

<b>SWCPP Ref. No.:</b>	PPSSWC-244
<b>DA No.:</b>	DA22/0326
<b>PROPOSED DEVELOPMENT:</b>	Construction of a Seven (7) Storey Accommodation Hotel with 140 Rooms, including Food and Beverage Use on the Top Floor with Outdoor Rooftop Seating, and Three (3) Basement Levels with 63 Parking Spaces
<b>PROPERTY ADDRESS:</b>	28 Somerset Street, KINGSWOOD NSW 2747 30 Somerset Street, KINGSWOOD NSW 2747 32 Somerset Street, KINGSWOOD NSW 2747
<b>PROPERTY DESCRIPTION:</b>	Lot 57 DP 215146, Lot 58 DP 36728, Lot 59 DP 36728,
<b>ZONING:</b>	Zone B4 Mixed Use - LEP 2010
<b>CLASS OF BUILDING:</b>	Class 3 , Class 6 , Class 7a
<b>ASSESSING OFFICER</b>	Sandra Fagan
<b>APPLICANT:</b>	M Viscovich
<b>DATE RECEIVED:</b>	12 April 2022
<b>REPORT BY:</b>	Sandra Fagan, Senior Development Assessment Planner, Penrith City Council
<b>RECOMMENDATIONS:</b>	Approve

## Assessment Report

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### Executive Summary

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This Development Application is lodged by Boston Global, with the landowner being Boston Nepean Pty Ltd. The application seeks consent for a new seven storey tourist and visitor accommodation building in the form of a hotel, which the applicant has described as a 'medi-hotel'.

The hotel will contain 140 rooms spread across all levels of the building, except for the seventh floor (Level 6) which contains the hotel's front reception and food and beverage facility, including outdoor rooftop seating. The ground floor contains a retail space notated as 'wellness retail' and a separate space notated as 'wellness centre'. These two spaces front Somerset Street. The proposed development will have 3 basement levels with parking for 63 vehicles. Access to the basement will be via a double-width driveway in Hargrave Street. The building is set back 4m from both the Somerset Street and Hargrave Street boundaries. The front setback area to Somerset Street contains a double-height landscaped arbour structure with deep soil planting, decked pathways and seating areas.

The proposed development has been amended to respond to initial comments made by Council staff and Council's Urban Design Review Panel. These amendments are mostly refinement of details, such as additional windows, adjustment of rainwater tanks, continuation of the facade treatment of the seventh floor, and justification for the substation relocation (which has resulted in the removal of the blast wall). The applicant has also made further amendments that respond to the structural design. These include a reduction in the building footprint at Levels 4 and 5 resulting in a step in the northern facade and a slight decrease in floor space, additional windows to the Hargrave Street facade, and replacement of the flat concrete roof at the topmost floor with a lighter weight pitched roof structure.

It is noted that the current proposed development is also the culmination of previous discussions and amendments made in relation to another Development Application (DA20/0767), which was subsequently approved by the Penrith Local Planning Panel on 21 September 2021. The applicant has commenced some works under the previous Development Consent for DA20/0767. These works include demolition of all existing dwellings, tree and vegetation removal, and excavation. The current proposed development is similar in design, footprint, appearance, parking spaces, and use, as the previous Development Consent.

However, the previous Development Consent for DA20/0767, is the subject of a current third-party appeal that was heard in the Land and Environmental Court in late-September 2022. The appellant is seeking to have the development consent declared invalid. At the time of finalising this planning assessment report the judgement has not yet been issued. Notwithstanding the outcome of the Court case, the applicant has confirmed that they wish to proceed with this current Development Application (DA22/0326).

The proposed development does not comply with Council's LEP and DCP controls relating to maximum building height and number of car parking spaces. The maximum permitted building height pursuant to Clause 4.3 of the Penrith LEP is 18m. The proposed development will have a maximum height of 23.854m to the top of the lift overruns and rooftop mechanical plant. This represents a non-compliance of 5.854m or 32.5% over the height control. The application is accompanied by a written request pursuant to Clause 4.6 of the LEP seeking a variation to the development standard for maximum building height at Clause 4.3.

Regarding on-site parking, the proposed development provides 63 spaces in three basement levels. Depending on how the parking rates in the Penrith DCP are applied, the proposal results in a shortfall of between 93 to 157 spaces. The application is accompanied by a traffic report which outlines reasons for why a reduced number of spaces could be considered in this case. This planning assessment report will outline the various ways parking numbers can be applied to the proposed development.

Parts of the proposed building also do not comply with the 6m side and rear setback controls for Levels 4 and 5 (being those levels above 12m in height). The northern facade is set back between 5.5m and 5.9m from the side boundary, and the eastern facade is set back 5.9m from the rear boundary and 3.77m from the rear boundary near the Hargrave Street frontage. Level 6 (which is the seventh or topmost floor) is set further back from the building edges and therefore does comply with the 6m setback control.

This planning assessment report will outline and discuss why the proposed building height, parking quantum, and setbacks are acceptable and why dispensation from the above controls can be granted in the circumstances of this proposed development.

The design architect is Ben Pomroy of Rothelowman Architects (registration number 7918). The landscape consultant is Craig Tennant of LandFX (registration number 1826).

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 24 October 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 a Medical Mixed Use area. The site is zoned B4 Mixed Use in the Penrith LEP.

The application was publicly exhibited and notified to both surrounding landowners and to those who made a submission to the previous application (DA20/0767). Eight submissions have been received, seven of which raise concerns and one from Nepean Hospital in support. The main concerns raised relate to; the inadequacy of the written request pursuant to Clause 4.6; the omission of landowners' consent to remove the tree on the adjoining site; noise; traffic; parking non-compliance; setbacks; height and scale; and characterisation of the use as a

medi-hotel.

The proposed (amended) 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.

One of the conditions recommended is that the existing Development Consent for DA20/0767 is surrendered in accordance with the Act and Regulations. This is to ensure a simpler process moving forward given that the proposed hotel building in each application/consent is slightly different. The main differences are the roof profile and material, the loading dock location, the substation location, the ground floor uses, and the hotel reception location. The Regulations allow the applicant and the consent authority to clarify what works have already been carried out pursuant to the existing Development Consent upon its surrender. These works include demolition, tree removal, and excavation with piling/shoring.

## Site & Surrounds

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The subject site comprises 3 lots known as 28, 30, and 32 Somerset Street. The lots will be consolidated to create a combined site area of approximately 1,681 square metres. The consolidated site is located on the north-eastern corner of Somerset and Hargrave Streets, with its main frontage of 55.5m to Somerset Street, and its secondary frontage of 19.8m to Hargrave Street.



The dwellings on each of the lots have been demolished, as permitted by the previous Development Consent for DA20/0767. Further, the site has been cleared and the basement levels have been excavated. The two images below show the subject site.



A - VIEW NORTH UP SOMERSET STREET



B - VIEW SOUTH DOWN SOMERSET STREET

The subject site is located opposite the Nepean Public Hospital site. The surrounding area continues to experience developments and approvals relating to multi-storey buildings, many with medical related uses. The subject site is also within the Hospital Precinct of the Penrith Health and Education Precinct, and more specifically within the Medical Mixed-Use area of the precinct. However, it is also acknowledged that currently many of the properties in Hargrave Street contain existing single detached dwellings on traditional residential lots.

Multi-storey developments (both approvals and constructed) in the area include:

- Nepean Hospital Redevelopment - State Significant Development 8766 - 14 storey new hospital building (approximately 67m high), completed and further works ongoing;
- Nepean Hospital Multi-Level Car Park (see first image above) - new above ground hospital car park (approximately 22m high), completed;
- 29-33 Derby and 38 Somerset Streets (DA17/1107) (see second image below) - 4 storey health facility known as the 'Somerset Specialist Centre' (approximately 21.6m high), completed;
- 48-56 Derby Street (DA15/0730) (see third image below) - 5-8 storey residential flat building with ground floor medical uses (approximately 25.35m high), completed;
- 84-88 Parker Street (DA18/0773) - 6 storey health facility (approximately 23.9m high), completed;
- 1-11 Barber Avenue (DA18/1222) - Nepean Private Hospital expansion (approximately 20.9m high), under construction;
- 39-43 Orth Street (DA19/0801) - 5 storey private hospital (approximately 21.6m high), completed;
- 10-12 Hargrave Street (DA17/0490) - 6 storey serviced apartments building (approximately 21.6m high), completed;
- 34-36 Somerset Street (DA20/0810) - 5 storey private hospital (approximately 25.26m high), DA approved;
- 28-32 Somerset Street (the subject site) (DA16/0597) - 6 storey residential flat building with ground floor medical use (approximately 22.5m high), DA approved; and
- 28-32 Somerset Street (the subject site) (DA20/0767) - 7 storey hotel building (23.854m high), DA approved.

The first image below is the multi-storey parking for Nepean Hospital, located diagonally opposite the subject site, and constructed several years ago.



The second image below is the recently completed Somerset Specialist Centre, on the corner of Somerset and Derby Streets.



The third image below is of the mixed-use development at 48-56 Derby Street.





## Proposal

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The proposal is for the construction of three basement levels, and a seven-storey building to be used as an accommodation hotel containing 140 rooms. The applicant describes the use as a 'medi-hotel' because of its proximity to Nepean Hospital and other medical facilities in the immediate area. The hotel will be marketed to pre- and post-operative patients and their families, as well as general members of the public. No medical advice or services will occur at the hotel. The matter of land use characterisation is discussed further in the report.

The hotel will be operated by up to 30 staff. The three basement levels will provide parking for 63 vehicles with access from Hargrave Street as well as service and storage rooms. The ground floor will contain the front entry from Somerset Street, a 'wellness centre' space, a retail space, hotel rooms occupying the rear and northern side of the ground floor, and back-of-house areas such as staff toilets, the loading dock (accessed from Hargrave Street), kitchen store areas, and the waste collection room. The applicant has described the wellness centre space as being a supporting amenity for the hotel. The type of uses may include fitness/gym, therapy/counselling, yoga, meditation, or massage. The applicant has described the retail space as being a type of use to complement the wellness centre, such as supplements, natural cosmetics, reading materials, health foods, and the like.

The ground floor is set back 4m from both the Somerst Street and Hargrave Street frontages. The front setback to Somerset Street contains a double-height landscaped arbour, with suspended decked paths, deep soil planting and seating areas. Hotel rooms are then proposed on every upper level of the building, except for the seventh floor (Level 6/Rooftop). Level 6 is set back from all building edges and will contain the hotel reception area, toilets, hotel meeting room and office, as well as the hotel's food and beverage space, which includes both internal and external (rooftop) seating areas. The food and beverage space will also be available to non-guests. An area for mechanical plant is shown located in a specific services area on this level.

The building is architecturally expressed by three to four different treatments of the facade. The ground and first floors to Somerset Street appear as part of the landscaped arbour structure. The two upper hotel floors (Levels 4-5) are distinguished from the lower floors (Levels 2-3) by larger window cut-outs, with splayed reveals and more void to solid. The topmost floor, containing the hotel reception and dining areas, is set back from the building edges and enclosed in a filigree screen that is operable on the western elevation. The external terrace spaces located on the topmost level are set back behind a planted edge and a 1.8m high glass balustrade. Proposed materials include textured cladding in a mid-grey colour for facade walls, with the splayed window reveals being in a copper tone, metal finish screen walls, clear glazing at the ground floor frontages, tinted glazing for hotel rooms,

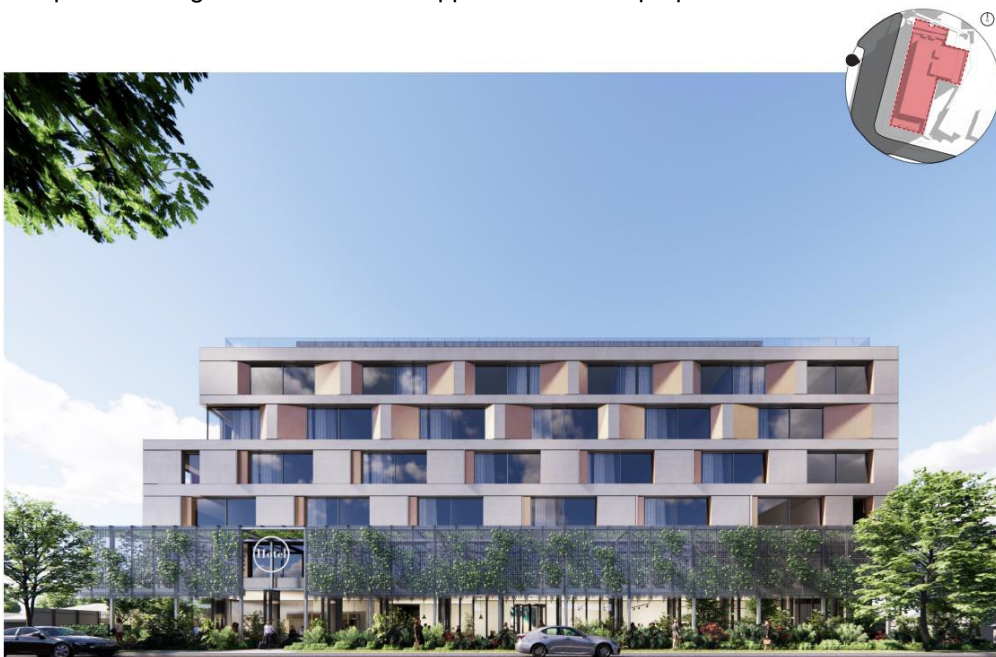
and a colourbond roof in a light grey colour (surfmist).

The proposal includes new landscaping in a variety of areas and types. This includes deep soil planting on both street frontages, within the front setback area, a landscaped arbour in the Somerset Street setback, a landscaped arbour above part of the driveway cavity, and a planter box along the edges of the outdoor dining located on the topmost floor.

The design architect is Ben Pomroy of Rothelowman Architects (registration number NSW 7918). The landscape design is by Craig Tennant of LandFX (registration number NSW 1826).

Other site preparation works have been carried out and completed as permitted by the previous Development Consent for DA20/0767. This includes demolition of dwellings, tree and vegetation removal, site clearing, excavation, and piling/shoring. Therefore, these completed works are no longer part of the current proposed development as retrospective consent cannot be issued for works already carried out.

The photomontages below show the appearance of the proposal.



**Render from Somerset Street Frontage**



**Render from Corner of Somerset and Hargrave Streets**



**Render from Hargrave Street Frontage**

## **Plans that apply**

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- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Industry and Employment) 2021
- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Precincts—Western Parkland City) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021



- **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 proposal references the removal of 5 trees, with 4 of those trees being of a 'low' category (small and in decline) and 1 tree being of moderate significance. However, the trees have now been removed from the site in accordance with the previous Development Consent for DA20/0767. This is discussed further in the section below relating to the SEPP (Biodiversity and Conservation) 2021.

- **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*.

- **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 7.12 - Developer Contributions**

In accordance with Section 7.12 of the Act, Council has adopted a 'Development Contributions Plan for Non-Residential Development' which captures development with a cost of more than \$100,000, that is not otherwise subject to a contribution pursuant to Section 7.11 of the Act. In this case the proposed development, being tourist and visitor accommodation, with a cost of more than \$100,000 triggers the ability for Council to impose a condition requiring contributions in accordance with the Plan.

The contribution rate is a fixed levy calculated at 1% of the proposed cost of carrying out the development. Therefore, the contribution amount required for the proposed development is \$341,307.00. However, the applicant has made a Section 7.12 payment for the development under Development Consent DA20/0767. Council's Contributions Planner has agreed that the recommended condition to be imposed on this application (DA22/0326) should only reflect the difference between the amount already paid and the amount generated as a result of this current proposed development, given that the proposal is essentially for the same development. Therefore, the recommended condition reflects the remaining amount payable as \$22,860.00, which will be indexed.

### **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.

The previous Development Consent for DA20/0767 permitted the removal of 5 trees. These trees have now been removed and therefore, tree removal is no longer part of this current proposal. The applicant has also confirmed that tree protection measures were installed to certain trees during the demolition and excavation phase, although these measures have now been removed as the first phase of works has been completed. However, the tree protection measures as recommended in the applicant's Arborist Report are likely to be required during all stages of the development. Therefore, the Arborist Report with the recommendations for tree protection measures (for those trees to be retained and protected) is still valid and applicable.

In addition, an updated Arborist Report was submitted to correct an error that was in the original arborist report (noting that the original report was mistakenly submitted with the DA). The original arborist report incorrectly referred to Tree 5, located on the neighbouring property, as being removed. This could not be proposed as the tree is not located on the subject site and the applicant does not have the relevant landowner's consent to undertake those works. The updated Arborist Report now confirms that Tree 5 is not proposed to be removed and requires tree protection measures. It is also noted that the Demolition Plan in the package of architectural drawings shows Tree 5 as being removed. This is incorrect. Given that demolition is not part of the proposed development, this particular drawing in the package will not be approved.

The proposal also includes new landscaping to mitigate the loss of vegetation, with the Arborist Report recommending new planting to include semi-mature trees within prominent areas. The architectural and landscape drawings show how the landscaping proposed is integral to the design of the building, particularly the landscaped arbour in the Somerset Street setback, the arbour over the basement access, and as part of future public domain works for the street upgrades.

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 (Industry and Employment) 2021**

This SEPP contains the provisions for signage. The architectural drawings show a proposed location for three building name signs for the hotel. Both side (short) elevations, being the north and south building facades, show an area for an illuminated sign at Level 5. The front elevation also shows a third illuminated sign located at Level 1 above the main hotel entry. Although there is little detail about the design and appearance of each sign, the position and number proposed is acceptable. A suitable condition is recommended to ensure that the future signage in these three locations is well designed and of a high quality finish, such as individually cut letters with no backing board. The illumination will need to be internally lit and able to be dimmed during the night-time if required.

## **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 (Precincts—Western Parkland City) 2021**

This SEPP contains controls relating to the new Western Sydney Aerotropolis. Notwithstanding that the subject site is located outside of the Aerotropolis, the SEPP identifies the site as being within a wildlife buffer zone, on the wind turbines map, and having an obstacle limitation of RL 230.5.

