

SWCPP Ref. No.:	PPSSWC-214
DA No.:	DA21/0945
PROPOSED DEVELOPMENT:	Demolition of Existing Pub (Kingswood Hotel) and Staged Construction of Two Mixed-Use, Residential Flat Buildings, being Six-Storey and Eight-Storey, Containing 54 and 79 Apartments, with Basement Parking and Rooftop Common Open Space. Proposal includes New Permanent Ground Floor Pub and Bottle Shop, with New Temporary Ground Floor Pub.
PROPERTY ADDRESS:	26 Rodgers Street, KINGSWOOD NSW 2747 180 Great Western Highway, KINGSWOOD NSW 2747
PROPERTY DESCRIPTION:	Lot 26 DP 1855, Lot A DP 406516, Lot 56 DP 1101143,
ZONING:	Zone B4 Mixed Use - LEP 2010
CLASS OF BUILDING:	Class 2 , Class 7a , Class 6
ASSESSING OFFICER	Sandra Fagan
APPLICANT:	Hamptons Property Services Pty Ltd
DATE RECEIVED:	13 December 2021
REPORT BY:	Sandra Fagan, Senior Development Assessment Planner, Penrith City Council
RECOMMENDATIONS:	Approve

Assessment Report

Executive Summary

This Development Application is lodged by Urbis planning consultants for the landowner, Kingswood Hotel Property Pty Ltd (part of the Iris Hotel Group).

The subject site is two separate parcels of land that do not share a boundary. The first parcel is 180 Great Western Highway, and the second parcel is 26 Rodgers Street. The two parcels are separated by Wainwright Lane and both sites have a frontage to Bringelly Road. The site facing Great Western Highway contains a pub known as the Kingswood Hotel. The parcel facing Rodgers Street is vacant grassed land.

For ease of reference, henceforth the site at 180 Great Western Highway is referred to as the '**Northern Site - Building A - Stage 2**'. The site at 26 Rodgers Street is referred to as the '**Southern Site - Building B - Stage 1**'.

The application seeks consent to demolish the existing pub and construct two residential flat buildings (one building on each site) both with ground floor commercial uses. Building A will contain a new permanent pub, to replace the Kingswood Hotel, while Building B will contain a bottle shop and a temporary pub. Part of the temporary pub will revert to a commercial or retail use when the permanent pub is completed. The remaining portion of the temporary pub will become part of the bottle shop. Building A will be eight-storey and contain 79 apartments and Building B will be six-storey and contain 54 apartments. This represents a total of 133 apartments. Each building will have basement parking levels and a roof top communal open space. The buildings will be physically and operationally separate from each other.

The application also seeks to construct the two buildings in two separate stages. Stage 1 will be the initial construction. It will be for Building B at the Southern Site, 26 Rodgers Street. The temporary pub in Building B will only be able to commence operation when the existing Kingswood Hotel has wholly ceased operation. The temporary pub will then be required to close prior to the release of any Occupation Certificate for the permanent pub, which will be located in Building A. Building A will be constructed as Stage 2 at the Northern Site, 180 Great Western Highway. Suitable conditions are recommended to address this timing issue so that at no point can there be two pubs operating at the same time.

The Development Application has been amended to respond to initial comments made by Council staff and Council's Urban Design Review Panel. It is also noted that the proposal has been the subject of previous reviews and amendments prior to the Development Application being lodged. The most recent amendments were refinement of details, such as architectural expression of the facades. The stormwater design was also amended to include upgrade of the surrounding street infrastructure (pipes). Updated acoustic, contamination, and traffic reports were also submitted. These addressed the additional information initially requested by Transport for NSW and Nepean Police, who raise no objection to the amended proposal, subject to conditions.

All of the internal units of Council now raise no objection to the proposed development, except for Council's Waste Services Team. Some design changes to the waste infrastructure will be needed, but these can be accommodated by recommended conditions of consent. Council staff will play an active role in reviewing these changes given that Council is responsible for the collection of waste generated by the residential apartments. Waste from the non-residential uses will be collected by a private contractor.

The proposed development does not comply with Council's mapped LEP control for maximum building height. Clause 4.3 of the LEP permits a maximum height of 24m for the Northern Site and 18m for the Southern Site. The highest point of the proposed development is to the top of the lift overrun of Building A. At this point Building A will be 6.6m over the 24m height control at Clause 4.3 of the LEP, resulting in a maximum height of 30.6m. In addition, Building B will be 6.1m over the 18m height control, resulting in a total height of 24.5m. It is also noted that the proposed development does not utilise the 20% additional height afforded by Clause 7.11 of the LEP. Clause 7.11 would have permitted a maximum height of 28.8m for the Northern Site and 21.6m for the Southern Site. Clause 7.11 is not applied to the proposed development as various elements of both buildings will still exceed the additional height. Building A would still be 1.8m above the additional height permitted by Clause 7.11 and Building B would be 2.9m over.

The application is accompanied by a written request pursuant to Clause 4.6 of the Penrith LEP seeking a variation of the development control for the mapped building height at Clause 4.3 of the LEP. This planning assessment report will outline and discuss why the proposed building height is acceptable notwithstanding the non-compliance, and why dispensation from the control can be granted in the circumstances of this case.

In addition, the number of car parking spaces proposed for the pub in Building A does not comply with a strict application of the Penrith DCP parking rates. The DCP would require 150 on-site parking spaces for the pub in Building A while the proposal provides 56 pub parking spaces. This is a non-compliance of 94 pub parking spaces. Notwithstanding the shortfall, the quantum of on-site parking provided for the pub use is acceptable, and the DCP permits a variation or dispensation of the parking numbers required.

The design architect is Vince Squillace of Squillace Architects (registration number NSW 6468, VIC 17219, QLD 3677, NT AR1173). The landscape consultant is Paul Scrivener of Paul Scrivener Landscape.

The Sydney Western City Planning Panel is the consent authority as the proposed development has a capital investment value of more than \$30 million, thereby falling within the category of '*Regionally significant development*' pursuant to Schedule 6(2) of the SEPP (Planning Systems) 2021. The Panel briefing occurred on 21 March 2022 and the Panel minutes are publicly available.

The site is within the Hospital Precinct of the Penrith Health and Education Precinct. Within this precinct the site is then identified as being within the Commercial Mixed Use area. The site is zoned B4 Mixed Use in the Penrith LEP.

The application was publicly exhibited and notified to surrounding landowners. Two submissions have been received. The main concern raised relates to the possible impacts to the development potential of an adjoining site. Both the applicant's consultant team (architect and planner) and the adjoining landowner (objector) have met to discuss this specific concern. The proposed footprint and shape of the building at 26 Rodgers Street has been intentionally designed with setbacks along the site's southern and eastern property boundaries. This provides the ability for the adjoining site to mirror the building footprint and shape. In doing so, a collated development could potentially share a 'central cut-out/void' that would benefit a future apartment design on the adjoining site.

The amended proposed development is acceptable on planning, amenity, design, traffic and engineering grounds. The recommendation is that the Panel accept the Clause 4.6 written request to vary the development standard for maximum building height, and approve the Development Application, subject to conditions.

Site & Surrounds

The subject site comprises two land parcels (having a total of 3 lots) known as 180 Great Western Highway, and 26 Rodgers Street, Kingswood. The two sites are separated by Wainwright Lane, have a frontage to Bringelly Road, and do not share any common boundaries. The aerial image below shows the two sites in context with adjoining roads, Kingswood Train Station, and neighbouring properties.



180 Great Western Highway (Northern Site):

This parcel of land contains a single lot with a generally uniform rectangular shape. It's primary, northern, frontage is to Great Western Highway, and it has an area of 1,942sqm. It is occupied by an existing pub, the Kingswood Hotel. The site has a secondary frontage facing east to Bringelly Road. A third street frontage to the rear faces south onto Wainwright Lane. The western boundary adjoins a vacant parcel of land at 182-190 Great Western Highway. Kingswood Train Station is located opposite the site on Great Western Highway. A signalised intersection (traffic lights and pedestrian crossing) is located near the site on the corner of Great Western Highway and Bringelly Road.

26 Rodgers Street (Southern Site):

This parcel contains two lots and is generally L-shaped. It has a site area of 1,828sqm. It is vacant, grassed land. This site also has three street frontages. The main frontage faces east to Bringelly Road, the secondary frontage faces south to Rodgers Street, and the rear frontage faces north to Wainwright Lane. The western boundary adjoins a vacant parcel at 3 Rodgers Street. Part of the eastern and southern boundaries of this site adjoin a single storey commercial building at 1 Bringelly Road.

Below are photographs of the subject site.



Corner of 180 Great Western Highway and Bringelly Road - Existing Pub



Great Western Highway Frontage of Pub



Wainwright Lane Looking West - Pub in Foreground, 8-Storey Residential Developments in Background



Bringelly Road Frontage of 26 Rodgers Street - View of Neighbouring Property at Left



Bringelly Road Looking North, Showing Neighbouring Property, 26 Rodgers Street and Rear of Pub



Rodgers Street Frontage of Southern Site - Neighbouring Property to Right, Rear of Pub in Background



Rodgers Street Frontage of South Site - Looking West

The subject site is located within the Hospital Precinct of the Penrith Health and Education Precinct. Within this Precinct, the subject site is identified as being within the Commercial Mixed-Use Precinct. The Health and Education Precinct continues to experience multi-storey redevelopment, of both a commercial, health, and residential nature, consistent with the Penrith LEP, DCP, and strategic vision for the area.

To the west of the subject site, at 240-250 Great Western Highway (see image below) is an eight-storey

residential flat building / shop-top housing (DA13/0554).



Eight-Storey Shop-Top Housing at 240-250 Great Western Highway

Closer to the subject site, at 202-206 Great Western Highway, is another eight-storey residential flat building / shop-top housing.

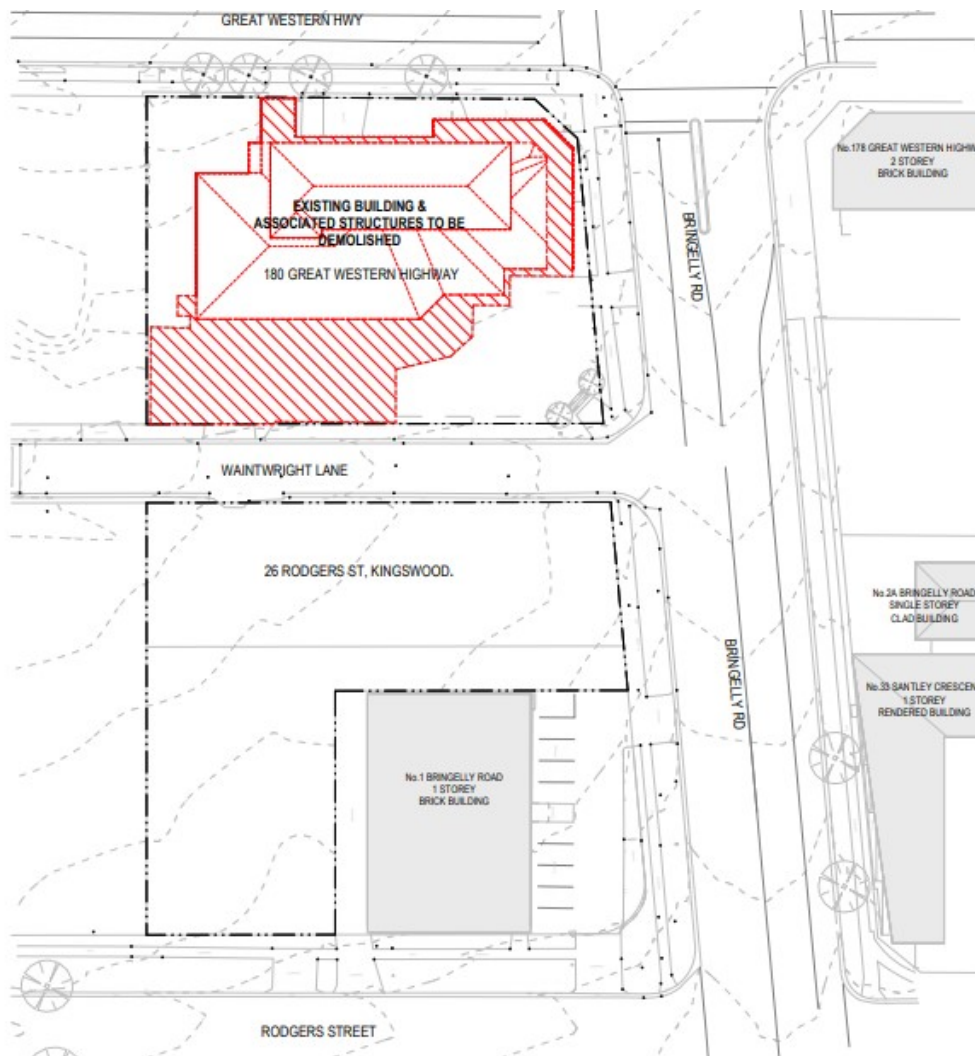


Eight-Storey Shop-Top Housing at 202-206 Great Western Highway

The local smaller streets such as Rodgers Street and parts of Bringelly Road currently still contain original single dwellings. Parts of Bringelly Road also contain older stock commercial buildings.

Proposal

The proposal includes demolition of the existing pub building, the Kingswood Hotel, clearing of the grass cover that occupies the vacant site, and some site remediation. The image below shows in red the building to be demolished at 180 Great Western Highway, and the vacant land at 26 Rodgers Street that will be cleared of grass and remediated.



The proposed development is for the staged construction of two, mixed-use / residential flat buildings (one new building on each site), with excavation and construction of basement levels for parking.

The proposed stages of construction correspond to the separate sites, with the building to be located at 26 Rodgers Street being completed and occupied as the first stage. Therefore, the site at 26 Rodgers Street is referred to as the 'Southern Site - Building B - Stage 1'. The second stage will be the building at 180 Great Western Highway, including the demolition of the existing pub. The site at 180 Great Western Highway is referred to as the 'Northern Site - Building A - Stage 2'.

The design architect is Vince Squillace of Squillace Architects (registration number NSW 6468, VIC 17219, QLD 3677, NT AR1173). The landscape consultant is Paul Scrivener of Paul Scrivener Landscape.

The proposed development is the culmination of two Urban Design Review Panel (UDRP) reviews and one pre-lodgement meeting with Council staff. The current proposal before the Panel has been amended to respond to comments made by staff and the UDRP as part of these reviews and assessment of the Development Application.

Stage 1 - 26 Rodgers Street - Southern Site - Building B

It is proposed that Building B is constructed and occupied initially. Building B includes the following:

- grass clearing from the vacant site and remediation to remove asbestos found in fill;

- excavation to create three basement parking levels accessed from Rodgers Street, containing 78 residential parking spaces and 26 commercial parking spaces;
- construction of a six-storey mixed-use/residential flat building containing 54 apartments on Levels 1-5. The building is designed with two separate lift cores and two separate residential entry lobbies, being one from Rodgers Street and one from Bringelly Road;
- the ground floor will contain a permanent bottle shop and a temporary pub. A portion of the temporary pub (the space labelled 'VIP') will revert to a commercial or retail use when the permanent pub (proposed as part of Stage 2) is complete. The remaining portion of the temporary pub (the space labelled 'hotel') will be converted to be part of the bottle shop. The temporary pub will have a 300-patron capacity and will trade between 9:00am and 3:00am Monday to Saturday, and between 10:00am and 10:00pm on Sunday. The permanent bottle shop is proposed to trade between 9:00am and 12 midnight Monday to Saturday, and between 10:00am and 10:00pm on Sunday. (With regard to the bottle shop, it is noted that the current liquor licence only allows take-away sales to 11:00pm on Mondays to Saturdays and therefore the recommended condition of consent will reflect an 11:00pm closing time for the bottle shop); and
- communal open space at roof level.

The building has been designed to provide a setback or cut-out in the south-eastern corner of the site so as to address potential impacts to the adjoining site at 1 Bringelly Road. The external facades include linear and curved elements. The materials include painted white render horizontal bands, brown face brick, green glazed tiles, and metal louvres.

Stage 2 - 180 Great Western Highway - Northern Site - Building A

Building A is proposed to be constructed as the second stage. Building A includes the following:

- demolition of the existing pub;
- excavation to create three basement parking levels accessed from Wainwright Lane, containing 56 pub parking spaces and 106 residential parking spaces. The rear of the site on Wainwright Lane contains a porte-cochere to provide access to a loading area and a rear entry to the pub;
- construction of an eight-storey mixed use/residential flat building, containing 79 apartments on Levels 1-7, with the residential lobby entrance on Great Western Highway;
- the ground floor will contain the permanent replacement pub, including a lounge, gaming room, bistro, and outdoor dining to Bringelly Road. The pub will have a 500-patron capacity and trade between 9:00am and 3:00am Monday to Saturday, and between 10:00am and 10:00pm on Sunday. These proposed hours are within the current approved hours of the existing pub and within the hours permitted by the liquor licence. The pub will be accessed via two specific entries, one on Great Western Highway, and the other from Wainwright Lane; and
- communal open space at roof level.

The building footprint provides a setback or cut-out at the south-western corner of the site, which continues into the central part of the proposed building. The external facades include linear and curved elements. The materials include glazed white and black tiles, with a bronze cladding banding for the ground floor pub. The upper levels include green bricks of a radiating tone/colour, brown face brick, metal louvres, and painted render.

The proposed development includes landscaping on-site and public domain improvement works, including new

street trees.

The two sites do not need to be consolidated as the two buildings will operate independent of each other and will not share any common or servicing areas. However, the single land parcel that contains two lots (at 26 Rodgers Street) will be required to be consolidated into one lot via condition.



**Photomontage from Corner of Great Western Highway and Bringelly Road
Building A in Foreground and Building B in Background**



**Photomontage from Bringelly Road with Wainwright Lane in the Centre
Building B to the Left and Building A to the Right**

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Industry and Employment) 2021
- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- State Environmental Planning Policy (Western Sydney Aerotropolis) 2020
- State Environmental Planning Policy No 65—Design Quality of Residential Flat Development

Planning Assessment

• **Section 1.7 - Application of Part 7 of Biodiversity Conservation Act 2016**

The site is not identified on the Biodiversity Values Map as containing vegetation having biodiversity value. The site hosting the existing pub is void of any trees or vegetation. The vacant site at 26 Rodgers Street contains only grass with no trees. Therefore, the proposed loss of biodiversity is negligible.

• **Section 2.12 – Sydney Western City Planning Panel (SWCPP)**

The Sydney Western City Planning Panel is the consent authority as the proposed development is identified as '*Regionally significant development*' pursuant to Schedule 6, Clause 2 (*General development over \$30 million*) of the *State Environmental Planning Policy (Planning Systems) 2021*.

The Panel briefing occurred on 21 March 2022. The matters contained in the Record of Briefing are shown in *italics* below, with commentary following:

- *The applicant has generally agreed to adopt the recommendations of Council's Urban Design Review Panel.*

Noted and agreed.

- *The site is located in the Nepean Hospital 'Health and Education Precinct' which makes bonus height provisions available. Council has formed the view that where the height of the building does not comply with the height limit allowing the 20% bonus, the bonus does not apply and the clause 4.6 request ought to refer to the mapped standard.*

Noted and agreed. The applicant's written request pursuant to Clause 4.6 of the Penrith LEP seeks a variation to the development standard for maximum building height mapped under Clause 4.3.

- *The site in the corner of Bringelly Road and Rodgers Street raises a potential issue of site isolation which should be considered in accordance with the Court's planning principle and consultation between the two property owners should be encouraged. If the sites are developed independently, the DA design should ensure a fair result in terms of visual and acoustic privacy, and development potential, for the respective properties.*

This matter is discussed below in the Submissions section of this report.

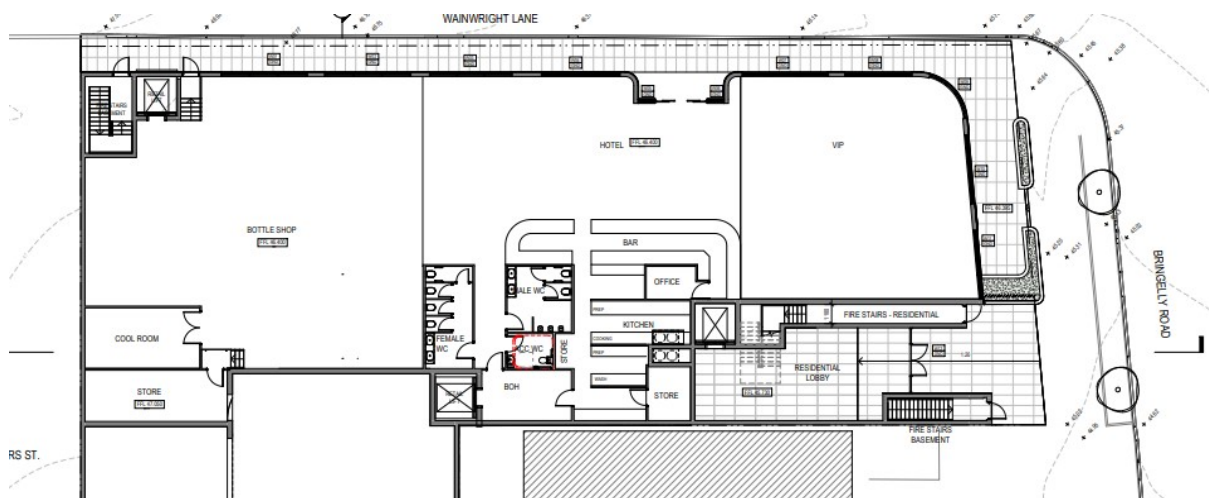
- *Council staff have raised the issue of separating the residential and hotel entrances and queried whether there should be two lift cores to better service the apartments.*

While no change has occurred to the residential entry to Building A, the residential lobby position, size, and design is deemed to be satisfactory. The residential lobby is centrally positioned fronting Great Western Highway. It is wide and not deep/long so it allows immediate access to the two lifts (one core) while maintaining sightlines to the street. CCTV will be placed at the pub's entry and the residential entry will require swipe card access. Future signage to demarcate the two different entries will also assist. A condition is recommended to require a signage strategy which includes appropriate directional signage to assist in demarcating the residential entry from the pub entry.

