

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA16/0597
Proposed development:	Demolition of Existing Structures, Construction of Six (6) Storey Mixed Use Development including Ground Floor Commercial Tenancy, 52 Residential Apartments & Two (2) Levels of Basement Car Parking
Property address:	28 Somerset Street, KINGSWOOD NSW 2747 30 Somerset Street, KINGSWOOD NSW 2747 32 Somerset Street, KINGSWOOD NSW 2747
Property description:	Lot 57 DP 215146 Lot 58 DP 36728 Lot 59 DP 36728
Date received:	23 June 2016
Assessing officer	Mathew Rawson
Zoning:	Zone B4 Mixed Use - LEP 2010
Class of building:	Class 1a , Class 7a , Class 6
Recommendations:	Approve

Executive Summary

Council is in receipt of a development application for a mixed use development comprising a commercial tenancy and a residential flat building with a total of 52 units at 28-32 Somerset Street, Kingswood. The subject site is zoned B4 Mixed Use under the Penrith Local Environmental Plan (LEP) 2010. Both commercial premises and residential flat buildings are permissible land uses in the B4 zone with Council consent.

Key issues identified for the proposed development and site include:

- Urban Design Review Panel (UDRP) comments which have now been addressed by way of revised plans which result in increased building separation and measures to reduce or mitigate the impacts on the adjoining northern neighbour's visual privacy.
- Waste Collection, which is undertaken by way of a loading bay within the first basement level.
- Height of Building variation required to an LEP development standard. The variation is deemed acceptable given the design excellence, consistency with the Penrith Health and Education Precinct planning provisions and residential amenity achieved by the proposal.
- Minor variations to planning controls such as building separation, circulation areas, communal open space and room depth.

The application has been notified to adjoining and nearby properties, advertised in the local newspaper and placed on public exhibition for a period of 14 days. One submission was received which is dealt with in the body of this report.

An assessment under Section 79C of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for approval subject to the recommended conditions of consent.

Site & Surrounds

The subject sites are known as 28, 30 and 32 Somerset Street, Kingswood, and is legally described as Lots 59, 58 and 57 DP 215146 respectively. The combined form of the sites is trapezoid in shape, and measure a total site area of approximately 1,694 sqm. No's 28 and 30 Somerset Street currently are occupied by single storey cottage style dwellings, and 32 Somerset Street is currently vacant. There are a number of mature trees and gardens on the site, which will be removed. All street trees and trees on adjacent land will be retained.

The site is located within the Penrith Health and Education Precinct, and specifically within the Medical Mixed Use character zone of the Hospital Precinct, surrounding Nepean Hospital, which is directly west of the site. Surrounding medical services and facilities make this area the primary medical centre for the Penrith LGA.

The Health and Education precinct is located immediately east of, and in close proximity to the Penrith City Centre. The site is located in close proximity to public transport, including a number of bus services stopping within 200 m walking distance of the site, with services running to Penrith, Claremont Meadows, Oxley Park, Mount Druitt, Erskine Park and St Clair. In addition, the site is located 650 m walking distance from Kingswood Railway Station.

The locality has a mixed character with development to the west comprising of an eight storey multi-deck car park adjoining the Nepean Hospital and further beyond a variety of medical and commercial land uses along Derby Street. To the north, east and south low density residential development at 1 or 2 storeys is predominant.

The locality is expected to undergo a significant transition under Penrith Local Environmental Plan (LEP) 2010 (Amendment No.4), which rezoned the locality B4 with maximum height limits of up to 21.6 m.

Proposal

The proposed development will contain 52 apartments across 6 storeys with 1 commercial tenancy on the ground floor at the corner of Somerset and Hargrave Street roof level will have a lift overrun and plant equipment and be accessed from the stair core. The proposed development will also include 2 levels of basement car parking with a total of 73 car spaces including 11 visitor spaces, 6 accessible spaces and 5 spaces for the commercial tenancy. Vehicle access to the site will be through a new vehicle crossover located on Hargrave Street and two existing vehicle crossovers on Somerset Street will be removed allowing for the potential for additional street parking. Pedestrian access will be via Somerset Street which will act as the site's street address.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy No 65—Design Quality of Residential Flat Development
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

• Section 79C - Evaluation

The development has been assessed in accordance with the matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration:

Section 79C(1)(a)(i) The provisions of any environmental planning instrument

State Environmental Planning Policy No 55—Remediation of Land

Clause 7 of SEPP 55 outlines the following requirements that a consent authority consider prior to the issue of a consent for any development:

“A consent authority must not consent to the carrying out of any development on land unless:

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

There is no record to suggest that the subject site is contaminated. The proponent has outlined that the site has been historically used for residential purposes and the current proposal does not substantially change the dominant land use. Council’s Environmental Health Officer has reviewed the proposal in detail and raised no concerns regarding land contamination for the proposed development.

As a result it is considered that as the use of the land is not substantially changed and the land is suitable for residential development, the proposed development is compliant with the provisions of SEPP 55, particularly Clause 7.

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

The proposed development is consistent with the aims and objectives of SEPP 65. The accompanying SEPP 65 regulations require the involvement of a qualified designer throughout the design, approval and construction stages. In this regard, the application has been accompanied by a design verification statement from a suitably qualified designer.

An assessment has been undertaken of the proposed development in relation to the nine design quality principles and the related Apartment Design Guide (ADG). The proposal is for the most part in accordance with the provisions of the SEPP and the ADG, although the following matters are noted for discussion:

3D Communal Open Space

The site area is 1694 sqm, of that 424 sqm (25%) is required to remain as communal open space. Although the proposal will comply with the DCP for maximum site coverage with a building footprint of 1164 sqm (31% total open space) the development will only achieve 272 sqm of communal open space (16% of the total site area).

The communal open space that will be provided will have good quality amenity with communal facilities such as bench seating and BBQ facilities being provided and access to deep soil areas. Since the open space is not currently surrounded by buildings it will receive over 50% of direct sunlight and for a duration greater than 2 hours between 9 am and 3 pm in mid winter. Many of the apartments in the development have balconies greater than the minimum required providing additional private open space to the residents. In this regard the proposal complies with the objectives of the ADG’s open space requirements.

3F Separation between Windows and Balconies

Recently a Development Application has been submitted to Penrith Council identifying 1-5 Hargrave Street and 38-40 Orth Streets on the site’s eastern boundary as an amalgamated development. In recognition of this likely future development the setbacks and apartment configuration has been revised with compliant 6 m setbacks (levels 1-4) and 9 m setbacks (levels 5-6) to all balconies and living areas for a majority of the eastern facade. Due to site specific constraints these setbacks cannot be practically achievable towards the southern section of the eastern boundary, this has necessitated reduced setbacks of no less than 3m (level 1-4) and 4.5m (levels 5-6). The apartments that encroach on this setback will have living areas orientated away from the common boundary and privacy screening to all windows within the setback defined by the ADG.

