

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, and associated demolition, tree removal, public domain, road works and servicing arrangements.
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 Olivia Page, Consultant Planner, Gyde Consulting
APPLICANT:	Ethos Urban
DATE RECEIVED:	21 December 2020
REPORT BY:	Stephen Kerr, Consultant Planner, Gyde Consulting Olivia Page, Consultant Planner, Gyde Consulting
RECOMMENDATIONS:	Approval, subject to conditions

Addendum Assessment 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 (277 short-term spaces and 372 long-term spaces), 37 commercial spaces, 14 accessible spaces and 34 motorcycle spaces, a multi-use community space, a public rooftop garden and 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 and seven car parking spaces including one accessible parking space part situated on Lot 1 DP1265105 (Soper Place Carpark) and Lot 11 DP854412 (Penrith Community Health Centre (PCHC).

The Site

The site is known as Soper Place Carpark. The street 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 (PCHC)
- Soper Place, public road

Zoning and Permissibility

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

History

This report is an addendum to the original assessment report dated 25 October 2022. The original assessment report recommended deferral subject to resolving the below listed matters.

- *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.*

This Addendum Assessment Report deals **only** with the matters for deferral. For completeness, this report is to be read in conjunction with the original Assessment Report dated 25 October 2022.

As the consent authority, the Sydney Western City Planning Panel (SWCPP) was briefed on DA20/0858 on 2 November 2022. The Record of Deferral dated 11 November 2022 confirms the SWCPP agreed to defer the determination of the matter until the matters identified above have been resolved.

Following receipt of the Record of Deferral, Council's Consultant Planner, Gyde, issued the Applicant correspondence confirming the exact particulars required to address the matters for deferral and discussion in the SWCPP Briefing Meeting. The correspondence was issued by Council's Consultant Planner on 14 November 2022. It encompassed the reasons for deferral outlined by the SWCPP Record of Deferral:

- *Cover letter, which in detail, addresses each of the items for deferral in the Assessment Report, SWCPP Record of Deferral and this email (the latter is all encompassing for ease).*
- *Amended demolition plan (DA03 rev C) which captures all demolition work required to accommodate the proposed development, including Lot 11 DP854412 (Penrith Community Health Centre).*
- *Noting the DA no longer proposes subdivision, if the applicant is happy with the suggested interim approach by the SWCPP, prepare, and submit a detailed landscape plan for the northern development lot (residue land). Drawing Northern Lot Landscape concept dated 19 July 2022, submitted with the August 2022 package, is incomplete.*
- *An applicant response as to how the endorsed scheme by the Competitor Jury is "substantially the same" as that which was the winner of the design competition. Suggest including photomontages to point to the changes and how in the context of these, the development, remains substantially the same.*
- *Formal owners consent for the proposed works on Lot 11 DP854412 (Penrith Community Health Centre).*
- *Additional contamination testing as described in the Assessment 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. This includes a Detailed Site Investigation (DSI) for the untested area on the parent lot south of BH21 on the northern development lot (residue land). If the DSI requires a Remediation Action Plan, a RAP, which outlines how the site can be made suitable for the land use.*
- *An updated Services Management Plan and Transport Assessment which:*
 - *Confirms with the servicing arrangement for the properties on the southern side of Soper Place, resolving the current conflict with loading bays 2 and 3. Provide updated swept path analysis and text response.*
 - *Please explain why swept path AG1491-22-v6 issued to Council on 02/11/22 depicts a reverse movement into the existing loading bay of 87- 89 Henry Street, rather than entry forward and exit in reverse.*
 - *Confirm Penrith Community Health Centre consent to the servicing arrangement comprising 6.4 metre small ridge vehicle and their nominated service provider will use the proposed roundabout to do so.*
 - *Attach the updated swept paths provided on 02/11/22 which confirm how the following two items are resolved:*
 - *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).

- *An updated Waste Management Plan which reflects any amended servicing and waste collection associated with the DA.*

On 25 November 2022, the applicant submitted their amended DA which comprised the following documentation:

- Cover Letter prepared by Ethos Urban dated 25 November 2022
- Consolidated Detailed Site Investigation prepared by JBS&G dated 25 November 2022
- Consolidated Remediation Action Plan prepared by JBS&G dated 25 November 2022
- Northern Development Lot Landscape Plan prepared by Penrith City Council dated 24 November 2022
- Owners Consent Letter from Nepean Blue Mountains Local Health District dated 7 November 2022
- Design Excellence Letter prepared by Durbach Block and Jagers dated 23 November 2022
- Amended Site Analysis Plan (drawing DA02) prepared by Durbach Block and Jagers dated 23 November 2022
- Amended Services Management Plan prepared by Ason Group dated 24 November 2022
- Amended Waste Management Plan prepared by Enstruct dated 22 November 2022

Council undertook an assessment of submitted information and issued an Urgent RFI to the applicant dated 7 December 2022 and subsequent Email RFI dated 8 December 2022 which raised urgent matters relating to contamination, traffic management, waste servicing and the demolition plan.

On 19 and 21 December 2022, the applicant submitted their amended DA which comprised:

- Consolidated Detailed Site Investigation Report dated 13 December 2022
- Remediation Action Plan dated 9 December 2022
- Amended Site Analysis Plan (drawing DA02) prepared by Durbach Block and Jagers dated 12 December 2022
- Soper Place Swept Paths (drawing AG1491-34-v5 AG01 and AG01) prepared by Ason Group dated 14 December 2022
- Services Management Plan (P1491r05v09) prepared by Ason Group dated 21 December 2022
- Email correspondence between the applicant and the operator (Blackman Bicycles) and landowner of 87- 93 Henry Street, Penrith.