The objective of the wildlife buffer clause is to regulate development on land surrounding the new 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 requirements for further consideration. The proposed development, being an accommodation hotel, 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.

Regarding 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 or above 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.

The clause relating to wind turbines is not relevant to the proposed development as the proposal does not include electricity generating works comprising a wind turbine.

## **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 a Preliminary Site Investigation which concluded that the "*site can be made suitable*" subject to the following:

- "*A hazmat survey of existing buildings prior to demolition and the site being cleared by an occupational hygienist post demolition works*".
- "*Confirmation of the contamination status (and waste classification) of the soils under the existing buildings*".
- "*Development of an unexpected finds protocol for implementation during the works*".

Additional information was submitted to respond to initial concerns raised by Council's Environmental Management Team. This included an Asbestos Clearance Certificate, an asbestos tipping docket, and a Demolition Clearance letter. Council's Environmental Management Officer has reviewed the information and has raised no further objection subject to conditions.

## State Environmental Planning Policy (Transport and Infrastructure) 2021

Clause 2.48 of the SEPP relates to development likely to affect, or near, an electricity transmission or distribution network. In accordance with this clause, Endeavour Energy were notified of the application and invited to comment. Their response by letter dated 14 May 2022 states that their previous response (July 2021) is still applicable notwithstanding the changes to the substation location, and that a condition should be imposed to require the applicant to obtain evidence from Endeavour Energy confirming satisfactory arrangements have been made for the connection of electricity and the design requirements for the substation. Suitable conditions are recommended.

The Endeavour Energy response also identifies that an overhead power line from a pole in Somerset Street overhangs the subject site, although serving the adjoining site. The applicant has been made aware of this issue and a suitable condition relating to utilities is recommended.

## 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 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 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 - See discussion
Clause 7.11 Penrith Health and Education Precint	Does not comply - See discussion
Clause 7.30 Urban Heat	Complies - See discussion

### Clause 2.3 Permissibility

The site is zoned B4 Mixed Use in the Penrith LEP. "*Hotel or motel accommodation*" and "*Commerical premises*" are permitted in the zone with consent. The proposed development, being for an accommodation hotel use is permissible in the zone with development consent. The other proposed uses, such as the wellness centre space, the retail space, and the drink and dine areas, are considered to be ancillary spaces that support the hotel use. At any rate, these other spaces would also fall within the definition of "commercial premises" and are therefore also permissible with consent even if they were stand-alone spaces.

### Clause 4.3 Height of buildings



The Penrith LEP at Clause 4.3 permits a maximum building height of 18m. The proposed development will have a maximum building height of 23.854m (RL 72.00) which is to the top of the lift overruns and to the top of the A/C units on the roof. This exceeds the development standard for building height by 5.854m, which is 32.5% over the control.

The proposed breach of the development standard for building height is discussed below in relation to the applicant's written request pursuant to Clause 4.6 to vary this standard.

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

The Penrith LEP allows a maximum Floor Space Ratio of 3.5:1. The amended proposal includes a small reduction in gross floor area resulting from the stepping-in of the building footprint at Levels 4 and 5, on the northern elevation. The proposed gross floor area is now 5,708.5 square metres, which results in a compliant Floor Space Ratio of 3.37:1.

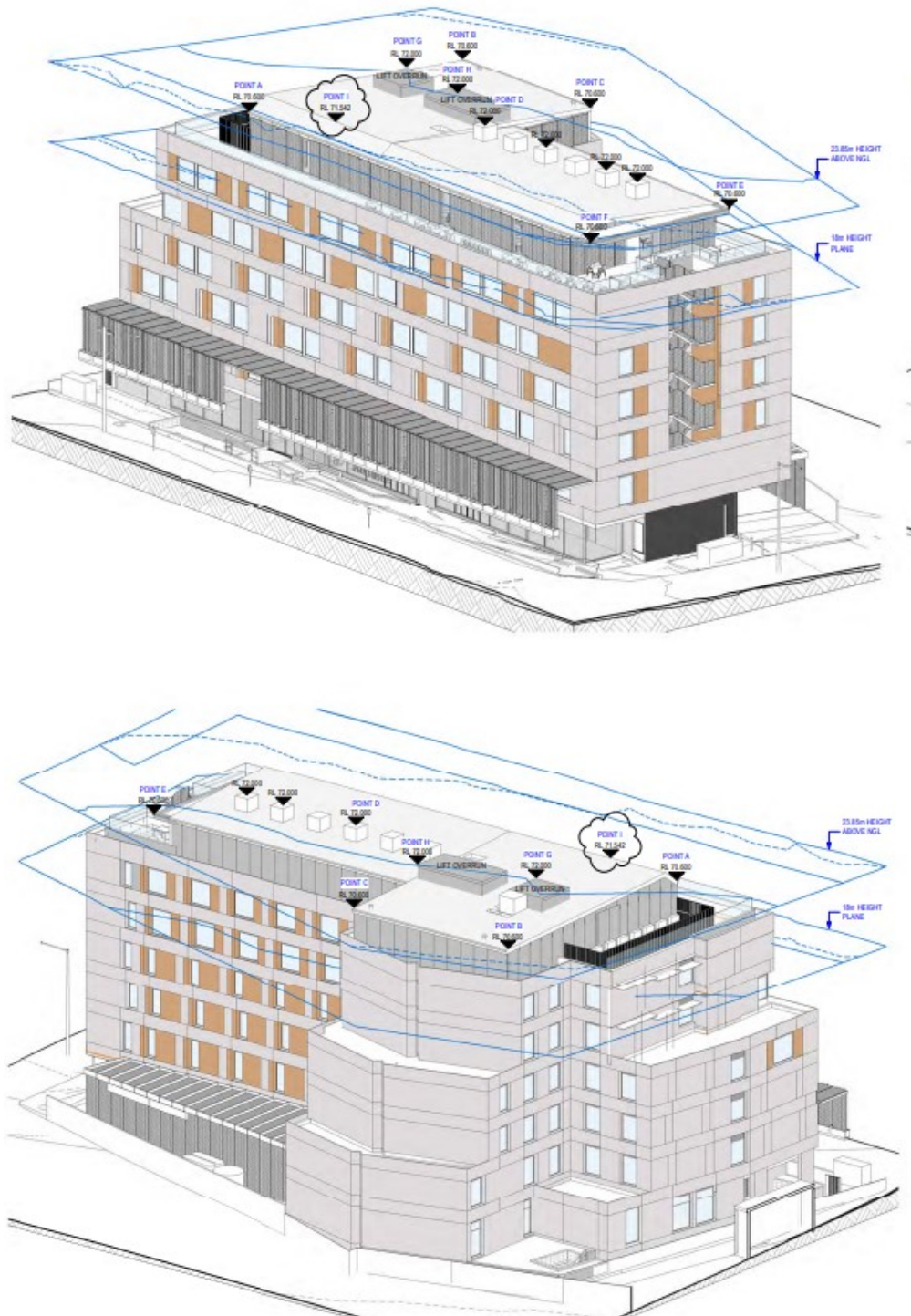
#### **Clause 4.6 Exceptions to development standards**

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 that for 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.

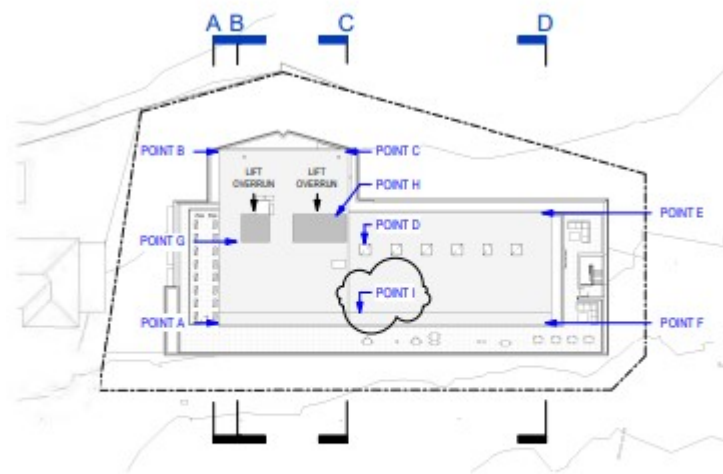
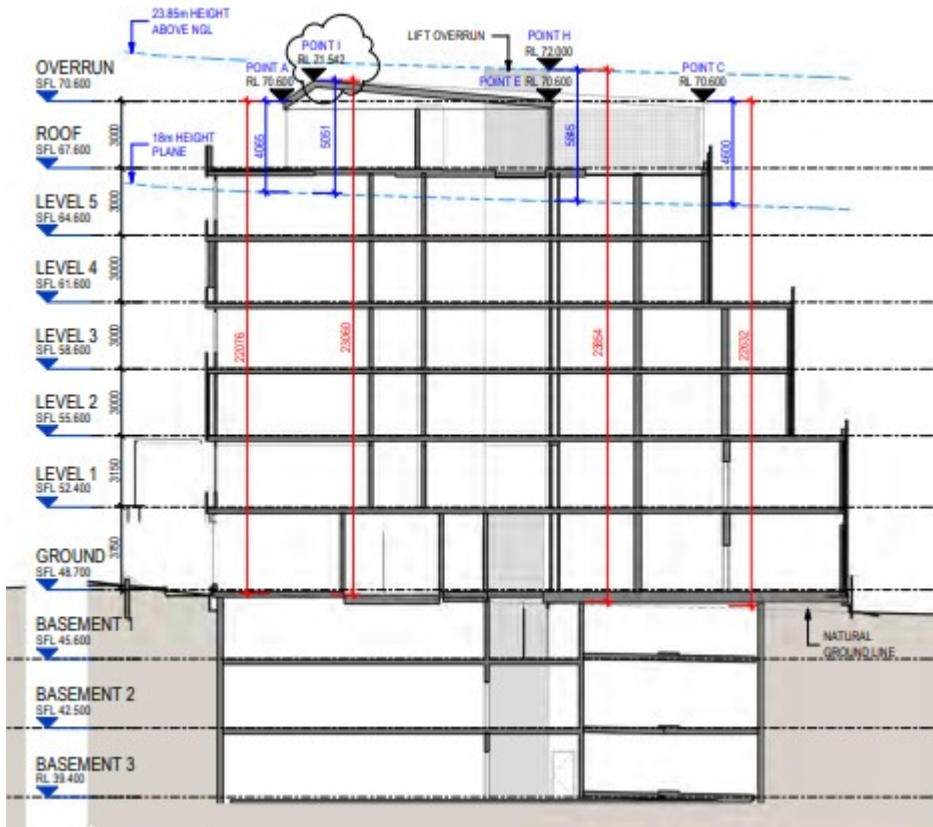
Clause 4.3 of the Penrith LEP allows a maximum height limit of **18 metres**. Building height in the LEP is defined as "*the vertical distance from ground level (existing) to the highest point of the building*" in relation to the height of a building in metres. In relation to the RL of a building, it means "*the vertical distance from the Australian Height Datum to the highest point of the building*". For the proposed development, the highest point of the building is the top of the lift overruns and the top of the A/C units located on the roof. Both the top of the lift overruns and the roof mounted A/C units have a proposed building height of **23.854 metres**, being at **RL 72.00**.

Therefore, at the highest point of the building, the proposed development will be 5.854 metres over the 18m LEP height standard. This represents a non-compliance of 32.5%.

The architectural drawings (at Drawing No. TP05.05 Revision B) includes two isometric images (front and rear views) and four sections to demonstrate the proposed building height non-compliance. Some of these images are included below. The LEP 18m height plane is shown by the lower blue line.



While the highest point of the proposed building is at RL 72.00 (23.854m), the sloping roof structure ranges from RL 70.60 to RL 71.542. This is best seen in the section extract below. The proposed height non-compliance varies at certain points along the 18m height plane and at various points of the proposed building. The non-compliance in metres is seen in the four sections in Drawing Number TP05.05 Revision B. An extract of Section B is below. It shows that at Section B the height non-compliance varies from 4.065m over to 5.845m over.



**HEIGHT PLANE KEY PLAN**

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:

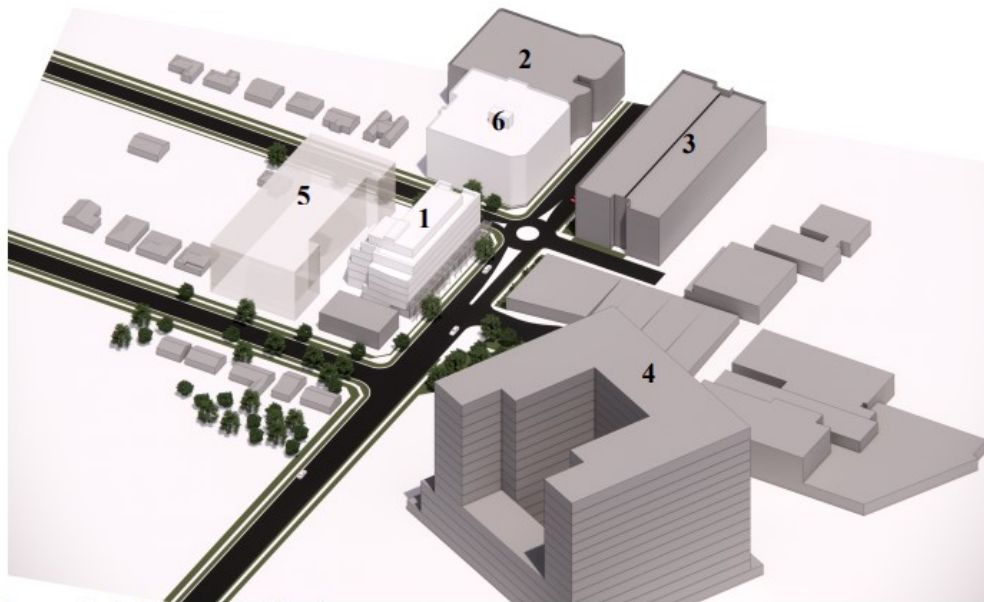
The applicant has submitted a written request that seeks to justify the proposed contravention. The written request has also been amended to include further information about the heights of surrounding developments. A full copy of the written request, dated 31 October 2022, has been provided to the Panel.

The applicant's written request makes the following statements:

- This Development Application seeks approval for the same building height approved by Council (the Local Planning Panel) in September 2021 under DA20/0767;
- While the extra 20 per cent of height available under Clause 7.11 is not available to this DA, it is still relevant to this Clause 4.6 request because it assists in establishing the existing and desired future character of the area (that is, the LEP 2010 anticipates that buildings will be built to this height in the locality);
- The height, bulk and scale of the desired future character of the locality is best described by the built form that comprises a significant part of the immediate visual catchment (i.e. context) of the subject site as described in the following table and block diagram (on pages 3 and 4 of the written request and as seen in the two images below):

No.	Site	Status	Building Height (m)
1	Subject Site (28-32 Somerset Street)	Proposed development	23.854
2	Somerset Specialist Centre (29-33 Derby Street and 38 Somerset Street)	Completed	21.6
3	Nepean Hospital Car Park	Completed	22.3 (approx.)
4	Nepean Hospital Redevelopment	Under construction	67.8
5	Private Hospital (Australian Unity site)	Concept only	21.6
6	Private Hospital (34-36 Somerset Street)	DA approved	25.26
	48-56 Derby Street	Completed	25.35
	84-88 Parker Street	Under construction	23.9
	1-11 Barber Avenue	Under construction	20.9
	39-43 Orth Street	Under construction	21.6
	10-12 Hargrave Street	Under construction	21.6





Source: Rothelowman Architects

It should be noted that Block 5, which is the adjoining site, is a concept only. There is no current proposal or approval for Block 5.