The future development adjacent to the remaining site at 26 Somerset St on the northern boundary lends itself to either a medical suite or a mixed use development. Due to the size and proportions of the site it is unsuitable for a basement carpark configuration. It is expected that any future development on this site, be

it medical suites or mixed use residential would be orientated towards the street boundaries and have no setback to the southern boundary that is shared with the proposal outlined in this report. The scale of the subject development is an opportunity to reduce the setbacks on the northern boundary enabling the proposal to meet the density pursued by the sites planning controls in addition to being a challenge as this northern elevation will likely remain prominent throughout the future development of the precinct and is required to be designed as a primary elevation. As such the development has been designed with a 3 m setback to the northern boundary however the unit layouts have been designed to ensure that they are not orientated towards the northern boundary. Additionally it is likely that this northern neighbour will likely be developed with a more commercial development in mind given its lot size. Alternatively if mixed development with residential component is pursued it is small enough to ensure that no units are orientated towards the shared boundary with the subject site (which is also a better outcome in terms of solar access).

The floorplate has been designed to mitigate the impact upon current and future neighbours. Only 3 apartments in a typical floorplate are orientated towards common boundaries. These apartment have deep balconies with the extent of glazing on the relevant facades minimised.

As the development is subject to a maximum 3.5:1 FSR control for the setbacks applied have required some flexibility to meet the desired density for the site.

4D Apartment Size and Layout

Room depth is required to be a max. of 2.5 x ceiling height (2.7 m) which equals 6.75 m. The master bedrooms of Units 102, 202, 302, 402 and 502 all technically do not comply with this control when measured from the facade of the building where natural light will actually be available. The reasons for the variation is based on the "snorkel" or "piggy-back" room configuration. Given that the long room depth ends with a bathroom where mechanical ventilation is required which will aid achieving ventilation of the room space and that the main use of the bedroom is a passive or sleeping space this variation to the room depth control is deemed to be acceptable.

Numerous units are also provided with a small study area in addition to the open plan living areas. These study areas do not comply with the control of the ADG which requires that: "A window should be visible from any point in a habitable room." However the ADG goes to outline that: "Where minimum areas or room dimensions are not met apartments need to demonstrate that they are well designed and demonstrate the usability and functionality of the space with realistically scaled furniture layouts and circulation areas. These circumstances would be assessed on their merits." Given that the study areas are not enclosed and are not of sufficient size they are not considered likely to be used as additional bedrooms. Furthermore the furniture layouts submitted with the application provide a realistic use of the spaces which demonstrates that they are well designed, usable and functional. Ultimately the fact these study areas are not provided with natural light or ventilation is not considered to be a reasonable reason to delete them from the plans given their functionality and lack of adverse impacts likely to arise from their presence.

4F Common Circulation Spaces

The proposal does not strictly comply with this design criteria as it has between 8 and 10 apartments per level and a single core. It does comply with the design guidance regarding providing less than 12 apartments per core.

Through the use of 2 sources of natural light including a window at the lift lobby combined with bench seating and planter boxes at each level, a good quality environment and amenity will be provided to the common areas supporting the proposals use of up to 10 apartments per level.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the application against relevant criteria within Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997) and the application is satisfactory subject to recommended conditions of consent.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Complies
Clause 2.3 Permissibility	Complies
Clause 2.3 Zone objectives	Complies
Clause 2.7 Demolition requires development consent	Complies
Clause 4.1A Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings	N/A
Clause 4.3 Height of buildings	Does not comply - See discussion
Clause 4.4 Floor Space Ratio	Complies - See discussion
Clause 4.5 Calculation of floor space ratio and site area	Complies
Clause 4.6 Exceptions to development standards	Complies - See discussion
Clause 5.9 Preservation of trees or vegetation	Complies
Clause 7.1 Earthworks	Complies
Clause 7.4 Sustainable development	Complies
Clause 7.6 Salinity	Complies
Clause 7.7 Servicing	Complies
Clause 7.8 Active street frontages	Complies
Clause 7.11 Penrith Health and Education Precinct	Complies - See discussion

Clause 4.3 Height of buildings

The proposed development fails to comply with the applicable 18 m height of building development standard.

- The development's roof height is between 18.8 - 20.8 m above existing natural ground.
- The development's plant room roof is between 20.4 - 21.6 m above existing natural ground.
- The development's lift overrun is between 20.5 - 22.5 m above existing natural ground.

Accordingly a request to vary the development standard has been submitted in accordance with Clause 4.6 of the LEP.

Clause 4.4 Floor Space Ratio

The proposed development has a gross floor area of 4653 sqm and a total site area of 1694 sqm. This equates to a floor space ratio of 2.75:1 which is far below the allowable FSR of 3.5:1 (or 5929 sqm of gross floor area)

Clause 4.6 Exceptions to development standards

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.

Comment: As noted above the development contravenes the development standard for height of buildings under Clause 4.3 of the Penrith LEP 2010.

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

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

Comment: (a) The applicants request to vary clause 4.3 adequately demonstrated as follows that compliance with the development standard is unreasonable or unnecessary in this case:

In Wehbe v Pittwater Council [2007J NSWLEC 827 Preston CJ set-out the five ways of establishing that compliance with a development standard is unreasonable or unnecessary in support of justifying a variation. These are:

- 1. the objectives of the standard are achieved notwithstanding non-compliance with the standard;*
- 2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- 3. the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- 4. the development standard has been virtually abandoned or destroyed by Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
- 5. the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

As outlined in [in other sections of the applicant's 4.6 request] the proposed development is consistent with the underlying objectives of the building height standard, particularly when understood in conjunction with Clause 7.11 relating to alternate building heights in the Penrith Health and Education precinct, and therefore satisfies the first test.

Compliance with the 18m building height standard is considered unreasonable and unnecessary for the following reasons:

- Clause 7.11 enables buildings to achieve an alternate height of up to 21.6 metres, if internal floor to ceiling height requirements are satisfied on the ground and first floor.*
- The building envelope including the plant level is entirely within the 21.6 metre height limit under Clause 7.11, with the exception of a small portion of lift overrun.*
- There is no benefit in providing 3.5 metre floor to ceiling heights for the ground and first floor merely to trigger the 20% height bonus, in circumstances where:*
 - 1. the site is relatively narrow and constrained, and unable to accommodate significant non-residential uses;*
 - 2. as such, Council officers have endorsed in principle the approach of providing a single commercial tenancy at the ground floor;*
 - 3. providing 3.5 metre floor to ceiling heights at both ground and first level would therefore be futile;*
 - 4. providing 3.5 metre floor to ceiling heights at both ground and first level would unnecessarily further increase the height of the development;*
 - 5. the proposed 3.1 metre floor to ceiling height at ground floor (3.5m floor to floor) is adequate to accommodate a wide range of non-residential uses; and*
 - 6. apartments on ground level will still have the potential to be converted to nonresidential uses as they have been designed to incorporate private entries to Somerset Street and have 3.1 m floor to ceiling heights.*
- The bulk and scale impacts associated with the additional height are considered acceptable given that the adopted controls for the Penrith Health and Education precinct envisage that 21.6 m height limits are acceptable and do not cause significant overshadowing of the surrounding area, importantly to adjacent properties.*
- The proposed floor space ratio of the development equates to 2.8:1, which is well below the FSR standard of 3.5:1. The proposal is unable to achieve the maximum FSR permitted on the site even with the proposed exceedance. The additional height will ensure that the proposed development is aligned and more compatible with Council's density controls and objectives for the precinct.*

(b) Additionally the applicant submitted the following planning grounds to justify the proposed contravention of the development standard:

"The following outlines the key reasons the proposed development is appropriate for the site and a departure from the strict application of the development standard is reasonable:

- The bulk and scale of the proposed development positively and appropriately responds to the desired*

future character of the Penrith Health and Education Precinct, without significant impacts on solar access, traffic, view loss and privacy.