Council undertook an assessment of the above information and issued the Applicant an Email RFI dated 10 January 2023 which stated:

The DA proposes "Option 2A" for the waste servicing of Penrith Community Health Centre (PCHC), which involves a reverse manoeuvre into the existing on-grade carpark, where bins are stored at the rear. Option 2A (as previously flagged) is not supported by Council's Traffic and Waste Engineers and detailed in the original assessment report as being disregarded due to the safety concerns which arise from such an arrangement and being contrary to road rules.

Service vehicles are to enter and exit the site in the forward direction, alternatively, utilise the dedicated bay that have entry and exit in a forward direction with no reversing.

An alternative arrangement for waste servicing is required for PCHC that does not involve a reverse manoeuvre. Agreement to such an arrangement is to be coordinated with the contractor (understand this is Bingo) and written agreement provided to Council.

In summary, an amended Services Management Plan, Waste Management Plan, and written agreement from PCHC's waste contractor for the relevant arrangement is required. Should this be unable to be provided, the DA cannot be supported in its current form.

On 9 February 2023, representatives of Council's Property Development Team, Council's Consultant Planners, Council's DA Planners, Council's Waste Engineer and Traffic Engineers met. Representatives of Council's Property Development Team presented the (be proposed) alternative waste collection for PCHC which superseded the former "Option 2A". The verbal presentation detailed:

- An improved servicing outcome for PCHC that involves vehicles entering the new road reserve at the north-west corner of the parent lot/Soper Place Carpark (Lot 1 DP1265105) in a forward direction, then reversing a reduced distance of approximately 33 metres across Lot 1 DP 1265105 and Part Lot 11 DP854412 (PCHC) into the existing on-grade carpark on the western side of the PCHC site (being an approximately 7.2 metre reduction in the current reverse manoeuvre). The waste storage bins are located within the rear (north) of the on-grade carpark. Then the waste collection vehicle, to be operated by Bingo Industries, exit in a forward direction on the proposed extended Woodriff Street.
- Council's representatives of the Property Team verbally advised this reduced reverse manoeuvre occurs on private land and is compliant with the relevant road rules.
- Council's representatives of the Property Team confirmed the seven spaces (including one disabled space) provided for PCHC are proposed only for use by clients of PCHC, noting the Soper Place carpark development (subject of this assessment) delivers 686 spaces and there will also be additional residual parking to the west of the Soper Place development.
- Council's representatives of the Property Team verbally advised of NSW Health's support for the proposed arrangement. Council's Consultant Planner requested this be confirmed in writing in the submission.
- Council's representatives of the Property Team commented on NSW Health's announcement (dated 20 December 2022) to upgrade Nepean Hospital. This involves the delivery a community health centre on the site of the existing PCHC, where locals can easily access integrated health care and mental health services for families and young people at home and in the community.
- Discussions during the meeting focused on the safety of pedestrians and how conflicts could be minimised with mitigation measures.
- Council's representatives of the Property Team confirmed the amended proposal would subsequently be submitted on the Planning Portal.

On 10 February 2023, Council received the applicant's amended DA, comprising:

- Cover Letter prepared by Schandel Fortu, Director, Ethos Urban (undated)
- Nepean Hospital Upgrade Article prepared by NSW Health dated 20 December 2022
- Email correspondence (various) regarding servicing arrangement and waste collection for PCHC with Bingo Industries and NSW Health representatives.
- Swept paths (drawings AG1491-26-v12 AG01, AG02, AG03, prepared by Ason Group dated 10 February 2023)

- Cadastre Boundary Photo (undated and source unnamed).

On 13 February 2023, Council issued an Urgent Email RFI to the applicant which sought clarification as when servicing of PCHC would occur and confirmation of agreement from Bingo and PCHC of the proposed arrangement, as it was apparent emails to this affect were missing from the 10 February 2023 submission.

On 16 February 2023, Council received correspondence including legal advice, GANSW correspondence and Council email correspondence in relation to the design competition for the subject site. Refer to the detailed discussion under Clause 8.4 of the PLEP 2010.

Tabulated Assessment of Remaining Issues

The following table provides a high-level assessment of the amended DA addressing the matters for deferral and subsequent correspondence from Council following receipt of amended DA documentation as outlined above. A detailed assessment is provided later in this report.

Table 1: Assessment against items for deferral

ITEM	COUNCIL ASSESSMENT
Cover letter	Satisfactory, noting the below.
Amended demolition plan	Amended Site Analysis Plan (drawing DA02) prepared by Durbach Block and Jagers dated 12 December 2022 is satisfactory.
Subdivision of northern development lot	The applicant has removed the subdivision of the northern development lot.
Interim landscaping for northern development lot	A satisfactory landscape plan depicting the proposed landscaping on the northern development lot has been submitted.
Design excellence	<p>Durbach Block Jagers has prepared a letter (dated 23 November 2022) which details how the endorsed scheme by the Competition Jury is “substantially the same” as that which was the winner of the design competition. Refer below for further discussion.</p> <p>Additionally, commentary is provided on whether the design competition undertaken in 2019, prior to submission of the subject DA, was undertaken in accordance with Clause 8.4 of the PLEP 2010, specifically the approved procedures at the time being the Director General’s Design Excellence Guidelines dated 2011.</p>
Formal owners’ consent from Lot 11 DP854412	Formal owners’ consent has been provided by Nepean Blue Mountains Local Health District, the owners of Penrith Community Health Centre, being Lot 11 DP854412.
Additional contamination testing	Council’s Environmental Health Officer reviewed the Consolidated Detailed Site Investigation (DSI) dated 13 December 2022 and Remediation Action Plan (RAP) dated 9 December 2022. The DSI and RAP was amended to reflect the proposed use of the northern development lot (interim landscaping) and updated commentary and recommendations to ensure the site can be made suitable for the land uses now proposed. The applicant also clarified whether there will be any implications associated with the proposed northern development lot landscaping being installed on the existing and broken up asphalt surface from