- *The 'VIP' gaming area should present as clearly subsidiary to the main hotel use, with the main presentation of the hotel to be active. The Panel queries whether locating the 'temporary' VIP room on the corner of the southern building risks departing from that principle.*

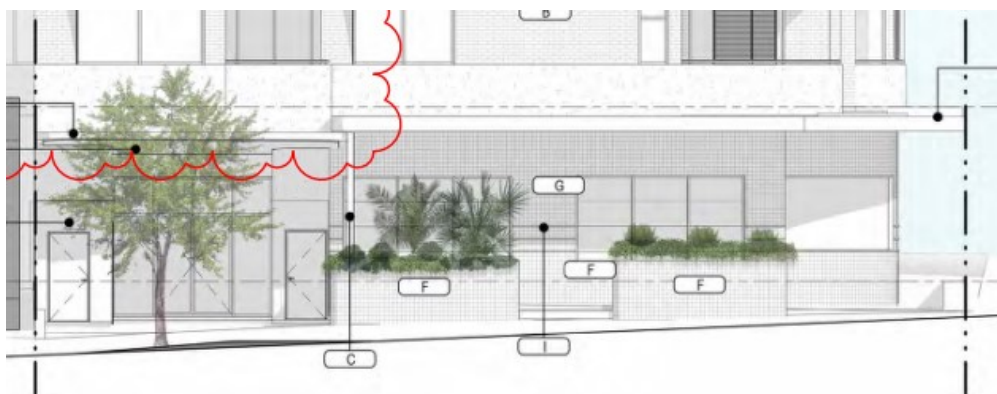
The VIP gaming area shown in Building B (South Site - 26 Rodgers Street) is located on the corner of Wainwright Lane and Bringelly Road. The front building line is set back 3m from the Bringelly Road frontage, with a smaller setback from the Wainwright Lane frontage. The setback area is designed as an external terrace and two planter boxes demarcate the front property boundary from the footpath.

This is shown in the image below which is an extract from the ground floor plan. It also shows the spatial arrangement of the proposed permanent bottle shop (to the left) and the temporary hotel, which consists of hotel/bar area (centrally positioned) and the VIP (gaming) space (to the right).



It is likely that the hotel/bar space has been centrally positioned because the spatial planning can be deeper in this area. Therefore, the hotel bar, office, kitchen, back of house, and toilets can be positioned behind the hotel bar. The spaces behind the bottle shop and VIP room are not as deep as they need to accommodate the fire stairs, residential lobby, and the void over the loading dock. It is preferable to keep the permanent bottle shop in its current proposed position, as Wainwright Lane is a rear lane frontage. The bottle shop is therefore less visible to the general public who are more likely to use Bringelly Road to access the signalised traffic crossing to access Kingswood Train Station.

In addition, the VIP room is part of the temporary pub and this space will revert to a retail or commercial use when Building A is complete. The proposed planter boxes on the Bringelly Road frontage also provide a level of interest that helps to screen the VIP room and to mark the approach to the residential lobby (which is located behind the new street tree shown on the image below).



- *There should be a clear staging plan.*

The proposed staging of the development is included in the application. Stage 1 will occur first and will relate to the new building located at 26 Rodgers Street. Stage 1 can be completed and occupied independent of Stage 2. Stage 2 relates to the proposed building at 180 Great Western Highway. Given that the subject site is on two separate parcels of land, with separate street frontages, the staging and separation of the development is more easily managed.

Suitable conditions are recommended to ensure that the development can never operate with two pubs simultaneously. Each of the stages will include the required works to the length of the public domain adjoining the frontage of each site. The stormwater design, which includes new pipes in Rodgers Street and Wainwright Lane can also easily be divided into the two stages.

- *Some bicycle parking might be considered at street level to service the hotel.*

The applicant has no objection to providing some bicycle parking in front of the hotel. The design architect has suggested that a total of six bicycles could be accommodated, with 4 on the footpath of Great Western Highway and 2 on the Bringelly Road footpath. Details of a solution can be further investigated with the applicant, Council staff, and Transport for NSW. Consideration needs to be given to the requirement to underground existing utilities, footpath widths, accessible paths of travel (particularly for the vision impaired), and the placement of street trees. A suitable condition is included in the recommended conditions that allows a further discussion between the applicant and Council staff in this regard, with details to be submitted with the relevant Roads Act application for public domain works.

• **Section 4.15 - Evaluation**

The assessment of the proposal has taken into account the matters for consideration contained at Section 4.15 of the Act. Those matters requiring further discussion are identified throughout this report and are discussed further.

• **Section Objects of the Act**

The proposed development meets the Objects of the Act, including the orderly and economic use of the land, and the promotion of good design and amenity of the built environment.

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

State Environmental Planning Policy (Biodiversity and Conservation) 2021

This SEPP contains the provisions of the former SEPP (Vegetation in Non-Rural Areas) 2017, and the former Sydney Regional Environmental Plan, SREP 20 - Hawkesbury/Nepean River, as well as provisions relating to vegetation and biodiversity. The aims of the consolidated SEPP include; protection of the biodiversity value of trees and other vegetation in non-rural areas of the State; to preserve the amenity of these areas through the preservation of trees and other vegetation; and to protect the river system.

As mentioned above, the subject site contains no trees and no significant vegetation. The vacant site at 26 Rodgers Street only contains grass akin to a suburban lawn. Therefore, the proposed development will not have an adverse impact on existing landscaping and biodiversity as it relates to the current situation on the site. In addition, the proposed development includes new landscaping both on-site and within the public domain, including new street trees.

With regard to protecting the Hawkesbury-Nepean river system, suitable conditions are recommended to mitigate and manage impacts to the river system. This includes conditions relating to the safe removal and disposal of asbestos on site, the treatment of groundwater and inability to pump groundwater into Council's stormwater system without prior approval, and sediment and erosion control measures.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

This Policy ensures the implementation of the BASIX scheme which encourages sustainable residential development. It requires certain kinds of residential development to be accompanied by a list of commitments to be carried out by applicants. Each proposed building is accompanied by a BASIX Certificate demonstrating compliance.

State Environmental Planning Policy (Industry and Employment) 2021

This SEPP contains the provisions for signage. The architectural drawings show two proposed building name signs for the permanent pub at Building A. Each sign is shown as individually cut and mounted letters saying 'Kingswood Hotel'. Both signs are shown just above the awning, with one on the corner of Great Western Highway and Bringelly Road, and the other on the Bringelly Road frontage. Both of these signs are acceptable in their position and design.

A suitable condition is recommended to ensure that these two signs remain of a high-quality finish (individually cut letters) and that the method of illumination is able to be dimmed during the night-time if required.

Any further signage is required to be the subject of a Signage Strategy to be submitted to Council for approval.

State Environmental Planning Policy (Planning Systems) 2021

The proposed development falls within the category of '*Regionally significant development*' pursuant to Schedule 6(2) of the SEPP (Planning Systems) 2021. The Capital Investment Value is over \$30 million and the proposal is within the group of '*General development over \$30 million*'.

State Environmental Planning Policy (Resilience and Hazards) 2021

This SEPP contains the provisions of the former *SEPP 55 - Remediation of Land*. The new SEPP provides controls at Chapter 4 (Clauses 4.1 - 4.19) that require consideration of whether the land is contaminated, and if it is, whether the land is suitable in its contaminated state (or will be suitable after remediation) for the purpose for which development is proposed.

The application includes the appropriate reports investigating both sites. The site at 180 Great Western Highway was found to be acceptable and required no further investigation. The site at 26 Rodgers Street identified some asbestos contaminated fill material. A subsequent Remediation Action Plan was submitted which recommends the removal of fill material to a licensed landfill (off-site disposal) as the preferred remediation strategy. The Report states that the site will be suitable for the redevelopment after remediation.

Council's Environmental Management officer has reviewed the reports and raised no objection subject to conditions, which are included in the recommended conditions of consent.

State Environmental Planning Policy (Transport and Infrastructure) 2021

The applicable considerations of this SEPP relate to; proximity and frontage to an arterial road; proximity to a rail corridor; noise and vibration; and proximity to overhead power lines.

In particular, the following SEPP clauses are relevant:

- Clause 2.48 - relates to the proximity of the proposed development to overhead and/or underground power lines. Requires the consent authority to give written notice to the electricity supply authority (inviting comments) and then to take into consideration any response;
- Clause 2.98 - relates to development adjacent to a rail corridor. Requires notice to be provided to the rail authority;
- Clause 2.99 - relates to proposed excavation within 25m of a rail corridor. Requires notice to be given to the rail authority;
- Clause 2.100 - relates to rail noise and vibration impacts. Requires consideration of guidelines and measures taken to ensure certain noise levels within apartments are met;
- Clause 2.119 - relates to development with frontage to a classified road. Requires consideration of proposed site access, ongoing operation of the classified road, and measures to ameliorate noise from the road to the proposed development;
- Clause 2.120 - relates to residential development adjacent to a busy road. Requires consideration of guidelines and measures taken to ensure certain noise levels within apartments are met; and
- Clause 2.122 - relates to traffic-generating development. Requires notice to be given to Transport for NSW and consideration of any response received. Also requires consideration of the movement of people and freight, traffic safety, road congestion, and parking implications.

The relevant guidelines are the NSW Department of Planning '*Development near Rail Corridors and Busy Roads - Interim Guideline*'. In addition, Section 138 of the Roads Act applies given the site's location fronting Great Western Highway which is a classified road.

Therefore, the application was referred to Transport for NSW (Roads), Transport for NSW (Sydney Trains), and Endeavour Energy.

Clause 2.48 - Electricity Network

A written notice was sent to Endeavour Energy "*inviting comments about potential safety risks*" as

required per Clause 2.48(2)(a). A response from Endeavour Energy was received, dated 2 February 2022. The referral response raises no objection and tables both conditions and advice. The conditions are generic in nature and do not require any design changes to the proposed development. For this reason, a generic condition of consent is recommended, which will reference the referral response from Endeavour Energy.

Clause 2.98 and Clause 2.99 - Rail Corridor

The application of both of these clauses is qualified by subclauses. For example, Clause 2.98 applies to development on land adjacent to a rail corridor if the development; is likely to have an adverse effect on rail safety; involves the placing of a metal finish on a structure and the rail corridor is used by electric trains; involves the use of a crane in the air space above the rail corridor; or is located within 5m of an exposed power line that is used for the railway. Clause 2.99 applies if there is excavation at least 2m deep within a horizontal distance of 25m from the rail corridor.

When the subclauses are applied to the proposed development, it is not clear whether these clauses strictly apply. Notwithstanding this, a referral was sent to the rail authority, Transport for NSW (Sydney Trains). A referral response, in the form of the granting of concurrence subject to conditions, was received on 9 March 2023. In addition, a submission representing the landowner of the rail corridor was also received. The matters raised in the submission are discussed later in this report, under the section 'Community Consultation'. The referral response is discussed below.

The referral response states that it has considered the potential effects of the development, as outlined in Clause 2.99(4) of the SEPP, and has decided to grant it concurrence, subject to recommended conditions. These conditions are included in the recommended conditions of consent attached to this assessment report.

In addition, Clause 2.98 refers to consideration of the relevant guidelines issued by the Planning Secretary. This aspect is discussed below.

Clause 2.100 - Rail Noise and Vibration and Clause 2.120 - Road Noise and Vibration

These two clauses relate to the same matter, with Clause 2.100 being rail noise and Clause 2.120 being road noise. Both clauses require the consent authority to consider any guidelines issued by the Planning Secretary and to be satisfied that appropriate measures will be taken to ensure that noise levels in bedrooms will not exceed 35 dB(A) between 10pm and 7am, and for other areas of the residential accommodation, will not exceed 40 dB(A) at any time.

The application is accompanied by an Acoustic Report which has considered the noise and vibration impacts to the future apartments from the road (Great Western Highway) and from the rail corridor, as well as from future mechanical plant required for the buildings. The amended Acoustic Report adequately refers to the Department's guidelines as well as the SEPP clauses and noise emission criteria.

The amended Acoustic Report establishes appropriate acoustic treatments for the facades, including identifying construction elements to address noise intrusion, such as glazing and window requirements, and external wall construction. The Acoustic Report demonstrates that the internal noise levels for the relevant areas of the residential accommodation will comply with the noise criteria stated in the SEPP and guidelines.

Council's Environmental Management officer is satisfied with the recommendations of the amended Acoustic Report in this regard. Suitable conditions are recommended relating to adhering to the construction and operational requirements of the amended Acoustic Report.

Clause 2.119 - Development with Frontage to a Classified Road

The Great Western Highway is a classified road. The clause requires that the consent authority is satisfied that; vehicular access is provided by a road other than the classified road; measures will be taken to ameliorate traffic noise or vehicle emissions; and that the safety, efficiency, and ongoing operations of the classified road will not be adversely affected by the development as a result of:

- the design of the vehicular access to the land, or
- the emission of smoke or dust from the development, or
- the nature, volume or frequency of vehicles using the classified road to gain access to the land.

Traffic noise has been discussed above. Building A which has a frontage to Great Western Highway will be accessed from the rear with a driveway on Wainwright Lane. Wainwright Lane is accessed from Bringelly Road. Smoke and dust from the construction of the development is addressed via conditions of consent. The ongoing use of Building A as a pub and residential accommodation will not generate smoke or dust that will affect the operation of the classified road. The proposed use will not generate an unreasonable number of private vehicles using the classified road to gain access to the two buildings, particularly because access is provided via the rear lane which is accessible from Bringelly Road. In addition, the proposed use, being residential apartments and a commercial use, will not generate a large volume of heavy vehicles to service the site.

The DA is accompanied by a Traffic Report which has suitably reviewed and considered traffic generation, access, and parking. Both Transport for NSW and Council's Traffic Engineering Team have reviewed the DA documentation and have raised no objection to the amended proposal, subject to conditions. In particular, Transport for NSW has stated that the *"Access arrangement via Wainwright Lane is supported"*.

Clause 2.122 - Traffic-generating Development

The proposed development is '*traffic-generating development*' for the purpose of the SEPP and Clause 2.122. Therefore, the consent authority must consider the comments from Transport for NSW and the accessibility of the site, including:

- the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and
- the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and
- any potential traffic safety, road congestion or parking implications of the development.

The initial referral response from Transport for NSW requested further details relating to; traffic generation; traffic modelling; the continued operation of the traffic signals on the corner of Great Western Highway and Bringelly Road; and infrastructure for cyclists.

The applicant subsequently submitted additional information and a second referral was forwarded to Transport for NSW. The latest response from Transport for NSW is by letter dated 6 September 2022. The letter references that it is both a referral response (SEPP) and concurrence (Roads Act). The letter raises no objections and includes ten conditions which are included in the recommended conditions of consent.

In addition, Council's Traffic Engineering Team have raised no objections to the amended proposal on the grounds of traffic generation, vehicular access design, and the movement of people and vehicles to and from the site.

The proposed non-compliance with on-site parking, only for the pub component of the development, is

discussed below in the 'Likely impacts' section of this report.

State Environmental Planning Policy (Western Sydney Aerotropolis) 2020

This SEPP still applies to the proposed development as the new *SEPP (Precincts - Western Parkland City) 2021* contains savings provisions. The subject site is located outside of the Western Sydney Aerotropolis, however, the SEPP identifies the site as being within a wildlife buffer area. The objective of the wildlife buffer clause is to regulate development on land surrounding the Western Sydney Airport where wildlife may present a risk to the operation of the airport, such as bird strikes. Certain types of development then trigger the requirement for further consideration. The proposed development is not one of the types of uses that warrant additional consideration under the SEPP with regard to wildlife and the operation of the airport.

The subject site is also identified as being located within the Obstacle Limitation Surface Map. The relevant clause of the SEPP relates to development that would penetrate the prescribed air space for the airport (for the subject site this would be development at a height of RL 230.5 AHD) and be a 'controlled activity'. The proposed development neither penetrates the prescribed air space, nor is it a controlled activity, therefore not triggering any additional considerations under this clause.

State Environmental Planning Policy No 65—Design Quality of Residential Flat Development

SEPP 65 aims to improve the design quality of residential apartment development in New South Wales. In particular, the Policy requires consideration of the design quality of the development when evaluated in accordance with the design quality principles, and the Apartment Design Guide (ADG).

Given its relevance to SEPP 65 and design quality, the comments from Council's Urban Design Review Panel are also discussed in this section.

The application is accompanied by two statements from the qualified designer, in accordance with Clause 50 (1A) and (1B) of the applicable Regulations. The statements; verify that the registered architect designed the building; explains how the development addresses achievement of the design quality principles; and shows how Parts 3 and 4 of the ADG have been achieved. The registered architect is Vince Squillace, of Squillace Architects (registration number NSW 6468).

Council's Urban Design Review Panel (UDRP)

Prior to the DA being lodged, a draft proposal was reviewed twice by Council's UDRP, in January and June 2021. The applicant also carried out a Pre-lodgement meeting with Council staff in May 2021. Therefore, the DA as originally submitted mostly addressed the previous comments made by Council staff and the UDRP.

In addition, the lodged DA was reviewed a third time by the UDRP in January 2022. The UDRP stated that the design and layout was generally acceptable, but that further refinements were needed. These refinements related to:

- reinstatement of the curvilinear building form to Building A on the corner of Great Western Highway and Bringelly Road, and removal of the heavier slab expression (as per a previous sketch shown to the UDRP);
- design changes to the roof top communal open space areas, to improve their function, amenity, and usability; and

- clarification of the colours to be used in the proposed green face brick, although the materiality as a whole was acceptable.

The UDRP also provided the applicant with a sketch of the required changes. The proposed development has now been amended to incorporate the suggested changes and the amended proposal addresses the most recent UDRP comments.

SEPP 65 and ADG Assessment

An assessment against the 'Design Quality Principles' of the SEPP is at **Table 1** below, and an assessment against the Apartment Design Guide is at **Table 2** below.

Table 1: Assessment Against Design Quality Principles		Discussion
Principle 1: Context and Neighbourhood Character	<p>Good design responds and contributes to its context.</p> <p>Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.</p> <p>Responding to context involves identifying the desirable elements of an area's existing or future character.</p> <p>Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</p> <p>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</p>	<p>The proposal is for an eight storey building fronting Great Western Highway and the return to Bringelly Road, and for a six-storey building fronting Bringelly Road and Rodgers Streets.</p> <p>The subject site is located in the Penrith Health and Education Precinct and is opposite Kingswood Train Station.</p> <p>The area is experiencing urban growth and redevelopment.</p> <p>The proposed scale of both buildings is an appropriate resulting form. The proposed mix of commercial uses and residential apartments will positively contribute to the strategic vision for the area which is outlined in Council's LEP, DCP, and planning documents relating to Kingswood.</p>

Principle 2: Built Form and Scale	<p>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</p> <p>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook</p>	<p>Building A fronting Great Western Highway will have a similar scale and form to the recently completed residential building on the same side of the highway. Building A can also be seen as a corner gateway development that forms the start of the eastern part of the Hospital Precinct.</p> <p>Both buildings use a suitable palette of materials and facade features to assist in breaking down the mass of the building and providing visual interest. This includes the variety of materials proposed, the horizontal banding, the curved building edges, and the fenestration and balcony patterns.</p>
Principle 3: Density	<p>Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</p> <p>Appropriate densities are consistent with the area's existing or projected population.</p> <p>Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</p>	<p>Both buildings are compliant with the LEP Floor Space Ratio controls. All apartments have compliant sizes, open space, storage, and parking spaces.</p>
Principle 4: Sustainability	<p>Good design combines positive environmental, social and economic outcomes.</p> <p>Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs.</p> <p>Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.</p>	<p>The apartments are designed to have compliant solar access and natural cross ventilation.</p> <p>Both buildings are accompanied by BASIX certificates demonstrating compliance with requirements for sustainable design. The DA is accompanied by a Section J report showing compliance with glazing requirements. Council's Waterways Officer is satisfied with the stormwater treatment method proposed (rainwater tanks).</p>

<p>Principle 5: Landscape</p>	<p>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity.</p> <p>A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.</p> <p>Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.</p> <p>Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.</p>	<p>The architectural drawings include plans showing the location and amount of landscaping proposed for each building.</p> <p><u>Building A - Northern Site:</u> Although the landscaping on the Northern Site is not deep soil, the proposal includes 25% of the site area as landscaped area, being a total of 489sqm of landscaped area.</p> <p>Landscaping is provided in areas around the building on the ground floor. This is located at the rear port-cochere and rear entry to the pub, as well as the outdoor dining area to Bringelly Road.</p> <p>Landscaping for the residential apartments is provided on the first floor, in a 256sqm internal courtyard, and on the communal rooftop terrace, which contains 159sqm of landscaped edges.</p> <p><u>Building B - Southern Site:</u> The landscaping for Building B equates to 18.3% of the site area, being a total of 334sqm. Landscaping is provided on Level 1 (213sqm) and along the edges of the communal roof top terrace (121sqm).</p>
<p>Principle 6: Amenity</p>	<p>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.</p> <p>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.</p>	<p>The resulting amenity of the amended proposal is acceptable. The proposed apartments comply with the core ADG controls, including natural cross ventilation, solar access, privacy, apartment sizes, layouts and design, storage space, and parking spaces.</p>

Principle 7: Safety	<p>Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.</p> <p>A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.</p>	<p>The building has been designed to address Crime Prevention Through Design principles. This includes lighting throughout the basement and entry spaces, secure entry points, passive surveillance, and CCTV.</p> <p>The residential apartments have access to private balconies as well as the communal rooftop open space.</p> <p>The Development Application was reviewed by Council's Community Safety Officer and Social Planning Officer, with no objections raised subject to conditions.</p>
Principle 8: Housing Diversity and Social Interaction	<p>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</p> <p>Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.</p>	<p>The proposal provides a suitable mix of 1 bedroom, 2 bedroom and 3 bedroom apartments.</p>
Principle 9: Aesthetics	<p>Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.</p> <p>The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</p>	<p>The facades of the proposed buildings were reviewed by Council's Urban Design Review Panel, and by Council staff. Changes were made to the facade to respond to initial comments made. The use of varied textures, finishes, and colours, coupled with the design proportions and detailing, ensures an interesting, well considered, and good quality design.</p>

Table 2: Assessment Against the Apartment Design Guide (ADG)

Part	Objective	Discussion	Compliance
3A-1	Design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context.	A Site Analysis plan and a Survey Plan accompanies the application. The information shown addresses the elements specified in Appendix 1 of the ADG.	Yes
3B-1	Buildings types and layouts respond to the streetscape and site while optimising solar access.	The buildings have been orientated to 'face the street'. Apartments have been designed with solar access to living spaces via the use of windows facing north and east.	Yes
3B-2	Overshadowing of neighbouring properties is minimised during mid-winter.	<p>The discussion below under Parts 3D and 4A demonstrates that the proposed apartments meet the design guidance of the ADG. The application includes detailed information about which apartments receive sunlight, and at what times.</p> <p>Solar access to adjoining properties, particularly 1 Bringelly Road has been considered in the footprint and layout of the proposed building on the Southern Site, at 26 Rodgers Street.</p>	Yes
3C-1	Transition between private and public domain is achieved without compromising safety and security.	The ground floor of both buildings will contain commercial uses, allowing the residential uses to start at Level 1. Upper level balconies will overlook the public domain to ensure passive surveillance while being separated from the street.	Yes
3C-2	Amenity of the public domain is retained and enhanced.	Landscaping is included to soften the edge between the public domain and the ground floor while maintaining active street frontages. Footpath upgrades will be required via future Roads Act applications and this will include new street trees and undergrounding of utilities.	Yes

3D-1	An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping.	For Building A the proposed development provides a landscaped communal roof terrace with amenities having a total area of 438sqm. For Building B, this figure is 487sqm.	Yes
3D-2 and 3D-3	Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting. Communal open space is designed to maximise safety.	Both rooftop communal open space areas are designed to include landscaping, seating, a toilet and BBQ's. The communal open space areas have good access to light, are open and airy, and have generous dimensions.	Yes
3E-1	Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. The design criteria for this site is to provide deep soil zones equal to 7% of the site area and having a minimum dimension of 6m.	Due to the typology and zoning of the site, Building A proposes full site coverage. However, soft landscaping is proposed totalling 489sqm, which is 25% of the site area. Building B provides 334sqm, which is 18% of the site area.	No, but acceptable.

