car park, noting that the green façade does not extend to the ground level adjacent to the laneway.</p> <p><u>11.4.3 Site Facilities and Services</u></p> <p>Services and facilities are available to the site. Refer to discuss below in 'likely impacts of development' regarding proposed servicing arrangements.</p> <p><u>11.5.1 Reflectivity</u></p> <p>The proposed green façade will not cause glare or reflectivity.</p> <p><u>11.5.2 Maximising Liveability and Longevity</u></p> <p>The proposed floor to floor heights will allow the adaptability of the building to accommodate a range of uses over time.</p> <p><u>11.7.1 Precinct controls</u></p> <p>See responses to 11.3.1, 11.3.2 and 11.4.2.</p> <p>The extension of Woodriff Street North through to Belmore Street has not been provided as the land is currently not in Council ownership.</p> <p>A new lane is proposed to the rear of the properties on Henry Street (i.e. the realigned Soper Place), however, the lane does not provide east-west vehicular connectivity as suggested by the DCP and is limited to westbound traffic only.</p>

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

There are no Planning Agreements in place that apply to the subject DA. The DA was submitted with a Community Infrastructure offer under clause 8.7 of the Penrith LEP.

Refer to discussion earlier in this report.

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

Section 61

Section 61 outlines the additional matters that consent authority must consider. The following table considers these additional matters.

Table 6: Response to s61 of the Regs

Additional matters in s61 of the Regs	Response
(1) In determining a development application for the demolition of a building, the consent authority must consider the Australian Standard AS 2601—2001: The Demolition of Structures.	Demolition of existing site structures is proposed as discussed earlier. Section 61(1) could be addressed via a condition of consent.

Additional matters in s61 of the Regs	Response
(2) In determining a development application for the carrying out of development on land that is subject to a subdivision order under the Act, Schedule 7, the consent authority must consider— (a) the subdivision order, and (b) any development plan prepared for the land by a relevant authority under that Schedule.	Not applicable.
(3) In determining a development application for development on the following land, the consent authority must consider the Dark Sky Planning Guideline— (a) land in the local government area of Coonamble, Gilgandra or Warrumbungle Shire or in the part of the local government area of Dubbo Regional that was formerly in the City of Dubbo, (b) land less than 200 kilometres from the Siding Spring Observatory, if the development is— (i) State significant development, or (ii) designated development, or (iii) development specified in State Environmental Planning Policy (Planning Systems) 2021, Schedule 6.	Not applicable.
(4) In determining a development application for development for the purposes of a manor house or multi dwelling housing (terraces), the consent authority must consider the Low Rise Housing Diversity Design Guide for Development Applications published by the Department in July 2020.	Not applicable.
(5) Subsection (4) applies only if the consent authority is satisfied there is not a development control plan that adequately addresses the development.	Not applicable.
(6) In determining a development application for development for the erection of a building for residential purposes on land in Penrith City Centre, within the meaning of Penrith Local Environmental Plan 2010, the consent authority must consider the Development Assessment Guideline: An Adaptive Response to Flood Risk Management for Residential Development in the Penrith City Centre published by the Department on 28 June 2019.	Not applicable.
(7) In determining a development application for development on land to which Wagga Wagga Local Environmental Plan 2010 applies, the consent authority must consider whether the development is consistent with the Wagga Wagga Special Activation Precinct Master Plan published by the Department in May 2021.	Not applicable.
(7A) In determining a development application for development on land to which Moree Plains Local Environmental Plan 2011 applies, the consent authority must consider whether the development is consistent with the Moree Plains Special Activation Precinct Master Plan published by the Department in January 2022.	Not applicable.
(8) Subsections (7) and (7A) do not apply to a development application made on or after 30 September 2022.	Not applicable.

Sections 62, 63, 64, 65, 66, 67, 68

Sections 62, 63, 64, 65, 66, 67 and 68 of the Regs are not applicable to the subject proposal.

Section 203

The regulation requires under section 25B that a Council that is negotiating, or entering into, a Planning Agreement, must consider the relevant practice not (being that issued by the Planning Secretary). The DA was not lodged with an Offer to enter a Planning Agreement.