ITEM	COUNCIL ASSESSMENT
	<p>a land contamination perspective. As required, recommendations and mitigation measures are to be included to ensure compliance with <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> and other relevant policies and guidelines.</p> <p>Council's Environmental Health Officer raised no objection, subject to conditions.</p>
Amended Services Management Plan	<p><i>Servicing arrangement for properties on southern side of Soper Place</i></p> <p>The Amended Services Management Plan (P1491r05v09) prepared by Ason Group dated 21 December 2022 comprised:</p> <ul style="list-style-type: none"> • For the properties at the western end of Soper Place, they will benefit from the on-site loading zone which accommodates an SRV and a kerbside loading zone (no.3) which accommodates a HRV. • For the properties at the eastern end of Soper Place, they will benefit from loading zone 1. No issues with this loading zone (as originally assessed). • Loading zone 1 and 3 are subject to 15 minute loading time restrictions and the kerbside areas surrounding the loading zones are subject to no stopping restriction as shown in the Amended SMP dated 21 December 2022. • Loading will continue occurring on-site for 83- 85 Henry Street within their on-grade carpark. Hence loading bay 2 has removed. <p>As depicted in the points above, the properties on the southern side of Soper Place can be adequately serviced. Council's Traffic Engineers commented that the removal of loading bay 2 and slight relocation of loading bay 3 "negatively impact" the properties on the southern side of Soper Place ability to service.</p> <p>The applicant submitted agreement from Blackmans Bicycle.</p> <p>While there is some very minor loss of on-street parking to accommodate the loading zone and realignment of Soper Place, some of the properties on the southern side of Soper Place have unimpacted on-site parking and the carpark development accommodates a significant number of public parking spaces that could be utilised. Section 2.2/page 13 of the SMP dated 8 August 2022 states "<i>no stopping restriction on approach/departure of intersections, across existing access driveways along the south side of Soper Place.</i>" This no stopping restriction is consistent with the SMP dated 21 December 2022. The second round of notification occurred from 22 August to 5 September to owners and occupiers of adjoining land.</p> <p>The amended proposal provides adequate servicing, notwithstanding the deletion of one surplus loading bay, results in improved vehicle manoeuvring by eliminating existing swept path conflicts and greatly improves the supply of car parking in the locality. On balance, the proposal results in an improved outcome for businesses on the southern side of Soper Place.</p> <p><i>Waste collection for Penrith Community Health Centre</i></p> <p>Swept paths (drawings AG1491-26-v12 AG01, AG02, AG03) prepared by Ason Group dated 10 February 2023 demonstrate that post development of Soper Place Carpark PCHC will continue to adequately serviced from a waste collection perspective. Refer to the detailed assessment later in this report.</p> <p><i>Swept paths</i></p> <p>The applicant has:</p>

ITEM	COUNCIL ASSESSMENT
	<ul style="list-style-type: none"> • Provided amended swept paths and confirmed the exit swept path has been modelled at 5km/h with no turn from stop. Council's Traffic Engineer raised no concern with this matter in their referral response. • Provided amended swept paths which depicts how the 9.7 metre truck, not being perpendicular on exit swept path as it leaves the subject site, mitigates safety concern for sight distance to pedestrians. Council's Traffic Engineer did not raise any concern with this in their referral response. <p>Note: The applicant provided an Amended SMP dated 21 December 2022. The SMP was not subsequently amended to be consistent with amended DA documented submitted on 10 February 2023. The SMP will require amendments to address the proposed servicing arrangement for PCHC. This has been conditioned accordingly.</p>
Amended Waste Management Plan	The applicant provided an Amended Waste Management dated 22 November 2022. The WMP was not subsequently amended to be consistent with amended DA documented submitted on 10 February 2023. This has been conditioned accordingly.

Proposal

The amended scope of work is described as follows:

- 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 two 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 and seven car parking spaces including one disabled space (to be utilised by PCHC clients), 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.
- Interim landscaping on the residual land at the north-east of the site.

It is noted that the previously proposed subdivision has been removed from scope of work.

Figure 1 provides an extract of the Site Analysis Plan (drawing DA02) prepared by Durbach Block and Jagers dated 12 December 2022 which depicts the demolition required to accommodate the works.