3F-1	<p>Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.</p> <p>The design criteria requires the first 4 levels to be separated from side and rear boundaries by 6m, and for any levels between 5-8 to be separated by 9m (for habitable rooms).</p>	<p>Both buildings contain varied setbacks.</p> <p>For example, Building B provides 6m, 7m, and 8.9m setbacks from property boundaries that adjoin neighbours.</p> <p>Then, a total of five windows to bedrooms, which are near the boundary with 1 Bringelly Road, include fixed privacy blades and vertical fins, to assist in maintaining visual privacy.</p> <p>For Building A, the windows are suitably placed to ensure adequate privacy separation. This includes having no windows near the western property boundary, and providing a centrally located cut-out void to enable some windows to be arranged around the edges of the central void. A few windows which are close to the common corridor also have external blades.</p>	Yes - in part, but acceptable.
3F-2	<p>Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space.</p> <p>The ADG design guidance then references:</p> <ul style="list-style-type: none"> • separating communal open space areas from private areas; • separating habitable rooms; (bedrooms, living rooms) from other open gallery access spaces within the apartment; • positioning balconies in front of living rooms; • offsetting windows from adjacent developments; and • recessing balconies or using fins between adjacent balconies. 	Taking into consideration the design guide principles referenced above, the spatial planning of the apartments around central voids and facing the street edges, is an appropriate design response, which will result in a good level of residential amenity.	Yes

3G-1	Building entries and pedestrian access connects to and addresses the public domain.	<p>The residential entry to Building A has been discussed above. Notwithstanding that it is located next to the pub's main entry on Great Western Highway, it is acceptable because it is centrally located on the main road (with increased traffic and visibility), and the lobby is not deep and has quick and easy access to the lifts.</p> <p>Building B has two residential entry lobbies which is appropriate given that building's position on more secondary streets.</p>	Yes
3G-2	Access, entries and pathways are accessible and easy to identify.	The main building entry points for both the residential lobbies and the commercial uses are clearly identifiable from the street and level access is (or can be) provided.	Yes
3H-1	Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.	<p>The vehicle access points have been positioned away from the primary roads and suitably designed to meet the relevant Australian Standards.</p> <p>Transport for NSW support the driveway being for Building A being in Wainwright Lane.</p>	Yes
3J-1	Car parking is provided based on proximity to public transport.	<p>The car parking spaces provided for the residential and retail components of the proposed development comply with Council's DCP rates.</p> <p>The parking non-compliance associated with the pub component is discussed later in this report, but is also acceptable given the site's position opposite Kingswood Train Station and taking into account the current number of parking spaces for the existing pub.</p>	Yes - in part, but acceptable.

3J-2	Parking and facilities are provided for other modes of transport.	<p>Building A is provided with six motorbike spaces and 39 bicycle spaces.</p> <p>Building B is provided with ten motorbike spaces and 12 bicycle spaces, which is compliant.</p> <p>The bicycle spaces are available for residents, visitors, staff, and customers. Residential storage cages in the basement can also accommodate bicycles.</p>	Yes
3J-3	Car park design and access is safe and secure.	<p>The two lift cores in Building B assist in providing safe and good access to the lift options in the basement.</p> <p>The basement parking levels of Building B are designed to restrict the movement of the pub users (customers and staff) from the residential lifts and parking areas.</p> <p>Conditions relating to lighting in the basement is included in the recommended conditions.</p>	Yes
3J-4	Visual and environmental impacts of underground car parking are minimised.	The basement levels are located below ground and therefore will not protrude or create dead facade frontages.	Yes
4A-1	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.</p> <p>The design criteria then states that:</p> <ul style="list-style-type: none"> • living rooms and private open spaces of at least 70% of apartments to receive 2 hours direct sunlight between 9am and 3pm mid-winter; and • a maximum of 15% of apartments receive no direct sunlight. 	<p>The drawings include plans showing which specific apartments have access to more than two hours of solar access between 9am and 3pm, mid-winter.</p> <p>For Building A, 56 of the 79 apartments comply, representing 70.88% of apartments.</p> <p>For Building B, 39 of the 54 apartments comply, representing 72.2% of apartments.</p>	Yes

4A-2	<p>Daylight access is maximised where sunlight is limited.</p> <p>The design guidance makes reference to only using courtyards, skylights and high level windows as secondary light sources for habitable rooms, and using reflective and light coloured materials.</p>	All apartments will receive adequate access to daylight given the spatial planning and footprint of the residential levels.	Yes
4A-3	Design incorporates shading and glare control, particularly for warmer months.	Awnings are proposed at street level. Some windows include top fins to provide shade, and the application includes a satisfactory Section J report which addresses thermal performance of glazing.	Yes
4B-1	All habitable rooms are naturally ventilated.	All habitable rooms have operable windows to allow natural breezes to flow through the spaces.	Yes
4B-2	<p>The layout and design of single aspect apartments maximises natural ventilation.</p> <p>The design guidance then references limiting apartment depths relative to ceiling heights and that 8m is the maximum depth for a single aspect apartment (in an open plan scenario).</p>	The proposal complies with this control.	Yes

4B-3	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.</p> <p>The design criteria then states that 60% of apartments are naturally ventilated and that inlet and outlet windows are approximately of the same size.</p>	<p>The drawings include cross ventilation plans which show which apartments achieve natural cross ventilation.</p> <p>For Building A the plans show that 56 of the 79 apartments are naturally cross ventilated. This equates to 71% which exceeds the 60% design guide.</p> <p>It is acknowledged that a series of apartments in Building A, facing Bringelly Road to the east, are less likely to be conventionally cross ventilated. However, these apartments are designed with a corner balcony that protrudes beyond the adjoining solid wall, and in doing this, those apartments have a portion of their balcony that faces north as well as east. In addition, those apartments have a small cut-out orientated to access air coming from a north-easterly direction as well as from the east.</p> <p>For Building B the plans show that 42 of the 54 apartments are naturally cross ventilated. This equates to 77% which exceeds the 60% design guide.</p>	Yes
4C-1	<p>Ceiling height achieves sufficient natural ventilation and daylight access.</p> <p>The design criteria references habitable rooms achieving a finished floor to ceiling height of 2.7m.</p>	<p>All habitable rooms will achieve a minimum floor to ceiling height of 2.7m.</p>	Yes

4D-1	<p>The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.</p> <p>The design criteria states the following minimum internal floor areas:</p> <ul style="list-style-type: none"> • 1 bed – 50sqm; • 2 bed – 70sqm; and • 3 bed – 90sqm. <p>Additional bathrooms increase minimum areas by 5sqm and all habitable rooms are to have BCA compliant windows in terms of size (glass area of not less than 10% of room size).</p>	The Design Verification Statement submitted by the Registered Architect confirms that all apartments either comply or exceed this criteria.	Yes
4D-2	<p>Environmental performance of the apartment is maximised.</p> <p>The design criteria references habitable room depths limited to 2.5 x ceiling height, and open plan layouts have a maximum depth of 8m from the window.</p>	The proposed apartment depths comply with this requirement.	Yes
4D-3	<p>Apartment layouts are designed to accommodate a variety of household activities and needs.</p> <p>The design criteria specifies:</p> <ul style="list-style-type: none"> • master bedrooms to be 10sqm and other bedrooms to be 9sqm; • bedrooms have minimum dimensions of 3m; • living rooms have minimum widths of 3.6m (for 1 bed) and 4m (for 2/3 bed); • cross-through apartments are at least 4m wide. 	All apartments comply with this requirement.	Yes

4E-1	<p>Apartments provide appropriately sized private open space and balconies to enhance residential amenity.</p> <p>The design criteria states that all apartments are to have primary balcony areas of the following size:</p> <ul style="list-style-type: none"> • 1 bed – 8sqm (2m deep); • 2 bed – 10sqm (2m deep); and • 3 bed – 12sqm (2.4m deep). <p>Ground floor apartments are to have at least 15sqm of private open space with a minimum depth of 3m.</p>	The Design Verification Statement submitted by the Registered Architect confirms that all apartments comply with this criteria.	Yes
4E-2	<p>Primary private open space and balconies are appropriately located to enhance liveability for residents.</p>	Balconies are located adjacent to living areas, and are well proportioned and usable.	Yes
4E-3	<p>Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.</p> <p>The design guide suggests that front fence are visually permeable, full width-full height glass balustrades are avoided, operable screens are used, air-conditioning should be located on roofs or screened if on balconies.</p>	The balconies are an integral part of the facade design. Although some glass balustrades are proposed, these are balanced by the strong horizontal banding in the facade. A suitable condition is recommended to ensure that all air conditioning is designed to be co-located on the roof and not on individual balconies.	Yes
4F-1	<p>Common circulation spaces achieve good amenity and properly service the number of apartments.</p> <p>The design criteria states that no more than 8 apartments can be accessed off a circulation core.</p> <p>The design guidance suggests that greater corridor widths improve amenity, daylight and natural ventilation should be provided, and primary windows should not open onto the corridor.</p>	<p>Building A has one residential lift core. However, the spatial configuration of the common corridor and apartments means that the maximum number of apartments provided off a circulation core on a single level is six apartments.</p> <p>For Building B the maximum number of apartments accessed off a circulation core is also six.</p>	Yes

4F-2	Common circulation spaces promote safety and provide for social interaction between residents.	The common corridors in both buildings provide an outlook into the central void/cut-out, which is landscaped at Level 1.	Yes
4G-1	<p>Adequate, well designed storage is provided in each apartment.</p> <p>The design criteria requires additional storage as follows:</p> <ul style="list-style-type: none"> • 1 bed – 4 cubic metres; • 2 bed – 6 cubic metres; and • 3 bed – 10m cubic metres, <p>with 50% of that space in the apartment.</p>	The architectural drawings include floor plans showing the storage areas for each apartment, with both a designated space in the basement parking levels, as well as within each apartment.	Yes
4G-2	Additional storage is conveniently located, accessible and nominated for individual apartments.	Individual storage spaces for apartments are located on the basement levels, generally positioned behind the dedicated residential parking space.	Yes
4H-1 and 4H-2	<p>Noise transfer is minimised through the siting of buildings and building layout.</p> <p>Noise impacts are mitigated with apartments through layout and acoustic treatments.</p>	Adequate building separation has been provided to neighbouring properties, as well as the inclusion of fixed privacy screens and fixed vertical blades to some windows.	Yes
4K-1 and 4K-2	<p>A range of apartment types and sizes is provided to cater for different household types and into the future.</p> <p>The apartment mix is distributed to suitable locations within the building.</p>	<p>Both buildings will contain a mix of apartments, being:</p> <p>Building A</p> <ul style="list-style-type: none"> • 26 x 1 bedroom; • 48 x 2 bedroom; and • 5 x 3 bedroom apartments. <p>Building B</p> <ul style="list-style-type: none"> • 12 x 1 bedroom; • 36 x 2 bedroom; and • 7 x 3 bedroom apartments. 	Yes

4M-1 and 4M-2	<p>Building facades provide visual interest along the street while respecting the character of the local area.</p> <p>Building functions are expressed by the facade.</p>	<p>The design of the building facades was the subject of a number of reviews by Council staff and the Urban Design Review Panel. Suitable amendments have been made to address comments following these reviews.</p> <p>The detailed design of the facades and the variety of materials and finishes is acceptable.</p>	Yes
4N-1, 4N-2 and 4N-3	<p>Roof treatments are integrated into the building design and positively respond to the street.</p> <p>Opportunities to use roof space for residential accommodation and open space are maximised.</p>	<p>Both buildings will have communal rooftop open space, which has been designed to include landscaping, seating, a toilet, and a BBQ area.</p>	Yes
4O-1 and 4O-2 4P-1, 4P-2 and 4P-3	<p>Landscape design is viable and sustainable.</p> <p>Landscape design contributes to the streetscape and amenity.</p> <p>Planting on structures contributes to the quality and amenity of communal and public open spaces.</p>	<p>Building A includes a total of 489.2sqm of landscaped area. The communal landscaped area for the residential apartments is split into two spaces. One is located on the first floor and is designed as one part being a green roof (above the rear pub entry) and the other part being a communal garden area (that is effectively the ground of the internal courtyard / lightwell). The other landscaped area is on the edges of the roof terrace and is a usable communal recreation space.</p>	Yes
4Q-1, 4Q-2 and 4Q-3	<p>Universal design features are included in apartment design to promote flexible housing for all community members.</p> <p>The design guidance makes references to a 'silver level' in the Livable Housing Guideline and seven core design features.</p>	<p>The proposal provides a varying stock of apartments including adaptable units.</p>	Yes

4S	Mixed use buildings	<p>For Building A, the proposed commercial (pub) use of the ground floor accords with the planning guidelines for Kingswood and replaces the existing pub.</p> <p>The proposed retail and commercial spaces in Building B will also add interest and activity to the area.</p>	Yes
4T	Awnings	Awnings are provided.	Yes
4U-1, 4U-2 and 4U-3	<p>Development incorporates passive environmental design.</p> <p>Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer.</p>	<p>Adequate natural daylight, sunlight and ventilation is provided to apartments as per the design criteria of the ADG discussed above.</p> <p>Shading is provided by balcony overhangs, landscaping and the roof terrace structures.</p>	Yes
4V-1, 4V-2 and 4V-3	<p>Potable water is minimised. Urban stormwater is treated on site before being discharged to receiving waters. Flood management systems are integrated into site design.</p>	Water efficient fixtures, appliances, and a rainwater tank are included, which meets all BASIX requirements.	Yes
4W-1 and 4W-2	<p>Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.</p> <p>Domestic waste is minimised by providing safe and convenient source separation and recycling.</p>	The proposed development includes provision for on-site waste collection by Council's garbage trucks. This is discussed further in the Referrals section of this report. The detailed design of the waste infrastructure will require some amendments which are addressed by a recommended condition of consent.	Yes
4X-1, 4X-2 and 4X-3	<p>Building design detail provides protection from weathering.</p> <p>Systems and access enable ease of maintenance.</p> <p>Material selection reduces ongoing maintenance costs.</p>	Suitable materials are included to assist with long term maintenance, such as face brick and tile floor coverings for communal areas (rooftop open space and corridors).	Yes

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Complies
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies
Clause 2.7 Demolition requires development consent	Complies
Clause 4.3 Height of buildings	Does not comply - See discussion
Clause 4.4 Floor Space Ratio	Complies - See discussion
Clause 4.5 Calculation of floor space ratio and site area	Complies
Clause 4.6 Exceptions to development standards	Complies - See discussion
Clause 5.10 Heritage conservation	Complies - See discussion
Clause 7.1 Earthworks	Complies
Clause 7.4 Sustainable development	Complies - See discussion
Clause 7.6 Salinity	Complies
Clause 7.7 Servicing	Complies
Clause 7.8 Active street frontages	Complies
Clause 7.11 Penrith Health and Education Precinct	Does not comply - See discussion
Clause 7.30 Urban Heat	Complies - See discussion

Clause 2.3 Permissibility

The subject site is zoned B4 Mixed Use. The proposed residential use is permissible with consent as the Penrith LEP permits '*residential accommodation*', '*residential flat buildings*', and '*shop-top housing*', all being definitions which the residential portions of the proposed development meet.

The proposed bottle shop, pub, and commercial (or retail) uses are also permissible with consent in the B4 zone by virtue of those uses falling within the overarching category of '*commercial premises*'. In particular, a '*pub*' is a type of '*food and drink premises*', which is a type of '*retail premises*', which is a type of '*commercial premises*'.

Clause 4.3 Height of buildings

Clause 4.3 of the Penrith LEP permits a maximum building height of 24m for the Northern Site (180 Great Western Highway) and 18m for the Southern Site (26 Rodgers Street). Building A is proposed to be at a maximum height of 30.6m (to the top of the lift overrun) and Building B is proposed to be at a maximum height of 24.5m to the top of the lift overrun. The application includes a Clause 4.6 written request.

Clause 4.4 Floor Space Ratio

The Penrith LEP permits a maximum floor space ratio 4:1 for the Northern Site (180 Great Western Highway) and 3:1 for the Southern Site at 26 Rodgers Street. The proposed development complies with this control having a FSR of 3.9:1 and 3:1 respectively.

Clause 4.6 Exceptions to development standards

Clause 4.6 of the Penrith LEP allows the applicant to make a written request to vary the applicable development standard that is contravened. In this case, the development standard that is contravened is the mapped maximum building height at Clause 4.3(2) of the Penrith LEP. This height control is written as a development standard and can therefore be varied pursuant to Clause 4.6. In addition, Clause 4.6(8) of the LEP does not exclude the operation of Clause 4.6 from the development standard for height.

Clause 4.3 of the Penrith LEP allows a maximum building height of **24m** for Building A and **18m** for Building B. Building height in the LEP is defined as *"the vertical distance from ground level (existing) to the highest point of the building"* in relation to the height of a building in metres. In relation to the RL of a building, it means *"the vertical distance from the Australian Height Datum to the highest point of the building"*.

The extent of proposed non-compliance varies given the slope of the natural ground level and the position of the building structures relative to natural ground. The figures below represent **some** of the proposed height breaches above the height control at Clause 4.3. More detail about the numerical breaches for each building component is provided in a table within the applicant's written request.

The additional 20% height afforded by Clause 7.11 cannot be utilised by the proposed development as the buildings would still breach that additional height control. However, it should be noted that Clause 7.11 would allow an additional height of 4.8m for the Northern Site (total height of 28.8m) and 3.6m for the Southern Site (total height of 21.6m). The applicant's written request also provides a table with the numerical breaches against the additional height clause, as a means of comparison.

Building A will have a maximum height of 30.6m. Building A will have the following height breaches:

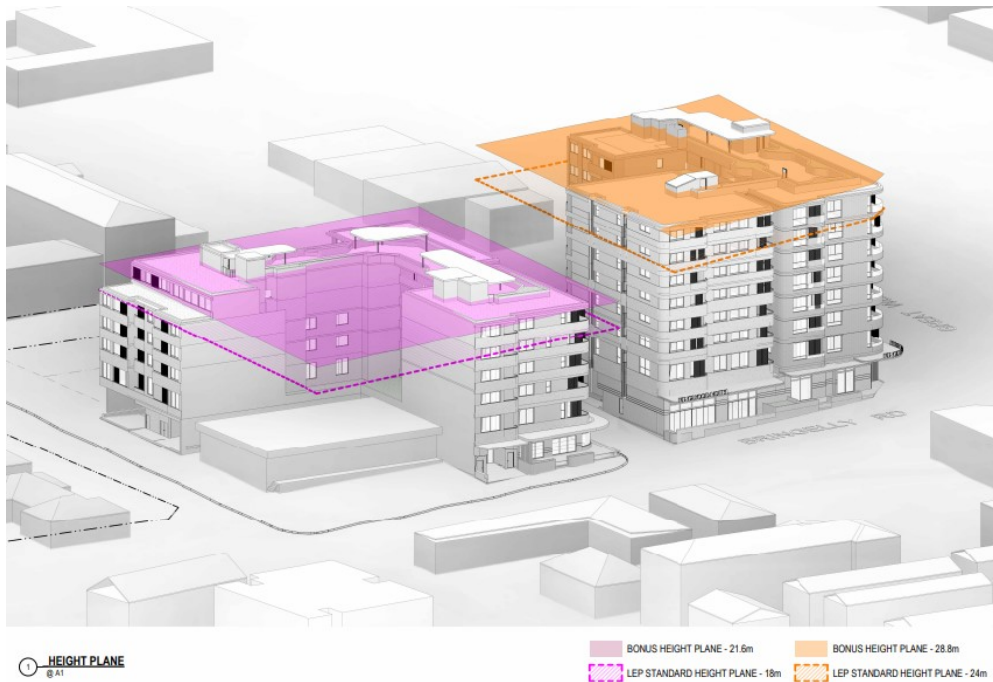
- Lift overrun: 6.6m (27.5%) over;
- Roof pergola: 6m (25%) over; and
- Top of building: 2.9m (12.1%) over.

Building B will have a maximum height of 24.5m. Building B will have the following height breaches:

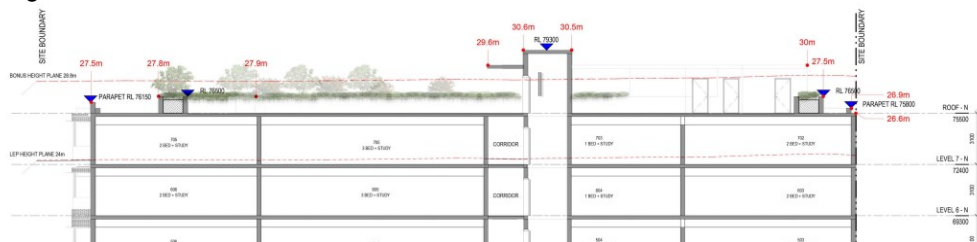
- Lift overrun: 6.1m (33.9%) over;
- Roof pergola: 5.1m (28.3%) over;
- Roof level planter box: 3.9m (21.7%) over; and
- Top of building: 3.5m (19.4%) over.

The architectural drawings (at Drawing No. DA-433, Revision C) include an isometric image (taken from Bringelly Road) to demonstrate the proposed building height non-compliances. This image is included below. Building A is to the right. The orange hatched line denotes the LEP mapped 24m height envelope while the solid orange colour shows the additional height to 28.8m pursuant to Clause 7.11.

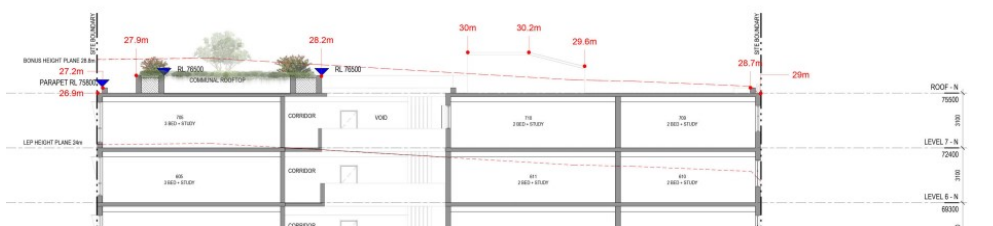
Building B is on the left of the image. The purple hatched line denotes the 18m LEP mapped height envelope, while the purple solid colour is the additional height to 21.6m pursuant to Clause 7.11. It is reiterated that the proposed development does not benefit from the additional height afforded by Clause 7.11 because the proposed building will exceed that height.