- *The bulk and scale impacts associated with the additional height are considered acceptable given that the adopted controls for the Penrith Health and Education precinct envisage that 21.6 m height limits are acceptable. and do not cause significant overshadowing of the surrounding area, importantly to adjacent properties.*
- *The proposal incorporates contemporary design elements which positively contribute to the amenity and streetscape of both Somerset and Hargrave Streets. Vertical and horizontal elements within the design of the facade, break up the massing, and therefore minimise the visual scale of the additional built form, and generous landscaping is incorporated.*
- *The proposed floor space ratio of the development equates to 2.8:1, which is well below the FSR standard of 3.5:1. The proposal is unable to achieve the maximum FSR permitted on the site even with the proposed exceedance. The additional height will ensure that the proposed development is aligned and more compatible with Council's density controls and objectives for the precinct.*
- *The proposal will deliver positive social and economic outcomes for the local area providing residential housing and commercial opportunities. The proposal will improve street amenity and activation at ground level, with active frontages and passive surveillance. The proposal provides high quality apartments, which exceed minimum size requirements."*

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

(a) the consent authority is satisfied that:

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

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

(b) the concurrence of the Director-General has been obtained.

Comment: (a) The applicant's written request as detailed above is considered satisfactory to address the matters required by subclause (3). The proposed development represents a suitable development of the site in terms of the desired character for the locality and is therefore considered to be in the public interest.

(b) Department of Planning Circular PS 08–003 notified the assumed concurrence of the Director General for all exceptions to development standards under Clause 4.6 of the standard instrument LEP (aside from some controls relating to subdivision of rural and environmental zones).

In conclusion the proposed variation is supported on the basis of its consistency with the matters for consideration outlined in Clause 4.6.

Clause 7.11 Penrith Health and Education Precinct

It is noted that the development does not trigger the 20% height bonus applicable when the ground and first floor levels are provided with an 'adaptable' 3.5 m floor to ceiling height as outlined within this clause of the LEP. However it is also noted that the proposed development provides up front ground floor commercial floor space as well as adaptable 3.5 m floor to ceiling heights for the ground floor and is therefore consistent with the objectives of this clause.

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

Development Control Plan 2014

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

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

Fire Safety

Under Part 9 of the Environmental Planning and Assessment Regulation 2000 owners of buildings must provide the FRNSW Commissioner with a copy of the Fire Safety Certificate for the building (along with the current Fire Safety Schedule). The Fire Safety Certificate is issued when essential fire safety measures have been assessed by a qualified person as being capable of performing to the standard defined by the Schedule. A condition of consent has been imposed to ensure that this occurs on an annual basis.

Prescribed Conditions

The relevant prescribed conditions of the Regulations, such as the requirement for compliance with the BCA, will be imposed as conditions of consent where applicable.

Advertising and Notification

Neighbour notification and advertising was carried in accordance with the requirements of the Regulations.

Section 92 - Additional Matters

- Any demolition will be conditioned to be in accordance with the provisions of AS 2601.
- The development is not subject to the NSW Government's Coastal Policy.
- The development is not situated on land subject to an order made under Schedule 5 of the Act (paper subdivisions).

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

Likely impacts of the proposed development as identified throughout the assessment process include:

Site Isolation

The northern adjoining property at 26 Somerset Street, Kingswood will be left isolated by the subject development and by the proposed development partly over 40 Orth Street, Kingswood which is currently under assessment by Council (DA16/0999).

Accordingly the applicant was required to address the planning principles of the Land and Environment Court in relation to re-development of land. The applicant submitted advice from Mills Oakley Law Firm (Ref: TJFS/AJWS/3217581) which came to the following legal opinion:

"A. Zeftco has made all reasonable efforts to acquire 26 Somerset in an attempt to amalgamate it with the DA site to form one consolidated site comprising 26-32 Somerset Street.

B. Amalgamation of 26 Somerset and the DA site is not reasonably feasible having regard to the attempts Zeftco has already made to acquire 26 Somerset and the express reluctance of the owner to sell that property.

C. Zeftco has satisfied the Land and Environment Court's planning principle regarding site isolation, particularly in terms of its attempts to acquire 26 Somerset and the level of negotiations it has engaged in to secure that acquisition.

D. Council ought to be satisfied that Zeftco has done all it reasonably can to acquire 26 Somerset to amalgamate it with the DA site. The DA could not validly be refused on this basis."

It is considered that the submitted legal advice and appendices (including land valuation of the isolated site) satisfies the Land and Environment Court's planning principles regarding site isolation, particularly in terms of the proponent's attempts to acquire 26 Somerset Street and the level of negotiations it has undertaken to secure that acquisition. Furthermore it is not considered that the site's re-development potential has been unacceptably impacted given that the zoning of 26 Somerset Street is B4 Mixed Use which allows for a range of commercial uses as well as residential flat buildings without an applicable minimum lot size control. Re-development of the site in isolation is also possible whilst remaining consistent with the objectives of the B4 zone whereas this may not have been possible in a strictly high density residential context.

Other impacts identified in assessment

Subject to the recommended conditions of consent, it is not considered that the proposal will result in any significant impacts on the natural, social or economic environments of the locality due to its scale, location and consistency with desired future character of the area evidenced by the relevant planning controls and land zoning.

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

The subject site is deemed suitable for the following reasons:

- The zone permits the proposed use.
- The use is consistent and compatible with surrounding/adjoining land uses.
- The grade of the site is suitable for the design proposed.
- Stormwater from the site is able to drain to Council's satisfaction.
- The site is adequately serviced by access, water and sewer infrastructure which has the capacity to cope with any increase in demand associated with the proposed development.
- Recommended conditions of consent will ensure that the proposal will have minimal effects on the surrounding environment during the construction stage.

Section 79C(1)(d) Any Submissions

Community Consultation

In accordance with DCP 2014 the proposed development was notified to nearby and adjoining residents, advertised in the local newspaper and placed on public exhibition for a period of 14 days. Council has received 1 submission in response from the Nepean Blue Mountains Local Health District.