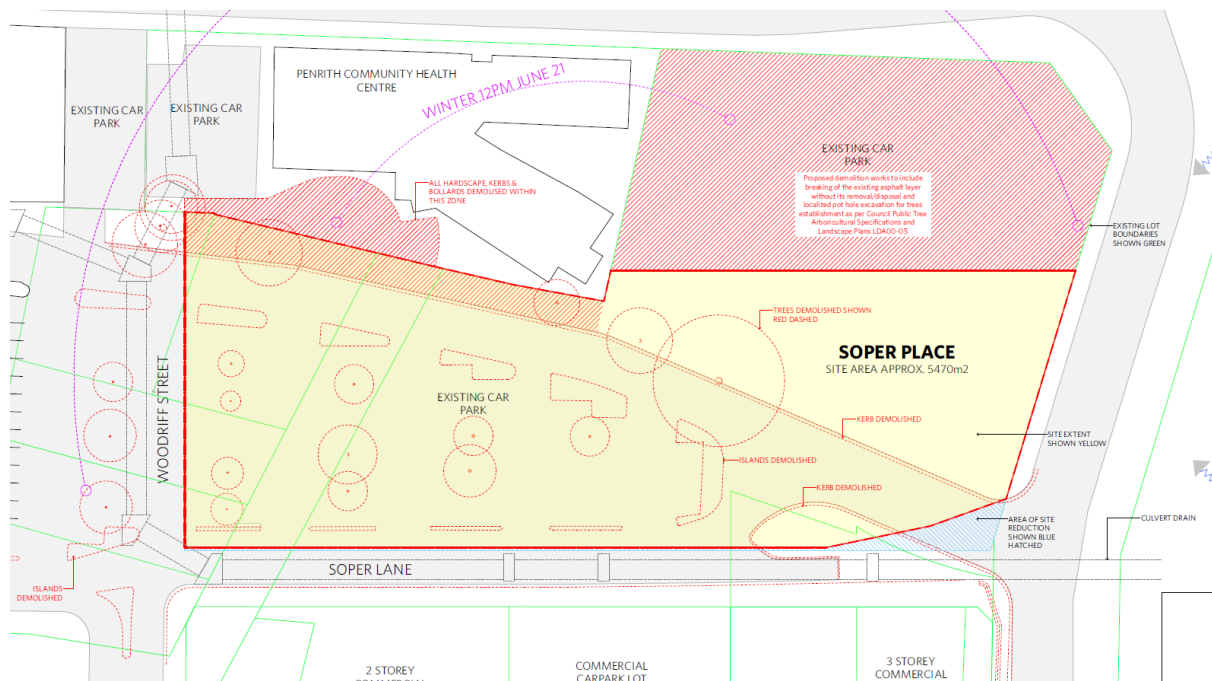


Figure 1: Extract of demolition plan (Source: Durbach Block and Jagers)

Figure 2 provides an extract of the interim landscape plan for the residue land at the north-east of the site, formerly referred to as the northern development lot (residue land).



Figure 2: Extract of concept interim landscape plan (Source: Design & Projects)

Plans that apply

- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- Penrith Local Environmental Plan 2010
- Penrith Development Control Plan 2014

Planning Assessment

State Environmental Planning Policy (Biodiversity and Conservation) 2021

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 as they relate to the deferral matters are discussed below.

The policy with regard to urban development states that:

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

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) below.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 Remediation of land

The object of Chapter 4 of 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.*

This assessment is to be read in conjunction with the original assessment undertaken in the Council Assessment Report dated 25 October 2022. It was previously considered that the consent authority could not be satisfied that the parent lot is not contaminated. Further testing was required and subsequently undertaken by the applicant, see below.

The Consolidated DSI prepared by JBS&G dated 13 December 2022:

- Documents the four additional boreholes (BH24 to BH27) across the northern lot to a maximum depth of 27 metres:
 - Results showed concentrations of metal were all below adopted health investigation levels (HILs).
 - Three samples contained zinc, one copper in exceedance of generic EILs for commercial/industrial land use.
 - BH25 in exceedance of generic ecological screening level for commercial/industrial land use.
 - No asbestos in additional testing, previously in BH21.
 - Propose to remediate asbestos and lead impacts detected in BH21 and BH23, to be excavated for removal from site and lawful off-site disposal. In this manner any potential unacceptable risk to future on-site receptors would be eliminated following site redevelopment.
 - The concentrations of B(a)P detected in fill and soil on the site, including fill material at BH25, are not considered to be an unacceptable risk to current and future site receptors.
- The Consolidated DSI recommends the preparation of a RAP, see below discussion.
- Concludes the site can be made suitable for use as a multi-level carpark/commercial development on the parent lot and landscape area on the northern development lot (residue lot) without any ongoing management obligations subject to implementation of a RAP prepared in accordance with relevant policies including RHSEPP.

An amended RAP prepared by JB&S dated 9 December 2022 was submitted concurrently with the amended Consolidated DSI. The amended RAP:

- Takes into account the interim landscaping on the northern development lot (residue land).
- Indicates the proposed remediation strategy is excavate, take contaminated material off-site and dispose of in accordance with the relevant requirements.

Council's Environmental Health Officer has reviewed the amended DA and supports the proposal, subject to conditions.

Having regard to Section 4.6 of the RHSEPP the site can be made suitable subject to implementing the recommendations of the RAP.

State Environmental Planning Policy (Transport and Infrastructure) 2021

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 site and the northern development area (residue land) to the north 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 DA has been amended to remove the previously proposed subdivision, there is no development proposed on this land, with the exception of interim landscaping as described earlier in this report. Hence, the criteria in Section 2.119(a)-(c) is not relevant to the amended proposal.

Section 2.122 Traffic-generating development

An assessment was made against Section 2.122 in the Original Assessment Report dated 25 October 2022. The DA was referred to Transport for NSW (TfNSW) for their review and TfNSW provided their written response dated 16 October 2022. In summary, TfNSW commented that the Penrith CBD is undergoing significant change and growth and recommended further

review of the Penrith CBD town planning and network traffic assessment be undertaken. This referral advice does not prevent the progression of the subject DA. Notwithstanding, the applicant should take on board TfNSW's comments in their ongoing strategic planning for the CBD.