The images below show two section details of **Building A**. The lower red dotted line denotes the 24m LEP height control at the relevant property boundary. The upper red dotted line denotes the 28.8m additional height that relates to Clause 7.11.



East-West Section of Building A

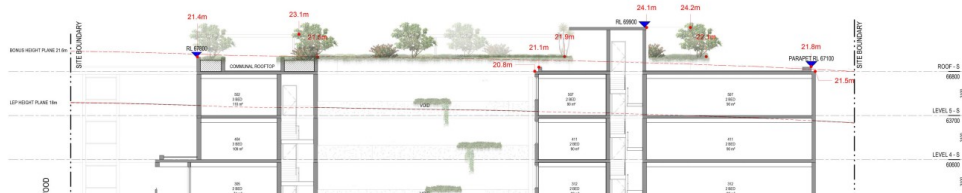


North-South Section of Building A

The two additional images below show section details of **Building B**. The lower red dotted line denotes the 18m LEP height control at the relevant property boundary. The upper red dotted line denotes the 21.6m additional height that relates to Clause 7.11.



North-South Section of Building B - Taken near Western End



North-South Section of Building B - Taken near Eastern End

Clause 4.6:

The objectives of Clause 4.6 are contained at Sub-Clause (1) and are; *"to provide an appropriate degree of flexibility in applying certain standards to particular development"*; and *"to achieve a better outcome for and from the development by allowing flexibility in particular circumstances"*. In addition, the Planning Portal website states that *"Development standards are designed and applied to regulate the type, size and scale of development that can be approved"*.

Clause 4.6(3) requires the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating the following:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- (b) That there are sufficient environmental planning grounds to justify contravening the development standard.

Applicant's Written Request Pursuant to Clause 4.6:

The applicant submitted a written request that seeks to justify the proposed contravention. The written request has been amended to clearly stipulate that it is the mapped development standard for height at Clause 4.3 of the LEP that is seeking to be varied, and not the additional height afforded by Clause 7.11. A full copy of the current written request, dated 10 March 2023, has been provided to the Panel.

The applicant's written request makes the following statements:

- Using the Wehbe principles, the objective of the development standard for height is achieved notwithstanding non-compliance with the standard (pages 15 - 16 of the applicant's written request);
- The Precinct has seen an uplift in built form controls to attract and complement Nepean Hospital. The proposed development is of a compatible scale and form with existing and recent developments in the area;
- Desired future character of the area is determined by reference to a suite of planning controls and by reference to the existing character of buildings in the area, not only by the controls encapsulated in

the zone objectives and LEP development standards;

- The Penrith DCP provides benefit in setting out the desired future character of the locality, and in conjunction with the various planning instruments (local and State), cumulatively assist to establish desired future character;
- The Character Statement in the DCP for the Commercial Mixed-Use precinct in the Hospital Precinct of the Penrith Health and Education Precinct is useful to help establish desired future character, referencing higher density residential development in Bringelly Road and Rodgers Street, as well as retail businesses along Great Western Highway;
- The proposed scale of the buildings will fit comfortably with the urban context. Although the proposed buildings would currently be higher than the immediate neighbours, the resulting scale and bulk is anticipated by the controls, and this pre-existing character will be replaced over time;
- The proposed rooftop levels of both buildings are set back from property boundaries. The centralised location of the lift cores will ensure the lift overruns do not form part of the dominant visual building composition from the street frontage or neighbouring properties;
- The natural fall of the land results in variations to the height non-compliance. The buildings provide floors that are set back from some street frontages, notably the residential floors of Building A are set back from the Bringelly Road boundary;
- The visual impact of the building components that breach the height control are skilfully designed so as to not impact on the perceived bulk when viewed from the street. This includes setbacks, landscaped elements, facade undulations, and materiality;
- When considering the scale of buildings that the controls would allow, the elements of the proposed building that exceed the height control would have insignificant additional impacts on the overshadowing of adjoining properties and the public domain;
- The adjoining developments in the vicinity of the site are generally underdeveloped at present and will be replaced over time, likely seeking to use the additional heights afforded by Clause 7.11 and resulting in a scale that could be similar to the proposed development;
- There are sufficient environmental planning grounds, despite the non-compliance. This includes that the lift overruns, which represent the greatest proposed breach, are set back from adjacent street frontages and are centralised so to not create a dominant visual element in the building composition. In addition, the non-complying portions of the development will not cause adverse impacts on solar access, view loss, or loss of privacy;
- When the building is viewed from the main vantage points of Great Western Highway and Bringelly Road, the upper level and roof (non-complying elements) will be viewed against the building as a whole and will not readily dominate the visual appreciation of the building;
- The extent of the height breaches are in-part a result of the natural topography of the site;
- The rooftop levels provide meaningful communal open space as part of the development. It is appropriate to elevate the communal open space on the roof level as this allows the space to be further separated from the busy Great Western Highway;
- Given the mixed-use nature of the area and the proximity to public transport nodes and services, it

makes strategic planning sense to provide residential accommodation on the site, where there are sound opportunities for employment and a reduction in reliance on private transport. This is recognised as an environmental planning ground in *Big Property* (49);

- The proposed development is consistent with Council's vision for the locality. It will achieve active frontages and promote vibrancy and safety in the area, and will provide more residential accommodation in a suitable area near employment and transport options and near health services; and
- Strict compliance with the development standard (and with consideration to the additional height clause) may only result in removing the rooftop communal open space area and some residential apartments. Given those areas have no adverse impacts, it would be undesirable to require them to be deleted.

Panel's Consideration Pursuant to Clause 4.6:

Clause 4.6, Sub-Clause (4) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied of the following:

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

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

The discussion below is provided so that the Panel may be satisfied that the requirements of Clause 4.6(4) have been met and that development consent can be granted to the proposed development notwithstanding the contravention of the development standard for maximum building height.

Has the applicant's written request adequately addressed the matters required to be demonstrated by subclause (3)?

It is considered that the applicant's request, when read in its entirety, follows a sound line of argument for justifying why the standard for building height is unreasonable or unnecessary in this particular case. The request addresses the impacts of the proposal and shows that the proposed development will still meet the objectives of the particular standard, notwithstanding the breach of the numerical control. The statement has also outlined environmental planning grounds considered relevant for allowing a contravention of the development standard. Therefore, the written request is sound and has addressed the relevant matters required by Clause 4.6(3).

Is the proposed development consistent with the objectives for the standard relating to building height contained in the LEP?

The height of buildings control is at Clause 4.3 of the LEP and contains four objectives, being:

- (a) To ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality;
- (b) To minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas, including parks, streets and lanes;
- (c) To minimise the adverse impact of development on heritage items, heritage conservation areas and areas of scenic or visual importance; and

(d) To nominate heights that will provide a high quality urban form for all buildings and a transition in built form and land use intensity.

With consideration of the proposed development and the four objectives, the following comments are made:

- The site is located within the Penrith Health and Education Precinct which has seen an uplift in built form controls to attract and complement Nepean Hospital and its surrounds, including health, education, commercial, and residential land uses;
- Recent developments in the area have resulted in multi-storey residential buildings, particularly two developments with frontages to Great Western Highway and Wainwright Lane. These developments are near the subject site and are eight-storey in scale;
- Recent, and ongoing, developments in the area have been changing the streetscape appearance and built form character of Kingswood;
- The proposed development is of a comparable scale and form with recent new developments in the area. The scale and bulk of the proposed development does not detract from the desired future character of the area;
- While the additional height afforded by Clause 7.11 of the LEP cannot be utilised in this case, it is still a relevant matter to assist in determining desired future character and scale. Taking this into account, most of the proposed buildings would fall within the additional height control. Parts of the roof structures, such as the lift overrun, roof pergolas, and roof level planter boxes, exceed the additional height control. However, these proposed building elements are integral to the design quality of the development and increase the amenity of the future residential users (by providing shade on the rooftop open space, providing landscaping, and providing equitable access);
- For Building A, the ground floor pub has a floor to floor height of 5m and the first floor has a floor to floor height of 3.9m. For Building B, the ground floor is 4.1m and the first floor is 3.9m. This complies with the objectives of Clause 7.11, notwithstanding the non-compliance with the additional height control. The generous internal floor to ceiling height for the pub is also preferable to a standard BCA compliant floor to ceiling height. This will result in a licensed venue that is modern, airy, and a move away from the 'dark and dingy' pub that currently exists on the site;
- The matter of solar access to the neighbouring property at 1 Bringelly Road is discussed in the Submissions section of this report and is acceptable. The proposed development, with the non-compliant height, will not generate any significant additional amenity impacts with regard to overshadowing, visual and acoustic privacy or view loss, beyond what would occur from a compliant development;
- The proposed development will not impact on the 'milestone' heritage item located on the highway near the site, and the site not identified as an area of scenic or visual importance; and
- The scale of Building B is smaller than Building A in response to the Southern Site (26 Rodgers Street) being near the interface with an area of lesser intensity.

Is the proposed development consistent with the objectives for development within the B4 - Mixed Use Zone?

The B4 Mixed Use zone has five objectives, being:

- To provide a mixture of compatible land uses;
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling;
- To minimise conflict between land uses within this zone and land use within adjoining zones;
- To create opportunities to improve public amenity; and
- To provide a wide range of retail, business, office, residential, community and other suitable land uses.

With regard to the above objectives, it is considered that the proposed development will meet the relevant objectives and not detract from the achievement of those objectives. The proposal will contribute to the function and character of the Penrith Health and Education Precinct and the suburb of Kingswood. The buildings will provide contemporary residential flat buildings and a purpose-built and modern pub, with a bistro feature including outdoor dining. The development is also well positioned, being opposite Kingswood Train Station.

In addition, Council's Community Safety officer has reviewed the proposal and commented that the locality of Kingswood needs new development to assist in improving the safety and usability of the area. Therefore, the proposed development will meet the objectives of the B4 Mixed Use zone and will also be in the public interest.

In addition, the provision of good quality residential accommodation and commercial uses along Great Western Highway accords with Council's *'Penrith Urban Study - Managing Growth to 2031'*, particularly Chapter 5.4 that relates to Kingswood. The proposed development also accords with Council's *'Think Bold Kingswood Place Plan'*, dated 19 October 2020, which is a strategic document driven by the community. The plan references the rapid urban changes coming to Kingswood and the need for welcoming and active spaces.

Draft Amendments to Clause 4.6 - Explanation of Intended Effect (EIE):

The EIE was exhibited by the Department from 31 March to 12 May 2021. The Department's public exhibition information states that the proposed changes to Clause 4.6 aim to clarify the requirements for varying development standards and improve transparency and accountability in the planning system, with a greater focus on improved planning outcomes of proposed development and consistency with the strategic context of sites.

The revised tests may be whether:

- *"the proposed development is consistent with the objectives of the relevant development standard and land use zone; and*
- *the contravention will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened. In deciding whether a contravention of a development standard will result in an improved planning outcome, the consent authority is to consider the public interest, environmental outcomes, social outcomes or economic outcomes; or*
- *an alternative test may be developed to enable flexibility to be applied in situations where the variation is so minor that it is difficult to demonstrate an improved planning outcome, but the proposed variation is appropriate due to the particular circumstances of the site and the proposal".*

Considering the above, the following statements are made about the proposal:

- The proposed rooftop communal space is set back from the property boundaries as well as from all of the building's edges. Therefore, the rooftop level structures will not be readily visible from vantage points in surrounding streets, and where it is visible, its appearance will be softened by the proposed landscaping in the planter boxes around the roof edges;

- The rooftop communal space provides a high level of amenity to the future residential users of the development. It will provide residents with a usable space that is further separated from the busy Great Western Highway, while still being able to live in an accessible location near a train station;
- The development as a whole will have a positive impact on Kingswood as a suburb and area in which to live, work, and pursue recreation. The redevelopment of the existing pub will improve the appearance and functionality of that space, and the inclusion of a bistro area with outdoor dining will appeal to broader members of the community;
- A reduction in the floor to ceiling height of the pub (as a means of reducing the height non-compliance) would result in a worse outcome for the usability of the pub space, and not result in a tangible benefit just to meet the numerical requirements; and
- The topmost residential floor of both buildings is the floor that sits between the mapped LEP height control and the additional height control. However, it is appropriate to consider the resulting scale and form that could be achieved on adjoining sites when using the 20% additional height afforded by Clause 7.11. It is also relevant to consider that future development on adjoining sites is likely to seek to use Clause 7.11, and that the resulting scale may be similar to the proposed development.

Delegation to Panel:

Clause 4.6(4)(b) requires the concurrence of the Planning Secretary. In this regard, a standard delegation was issued by the Planning Secretary in Planning Circular 20-0002 issued on 5 May 2020 (replacing previous circulars). This Circular provides assumed concurrences. For development that would contravene a standard by more than 10%, the assumed concurrence does not apply to a delegate of Council. However, this restriction does not apply to decisions made by independent assessment panels as they exercise their consent authority functions on behalf of Councils but are not legally delegates of Council.

Therefore, the delegation to vary the development standard and determine the application lies with a Planning Panel. Given that the proposed development meets the definition for '*Regionally significant development*', the application can be determined by the Sydney Western City Planning Panel. The Planning Panel can be satisfied that they have the relevant concurrence from the Planning Secretary to vary the development standard and that they have adequately and appropriately carried out a consideration pursuant to Clause 4.6 to vary the development standard for maximum building height and grant development consent.

Clause 5.10 - Heritage conservation

The Penrith LEP identifies a local heritage item (number 861) called 'Milestone' which is located within the roadway or footpath of Great Western Highway. The item is in the vicinity of the subject site, although not adjoining the site. The item is a small, rectangular sandstone block with the inscribed words 'Penrith' and 'Sydney' and their respective distances in miles.

The State Heritage Inventory statement of significance says that "*The milestone is an interesting remnant of the early establishment of the Western Road as an important link between Sydney and the western districts, and reflects the importance of Penrith along this route*". The proposed development will have no impact on the significance of this Item.

Clause 7.4 Sustainable development

The proposed development includes a rainwater tank and an acceptable stormwater treatment that will effectively treat stormwater prior to discharge to the street system. The application is accompanied by a compliant BASIX certificate for each individual building and a Section J report (relating to glazing efficiency and the National Construction Code).

Clause 7.11 Penrith Health and Education Precinct

The site is located within the Penrith Health and Education Precinct. Therefore Clause 7.11 of the LEP could be utilised by the applicant. This clause allows additional height (up to 20% of the applicable height standard) if certain pre-requisites are met. The pre-requisite is that the floor to ceiling height of both the ground and first floors is at least 3.5m. The objective of this control is to provide higher floor to ceiling heights at the two lower levels of buildings so that there is flexibility in the building's future use, and to encourage some non-residential uses on the lower floors.

If the bonus 20% height was utilised, it would allow a maximum building height of 28.8m for the Northern Site and 21.6m for the Southern Site.

Although the ground and first floors of both proposed buildings are at least 3.5m, the overall building height is more than what the bonus height would allow. Therefore, the proposed development cannot utilise the 20% additional height afforded by Clause 7.11. The applicable development standard for maximum building height remains the mapped height at Clause 4.3 of the Penrith LEP.

Clause 7.30 Urban Heat

Clause 7.30 of the Penrith LEP was gazetted on 22 July 2022, along with amendments to the Penrith DCP. The clause relates to Urban Heat. The clause requires that the consent authority is satisfied that planning and design measures are incorporated to reduce the urban heat island effect. The matters for consideration outlined in the clause are referenced below, with commentary against each matter. This commentary includes additional information submitted by the applicant to respond to this new LEP clause.

(a) *Maximise green infrastructure*: The proposal will result in an increase to green infrastructure compared to the existing condition. The proposed development provides approximately 25% of landscaping for Building A and 18% for Building B. Native plans have also been proposed.

(b) *Retain water in the landscape*: The buildings provide additional setbacks to the eastern facade as well as additional setbacks to the northern facade (for Building B). This allows for significant use of awnings and the planting of street trees.

(c) *Use design measures to ensure the thermal performance of the development achieves a high degree of passive cooling*: The proposed development uses operable screens, hoods over windows, green roofs, masonry walls with cavities and insulation, open common corridors, and deep balconies. Communal areas have been located on both the rooftop and podium level so that there are areas that allow comfortable use during summer and winter months. In addition, a large void is used through both developments that provides cross flow ventilation to common corridors. The large green area on the podium level along with vertical slots through the facades provides passive cooling effects for thermal comfort.

(d) *Use building, paving and other materials that minimise heat impacts*: The proposal uses natural colours to reduce solar absorption and heat retention. When combined with the proposed planting strategy to provide shading to these areas, this will result in an efficient thermal performance consistent with the objectives of the clause. The reduction in impervious surfaces will allow for greater retention of rainfall within vegetation and soils across the site.

(e) *Reduce reliance on mechanical ventilation and cooling systems, to conserve energy and to minimise heat sources*: Reliance on mechanical plant is reduced by using operable screens in the apartments, as well as hoods over windows, green roofs, wall insulation, open common corridors, deep balconies, and the voids through the buildings which allow cross ventilation to common corridors.

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

Development Control Plan 2014

Provision	Compliance
DCP Principles	Complies
C1 Site Planning and Design Principles	Complies
C2 Vegetation Management	Complies
C3 Water Management	Complies
C4 Land Management	Complies
C5 Waste Management	Does not comply - see Appendix - Development Control Plan Compliance
C6 Landscape Design	Complies
C7 Culture and Heritage	Complies
C8 Public Domain	Complies
C9 Advertising and Signage	Complies
C10 Transport, Access and Parking	Does not comply - see Appendix - Development Control Plan Compliance
C11 Subdivision	N/A
C12 Noise and Vibration	Complies
C13 Infrastructure and Services	Complies
C14 Urban Heat Management	Complies
D2.1 Single Dwellings	N/A
D2.2. Dual Occupancies	N/A
D2.3 Secondary Dwellings	N/A
D2.4 Multi Dwelling Housing	N/A
D2.5 Residential Flat Buildings	Complies
D2.6 Non Residential Developments	N/A
E12 Penrith Health and Education Precinct	Does not comply - see Appendix - Development Control Plan Compliance

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

The relevant requirements of the Regulations can be met subject to recommended conditions.

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

Proposed Pub and Bottle Shop

The existing pub, the Kingswood Hotel, was reconstructed in 2006 although a pub has existed on the site for much longer. The reconstructed (current) pub has a valid development consent (DA04/0856.02) and

current liquor licence (hotel licence). The liquor licence includes hours that the pub can serve alcohol, including hours for take-away sales. The liquor licence also references approval for 30 gaming machines and an associated Local Impact Assessment under Section 36 of the Gaming Machines Act.

The Development Application is accompanied by a Social Impact Assessment and an operational Plan of Management. The DA was referred to Nepean Police, as well as Council's Community Safety officer and Social Planning Team. All three raised no objection to the proposal subject to conditions. The referral response from Nepean Police is discussed below in the Submissions section of this report. Council's Community Safety officer stated that the submitted Social Impact Assessment and Plan of Management "*all talk to important CPTED design and management elements that when implemented will enhance user safety and contribute to minimising any associated crime risks with this development*". The Council officer also stated that the proposed development, including the renewal of the hotel, will enhance the streetscape along Great Western Highway, Bringelly Road, Wainwright Lane, and Rodgers Street, and will contribute to enhanced feelings of safety, encouraging increased usability and walkability.

The permanent pub in Building A is proposed to operate between 9:00am and 3:00am Monday to Saturday and between 10:00am and 10:00pm on Sunday. The outdoor dining areas (facing Bringelly Road) will operate between the hours of 10:00am and 12:00 midnight Monday to Saturday and between 10:00am and 10:00pm on Sunday. These proposed trading hours are within the hours (when liquor is able to be served) stated in the current liquor licence. The proposed DA operating hours are also within the 'gaming machine shutdown hours' specified in the liquor licence.

The bottle shop in Building B will trade between 10:00am and 11:00pm Monday to Saturday and between 10:00am and 10:00pm on Sunday. These hours are also within the hours permitted by the liquor licence for take away sales.

The patron capacity of the permanent pub will be 500 persons. The temporary pub in Building B is proposed to operate the same hours but with a patron capacity of 300 persons.

Suitable conditions are recommended to address the following:

- that the use of the temporary pub only commence after the existing pub (Kingswood Hotel) has wholly ceased operation;
- that the use of the new permanent pub in Building A only commence after the temporary pub has wholly ceased operation;
- that the floor space labelled 'VIP' in the temporary pub in Building B revert to a retail or commercial use that does not primarily involve alcohol; and
- that the floor space labelled 'hotel' in the temporary pub in Building B is permitted to become part of an extended bottle shop tenancy.

Noise

The application is accompanied by an Acoustic Report that has been amended twice to address comments made by Council staff. Matters relating to noise experienced for the future residential apartments from the road, rail corridor, and mechanical plant have been discussed above in the section for the relevant SEPP.

The Acoustic Report includes a satisfactory assessment of the surrounding users (noise receivers) and demonstrates that the proposed trading hours for the pub uses, as well as the patron capacity, and management measures will ensure that noise emission criteria will be met.

Council's Environmental Management officer has reviewed the amended Acoustic Report and raised no

objection subject to conditions. Suitable conditions are included in the recommended conditions covering these operational matters (patron capacity, operating hours, and when to close windows).

Parking

The proposed number of on-site parking spaces for the residential component of both buildings is fully compliant with the Penrith DCP rates. This includes number of spaces for apartments, visitors, service bays, and car wash bays. In addition, the number of spaces for the bottle shop and (future) commercial use in Building B is also DCP compliant. A suitable condition is recommended to require the allocation of parking spaces to be as per the applicant's additional traffic document (letter prepared by CJP Engineers dated 22 December 2022) noting that the annotated numbers in the architectural drawings contain some minor inaccuracies.

However, the parking spaces proposed for the permanent pub do not comply with the DCP. The new (replacement) pub located in Building A would require **150** parking spaces based on the DCP rates of "*1 space per 4sqm of bar floor area*", and "*1 space per 6sqm of lounge and dining room*". The proposed development includes **56** parking spaces for the pub use. This is a non-compliance of **94** spaces.

The existing pub on the site operates with approximately 10 on-site parking spaces, notwithstanding that a strict application of the DCP parking rates would require approximately 120 parking spaces for the existing pub.

The DCP, at Clause C10.5.1(4) provides the discretion to waiver or reduce the number of parking spaces required if the reduced provision can be justified in a Traffic Impact Statement. This should consider; the proximity to public transport nodes; the opportunity to share parking with another use; and an empirical assessment of car parking.