Submissions

The following issues were raised in the submission received and have formed part of the assessment.

Issue Raised	Comments

Concern relates to the height of the respective developments and the impact on current and future flight paths for helicopters that access the Nepean Hospital Campus for the purposes of patient transfer and retrieval. This concern extends to include the construction phase of development particularly when involving tower cranes.

It is Council staff's understanding that for helicopter landing sites that are not in the vicinity of controlled airspace (usually around airports), flight paths do not require any form of formal approval from any level of government. Therefore there is no in-force approval governing flight paths for helicopters accessing the helipad. Instead the helicopter operator must adhere to Visual Flight Rules and Civil Aviation Guidelines which are based on safety.

Council is working with Nepean Hospital to provide an outcome which allows for the continued safe operation of aeromedical patient transfer. However Council is yet to be provided with any existing plans which detail the current flight paths taken by ambulance helicopters accessing the helipad or any proposed new flight path solutions.

On this basis a merit assessment of the subject development proposal has been undertaken to determine its impact on helicopter operations. The subject site is located approximately 380 metres from the Nepean Hospital Campus's current helicopter landing pad. Located between the landing pad and the subject site are buildings of considerable scale which are similar to the subject to development in terms of overall height (such as the multi-deck car park).

The landing pad is approximately 15 m lower than the roof of the proposed development (taking into account the fact that the helipad is approximately 7 m higher than the subject site's existing ground level). This means that the helicopter would require a rate of climb of 1:25 (or 4%) to clear the proposed building.

The recommended slope of approach and departure paths outlined in the Civil Aviation Safety Authority (CASA) document 'CAAP 92-2(2): Guidelines for the establishment and operation of onshore Helicopter Landing Sites' ranges from 4.5% to 12.5%. As such, even the minimum recommended slope of approach and departure path (4.5%) recommended by CASA would clear the proposed building.

Accordingly, it is not considered that the proposed development when constructed will be responsible for any impact on flight paths for helicopters accessing the Nepean Hospital Campus's landing pad.

During construction it is acknowledged that a tower crane will almost certainly be required to be erected to enable construction of the proposal. In order to ensure such a crane is of no impact during flight operations, the following condition of development consent is recommended:
"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.
- Maximum height.

- Position and orientation of 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, such that the lighting will provide an indication of the height of the crane and the radius of the crane jib. Such lighting, which should be displayed at night, should be positioned so that when displayed it is visible from all directions.
- When a crane is unattended for a period of time ensure the crane's boom is retracted and lowered as far as possible."

This condition of consent has been provided for the Nepean Hospital's review and were advised of the development being recommended for approval. No further response was received.

Referrals

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

Referral Body	Comments Received
Building Surveyor	No objections - subject to conditions
Development Engineer	No objections - subject to conditions
Landscape Architect	No objections - subject to conditions
Environmental - Environmental management	No objections - subject to conditions
Environmental - Waterways	No objections - subject to conditions
Waste Services	Not supported
Traffic Engineer	Not supported
Community Safety Officer	No objections - subject to conditions
Tree Management Officer	No objections - subject to conditions

Traffic Engineer

Council's Traffic Engineer raised the following concerns with the proposed development:

"The length of time and frequency that both waste servicing and removalist vehicles would occupy the loading bay at the bottom of the ramp highlights the inappropriateness of the location and the recommended options. All swept paths for vehicle manoeuvring are shown in car park aisles which is inappropriate. The report indicates that the truck would manoeuvre into the bay within 1 minute and it's not clear whether the lights would remain on red while all servicing occurs or just during manoeuvring. An occupied loading bay appears to block traffic. Any queuing in the ramp/to the street for servicing/removals is inappropriate and dangerous. Convex mirrors are not approved RMS devices as drivers over-rely on them and they distort distances."

Comment: A condition of consent is recommended that requires the building's caretaker be onsite during waste collection to ensure that there is a spotter during the waste truck's reversing maneuvers.

Additionally traffic management systems are required which warn approaching drivers of the waste collection vehicle reversing by way of high level sensors and flashing traffic lights.

The loading bay as shown on plans maintains a 5.5 m wide carriage way for basement users to travel past the loading bay even whilst trucks are parked and waiting.

Swept paths were submitted from the applicant's traffic engineer which show that the truck maneuvers were capable of being undertaken by up to a 12 m long heavy rigid vehicle (HRV), this ensures that Council's smaller wheelbase 10.5 m truck will be able to accommodate such a maneuver. There are no turn tables proposed by the development.

Note: The width of the parking spaces being 2.4 m rather than the suggested width of 2.5 m was also raised as an issue. The development will be subject to a condition of consent which ensures that all car parking spaces comply with the requirements of the relevant Australian Standard.

Waste Services

Council Waste Officer raised the following concerns in relation to the proposed development:

Onsite Loading Bay

The requirement for onsite collection is outlined under section 5.3.4.1 Access to Waste Storage and/or Collection Areas Subsection 3. The amended plans submitted that strive to address these requirements are not supported. The presented maneuvers require the following to be undertaken:

- Reverse blind into an active path of basement travel
- Perform maneuvers outside of the trucks operational capabilities
- Turn tables that obstruct basement movements

Comment: A condition of consent is recommended that requires the building's caretaker be onsite during waste collection to ensure that there is a spotter during the waste truck's reversing maneuvers. Additionally traffic management systems are required which warn approaching drivers of the waste collection vehicle reversing by way of high level sensors and flashing traffic lights.

Swept paths were submitted from the applicant's traffic engineer which show that the truck maneuvers were capable of being undertaken by up to a 12 m long heavy rigid vehicle (HRV), this ensures that Council's smaller wheelbase 10.5 m truck will be able to accommodate such a maneuver. There are no turn tables proposed by the development.

Waste Chute System

The proposed chute room located in the basement is not supported. The area has the following constraints including restricted access to service bins due to the location of the linear track system, the chute outlets are not placed over the centre of the linear track to allow serviceability and the room is too narrow to allow sufficient manoeuvrability.

The waste chute room located in basement 1 will need to incorporate the following infrastructure into its design:

- Incorporation of linear track device under each individual chute. System specifications will need to be provided with the operational clearances and location clearly outlined on architectural plans
- Minimum 0.9m clearances around the track device to allow the bins to be rotated and changed when full
- Suitable Door access for the service of bins with a minimum width of 1.8m
- Should a roller shutter door be provided an additional service door is required inclusive of an Abloy Key system
- Allow for the storage of 2x1,100L Service bins in each chute room with a minimum 1.4m wide unobstructed path of access

Comment: These requirements will be imposed by way of condition of consent requiring an amended basement plan that incorporates these changes.

Waste Collection Room

The proposed waste collection room located adjacent to the loading bay is not supported. The area is not enclosed, lockable and unable to contain the desired collection fleet with the required manoeuvrability

provisions.