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

Traffic, Access, and Servicing

Soper Place

The DA proposes to realign and narrow Soper Place. A key consideration of this realignment is the ongoing servicing of the properties on the southern side of Soper Place being 19- 21 Lawson Street and 81- 93 Henry Street. The existing loading arrangements are as follows:

- 19- 21 Lawson Street: on-street loading bay adjacent to the southern footpath of Soper Place
- 81 Henry Street: on-street loading bay adjacent to the southern footpath of Soper Place at the rear of 81 Henry Street, and on-site basement parking able to accommodate a B99 vehicle.
- 83- 85 Henry Street: two vehicular driveways accessible from Soper Place providing access to an open on-grade carpark. Accommodates medium ridge vehicle (MRV).
- 87- 89 Henry Street: bins stored on footpath, kerbside waste collection and one on-site loading bay accessible from Soper Place accommodating an MRV.

Ason Group have conducted swept path analysis of the above existing servicing arrangements for the properties on the southern side of Soper Place in the Services Management Plan dated 29 September 2022 and swept path analysis of the proposed servicing arrangement for the subject development in the Transport Assessment dated 29 September 2022.

The proposed development of Soper Place carpark is serviced within the ground floor of the proposed carpark by a 9.7 metre heavy ridge collection vehicle as per Council's standards. This vehicle would enter at the carpark entrance and exit onto Soper Place.

The applicant has proposed three additional on-street loading bays on the southern side of Soper Place, known as loading bays 1, 2 and 3. The applicant states the intent of the kerbside loading bay are:

- *"To provide a kerbside loading arrangement that is shared between the properties of concern to fulfil servicing needs to each of the properties concerned, until such a time where the properties are developed with on-site loading facilities;*
- *To provide kerbside loading spaces for use by waste collection contractors to conduct waste collection activities kerbside; and*
- *Introduce parking restrictions that allow for a shortened timeframe of when commercial vehicle can use the kerbside loading area to minimise heavy vehicle access during peak periods of the Soper Place carpark."*

The swept path analysis provided in the Services Management Plan indicates a service vehicle exiting the proposal conflicts with loading bay 2, while a service vehicle exiting the

existing loading bay of 87- 89 Henry Street conflicts with proposed loading bay 3. Refer to the below images.