- The proposed building is consistent with the height, bulk and scale of the desired future character of the locality that comprises buildings up to 14 storeys in height, and is not out of character in terms of height, bulk and scale;
- The strict terms of Clause 4.3 of the Penrith LEP 2010 do not define the desired future character (*Woollahra Municipal Council v SJD DB2 Pty Ltd [2020] NSWLEC 115 at [53]*). Building heights set out under Clause 4.3 alone do not establish the desired future character and therefore desired future character can be evaluated by reference to matters other than strict provisions of Clause 4.3 (paragraphs 56 and 59);
- The desired future character cannot be said to be an 18 metre height limit. This is because the Penrith LEP itself anticipates that a building of 21.6 metres in height can be built on the site (provided the floor to ceiling height of the ground and first floors is 3.5m - which does not apply to the proposed development). However, this additional height also shapes what should be understood as being the desired future character. Additionally, the likely heights of future buildings in the vicinity are not the heights set under Clause 4.3, but the heights set under Clause 7.11;
- The perceived size and scale of development is 6 storeys with the roof top level being set back from each boundary so that it is not clearly visible from the public domain and reduces visual impact;
- The proposed building provides a suitable transition in scale from the significantly higher built form in the Nepean Hospital site to the medical mixed-use precinct to the east and the residential precinct further east;
- The non-compliance is not the result of excessive floor space, with the maximum permissible floor space ratio for the subject site not being achieved;
- There is at least one other nearby case at 48-56 Derby Street, where Council has departed from the maximum building height standard and approval was granted for an 8 storey residential flat building;

- The development, even with the proposed contravention, still minimises adverse impacts on the amenity of the locality. Minimising impacts does not mean no impacts or no variation in impacts (cf *Woollahra Municipal Council v SJD DB2 Pty Ltd [2020] NSWLEC 115 at [81]*). The development has been designed to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and public areas;
- The architectural plans provide a comprehensive analysis of the shadow impacts from the proposed development. This assessment shows there is a minimal / insignificant shadow impact from a scheme that is exceeding the building height limit as proposed and there would not be any improved benefits from a scheme that was compliant with the building height;
- The Acoustic Report outlines management and building controls that will ensure acceptable management of noise impacts from the dining and bar areas located on the rooftop, including hours of operation, a 1.8m high glazed balustrade, and limit on patron numbers;
- The roof top bar and dining area is also set well back from the edge of the predominant built form below and there is landscape screening proposed to the outer edges of the outdoor rooftop areas that will ensure there are no overlooking or privacy impacts. Preliminary site and broader locality analysis indicates there are no potential views that can be disrupted by the development or by the addition of the roof top amenities;
- There are no heritage items, conservation area and areas of scenic or visual importance identified that could be impacted by the proposed development;
- The proposed hotel displays design excellence and is strategically located in an area that is best suited to provide a transition in built form and land use intensity from the development in the Nepean Hospital site to the surrounding development in the mixed-use zone. The site is ideally suited to accommodate additional building height, being along Somerset Street and directly opposite the Nepean Hospital site;
- Public amenity will be boosted by the addition of a roof top food and beverage facility that is currently not being provided in the locality. The additional rooftop area and subsequent public benefits can only arise if a contravention is allowed;
- The development achieves the standard's objectives despite the non-compliance with the 18 metre height development standard (based on the above comments) and this is considered sufficient to establish that compliance with the building height standard is unreasonable or unnecessary in the circumstances of this case;
- There are sufficient environmental grounds to justify contravening the development standard. Environmental planning benefits have been identified that arise as a consequence of the building height contravention, including adverse impacts that are avoided. Another ground is that the non-complying development provides a better built form closely reflecting the existing and desired future character of the area established by the Penrith LEP as a whole (rather than just Clause 4.3);
- The non-compliant development better contributes (when compared with a compliant development) to the relevant zone objectives, given that the food and beverage facility on the rooftop level will improve the ability of the building to cater for a greater range of compatible land uses. A rooftop food and beverage facility is appealing to many, entices more guests to dine at the hotel, and local residents and health care workers can gather in a safe and pleasant environment;

- Subsequently, the 18m height standard required under Clause 4.3 is not considered appropriate for the site and adherence to the 18m height standard would (in the circumstances) have a sub-optimal environmental planning outcome that can be avoided by allowing the contravention;
- Requiring the proposal to comply with Clause 4.3 will require the loss of the rooftop amenities and would have negative social and economic consequences when compared with the proposed contravening development. The proposed rooftop facilities contribute to achieving the aims of the *Penrith LEP 2010* as well as the objectives of the *Environmental Planning and Assessment Act 1979*;
- While the numerical extent of the building height contravention is not minor, this is not, in itself, a material consideration as to whether the contravention should be allowed. Clause 4.6 is similar to the previous long-standing SEPP 1. From its earliest days it was established that SEPP 1 may be applied to vary development standards even when the variation could not be regarded as minor (*Michael Projects v Randwick Municipal Council (1982) 46 LGRA 410, 414*);
- The Court of Appeal considered the issue in *Legal and General Life v North Sydney Municipal Council (1990) 69 LGRA 201*, where a building was approved with a FSR 329% over the development standard and a height 240% over, where the Judge stated that the discretion vested in Councils under SEPP 1 is wide and unconfined; and
- Clause 4.6 is similar in terms to SEPP 1 in this respect. Relevantly, there are no provisions that make it necessary for a consent authority to decide whether the variation is minor and there is no constraint on the degree to which a consent authority may depart from a numerical standard under Clause 4.6. (The written request at pages 11 and 12 then mentions eight Land and Environment Court cases where the Court granted consent to developments that were well over the applicable development standard).

#### SWCPP (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 to the SWCPP 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 outlined above 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. Recent developments in the area have resulted in multi-storey, non-residential buildings which have been changing the streetscape appearance and built form character of the area. The proposed development is of a compatible scale and form with existing recent developments that support the health related uses in the Precinct. In addition, the scale and bulk of the proposed development does not detract from the existing and desired future character of the area;
- While both Level 5 and Level 6 of the proposed building exceed the 18m height limit, some consideration should be given as to how the proposed building relates to the 21.6m height afforded by the LEP bonus provisions at Clause 7.11, as this is relevant to the consideration of desired future character and appearance. Taking this into account, all of Level 5 and part of Level 6 (topmost floor) would fall within the 21.6m bonus height. The proposed development would be 2.254m over the possible permitted 21.6m bonus height control;
- In relation to the urban design quality of Level 6 (rooftop level), Council's Urban Design Review Panel has previously stated "*The proposed top storey (which exceeds the maximum-plus-bonus height) comprises a visually-recessed 'filigreed cage' which would be concealed substantially behind the level five parapet from close quarters vantage points along Somerset and Hargrave Streets (but would be visible from easterly locations along Hargrave Street)*";
- The structures that will breach the height controls will not generate any significant additional amenity impacts with regard to overshadowing, visual and acoustic privacy or view loss. The shadow diagrams show that the additional shadows cast by the rooftop level will fall mostly within the footpath or roadway of Hargrave Street. After 2pm there will be some additional shadow cast by the rooftop on the front yard areas of 3 residential properties on the opposite side of Hargrave Street. However, this additional area of shadow is not considered to be significant in either size or position;
- The proposed development is not near any heritage items or conservation areas, nor is the site identified as an area of scenic or visual importance; and
- The subject site is not on the interface with an area of lesser intensity, as surrounding properties have a similar zone, and FSR and height controls. Nevertheless, the scale of the proposed development does provide a transition between the higher density of the Nepean Hospital site and the existing



dwelling to the east.

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

The B4 Mixed Use zone has five objectives as follows:

- 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. The building will provide a contemporary and purpose-built hotel within walking distance of Kingswood Train Station and other medical uses. It will also provide a drink and dine option for non-guests. Therefore, the proposed development will meet the objectives of the B4 Mixed Use zone and will also be in the public interest.

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 level is set back from the property boundaries as well as from the built edge of the predominant building line. Therefore, the rooftop level will not be readily visible from vantage points in surrounding streets, and where it is visible, its appearance will be softened by the proposed filigree screening;
- The roof top level will provide a facility which is available to members of the public including medical staff as well as hotel guests. Therefore, the proposed development with the contravention will provide an added, publicly accessible facility, that will provide interest and vitality to the area;

- Level 5 contains 24 hotel rooms, representing 17% of the total number of hotel rooms proposed. Merely replacing the hotel rooms on Level 5 with the drink and dine spaces may make the development unviable, and is more likely to result in the loss of the Level 6 (rooftop) dining spaces altogether, or the transfer of those spaces to the ground floor, replacing the wellness centre and retail space. While this might be an option, it is not considered to result in a better planning outcome. The proposal, with its ground floor retail, and with its rooftop drink and dine spaces, is considered to have a better social and economic outcome than a development without those spaces;
- The lower floors of the building provide rear and side setbacks when the DCP does not require them. Therefore, the building footprint is smaller on the lower levels than it could be. Although it is acknowledged that hotel rooms require windows, the lower floors could have potentially been designed to be closer to the site's rear and side boundaries (containing rooms that are not required to have windows such as back of house areas). This could have resulted in a shorter, but fatter building, which would not have been a better planning outcome. The proposed development, being smaller in footprint and having floorplates that are stepped and varied but resulting in a higher building than the control allows, is a better planning outcome. This is because the proposed scale and envelope provides an articulated facade and allows deep soil landscaping; and
- The building provides a 4m front setback to Somerset Street (which is required by the DCP) as well as a 4m front setback to Hargrave Street (which is not a DCP requirement). Both front setbacks permit landscaping and a softer building edge to the streets. It should also be noted that some other developments in the area do not provide the front setback to Somerset Street, as they are built to the street edge. Therefore, the proposed building has a smaller footprint than might otherwise be permitted or argued for, resulting in a higher building, but one that has a better urban design outcome.

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 7.4 Sustainable development**

The application is accompanied by an Environmentally Sustainable Design (ESD) Report which outlines strategies to target sustainability targets within the building construction and design. The report:

- states that the building can comply with Section J of the National Construction Code (glazing and building thermal performance);
- provides recommendations for building fabric (for walls, roof, floors and the like);
- provides recommendations for building services;
- requires an on-site rainwater tank (proposed) and water saving taps and plumbing;
- states that the architectural design includes vertical and horizontal shading on the western and eastern facades, with limited openings on the northern and southern facades;
- states that internal blinds will be used for hotel rooms;
- states that photovoltaic panels will be installed on the roof; and
- states that energy recovery ventilators are to be located on the roof to recover heat from the A/C units before being exhausted (saving energy in the process).

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

The ground floor frontage to Somerset Street contains both active uses and an active facade. The uses include a 'wellness centre' on the northern side of the ground floor, and a retail space on the southern side of the ground floor. Both spaces have shopfront style, glass facades to Somerset Street, with the retail space having access from the street. The proposed building is also set back 4m from the property boundary to Somerset Street. This setback area provides deep soil landscaping with a decked path, in the form of a two storey landscaped arbour. The decked path includes seating and access to both the hotel and the retail space.

### **Clause 7.11 Penrith Health and Education Precinct**

The site is located within the Penrith Health and Education Precinct and 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.

For the development, this could allow a maximum building height of 21.6m, if 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 buildings' future use, and to encourage non-residential uses in the precinct to support the medical, mixed-use area.

The proposed development does not achieve the 3.5m floor to ceiling height at first floor level, with a 3m floor to ceiling height proposed. Therefore, the pre-condition of Clause 7.11 is not met and the proposed development cannot utilise the 20% additional height afforded by Clause 7.11.

### **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 architect to respond to this new LEP clause.

(a) *Maximise green infrastructure*: The proposed building is set back 4m from both Somerset and Hargrave Streets, with this setback area being deep soil and containing new vegetation. The Somerset Street setback also includes a landscaped arbour which provides shading to the western facade of the building at the two lower floors. A landscaped arbour is also proposed above some of the hardstand driveway. The proposal will retain 3 existing street trees and includes new trees and deep soil landscaping along the other property boundaries (side and rear). Planting is also integrated along the western and southern edges of the rooftop communal space.

(b) *Retain water in the landscape*: Much of the landscaping proposed is within deep soil areas. The Somerset Street setback area is designed as a landscaped bioswale, with stormwater management devices concealed in the landscape planting. The suspended decked pathways allow water filtration to the deep soil plantings below. The proposal includes a 15kl rainwater tank that will be used for irrigation (and toilet use). The rainwater tank will collect rainwater from approximately 768sqm of roof area to achieve a non-potable reuse of 91% which is above Council's requirement of 80% reuse. Water saving taps and plumbing will also be used.

(c) *Use design measures to ensure the thermal performance of the development achieves a high degree of passive cooling*: The main landscaped arbour provides additional shading to the hotel's western facade to Somerset Street, while the second landscaped arbour over the driveway reduces heat reflections coming off the hardstand surface. The ESD Report states that the proposed development will meet Section J of the National Construction Code (relating to glazing and thermal performance). The NCC requirements are sufficient to ensure a reasonable thermal performance outcome for Penrith's conditions. In addition, the hotel rooms will use internal blinds, and the windows of the northern and western facades have deeper reveals and framed openings. The proposed development has certain areas which can function to provide a cool refuge. This includes the landscaped arbour and decked pathway, the arrival entry, and the internal roof top areas. The upper floor communal spaces are screened towards the west by a series of fixed and operable mesh screens. The screens have a similar appearance to the arbour and will reduce western sun penetration into the spaces and reduce heat loadings on glass. On the western and southern edges of the communal canopy space, the roof projects outwards to provide shading in mid-summer to the glass.

(d) *Use building, paving and other materials that minimise heat impacts*: The architectural package outlines the materials and the submitted ESD Report makes further recommendations for building materials. The external materials are generally light in colour or mid-tone and are appropriate for the development. The proposed roof has been amended from a flat concrete slab design to a colourbond pitched roof in a light grey colour.

(e) *Reduce reliance on mechanical ventilation and cooling systems, to conserve energy and to minimise heat sources*: The submitted ESD Report makes recommendations for the building services, including that photovoltaic panels will be used, and that energy recovery ventilators will be located on the roof and will recover heat from the A/C units before being exhausted (saving energy in the process).

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

**Development Control Plan 2014**

<b>Provision</b>	<b>Compliance</b>
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	N/A
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
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**

**Medi-Hotel Use**

The documentation describes the proposed use as a medi-hotel. Although NSW Health does not have specific information relating to medi-hotels, the applicant has provided information on how this concept works in Victoria. Please note that the proposed use is not related to hotels used during the Covid pandemic for quarantine purposes.

Health Victoria states that "*Medihotels fulfil the following functions. They:*

- *provide high-quality, non-ward type accommodation and hotel services that reflect the environment and*

- *character of a hotel;*
- *are located within or in close proximity to a hospital;*
- *are accessed on referral from clinical, diagnostic and other hospital units following a screening process;*
- *provide minimal supervision and support for patients;*
- *ensure access to prearranged episodic care similar to that generally available within the community; and*
- *provide facilities for a family member or carer as required".*

The design of the proposed hotel contains specific elements to support its use in the Penrith Health and Education Precinct. This includes 12 accessible rooms, larger suites that can provide clearances for guests, and a nurse's room on each floor that creates storage space for wheelchairs or medical supplies. The applicant also states that the proposed wellness space, wellness retail, and the food and beverage facility is beyond a standard hotel model. On this point, it is acknowledged that the future use of the wellness centre and retail space cannot be restricted to only 'wellness' uses, given that the Exempt and Complying Codes SEPP allows certain changes of use.

The applicant also points to a support letter from Nepean Hospital dated 7 September 2020. In that letter, the local health service states that the food, beverage, and conferencing facilities are much needed in the area, will make a positive contribution to the community, will support the Nepean Health Precinct, and will enhance the total care experience for patients and their families. It is noted that the proposed hotel does not contain a conference facility, although a small meeting room is included on the top floor.

It is acknowledged that the hotel use is likely to attract and cater for guests that will be using the surrounding hospital and health facilities, as well as other members of the public. The hotel is located in close proximity to Nepean Hospital which is a recognised feature of a medi-hotel. At any rate, the planning assessment of the proposal has been carried out having regard to the controls relating to hotels and tourist and visitor accommodation, as defined by the Penrith LEP. The assessment relating to parking does not solely rely on the use being described by the applicant as a medi-hotel.

### **Urban Design and Architectural Expression**

The proposed development is the culmination of previous reviews by Council's Urban Design Review Panel (UDRP) and amendments made to the proposed development, these occurring both prior to and after determination of the previous development consent for DA20/0767. The resolved outcomes in terms of the building's detailed design and appearance have been retained in this current application.

The current proposal has also been further reviewed by the UDRP. The UDRP's additional comments are outlined in *italics* below with discussion following:

- *The open fire stair on the Hargrave Street frontage should not be enclosed at ground and first floor levels as its open presentation to ground ameliorated and broke up the mass of the external wall treatments.*

The architect has advised that the fire stair to Hargrave Street has to be enclosed at ground and first floor levels and that therefore the change suggested by the UDRP could not be made. The specific response is *"the structural requirements of the building cantilever over the driveway results in limitations to the previously proposed openings to the fire stair at Level 1. To counter this reduction in passive surveillance, eight additional windows have now been added on the South-Western corner from Level 1 to Level 4 and above the loading dock on the South-Eastern corner from Level 2 to Level 5. This provides additional articulation and visual interest to the southern facade, as requested in the approved conditions of consent. The shop-front glazing to the corner has been reduced by approximately 1m in order to provide fire*



*separation from the egress stair and door swings. Activation as proposed in the original DA is still included for the use on ground level".* The facade modulation and articulation of the Hargrave Street elevation is acceptable. In particular, the eight additional windows have a splayed treatment and surrounds that break up the facade massing.

- *Provide reasoning for the relocation of the substation (and the hydrant boosters) and provide landscaping to ameliorate its presentation to the street if it cannot be relocated out of the setback zones or reorientated with its narrowest frontage to the street.*

The substation has been relocated from the primary street frontage on Somerset Street to the secondary street frontage on Hargrave Street. The architect has advised that this was done in order to co-locate it with the main service and vehicular access point on Hargrave Street. This change results in a better presentation to Somerset Street and increased landscape treatment near the building's main entry. Although it is acknowledged that the Somerset Street frontage will now accommodate the hydrant booster equipment, the relocation of the substation has also resulted in the removal of the previously approved blast wall near the northern side boundary. It is therefore preferred to have the substation on the secondary street frontage and without the need for a blast wall. The architect has also advised that the existing required solid fire walls at the Hargrave Street elevation are able to perform a double use as protection for adjoining properties from the substation.

Regarding reorientation of the substation (to have its shorter length facing the street) the architect has advised that this cannot occur as the substation design has been carried out in accordance with the local electricity authority requirements. However, landscaping is proposed around the substation to screen its presence as far as possible. In addition, a condition is recommended to be imposed to require that the substation colour finish is either a khaki-green, a dark recessive colour, or contain a painted mural. This is to avoid the lighter green colour that is present on substations in the area as the lighter colour is less visually recessive.

- *The metal screen finish used for the lower levels fronting Somerset Street and for the top storey should be retained.*

The removal of the metal shroud feature to the northern elevation of the rooftop level was a drafting error which has now been corrected in the amended drawings. The metal screen finish has been reinstated.

- *The slight change to the dining area and dining terrace at the south-eastern corner is not a concern.*

Noted.

- *The replacement of trees along the driveway with rainwater tanks is not acceptable, and tree planting needs to be reinstated in this location.*

The amended architectural drawings have updated the rainwater tank sizes and positions along the eastern edge of the driveway. Landscaping and tree planting has been reinstated along the eastern setback. The height of the tanks will not exceed the height of the proposed 2m high fence. A condition is recommended to require that all fencing is wholly contained within the boundaries of the subject site unless the relevant landowner's consent is obtained to install the fencing to straddle the property boundaries.

## **Traffic**

The application is accompanied by a Traffic Report (July 2021) and an additional traffic letter (March 2022) which was submitted to address the particular changes between the previously approved development and the current proposed development. Further traffic information was then submitted by letter dated September

2022 to respond to initial feedback from Council staff.