The amended waste collection room will need to incorporate the following infrastructure into its design:

- Room built to store the 6x1,100L bins plus 0.2m between bins to allow adequate manoeuvrability room
- Suitable Door access for the service of bins with a minimum width of 1.8m
- Should a roller shutter door be provided an additional service door is required inclusive of an Abloy Key system
- The room is to be located adjacent to the loading bay

Comment: These requirements will be imposed by way of condition of consent requiring an amended basement plan that incorporates these changes.

Bulky Households Goods Room

The proposed bulky household goods room located adjacent to the loading bay is not supported. The area is undersized, 1.2m wide at its narrowest point, door access 1.4m wide and location is not directly accessible to the loading bay without crossing basement traffic.

The Bulky Households Goods Room will need to incorporate the following infrastructure into its design:

- The room is to be 9m² in area to allow service of the development with a minimum room width of 1.8m
- Suitable Door access for the service of bins with a minimum width of 1.8m
- Should a roller shutter door be provided an additional service door is required inclusive of an Abloy Key system
- The room is to be located adjacent to the loading bay, if possible.

Comment: These requirements will be imposed by way of condition of consent requiring an amended basement plan that incorporates these changes.

Internal Waste Infrastructure

All onsite waste infrastructure including the Waste Chute Room, Temporary Waste Storage Room, Waste Collection Room and Bulky Household goods room will need to incorporate the following minimum design specifications:

- The floor must be finished so that it is non-slip and has a smooth and even surface covered at all intersections
- Floor graded to a central drainage point connected to the sewer, enabling all waste to be contained and safely disposed of
- Fully enclosed and roofed with a minimum internal room height in accordance with the Building Code of Australia 2016 (BCA)
- The room is to be provided with an adequate supply of water through a centralized mixing valve with hose cock
- Incorporation of adequate lighting and naturally/mechanical ventilation to meet Building Code of Australia 2016 requirements

Comment: These requirements will be imposed by way of condition of consent that such infrastructure be constructed and shown on the plans accompanying the Construction Certificate.

Indemnity Agreement

Prior to the issue of any Occupation Certificate, all dwellings within Penrith LGA are required to enter a formal agreement with Penrith City Council for the utilization of Council's Waste Collection Service. This is to include Council being provided with indemnity against claims for loss or damage.

Comment: This requirement will be imposed by way of condition of consent.

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

The proposed development will not generate any unacceptable issues of public interest.

Section 94 - Developer Contributions Plans

The following Section 94 plans apply to the site:

- Section 94 - District Open Space Facilities
- Section 94 - Cultural Facilities
- Section 94 - Penrith City Local Open Space

The following Section 94 calculations apply to the proposed development.

Calculation for demolition of 3 x dwellings and construction of a mixed use development with ground floor commercial tenancy and 52 unit residential flat building					
<i>Open Space</i>					
No. of units	x	Rate	-	Credit for existing dwelling/s	Contribution rate
52	x	2	-	9.3	94.7
<i>City Wide</i>					
No. of units	x	Rate	-	Credit for existing dwelling/s	Contribution rate
52	x	2.4	-	9	115.8
AMOUNT					
S.94 Contribution Plan		Contribution Rate x Calculation Rate			Total
District Open Space		94.7 x \$1869.00			\$176,994.00
Local Open Space		94.7 x \$676.00			\$64,017.00
Cultural Facilities		115.8 x \$150.00			\$17,370.00
		NET TOTAL			\$258,381.00

Conclusion

Subject to the recommended conditions of consent the proposal is considered to be consistent with the relevant sections of the Environmental Planning and Assessment Act 1979, relevant State Environmental Planning Policies, the relevant Local Environmental Plan and the Penrith Development Control Plan 2014 because it does not contravene any development standards and will not result in any significant impacts on the natural, social or economic environments.

The site is suitable for the proposed development, the proposal does not conflict with the public interest, and there is unlikely to be negative impacts arising from the proposed development. Accordingly, the application is worthy of support and recommended for approval, subject to recommended conditions.

Recommendation

1. That the submitted Clause 4.6 variation to the height of buildings standard under Clause 4.3 of the Penrith LEP 2010 be supported.
2. That DA16/0597 for the demolition of existing structures & construction of a mixed use development including a ground floor commercial tenancy, 52 residential apartments and 2 levels of basement car parking at 28-32 Somerset, Kingswood, be approved subject to the attached conditions.

CONDITIONS

General

1 A001

The development must be implemented substantially in accordance with the following stamped approved plans and documents, the application form and any supporting information received with the application, except as may be amended in red on the approved plans and documents and by the following conditions.

Description	Reference Number	Prepared by	Dated
Cover Sheet	Job No: 20072, Drawing No: DA0001, Revision: 02	Plus Architecture	18 October 2016
Survey/Demolition Plan	20072, DA0020, 01	Plus Architecture	03 June 2016
Basement 02	20072, DA0098, 02	Plus Architecture	18 October 2016
Basement 01	20072, DA0099, 02	Plus Architecture	18 October 2016
Ground Floor	20072, DA0100, 02	Plus Architecture	18 October 2016
Level 01	20072, DA0101, 02	Plus Architecture	18 October 2016
Level 02	20072, DA0102, 02	Plus Architecture	18 October 2016
Level 03	20072, DA0103, 02	Plus Architecture	18 October 2016
Level 04	20072, DA0104, 02	Plus Architecture	18 October 2016
Level 05	20072, DA0105, 02	Plus Architecture	18 October 2016
Roof	20072, DA0106, 02	Plus Architecture	18 October 2016
North Elevation	20072, DA0200, 02	Plus Architecture	18 October 2016
East Elevation	20072, DA0201, 02	Plus Architecture	18 October 2016
South Elevation	20072, DA0202, 02	Plus Architecture	18 October 2016
West Elevation	20072, DA0203, 02	Plus Architecture	18 October 2016
Section A-A	20072, DA0220, 02	Plus Architecture	18 October 2016
Section B-B	20072, DA0221, 02	Plus Architecture	18 October 2016
Section C-C	20072, DA0222, 02	Plus Architecture	18 October 2016
Section D-D	20072, DA0223, 02	Plus Architecture	18 October 2016
Adaptable Units	20072, DA0240, 02	Plus Architecture	18 October 2016
Materials and Finishes Schedule	20072, DA0360, 01	Plus Architecture	03 June 2016
Landscape Plan	103	Arcadia Landscape Architecture	June 2016
West Elevation	104	Arcadia Landscape Architecture	June 2016
Section A	105	Arcadia Landscape Architecture	June 2016
Section B	106	Arcadia Landscape Architecture	June 2016
Section C	107	Arcadia Landscape Architecture	June 2016
Section D	108	Arcadia Landscape Architecture	June 2016
Planting Schedule	110	Arcadia Landscape Architecture	June 2016
Planting Plan - Ground	201	Arcadia Landscape Architecture	June 2016
Planting Plan - Level 1-5 Typical	202	Arcadia Landscape Architecture	June 2016
Landscape Details - Hardworks	203	Arcadia Landscape Architecture	June 2016
Landscape Details - Softworks	204	Arcadia Landscape Architecture	June 2016
Landscape Specification	205	Arcadia Landscape Architecture	June 2016