The applicant has submitted justification for the parking non-compliance, including the following statements:

- *The existing pub currently operates with 10 on-site parking spaces so the proposed provision of 56 spaces is significantly more than the existing provision;*
- *Many of the pub patrons are expected to live within the future development itself as well as the existing and future high-density residential development within walking distance of the site, on both sides of the railway line;*
- *Many of the pub patrons are also expected to work within the surrounding area and within walking distance of the site, on both sides of the railway line;*
- *The pub will promote measures such as responsible drink-driving attitude, including car pooling with designated drivers and taxi services;*
- *The DCP parking rates for pubs are outdated and from an era where random breath testing was less prevalent or non-existent;*
- *The proliferation of ride-share services such as Uber has reduced reliance on private vehicles;*
- *The pub will monitor the use of on-site parking by staff and assign parking to a small portion of staff members only, to ensure the availability of customer parking spaces;*
- *The pub will produce a Transport Access Guide which can be given to staff and customers to indicate*

how they can travel to the site by means other than car;

- *Surveys undertaken at the Wentworth Hotel, Homebush, a similar sized pub to that proposed, indicated that the average peak parking demand was 1 space per 34sqm, whilst the absolute peak parking demand was 1 space per 19sqm, meaning the proposed pub's actual peak parking demand is likely to be in the order of 22-40 spaces, whereas 56 spaces are proposed; and*
- *The existing pub has approximately 10 informal on-site car parking spaces, such that the proposed development provides significantly more than the current provision, and will effectively increase the availability of on-street parking in the surrounding area.*

Having regard to the above comments and the circumstances of this case, it is considered that the on-site parking proposed is acceptable for the following reasons:

- Some weight should be attached to the fact that the new proposed pub replaces the existing pub which has operated at the site for many years;
- Some dispensation can be given to acknowledge that some pub patrons will be residents and/or workers in the proposed development and the surrounding area;
- Some weight can be attached to the pub's location close to both Kingswood Train Station and the adjoining traffic lights which allow a safe crossing of Great Western Highway;
- Other aspects of the proposal are acceptable, including the quality of the architectural appearance of the building and the positive contribution to the Penrith Health and Education Precinct; and
- The number of parking spaces proposed still meets the objectives of Clause C10.5.1 of the DCP, particularly, the provision of an appropriate number of vehicular parking spaces having regard to the proposed use of the land, the nature of the locality, and the intensity of the use.

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

The proposed development and use is deemed to be suitable for the host site, subject to conditions. The application is accompanied by Geotechnical Reports which make suitable recommendations for the basement excavation. The proposed method of stormwater drainage has been refined to include upgrade of the existing pipe infrastructure in Wainwright Lane and Rodgers Street. The proposed development has considered the shape of the site and its street frontages, and the buildings are suitably set back from property boundaries where relevant.

Section 4.15(1)(d) Any Submissions

Community Consultation

The application was publicly exhibited and notified to surrounding landowners. Two submissions have been received. In addition, external referrals were sent to Transport for NSW, Sydney Trains, and the Nepean Local Area Command (Police). A summary and commentary regarding the referral responses is provided below.

Nepean Police:

Upon the DA being lodged, Council's Senior Planner made both telephone and email contact with the Nepean Police Area Command, and specifically the Licensing Sergeant. At that time, the Licensing Sergeant told Council staff that the current operation of the existing pub was generally satisfactory, with no objections raised. Following these conversations, the Development Application was referred through the

Planning Portal to Nepean Police. Council staff understand that the Police have two relevant teams which deal with pubs, one being the Licensing Team, the other being the Crime Prevention officers.

In response to the initial referral of the DA, the Nepean Police Crime Prevention team requested further information, being details of the proposed position of CCTV, and the means of securing the residential lobbies. Additional information was duly submitted by the applicant and a second referral through the Planning Portal to Nepean Police was initiated. However, a further referral response from the Crime Prevention officers of Nepean Police has not been forthcoming.

To address this, Council's Senior Planner again contacted the Licensing Supervisor of the Nepean Police Area Command on 27 February 2023. The verbal advice provided was that there are no objections to the proposed development, subject to conditions relating to the Plan of Management, CCTV, and the preservation of any crime scene. Suggested wording for these requirements was then emailed by the Licensing Supervisor to Council's Senior Planner. Suitable conditions to cover these aspects are included in the recommended conditions of consent.

The matter of securing the residential lobbies was raised with the applicant. The applicant has responded by stating that the residential entry lobbies are separate from the entries to the pub. The pub entries will have CCTV coverage and the residential entries will require a swipe card.

Transport for NSW (Roads) and Sydney Trains (Rail Corridor):

The referral responses from Transport for NSW and Sydney Trains are discussed above in the section for SEPP (Transport and Infrastructure) 2021. A public submission on behalf of the rail and commuter car park landowner was also received (discussed below).

Public Submissions:

Two submissions have been received. The comments and concerns are summarised and discussed below.

Commuter Rail Car Park

A submission has been received from an agent acting on behalf of Transport for NSW in relation to their property holdings near the subject site, and specifically the rail station and commuter car park on Great Western Highway, opposite the subject site. The submission states that the development must not rely on the adjacent commuter car park and existing adjacent land under the ownership of the agent for residential or customer car parking, deliveries, loading, and the like, either during construction, and in the future operational phase of the development.

While the Plan of Management for the pub could include a statement advising that staff are not permitted to park in the commuter car park, this type of requirement for the future residential occupiers and their visitors, as well as customers, cannot be imposed as a condition of development consent. This is because Council staff cannot enforce this condition and it relates to land which Council has no authority over and which is generally publicly accessible.

The proposed development does include adequate areas on-site for servicing of the buildings and it is therefore more likely that deliveries will occur from within the site. The need for drivers to cross Great Western Highway might also be a deterrent as drivers may more readily choose to park on the same side of the highway as the buildings. It is also noted that the proposed development provides compliant parking spaces for the residential and visitor components of both buildings, and the commercial components of Building B.

Traffic Generation

This submission states that the proposal should demonstrate that additional vehicle movements will not impact on the entry, egress, and traffic flow through the rail station and commuter car park (located opposite the site on Great Western Highway). In addition, the submission states that the development should leave capacity within the local road network for a future development of the rail owned land in the vicinity of the site.

The Development Application is accompanied by a Traffic Report that was amended to address specific initial comments raised by both Transport for NSW and Council's Traffic Engineer. Subsequently, Transport for NSW (as the roads authority) provided their referral response and their concurrence pursuant to the Roads Act. Council's Traffic Engineering Team raise no objection to the proposal on the grounds of traffic generation.

The Traffic Report concludes that the proposed development (both buildings) would generate up to 39 vehicle trips during the morning (AM) peak and up to 118 vehicle trips during the afternoon (PM) peak. This is then compared to the existing traffic generated by the current pub which is estimated to be 79 vehicle trips during the PM peak period, resulting in a total net increase of 39 additional vehicle trips per hour during both the AM and PM peak periods (effectively representing the new residential component of the proposed development).

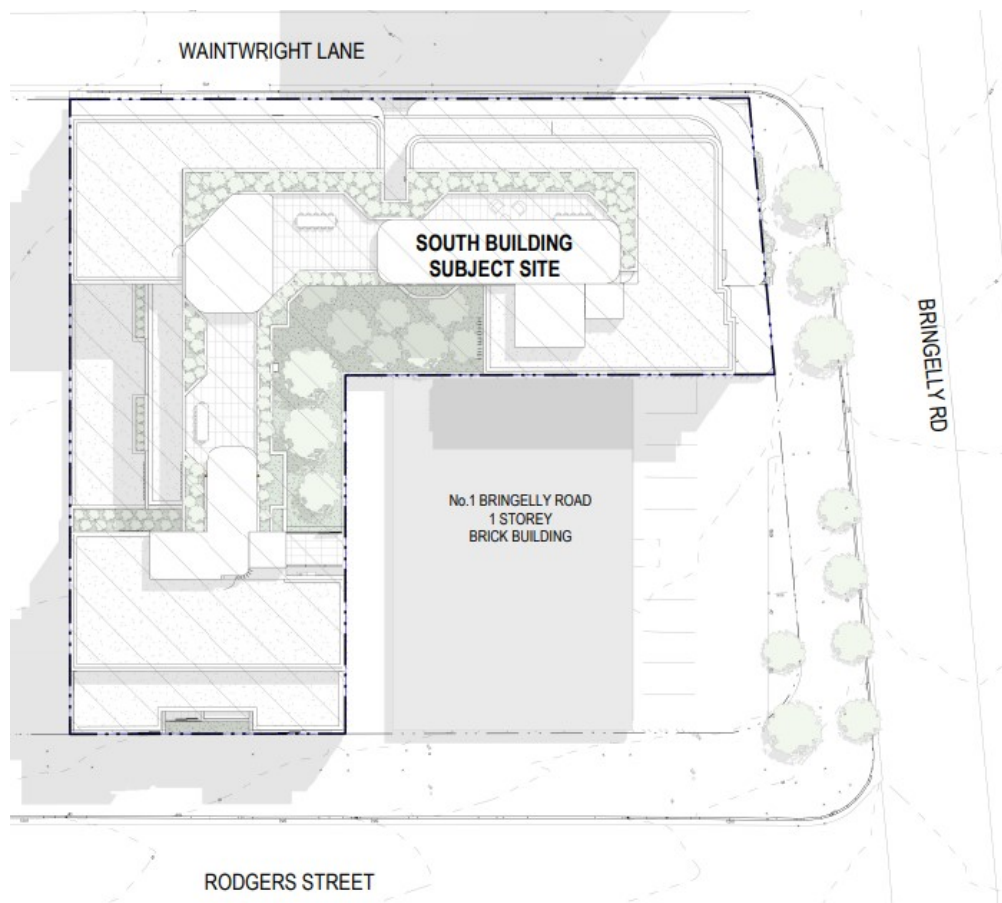
Impact of Proposal on Future Development Potential of Adjoining Site, Including Solar Access and Forced Setbacks

This concern has been raised by a neighbour adjoining the 'South Site' at 26 Rodgers Street. The crux of the concern is about what impacts proposed Building B might have on the future development potential of the adjoining site to the south and east of 26 Rodgers Street, including solar access impacts on the "highest and best use" of the adjoining site. While the submission does not use the term 'lot isolation', this is generally the planning term used to describe the issue raised.

The two lots that form the South Site at 26 Rodgers Street wrap around the neighbouring site so that the subject site has both a southern and eastern boundary abutting this neighbour. However, both the subject site and the neighbouring site have a frontage to both Bringelly Road and to Rodgers Street. This arrangement is shown in the image below.

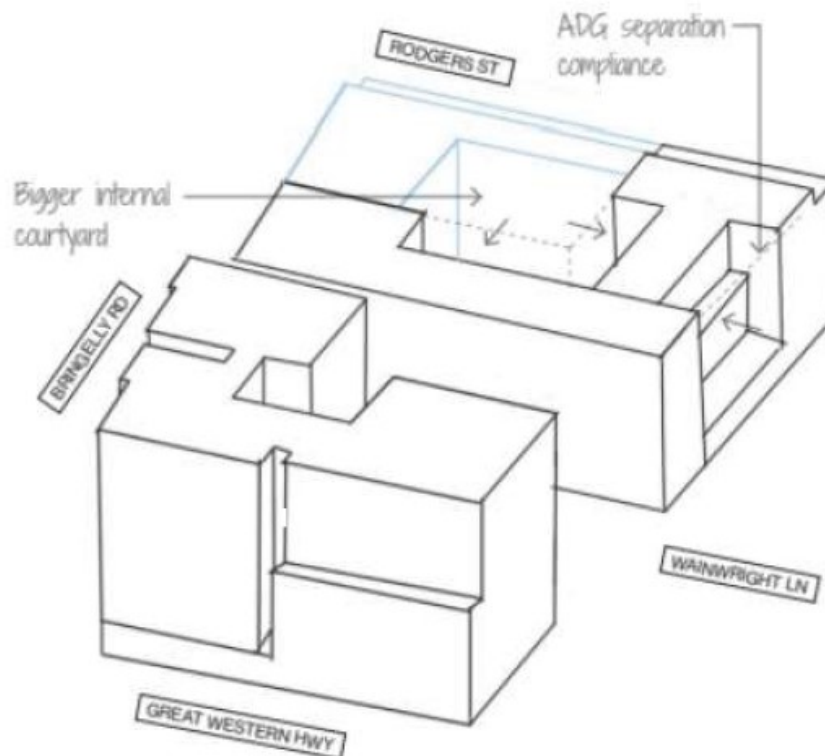
After receiving the submission, Council's Senior Planner discussed the concern with the neighbour. Through mutual agreement, the applicant's consultant team (architect and planner) met with the neighbour in person to discuss this specific concern. While Council staff were not a party to these discussions, it is understood that the architect was able to demonstrate to the neighbour a potential future scenario for redevelopment of the adjoining site, that in particular takes its cue from the proposed footprint and shape of Building B.

Proposed Building B (as shown below) has intentionally been designed with setbacks along part of the site's southern and eastern property boundaries, as well as shorter lengths of solid wall placed on the boundaries.



The result is a void in the south-eastern corner of the subject site, which corresponds to the north-western corner of the neighbouring site. In addition, the two lengths of proposed solid boundary wall readily set the scene for the neighbouring property to have solid boundary walls in the same location and for a similar length. In effect, this would allow the neighbouring property to mirror the footprint of proposed Building B (similar to an inverted L-shape), which would then result in the two developments sharing a generous internal void area that has adequate separation to comply with the ADG requirements for separation and setbacks.

This outcome is shown in the indicative block diagram below which was prepared by the applicant's architect and provided to the neighbour. The potential block envelope for the neighbouring property is shown in blue (top left corner of the image).



While a more detailed analysis of a potential residential layout (floor plan) was not provided, the block envelope is adequate to show how a residential scheme could benefit from the site's two street frontages as well as the central void. It also demonstrates how the two sites can interact without impacting on each other.

In addition, the neighbouring site could take advantage of a larger floor plate on the ground and first floors if a commercial use was proposed at the lower levels, with setbacks at the upper levels for any residential apartments. Commercial uses at ground (and possibly the first floor) would be more in keeping with the objectives of the zone and the Penrith Health and Education Precinct.

With regard to the submission comment about 'forced setbacks', the proposed floor plan layout of Building B does not include any windows that face directly into the neighbouring property, that are not already adequately set back in accordance with the ADG design criteria. The only apartment windows that are close to the neighbouring property boundary are the west facing rear bedrooms of the apartments fronting Bringelly Road. However, these are designed with external screening to the window and face west, into the subject site itself.

It is therefore concluded that the proposed development will not result in the adjoining lot being isolated. However, for thoroughness, consideration has been given to the planning principle set out by the Land and Environment Court. In this regard, the following comments are made:

- The planning principle asks two main questions. Firstly, is amalgamation of the sites feasible? Secondly, can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?;
- In response to the first question (and using the planning principle), it is not considered that the neighbouring lot will be isolated by the proposed development. The block envelope diagram above shows that a reasonable form and footprint could be accommodated on the neighbouring site, and that this form could realistically include a mix of commercial, health, and/or residential uses. While the

public submission may imply that a residential use is the 'highest and best use', this may not necessarily be the case given the site's location in the Penrith Health and Education Precinct and near a major arterial road and a train station;

- In addition, the neighbouring lot has a site area of 980sqm and is generally square-shaped, having a depth of around 30m and a length of around 32m. The land is also zoned B4 Mixed Use. The Penrith LEP does not have a minimum lot size for land in the B4 zone. Land of this lot size and shape, located on a corner, and with two street frontages is deemed to be able to host a future redevelopment. Vehicular access could be achieved from Rodgers Street as the distance from the corner of Bringelly Road would well exceed the required 6m setback from a street corner; and
- In response to the second question, both the proposed development and a possible future development on the neighbouring land would not require a variation to a lot size control (because such a control is not applicable in this case). Further, the block diagram shows that both sites could achieve a development that has an appropriate urban form, and an acceptable level of amenity and yield.

Impacts from Basement Excavation

The submission raises concern that the excavation may cause land slippage, and/or damage to the neighbouring building, particularly where the neighbouring building has a brick wall built to their northern boundary.

A Geotechnical Report accompanies the Development Application. This has been reviewed by Council's Engineer and found to be adequate.

The applicant has also responded to this concern to state that dilapidation reporting and vibration monitoring can be imposed as conditions of consent and would be part of a more detailed Construction Management Plan that is prepared prior to excavation works. This approach is reasonable and is the usual practice when excavation is proposed. Suitable conditions are therefore included in the recommended conditions of consent. The condition to carry out a dilapidation survey also requires a copy to be provided to the relevant adjoining landowner/s both prior to construction works occurring and prior to an Occupation Certificate.

Stormwater Impacts and Runoff to Adjoining Property

The concern raised here is about the possibility of water logging on the neighbouring property, as well as not wanting the development to force the need for an easement burdening the neighbouring site. Council's Engineer was asked to provide advice on this matter. The advice received confirms that the proposed development does not include or require any easements over adjoining properties, as the proposal seeks to directly drain to either the Wainwright Lane or Rodgers Street road reserves. In addition, the proposed stormwater management design deals with stormwater runoff by collection on-site via the roof and ground drainage, which is then discharged to the road. The proposed development includes new stormwater pipes in parts of Rodgers Street to carry the stormwater from Building B to existing infrastructure in Bringelly Road.

Referrals

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

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

Waste Services

Council's Waste Team has raised some concerns with the design of the waste infrastructure for each building. It is considered that the design details required by Council's Waste Team can be addressed via a condition and prior to the relevant Construction Certificate stage for each building. A suitable condition is recommended that requires Council's Development Assessment Coordinator to endorse the final waste infrastructure design.

The changes required include:

- All 3 chute rooms and linear track systems are to demonstrate the 3 bin positions for each chute, the clearances required around the linear track systems, or the 1.8m loading zone needed at the front of the linear track system for loading and unloading bins on the track;
- In Building A, the commercial waste room is to be physically separated from the residential waste collection room (using a wall or the like);
- In Building B, the chute room and waste collection room are to be physically separated;
- In Building B, the retail waste room (housing 6 x 1100L bins) is permitted to be smaller by replacing the dual doors opening inward to dual doors opening outward (or a roller door) to allow more room to enable separate enclosures for the chute room and waste collection room (Core B);
- In Building B, Core B, the bulky waste room single door and dual doors are permitted to be replaced with a roller door/s, being a minimum 1.8m wide to allow for contractor access to clear the bulky waste room;
- In Building B, the route of travel from Core A to Core B using a bin tug device, or by the caretaker moving bulky waste, is to be demonstrated, by providing the route of travel of the bin tug device with bins in train, including swept paths and detailing traffic signal practice to stop traffic movement in the active carriageway; and
- For both Buildings A and B, the bin service lifts are to include adequately sized doors to the lift/s to allow easy access for the 1100L bin footprint (which is 1090mm x 1240mm).

Section 4.15(1)(e)The public interest

The proposed development is in the public interest as it results in an appropriate development of the site, with a building and use that will support the function and vitality of the Penrith Health and Education Precinct and the locality of Kingswood. Suitable conditions of consent are recommended to mitigate impacts to neighbours as a result of the construction phase of the development, as well as the ongoing operation of the pub and bottle shop. This includes an operational Plan of Management and conditions restricting patron capacity, noise emissions, and trading hours.

Section 94 - Developer Contributions Plans

Contributions pursuant to Section 7.11 of the Act and Council's Contributions Plan have been levied towards Local Open Space, District Open Space, and Cultural Facilities. The contribution amounts are levied against the proposed residential apartments. The amounts have been split to reflect the two stages of the development, allowing the contributions attributed to Building A (being the later, second stage) to be paid only prior to the release of a Construction Certificate for Building A. This is reflected in six recommended conditions of consent.

The total contribution amount for Stage 1 is **\$338,742**. The total contribution amount for Stage 2 is **\$495,567.00**.

Conclusion

The proposed development is for two multi-storey residential flat buildings, which will be constructed in two stages, and are located on two separate parcels of land.

The primary site is located at 180 Great Western Highway. This site currently contains a single storey pub known as the Kingswood Hotel. The new development will be an eight-storey building that will contain a new pub on the ground floor. The upper levels of the building will contain residential apartments and a rooftop communal open space. Parking will be located in basement levels.

The second site is located at 26 Rodgers Street. This site is currently vacant. The proposed development on this site will also be for residential apartments on the upper levels, and commercial uses occupying the ground floor. The commercial uses will include a bottle shop and a temporary pub (being the relocated Kingswood Hotel) which will operate while the development on the northern site is constructed.

The proposal has been amended to address initial concerns raised by Council staff and the Urban Design Review Panel. This includes amending the stormwater design to address capacity in the surrounding street network, facade changes, and design refinement to improve the amenity of the rooftop communal areas. Additional information to address the initial referral responses from Nepean Police and Transport for NSW was also submitted. Those external agencies now raise no objection to the proposed development, subject to conditions, which have been included in the recommended conditions of consent.

Notwithstanding the suitable amendments made to the proposal, both buildings will exceed the development standard for building height as permitted by the mapped height control at Clause 4.3 of the Penrith LEP. The variations vary across of the site given the slope of natural ground level. The variations may also appear significant numerically because they are breaches of the 'base' mapped height limits.

However, when considering the resulting scale that could be permitted by the additional height afforded by Clause 7.11 of the LEP, the resulting scale of the proposed development is similar to what the LEP controls would allow on other sites. This planning assessment report explains why the additional height at Clause 7.11 cannot be utilised and why the resulting scale and form of the proposal is still acceptable in context, and when assessed against the broader planning controls and principles for the area.

In addition, the on-site parking spaces proposed for the new pub do not strictly comply with the Penrith DCP. It is noted that the on-site parking spaces provided for all the residential apartments, and the other commercial uses (bottle shop and commercial space) do comply with the DCP.

On balance, the proposed development is a suitable design response to the controls for the site and the strategic vision for Kingswood and the Penrith Health and Education Precinct.

The Development Application is recommended for approval subject to conditions.

Recommendation

It is recommended that:

1. The request made pursuant to Clause 4.6 of the Penrith LEP 2010, dated 10 March 2023, to vary the development standard for building height at Clause 4.3 of the Penrith LEP, is accepted and the variation is granted; and
2. Development Application DA21/0945 for the demolition of Kingswood Hotel and the staged construction of two residential flat buildings/shop-top housing, containing a ground floor pub, bottle shop, and commercial space, with basement parking levels, at 180 Great Western Highway, and 26 Rodgers Street, Kingswood, be approved subject to conditions.

CONDITIONS

General

- 1 The development must be implemented substantially in accordance with the plans stamped approved by Council and referenced in the table below, the consultant reports referenced at the end of the table, and with the following conditions.