The traffic information submitted assesses the existing performance and capacity of roads near the site, as well as the location and availability of public transport. It then makes estimates of the post-development performance of intersections near the subject site. The report uses the 'existing' traffic volumes of a previous survey carried out in 2015, and increases these results by a growth rate of 2% per annum. This was in response to the Covid pandemic situation where current traffic volumes in a new survey would not reflect the normal use of roads.

This approach is reasonable and acceptable in the circumstances. However, clarification was sought given that Nepean Hospital has been undergoing redevelopment since 2015. The applicant's Traffic Engineer has confirmed that the multi-storey hospital car park located near the site on Somerset Street **was** included in the previous traffic survey. However, the more recent multi-storey hospital car park, which is located at the corner Parker Street and Barber Avenue, did not have available data in terms of obtaining suitable forecasts of the expected impacts of that redevelopment on Somerset Street. Nevertheless, access to this recent multi-storey car park is from the southern and western parts of the hospital campus, and not near the subject site.

The additional traffic information estimates that the proposal would result in a net increase of 48 vehicle trips on the surrounding road network during peak hours. This would be 36 additional vehicle trips to and from the Hargrave Street driveway, 14 trips to and from the eastern kerb of Somerset Street, and 2 fewer trips from the existing residential driveways in Somerset Street (taking into account removal of the existing dwellings on the site). Most of these vehicle movements would be in Somerset Street.

The information concludes that the intersection of Somerset and Hargrave Streets would continue to operate at a good level of service, with some short delays, but also spare capacity. The report also acknowledges that the NSW Ambulance Service uses Somerset Street and states that the increase in the average delay to northbound and southbound vehicles along Somerset Street (including ambulances) will be 0.1 seconds per vehicle.

Council's Engineer has stated that the information submitted with the application shows that traffic generated by the development is able to be accommodated in the road network.

## **Parking**

The proposal includes three basement levels which accommodate a total of **63** car parking spaces. Basement Level 1 contains 19 spaces, Basement 2 contains 20 spaces, and Basement 3 contains 24 spaces. Given the shape and size of the site, the need to provide deep soil planting, and the requirement for a two-way ramp and services in the basement, each basement level is restricted in the amount of parking spaces it can accommodate.

The quantum of parking proposed to be provided on-site does not comply with the rate required by the Penrith DCP. Part C10 of the Penrith DCP has a specific category for '*hotel or motel accommodation*', which requires "*1 space per unit plus 1 space per manager plus 1 space per 6 employees*". Based on the hotel having 140 rooms, and 30 staff, the proposed **hotel rooms** would require **146** parking spaces.

However, the manner in which parking rates are calculated (using the Penrith DCP) for the other uses and areas of the proposed hotel is somewhat varied. The proposed hotel development includes a wellness centre (67sqm) and wellness retail (159sqm) on the ground floor. There is also a proposed '*hotel food & beverage*' (213sqm) and an '*outdoor terrace*' (168.7sqm) on the topmost floor. All of these non-room spaces either are, or can be, available to non-guests (members of the general public) as well as hotel guests. It is acknowledged that the additional traffic letter dated September 2022 states that the wellness centre is only

available to hotel guests. In addition, access to this space is from within the building, not directly from the street frontage. However, it is not considered a necessity that the wellness centre is only restricted to hotel guests, given that its future use could include a range of activities that might also be accessible to local workers and residents.

Therefore, for the purpose of calculating parking rates for the non-room spaces, these can be viewed in at least three ways:

- the spaces are seen as independent and stand-alone uses, with the full DCP parking rates applied to each individual space; or
- as above, but with the three spaces granted a dispensation given that a proportion of the customers will be hotel guests already on the premises; or
- the retail and wellness spaces are seen as stand-alone uses (with or without a dispensation), but the hotel food and beverage spaces are seen as an ancillary part of the hotel offering, with no parking rates applied to the drink and dine area, and in acknowledgment that the drink and dine spaces will not be sub-let to a third party and will be operated by the hotel (see comments below).

It is therefore prudent to provide the consent authority with the various quantum of parking that the proposed development could generate, so that the Panel members have the full suite of information to consider.

For retail uses, the DCP requires "*1 space per 30sqm GFA*". Based on the ground floor retail space being 159sqm, this space would require **5.3** parking spaces. For a fitness centre (gym), the DCP requires '*7 spaces per 100sqm*'. Based on the wellness centre being 67sqm (and concluding that the best-fit category is a fitness centre), the wellness centre would require **4.69** spaces. For a restaurant/reception/function room, the DCP requires "*1 space per 6sqm of seating area, plus 1 space per employee*". Based on the hotel food and beverage having an indoor space of 213sqm and an outdoor space of 168.7sqm, the dining spaces would require **63.6** spaces. This figure is based on the 1 space per 6sqm rate and has not calculated additional spaces for employees, as the number of employees has already been calculated using the hotel rate.

Therefore, based on calculating parking rates for each proposed use as a stand-alone or independent use, the proposed development would require **220** on-site parking spaces.

However, it is considered that the hotel food and beverage space is an ancillary component of the hotel and should not be seen as a stand-alone or independent restaurant. It is also considered that a large proportion of patrons to the dining spaces will be existing hotel guests. Although the food and beverage spaces will also be available to the public, the space will be operated by the hotel operator. In determining the previous Development Application (DA20/0767), the Local Planning Panel imposed a condition on the consent to state that the drink and dine spaces could not be sub-let to a third party and would be operated by the hotel. The same condition is recommended to be imposed on this proposal.

Therefore, if the 63.6 parking spaces attributed to the dining area were deleted from the total, the quantum of parking for the proposed development would be reduced to **156**. If the view is that some parking should be attributed to the dining spaces, but with a dispensation of either 50% (32 spaces required) or 25% (48 spaces required), the total for the proposed development would be between **188** to **204** spaces.

No dispensation or reduction has been given for the wellness retail and wellness centre on the ground floor. The retail space is likely to be sub-let to a third party and is designed to have its primary frontage and entry to Somerset Street. The wellness centre also has the possibility of being sub-let, and although its main entrance is from within the building, its shopfront appearance may attract more passing patrons as it has a high street presence.

Either way the parking numbers using the Penrith DCP are calculated, the proposed development results in a shortfall, given that **63** on-site parking spaces are proposed. The shortfall varies from between **157** spaces to **93** spaces.

The applicant has submitted justification for the parking non-compliance in their Traffic Report. The Traffic Report includes the following relevant statements:

- *That there is a marked difference in the operational and therefore parking requirements of a motel compared with the hotel proposed. A motel (derived from the term "motor hotels") generally caters for people travelling by car and staying overnight before continuing on a car-based journey. However, the expectation for a visitor to a hotel is different in terms of expecting to park their car near their room, and in this case, the proposed hotel is designed and located primarily to cater for hospital patients and their families who are more likely to catch public transport or a taxi because of convenience. Therefore, the parking rate for a hotel and a motel should not be grouped together as the two uses are different;*
- *Penrith Council has previously approved tourist and visitor accommodation (serviced apartments) with a lesser amount of parking than the required DCP rate, at 10-12 Hargrave Street (DA17/0490) and Quest Apartments in Thornton (DA16/0357). (Note: Both of these DAs cited as an example of non-compliant parking were for serviced apartments. The accompanying planning assessment reports noted that the Penrith DCP does not have specific parking rates for serviced apartments, so in those cases the RTA Guide was used);*
- *This position is supported by the RTA (now Transport for NSW) who differentiates between the travel and parking demand characteristics of motels and tourist hotels in their RTA's Guide to Traffic Generating Developments (RTA Guide). The RTA Guide has a separate definition for a 'motel' and a 'hotel' referencing that a motel is substantially used for overnight accommodation of travellers and their vehicles. It recommends that motels provide one space per unit plus one space per two employees;*
- *For a 'hotel' the RTA Guide contains no current research data on tourist hotels but indicates that based on model averages from surveys conducted in the Sydney CBD, it suggests a parking rate of one space for every 5 rooms in a 5-star hotel and one space for every 4 rooms in a 3 or 4-star hotel. Based on this rate, the proposed development would require between 28 and 35 spaces;*
- *The Traffic Report has carried out a parking demand study using analysis from comparable sites where tourist hotels are situated within health precincts. The study includes St Leonards (North Shore Hospital), the 'Medi-Stay' rooms near St George Private and St George Public Hospitals at Kogarah, and the Murdoch Health and Knowledge Precinct in Perth;*
- *For the St Leonards location, the study found that a 140 room hotel would require 59 parking spaces (47 spaces for rooms and 12 spaces for staff), the Perth location would require 47 spaces, and the Kogarah location provides no onsite parking. (Note: The 'Medi-Stay' at Kogarah appears to be a total of 6 rooms on Level 2 of a multi-storey building);*
- *The study found that parking was required at a rate of 1 space per 3 accommodation rooms, which for this proposed development would equate to 47 spaces;*
- *While surveys of a comparable development would be informative, we have been unable to identify a comparable medi-hotel in a similar location in Western Sydney in order to provide data to quantify the assumed reduction in overall parking demand due to the high levels of guests and locals (such as hospital workers) being users of the ancillary facilities;*

- *The ancillary areas of the hotel such as the dining areas, retail, and wellness centre are primarily for the use of hotel guests, although also available to members of the public. However, it is expected that patrons from the 'public' category are likely to be people already in the area (such as staff and patrons from surrounding medical uses);*
- *Direct application of each of the DCP rates in full for each of the other ancillary facilities at the proposed medi-hotel would assume that each of the proposed ancillary facilities is a standalone operation, with all customers and staff being drawn from outside the site. Furthermore, it would imply that the peak parking demands of all the standalone uses would need to be met simultaneously, which doesn't take into account that a user of one of the ancillary areas may also be a user of another ancillary area on the same visit, e.g., a customer of the wellness centre may also be a customer of the wellness retail on the same visit; and*
- *Racks to park 16 bicycles are provided in the basement and at ground level.*

It is acknowledged that the proposed parking to be provided on the site does not comply with the Penrith DCP. The extent of non-compliance varies depending on how the parking rates in the DCP are applied. 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.

Having regard to this, it is considered that the on-site parking proposed is acceptable for the following reasons:

- There is some merit to the argument about the different style of use for motels and hotels and it is acknowledged that the RTA Guide also differentiates between the two;
- The proposal would comply with the parking rates suggested in the RTA Guide for a 3-4 star hotel;
- The site is located within 800m of Kingswood Train Station and is near bus routes that service Nepean Hospital;
- The proposal is compliant with (and under) the Floor Space Ratio controls for the site, floor space being a control that restricts the intensity of use;
- The rooftop dining uses does not change the number of hotel rooms proposed so is not seeking to increase the yield of rooms;
- The applicant has stated that the hotel operator will manage the entirety of the hotel and that the food and drink spaces will not be stand-alone or separately managed, with this also being a recommended condition;
- The basement footprint is constricted by the size and shape of the site;
- The basement footprint has been intentionally set back from property boundaries to provide deep soil landscaping along both street frontages and the rear setback, therefore, each basement level accommodates no more than 24 parking spaces;
- The previous proposal (DA20/0767) was amended to include the third level of basement as a means to increase the number of on-site parking spaces. This third level has been retained in the current proposed development;
- To provide fully DCP compliant on-site parking would require approximately 6 basement levels, or a substantial reduction of hotel rooms (potentially creating a three storey building). Either option is likely to make the proposal economically unviable, and could result in a less desirable urban form for the locality; and
- Other aspects of the proposal are acceptable, including the quality of the architectural appearance of the building and the positive contribution to the Health and Education Precinct.

In addition, it is considered that the on-site parking 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.

## Noise

The application was accompanied by an original Acoustic Report dated April 2022. This report was then amended twice to address initial comments made by Council staff and in the public submissions. The amended Acoustic Report is dated 11 January 2023. It is accompanied by additional acoustic information (letter dated 27 September 2022 and memorandum dated 11 January 2023). The amended Acoustic Report and covering information specifically address the proposed development as lodged with this new DA, noting the differences in this application from the approved development, such as the loading dock location and ground floor uses. The acoustic information also responds to the comments made in the public submissions and gives consideration to the potential noise intrusion from traffic and helicopter noise, the noise emissions associated with mechanical plant, the dining and bar spaces, as well as the loading dock and driveway.

The matters that were required to be addressed in the amended Acoustic Report related to; clarifying the data for the daytime period; requiring a noise assessment of the basement (including the workshop laundry and car parking spaces); requiring further noise assessment from the wellness centre and wellness retail (including the outdoor spaces); clarifying the noise predictions from the rooftop dining spaces; and clarifying whether the acoustic report took into account the potential height/levels of approved developments nearby.

The amended Acoustic Report establishes appropriate noise criteria for the development and acoustic separation requirements. The report makes recommendations including identifying construction elements to address noise intrusion, such as glazing requirements and external wall construction. The report also outlines management measures, such as restricting the use of music on the topmost floor, operational hours, patron numbers, and requiring a glazed/solid balustrade around the perimeter of the outdoor dining area, to a height of 1.8m.

Subject to these requirements and management, the amended Acoustic Report found that:

- noise intrusion could be effectively addressed by construction elements;
- the use of the licensed areas could comply with the day, evening and early night time criteria (noting that the day criteria was found to be exceeded by 1dBA which is deemed to be negligible);
- there was no significant increase to traffic noise as a result of the movements associated with the development; and
- noise associated with the use of the loading dock driveway could also comply.

The specific operational requirements recommended in the Acoustic Report are:

- the **internal** non-hotel room spaces (being the ground floor wellness centre, wellness retail, and the top floor dining/bar) can be used every day for 24 hours. (Notwithstanding this recommendation from an acoustic viewpoint, a condition further restricting the operating hours of the two ground floor spaces is recommended);
- the **external** drink/dine areas of the topmost floor, and the external area associated with the ground floor wellness centre are restricted to between 7am to 10pm Monday to Saturday, and between 8am to 10pm on Sundays and public holidays;
- all windows and doors of any internal areas of the ground floor and roof-top area are to be closed after 10pm and not open before 7am. (The recommended condition will clarify that doors can be used for any required ingress, egress, or emergencies);
- background music can only be used within internal areas and cannot exceed 75dBA within the space;



- the glazed/solid balustrade around the perimeter of the outdoor drink/dine areas must be maintained to a height of 1.8m;
- the landscaped arbour over the driveway shall include solid panels within the arbour frame along the eastern side, and a landscaped 'lid' over the ramp;
- patrons (not including staff) must be restricted to a maximum of 84 for the wellness retail, 36 internal for the wellness centre, 5 external for the wellness centre, 75 internal for the Level 6 dining (when the windows are permitted to be open during the day time hours), 99 external for the Level 6 rooftop dining areas between the hours of 7am and 6pm, 60 external for the Level 6 rooftop dining area between the hours of 6pm and 10pm, and 174 internal for the Level 6 dining area (being when the windows must be closed at night-time, representing the maximum 99 external guests that can be added to the internal total).

Council's Environmental Management Officer has advised that *"It is considered that the potential noise impacts associated with the development have been satisfactorily addressed. The development can comply with the established noise criteria, subject to compliance with a number of recommendations. This will be ensured through conditions of consent, should approval be granted"*.

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

The site is deemed to be suitable for the proposed development and use, subject to conditions. The application is accompanied by a Geotechnical Report which makes suitable recommendations for the basement construction. The proposed method of stormwater drainage has been refined to include upgrade of the existing infrastructure in Hargrave Street. The proposed development has considered the shape of the site and its street frontages, and the building is suitably set back from property boundaries.

### **Section 4.15(1)(d) Any Submissions**

#### **Community Consultation**

The application was publicly exhibited and notified to surrounding landowners and to those who made a submission to the previous application (DA20/0767). A total of eight submissions have been received. Seven of the submissions raise concerns and one submission is in support of the proposed development.

The submission in support is from the Nepean Blue Mountains Local Health District. This letter states that a high quality medi-hotel with food, beverage and conferencing facilities is much needed in the area adjacent to Nepean Hospital. In terms of car parking, the letter also states that Nepean Hospital would be willing to discuss potential arrangements for the medi-hotel operator to access some of their car parking spaces if required. These comments are noted.

The comments and concerns in the remaining seven submissions are summarised and responded to below.

<b>Submission Comment</b>	<b>Response</b>
<p><b>Land Use Characterisation:</b></p> <p>The proposal appears to rely on categorising the land use as a 'medi-hotel to justify parking non-compliances.</p>	<p>Both matters relating to proposed use and parking have been discussed above in the 'Likely Impacts' section of this report.</p> <p>In addition, the standard instrument (and Penrith LEP) is written in a manner that provides</p>

The nomination of ground floor area as wellness retail and wellness centre without operational details and the nomination of a nurse's storage cupboard on the floor plans does not support the claim that the proposed development should be classified as a medi-hotel.

The material submitted with the development application does not provide a valid justification for the development of a tourist hotel in a medical precinct.

definitions for groups of uses, such as "*residential*" or "*tourist and visitor accommodation*". In some cases, these groups are then further defined into more specific categories, such as "*hotel and motel accommodation*", or "*boarding house*".

However, not all uses are specifically defined and not all uses are incorporated into planning controls, sometimes because the social and economic environment changes quicker than planning legislation.

For example, the NSW Health website does not contain any information about 'medi-hotels' (apart from the more recent reference to a Covid-19 quarantine hotel), although Health Victoria does have information about this type of use. This is also outlined above.

In this particular case, the proposed dominant use is considered to be an accommodation hotel. The best fit definition for planning purposes is a "*hotel or motel accommodation*" as per the Penrith LEP. The planning assessment has had regard to the relevant controls for accommodation hotels.

However, this does not preclude a merit assessment based on the details provided by the applicant about the proposed use.

In terms of parking numbers, this matter has been discussed above. Consideration of the parking non-compliance has taken into account a number of factors, not just the applicant's justification based on the use being a medi-hotel.

In terms of the proposed ground floor uses, it is acknowledged that the notation on the floor plan (being the references to 'wellness') does not result in the type of future use always being associated with wellness or health. The ground floor uses have been considered in terms of the larger space being a retail shop, and the smaller space being either a gym type use or a more broad commercial use, although it could also be used by the hotel as an ancillary space associated with a facility for hotel guests.