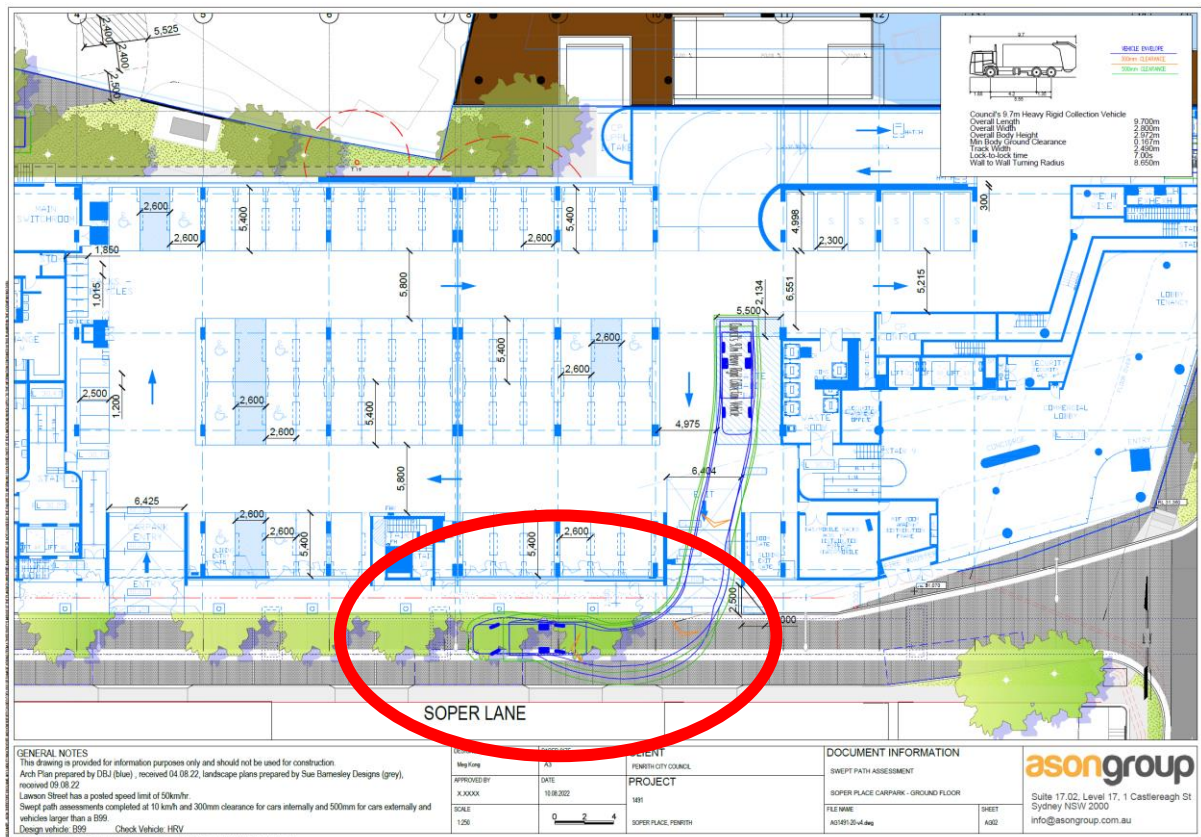


Figure 49: Extract of Soper Place swept path, overlap circled in red (Source: Ason Group)



Figure 50: Extract of Soper Place swept path, overlap circled in red (Source: Ason Group)

The applicant undertook consultation with the tenants on the southern side of Soper Place. This consultation is detailed in the Services Management Plan dated 29 September 2022. The outcomes are summarised as follows:

- Existing bin storage areas: 81- 85 Henry Street on site and 87- 93 Henry Street Soper Lane footpath (latter is inconsistent with Council's waste policy)
- Deliveries and truck size:
 - 19 Lawson Street: Bateman Battersby Lawyers - typically vans and 8.8 metre MRV for stationary
 - 19 Lawson Street: Okami - typically Coles delivery trucks being 6.4 metre small ridge vehicle (SRV)
 - 21 Lawson Street: Studio 1000 Photography Australia - did not respond to consultation call.
 - 81 Henry Street: Lower Russell & Farr Accountants - up to 8.8 metre MRV
 - 81 Henry Street: Job Quest - did not respond
 - 83- 85 Henry Street: Uniting Counselling and Meditation - no regular deliveries
 - 83- 85 Henry Street: Bonds Outlet Penrith - approximately 8 metre truck
 - 87- 93 Henry Street: Blackman Cycle – daily delivery 6.4 metre SRV, large deliveries approximately 8.8 metre MRV, major delivery once a year being a semi-trailer kerbside delivery
 - 87- 93 Henry Street: Inside Fitness - no deliveries
 - 87- 93 Henry Street: Breathless – no deliveries

Loading bay 1 accommodates a 10 metre truck and the proposal maintains the existing driveway/basement at 81 Henry Street. Loading bay 1 is supported and addresses the loading arrangements for 19- 21 Lawson Street and 81 Henry Street.

The Services Management Plan prepared by Ason Group dated 29 September 2022 identifies loading bay 2 is required for waste collection for 83- 85 Henry Street and loading bay 3 for waste collection for 87- 93 Henry Street. It is noted there is no guarantee these zones would not already be occupied.

However, Table 1 of the Services Management Plan identifies that for 83- 85 Henry Street waste bins are stored within the on-grade car park and collection occurs within the carpark. The 87- 93 Henry Street existing arrangements accommodate an 8.8 MRV and for majority of the year supports the servicing requirements of this property, noting the once-a-year semi-trailer delivery is required to Blackman Bicycles, currently this occurs kerbside. Table 1 of the Services Management Plan identifies bins for 87- 93 Henry Street are stored on the footpath and collection occurs kerbside. The swept path analysis identifies a conflict with loading bay 2 and 3. As a matter for deferral this conflict is to be resolved, including clarifying whether in fact loading bays 2 and 3 are required for waste collection for the affected properties.

The following additional amendments are required to the Services Management Plan:

- Demonstrate how the 9.7 metre truck, not being perpendicular on the exit swept path as it leaves the subject site, will mitigate safety concern for sight distance to pedestrians.
- Swept paths to show the vehicle once it has continued further down Soper Place toward Woodriff Street and straightened its wheel. Clarify the speed at which the swept path is modelled, noting modelling swept path by turning wheel on the spot is not acceptable).

Penrith Community Health Centre

The proposal will result in the loss of direct vehicular access to Penrith Community Health Centre from the existing Soper Place car park circulation road. The proposed access arrangement caters for a 6.4 metre long mini-rear loader waste truck access by forward in/forward out access for waste and infrequent deliveries. As identified earlier in this report, Page 58 of the Services Management Plan prepared by Ason Group includes drawing AG1491-26-v8 (dated 7 September 2022) which includes a forward in/reverse out option 2a. This plan is not supported by Council and is contradictory to the other documentation before Council for assessment, hence has not been assessed.