Document Number / Job Number - IRI2006	Issue	Title	Prepared By	Date
DA-001	F	Cover Sheet, Drawing List, Site Location Plan	Squillace Architecture / Interiors	25 November 2022
DA-010	B	Site Analysis Plan	Squillace Architecture / Interiors	23 May 2022
DA-011	D	Site Plan	Squillace Architecture / Interiors	25 November 2022
DA-030	B	Existing & Demolition Plan	Squillace Architecture / Interiors	23 May 2022
DA-N097	C	Floor Plan - Basement 3	Squillace Architecture / Interiors	23 May 2022
DA-N098	D	Floor Plan - Basement 2	Squillace Architecture / Interiors	25 November 2022
DA-N099	D	Floor Plan - Basement 1	Squillace Architecture / Interiors	25 November 2022
DA-N100	C	Floor Plan - Ground Floor	Squillace Architecture / Interiors	25 November 2022
DA-N101	C	Floor Plan - Level 1	Squillace Architecture / Interiors	23 May 2022

DA-N102	C	Floor Plan - Level 2-3	Squillace Architecture / Interiors	23 May 2022
DA-N103	C	Floor Plan - Level 4-6	Squillace Architecture / Interiors	23 May 2022
DA-N104	C	Floor Plan - Level 7	Squillace Architecture / Interiors	23 May 2022
DA-N107	C	Roof - Floor Plan North	Squillace Architecture / Interiors	23 May 2022
DA-N201	D	Elevation - Sheet 1	Squillace Architecture / Interiors	23 May 2022
DA-N202	D	Elevation - Sheet 2	Squillace Architecture / Interiors	23 May 2022
DA-N203	D	Elevation - Sheet 3	Squillace Architecture / Interiors	23 May 2022
DA-N204	D	Elevation - Sheet 4	Squillace Architecture / Interiors	23 May 2022
DA-N301	D	Building Section - Sheet 1	Squillace Architecture / Interiors	23 May 2022
DA-N302	D	Building Section - Sheet 2	Squillace Architecture / Interiors	23 May 2022
DA-N501	C	GFA Calculations	Squillace Architecture / Interiors	23 May 2022
DA-N531	C	Landscape Area	Squillace Architecture / Interiors	23 May 2022
DA-N601	B	Solar Access Plans	Squillace Architecture / Interiors	23 May 2022

DA-N603	B	Storage Calculations	Squillace Architecture / Interiors	23 May 2022
DA-N610	C	Cross Ventilation Plans	Squillace Architecture / Interiors	23 May 2022
DA-S098	C	Floor Plan - Basement 2	Squillace Architecture / Interiors	23 May 2022
DA-S099	C	Floor Plan - Basement 1	Squillace Architecture / Interiors	23 May 2022
DA-S100	D	Floor Plan - Lower Ground Floor	Squillace Architecture / Interiors	25 November 2022
DA-S101	B	Floor Plan - Ground Floor	Squillace Architecture / Interiors	23 May 2022
DA-S101a	C	Floor Plan - Driveway	Squillace Architecture / Interiors	25 November 2022
DA-S102	C	Floor Plan - Level 1-3	Squillace Architecture / Interiors	23 May 2022
DA-S103	C	Floor Plan - Level 4	Squillace Architecture / Interiors	23 May 2022
DA-S104	C	Floor Plan - Level 5	Squillace Architecture / Interiors	23 May 2022
DA-S105	B	Roof - Floor Plan South	Squillace Architecture / Interiors	23 May 2022
DA-S201	D	Elevation - Sheet 1	Squillace Architecture / Interiors	23 May 2022
DA-S202	D	Elevation - Sheet 2	Squillace Architecture / Interiors	23 May 2022

DA-S203	D	Elevation - Sheet 3	Squillace Architecture / Interiors	23 May 2022
DA-S204	D	Elevation - Sheet 4	Squillace Architecture / Interiors	23 May 2022
DA-S301	D	Building Section - Sheet 1	Squillace Architecture / Interiors	23 May 2022
DA-S302	D	Building Section - Sheet 2	Squillace Architecture / Interiors	23 May 2022
DA-S501	C	GFA Calculations	Squillace Architecture / Interiors	23 May 2022
DA-S531	C	Landscape Area Plan	Squillace Architecture / Interiors	23 May 2022
DA-S601	C	Solar Access Plans	Squillace Architecture / Interiors	23 May 2022
DA-S603	B	Storage Calculations	Squillace Architecture / Interiors	23 May 2022
DA-S610	C	Cross Ventilation Plans	Squillace Architecture / Interiors	23 May 2022
DA-431	C	Sun's Eye View Sheet 1	Squillace Architecture / Interiors	23 May 2022
DA-432	C	Sun's Eye View Sheet 2	Squillace Architecture / Interiors	23 May 2022
DA-433	C	Building Height Plane Diagram	Squillace Architecture / Interiors	23 May 2022
DA-610	C	Shadow Study Plan Winter Solstice - Proposed	Squillace Architecture / Interiors	23 May 2022

DA-611	C	Shadow Study Plan Winter Solstice - Proposed	Squillace Architecture / Interiors	23 May 2022
DA-700	B	3D Views	Squillace Architecture / Interiors	23 May 2022
Document Number / Job Number - 21/2300	Issue	Title	Prepared By	Date
01	C	Ground Floor Plan - North	Paul Scrivener	22 November 2021
02	C	Level 1 Floor Plan - North	Paul Scrivener	22 November 2021
03	C	Roof Floor Plan - North	Paul Scrivener	22 November 2021
04* * The works to the public domain in front of 1 Bringelly Road are not approved as part of this Development Consent.	C	Ground Floor Plan - South	Paul Scrivener	22 November 2021
05	C	Level 1 Floor Plan	Paul Scrivener	22 November 2021
06	C	Roof Floor Plan - South	Paul Scrivener	22 November 2021
07	C	Planting Schedule & Notes	Paul Scrivener	22 November 2021
08	C	Details	Paul Scrivener	22 November 2021
09	C	Public Domain North Building	Paul Scrivener	22 November 2021
10	C	Public Domain South Building	Paul Scrivener	22 November 2021
11	C	Public Domain A	Paul Scrivener	22 November 2021
12	C	Public Domain B	Paul Scrivener	22 November 2021
13	C	Public Domain Plan - North	Paul Scrivener	22 November 2021
14	C	Public Domain Plan - South	Paul Scrivener	22 November 2021

Document Number / Job Number - NSW220991	Issue	Title	Prepared By	Date
C01-001	A	Cover Sheet, Legends and Drawing Index	Accor Consultants	31 October 2022
C01-101	A	Construction Notes	Accor Consultants	31 October 2022
C03-001	A	Soil Erosion and Sediment Control Plan North	Accor Consultants	31 October 2022
C03-002	A	Soil Erosion and Sediment Control Plan South	Accor Consultants	31 October 2022
C03-101	A	Soil Erosion and Sediment Control Plan Notes and Details	Accor Consultants	31 October 2022
C08-001	A	Stormwater Management Plan - North Ground Floor	Accor Consultants	31 October 2022
C08-002	A	Stormwater Management Plan - North Basement 1	Accor Consultants	31 October 2022
C08-003	A	Stormwater Management Plan - North Basement 2	Accor Consultants	31 October 2022
C08-004	A	Stormwater Management Plan - North Basement 3	Accor Consultants	31 October 2022
C08-005	A	Stormwater Management Plan - South Ground Floor	Accor Consultants	31 October 2022
C08-006	A	Stormwater Management Plan - South Lower Ground Floor	Accor Consultants	31 October 2022
C08-007	A	Stormwater Management Plan - South Basement 1	Accor Consultants	31 October 2022
C08-008	A	Stormwater Management Plan - South Basement 2	Accor Consultants	31 October 2022
C08-301	A	Stormwater Details Sheet 1	Accor Consultants	31 October 2022
C08-302	A	Stormwater Details Sheet 2	Accor Consultants	31 October 2022

C08-303	A	Stormwater Details Sheet 3	Accor Consultants	31 October 2022
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Consultant Reports:

- Geotechnical Investigation Report (26 Rodgers Street, Kingswood), by Aargus, Reference GS8229-1A, Revision 0, dated 28 June 2021;
- Geotechnical Investigation Report (180 Great Western Highway, Kingswood), by Aargus, Reference GS8229-2A, Revision 0, dated 01 July 2021;
- Stormwater Letter, by Accor Consultants, Reference NSW220991, dated 25 November 2022;
- Section J Report, by Outsource Ideas P/L, Revision A, dated 18 November 2021;
- Building Code of Australia Compliance Assessment Report, by AE&D Group, Reference 11458, dated 25 November 2021;
- Kingswood Apartments and Hotel DA Acoustic Assessment, by Pulse White Noise Acoustics, Reference 210296, Revision 5, dated 10 February 2023;
- Traffic Impact Assessment by The Transport Planning Partnership, Reference 21021, Version 02, dated 22 November 2021;
- Access Compliance Assessment Report, by AE&D, Reference 11458, dated 24 November 2021;
- Kingswood Apartments & Hotel: Waste Management Plan, by MRA Consulting Group, Version 1.1, dated 28 November 2022;
- Social Impact Assessment, by Sarah George Consulting, dated December 2021;
- BASIX Certificates numbered 1261044M and 1248627M, both dated 23 November 2021;
- Remediation Action Plan 26 Rodgers Street, by Aargus, Reference ES8230/4, Revision 0, dated 01 November 2022;
- Detailed Site Investigation for 180 Great Western Highway, by Aargus, Reference ES8229/3, dated 24 May 2022; and
- Plan of Management, dated October 2020.

2 The development is approved to be undertaken as a staged development in two stages, being:

- Stage 1 / Building B - relating to the whole of the approved development located on the subject site known as 26 Rodgers Street; and
- Stage 2 / Building A - relating to the whole of the approved development located on the subject site known as 180 Great Western Highway.

The stages relating to the development also include the length of all public domain spaces/footpaths directly adjoining each building, and the relevant stormwater infrastructure upgrades.

Conditions of consent relevant to each stage must be undertaken prior to the issue of the relevant Construction Certificate/s and the relevant Occupation Certificate/s. The Certifier must ensure that all required works necessary for each stage have been completed at the relevant and required time.

- 3 The only signage approved are the building identification signs for the pub, of which the location and type is shown in the architectural drawings referenced at Condition 1. These signs are to be of a high-quality design (individually cut letters), colour, material, and finish. They are to be proportionally sympathetic to the host building and are not to obscure any architectural features of the building.

The method of illumination must include the ability for the lighting to be dimmed.

Any other signage is to be the subject of a Signage Strategy to be submitted to Penrith City Council. Written approval of the Signage Strategy is to be obtained from Penrith City Council prior to the installation of any such signage. The Signage Strategy is to include appropriate directional signage to assist in identifying the demarcating the residential entry lobby from the pub entrance on Great Western Highway.

- 4 The finishes of all structures and buildings are to be maintained at all times and any graffiti or vandalism immediately removed/repaired.
- 5 Prior to the issue of the relevant Construction Certificate/s, compliance with AS 4253-2019 is to be demonstrated including address of Appendix A - Positioning and Numbering of Mailboxes.
- 6 Prior to the erection of any crane or any temporary construction structure at a height greater than the roof of the subject development, written notice shall be provided to Council and the Nepean Blue Mountains Local Health District at least 21 days prior to the erection, indicating at least the following:
- Name of responsible company and relevant contact details.
 - Dimensions (height, length, etc).
 - Position and orientation of boom/jib and counter boom/jib.
 - Length of time that such a crane or structure will be erected on site.
 - The management plan and measures that will ensure that the crane or structure will be of least possible impact on flight operations for Ambulance NSW.

Any crane or any temporary construction structure erected at a height greater than the roof of the subject development shall comply with the following:

- Be equipped with medium intensity steady red lighting positioned at the highest point and both ends of the boom/jib and counter boom/jib, such that the lighting will provide an indication of the height of the crane and the radius of the crane boom/jib. Such lighting, which should be displayed at all times of the day and night, should be positioned so that when displayed it is visible from all directions.
- When a crane is unattended for an extended period of time ensure the crane's boom is retracted and lowered as far as possible.

- 7 Prior to the issue of the relevant Construction Certificate/s, documentary evidence must be prepared by a Registered Surveyor and submitted to the appointed Certifying Authority and the Council that includes and addresses the following:

- (a) A letter, signed by a current NSW Registered Land Surveyor and including his or her Board of Surveying and Spatial Information (BOSSI) identification number, stating that all investigations required under Surveyor-General's Direction No. 11 have been made for the subject site.
- (b) The above letter is required to confirm if any survey infrastructure will be affected or impacted upon by the proposal. If no impact is identified this must be detailed by the Registered Land Surveyor.
- (c) In the event that survey infrastructure is identified on the subject site and will be affected or impacted upon by the approved development, a copy of any Surveyor-General's Approval for Survey Mark Removal granted by NSW Spatial Services for the subject site, including all documentation submitted as part of that application (for example the survey mark audit schedule, strategy plan and strategy report) is required.

The applicant must, where possible, ensure the preservation of existing survey infrastructure undisturbed and in its original state or else provide evidence of the Surveyor-General's authorisation to remove or replace marks. Under Section 24 of the Surveying and Spatial Information Act 2002, it is an offence to remove, damage, destroy, displace, obliterate or deface any survey mark unless authorised to do so by the Surveyor-General.

- 8 Where a Surveyor-General's Approval for Survey Mark Removal has been granted by NSW Spatial Services, documentary evidence of restoration of the removed survey marker must be prepared by a Registered Surveyor and submitted to the appointed certifying authority and the Council prior to the issue of the relevant Occupation Certificate/s (where applicable).

The documentary evidence is to consist of a letter signed by a Registered Land Surveyor confirming that all requirements requested under the Surveyor-General's Approval for Survey Mark Removal under condition "Survey Infrastructure - Identification and Recovery" have been satisfied.

- 9 The non-residential spaces of the development shall be operated in accordance with the Acoustic Report referenced at Condition 1, and with the following restrictions:

The permanent pub at 180 Great Western Highway shall operate as follows:

- Trading hours are between 9:00am to 3:00am Mondays to Saturdays and 10:00am to 10:00pm on Sundays, except for the outdoor terrace area and unless the Liquor Licence states reduced (shorter) hours;
- Trading hours for the outdoor terrace area are between 10:00am to 12:00am (midnight) Mondays to Saturdays and 10:00am to 10:00pm on Sundays,
- The patron capacity is limited to 500 persons (not including staff);
- Only background music can be played within indoor areas as per the following; Bistro - 70dBA; Sports Bar - 70 dBA; VIP Lounge - 65dBA before midnight and 60dBA after midnight;
- The bi-fold windows on the eastern facade of the Bistro area along Bringelly Road are to be closed after 12 midnight (as shown in Figure 5 of the Acoustic Report referenced at Condition 1);
- Removal of glass or waste should be done internally and must not be taken external to the premises after 10:00pm and before 7:00am; and
- In accordance with an operational Plan of Management.

The temporary pub at 26 Rodgers Street shall operate as follows:

- Trading hours are between 9:00am to 3:00am Mondays to Saturdays and 10:00am to 10:00pm on Sundays, unless the Liquor Licence states reduced (shorter) hours;
- The patron capacity is limited to 300 persons (not including staff);
- Only background music can be played within indoor areas as per the following; Internal Areas - 70dBA;
- Removal of glass or waste should be done internally and must not be taken after 10:00pm and before 7:00am; and
- In accordance with an operational Plan of Management.

The bottle shop at 26 Rodgers Street shall operate as follows:

- Trading hours are between 10:00am to 11:00pm Mondays to Saturdays and 10:00am to 10:00pm on Sundays, with no trading to occur on Good Friday, Christmas Day, and December 31; and
- In accordance with an operational Plan of Management.

The commercial/retail use at 26 Rodgers Street shall operate as follows:

- 8am to 10pm Mondays to Saturdays and 8:30am to 9pm on Sundays.

- 10 The staging of the approved development must be carried out in a manner that ensures that there is only one licensed pub in operation at any one time. Therefore, the following must occur:
- The use of the temporary pub at 26 Rodgers Street shall not commence until the existing pub known as the Kingswood Hotel has ceased its operation entirely;
 - The Certifier must not issue any Occupation Certificate for the temporary pub at 26 Rodgers Street until satisfactory evidence has been provided to the Certifier demonstrating that the former Kingswood Hotel has ceased operation, and that a suitable liquor licence is in place for the temporary pub;
 - The new (permanent) pub located at 180 Great Western Highway shall not commence operation until the temporary pub at 26 Rodgers Street has ceased its use entirely;
 - The Certifier must not issue any Occupation Certificate for the new (permanent) pub at 180 Great Western Highway until satisfactory evidence has been provided to the Certifier demonstrating that the temporary pub has ceased operation, and that the relevant and suitable liquor licence is in place for the new (permanent) pub.
- 11 After cessation of the temporary pub located at 26 Rodgers Street, the spaces occupied by the former temporary pub, shall be converted as follows:
- the space annotated on the architectural drawings as '*hotel/bar/office/kitchen/female and male WC*' is permitted to be converted to part of the bottle shop (or another retail or commercial use); and
 - the space annotated on the architectural drawings as '*VIP*' must be converted to a retail or commercial use whose primary purpose does not involve the sale and/or consumption of alcohol, either on or off the premises.

- 12 Prior to the release of the relevant Construction Certificate/s, the final design for the residential waste infrastructure for each building is to be endorsed by Council's Development Assessment Coordinator.

The detailed design is to include the following:

- All 3 chute rooms and linear track systems are to demonstrate the 3 bin positions for each chute, the clearances required around the linear track systems, or the 1.8m loading zone needed at the front of the linear track system for loading and unloading bins on the track. Reference is to be made to Section 3.7.1 of Council's *'Residential Flat Building Waste Management Guideline'*;
- In Building A, the commercial waste room is to be physically separated from the residential waste collection room (using a wall or the like);
- In Building B, the chute room and waste collection room are to be physically separated;
- In Building B, the retail waste room (housing 6 x 1100L bins) is permitted to be smaller by replacing the dual doors opening inward to dual doors opening outward (or a roller door) to allow more room to enable separate enclosures for the chute room and waste collection room (Core B);
- In Building B, Core B, the bulky waste room single door and dual doors are permitted to be replaced with a roller door/s, being a minimum 1.8m wide to allow for contractor access to clear the bulky waste room;
- In Building B, the route of travel from Core A to Core B using a bin tug device, or by the caretaker moving bulky waste, is to be demonstrated, by providing the route of travel of the bin tug device with bins in train, including swept paths and detailing traffic signal practice to stop traffic movement in the active carriageway; and
- For both Buildings A and B, the bin service lifts are to include adequately sized doors to the lift/s to allow easy access for the 1100L bin footprint (which is 1090mm x 1240mm).

Alternative design details satisfying the above matters can be submitted with a justification for the design.

- 13 Prior to the release of the relevant Occupation Certificate/s, the applicant is to enter into a formal agreement with Penrith City Council for the utilisation of Council's waste collection service, relating to the residential waste generated by each building. This is to include Council being provided with indemnity against claims for loss and/or damage. The provision of Council's waste collection service will not commence until formalisation of the agreement.
- 14 The loading docks of both buildings are not to be used between the hours of 10:00pm and 7:00am in order to protect the amenity of the residential apartments from noise disturbances.

- 15 The permanent pub; the temporary pub; and the bottle shop, are to operate in accordance with an Operational Plan of Management/s, which is to be finalised and implemented prior to the issue of the relevant Occupation Certificate/s.

The Plan of Management/s is to be reviewed at least every three (3) years, and may also be amended at any time after consultation with NSW Police, and/or at the direction of NSW Police. Any amendments to the Plan of Management are to occur in a manner that results in improvements to management practices.

Copies of the up-to-date Plan of Management/s are to be kept on the relevant premises and are to be made available to Nepean Police, Penrith City Council staff, Liquor and Gaming NSW inspectors, and any other relevant person authorised by the Independent Liquor and Gaming Authority.

The Plan of Management referenced at Condition 1 is to be amended to include:

- A statement advising that staff are not permitted to park their vehicles at the station commuter car park located on Great Western Highway;
- Provisions relating to the preservation of a crime scene so as to prevent any crime scene being cleaned prior to police attending;
- Provisions relating to the preservation of CCTV recordings.

- 16 The external blade screen treatment of the bedroom windows to Apartments 411 and 507 in the building at 26 Rodgers Street, is to be extended to corresponding bedrooms on Levels 1-3. Details are to be shown with the relevant Construction Certificate application.

- 17 The licensee must maintain a closed-circuit television (CCTV) system on all and any of the premises that are licensed, in accordance with the following requirements:

- (a) the system must record continuously from opening time until one hour after the premises is required to close;
- (b) recordings must be in digital format and at a minimum of ten (10) frames per second;
- (c) any recorded image must specify the time and date of the recorded image; and
- (d) the system's cameras must cover the following areas: (i) all entry and exit points on the premises, (ii) the footpath immediately adjacent to the premises, and (iii) all publicly accessible areas (other than toilets) within the premises.

The licensee must also:

- (a) keep all recordings made by the CCTV system for at least 30 days;
- (b) ensure that the CCTV system is accessible at all times the system is required to operate by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage; and
- (c) provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by a police officer or Liquor and Gaming NSW inspector to provide such recordings.

- 18 Immediately after the person in charge of the licensed premise/s, or a staff member, becomes aware of any incident involving an act of violence causing injury to a person on the premises, the person in charge of the licensed premises and/or staff member must:
- (a) take all practical steps to preserve and keep intact the area where the act of violence occurred;
 - (b) retain all material and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by NSW Police, as published from time to time on the Liquor and Gaming NSW website;
 - (c) make direct and personal contact with NSW Police to advise of the incident; and
 - (d) comply with any directions given by NSW Police to preserve or keep intact the area where the violence occurred.

In this condition, 'staff member' means any person employed by, or acting on behalf of, the licensee of the premises, and includes any person who is employed to carry on security activities (e.g. crowd controller or bouncer) on or about the premises.

- 19 The detailed design of the development/s as submitted with the relevant Construction Certificate/s is to demonstrate compliance with the requirements and recommendations of the specialist consultant report/s tabled at Condition 1, to the satisfaction of the Certifier.
- 20 Any lighting on the site shall be designed so as not to cause a nuisance to other residences in the area or to motorists on nearby roads and to ensure no adverse impact on the amenity of the surrounding area by light overspill. All lighting shall comply with AS 4282-2019 Outdoor Lighting Obtrusive Effects.
- Any lighting of the external areas within the development shall be designed and located in a manner to prevent light spill and/or glare impacts on neighbouring premises.
- 21 All air conditioning units are to be suitably placed and concealed on the roof areas, and are not permitted to be placed on private residential balconies.
- 22 Prior to the issue of the relevant Construction Certificate/s, the two lots that make up the subject site at 26 Rodgers Street are to be consolidated. Evidence of lot consolidation and plan registration with NSW Land Registry Services is to be provided to the Certifying Authority and Penrith City Council.
- 23 The hotel and/or bottle shop management will be available at a mutually convenient time, at the invitation of Penrith City Council and/or the NSW Police, to discuss and action agreed community safety, security or other issues in conjunction with other local stakeholders in the area, should Council staff or police form the view that this is needed. The manager shall be given no less than 14 days notice of the invitation to meet.
- 24 The hotel and bottle shop manager must ensure that the Crime Prevention Through Environmental Design principles included in the Statement of Environmental Effects (at Section 5) are adhered to and utilised in regard to the operation of the premises.