Documents:

- BASIX Certificate No. 732169M
- Waste Management Plan - Elephants Foot - 31 October 2016
- Traffic and Parking Assessment - The Transport Planning Partnership Pty. Ltd. - Ref: 16021 - 2 November 2016
- Transport Impact Assessment - The Transport Planning Partnership Pty. Ltd. - Ref: 16021 - 17 June 2016
- Stormwater Management Report - Northrop - Ref: 151404-CR02-C - 06/10/16
- Waste Collection Vehicle Noise - SLR Consulting Australia - Ref: 610.15704-L01-v0.2 - 28 October 2016
- Noise Impact Assessment - SLR Consulting Australia - Ref: 610.15704-R1 - 27 May 2016
- Access Compliance Capability Statement - AE & D Pty. Ltd. - Ref: 6284 - 31 October 2016.
- Geotechnical Investigation - Douglas Partners - Ref: 85085.00 - 13 October 2015
- Aboricultural Impact Appraisal and Method Statement - Naturally Trees - 23 October 2015

2 [A014 - LOT CONSOLIDATION](#)

Lot 57 in DP 215146 and Lots 58 and 59 in DP 36728 are all to be consolidated as one lot.

A copy of the registered plan of consolidation from Land and Property Information division of the Department of Lands is to be submitted to the Principal Certifying Authority (PCA) and Penrith City Council, if Council is not the PCA, prior to the issue of an Occupation Certificate for the development.

3 [A019 - OCCUPATION CERTIFICATE \(ALWAYS APPLY\)](#)

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

4 [A029 - HOURS OF OPERATION AND DELIVERY TIMES](#)

Delivery and service vehicles (including private garbage collection vehicles) generated by the development are limited to between 7am and 10pm Monday to Saturday.

5 [A046 - Obtain Construction Certificate before commencement of works](#)

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

6 [A Special \(Allocation of car parking spaces\)](#)

Prior to the issue of a Construction Certificate, plans of the basement must be submitted to, and approved by, Council showing the allocation of all basement car parking. Car parking spaces shall be allocated as follows:

- At least 1 space per 1 or 2 bedroom unit.
- 2 spaces per 3 bedroom unit.
- 1 dedicated car washing bay.
- 10 dedicated visitor spaces.
- 5 spaces for the commercial tenancy.

Note: The accessible parking spaces must be allocated to the adaptable units.

7 [A Special \(Changes to on-street car parking\)](#)

Prior to the issue of an Occupation Certificate, the applicant shall make arrangements with Council's Traffic Engineers and the Local Traffic Committee to amend the marked on-street car parking to be consistent with the proposal's vehicular access points as well as install the appropriate regulatory signage and linemarking. Such alterations shall be at no cost to Council.

8 [A Special \(Colours and Materials\)](#)

Prior to the issue of a Construction Certificate, details of the proposed external building materials and colours are to be submitted to, and approved, by Council.

9 [A Special \(Crane Operational Requirements\)](#)

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 counterboom/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 counterboom/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 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.

10 [A Special \(Design Verification CC\)](#)

Prior to the issue of a Construction Certificate, a design verification statement from a qualified designer shall be submitted. The design verification statement shall verify that the Construction Certificate plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles set out in Part 2 of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development.

11 [A Special \(Design Verification OC\)](#)

Prior to the issue of an Occupation Certificate, a design verification statement from a qualified designer shall be submitted. The design verification statement shall verify that the development achieves the design quality shown in the approved Construction Certificate plans and specifications, having regard to the design quality principles set out in Part 2 of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development.

12 [A Special \(fencing and retaining walls\)](#)

Prior to the issue of an Occupation Certificate, 2.1 m high fencing shall be erected along the northern boundary behind the development's building setback from Somerset Street and along the eastern boundary behind the development's building setback from Hargrave Street. Such fencing and any required retaining walls required shall be constructed entirely at the expense of the persons having the benefit of this consent. Timber retaining walls are not permitted.

13 [A Special \(Screening of plant\)](#)

Any plant or unsightly structures installed on the external facades or rooftop must be screened from view.

14 [A Special \(Traffic Control Measures\)](#)

Prior to the issue of a Occupation Certificate, Traffic Control Measures to minimise potential conflicts between the waste collection vehicle and other basement users shall be installed and in use as per the Traffic Management Plan prepared by The Transport Planning Partnership Pty. Ltd. dated 2 November 2016, reference 16021.

15 [A special Asbestos Certificate](#)

A Clearance Inspection shall be carried out and a Clearance Certificate issued by an independent licensed asbestos assessor (for Class A asbestos removal work) or an independent competent person (in any other case) **before any site excavation or construction works occur**. This Certificate is to be submitted to the Principal Certifying Authority **prior to the issue of the Construction Certificate**.

The Clearance Certificate is to verify that the surface of the development site is free from asbestos. The Clearance Inspection and Clearance Certificate is to be undertaken and prepared in accordance with the Work, Health and Safety Regulation 2011, and all applicable Australian Standards and NSW WorkCover Codes of Practice.

16 A special Contamination final status

Prior to the issue of the Construction Certificate, written confirmation is to be prepared by a suitably qualified consultant confirming the contamination status of the soils under the existing structures on site. This documentation is to be submitted to Penrith City Council for consideration and approval prior to the issue of the Construction Certificate.

Where these areas are found to be unsuitable for the proposed land use, further works on site are not to commence and additional investigations are to be undertaken. Should any contamination be found and should remediation be required, development consent is to be sought from Penrith City Council before the remediation works commence. All remediation works within the Penrith Local Government Area are considered to be Category 1 works under State Environmental Planning Policy 55-Remediation of Land and therefore require development consent.

17 A Special CPTED consolidated

Prior to the commencement of the development's use and in perpetuity, the following community safety and crime prevention through environmental design (CPTED) requirements shall be satisfied:

Lighting

- All lighting should be maintained and kept in a clean condition with all broken or burnt out globes replaced quickly.

Basement Car Parking

- Resident, staff, visitor and commercial tenancy parking spaces must be clearly identified within the basement car park.
- Pedestrian entry/exit points to the car park, including the lifts and stairwell, must also be fitted with access control systems 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 (walls/ceilings) should be light coloured to maximise light distribution.
- Signage must be in place to clearly identify exit and access points, the location of lifts and stairwells.
- CCTV cameras should be provided for this development and are recommended for the basement car park, particularly on entry/exit points, including lift lobbies and stairwells.

Communal/Public Areas

- Communal areas and utilities must be easily seen and well lit.
- Access to communal areas must be restricted to residents, staff and authorised guests/visitors only.
- Clear signage must be displayed to indicate the location of facilities, and to indicate facilities that are accessible/for use by residents only.
- Common areas that are not intended for night time use should be securely locked after hours. Signage should indicate opening hours for each facility/area.
- Open style or transparent materials are encouraged on doors and/or walls of elevators/stairwells.
- Seating should be located in areas of active uses.