The Services Management Plan fails to identify satisfactory servicing arrangements for the Penrith Community Health Centre should the development proceed.

Intersection Impacts

To maintain an acceptable level of service in the surrounding network, the Transport Assessment prepared by Ason Group dated 29 September 2022 identifies the following upgrades:

- Optimising signal timing at Henry Street/Lawson Street
- Implement a no stopping restriction to the westbound lane of Henry Street and optimise signalling at the Henry Street /Evan Street intersection; and
- Provide grade separated pedestrian crossing to remove pedestrian signal timing and improve safety at the Belmore Street/Station Street/Jane Street intersection.

There is no indication, however, how and when these upgrades will be implemented. As noted earlier, TfNSW outlined in their referral that the Penrith CBD is undergoing significant change and growth. TfNSW recommends further review of the Penrith CBD town planning and network traffic assessment be undertaken, noting that network upgrades required are not just solely associated with any single development, rather the CBD as a whole.

Detailed Design and Manoeuvring

The drawings note various issues that require resolution in detailed design of the carpark including swept path drawing AG1491-20-v3 which illustrates the aisle width of 5.215 metres (shown in clouded red) is too narrow to comply with AS2980.1:2004, see below plan.

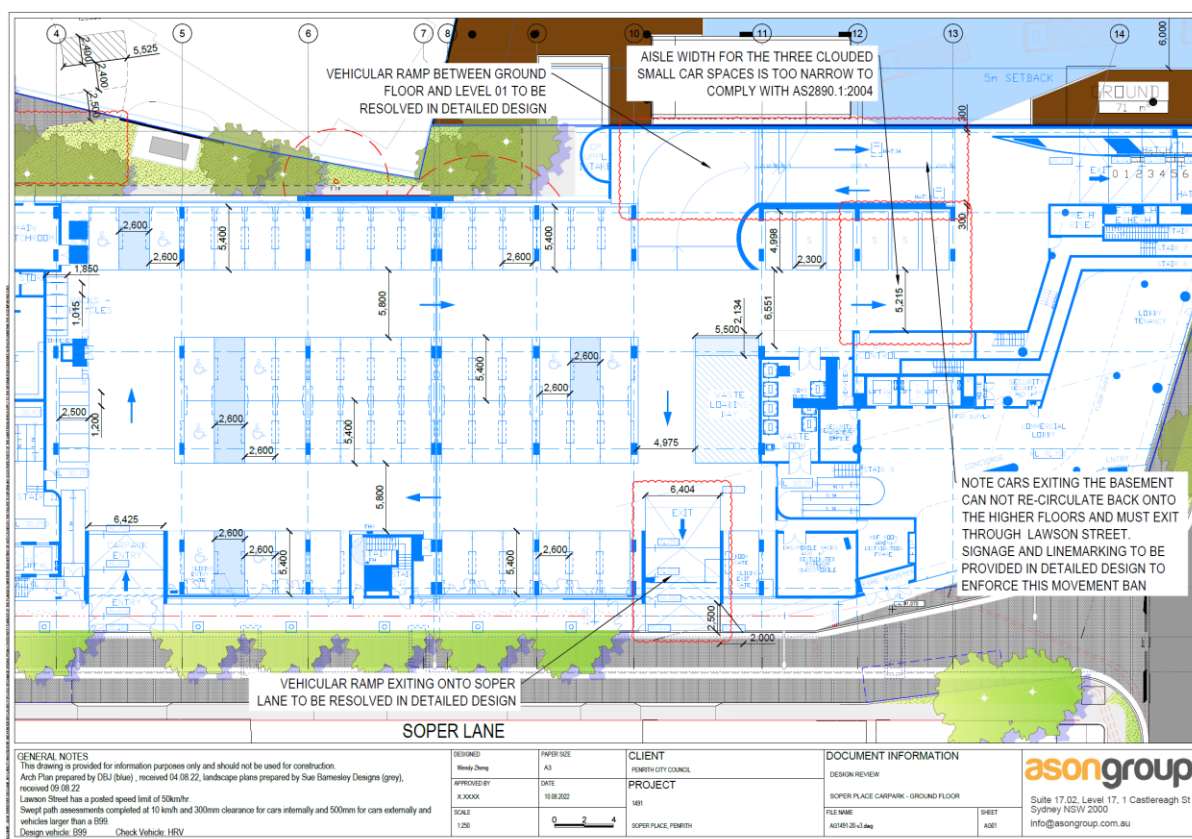


Figure 51: Extract of swept path (Source: Ason Group)

These matters can be resolved via a condition of consent.