- 25 The following community safety and crime prevention through environmental design (CPTED) requirements are required to be implemented:

(a) Lighting

- All outdoor/public spaces throughout the development must be lit to the minimum Australian Standard of AS 1158. Lighting must be consistent in order to reduce the contrast between shadows and illuminated areas and must be designed in accordance with AS 4282 - Outdoor Lighting Obtrusive Effects.
- Lighting must illuminate pedestrian routes, residential and hotel entries, internal and external communal areas such as hallways, lobbies, lifts and stairwells.

(b) Basement Car Parking

- A security system must be installed on any pedestrian and vehicle entry/exit points to the car park, including the lifts and stairwells, to minimise opportunities for unauthorised access.
- All areas of the car park must be well-lit, with consistent lighting to prevent shadowing or glare.
- Car park surfaces including walls and ceilings are to be light coloured with details included with the relevant **Construction Certificate** applications.

(c) Building Security and Access Control

- Intercom, code or card locks or similar must be installed for all entries to the buildings, all restricted 'residential' or 'staff' only areas, all private communal areas (i.e. courtyards).
- Australian Standard 220 door and window locks must be installed in all dwellings.
- CCTV is to be provided to cover areas that are able to be publicly accessed, including all entry/exit points into the non-residential portions of the buildings and car park. Cameras must be of sufficient standard to be useful for police in the event of criminal investigations. Lighting must be provided to support cameras at night (alternatively infra-red cameras are recommended). Signage must be displayed to indicate that CCTV cameras are in use.
- Letterboxes must be opened from private open space only (i.e. residential lobby). The location of the letterboxes for the residential apartments has not been provided on the architectural plans and must be included.

(d) Signage

- Residential entries, maps and facilities must be clearly signposted.
- Hotel entries and facilities must be clearly signposted.

(e) Graffiti/Vandalism

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

(f) Landscaping

- All vegetation must be regularly pruned to ensure that sight lines are maintained.

Demolition

- 26 All demolition works are to be conducted in accordance with AS 2601-2001 - *The Demolition of Structures*. SafeWork NSW requirements apply to demolition work and compliance with those requirements, including the *SafeWork NSW Code of Practice Demolition Work August 2019*, is required. Prior to demolition, all services shall be suitably disconnected and capped off or sealed to the satisfaction of the relevant service authority requirements.
- 27 Regulatory obligations (including licensing and notification requirements) for the management, control and removal of asbestos are prescribed in the following:
- Work Health and Safety Act 2011,
 - Work Health and Safety Regulation 2017,
 - SafeWork NSW Code of Practice How to Manage and Control Asbestos in the Workplace August 2019,
 - SafeWork NSW Code of Practice How to Safely Remove Asbestos August 2019,
 - Australian Standard AS 2601-2001 - The Demolition of Structures.

Compliance with the above legislation is required and reference should be made to SafeWork NSW and to the Asbestos Policy, Penrith City Council, 2014. All asbestos laden waste must be disposed of at a waste management facility licensed by the NSW Environment Protection Authority to receive asbestos waste.

- 28 Dust suppression techniques are to be employed during all works to reduce any potential nuisances to surrounding properties.
- 29 Mud and soil from vehicular movements to and from the site must not be deposited on the road.
- 30 All demolition works that involve the use of heavy vehicles, heavy machinery and other equipment likely to cause offence to adjoining properties, are restricted to the following hours in accordance with the NSW Department of Environment and Climate Change's "Interim Construction Noise Guideline" 2009:
- Mondays to Fridays, 7am to 6pm.
 - Saturdays, 7am to 1pm if inaudible on neighbouring residential premises, otherwise 8am to 1pm.
 - No work is permitted on Sundays and public holidays.

In the event that the work relates to activities inside the building and does not involve external walls or the roof and does not involve the use of equipment that emits offensive noise, then the works are not restricted to the hours stated above. The provisions of the Protection of the Environment Operations Act 1997 in regulating offensive noise also apply to all works.

- 31 With respect to development that involves excavation that extends below the level of the base of the footings of a building, structure or work on adjoining land, including a structure or work in a road or rail corridor, the applicant must at their own expense:
- (a) protect and support any building, structure or work on adjoining land from possible damage from the excavation,
 - (b) if necessary, underpin the building, structure or work on adjoining land to prevent damage from the excavation.

These requirements do not apply if the person having the benefit of the development consent owns the adjoining land, or the owner of the adjoining land gives written consent to the condition not applying.

Heritage/Archaeological relics

- 32 If any archaeological relics are uncovered during the course of the work no further work shall be undertaken until further directed by Penrith City Council or the NSW Heritage Office.

The applicant is advised that depending on the possible significance of the relics, an archaeological assessment and an excavation permit under the Heritage Act 1977 may be required before any further work can be recommenced in that area of the site.

Environmental Matters

- 33 Site remediation works shall be carried out generally in accordance with the 'Detailed Site Investigation' (ES8230/3) for 26 Rodgers Street, Kingswood prepared by Aargus Pty Ltd dated 24/5/2022 and the 'Remediation Action Plan' (ES8230/4) for 26 Rodgers Street, Kingswood prepared by Aargus Pty Ltd dated 1/11/2022 as well as the National Environment Protection (Assessment of Site Contamination) Measure [NEPC 2013], applicable NSW Environment Protection Authority Guidelines and Penrith Development Control Plan.

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

- Written notification that the site remediation works have been completed is to be submitted within 30 days of the said works having been completed.
 - A Validation Report, prepared by an appropriately qualified person, is to be submitted within 60 days of the said works having been completed / before any building work can commence on the remediated site. The report shall certify that the remediation works have been carried out in accordance with the approved Remediation Action Plan, the National Environment Protection (Assessment of Site Contamination) Measure [NEPC 2013], relevant NSW Environment Protection Authority Guidelines and Penrith Development Control Plan.
- 34 No fill material shall be imported to the site until such time as a certificate demonstrating that the material is suitable has been submitted to, considered and approved by the Certifier. This certificate may be in the form of a validation certificate, waste classification, or appropriate resource recovery order/exemption. A copy of a report forming the basis for the validation is also to be provided. The certification shall:
- be prepared by an appropriately qualified person with consideration of all relevant guidelines, standards, planning instruments and legislation (e.g. EPA, NEPM, ANZECC, NH&MRC),
 - clearly state the legal property description of the fill material source site and the total amount of fill tested,
 - provide details of the volume of fill material to be used in the filling operations,
 - provide a classification of the fill material to be imported to the site in accordance with the NSW Environment Protection Authority's "Waste Classification Guidelines" 2014, and
 - (based on the fill classification) determine whether the fill material is suitable for its intended purpose and land use and whether the fill material will or will not pose an unacceptable risk to human health or the environment

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

- 35 All demolition and construction waste materials stored on-site are to be contained within a designated area such as a waste bay or bin to ensure that no waste materials are allowed to enter the stormwater system or neighbouring properties. The designated waste storage areas are to be fully enclosed when the site is unattended.
- 36 Waste materials associated with the demolition, remediation and construction phases of the development are to be classified and disposed of at a lawful waste facility, or, if suitable, re-used or recycled in accordance with the approved Waste Management Plan. Where the disposal location or waste materials have not been identified in the waste management plan, details shall be provided to the Certifying Authority as part of the waste management documentation accompanying the Construction Certificate application.

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

- 37 The design and construction recommendations provided in the 'DA Acoustic Assessment - Kingswood Apartments and Hotel', referenced at Condition 1 shall be implemented and incorporated into the design and construction of the development and shall be shown on plans accompanying the relevant Construction Certificate application/s.
- 38 All vehicle washing shall be conducted in a wash bay connected to the sewer in accordance with Sydney Water's requirements.
- 39 Only clean and unpolluted water is to be discharged into Penrith City Council's stormwater drainage system. Liquid wastes suitable for discharge to the mains sewer are to be discharged in accordance with Sydney Water requirements. If mains sewer is not available or if Sydney Water will not allow disposal to the sewer, then a suitable waste contractor is to remove the liquid waste from the premises to an appropriate waste facility.
- Waste licensing requirements apply in NSW. Where required, the waste contractor and waste facility are to be licensed by the NSW Environment Protection Authority. Reference should be made to the NSW Environment Protection Authority for licensing requirements.
- 40 Any liquid discharge from the air handling system, resulting from operation, maintenance and/or cleaning operations, are to be disposed of into the sewer system. Discharge into the stormwater disposal system is not permitted.
- 41 Construction works shall be carried out in accordance with the NSW Department of Environment and Climate Change's "Interim Construction Noise Guideline" 2009.

- 42 Prior to the issue of the relevant Construction Certificate/s, a Construction Environmental Management Plan (CEMP) is to be prepared by a suitably experienced / qualified person and submitted to Penrith City Council for approval. If Council is not the certifying authority, a copy of Council's approval is to be provided to the Principal Certifying Authority. The CEMP is to address the environmental aspects of the construction phase of the development and is to include details on the environmental management practices and controls to be implemented on the site.

The CEMP is to address, but is not limited to the following:

- Water quality management,
- Noise control and hours of operation,
- Dust suppression,
- Waste management (including solid and liquid waste),
- Erosion and sediment control,
- Air quality including odour and dust control.

All construction activities on the site are to be implemented and carried out in accordance with the Council approved CEMP.

- 43 **Prior to the issue of the relevant Construction Certificate/s**, a Construction Noise and Vibration Impact Assessment and Management Plan, prepared by a suitably qualified acoustic consultant, is to be submitted to Penrith City Council for approval. This assessment is to consider (at minimum) the noise and vibration impacts associated with the construction phase, as well as details of the construction program, construction methods, equipment and vehicles in association with the NSW Department of Environment and Climate Change's "Interim Construction Noise Guideline" 2009.

The recommendations of the Council approved Management Plan are to be implemented and adhered to during the construction phase of the development.

- 44 **Prior to the issue of the relevant Occupation Certificate/s**, a Compliance Certificate, prepared by a suitably qualified acoustic consultant, is to be submitted to and approved by Penrith City Council. The Certificate is to demonstrate that all plant and equipment has been installed to comply with the established noise criteria as detailed in the 'DA Acoustic Assessment - Kingswood Apartments and Hotel' (210296 R4) prepared by Pulse White Noise Acoustics dated 7/11/2022.
- 45 All mechanical plant and equipment is to comply with the noise criteria established in the Council approved 'DA Acoustic Assessment - Kingswood Apartments and Hotel' (210296 R4) prepared by Pulse White Noise Acoustics dated 7/11/2022.
- 46 Wastewater from the washing of garbage bins and vehicles is not to enter the stormwater system.
- 47 Noise levels from the premises shall not exceed the relevant noise criteria detailed in 'DA Acoustic Assessment - Kingswood Apartments and Hotel', referenced at Condition 1. The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.

- 48 The proprietor of the food business shall ensure that the requirements of the NSW Food Act 2003, NSW Food Regulation 2015 and the Australian and New Zealand Food Standards Code are met at all times. This includes appointing a Food Safety Supervisor, with a current Food Safety Supervisor Certificate recognised by the NSW Food Authority, prior to commencement of the business.
- 49 A satisfactory inspection from an authorised officer of Council's Environmental Health Department is required prior to the issue of the relevant Occupation Certificate/s relating to the areas where food and/or drink is prepared and served.
- 50 Prior to the issue of the relevant Occupation Certificate/s and commencement of trade, the occupier must register their food business with Penrith City Council by completing Council's "Registration of Premises - Food" Form. The occupier of the premises must notify Council within 7 days of any change of details.

BCA Issues

- 51 Access and sanitary facilities for persons with disabilities are to be provided and maintained in accordance with the requirements of the Building Code of Australia and AS 1428 "Design for Access and Mobility". Details of compliance are to be provided in the relevant plans and specifications accompanying the Construction Certificate application.
- 52 The owner of a building, to which an essential fire safety measure is applicable, shall provide Penrith City Council with an annual fire safety statement for the building. The annual fire safety statement for a building must:
- (a) deal with each essential fire safety measure in the building premises, and
- (b) be given:
- within 12 months after the last such statement was given, or
 - if no such statement has previously been given, within 12 months after a final fire safety certificate was first issued for the building.

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

- must also provide a copy of the statement (together with a copy of the current fire safety schedule) to the Commissioner of New South Wales Fire Brigades, and
 - prominently display a copy of the statement (together with a copy of the current fire safety schedule) in the building.
- 53 The external walls of the building including attachments must comply with the relevant requirements of the National Construction Code (NCC). Prior to the issue of the relevant Construction Certificate/s and relevant Occupation Certificate/s the Certifying Authority and Principal Certifying Authority must:
- (a) Be satisfied that suitable evidence is provided to demonstrate that the products and systems proposed for use or used in the construction of external walls including finishes and claddings such as synthetic or aluminium composite panels comply with the relevant requirements of the NCC; and
- (b) Ensure that the documentation relied upon in the approval processes include an appropriate level of detail to demonstrate compliance with the NCC as proposed and as built.

Health Matters and OSSM installations

- 54 The construction, fit-out and finishes of the food premises must comply with Food Safety Standard 3.2.3 of the Australian and New Zealand Food Standards Code, and AS 4674-2004 Design, Construction and Fitout of Food Premises. Details showing compliance are to be included in the Construction Certificate application/s to the satisfaction of the Certifier.
- 55 Prior to the issue of the relevant Occupation Certificate/s and prior to the commencement of any system, the occupier must register their Cooling Towers and Warm Water Systems with Penrith City Council by completing the "Regulated Systems Premises - Registration Form". The occupier of the premises must notify Council within 7 days of any change of details.
- 56 Any air-handling systems, hot-water systems, humidifying systems, warm-water systems and water-cooling systems shall be operated and maintained in accordance with the Public Health Act 2010, Public Health Regulation 2012 and any relevant standards, guidelines or codes of practice published or endorsed by the NSW Ministry of Health.
- 57 Prior to the issue of the relevant Occupation Certificate/s, and operation of the business, the exhaust system shall be certified by an appropriately qualified person to comply with the Building Code of Australia and Australian Standard AS 1668, Parts 1 & 2. A copy of the certification and supporting documentation must be provided to Council's Environmental Health Department if Council is not the Principal Certifying Authority.
- 58 Any air-handling systems, hot-water systems, humidifying systems, warm-water systems and water-cooling systems must be installed in accordance with AS/NZS 3666.1:2011 "Air-Handling and Water Systems of Buildings - Microbial Control - Design, Installation and Commissioning", as applicable to the specific system. An air-handling system must be fitted with supply air filters.
- 59 The construction and operation of the premises shall comply with the NSW Smoke-free Environment Act 2020 and Smoke-free Environment Regulation 2016.
- 60 Any regulated system to be installed on-site will require a detailed plan showing the details below to be submitted to and approved by Council prior to the issue of the relevant Construction Certificate/s:
- Installation in accordance with AS/NZS 3666.1:2011 "Air-Handling and Water Systems of Buildings - Microbial Control - Design, Installation and Commissioning" including but not limited to information on location of the systems being in a position to ensure that the exhaust discharge from the cooling tower is a minimum 6m away from occupied areas, pedestrian thoroughfares, trafficable areas, air intakes including lift vents and building openings.
 - Evidence of safe and easy access to the regulated system (as defined in the Public Health Act 2010) for the purpose of the cleaning, inspection and maintenance of the system.
 - Location of storage of chemicals, banded or stored in such a way to prevent the chemical entering the storm water system.
 - Systems liquid discharge point to sewer.

Utility Services

- 61 A Section 73 Compliance Certificate under the Sydney Water Act 1994 shall be obtained from Sydney Water. The application must be made through an authorised Water Servicing Coordinator. Please refer to “Your Business” section of Sydney Water’s website at www.sydneywater.com.au then the “e-developer” icon, or telephone 13 20 92.

The Section 73 Compliance Certificate must be submitted to the Principal Certifying Authority prior to the issue of the relevant Occupations Certificate/s.

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

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

- 63 Prior to the issue of the relevant Construction Certificate/s, the Principal Certifying Authority shall be satisfied that telecommunications infrastructure may be installed to service the premises which complies with the following:
- The requirements of the Telecommunications Act 1997;
 - For a fibre ready facility, the NBN Co’s standard specifications current at the time of installation; and
 - For a line that is to connect a lot to telecommunications infrastructure external to the premises, the line shall be located underground.

Unless otherwise stipulated by telecommunications legislation at the time of construction, and prior to the issue of the relevant Occupation Certificate/s, the development must be provided with all necessary pits and pipes, and conduits to accommodate the future connection of optic fibre technology telecommunications.

- 64 Prior to the issue of the relevant Occupation Certificate/s, written certification from all relevant service providers that the telecommunications infrastructure is installed in accordance with the requirements above and the applicable legislation at the time of construction, must be submitted to the Principal Certifying Authority.
- 65 Prior to the issue of the relevant Construction Certificate/s, the Certifying Authority is required to ensure approval has been granted through Sydney Water’s online ‘Tap In’ program to determine whether the development will affect Sydney Water’s sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. Refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 13 20 92.
- 66 The applicant must ensure that at all times they have a representative (which has been notified to Sydney Trains in writing), who:
- (a) oversees the carrying out of the applicant’s obligations under the conditions of this consent and in accordance with correspondence issued by Sydney Trains;
 - (b) acts as the authorised representative of the applicant; and
 - (c) is available (or has a delegate notified in writing to Sydney Trains that is available) on a 7 day a week basis to liaise with the representative of Sydney Trains, as notified to the applicant.

- 67 Without in any way limiting the operation of any other condition of this consent, the applicant must, during demolition, excavation and construction works, consult in good faith with Sydney Trains in relation to the carrying out of the development works and must respond or provide documentation as soon as practicable to any queries raised by Sydney Trains in relation to the works.
- 68 Where a condition of consent requires consultation with Sydney Trains, the applicant shall forward all requests and/or documentation to the relevant Sydney Trains External Interface Management team. In this instance the relevant interface team is West Interface and they can be contacted via email on West_Interface@transport.nsw.gov.au.
- 69 The development is to demonstrate compliance with the conditions outlined in the referral response from Endeavour Energy, dated 2 February 2022.
- 70 Prior to the issue of the relevant Construction Certificate/s, the applicant shall provide an accurate survey locating the development with respect to the rail boundary and rail infrastructure. This work is to be undertaken by a registered surveyor, to the satisfaction of a Sydney Train's representative.
- 71 The applicant shall prepare an acoustic assessment demonstrating how the proposed development will comply with the Department of Planning's document titled "Development Near Rail Corridors and Busy Roads - Interim Guidelines". The applicant must incorporate in the development all the measures recommended in the report. A copy of the report is to be provided to the Principal Certifying Authority and Council prior to the issue of the relevant Construction Certificate/s. The Principal Certifying Authority must ensure that the recommendations of the acoustic assessment are incorporated in the construction drawings and documentation prior to the issue of the relevant Construction Certificate/s.
- 72 Prior to the issue of the relevant Construction Certificate/s, the applicant is to engage an Electrolysis Expert to prepare a report on the Electrolysis Risk to the development from stray currents. The applicant must incorporate in the development all the measures recommended in the report to control that risk. A copy of the report is to be provided to the Principal Certifying Authority with the application for the relevant Construction Certificate/s. The Principal Certifying Authority must ensure that the recommendations of the electrolysis report are incorporated in the construction drawings and documentation prior to the issue of the relevant Construction Certificate/s.
- 73 The applicant shall provide a Geotechnical Engineering report to Sydney Trains for review by Sydney Trains' Geotechnical section prior to the commencement of works. The report shall demonstrate that the development has no negative impact on the rail corridor or the integrity of the infrastructure through its loading and ground deformation and shall contain structural design details/analysis for review by Sydney Trains. The report shall include the potential impact of demolition and excavation, and demolition- and excavation-induced vibration, on rail facilities, and loadings imposed on Sydney Trains Facilities by the development.
- 74 The design, installation and use of lights, signs, and reflective materials, whether permanent or temporary, which are (or from which reflected light might be) visible from the rail corridor must limit glare and reflectivity to the satisfaction of the rail operator. The Principal Certifying Authority is not to issue the relevant Construction Certificate/s until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

- 75 Prior to the issue of the relevant Construction Certificate/s, the applicant must submit to Sydney Trains a plan showing all craneage and other aerial operations for the development and must comply with all Sydney Trains requirements. If required by Sydney Trains, the applicant must amend the plan showing all craneage and other aerial operations to comply with all Sydney Trains requirements. The Principal Certifying Authority is not to issue the relevant Construction Certificate/s until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
- 76 During all stages of the development the applicant must take extreme care to prevent any form of pollution (including dust) entering the rail corridor. Any form of pollution that arises as a consequence of the development activities shall remain the full responsibility of the applicant.
- 77 Excess soil is not allowed to enter, be spread, or stockpiled within the rail corridor (and its easements) and must be adequately managed/disposed of.
- 78 The applicant must ensure that all drainage from the development is adequately disposed of and managed and not allowed to be discharged into the rail corridor unless prior written approval has been obtained from Sydney Trains.

Construction

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

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

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

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

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

All construction signage is to be removed when the relevant Occupation Certificate/s have been issued for the development.

80 Prior to the commencement of construction works:

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

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

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

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

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

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

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

81 Before a rainwater tank(s) can be used, a certificate or suitable document is to be submitted to the Principal Certifying Authority stating that the rainwater tank has been installed in accordance with:

- the Manufacturer's Specifications, and
- Sydney Water and NSW Health requirements.

This certificate or documentation is to be provided by the licensed plumber who installed the rainwater tank on the property, and is to be submitted prior to the issue of the relevant Occupation Certificate/s.

82 The rainwater tank supply must not be connected to drinking and bathing water tap outlets.

83 The rainwater tank pump must not exceed 5dBA above ambient background noise level at the nearest residential property boundary. The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.

84 Construction works that are carried out in accordance with the approved consent that involve the use of heavy vehicles, heavy machinery and other equipment likely to cause offence to adjoining properties shall be restricted to the following hours in accordance with the NSW Environment Protection Authority Noise Control Guidelines:

- Mondays to Fridays, 7am to 6pm.
- Saturdays, 7am to 1pm if inaudible on neighbouring residential premises, otherwise 8am to 1pm.
- No work is permitted on Sundays and public holidays.

Other construction works carried out inside a building/tenancy and that do not involve the use of equipment that emits noise are not restricted to the construction hours stated above.

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

Roads Act Requirements

85 Penrith City Council is the Roads Authority under the Roads Act 1993 responsible for approving:

- Works on the road reserve, or
- The placement of hoardings, structures, containers, waste skips etc on the road reserve.