Penrith Local Environmental Plan 2010

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 amended to take into account all expected demolition works to accommodate the proposed development, including on Lot 11 DP854412 (PCHC). An amended plan (Site Analysis Plan (drawing DA02) prepared by Durbach Block and Jaggars dated 12 December 2022) has been provided and is satisfactory.

Clause 2.6 Subdivision – consent requirements

The DA has been amended to remove the previously proposed subdivision of the site. Hence an assessment against Clause 2.6 of the LEP is no longer required.

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.

The site is identified as a key site map and was anticipated to be development with a capital investment value (CIV) greater than \$100,000 and hence in accordance with Clause 8.4(3) of the PLEP 2010, development consent must not be granted on land to which the part applies unless an architectural design competition has been held in relation to the development.

Clause 8.4(7) of the PLEP 2010 states:

(7) In this clause—

architectural design competition means a competitive process conducted in accordance with procedures approved by the Director-General from time to time.

The relevant approved guidelines are the Director General's Design Excellence Guidelines dated 2011 (Guidelines 2011), noting the Draft Government Architect NSW (GANSW) Design Excellence Competition Guidelines exhibited in May 2018 have not been finalised/approved as at the date of this report.

Page 1 of the Guidelines 2011 states for invited design competition (which applied in the subject case):

*For most projects, the proponent will invite a minimum shortlist of three architectural/design firms to participate in a design competition and supply them with the competition brief, which has been previously **endorsed by the consent authority**.*

In October 2019 when the subject design excellence competition was held it was uncertain who the "consent authority" were to be, given the CIV was not yet confirmed.

GANSW and Council's Assessment Planners were consulted in mid-2019 on the competition, the Competition Strategy and Competition Brief, with email correspondence to this effect. However, there is no confirmation that the Brief was formally 'endorsed' by the consent authority, or Council/GANSW for that matter.

The Guidelines 2011 have not been drafted with the degree of precision as a statutory instrument. Furthermore, since 2011 there have been various legislative changes to the definition and role of consent authorities in different circumstances. The result is that it is unclear how endorsement of the Brief by the 'consent authority' could actually occur, noting for example that a Regional Planning Panel is not conferred with the statutory power to approve design competition briefs.

Clause 8.4(4) of the PLEP 2011 states:

(4) Subclause (3) does not apply if the Director-General certifies in writing that the development is one for which an architectural design competition is not required.

In considering the process undertaken for the subject competition, Council wrote to GANSW to seek a waiver to the Soper Place competition, as the Brief was not formally endorsed by the "consent authority" prior to commencing the competition. The Government Architect advised in her written response dated 2 February 2023:

RE: COMPETITION WAIVERS FOR *SOPER PLACE* AND 129 – 133 HENRY STREET

I am further responding to your letters dated 22 November 2022, requesting certification from the Secretary under clause 8(4)(4) of the PLEP that an architectural design competition is not required in respect of projects located at the above addresses (projects). I note Council has undertaken architectural design competitions for both projects in satisfaction of the requirements set out in clause 8.4 of PLEP.

Accordingly, as Government Architect, acting under delegation from the Secretary, in the case of both projects I have determined it to be unnecessary to provide certification that an architectural design competition is not required.

Concurrently Council sought legal advice from Dentons on the matter with the letter is dated 21 October 2022. Dentons reaffirm that:

"...there is no positive evidence of endorsement by any consent authority of the design competition brief. On this basis there is as strong argument that an architectural design competition has not been held in accordance with the guidelines".

Having regard to the above, the SWCPP needs to form a position whether the competition undertaken for the subject site is valid having regard to Clause 8.4 of the PLEP 2010, noting:

- Abbie Galvin, Government Architect GANSW, in her letter dated 2 February 2023 stated that "Council has undertaken architectural design competition for the project/site in satisfaction of the requirements set out in Clause 8.4 of the PLEP 2010."
- Dentons has advised that the absence of an endorsed competition brief by the "consent authority" the competition could be taken to have not in fact been held.
- There is opportunity for Council to seek a waiver in Clause 8.4(7) of the PLEP 2010. This appears to be the (only) reasonable pathway to satisfy Clause 8.4 of the PLEP 2010. Council's Independent Assessment Planner has raised this as a matter of

urgency with Council's Planners and Property Team (the latter being representatives associated with the applicant).

Notwithstanding the above, a design excellence competition was held for the subject development on 31 October 2019 in the same manner as other architectural design competitions held in the Penrith LGA pursuant to Clause 8.4 of the PLEP. The Design Brief for the competition was prepared with the demonstrable involvement of the Council's (a consent authority) development assessment team.

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 Woodruff 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.

The applicant was requested, post deferral in November 2022, to demonstrate how the proposal before the SWCPP retains essentially the same essence and is “*substantially the same development*” as originally judged by the competition Jury. Durbach Block Jaggers provided a response letter dated 23 November 2022. Having regard to the response, this assessment is satisfied that the scheme retains essentially the same essence and is “*substantially the same development*” noting:

- Durbach Block Jaggers, the winning architects, were maintained to prepare the DA.
- The design maintains and enhances the key elements of the original brief being a public carpark, commercial office space, community facilities (public room and basketball court), rooftop garden and small retail tenancies fronting Soper Place.
- As with all competitions, the design developed post competition including responding to the Jury’s ongoing feedback, including:
 - Removal of 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.
 - Enhancing 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.
 - Providing planting which is compatible with the local climatic conditions of Penrith.
 - Realigning the extension of Woodriff Street North, creating a clear civic link on the west of the site.