Subdivision

As discussed earlier in this report, the DA seeks consent to subdivide the land, creating a parent lot and northern development lot (residue lot). While development consent is not sought for the future development on this lot, the applicant was requested to demonstrate how the northern residual lot may be redeveloped in the context of the subject proposal, including access to it. Council is not satisfied that the proposed subdivision will result in a lot that may be adequately redeveloped. The traffic and access matters identified earlier require resolution by the applicant.

Community Infrastructure

The DA relies on clause 8.7(5) of the LEP. As assessed earlier in this report, it has been demonstrated how the higher density development proposed has been valued to deliver appropriate CI within the City Centre.

Owners Consent

The proposal includes work to create new access arrangements on part of Lot 11 DP854412 (Penrith Community Health Centre). The applicant has not provided formal Owners Consent from the owner of this land.

Contamination

As discussed under the RHSEPP assessment above, there is insufficient information to confirm the parent lot is not contaminated. Additional borehole testing is needed between

BH21 in the DSI for the northern development lot (residue lot) and BH05, BH06 and BH07 in the DSI for the parent lot. Confirmation is required that areas of concern do not trail south into the parent lot. This is a matter for deferral and requires addressing.

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

The matters for deferral are to be addressed before it can be concluded that the site is suitable for the proposed development.

Section 4.15(1)(d) Any Submissions

Community Consultation

The proposal was publicly exhibited on two occasions as follows:

- The first public exhibition period was 18 January to 16 February 2021 (mail out letter to owners and occupiers, and local newspaper advertising)
- The second public exhibition period was 22 August to 5 September (mail out letters to owners and occupiers only)

Seven unique submissions were made. The following table provides a summary of the matters raised.

Table 7: Summary of matters raised in public submissions

Matter	Response
<u>Built form</u> Inconsistent with surrounding context.	As discussed earlier in this report, the proposal is compatible with the desired future character of the town centre.
Greenspace	The landscape proposal is considered a positive outcome by the Competition Jury and Council's landscape officer.
<u>Materiality</u> Materials and finishes not supported.	The proposed materials and finishes have been endorsed by the Competition Jury.
<u>Parking</u> Confirmation that there will be no loss of land or parking areas affiliated with the Community Health Centre.	Penrith Community Health Centre has been consulted during the DA process. The MOU provided by Health Infrastructure and ground floor plan (drawing DA05) demonstrates the existing on-grade parking in front of the Penrith Community Health Centre will be sufficiently replaced, meaning no loss of parking.
<u>Acoustic</u> Assess long-term noise impact on Penrith Health Centre as a result of proposal.	Council's environmental health officer confirms noise impacts are acceptable, subject to implementing the recommendations in the Acoustic Report.
<u>Dust</u> Implement appropriate measures to mitigate dust during construction.	This will be dealt with via preparation of a Construction Management Plan prior to issue of an CC and include dust mitigation measures.
<u>Fire</u> Maintain fire egress for Penrith Health Centre.	It is anticipated the Penrith Community Health Centre has multiple fire egress points, one visible from the southern frontage. Council's Building Certification Supervisor has outlined that it is the responsibility of the health centre landowner to maintain fire egress on their subject property. The proposal is sufficiently separated from the existing Health Centre and is not anticipated to impact the existing fire egress.

Matter	Response
<u>Traffic</u> Construction of the proposal will increase traffic delays in the locality.	The construction traffic volumes of the development can be accommodated, subject to implementation of the traffic control measures discussed earlier.
<u>Consultation process</u> Residents were notified via post- which came after the submission date closed.	Community consultation was taken on two occasions in accordance with Council's Community Participation Plan.
<u>Access</u> Only one access point to the carpark which will cause delays in trying to drive down Lawson Street and surrounding streets.	Refer to discussion under 'likely impacts of the development'.
<u>Tree Removal</u> Confirm if the English Oak Tree "in the small park next to Penrith Veterinary Hospital" is proposed for retention.	The trees proposed for removal coincide with the proposed building envelope as depicted in the tree removal plan in Figure 41. The Penrith Veterinary Hospital and trees in the carpark nearby as not affected by the proposal.
<u>Width of Soper Place</u> The proposed Soper Place roadway of 5.5 metres is considered to be insufficient to accommodate vehicle traffic safely and efficiently. It is noted that only 3 metres of the roadway will accommodate moving traffic, and the other 2.5 metres consists of loading bays to service the existing buildings within the near vicinity.	Refer to discussion under 'likely impacts of the development'.
<u>Width of proposed Soper Place footpaths</u> The footpaths are to only be 1.5 metres wide, being a significant reduction along the southern side of Soper Place- Raising accessibility and safety concerns. Consideration should be given to ensure that the finished height of the new Soper Place footpath on the southern side adequately enables access to the entrance ways of the buildings located within the area and respective garbage storage facilities.	Council's traffic engineer considers the width of the proposed footpaths on Soper Place to be acceptable.