Residential Developments Building Identification

- Each individual dwelling should be clearly numbered.
- Unit numbers should be clearly provided on each level.
- Each building entry should clearly state the unit numbers accessed from that entry.

Building Security & Access Control

- CCTV Recordings must be made 24 hours/7 days and footage must be kept for a minimum period of 30 days. The CCTV control system must be located within a secured area within the main ground floor reception area and must only be accessed by authorised personnel. Signage noting that CCTV cameras have been installed must also be clearly displayed throughout the building, as proposed.
- Access from the street and pedestrian connections from within the building must be secured by a swipe card system and/or intercom to restrict unauthorised access, except for the ground floor commercial tenancies.
- Access to service areas and staff areas must be restricted via a swipe card by authorised staff which will assist in restricting unauthorised access.
- Main entry doors for apartment buildings should be displayed requesting residents to not leave doors wedged open.
- Australian Standard 220 door and window locks should be installed in all dwellings.
- Storage and loading dock areas should be well secured and well lit.
- Viewers on entry doors shall be installed to allow residents to see who is at the door before it is opened.
- If security grills are used on windows they should be operable from inside in case of emergencies.

Ownership & Space Management

- The management team must ensure that the building is maintained at all times, including replacement of lighting, regular maintenance of all public areas and landscaped open space and general repairs.

Management must also ensure the speedy repair or cleaning of damaged or vandalised property and provide for the swift removal of graffiti.

Way Finding/Finding Help

- Signs should be large and legible, and use strong colours, standard symbols and simple graphics. They should indicate where to go for help or assistance.
- Signs should be strategically located at entrances and near activity nodes such as intersections of corridors or paths.
- Signs should indicate how to report maintenance problems in the complex.
- Where exits to pedestrian routes are closed after-hours this should be indicated at the entrance to the route and information on alternative routes should be clearly advised.
- Signs that provide way finding information should not be relied upon solely, the overall legibility of the design needs to be well considered. Users of the space need to be able to intuitively understand where they are within the complex or area and how they can get away.
- Commercial facilities fronting the development must be clearly signposted and numbered. Street numbers should be at least 7 cm high, and positioned between 1 m and 1.5 m above ground level on the street frontage.
- Street numbers should be made of durable materials preferably reflective or luminous, and should be unobstructed (e.g. by foliage).
- Location maps and directional signage should be provided for the proposed development to assist with wayfinding.

Graffiti/Vandalism

- Any blank surfaces fronting the development may be susceptible for graffiti vandalism. Graffiti resistant coatings must be used to external surfaces where possible, also including signage, furniture, retaining walls etc. Wall-hugging vegetation (i.e. 'green-screening') may also be considered to deter graffiti to vulnerable walls.
- Procedures must be in place to ensure the prompt removal and/or repair of graffiti or vandalism to the buildings, commercial tenancies and common areas. This includes reporting incidents to police and/or relevant authorities.

18 [A special Unexpected Finds Protocol](#)

An Unexpected Finds Protocol (the Protocol) is to be developed by an appropriately qualified environmental consultant. **Prior to the issue of the Construction Certificate**, the Protocol is to be submitted to and approved by the Principal Certifying Authority. If Council is not the certifying authority for this development, the Protocol is required to be provided to Penrith City Council.

The Protocol is to address the management of any contamination found on the site during the excavation and construction phases of the development, including at minimum, contaminated soils, groundwater, buried building materials, asbestos, odour and staining.

The above Protocol is to be complied with at all times during the excavation and construction phase of the development.

19 [A Special Waste Indemnity Agreement](#)

All dwellings within Penrith LGA are required to enter a formal agreement with Penrith City Council for the utilization of Council's Waste Collection Service. This is to include Council being provided with indemnity against claims for loss or damage.

Note: By entering into an agreement with Council for waste collection, the development will be required to operate in full compliance with Penrith City Councils Waste collection and Processing Contracts for Standard Waste Collection. The provision of Council's waste collection service will not commence until formalisation of the agreement.

The original signed copy is to be submitted to council prior to the issue of an Occupation Certificate.

20 [A Special Waste Plan Amendments](#)

Prior to the issue of a Construction Certificate, a revised basement plan shall be submitted and approved by Council which complies with the following:

Waste Chute System

The waste chute room located in **basement 1** will need to incorporate the following infrastructure into its design:

- Incorporation of linear track device under each individual chute. System specifications will need to be provided with the operational clearances and location clearly outlined on architectural plans
- Minimum 0.9m clearances around the track device to allow the bins to be rotated and changed when full
- Suitable Door access for the service of bins with a minimum width of 1.8m
- Should a roller shutter door be provided an additional service door is required inclusive of an Abloy Key system
- Allow for the storage of 2x1,100L Service bins in each chute room with a minimum 1.4m wide unobstructed path of access

Waste Collection Room

The amended waste collection room will need to incorporate the following infrastructure into its design:

- Room built to store the 6x1,100L bins plus 0.2m between bins to allow adequate manoeuvrability room
- Suitable Door access for the service of bins with a minimum width of 1.8m
- Should a roller shutter door be provided an additional service door is required inclusive of an Abloy Key system
- The room is to be located adjacent to the loading bay

Bulky Households Waste Room

The Bulky Households Goods Room will need to incorporate the following infrastructure into its design:

- The room is to be 9m² in area to allow service of the development with a minimum room width of 1.8m
- Suitable Door access for the service of bins with a minimum width of 1.8m
- Should a roller shutter door be provided an additional service door is required inclusive of an Abloy Key system
- The room is to be located adjacent to the loading bay

Demolition

21 [B001 - Demolition of existing structures](#)

All existing structures on site are to be demolished as part of the approved work.

22 [B002 - AS FOR DEMOLITION AND DISPOSAL TO APPROVED LANDFILL SITE](#)

All demolition works are to be conducted in accordance with the provisions of AS 2601-1991 "The Demolition of Structures". **Prior to demolition**, all services shall be suitably disconnected and capped off or sealed to the satisfaction of the relevant service authority requirements.

All demolition and excavated material shall be disposed of at a Council approved site or waste facility. Details of the proposed disposal location(s) of all excavated material from the development site shall be provided to the Principal Certifying Authority **prior to commencement of demolition**.

23 B003 - ASBESTOS

You should read Council's Fact Sheet titled "Handling and Disposal of Fibrous Cement Products" **before any demolition works commence on the site.**

Prior to commencement of demolition works on site, a portaloos with appropriate washing facilities shall be located on the site and the Principal Certifying Authority is to be satisfied that:

- Measures are in place so as to comply with the WorkCover Authority's "Short Guide to Working with Asbestos Cement" and
- The person employed to undertake the works is a licensed asbestos removal contractor and is holder of a current WorkCover Asbestos Licence.