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

Table 2: 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 in the Original Assessment Report dated 25 October 2022.
(v) bulk, massing and modulation of buildings,	(v) is achieved as discussed in the Original Assessment Report dated 25 October 2022.
(vi) street frontage heights,	(vi) is achieved as discussed in the Original Assessment Report dated 25 October 2022.
(vii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,	(vii) is achieved as discussed in the Original Assessment Report dated 25 October 2022.
(viii) the achievement of the principles of ecologically sustainable development,	(viii) is achieved. The development includes appropriate ESD measures.
(ix) pedestrian, cycle, vehicular and service access, circulation and requirements,	(ix) is achieved as discussed elsewhere in this report and in the Original Assessment Report dated 25 October 2022.
(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.

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

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

Penrith Development Control Plan 2014

Table 3: Penrith DCP Compliance Table

Provision	Compliance
C4 Land management	Refer to RHSEPP assessment 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 with the removal of loading bay 2 and slight relocation of loading bay 3 on Soper Place, and the proposed waste servicing for PCHC.
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	The DA has been amended to remove the previously proposed subdivision.

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

The original assessment in the Assessment Report dated 25 October 2022 is unchanged.

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

The original assessment in the Assessment Report dated 25 October 2022 is unchanged.

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.

A matter for deferral was confirmation as to how the properties on the southern side of Soper Place can be adequately serviced in the context of the realignment of Soper Place and

resolving a conflict with loading bays 2 and 3. The SMP prepared by Ason Group dated 21 December 2022 includes modifications to the proposed servicing arrangement and adequately demonstrates how all properties can be serviced. The amendment arrangement comprises:

- Two kerbside loading bays on the southern side of Soper Place (loading bay 1 and 3);
- Deletion of the former loading bay 2; and
- Shifting of loading bay 3 slightly west.

Page 12 (PDF) of the SMP dated 21 December 2022 details the intent of the kerbside loading bays as follows:

- *“To provide a kerbside loading arrangement that is shared between the properties of concern to fulfil servicing needs of each of the properties concerned, until such time where the properties are developed with on-site loading facilities; and*
- *To provide kerbside loading spaces for use by waste collection contractors to conduct waste collection activities kerbside.”*

Page 13 (PDF) of the SMP dated 21 December 2022 indicates the following parking restrictions in conjunction with the kerbside loading bays:

- *“No stopping restrictions on approach/departure of intersections, and across existing access driveways along the south side of Soper Lane; and*
- *15 minute loading zone.”*

Council notes that the SMP dated 21 December 2022 includes references to “draft”. However, in respect of the servicing arrangements (except those relating to PCHC as discussed below) are considered final and have been conditioned accordingly.

The previous swept path analysis indicated a service vehicle exiting Soper Place carpark conflicted with loading bay 2 and a service vehicle exiting the existing loading bay of 87- 89 Henry Street conflicted with the proposed loading bay 3. The removal of loading bay 2 and shifting of loading 3 west respectively removes these conflicts and is now considered acceptable.

Loading bay 2 was not required, as identified in Table 1 of the SMP waste bins are stored within the existing on-grade car park and collection occurs within the carpark.

Section 2.5 of the SMP dated 21 December 2022 confirms the waste management arrangement for the properties on the southern side of Soper Place require on-site storage, where contractors will retrieve bins from on-site storage areas, move to the loading area, empty the bins, and return to on-site storage areas. No bins will be left kerbside, except when loading/unloading. A condition of consent is imposed accordingly.

Section 2.6 of the SMP dated 21 December 2022 outlines that the two proposed loading bays (numbers 1 and 3) on the southern side of Soper Place provide sufficient capacity to accommodate loading and servicing needs of the affected existing businesses on the southern side of Soper Place, with the exception of the Blackman Cycle annual major delivery that involves a semi-trailer. Appendix A (page 38) of the SMP dated 21 December 2022 states in relation to 83- 91 Henry Street:

- *“The existing integrated loading bay can accommodate a service/delivery vehicle of 7.36 metre in length within the property boundary.*
- *Blackmans currently receive deliveries with service/delivery vehicles of 8.8 metre in length within on-site loading bay. Due to the length of service/delivery vehicle(s)*

(greater than 7.36 metre) a portion of the vehicle extends across the pedestrian path blocking access for the duration of loading/unloading activities.

- *The cardboard waste stream is currently stored/collected in a 3m³ front lift bin.”*

The proposed loading bay 3 (as shifted west) accommodates waste collection and delivery vehicles up to a heavy rigid vehicle (HRV – 10.5 metre). It also accommodates an additional 2 metre unobstructed area to the rear of the vehicle to support servicing/loading free from vehicles and driveways. This proposal alleviates the need to reverse within the existing loading bay and accommodates larger vehicle. The 15-minute loading restriction and no stopping signage, except where existing driveways and loading bays are provided, is satisfactory to manage this arrangement. The applicant submitted agreement from Blackmans Bicycle for this proposed servicing arrangement.

While Council's Traffic Engineers advised that loading bay 3 was only to be used for waste collection in their referral advice, Council's Consultant Planner has taken the view that the amended arrangement and shifting of loading bay 3 improves the servicing capacity for 83-97 Henry Street and does not result in any conflicts in the swept path analysis.

While there is some very minor loss of on-street parking to accommodate the loading zone and realignment of Soper Place (as raised by Council's Traffic Engineers), some of the properties on the southern side of Soper Place have unimpacted on-site parking and the carpark development accommodates a significant number of public parking spaces (686 in total) that could be utilised. Section 2.2/page 13 of the SMP dated 8 August 2022 states “no stopping restriction on approach/departure of intersections, across existing access driveways along the south side of Soper Place.” This no stopping restriction is consistent with the SMP dated 21 December 2022. The second round of notification occurred from 22 August to 5 September to owners and occupiers of adjoining land. This said the view has been formed by Council's Consultant Planner that agreement from all properties on the southern side of Soper Place for the minor loss of on-street parking is not required.