Referrals

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

Table 8: Referral summary

Referral body	Comments received
Environmental health	Not supported, refer to assessment under RHSEPP.
Community infrastructure panel	Not supported, refer to assessment under LEP, specifically clause 8.7.
Waste services	Not supported, refer to assessment under 'likely impacts of the development'.
Traffic engineer	Not supported, refer to assessment under 'likely impacts of the development'.
Transport for NSW	Supported, however the referral recommends Penrith CBD wide traffic network assessment be undertaken. The referral advice does not

Referral body	Comments received
	prevent the progression of this subject DA, notwithstanding the requirement to undertake CBD traffic network assessment would be imposed as a general condition of development consent.
Asset management	No objection, subject to conditions
Building surveyor	No objection, subject to conditions
Community facilities and recreation	No objection, subject to conditions
Public domain and amenity safety	No objection, subject to conditions
Development engineer	No objection, subject to conditions
Heritage	No objection, subject to conditions
Public health	No objection, subject to conditions
Social planning	No objection, subject to conditions
Landscaping	No objection, subject to conditions
Wastewater	No objection, subject to conditions
Endeavour energy	No objection, subject to conditions

Section 4.15(1)(e) The public interest

The matters for deferral require addressing prior to determining if the development is in the public interest.

Conclusion

The proposal has been assessed against the relevant environmental planning instrument and policies, including the Penrith LEP 2010 and Penrith DCP 2014, including Part E11- Penrith City Centre.

The Design Excellence Jury commended the scheme for its enhanced public domain outcome, wayfinding on the ground plane, the alignment of Woodriff Street delivering a civic character and the flexibility and adaptability of the proposal.

Before the application could be recommended for approval, however, the following matters require resolution:

- Additional contamination testing as described in this report to determine whether the parent lot is contaminated and if any work is required to make the land suitable having regard to Section 4.6 of the RHSEPP;
- Formal owners consent for the proposed works on Lot 11 DP854412 (Penrith Community Health Centre);
- Updated Services Management Plan which:
 - Resolves the conflict with loading bays no.2 and no.3, including confirming whether they are required for waste servicing of 83- 85 Henry Street and 87- 93 Henry Street, respectively.
 - Provides satisfactory servicing for Penrith Community Health Centre.
 - Demonstrate how the 9.7 metre truck, not being perpendicular on the exit swept path as it leaves the subject site, will mitigate safety concern for sight distance to pedestrians.
 - Swept paths to show the vehicle once it has continued further down Soper Place toward Woodriff Street and straightened its wheel. Clarify the speed at which the swept path is modelled, noting modelling swept path by turning wheels on the spot is not acceptable).
- Demonstrate how satisfactory vehicle access can be provided to the northern development lot (residue lot) having regard to:

- Proximity of any access on Lawson Street to the roundabout intersection of Belmore Street and Lawson Street which would necessitate left-in left-out access and create undesirable traffic movements on immediate approach to the roundabout and pedestrian refuge facility.
- Future upgrade of the intersection of Belmore Street and Lawson Street to traffic signals and the resulting proximity of any access on Lawson Street to signals.
- Existing median island and raised threshold on Lawson Street which would need to be retained as part of the high pedestrian activity area.
- Inadequate swept paths provided that fail to demonstrate satisfactory access and manoeuvring and account for existing infrastructure and site conditions.
- If any access to Lawson Street were to be supported, there are still issues with internal circulation for waste collection and service vehicles due to the narrow lot frontage on Lawson Street.

Recommendation

1. That DA20/0858 be deferred to provide additional information on contamination, formal owners consent for Lot 11 DP854412, demonstrate how satisfactory vehicle access can be provided to the northern development lot (residue lot) and updated Services Management Plan.