In terms of providing a valid justification for the proposed use, a tourist and visitor accommodation use is permitted with consent in the B4 zone. Further, the DCP states that the Medical Mixed-

	<p>Use Precinct encourages development that would support the operation of the hospital, such as medical offices, pharmacies, short-term accommodation, convenience stores and other forms of retail that will meet the needs of visitors and people using the medical services offered within the precinct.</p> <p>Therefore, the proposed hotel use, being a form of short-term accommodation, as well as the dining and retails use proposed, is in line with the anticipated and desired uses in the area.</p>
<p><b>Traffic:</b></p> <p>The area is already jam packed with traffic. Local streets are used by residents, hospital staff, visitors and relatives to the hospital.</p> <p>The proposed development will add congestion and more vehicles to the area, including buses and contractors coming to and from the site (such as garbage collection and laundry services).</p> <p>Hargrave Street is a narrow street and there are existing issues with cars proceeding in opposite ways. The driveway should not be in Hargrave Street.</p>	<p>It is acknowledged that the area is undergoing change through recent developments. This is the result of changes to the planning controls which permitted an uplift in height, floor space, and uses, so as to support the locality's position near Nepean Hospital. With this, it is expected that there will be more vehicle movements and activity in the area and streets.</p> <p>The application is accompanied by an amended Traffic Report. Traffic generation has been discussed above in the 'Likely Impacts' section of this report.</p> <p>The Traffic Report found that although the proposed development would generate an additional 48 vehicle trips during peak periods, the surrounding roads and intersections have capacity to accommodate the increase.</p> <p>Regarding Hargrave Street, the Traffic Report acknowledges that this is a local road that is 7.2m wide, and is a one-lane, two-way road. Parking bays are delineated on either side of the road, and the road widths permit only one direction of travel between parked cars. If vehicles approach from opposite directions, one must wait at a driveway to allow the other to pass.</p> <p>The driveway is proposed to be on Hargrave Street as this is the secondary frontage to the site. The Somerset Street frontage is designed to be set back 4m from the street, and to contain deep soil landscaping including a double-height landscaped arbour. From an urban design perspective, this is a better outcome than interrupting the main facade on Somerset Street by providing driveway at that frontage.</p>

The Traffic Report states that the proposed development will result in an additional 36 vehicle trips to and from the Hargrave Street driveway during the peak morning and afternoon hours. The Traffic Report estimates that half of these trips would approach/depart from Somerset Street.

The Traffic Report has predicted that the intersection of Hargrave and Somerset Streets will still function at a satisfactory level as a result of the proposed development, with the wait time at that intersection expected to be approximately 8.2 seconds by 2030.

Council's Traffic Engineer has raised no concerns with the traffic generation as a result of the proposed development and the impact on the road network and intersections.

<p><b>Poor Location:</b></p> <p>This is not a good location for a hotel development because of traffic and overshadowing, which will make people sick if your property is in shade with mould and mildew growing.</p> <p>Are Council and the building companies working together to make people sick and forced to go to the hospital for treatment?</p> <p>Is there another development proposed on the corner of Bringelly Road and the Great Western Highway incorporating the Kingswood Hotel?</p> <p>There has also been a recent approval in Hargrave Street for serviced apartments which will bring more traffic.</p>	<p>The site is located in a B4 Mixed Use zone. Hotels are a permitted use in that zone. The proposed building takes into account the shape and boundary alignments of the site. The building includes setbacks and landscaping which assist in breaking down the building's mass and scale.</p> <p>Regarding the reference to overshadowing as a reason why the location is not appropriate, the author of this particular comment has a property that is 300m from the subject site, and that property is not affected by overshadowing as a result of the proposed development.</p> <p>The matter of overshadowing of private properties as a result of the proposed development is discussed below.</p> <p>It is acknowledged that the proposed development will cast a shadow over parts of the adjoining roads and footpaths. However, this shadow is an expected outcome from any development of the site, and it is preferred that the shadows cast fall onto the road rather than parks and private gardens or dwellings.</p> <p>The reference to a development at the Kingswood Hotel is correct. There is a Development Application, DA21/0945, that seeks consent for two residential (mixed-use) buildings incorporating a rebuilt Kingswood Hotel. That DA is still being assessed by Council staff and the Sydney Western City Planning Panel is the consent authority.</p> <p>The reference to serviced apartments is likely to relate to the Development Consent for DA17/0490 which permits a six-storey building. This has recently been constructed. Serviced apartments are also a permitted use within the B4 zone.</p>
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**Lack of On-site Parking:**

It is already very difficult to park in the Kingswood area and the proposed development will further limit car parking. There should be less hotel rooms or compliant parking.

The proposed development would require 271 parking spaces plus 1 space per 6 hotel employees.

The proposed parking rates rely on discounts which are inappropriate for this project and the justification is inadequate.

This includes the applicant's traffic report seeking a 75% discount to the DCP rates for the wellness retail, wellness centre, and restaurant space (based on their report stating that 50% of the customers to these facilities will be hotel guests and of the remaining 50% being non-guest patrons, only half of these non-guests will drive and park at the hotel). The discounted rate should be lower and better supported by further information.

The comparative study of the facilities in St Leonards and Perth should have included more information to show that travel by staff and patients to Kingswood is similar to that at those other sites, noting that the catchment of the proposed development would be Western Sydney and the Blue Mountains, which is likely to have a higher proportion of people driving.

Using the RTA guideline rate of 1 parking space per 4 rooms is not appropriate as the proposed development is not a tourist hotel located in the Sydney CBD. Further information should have been provided to justify a lower rate based on the other two comparative sites, which the submitted report states is 1 space per 3 rooms. However, even if this lower rate is adopted, the proposed development would require 87 spaces, still resulting in a shortfall.

The issue of parking is discussed above in the 'Likely Impacts' section of this report. Although it is acknowledged that there is a parking non-compliance, a reduction in parking numbers is considered acceptable in the circumstances of the proposal. The Penrith DCP also allows the consent authority to consider a waiver or reduction in on-site parking.

The submission's reference to the proposed development requiring 271+ parking spaces is not agreed. Based on the calculations outlined in the 'Likely Impacts' section of this planning assessment report, the required number of parking spaces is less than that figure.

This planning assessment report outlines the various quantum of parking the proposed development could require, based on how the rates in the DCP are applied.

The quantum used in the planning assessment do not necessarily match the discounts and quantum suggested and sought in the applicant's traffic report/s. In particular, a discount has not been applied for the ground floor uses, while a discount has been applied for the rooftop dining area.

It is more transparent to provide the consent authority with figures reflecting a 'simple' application of the DCP rates as an initial (worse-case scenario) figure. The planning assessment then outlines the matters that could be considered if deciding to endorse a waiver or reduction in required parking numbers.



<p><b>Scale:</b></p> <p>A 7 storey development is excessive in the area where other buildings are of a smaller height.</p>	<p>It is acknowledged that the suburb of Kingswood contains many single storey dwelling houses on individual lots. However, it is also acknowledged that the area is undergoing change in the form of larger developments surrounding Nepean Hospital, including the hospital site itself.</p> <p>This urban development is a planned and intentional intensification of the area and is part of the adopted planning controls relating to the Penrith Health and Education Precinct in the <i>Penrith Local Environmental Plan 2010</i>.</p> <p>Although the proposed building is seven storeys in height, the topmost floor is setback from both the property boundaries, and from the building edges of the floors below. Therefore, the perceived scale, especially when viewed from the street, will be reduced.</p> <p>The written request to vary the development standard for height has been discussed above in the report. The written request includes information about other approved and constructed developments in the immediate area which are of a similar scale to the proposed development. While some of these developments may be 'smaller in height', the overall perception of bulk and scale is quite similar when taking into account the setbacks and facade articulation of the proposed development.</p>
<p><b>Setbacks and Treatment of Eastern, Northern, and Southern Facades, and Impact to Development Potential of Adjoining Site:</b></p> <p>Although the DCP permits a nil setback on side and rear boundaries for lower levels, adopting a nil setback at the rear boundary is inappropriate in this setting.</p> <p>While the eastern facade of the proposed building is set back between zero and approximately seven metres, it presents a blank facade which in the context of the town centre and outlook from the adjoining property is unacceptable and there is no opportunity to screen this facade.</p> <p>On the assumption that the adjoining development is a private hospital, the proximity of the proposal to the common boundary will result in a poor outlook from the adjoining development and</p>	<p>The DCP setback controls are specific controls in Chapter E12 that relate to the Penrith Health and Education Precinct.</p> <p>For the first 12m of building height, the DCP allows a zero setback from side and rear boundaries.</p> <p>Firstly, the proposal complies with this control. Secondly, only some of the building footprint is built to a zero rear setback (being on the eastern side).</p> <p>A portion of the eastern side of the ground and first floors abuts the rear boundary. This is for approximately 16m of building length, with the remainder of those two floors being set back much further, notwithstanding the control allowing a zero setback. In addition, the length of building that abuts the rear boundary is splayed so that each building length is approximately 8m long.</p>

overshadowing. It cannot be assumed that the adjacent development will mirror the proposal with largely a blank facade on a nil setback.

The northern and southern elevations feature predominantly blank facades which will be visible from the public domain with no opportunity to soften them.

The building bulk and zero setback will compromise the development potential and amenity of adjoining properties in terms of acoustic environment, outlook, and overshadowing.

In addition, at Levels 2 and 3 there is no portion of the building abutting the rear boundary, notwithstanding that the DCP control would also allow Levels 2 and 3 to have a zero rear setback.

The majority of the eastern (rear) elevation contains a fenestration pattern including windows in recessed reveals, solid horizontal panels, and expressed joints. The portion of the eastern elevation that is built to the boundary, or slightly set back from the rear boundary, does not contain windows. However, that splayed portion of the elevation has expressed joints and a textured cladding finish in a mid-grey colour. Therefore, although it is either on or close to the property boundary, its length is minimised to two splayed walls, with each wall length being about eight metres long, the cladding is textured, the colour is light, and the joints are expressed to break up the rectangular cladding panels and include smaller vertical panels between the larger ones.

It is considered that the proposed building footprint, particularly on the rear and side facing elevations, is well thought out, with appropriate setbacks and varied walls. It is not considered that the proposed development will compromise the development potential of the adjoining site.

The northern and southern facades are the short, side facades of the building. The northern facade is visible from Somerset Street, although the extent of visibility would be reduced at the time that the adjoining property on Somerset Street is developed. The southern facade is the Hargrave Street frontage, so this elevation will remain highly visible from the street.

The southern (Hargrave Street) facade required amendments following the previous approval from the Penrith Local Planning Panel. The Panel imposed an additional condition on the previous approval to require further articulation of the southern facade, such as more windows. The architectural drawings submitted with this current DA now include the new fenestration previously suggested by the Local Planning Panel. This is shown on drawing TP02.03/B and in the Updated Renders, dated October 2022. The detailing on the southern facade is acceptable for a street frontage. The matter of the enclosure of the fire

	<p>stairs at Ground and Level 1 has been discussed above.</p> <p>The northern facade is set back from both the side and front (Somerset Street) boundary. The facade, at Levels 1, 2, and 3 is also slightly splayed so that it is not on a uniform plane. At Levels 4 and 5 the splay is replaced by an indented step. Although the northern facade is less articulated than the other three facades, there is still adequate interest and modulation presented, particularly given that this elevation has shorter wall lengths, is set back from side and front property boundaries, and will be partially concealed when the adjoining site is redeveloped. At any rate, the northern facade includes splayed walls at the lower levels, a step/indent at the upper levels, expressed joints in the cladding, and a number of windows.</p>
<p><b>Building Height and Clause 4.6:</b></p> <p>The building should comply with the planning control for height.</p> <p>The consent authority could not form the level of satisfaction required by the provisions of Clause 4.6 of the Penrith LEP to allow the proposed contravention of the maximum building height standard.</p> <p>The Clause 4.6 request is deficient in the following respects:</p> <ul style="list-style-type: none"> <li>the request does not accurately describe the height of the proposed development, specifically the lift overrun, as the request states that the building including the lift overrun is 25.2m high while the architectural plans show the lift overrun at RL 72;</li> <li>it fails to provide sufficient environmental planning grounds that would justify the contravention to the standard. The main environmental planning ground cited to justify the contravention is the provision of a food and beverage facility on the rooftop, which the Clause 4.6 request also asserts will give better effect to the aims of the LEP. However, a compliant development including a rooftop facility would also equally be capable of being provided on the site if the scale of the proposed development was reduced through</li> </ul>	<p>A detailed discussion about the written request pursuant to Clause 4.6, as well as the other matters for consideration under that clause, is contained in this assessment report above.</p> <p>The consent authority has also been provided with a copy of the written request pursuant to Clause 4.6, and a copy of all the public submissions. The Panel therefore has access to the specific statements made in relation to the particular comments about and against the Clause 4.6 request and proposed building height.</p> <p>The applicant also amended the Clause 4.6 request to include information about the relative heights of nearby approvals / developments, as well as to correct errors. The current written request is dated 31 October 2022.</p> <p>This assessment report is clear that the applicable development standard for maximum building height is 18 metres as per Clause 4.3 of the Penrith LEP. The proposed development will have a maximum building height of 23.854 metres (RL 72), which is to the top of the lift overruns and to the top of the A/C plant located on the roof.</p> <p>The Clause 4.6 request lodged with the DA (dated 12 April 2022) included an incorrect statement on page 2 referencing that "<i>the building, including the lift overrun, is 25.2 metres high</i>". This error was corrected by removing the statement in the amended Clause 4.6 request dated 31 October</p>

the loss of one floor of hotel rooms. Therefore, removal of the rooftop bar and restaurant is not the necessary or inevitable consequence of requiring compliance with the applicable height control. Further, the economic or social benefit of the rooftop bar and restaurant is insufficient to justify the significant breach, and the Court has previously held that the economic feasibility of a proposal is 'not a relevant consideration' in determining whether it can be supported on planning grounds;

- inaccurate information has been relied upon to present an assessment of the 'existing character of the locality', such that the consent authority is invited to assess the proposed development against the wrong development standard and hence is misdirected in relation to its assessment. In particular, page 3 of the Clause 4.6 request includes a diagram which shows as number 5, the adjoining site, and represents that site with a large massing block. That site does not have development consent for a multi-storey building and showing that site as number 5 with a massing envelope is misleading; and
- continued reliance on Clause 7.11 with no architectural drawings showing the correct maximum permitted height (namely the 18m height limit).

There is no inherent design or site constraint that would preclude the proposal from including the roof top elements in a height compliant scheme. This could be achieved through the relocation of the restaurant and check-in administration to the ground floor and deleting the roof top terrace.

There is no physical impediment to a hotel being constructed on the site at a compliant height either with or without reliance on the incentive height.

2022.

The discussion contained above in this assessment report has provided commentary on the aspect of environmental planning grounds.

This planning assessment report has also discussed the Department's exhibited Explanation of Intended Effect relating to changes to Clause 4.6. The Planning Portal website states that the review has come about because "*the department has received feedback from council and industry stakeholders that there are several issues with how clause 4.6 has been interpreted over time*".

In addition, the Explanation of Intended Effect states that "*the current test under clause 4.6 is too complicated and unclear*" as "*evidenced by the growing body of case law pertaining to clause 4.6*", and that there is "*the need for greater transparency in the decision-making process*".

The EIE outlines that the planning outcomes test (being an improved planning outcome when compared with what would have been achieved if the development standard was not contravened) should have regard to; the public interest; improved environmental outcomes; improved social outcomes; and improved economic outcomes.

Regarding the diagram on page 3 of the Clause 4.6 request, and specifically its representation of Block 5, the amended Clause 4.6 request clarified that Block 5 was shown as a concept only. The image now uses a faded depiction of the block and the new table on page 3 of the Clause 4.6 request states that this is 'concept only'. The Panel members have been made aware that the adjoining property portrayed as Block 5 is still a single residential lot and that no approval for a multi-storey development has been discussed with Council staff or approved.

The package of architectural drawings was also amended during the assessment of the application. Drawing TP05.05/B now shows the 18m permitted height plane as per Clause 4.3 of the Penrith LEP.