The proposed servicing arrangement for Soper Place carpark is unchanged from that originally assessed in the 25 October 2022 Council Assessment Report.

The Applicant has:

- Provided amended swept paths and confirmed the exit swept path has been modelled at 5km/h with no turn from stop. Council's Traffic Engineer raised no concern with this matter in their referral response.
- Provided amended swept paths which depicts how the 9.7 metre truck, not being perpendicular on exit swept path as it leaves the subject site, mitigates safety concern for sight distance to pedestrians. Council's Traffic Engineer did not raise any concern with this in their referral response.

Penrith Community Health Centre

The applicant was requested by Council to demonstrate how waste collection for PCHC will be accommodated in the context of the Soper Place carpark development.

As outlined earlier in this report, the amended DA dated 10 February 2023 proposes:

- The waste collection storage area to remain unchanged at the northern end of the existing on-grade carpark on the western elevation of the PCHC building.
- The waste collection vehicle, being 10.5 metres (HRV) in length and to be operated by Bingo Industries, will enter the Soper Place carpark site (Lot 1 DP 1265105) in a

forward direction, then undertake an approximately 33 metre reverse manoeuvre across private land only, being Soper Place carpark site and the PCHC (Lot 11 DP 854412) into the existing on-grade PCHC carpark, undertake the waste collection and exit the carpark in the forward direction, driving southbound down the proposed extended Woodriff Street. This is approximately a 7.2 metre improvement from the existing straight line reversing arrangement of 40.2 metres. This improvement is considered to be a positive outcome for PCHC and in the public interest.

- Throughout all HRV manoeuvres a 500mm is included around the vehicle.
- Endorsement of the arrangement has been provided by PCHC and Bingo Industries.
- The existing disable parking space at PCHC does not meet AS2890.6 standards. The proposed DA deletes this non-compliant space and provides a parking space compliant with AS2890.1.
- Bollards are proposed to the south of the vehicles on-site manoeuvres to permit unobstructed pedestrian movements throughout collection times.
- The architectural and landscape plans require amendments to achieve the compliant swept path model with a shortened central island. This has been conditioned.

This arrangement is consistent with the following PDGP provisions:

- Section 5.3.4.1, Access to Waste Storage and/or Collection Areas, Control (3) which states:

There must be sufficient manoeuvring area on-site to allow collection vehicles to enter and leave the site in a forward direction and service the development efficiently with little or no need to reverse.

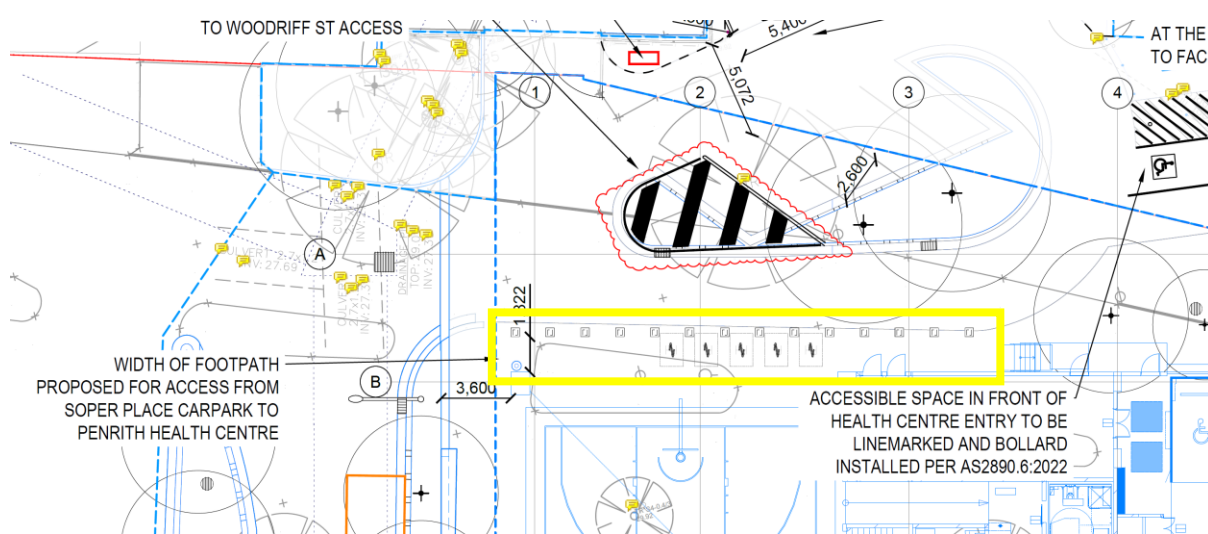


Figure 3: Extract of swept paths (drawings AG1491-26-v12 AG01) prepared by Ason Group dated 10 February 2023, bollards annotated with a yellow rectangle (Source: Ason Group)

In summary, the proposed servicing of PCHC improves the existing arrangement and is the safest option in terms of limiting pedestrian conflicts. The reverse manoeuvre occurs within private property and not in a public road reserve, being compliant with relevant road requirements. The current waste collection will occur during typical hours, noting the applicant is in ongoing discussion with Bingo Industries and PCHC to investigate an opportunity to service outside of PCHC opening hours which would be between 5.00pm and 8.30am.