The application for the relevant Construction Certificate/s is to accompany documentation specifying that a Roads Act approval, including payment of application and inspection fees under the Roads Act, has been sought from Penrith City Council for the erection of an awning over or on the relevant/applicable road reserve.

86 All buildings and structures, together with any improvements integral to the future use of the site, shall be wholly within the freehold property (unlimited in height or depth), along the Great Western Highway and Bringelly Road boundary.

87 The redundant driveway along the Bringelly Road boundary shall be removed and replaced with kerb and gutter to match existing. The design and construction of the kerb and gutter on Bringelly Road shall be in accordance with TfNSW requirements.

Details of these requirements should be obtained by email to developerworks.sydney@transport.nsw.gov.au. A plan checking fee and lodgement of a performance bond is required from the applicant prior to the release of the approved road design plans by TfNSW.

88 Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system along the Great Western Highway and Bringelly Road frontage are to be submitted to TfNSW for approval, prior to the commencement of any works. Please send all documentation to development.sydney@transport.nsw.gov.au. A plan checking fee and lodgement of a performance bond is required from the applicant prior to the release of the approved road design plans by TfNSW.

- 89 The developer is to submit design drawings and documents relating to the excavation of the site and support structures to TfNSW for assessment, in accordance with Technical Direction GTD2012/001.

The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by TfNSW. Documents should be submitted to Development.Sydney@rms.nsw.gov.au. If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) days notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

- 90 The developer shall be responsible for all public utility adjustment/relocation works, etc necessitated by the above/approved work and as required by the various public utility authorities and/or their agents.
- 91 The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths and parking bay dimensions, service bays) should be in accordance with AS 2890.1-2004, AS 2890.6-2009 and AS 2890.2-2018. Bicycle parking should be provided in accordance with AS 2890.3.
- 92 All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on Great Western Highway and Bringelly Road without TfNSW approval.
- 93 A Construction Pedestrian Traffic Management Plan (CPTMP) detailing construction vehicle routes, number of trucks, hours of operation, access arrangements, traffic control and pedestrian movements at the signalised intersection of Great Western Highway / Bringelly Road and its approaches, should be submitted to TfNSW for approval prior to the issue of the relevant Construction Certificate.
- 94 A Road Occupancy Licence (ROL) should be obtained from the Transport Management Centre for any works that may impact on traffic flows on Great Western Highway and Bringelly Road during construction activities. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>.

Engineering

- 95 All roadworks, stormwater drainage works, signage, line marking, associated civil works and dedications required to effect the consented development shall be undertaken by the applicant at no cost to Penrith City Council.
- 96 An Infrastructure Restoration Bond is to be lodged with Penrith City Council for development involving works around Penrith City Council's Public Infrastructure Assets. The bond is to be lodged with Penrith City Council prior to commencement of any works on site or prior to the issue of the relevant Construction Certificate/s, whichever occurs first. The bond and applicable fees are in accordance with Council's adopted Fees and Charges.

An application form together with an information sheet and conditions are available on Council's website. Contact Penrith City Council's Asset Management Department on 4732 7777 or visit Penrith City Council's website for more information.

97 Prior to the issue of the relevant Construction Certificate/s, a Section 138 Roads Act application, including payment of application and inspection fees together with any applicable bonds, shall be lodged with and approved by Penrith City Council (being the Roads Authority for any works required in a public road). These works may include but are not limited to the following:

- a) Road opening for utilities
- b) Road occupancy or road closures (including temporary construction work zones and tower crane operation)
- c) The placement of hoardings, structures, containers, waste skips, signs, etc in the road reserve
- d) Temporary construction access
- e) Temporary ground anchors (for basement construction)

All works shall be carried out in accordance with the Roads Act approval, the development consent, including the stamped approved plans, and Penrith City Council's specifications, guidelines and best engineering practice. Contact Penrith City Council's Asset Management Department on 4732 7777 or visit Penrith City Council's website for more information.

Note:

- Where Penrith City Council is the Certifier for the development, the Roads Act approval for the above works may be issued concurrently with the Construction Certificate or Subdivision Works Certificate.
- Separate approval may be required from Transport for NSW for classified roads.
- All works associated with the Roads Act approval must be completed prior to the issue of any Occupation Certificate or Subdivision Certificate as applicable.
- On completion of any awning over the road reserve, a certificate from a practising structural engineer certifying the structural adequacy of the awning is to be submitted to Council before Council will inspect the works and issue its final approval under the Roads Act.

- 98 Prior to the issue of the relevant Construction Certificate/s, the Certifier shall ensure that a Section 138 Roads Act application, including payment of application and inspection fees, has been lodged with and approved by Penrith City Council (being the Roads Authority under the Roads Act) for provision of the extension of Council's road drainage in Bringelly Road, Kingswood and public domain upgrade works (in accordance with Council's Kingswood Public Domain Manual) for the full frontage of the site in Wainwright Lane, Rodgers Street, Bringelly Road and Great Western Highway, Kingswood.

The public domain upgrade works must include appropriate new street trees and a (preliminary) design to accommodate some bicycle parking, which will be subject to a final review by Council staff.

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

Contact Penrith City Council's Development Engineering Department on 4732 7777 to obtain a formal fee proposal prior to lodgement and visit Penrith City Council's website for more information.

Note:

- Where Penrith City Council is the Certifier for the development, the Roads Act approval for the above works may be issued concurrently with the Construction Certificate or Subdivision Works Certificate.
- Separate approval may be required from the Transport for NSW for classified roads.
- All works associated with the Roads Act approval must be completed prior to the issue of any Occupation Certificate or Subdivision Certificate as applicable.

- 99 Prior to the issue of the relevant Construction Certificate/s, the Certifier shall ensure that any applicable application, including the payment of application and inspection fees, has been lodged with and approved by Transport for NSW (TfNSW) for any works within the Great Western Highway road reserve. A copy of TfNSW approval shall be submitted to Penrith City Council prior to Penrith City Council issuing any Roads Act approval.

- 100 The stormwater management system shall be consistent with the plan/s lodged for development approval, prepared by Acor Consultants, reference number NSW220991 C01-001 - C08-303, revision A, dated 31/10/2022.

Prior to the issue of the relevant Construction Certificate/s, the Certifier shall ensure that the stormwater management system has been designed in accordance with Penrith City Council's Stormwater Drainage Specification for Building Developments and Water Sensitive Urban Design (WSUD) Policy. The OSD discharge control pits shall have an orifice plate and outlet pipe sized in accordance with Penrith City Council's Stormwater Drainage Specification for Building Developments.

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

- 101 Prior to the issue of the relevant Construction Certificate/s, the Certifier shall ensure that the stormwater drainage system for the basement car park has been designed in accordance with the requirements for pumped systems in AS 3500.3 Plumbing and Drainage - Stormwater Drainage.

- 102 Prior to the issue of the relevant Construction Certificate/s, the Certifier shall ensure that vehicular access, circulation, manoeuvring, pedestrian and parking areas associated with the subject development are in accordance with AS 2890.1, AS 2890.2 and AS 2890.6.
- 103 Prior to the issue of a Roads Act approval, a Performance Bond is to be lodged with Penrith City Council for the extension of Council's road drainage and public domain upgrade works in Wainwright Lane, Rodgers Street, Bringelly Road and Great Western Highway, Kingswood.
- The value of the bond shall be determined in accordance with Penrith City Council's adopted Fees and Charges. Contact Penrith City Council's Development Engineering Department on 4732 7777 for further information relating to bond requirements.
- 104 Prior to the issue of the relevant Construction Certificate/s, a geotechnical investigation report and strategy shall be submitted to the Certifier to ensure the stability of any adjoining Council owned infrastructure and surrounding developments. The technical direction GTD 2012/001 prepared by Transport for NSW can be used as a guide for preparing the geotechnical investigation report and strategy.
- 105 The developer shall undertake dilapidation report/s for all adjoining buildings that confirms that no damage occurs due to the excavations associated with the development. The Private Certifier is to ensure that the dilapidation report/s are in place, and that a copy has been provided to the relevant adjoining landowner, both prior to the issue of the relevant Construction Certificate/s and then updated and submitted / provided prior to the issue of the relevant Occupation Certificate/s confirming no damage has occurred.
- 106 Prior to commencement of works, sediment and erosion control measures shall be installed in accordance with the approved, relevant Construction Certificate/s and to ensure compliance with the Protection of the Environment Operations Act 1997. The erosion and sediment control measures shall remain in place and be maintained until all disturbed areas have been rehabilitated and stabilised.
- 107 Upon completion of all works in the road reserve, all verge areas fronting the development are to be turfed. The turf shall extend from the back of kerb to the property boundary, with the exception of concrete footpaths, service lids or other infrastructure which is not to be turfed over. Turf laid up to concrete footpaths, service lids or other infrastructure shall finish flush with the edge.
- 108 All existing (aerial) and proposed services for the development, including those across the frontage of the development, are to be located or relocated underground in accordance with the relevant authorities' regulations and standards.
- 109 Prior to the issue of the relevant Occupation Certificate, the Principal Certifier shall ensure that all works associated with a Section 138 Roads Act approval have been inspected and signed off by Penrith City Council.

- 110 Prior to the issue of the relevant Occupation Certificate/s, works as executed drawings, final operation and maintenance management plans and any other compliance documentation for the stormwater management system shall be submitted to the Principal Certifier in accordance with Penrith City Council's Engineering Construction Specification for Civil Works, Stormwater Drainage Specification for Building Developments and WSUD Technical Guidelines.

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

- 111 Prior to the issue of the relevant Occupation Certificate/s, the Principal Certifier shall ensure that the stormwater management systems (including on-site detention and water sensitive urban design):
- Have been satisfactorily completed in accordance with the approved Construction Certificate/s and the requirements of this consent;
 - Have met the design intent with regard to any construction variations to the approved design, and;
 - Any remedial works required to be undertaken have been satisfactorily completed.

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

- 112 Prior to the issue of the relevant Occupation Certificate/s, a restriction on the use of land and positive covenant relating to the:

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

shall be registered on the title of the property. The restriction on the use of land and positive covenant shall be in Penrith City Council's standard wording as detailed in Council's Stormwater Specification for Building Developments - Appendix F.

- 113 The design is to ensure that the relevant corners of both Building A and Building B, at the corner of Wainwright Lane and Bringelly Road, including any external structures within the subject site at those corners, contains no structures or only low walls/structures/landscaping that enable clear visibility for drivers using Wainwright Lane. All vegetation in this area is to be kept at a low height and well maintained so as not to obstruct driver visibility.
- 114 Prior to the issue of the relevant Occupation Certificate/s, a Maintenance Bond is to be lodged with Penrith City Council for extension of Council's road drainage and public domain upgrade works in Wainwright Lane, Rodgers Street, Bringelly Road, and Great Western Highway, Kingswood. The value of the bond shall be determined in accordance with Penrith City Council's adopted Fees and Charges. Contact Penrith City Council's Development Engineering Department on 4732 7777 for further information relating to bond requirements.

115 The stormwater management system shall continue to be operated and maintained in perpetuity for the life of the development in accordance with the final operation and maintenance management plan. Regular inspection records are required to be maintained and made available to Penrith City Council on request. All necessary improvements are required to be made immediately upon awareness of any deficiencies in the stormwater management systems.

116 Prior to the commencement of any works on-site (including demolition works) or prior to the issue of the relevant Construction Certificate/s, whichever occurs first, a Construction Traffic Management Plan (CTMP) shall be submitted to Penrith City Council's Asset Management Department for endorsement. The CTMP shall be prepared by a suitably qualified consultant with appropriate training and certification from Transport for NSW.

The CTMP shall include details of any required road closures, work zones, loading zones and the like. Approval of the CTMP may require approval of the Local Traffic Committee. Please contact Council's Asset Management Department on 4732 7777 and refer to Council's website for a copy of the Temporary Road Reserve Occupancy Application Form.

117 Prior to the issue of the relevant Construction Certificate/s, the Certifier shall ensure that all vehicles accessing the site can enter and exit from/to the public road access in a forward direction. Any turning movements to comply must be in accordance with AS 2890 for the relevant vehicle.

118 Prior to the issue of the relevant Construction Certificate/s, the Certifier shall ensure that secure bicycle parking is provided at convenient location(s) in accordance with AS 2890.3 Bicycle Parking Facilities. Complying numbers of secure bicycle parking, end-of-journey facilities, change rooms, showers, and lockers shall be provided at a convenient location(s) in accordance with Penrith Development Control Plan (Chapter C10), AS 2890.3 Bicycle Parking Facilities, and the NSW Planning Guidelines of Walking and Cycling.

119 Prior to the issue of the relevant Construction Certificate/s, an Operational Traffic Management Plan is to be prepared. The Plan shall include all details of any traffic control measures and the management of heavy vehicles servicing the development and manoeuvring on the site. The Plan shall include, but not limited to, the provision of:

- Traffic controllers to provide oversight and manage heavy vehicles during their manoeuvring on the site, particularly in the event of turntable malfunction;
- Management of pedestrians and ensure they are kept clear of any heavy vehicles servicing the site particularly during reversing manoeuvres;
- Details on how drivers will be made aware that they must comply with the operational traffic management plan for the development;
- Frequency and schedule of loading dock use. Waste collection and truck deliveries are not to occur during the development peak hours; and
- Limiting access to vehicles no larger than Council's 9.7m waste collection vehicle.

120 Prior to the installation of any regulatory/advisory signage and line marking within the public road reserve or the issue of the relevant Occupation Certificate/s, whichever occurs first, plans and details shall be lodged with Penrith City Council and endorsed by the Local Traffic Committee for the following works:

- Changes to signage and on-street linemarking along all site frontages to suit the proposed driveway locations.

Approved signage and line marking shall be installed at no cost to Council.

The preferred configurations for on-street parking restrictions are as per Figure 2 and Figure 4 of the letter prepared by CJP Consulting Engineers, reference 22222, dated 22 December 2022; however, with one parking space retained between the Northern Building driveways.

Note:

- Contact Penrith City Council's Engineering Services Department on 4732 7777 for further information on this process.
- Allow at least eight (8) weeks for approval by the Local Traffic Committee.
- Applicable fees are indicated in Council's adopted Fees and Charges.

121 Prior to the issue of the relevant Occupation Certificate/s, entry and exit signage which is clearly visible from the public road shall be placed within the development site. The signage shall indicate that the vehicular access for ingress purposes only is appropriately signposted "Entry Only" and the vehicular access is to be used for egress purposes only is appropriately signposted "No Entry".

122 Prior to the issue of the relevant Occupation Certificate/s, directional signage and line marking shall be installed indicating directional movements and the location of customer and/or staff parking to the satisfaction of the Principal Certifier.

123 Prior to the issue of the relevant Occupation Certificate/s, a Workplace Travel Plan and Travel Access Guide are to be prepared and approved by the Certifier, to minimise car use by commercial staff and visitors. The plans shall set achievable targets and encourage participation to travel to/from the development by other means than by car, such as walking, cycling, car-pooling and public transport. The plan is to be implemented and reviewed by the management of the facility on a regular basis and operate for the life of the development.

124 Prior to the issue of the relevant Construction Certificate/s, the following documents are to be amended and form part of the relevant Construction Certificate/s documents, to the satisfaction of the Certifier:

- Amended Architectural Plans to show proposed parking supply consistent with the letter prepared by CJP Consulting Engineers, reference 22222, dated 22 December 2022;
- Amended Architectural Plans to show proposed locations of traffic mirrors, roller shutter, and wall modification's consistent with Appendix 2 of the letter prepared by CJP Consulting Engineers, reference 22222, dated 22 December 2022; and
- Amended Architectural Plans to show line markings (e.g. chevron or similar) on the spaces adjacent to the last parking bays on the southern end of South Building B1 and B2 to discourage use of these spaces for parking.

- 125 Subleasing of car parking spaces is not permitted. No parking is permitted outside of marked parking spaces shown on the approved plans. The required sight lines around the driveway entrances are not to be compromised by landscaping, fencing or signage.
- 126 All parking spaces, loading zones, parking aisles, and manoeuvring areas are to be kept clear of stored materials, products and waste materials such that these areas remain unobstructed and allow for the safe movement of vehicles.
- 127 The parking spaces to be provided for each building is to be as follows:

Building A - 180 Great Western Highway:

- 85 x Resident Spaces;
- 2 x Car Wash Bays;
- 4 x Services Spaces;
- 15 x Resident Visitor Spaces;
- 56 x Pub/Lounge/Bistro Spaces;
- 6 x Motorcycle Spaces; and
- 39 x Bicycle Spaces.

Building B - 26 Rodgers Street:

- 63 x Resident Spaces;
- 2 x Car Wash Bays;
- 2 x Services Spaces;
- 11 x Resident Visitor Spaces;
- 26 x Commercial Spaces;
- 10 x Motorcycle Spaces; and
- 12 x Bicycle Spaces.

The allocation of these parking spaces is to be retained and maintained thereafter. Any subdivision of the development, including strata subdivision, is to reflect the parking space allocation as per this condition.

Landscaping

128

All landscape works are to be constructed in accordance with the stamped approved plans referenced at Condition 1 and comply with Chapter C6 - Landscape Design and Section 2.9 of Appendix F4 - Technical Information within Penrith Development Control Plan 2014.

Landscaping shall be maintained:

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

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

129 All landscape works are to meet industry best practice and the following relevant Australian Standards:

- AS 4419 Soils for Landscaping and Garden Use,
- AS 4454 Composts, Soil Conditioners and Mulches, and
- AS 4373 Pruning of Amenity Trees.

Development Contributions

130 This condition is imposed in accordance with Penrith City Council's Section 7.11 Contributions Plan for Cultural Facilities. Based on the current rates applicable to contributions payable under this plan, **\$26,892.00** is to be paid to Council prior to issue of any relevant Construction Certificate being issued for the approved development at **26 Rodgers Street/Building B/Stage 1** (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 7.11 Contributions Plan.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The Section 7.11 Contributions Plan for Cultural Facilities is available on Council's website.

131 This condition is imposed in accordance with Penrith City Council's Section 7.11 Contributions Plan for District Open Space. Based on the current rates applicable to contributions payable under this plan, **\$229,068.00** is to be paid to Council prior to issue of any relevant Construction Certificate being issued for the development at **26 Rodgers Street/Building B/Stage 1** (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 7.11 Contributions Plan.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The Section 7.11 Contributions Plan for District Open Space is available on Council's website.

132 This condition is imposed in accordance with Penrith City Council's Section 7.11 Contributions Plan for Local Open Space. Based on the current rates applicable to contributions payable under this plan, **\$82,782.00** is to be paid to Council prior to issue of any relevant Construction Certificate being issued for the development at **26 Rodgers Street/Building B/Stage 1** (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 7.11 Contributions Plan.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The Section 7.11 Contributions Plan for Local Open Space is available on Council's website.

133 This condition is imposed in accordance with Penrith City Council's Section 7.11 Contributions Plan for Cultural Facilities. Based on the current rates applicable to contributions payable under this plan, **\$39,342.00** is to be paid to Council prior to issue of any relevant Construction Certificate being issued for the approved development at **180 Great Western Highway/Building A/Stage 2** (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 7.11 Contributions Plan.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The Section 7.11 Contributions Plan for Cultural Facilities is available on Council's website.

- 134 This condition is imposed in accordance with Penrith City Council's Section 7.11 Contributions Plan for District Open Space. Based on the current rates applicable to contributions payable under this plan, **\$335,118.00** is to be paid to Council prior to issue of any relevant Construction Certificate being issued for the development at **180 Great Western Highway/Building A/Stage 2** (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 7.11 Contributions Plan.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The Section 7.11 Contributions Plan for District Open Space is available on Council's website.

- 135 This condition is imposed in accordance with Penrith City Council's Section 7.11 Contributions Plan for Local Open Space. Based on the current rates applicable to contributions payable under this plan, **\$121,107.00** is to be paid to Council prior to issue of any relevant Construction Certificate being issued for the development at **180 Great Western Highway/Building A/Stage 2** (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 7.11 Contributions Plan.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The Section 7.11 Contributions Plan for Local Open Space is available on Council's website.

Certification

- 136 Prior to the commencement of any earthworks or construction works on site, the proponent is to:

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

The Principal Certifier shall submit to Council an "Appointment of Principal Certifying Authority" in accordance with Section 6.6 of the Environmental Planning and Assessment Act 1979.

Information to accompany the Notice of Commencement

Two (2) days before any earthworks or construction/demolition works are to commence on site (including the clearing site vegetation), the proponent shall submit a "Notice of Commencement" to Council in accordance with Section 6.6 of the Environmental Planning and Assessment Act 1979.

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

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

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

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

C5 Waste Management

Waste management has been discussed in the body of this report. Suitable conditions are recommended to be imposed on the consent to require further design details to satisfy Council's Waste Team.

C10 Transport Access and Parking

The matter of non-compliant on-site parking for the pub component of Building A has been discussed in the body of this report. The shortfall of pub parking spaces is acceptable in the circumstances of this case.

E12 Penrith Health and Education Precinct

The site is located within the Hospital Precinct of the Penrith Health and Education Precinct. Within this precinct, the site is then located within the Commercial Mixed-Use Precinct. The DCP characterises this precinct as including the "*existing shopping strip located adjacent to the Great Western Highway, Wainwright Lane located to the south and the northern end of Bringelly Road*". The main objectives of this precinct are to create active ground floor uses and high quality building and public domain outcomes. The DCP statement also says that "*there is opportunity for this area to adopt a higher density residential form along Rodgers Street and Bringelly Road*".

The proposed development will meet the objectives for the precinct, particularly given that both buildings will contain active non-residential uses on the ground floor, and well designed residential apartments on upper levels. The design, detailing, and materials used in the building facades will also result in good quality buildings that present well in the street.

For the most part, the proposed development as amended, **does comply** with Chapter E12 of the DCP. The various controls and objectives in Chapter E12 have been considered throughout the assessment of the proposal.

However, there are two controls that the proposed development does not satisfy. The first is a control that refers to buildings having a podium of two to four storeys, with upper floors set back. Both proposed buildings are not designed with podiums. Notwithstanding this, the design and scale of both buildings to the street frontages is acceptable in this instance. More generous setbacks are provided internally to the building form and this results in better amenity for the residential apartments. In addition, Council's Urban Design Review Panel stated that variations to the DCP wall height controls could be supported, and that the resulting scale appears to be an acceptable solution to the site's location on a busy major road.

The second non-compliance relates to site coverage. The DCP permits a maximum site coverage of 75% with a minimum 10% requirement for deep soil. Neither of the proposed buildings will comply with these controls as the buildings occupy the entire site at basement and ground floor levels. However, the DCP control also states that Council may consider 100% site coverage on land within the Commercial Mixed-Use character area along Great Western Highway. Building A qualifies for this variation. Although Building B is not located on Great Western Highway, that building does provide landscaped setbacks to all upper levels of the building.

On balance, the objectives and controls contained in Chapter E12 of the Penrith DCP are met.