Although the top floor could be removed, or those uses relocated to the ground floor, this would not necessarily result in a better development just

	<p>because the building would be compliant with the numerical height control.</p> <p>It is also relevant to consider the potential impacts from the topmost floor/s, whether those floors are set back, how visible they would be from surrounding public vantage points, whether they result in unacceptable overshadowing or loss of views, and whether the resulting scale and massing is appropriate in context. These matters have been discussed throughout this planning assessment report.</p>
<p><b>Overshadowing:</b></p> <p>The architectural plans include an assessment of the solar access for the proposed development but do not present an assessment of potential overshadowing by the proposal of adjoining properties.</p> <p>Given the orientation of the site it is likely that the proposal will result in overshadowing of the adjoining property from 12 noon and through the afternoon.</p>	<p>Hourly shadow diagrams were lodged with the original DA, and these were placed on Council's DA Tracker as part of the public exhibition documents.</p> <p>When the architectural drawings were amended in October 2022, the hourly shadow diagrams were consolidated into the architectural package.</p> <p>The proposed development will start to cast a shadow onto the adjoining property to the east (facing Hargrave Street) at 12 noon, with the shadow continuing to be cast between 12 noon and 3pm.</p> <p>It is acknowledged that the proposed development will cast afternoon shadow, although the resulting shadows cast onto the adjoining property would also be cast by a fully compliant scheme on the subject site.</p> <p>In addition, the eastern adjoining neighbour would not experience excessive mid-winter overshadowing before 12:30pm and would hence retain around three or more hours of sunlight to north-facing windows and the majority of private open space.</p>

<p><b>Noise and Acoustic Impact:</b></p> <p>Council should carefully consider the potential noise from the development, particularly the rooftop uses. Conditions should be imposed to control noise from people and music, restrict time of use, and include physical acoustic barriers.</p> <p>The submitted acoustic report is deficient, particularly in relation to driveway noise, sleep disturbance, and adopting an inappropriate noise target.</p> <p>The submission prepared by EMM acoustic consultants raises concerns about more detailed and technical aspects of the original acoustic report submitted with the DA (dated April 2022). These comments relate to; the nature and method of the noise modelling calculations; whether nearby approved developments have been taken into account; whether the correct noise targets have been used; lack of detail relating to the glazed openings on the rooftop dining areas; road traffic noise; and noise from the use of the loading dock and the driveway.</p>	<p>The original Acoustic Report submitted with the DA (April 2022) was amended to respond to initial concerns raised by Council's Environmental Management Officer. In addition, the applicant obtained a copy of all public submissions through a GIPA request.</p> <p>The amended Acoustic Report has been reviewed by Council's Environmental Management Officer. The Environmental Management Officer has advised that the amended Acoustic Report is acceptable, subject to recommended conditions.</p> <p>The applicant's acoustic consultant also submitted further information to specifically address the comments made in the submissions.</p> <p>The Acoustic Report includes recommendations relating to the ground floor and Level 6 non-hotel room areas (retail, wellness centre, and dining spaces, both internal and external). The amended Acoustic Report includes restrictions to operating hours, music, and patron numbers. These have been discussed in the 'Likely Impacts' section of this planning assessment report, and suitable conditions are recommended.</p> <p>In particular, the number of patrons permitted in the external roof top dining areas will be reduced to 60 patrons between the hours of 6pm and 10pm.</p>
<p><b>Light Spill from the Rooftop Drink and Dine:</b></p> <p>The lighting on the external rooftop dining areas may cause a nuisance through light spill</p>	<p>A condition is included in the recommended conditions to state that any lighting of the site, including all external areas of the development, is to be designed and located so as not to cause a nuisance or glare to nearby residences and/or motorists.</p>
<p><b>No Landowners Consent has Been Given to Remove Tree 5 from the Adjoining Property, and Potential Damage to Tree 5:</b></p> <p>The consent authority has no power to approve the DA because it proposes to carry out development on the adjoining land at 1 Hargrave Street, being the proposed removal of Tree 5.</p> <p>Tree 5 is shown as being removed in both the Demolition Plan and the Arborist Report dated 12 November 2020.</p> <p>The proximity of the proposed development to the</p>	<p>Tree 5 is a liquid amber located on the adjoining property at 1 Hargrave Street. It is located close to the property boundary.</p> <p>The proposed development <u>does not</u> include the removal of Tree 5.</p> <p>The Development Application was lodged with an older version of the Arborist Report. This was the version dated 12 November 2020. The submission of this version of the Arborist Report was an applicant error due to a change in staff.</p> <p>The November 2020 version of the Arborist Report</p>



site's eastern boundary will require the removal of Tree 5 which is a significant tree.

does state that Tree 5 will be removed. In addition, the Demolition Plan numbered TP00.03 also shows the removal of Tree 5.

Clarification was sought from the applicant given that the submission correctly identifies that landowner's consent for works to the neighbouring property has not been obtained.

The applicant has confirmed that Tree 5 is not proposed for removal and has submitted the updated Arborist Report (being the same version of the report that was subsequently approved with the Development Consent for DA20/0767 which is dated 29 July 2021.

The updated (July 2021) Arborist Report recommends tree protection measures to be installed on all retained trees, including Tree 5. It is understood that tree protection measures were installed during the recent demolition and excavation works that have been carried out.

In addition, the previously approved development included an amendment to the basement footprint to set back the eastern edge of all basement levels. This amendment is retained in the current proposed development.

The updated Arborist Report also states that the proposed basement will impact 8% of the tree's Tree Protection Zone (TPZ) and that this is in accordance with AS 4970-2009.

Suitable conditions are recommended to address the continued protection of Tree 5. The tree protection measures will need to be reinstalled prior to any further works at the site.

<p><b>Social Impact Assessment:</b></p> <p>A Social Impact Assessment should have been submitted with the DA given the proposed licensed areas.</p>	<p>The primary use of the proposed development is an accommodation hotel. The food and beverage space on the top floor is likely to be licensed. However, the dining space will not be a stand-alone venue and will operate as an ancillary feature of the hotel.</p> <p>In addition, the space is designed with seating and tables which promotes eating, not just drinking.</p> <p>Therefore, a Social Impact Assessment is not considered necessary given the nature and scale of the dining spaces. The relevant liquor licensing authority can impose additional restrictions on future liquor licences if required.</p>
<p><b>Crime Prevention Through Design:</b></p> <p>The application has inadequate information relating to crime prevention through design. An assessment of the Safer by Design Evaluation should be carried out.</p>	<p>Council's Community Safety Officer reviewed the proposed development and recommended conditions of consent relating to safety and security. These can be accommodated in the refinement of the design at Construction Certificate stage.</p> <p>In addition, the proposal includes clear glazing for the ground floor uses to Somerset Street which will allow passive surveillance. The front entry to the hotel is clearly marked as the main arrival point and details of lighting will be included in the Construction Certificate documentation.</p> <p>The pedestrian pathway on the northern side of the site is a fire access route, not a designated path for hotel guests. This pathway is likely to include lighting at night time. The pathway also has both hotel windows and the outdoor deck to the wellness centre facing into this pathway at ground floor level.</p>

## 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	Not supported, however conditions provided
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	Not supported

### Access Committee

Council's Access Committee considered the previous proposal for DA20/0767. The comments made by the Access Committee at that time were addressed via amendments to the previous proposal before it was determined by the Local Planning Panel. Those amendments, including justification for matters where amendments were not made, have been retained in this current proposed development. The current application is also accompanied by an updated Access Report which concludes that the "*subject development is capable of achieving compliance with the accessibility provisions of the BCA, either by complying with the prescriptive requirements or via a performance-based approach*".

Therefore, further consultation with the Access Committee was not necessary. The matters that were raised and subsequently addressed include the following:

- *The main entry revolving door is not suitable for persons with mobility issues.* The revolving door has been replaced with automatic sliding doors.
- *The location of the accessible parking spaces in the basement are too far from the lift.* The proposal provides 6 accessible parking spaces (2 on each basement level) although the Access Report states that only 5 accessible spaces are needed to comply with the BCA. Three of these spaces are located near the lift on the northern side, while the other three spaces are located on the southern side of the basement and therefore are not near the lifts. Section 3.2.5 of the Access Report states that the southern accessible parking spaces should be re-positioned to be closer to the passenger lift and that this detail will be required with the Construction Certificate plans. Conditions are recommended to ensure that the recommendations of the amended Access Report are met.
- *Insufficient number of accessible car parking spaces.* The proposal includes 63 car parking spaces for the hotel, of which 6 are designed as accessible spaces. The amended Access Report states that 5 accessible parking spaces would be required by the BCA and therefore the proposal complies.
- *Equitable access to the ground floor from the street must be demonstrated.* The architectural drawings resolved previous issues relating to stormwater drainage and equitable access from Somerset Street. This resulted in moving the main entry door further to the north. The Construction Certificate plans will require further details to show full compliance.
- *No accessible toilets are provided within the ground floor staff facilities.* The ground floor was amended to include an accessible toilet which is located between the male and female staff toilets and change rooms.
- *Issues regarding the width of corridors and number of turns to access rooms, particularly on the*

*ground floor.* This comment relates to one accessible room on the northern side of the ground floor, which involves two to three turns through corridors to access that particular room. The corridor in this area is 1.6m wide and the guest would need to travel for a distance of approximately 18m and navigate past two sets of cupboard/room outward opening doors. The applicant's access consultant has confirmed that the width of the corridors is sufficient to allow for 90 degree turns as required by AS 1428.1-2009 which stipulates a 1.5m by 1.5m turning space (the proposal provides a 1.6m area). There is also no requirement in the BCA regarding the travel distance to access the accessible rooms, only that there is an accessible path of travel. The consultant recommends that way-finding signage can be included at the detailed design stage as an enhanced provision. Given this, and because the access arrangement only relates to one hotel room, the proposed layout and access arrangement is acceptable.

## Development Engineer

Council's Development Engineer has raised concern with the following (in *italics*). An assessment and response is included after each point:

- *the proposed location of the loading bay requiring the service vehicle to make a reverse manoeuvre.* This matter is discussed below in the Waste Services referral section.
- *accessible parking spaces 38 and 58 not having a minimum width of 2.4m with an adjoining 2.4m wide shared area as required by AS 2890.6.* These two accessible spaces have a width of 3.8m in lieu of a 2.4m width with a dedicated 2.4m shared space adjoining. The applicant's access design consultant submitted further information to state that this is an accessibility requirement of the BCA, and that the BCA is a performance-based document. They have advised that in this instance a performance-based approach will be pursued to demonstrate compliance with the relevant performance provisions of the BCA. The applicant's consultant has also advised that the BCA Performance Solution "will look to place reliance upon New Zealand carparking design requirements which only requires a shared space of 1100mm, rather than 2400mm, hence when the design is assessed directly against the NZ requirements of AS/NZ 2890.6 a width of 3800mm is acceptable". Ultimately, this is a matter for the Certifier to ensure that the detailed design lodged with the Construction Certificate application complies with the relevant standards and the BCA.
- *the visitor bicycle parking area should be weather protected as per AS 2890.3 Bicycle Parking Facilities.* Eight visitor bicycle parking racks are provided within the landscaped setback on Hargrave Street (within the property boundaries of the subject site). Eight additional bicycle parking spaces for staff are located in the basement. The DCP and relevant standard require bicycle parking to be in secure and accessible locations, and to be provided with weather protection. The bicycle parking should be located to provide convenient access from surrounding bicycle routes and main building entrances. In terms of the proposed location of the visitor bicycle spaces, it is considered that their position is appropriate and adds some interest and activity to the street corner, particularly given that the DCP does not require the building to be set back from Hargrave Street. The bicycle parking racks also have deep soil landscaping around the area. The applicant has advised that providing a roofed structure over the bicycle parking was investigated, however, this raised some design concerns with the architect due to the location within the landscaped setback. The applicant has advised that the future hotel operator has indicated that weather protection of the visitor bicycle spaces can be provided via the provision of bicycle covers by hotel management when required. Given the proposed location of the visitor bicycle parking, and on urban design grounds, it is preferred that the bicycle parking area remain as is. However, the requirement for detailed compliance with the BCA and relevant standards is a matter for the Certifier to ensure at the Construction Certificate stage. The visitor bicycle parking area can accommodate a light-weight roofed structure if needed.

- *the need to provide two service vehicle parking spaces to comply with the RTA guide of having 1 service space per 100 rooms.* The applicant's traffic consultant has responded to this point by stating that the provision of a single loading bay suitable for a Small Rigid Vehicle is consistent with the previously approved development. In addition, the hotel and ancillary facilities would be managed by the same operator which will allow for management and scheduling of use of the loading dock for the development as a whole. This would maximise the efficiency of the loading space and remove the need to provide one additional loading space to accommodate unexpected servicing requirements.

## **Traffic Engineer**

Council's Traffic Engineer does not support the non-compliance with the parking rates in the Penrith DCP, and is concerned that the parking demand study does not adequately justify the lower parking rate as the surveys conducted were not of a similar location. This objection is not shared by the planning officer's assessment. The matter of parking has been discussed above in this report.

In addition, Council's Traffic Engineer has raised concerns with the loading bay accommodating a 6.4m vehicle rather than larger 10.5m vehicles, the loading bay requiring a reverse manoeuvre, and with the two drop-off spaces shown in the Somerset Street roadway, recommending that the building have a porte-cochere to enable guest drop off.

With regard to the loading bay size and the reverse movement, this is discussed below under the Waste Services referral section. It is also noted that the previous consent, with the loading bay located in the basement, required the waste vehicle to carry out a reverse manoeuvre.

With regard to the two-drop off spaces shown on Somerset Street, this would require a further application to, and approval from, Council's Local Traffic Committee. The drop-off spaces shown on the drawings are not to be specifically endorsed as part of any development consent and a condition to this effect is included in the recommended conditions. The suggestion of including a porte-cochere in the building's frontage is not supported on planning and urban design grounds as it would fundamentally alter, in an adverse way, the building's presentation to the street. It would also likely become the dominant facade feature and diminish the ability to provide for the landscaped harbour as proposed.

In addition, the Local Traffic Committee will consider how many on-street parking spaces would be lost if the two drop-off spaces were approved. Given that the three existing lots which form the subject site each have a driveway, it may result in no net loss of on-street parking spaces because the drop-off spaces are positioned where two of the lots have existing driveways. Further, the proposed driveway on Hargrave Street is located in a position currently identified as "No Stopping" so the overall net loss of on-street parking might still be zero. At any rate, a suitable condition is recommended to require a future approval from the Local Traffic Committee. If that approval is not forthcoming, it does not alter the design of the building and the hotel use is not dependent on achieving the two drop-off spaces, although it is desirable.

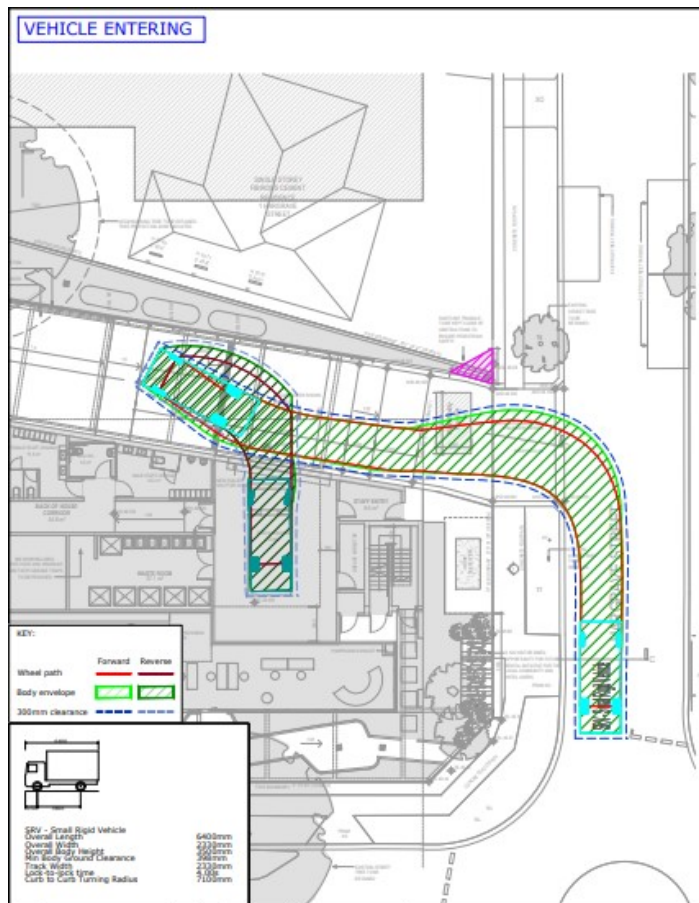
## **Waste Services**

The proposed development accommodates a loading bay at ground floor level, situated perpendicular to the driveway, and set within the building footprint so that it is not part of the Hargrave Street frontage. The loading bay is sealed with a roller shutter door off the driveway and includes a line marked area at both sides and at the end, which is the safe travel path for staff, noting that the staff entry from Hargrave Street requires a travel path around the loading dock. The waste room adjoins the loading dock and has direct access to it via double doors.

All waste will be collected by a commercial contractor and will be carried out from the proposed loading bay. The accompanying Waste Management Plan states that the three streams of waste (general waste,

recyclables, and organic waste) will be collected three times a week. Suitable conditions are recommended to ensure that the appropriate contract to collect waste is obtained prior to the issue of any Occupation Certificate.

The design of the loading dock will accommodate a Small Rigid Vehicle (6.4m SMR) while Council's policy would require servicing using a 9.7m vehicle, with a 4.5m head clearance. Further, the loading dock will require the waste vehicle to make one reverse manoeuvre to back into the loading dock. The vehicle is then able to leave in a forward direction. The swept path for this movement, being a truck entering the loading bay, is shown in the image below.



The applicant's waste consultant states that there are spatial constraints and limitations on the site's layout and that therefore, the larger vehicle is unable to be accommodated on the site. Additionally, it would not be spatially efficient to provide the space required for the truck to manoeuvre within and access the loading dock solely for waste collections. The waste consultant goes on to state that Capital City Waste Services Pty Ltd (commercial waste contractor) have advised that they are able to service the site with a Small Rigid Vehicle, which requires an operating height of 2.4m (the loading dock will have a clearance of 3.6m).

Given that Council will not be servicing the building because the use is not residential, the matter of waste collection is a private one requiring the operator to enter into a commercial contract. Because the whole of the building is the hotel use, it is likely to be operated by a single entity and therefore the management of waste and servicing will be easier to control in terms of times, methods and contracts.

In addition, any changes to the design to accommodate the larger vehicle would likely have a negative impact on the urban design quality and appearance of the building, particularly on Hargrave Street where

the driveway is located. The current design includes a two-way driveway with a landscaped arbour over. To provide the required headroom clearances for a larger truck would have knock-on effects to the driveway and arbour design. On balance, this would likely create more adverse impacts to the appearance of the building, with fewer benefits in terms of servicing, given that the site can still be serviced by a smaller truck.

## **Section 4.15(1)(e)The public interest**

The proposed development is considered to be 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. 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 hotel.

## **Conclusion**

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The proposal is for a 7 storey accommodation hotel that the applicant describes as a medi-hotel because of its proximity to Nepean Hospital and its location within the Penrith Health and Education Precinct. Notwithstanding this, the planning assessment of the Development Application has been carried out having regard to the planning controls for a hotel as defined in the Penrith LEP.

The proposal has been amended to address initial concerns raised by Council staff and the Urban Design Review Panel. The negotiated changes made in the previous application (DA20/0767) have also mostly been retained in this current proposal.