Council's Traffic Engineer does not support the proposed method of waste collection, but acknowledges that it is an improvement compared with the current arrangement and has

provided conditions should development consent be granted. The conditions require signage which limits parking for the seven loop road spaces to the PCHC operating hours only and provision bollards to deter pedestrian movements across the path of the waste collection vehicle during its limited service times.

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.

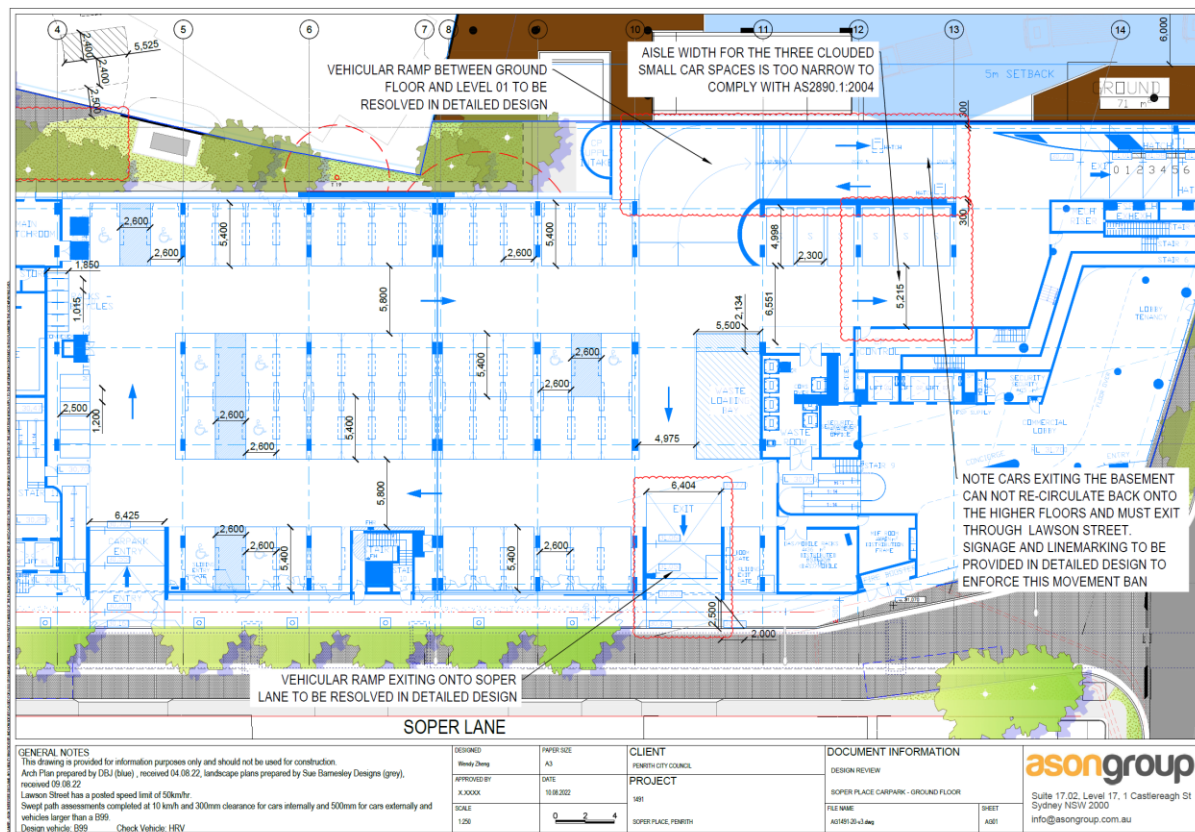


Figure 4: Extract of swept path (Source: Ason Group)

This matter is conditioned.

Swept path analysis of the disabled space provided for PCHC needs to be undertaken and ensure it is compliant with the relevant Australian Standards.

Subdivision

The previously proposed subdivision no longer forms part of the application. The Applicant has provided a landscape plan which comprises grass cover and 10 uplit trees (*Lagostromea indica*). This provides a satisfactory interim solution to the residual land in the north-east of the site.

Owners Consent

The proposal includes work to create new access arrangements on part of Lot 11 DP854412 (Penrith Community Health Centre). The applicant has provided formal Owners Consent from the owner of this land.

PENRITH CITY COUNCIL

Contamination

As discussed under the RHSEPP assessment above, the site can be made suitable for the proposed use subject to implementation of the recommendations in the RAP.

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

As discussed in this Addendum Assessment Report, the site is suitable for the proposed development.

Section 4.15(1)(d) Any Submissions

Public Submissions

No further submissions have been received. Refer to Original Assessment Report dated 25 October 2022 for a response to the submissions made during the two exhibition periods from 18 January to 16 February 2021 and 22 August to 5 September 2021.

Referrals

The amended proposal was referred to Council's Environmental Health Officer, Waste Services, Traffic Engineer. Their comments have formed part of this supplementary assessment.

Table 4: Referral summary

Referral body	Comments received
Environmental health	Supported, subject to conditions.
Waste services	Supported, subject to conditions.
Traffic engineer	Not supported, however conditions provided. Refer to discussion above.

Section 4.15(1)(e) The public interest

The proposed 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.

Having regard to the assessment under Clause 8.4 of the PLEP 2010, the SWCPP need to be satisfied whether a valid design competition has in fact been held for the subject site.

The matters for deferral raised in the Original Assessment Report dated 25 October 2022 and supplementary correspondence dated November 2022, December 2022, January 2023, and February 2023 have been satisfactorily addressed.

Recommendation

1. That DA20/0858 be approved, subject to conditions of consent.
2. That those making submissions and relevant State Agencies are notified of the determination.