Nevertheless, the proposed development does not comply with Council's LEP control for building height or DCP control for on-site parking. The applicant has submitted a written request pursuant to Clause 4.6 seeking to vary the development standard for building height at Clause 4.3 of the LEP. The applicant also seeks a variation to the DCP parking rates and has submitted a Traffic Report and supporting documents asking for a reduction in parking.

In terms of the proposed building's scale, design and appearance, the proposed development is acceptable. The design incorporates a 4m setback from both Somerset and Hargrave Streets. The front setback to Somerset Street contains deep soil vegetation and an accessible landscaped arbour with suspended decking and seating. The building facades are textured and layered and have varying expressions which assist with breaking up the massing of the building. The Level 6 rooftop level is set back from the building edges and enclosed behind a filigree screen, thereby mitigating its visibility and scale. The amended proposed development is considered to be a very good design which responds well to the host site and is considerate of surrounding properties by providing setbacks and stepped facades.

The Development Application is recommended for approval. Specific conditions are recommended to address noise emissions and to require the surrender of the previous consent for DA20/0767.

## Recommendation

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It is recommended that:

1. The request made pursuant to Clause 4.6 of the Penrith LEP 2010, dated 31 October 2022, to vary the development standard for building height at Clause 4.3 of the Penrith LEP is accepted; and
2. Development Application DA22/0326 for the construction of a seven storey accommodation hotel (tourist and visitor accommodation) with three basement parking levels, at 28-32 Somerset Street, Kingswood, be approved subject to conditions.



## CONDITIONS

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### 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	Issue	Title	Prepared By	Date
TP00.00	B	Cover Sheet	Rothelowman	6 October 2022
TP01.00	-	Basement 3	Rothelowman	25 March 2022
TP01.01	-	Basement 2	Rothelowman	25 March 2022
TP01.02	-	Basement 1	Rothelowman	25 March 2022
TP01.03	A	Ground	Rothelowman	5 October 2022
TP01.04	A	Level 1	Rothelowman	5 October 2022
TP01.05	A	Levels 2-3	Rothelowman	5 October 2022
TP01.06	A	Levels 4-5	Rothelowman	5 October 2022
TP01.07	A	Rooftop	Rothelowman	5 October 2022
TP01.08	B	Roof / Roof Services Plan	Rothelowman	6 October 2022
TP02.01	B	North Elevation	Rothelowman	6 October 2022
TP02.02	B	East Elevation	Rothelowman	6 October 2022
TP02.03	B	South Elevation	Rothelowman	6 October 2022
TP02.04	B	West Elevation	Rothelowman	6 October 2022
TP03.01	B	Section A-A	Rothelowman	6 October 2022
TP03.02	B	Sections B-B & C-C	Rothelowman	6 October 2022
TP05.01	A	Development Summary	Rothelowman	25 March 2022
TP05.02	A	GFA	Rothelowman	25 March 2022
TP05.04	A	Site Coverage and Deep Soil	Rothelowman	25 March 2022
TP05.05	B	Height Plane Diagram	Rothelowman	6 October 2022

01	D	Coversheet	LandFX	26 September 2022
02	D	Contents and Info Page	LandFX	26 September 2022
03	D	Landscape Character	LandFX	26 September 2022
04	D	Landscape Plan - Ground	LandFX	26 September 2022
05	D	Landscape Detail Plan - Ground 1 of 2	LandFX	26 September 2022
06	D	Landscape Detail Plan - Ground 2 of 2	LandFX	26 September 2022
DA_C01.01	06	Cover Sheet	Northrop	6 April 2022
DA_C02.01	06	Concept Sediment Erosion Control Plan	Northrop	6 April 2022
DA_C02.11	06	Sediment Erosion Control Details	Northrop	6 April 2022
DA_C04.01	08	Siteworks & Stormwater Management Plan - Ground Floor	Northrop	6 April 2022
DA_C04.02	04	Siteworks & Stormwater Management Plan - Basement 3	Northrop	6 April 2022
DA_C04.21	06	Stormwater Longitudinal Sections	Northrop	6 April 2022
DA_C05.01	05	Driveway Longitudinal Section	Northrop	6 April 2022
DA_C06.01	06	Details Sheet 01	Northrop	6 April 2022
DA_C06.02	04	Details Sheet 02	Northrop	6 April 2022

#### Consultant Reports:

- Report on Geotechnical Investigation, by Douglas Partners, Reference 99851.00, Revision R.001.Rev1, dated 7 May 2021;
- Stormwater Management Report, by Northrop, Reference 202701, Revision D, dated 6 April 2022 (note that the report incorrectly states a 2021 date for Revision D);
- Water Quality Chamber Letter, by Northrop, Reference SY202702-01-CV-LE1-1, dated 27 September 2022;
- BCA Design Assessment Report, by Design Confidence, Reference P220\_430-4 (BCA) NH, dated 31 March 2022;
- New DA Acoustic Assessment, by Pulse White Acoustics, Reference 220146, Revision 4, dated 11 January 2023;
- Traffic Report by The Transport Planning Partnership, Reference 20227, dated 23 July 2021 and Letter from TTPP, dated 31 March 2022;
- Access Design Assessment Report, by Design Confidence, Reference P220\_430-4 (ACCESS) NH, dated 31 March 2022;
- Aboricultural Impact Appraisal and Method Statement (Revision A), by Naturally Trees, dated 29 July 2021;

- Waste Management Plan, by Salt, Reference 20358W, Version F03, dated 31 March 2022;
  - Building Services Engineering Utilities Report, by Evolved Engineering, dated 5 November 2020;
  - Structural Development Application Report, by Northrop, Reference SY202701-SR01, Revision 1, dated 11 November 2020;
  - Report on Preliminary Site (Contamination) Investigation, by Douglas Partners, Reference 99851.00, Revision R.002.Rev0, dated 10 November 2020; and
  - Sustainability Services - ESD DA Report by Norman Disney Young, Reference rp220322s0032, Revision 3, dated 31 March 2022.
- 2 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 a Food Safety Supervisor, with a current Food Safety Supervisor Certificate recognised by the NSW Food Authority, must be appointed by the business prior to commencement of the business.
  - 3 Lots 58 and 59 in Deposited Plan 36728 and Lot 57 in Deposited Plan 215146, being 28, 30, and 32 Somerset Street, are to be consolidated into one lot. A copy of the registered plan of consolidation is to be submitted to the Principal Certifier and Penrith City Council, if Council is not the certifier, prior to the issue of an Occupation Certificate for the development.
  - 4 Prior to the issue of an Occupation Certificate 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.
  - 5 Servicing of the building via the loading dock can only occur between the hours of 7am to 10pm.
  - 6 The finishes of all structures and buildings are to be maintained at all times and any graffiti or vandalism immediately removed/repaired.

7 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.
- No part of the crane or structure shall extend beyond the boundaries of the subject development site unless approved by Penrith City Council in consultation with the Nepean Blue Mountains Local Health District. Any encroachment beyond the boundaries of the subject site shall be the minimum amount required to facilitate construction and access all parts of the construction site.

8 **Prior to the issue of any Construction Certificate**, 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.

**Note:** 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.

- 9 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 an Occupation Certificate or Subdivision Certificate (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.

- 10 The Development Consent numbered DA20/0767 must be surrendered prior to a Construction Certificate being issued for the Development Consent DA22/0326. The surrender must be in accordance with the requirements of the *Environmental Planning and Assessment Act, 1979*, (Section 4.63) and the *Environmental Planning and Assessment Regulation 2021* (Section 68). The surrender notice must clearly outline all works under DA20/0767 that have been completed. The Certifier shall obtain confirmation in writing of the surrender prior to the release of any Construction Certificate relating to the consent for DA22/0326.
- 11 A certificate is to be obtained from a qualified acoustic consultant certifying that the mechanical plant and equipment has been chosen and installed to meet the noise criteria in accordance with the approved acoustic report referenced at Condition 1. This Certificate is to be provided to the Principal Certifier prior to the issue of any Occupation Certificate.
- 12 Prior to the issue of any Occupation Certificate, the applicant is to provide evidence to the Principal Certifier that a commercial contract for all waste collection services to the site has been entered into. Such a contract must be retained and maintained while the site is being used. All costs associated with waste collection are to be at the expense of the developer/operator/landowner. The hotel waste is to be managed in accordance with the Waste Management Plan referenced at Condition 1.
- 13 The drawings and details submitted with the Construction Certificate application are to include all of the relevant recommendations and details as contained in the specialist consultant reports referenced at the end of the table at Condition 1.

14 The following restrictions apply to the non-hotel room spaces at both the ground floor and the topmost floor, including the external rooftop area and external ground floor deck to the northern elevation. These areas are to be used and managed in accordance with the recommendations of the acoustic report referenced at Condition 1. The use of these spaces are also restricted as follows:

- The use of the internal areas of the ground floor wellness retail and wellness centre is restricted to between 7am to 10:30pm every day;
- The use of the internal areas of the Level 6 drink and dine space are permitted to operate 24 hours every day;
- The use of the external areas associated with the Level 6 drink and dine space, and the external area of the ground floor wellness centre is restricted to between 7am to 10pm Monday to Saturday and between 8am to 10pm on Sundays and Public Holidays;
- All windows and doors of any internal areas of the ground floor and Level 6 drink and dine spaces are to be closed between 10:00pm and 7:00am, with doors used only for direct ingress and egress as required and for emergencies;
- Background music can only be played within the internal areas and is not to exceed 75dBA within the space/s; and
- The 1.8m high glazed balustrade around the entire perimeter of the outdoor dining/bar area is to be retained/provided as shown in the approved acoustic report.

The total number of patrons (not including staff) permitted is as follows:

- Internally in the wellness retail space = 84;
- Internally in the wellness centre space = 36;
- Externally for the wellness centre space = 5;
- Internally in the Level 6 drink/dine area when windows and doors are permitted to be open = 75 patrons;
- Internally in the Level 6 drink/dine area when windows and doors must be closed = 174 patrons;
- Externally in the Level 6 outdoor drink/dine area between the hours of 7am (or 8am on Sundays) to 6pm = 99 patrons; and
- Externally in the Level 6 outdoor drink/dine area between the hours of 6pm to 10pm = 60 patrons.

15 The details provided with the Construction Certificate must include adequate information to show that the recommendations of the Access Report referenced at Condition 1 have been included in the detailed design. This includes, but is not limited to, repositioning of the southern accessible parking spaces to be closer to the lift, way-finding signage is to be installed and maintained for the accessible room located on the northern side of the building at ground floor level, and a balance of right-hand and left-hand facilities in the accessible rooms.

16 The materials, finishes, and colours are to be those shown on Page 38 (Section 5.0) of the Urban Design Report prepared by Rothelowman, dated March 2022. The roof must be of a lightweight material (such as Colourbond) and must be in a light colour (such as Colourbond Surfmist).

17 The spaces on the ground floor marked as 'wellness centre' and 'wellness retail' are permitted to operate between the hours of 7am and 10:30pm every day. The glazed shopfronts of these two spaces is to remain clear and untinted. No signage, including decal stickers, is permitted to be placed on the shopfronts in a manner that obscures visibility into the spaces. These spaces do not have development consent to operate as a bar or a small bar, without the prior and relevant approval from Penrith City Council.

- 18 The only signage approved are the three building identification signs of which the location is shown in the architectural drawings referenced at Condition 1. The three signs are to be of a high quality design, colour, and finish. They are to be proportionally sympathetic to the host building and are not to obscure any architectural features of the building, nor protrude beyond any building edges.

The final details of the sign, including the position, material, method of illumination, and design is to be submitted to Council for approval prior to the signage being installed and displayed. The approved signage shall only be for building and/or tenancy identification signage, relating to the major tenant. The method of illumination must include the ability for the lighting to be dimmed.

- 19 The food and drink areas of the hotel are not to be sub-let to a third party. Those spaces are to be operated and managed by the hotel operator.

An operational 'Plan of Management' to reflect the above, and outlining appropriate management measures to mitigate impacts upon neighbours (including matters outlined below), is to be submitted to and approved by the Certifier prior to the issue of any Occupation Certificate.

Thereafter, the hotel shall be managed in accordance with the approved Plan of Management, which can be reviewed and updated to improve processes and operations. The Plan of Management is to include details of the following:

- The 24 hour contact details of the property caretaker or manager, who has overall responsibility for the operation, administration, cleanliness, maintenance and fire safety of the premises;
- Any rules, including details of how they will be publicised to guests, visitors and patrons, that cover guest behaviour, activities and noise, visitor policy and any other relevant rules;
- Measures to minimise unreasonable impact to the habitable areas of adjoining properties, including the management of the licensed bar / restaurant areas and the external seating areas;
- The use of the external and publicly accessible spaces are to be restricted in accordance with the Acoustic Report referenced at Condition 1 and other conditions of this consent; and
- Details of how complaints will be investigated, recorded and managed.

- 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 Any fencing shown on the approved drawings or referenced in the approved consultant's reports can only straddle the property boundaries if the relevant landowner's consent is obtained for the position of such fencing. Otherwise, all fencing must be positioned wholly within the boundaries of the subject site and the cost borne by the applicant.

22 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 4282-2019 Outdoor Lighting Obtrusive Effects.
- Adequate lighting is to be installed and maintained in the area of the bicycle parking.

**(b) Basement Car Parking**

- A security system must be installed on any pedestrian and vehicle entry/exit points to the car park, including the lift and stairwell, 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 **Construction Certificate** application.

**(c) Building Security & Access Control**

- Intercom, code or card locks or similar must be installed for all entries to the building and restricted areas. Access to hotel floors must be restricted to visitors travelling to the roof top only.
- Australian Standard 220 door and window locks must be installed in all premises/rooms.
- CCTV is to be provided to cover communal public space areas. 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.
- A monitored alarm system must be installed.
- A Plan of Management must be submitted **prior to the issue of an Occupation Certificate** detailing safety and security practices for the rooftop amenities, in particular the bar/restaurant.

**(d) 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.
- Outdoor furniture must be secured or stored away after hours.

**(e) Landscaping**

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

## **Environmental Matters**

23 All 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.



24 Waste materials associated with the construction phase 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 Waste Management Plan referenced at Condition 1. 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.

25 Noise levels from the premises shall not exceed the relevant noise criteria detailed in the approved acoustic report referenced at Condition 1. Prior to the release of the Construction Certificate for any part of the approved building located above ground, the Certifier shall ensure that the acoustic consultant has reviewed the amended roof construction material (from concrete to cladding) and incorporated any further acoustic recommendation/s as may be required to address that change of material.

The recommendations provided in the approved acoustic report referenced at Condition 1 shall be implemented into the design and construction of the development. A certificate is to be obtained from a qualified acoustic consultant certifying that the building has been constructed to meet the noise criteria in accordance with the approved acoustic report. This certificate is to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

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

27 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.

28 Construction works shall be carried out in accordance with the NSW Department of Environment and Climate Change's "Interim Construction Noise Guideline" 2009.

29 Prior to the issue of a Construction Certificate, further details of the type and location of all mechanical plant and equipment associated with the development is to be submitted to the Certifier for consideration and approval. This information is to be accompanied by suitable data and information from a qualified acoustic consultant to demonstrate compliance with the established noise criteria and the approved acoustic report referenced at Condition 1.

30 Wastewater from the washing of garbage bins and vehicles is not to enter the stormwater system.

31 The basement car park and basement waste storage room are to be mechanically ventilated in accordance with the relevant sections of the BCA and AS 1668, Parts 1 & 2. The discharge of the mechanical ventilation is to be to the roof of the building. The exhaust risers are to be reticulated through the internal areas of the building prior to their discharge to the roof. Suitable details are to be submitted to Penrith City Council for approval prior to the issue of a Construction Certificate and the approved details are then to be included in the Construction Certificate drawings.

32 An unexpected finds protocol is to be developed by an appropriately qualified environmental consultant. Prior to the issue of a Construction Certificate, the protocol is to be submitted to Council and approved. If Council is not the certifying authority for the development, the protocol is required to be submitted to Penrith City Council for approval.

The protocol is to address the management of any contamination on the site during the excavation and construction phases, including, at a minimum, contaminated soils, groundwater, buried building materials, asbestos, odour and staining. The protocol is to be complied with at all times.

33 When a vehicle is stationary in the loading dock, the engines of the vehicle are to be switched off.

## **BCA Issues**

34 The external walls of the building including attachments must comply with the relevant requirements of the National Construction Code (NCC). Prior to the issue of a Construction Certificate and Occupation Certificate, the Certifying Authority and Principal Certifying Authority must:

- (a) Be satisfied that suitable evidence is provided to demonstrate that the products and systems proposed for use or used in the construction of external walls including finishes and claddings such as synthetic or aluminium composite panels comply with the relevant requirements of the NCC; and
- (b) Ensure that the documentation relied upon in the approval processes include an appropriate level of detail to demonstrate compliance with the NCC as proposed and as built.

## **Health Matters and OSSM installations**

35 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 of the kitchen, bar and food preparation and storage areas must be prepared by a suitably qualified person and certified in accordance with Standard 3.2.3 of the Australian and New Zealand Food Standards Code and AS 4674-2004 *Design, Construction and Fitout of Food Premises* to the satisfaction of the Certifier prior to a Construction Certificate being issued.

## **Utility Services**

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

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

In the event that the pad mounted substation is repositioned, Penrith City Council shall be consulted over the proposed location prior to the relevant Construction Certificate being issued. The finished colour of the substation can only be either a khaki-green colour, a dark recessive colour, or can contain a painted mural. The intent of this is to finish the substation to be as visually recessive as possible.

38 **Prior to the issue of a Construction Certificate**, 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, the development must be provided with all necessary pits and pipes, and conduits to accommodate the future connection of optic fibre technology telecommunications.

39 The matters contained in the referral response letters from Endeavour Energy dated 29 July 2021 and 14 May 2022 shall be addressed in the Construction Certificate where relevant.

## Construction

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

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

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

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

41 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) 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.

42 Mud and soil from vehicular movements to and from the site during works must not be deposited on public roadways.

43 Dust suppression techniques are to be employed during all works to reduce any potential nuisances to surrounding properties.

44 All 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, does not involve external walls or the roof, and does not involve the interim 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.

45 The Certifier is to ensure that the recommendations of the ESD Report referenced at Condition 1 are incorporated into the details submitted with the Construction Certificate.

## **Engineering**

46 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.

47 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 any Construction Certificate, 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.

48 Prior to the issue of any Construction Certificate, 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 following:

- New kerb and gutter, path paving, landscaping and public domain street furniture for the full frontage of the site in Somerset Street and Hargrave Street in accordance with the Kingswood Public Domain Manual.
- Extension of the road drainage system within Hargrave Street and upgrade of the existing drainage system to provide sufficient capacity for the development.
- Vehicular crossover for the basement car park.
- Regulatory signage and line marking works in Somerset Street and Hargrave Street, subject to separate approval by the Local Traffic Committee.
- Road opening for utilities and stormwater (including stormwater connection to Penrith City Council roads and other Penrith City Council owned drainage)
- Road occupancy or road closures (including temporary construction work zones and tower crane operation).
- The placement of hoardings, structures, containers, waste skips, signs, etc in the road reserve.
- Temporary construction access.

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.

Notes:

- 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.
- 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.

- 49 The stormwater management system shall be consistent with the plans lodged for development approval, prepared by Northrop, reference number 202701, drawing numbers DA\_C01.01 to DA\_C06.02, revision 6, dated 6/4/22 and the subsequent letter regarding Water Quality Chamber prepared by Northrop, reference number SY202701-01-CV-LE1-1, dated 27/9/22.

Prior to the issue of any Construction Certificate, 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. 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.

- 50 Prior to the issue of any Construction Certificate, 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.
- 51 Prior to the issue of any Construction Certificate, 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.
- 52 Prior to the commencement of any works on-site or prior to the issue of any Construction Certificate, 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.
- 53 Prior to the issue of a Roads Act approval, a Performance Bond is to be lodged with Penrith City Council for civil works within Somerset Street and Hargrave Street. The value of the bond shall be determined in accordance with Penrith City Council's adopted Fees and Charges. You may contact Penrith City Council's Development Engineering Department on 4732 7777 for further information relating to bond requirements.
- 54 Prior to the issue of any Construction Certificate, 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.
- 55 The developer shall undertake a dilapidation report for all surrounding buildings and Council owned infrastructure that confirms that no damage occurs due to the construction activities associated with the development. If Council is not the Certifier for the development, then the dilapidation report/s shall be submitted to Council prior to the issue of any Construction Certificate and must then be updated and submitted prior to the issue of any Occupation Certificate confirming no damage has occurred.

- 56 Prior to commencement of works, sediment and erosion control measures shall be installed in accordance with the approved Construction Certificate 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.

- 57 Prior to commencement of any works associated with the development, a Traffic Guidance Scheme, including details for pedestrian management, shall be prepared in accordance with AS 1742.3 Traffic Control Devices for Works on Roads and the Transport for NSW (TfNSW) publication Traffic Control at Worksites Technical Manual, and certified by an appropriately accredited TfNSW traffic controller.

Traffic control measures shall be implemented during the construction phase of the development in accordance with the certified plan. A copy of the plan shall be available on site at all times. A copy of the Traffic Guidance Scheme shall accompany the Notice of Commencement to Penrith City Council.

- 58 On 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.

- 59 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 authority's regulations and standards.

- 60 Prior to the issue of any Occupation Certificate, the Principal Certifier shall ensure that all works associated with a Section 138 Roads Act approval or Section 68 Local Government Act approval have been inspected and signed-off by Penrith City Council.

- 61 Prior to the issue of any Occupation Certificate, 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.

62 Prior to the issue of any Occupation Certificate, the Principal Certifier shall ensure that the stormwater management systems (including water sensitive urban design):

- have been satisfactorily completed in accordance with the approved Construction Certificate or Subdivision Works Certificate 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.

63 Prior to the issue of any Occupation Certificate, a restriction on the use of land and positive covenant relating to the stormwater management systems (including 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.

64 Prior to the issue of any Occupation Certificate, a Maintenance Bond is to be lodged with Penrith City Council for civil works within Somerset Street and Hargrave Street. The value of the bond shall be determined in accordance with Penrith City Council's adopted Fees and Charges. You may contact Penrith City Council's Development Engineering Department on 4732 7777 for further information relating to bond requirements.

65 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 on awareness of any deficiencies in the stormwater management system.

66 The drop-off and pick-up spaces shown on the architectural drawings are not specifically approved by this development consent. Prior to the issue of any Construction Certificate or installation of any regulatory/advisory signage and line marking within the public road reserve, whichever occurs first, signage and line marking plans for any changes to parking bay markings and/or the installation of parking restriction signage/line marking in Hargrave Street and/or Somerset Street, shall be lodged with Penrith City Council and endorsed by the Local Traffic Committee. Approved signage and line marking shall be installed at no cost to Council.

Notes:

- 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.

67 Prior to the issue of any Construction Certificate, the Certifier shall ensure that secure bicycle parking is provided at convenient location(s) in accordance with AS 2890.3 Bicycle Parking Facilities.



- 68 Prior to the issue of any Occupation Certificate, the Certifier shall ensure that a Waste Collection / Service / Delivery Vehicle Operational Management Plan is in place. This Plan must apply to all waste collection and service/delivery vehicles access the site's loading dock. The Plan shall include details about:
- Coordinating all development site businesses and operator's agreements and management of all waste collection, service, and delivery vehicles to the site and to all businesses at the site;
  - Management of pedestrians to ensure they are kept clear of any service vehicles servicing the site particularly during reversing manoeuvres; and
  - Details on how drivers will be made aware that they must comply with the operational traffic management plan for the development.
- 69 Prior to the issue of any Occupation Certificate, directional signage and line marking shall be installed indicating directional movements and the location of customer, small, and/or staff parking spaces to the satisfaction of the Principal Certifier.
- 70 All parking spaces, loading zones, parking aisles and manoeuvring areas are to be kept clear of stored materials, products, waste materials, etc such that these areas remain unobstructed and allow for the safe movement of vehicles.
- 71 The car parking spaces at all basement levels are to be used solely by staff and visitors/guests of the hotel. At no time are the car parking spaces to be sub-leased. No parking is permitted outside of marked parking spaces shown on the approved plans.
- 72 The required sight lines around the driveway entrances are not to be compromised by landscaping, fencing or signage.
- 73 The applicant/developer must ensure that the relevant requirements, inspections and/or information, as recommended in the Geotechnical Report referenced at Condition 1, occurs at the appropriate time, including after the basement excavation is completed to confirm that the designed drainage system is adequate for the actual groundwater seepage flows.
- 74 Any groundwater removed from the site, whether originating from water table levels or seepage, must not be drained or discharged directly into Council's stormwater system without first obtaining written approval to do so from Council's Asset Management Department. Any such request to discharge must be accompanied by evidence as to the suitability of the groundwater to be discharged, including any treatment required, volumes and method of discharge.
- 75 No approval has been granted for dewatering of any groundwater that may be encountered during excavation. The applicant is to ensure that any approvals required under the Water Management Act from Water NSW are obtained, if required.

## **Landscaping**

76 All landscape works are to be constructed in accordance with the stamped approved landscape plans tabled at Condition 1. Landscaping shall be retained and 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.

In particular, the new landscaping is to be retained and maintained on the Somerset Street frontage of the site and in the arbour along the driveway area. 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.

77 The following series of reports relating to landscaping are to be submitted to the nominated consent authority at the appropriate time periods as listed below. These reports shall be prepared by a suitably qualified and experienced landscape professional.

**i. Implementation Report**

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

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

**ii. Maintenance Report**

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

The landscaping shall be maintained in a healthy state thereafter.

78 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.

79 The trees identified for retention in the arborist report referenced at Condition 1, being Trees numbered 1, 4, 5, 7, and 8 in that report, shall be retained and duly protected during the construction of the development as per the recommendations of that report.

Tree protection measures shall:

- be installed before any works can commence on site including the clearing of site vegetation;
- comply with the standards prescribed by the Method Statement of the arborist report; and
- be certified by the author of the arborist report before any works can commence on site. The certification is to be a Compliance Certificate or other written document certifying that the tree protection measures have been installed in accordance with the recommendations in the approved arborist report. The Compliance Certificate or other suitable documentation shall be submitted to the Principal Certifying Authority a minimum of 2 days prior to the commencement of site works. A copy of the Compliance Certificate or written documentation is to be submitted to Council with the "Notice of Commencement".

80 The Section 138 Roads Act application is to show details of the street trees required to be installed in both the Somerset Street and Hargrave Street public domain. The street trees in Hargrave Street are to be Zelkova 'Green Vase', 100L and the existing Brush Box is also to be replaced with Zelkova. The street trees in Somerset Street are to be Lophostemon Confertus, 100L, unless otherwise agreed by Penrith City Council.

## Development Contributions

81 This condition is imposed in accordance with Penrith City Council's Section 7.12 Contributions Plan for Non-Residential Development. Based on the current rates detailed in the accompanying schedule attached to this notice, **\$22,860.00 is to be paid to Council prior to a Construction Certificate being issued** for the development (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 7.12 Contributions Plan. The projected rates of this contribution amount are listed in Council's Fees and Charges Schedule.

This amount has taken into account the Section 7.12 contribution already paid against Development Consent DA20/0767. The applicant is to provide evidence that a payment pursuant to DA20/0767 has been made, showing the amount paid and at what date. This is to be submitted to Council prior to determining the remaining amount to be paid, and prior to making the additional payment required by this Development Consent for DA22/0326.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period.

## Payment of Fees

82 All roadworks, dedications and drainage works are to be carried out at the applicant's cost.

83 Prior to the commencement of any works on site, all fees associated with Penrith City Council-owned land and infrastructure shall be paid to Council. These fees include Road Opening fees where works or activities are proposed on/within a public road as well as Infrastructure Restoration fees.

## Certification

84 Prior to the commencement of any construction works on site, the proponent is to:

- (a) employ a Principal Certifier 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 Certifier" in accordance with Section 6.6 of the Environmental Planning and Assessment Act 1979. Two days before any construction works are to commence on site, the proponent shall submit a "Notice of Commencement" to Council in accordance with Section 6.6 of the Environmental Planning and Assessment Act 1979.

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

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

A copy of the Occupation Certificate and all necessary documentation supporting the issue of the 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 and C10 Transport, Access and Parking

These matters have been discussed in the body of the report.

#### E12 Penrith Health and Education Precinct

For the most part, the proposed development as amended, **does comply** with Chapter E12 of the DCP. However, the proposed development does not fully comply as follows:

- some parts of the building footprint at Levels 4 and 5 do not fully comply with the side and rear setback requirement of 6m;
- some parts of the building have a greater depth than 25m;
- the building does not have an awning to Somerset Street;
- the building does not have a 2-4 storey podium to Somerset Street; and
- the first floor does not comply with the required 3.5m floor to ceiling height. This particular aspect has been discussed in the body of this report.

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 Medical Mixed-Use Precinct. The main objective of this precinct is to further develop the Hospital Precinct into a specialised medical area, including providing for an innovative mix of commercial and medical related uses. The proposal meets this main objective as it provides a commercial use, being a type of tourist and visitor accommodation, which can support the medical uses in the area.

With regard to the subject site, including the land around the site, the DCP states the following: *"Development along Somerset Street and Derby Street is encouraged to take advantage of the potential of these streets to offer a high-quality entrance to the Hospital Precinct, with continuous landscaped themes and high quality architectural design. A high quality public realm will be achieved by providing generous pedestrian zones and activating ground floor frontages"*.

The proposed development will meet the objectives for the precinct, particularly given that the building will be set back 4m from Somerset Street, and that the front setback will contain a double-height landscaped arbour that will wrap around part of the Hargrave Street frontage. The arbour will contain deep soil landscaping, accessible decked pathways, and seating, which will serve as a visually interesting and inviting entrance to the hotel and street edge.

A discussion about compliance with the detailed controls in Chapter E12 of the DCP follows below.

Requirement	Discussion	Compliance
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<p>Floor to ceiling heights when seeking bonus building height in LEP, 3.5m on ground and first floors, and 2.7m on other floors</p>	<p>While the ground floor will be compliant at 3.5m, the first floor will have a floor to ceiling height of 3m.</p> <p>This is still acceptable as the objective of the control is to encourage non-residential uses on the ground and first floor of developments in the precinct. The proposed hotel rooms on the first floor are already a non-residential use, and the 3m floor to ceiling height provides adequate room for potential future non-residential uses.</p>	<p>Does not comply, but acceptable</p>
<p>Minimum site width of 24m for any mixed use development</p>	<p>Although the proposed building is not technically 'mixed-use', the consolidation of the three lots creates a development site with a width of 55.5m to Somerset Street.</p>	<p>Complies</p>
<p>Non-residential buildings greater than 12m in height are to have a maximum depth of 25m</p>	<p>Due to the shape of the site, some parts of the building at the lower levels will exceed the 25m depth control. However, this is acceptable because the footprint and spatial arrangement of the hotel floors provides side and rear setbacks that respond to the shape of the site. Every hotel room has a window and the publicly accessible non-room spaces have good, open frontages to the street and good access to natural light and air.</p>	<p>Does not comply, but acceptable</p>
<p>Side and rear setback requirement for non-residential uses:</p> <ul style="list-style-type: none"> <li>· Up to 12m - nil setback</li> <li>· 12m to 24m - 6m setback</li> </ul>	<p>The first four floors of the building (Ground and Levels 1, 2, and 3) comply with the DCP requirement which allows a nil setback. These 4 floors provide a variety of setbacks. The setbacks range from nil to 9m.</p> <p>Levels 4 and 5 are then required to be set back 6m from side and rear boundaries. Because of the splayed shape of the site, the resulting setbacks vary depending on which point of the boundary the measurement is taken from, as well as whether the measurement is taken parallel or perpendicular from the boundary to the building edge.</p> <p>Most of the building's rear setback (eastern side) at Levels 4 and 5 do comply with the 6m setback control, and at points exceed that control. However, the angled walls closest to the rear boundary measure as being 5.9m from the rear property boundary (when measured parallel to the boundary) but also measure as having a 6m setback when measured perpendicular to the boundary.</p>	<p>Complies</p> <p>Does not comply, but acceptable</p>

In addition, the squaring off of the south-eastern corner of the building (near Hargrave Street) also means that a portion of the footprint in the south-eastern corner is approximately 3.64m from the rear boundary when measured parallel to the boundary, and 3.778m when measured perpendicular.

On balance, this is acceptable as that part of the building reads as part of the Hargrave Street frontage. It would also look awkward from the street, in facade terms, if a portion of that elevation had to have an additional step.

At the northern side elevation, the edges of Levels 4 and 5 are located 5.5m and 5.9m from the side property boundary. Although the portion that is 5.5m from the side boundary is stepped in from the building edge, the splayed shape of the site at this point means that the stepped part of the footprint is numerically more non-compliant than the remainder of the northern facade.

Notwithstanding this non-compliance, the proposed building shape and footprint still provides separation and breathing space between its form and the neighbouring properties. The proposal is therefore considered to meet the objectives of the DCP setback controls. In addition, Level 6 (the topmost floor) is set further back from the building edges and complies with the setback controls.

<p>Front setback to Somerset Street to be 4m and a maximum podium height of between 2 to 4 storeys, with upper floors set back</p>	<p>The proposal does provide the required 4m set back from Somerset Street. The setback area is designed to provide a landscaped arbour, with suspended decked paving, shaded seating areas and deep soil landscaping.</p> <p>Although Level 4 is not set back from the street frontage, the desired podium scale is still achieved. Levels 4 and 5 have a different facade treatment to Levels 2 and 3. The upper two hotel floors have a varied placement of solid to void and have larger window openings and less solid facade. By contrast, Levels 2-3 have more solid facade, making the groups of floors present differently (like a middle and a top).</p> <p>In addition, the landscaped arbour to Somerset Street is a two storey element in the front elevation which provides the 2 storey scale at street level. This visually separates the base of the building from the upper floors as viewed from the street.</p>	<p>Complies</p>
<p>Site coverage - maximum 75% of site</p>	<p>The building footprint will occupy 64% of the site, which complies.</p>	<p>Complies</p>
<p>Deep soil zone - minimum 10% of site area in one continuous block</p>	<p>16.5% of the site is proposed to be for deep soil landscaping.</p>	<p>Complies</p>
<p>Building exteriors to be articulated, consider adjoining buildings, roof plant to be integrated, and durable materials used</p>	<p>The proposal is acceptable in this regard. Design and architectural expression have been discussed above in the body of the report. Plant has been shown in designated areas on Level 6 and on the roof.</p>	<p>Complies</p>



Blank building walls at ground floor to be avoided and street activation provided	<p>The ground floor to Somerset Street contains active uses open to the public, including the retail space and the wellness space. The setback area to Somerset Street contains the landscaped arbour that is accessible via the decked pathways and seating areas.</p> <p>The Hargrave Street frontage contains a landscaped setback and part of the retail space wraps around the corner to the Hargrave Street frontage.</p> <p>The side facades (northern and southern sides) have been further articulated with windows and stepped elements so as to enhance their appearance.</p>	Complies
Maximum of one vehicle access point	One vehicle access point is located on Hargrave Street, which is an appropriate location as this is the secondary street frontage. Part of the driveway cavity includes a landscaped arbour over.	Complies
Awning to be provided along active street frontages	<p>The Somerset Street frontage does not contain an awning overhanging the footpath. However, the building has been designed with a 4m setback to Somerset Street and a landscaped arbour. The arbour is an open and lightweight structure that allows people to walk through it, and provides shade and weather protection.</p> <p>The front facade would look awkward if an awning had to be attached to the double-height landscaped arbour.</p>	Does not comply, but acceptable
Provide site facilities and services	A specific area for plant is located at Level 6 which is suitably setback from the property boundaries. Plant is also shown on the roof in areas selected so as to not extend further than the top of the lift overrun (RL 72). Areas for loading and waste collection are provided on-site within the ground floor.	Complies