Any demolition works involving the removal of all asbestos shall only be carried out by a licensed asbestos removal contractor who has a current WorkCover Asbestos Licence.

All asbestos laden waste, including asbestos cement flat and corrugated sheeting must be disposed of at a tipping facility licensed by the Environmental Protection Authority to receive asbestos wastes.

24 B004 - Dust

Dust suppression techniques are to be employed during demolition to reduce any potential nuisances to surrounding properties.

25 B005 - Mud/Soil

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

26 B006 - Hours of work

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

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

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

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

Environmental Matters

27 D001 - Implement approved sediment& erosion control measures

A soil erosion and sediment control plan, prepared in accordance with Landcom's "Managing Urban Stormwater: Soils and Construction" 2004, shall be submitted for consideration and approval with the Construction Certificate application. {Note: Visit www.urbangrowth.nsw.gov.au to obtain a copy of the publication.}

The approved sediment and erosion control measures are to be installed prior to and maintained throughout the construction phase of the development until the land, that was subject to the works, has been stabilised and grass cover established.

28 D005 – No filling without prior approval (may need to add D006)

No fill material is to be imported to the site without the prior approval of Penrith City Council in accordance with Sydney Regional Environmental Plan No.20 (Hawkesbury- Nepean River) (No.2-1997). No recycling of material for use as fill material shall be carried out on the site without the prior approval of Council.

29 D007 - Cut and fill of land requiring Validation Certificate –limited to footprint

Cut and fill operations on the property are only permitted in conjunction with the building works as detailed on the approved plans and specifications, and shall not extend more than 2 metres past the defined building footprint.

30 D009 - Covering of waste storage area

All 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 shall provide at least two waste bays / bins so as to allow for the separation of wastes, and are to be fully enclosed when the site is unattended.

31 **D013 - Approved noise level 1**

Noise levels from the premises shall not exceed the relevant noise criteria detailed in "28-32 Somerset St, Kingswood: Development Application prepared by SLR Consulting Australia Pty Ltd dated 31 May 2016 (Report No. 610.15704-R1) and in the additional correspondence prepared by SLR Consulting Australia Pty Ltd titled "28-32 Somerset St, Kingswood DA: Waste Collection Vehicle Noise" dated 28 October 2016.

The recommendations provided in both of the above-mentioned documents are to be implemented and incorporated into the design and construction of the development, and shall be **shown on plans accompanying the Construction Certificate application**.

A certificate is to be obtained from a qualified acoustic consultant certifying that the development meets 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**.

The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.

32 **D014 - Plant and equipment noise**

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.

33 **D020 - Vehicle wash bay**

Vehicle wash bays are to be installed and connected to the sewer in accordance with Sydney Water's requirements. The Section 73 Certificate issued by Sydney Water for the discharge of vehicle wash bay wastewater from the premises shall be submitted to the Principal Certifying Authority before the wash bay can be installed.

34 **D026 - Liquid wastes**

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 licensed waste contractor is to remove the liquid waste from the premises to an appropriate waste facility.

The waste contractor and waste facility are to hold the relevant licenses issued by the NSW Environment Protection Authority.

BCA Issues

35 **E009 - Annual fire safety-essential fire safety (Class 2-9 buildings)**

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

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

(b) be given:

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

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

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

36 E01A - BCA compliance for Class 2-9

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

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

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

Health Matters and OSSM installations

37 F006 - Water tank & nuisance

The rainwater tanks must be maintained so as not to create a nuisance and it must be protected against mosquito infestation.

Utility Services

38 G002 - Section 73 (not for

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

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

39 G004 - Integral Energy

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

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

40 G006 -

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.

Prior to the issue of an Occupation Certificate, written certification from all relevant service providers that the telecommunications infrastructure is installed in accordance with the requirements above and the applicable legislation at the time of construction, must be submitted to the Principal Certifying Authority.

Construction

41 H001 - Stamped plans and erection of site notice

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

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

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

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

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

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

42 H002 - All forms of construction

Prior to the commencement of construction works:

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

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

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

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

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

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

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

43 H006 - Submission of and implement waste management plan

A completed demolition and construction waste management plan shall be submitted to Penrith City Council for consideration and approval. Council must approve the plan before works can commence on site.

The waste management plan shall be prepared in accordance with the Penrith Development Control Plan (2014), and shall address all waste materials likely to result from the proposed development, with details of the estimated waste volumes, onsite storage and management, proposed re-use of materials, designated waste contractors, recycling outlet and / or landfill site.

The approved waste management plan must be implemented on-site and adhered to throughout all stages of the development including demolition, with supporting documentation / receipts retained in order to verify the recycling and disposal of materials in accordance with the approved plan.

44 H033 – Clothes line

Clothes drying facilities are to be provided and screened from public view.

45 H036 - Rainwater Tank (Also impose H037, H038, H039, G005 & Q010)

The rainwater tank(s) is to be:

- erected on a self-supporting base in the approved location on the property in accordance with the stamped-approved site plans for the development,
- structurally sound and constructed in accordance with AS/NZS 3500 1.2- 1998: National Plumbing and Drainage - Water Supply - Acceptable Solutions,
- fully enclosed and all openings sealed to prevent access by mosquitoes,
- fitted with a first flush device,
- fitted with a trickle system to top up from mains water,
- provided with an air gap, and
- installed by a licensed plumber in accordance with Sydney Water's "Plumbing requirements Information for rainwater tank suppliers and plumbers April 2003" and the NSW Code of Practice: Plumbing and Drainage.

Additionally, the following are to be provided:

- A back flow prevention device shall be provided at the water meter in accordance with Sydney Water requirements.
- In the event of a power failure, a back up supply of mains water shall be provided to at least one toilet in the dwelling.
- The rainwater tank(s) and associated piping is to be labelled 'Rainwater - Not for Drinking' in accordance with Sydney Water requirements.
- The rainwater tank and pipework is to be painted in colours matching the external finishes of the dwelling and is to be of non-reflective finish.
- The overflow for the rainwater tank is to be connected into the existing stormwater disposal system on the site.

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

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

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

46 H037 - Safe supply of water from catchment areas (Also impose H036, H038 & H039)

The catchment area (for the rainwater tank) includes the parts of the roof of the dwelling(s) from which water is collected and includes gutters. To ensure a safe supply of water:

- roof catchment areas must be kept clear of overhanging vegetation,
- gutters must have sufficient fall to downpipes to prevent pooling of water,
- overflow, discharge from bleed off pipes from roof mounted appliances such as airconditioners, hot water services and solar heaters must not discharge into the rainwater catchment area,
- for roofs containing lead based, tar based or asbestos material the tank supply must not be connected to drinking, bathing and gardening tap water outlets,
- appropriate measures must be installed to prevent foreign materials from contaminating the water which enters the rainwater tank.

47 **H038 - Connection of rainwater tank supply (Also impose H036, H037 & H039)**

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

48 **H039 - Rainwater tank pumps (Also impose H036, H037 & H038)**

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

49 **H041 - Hours of work (other devt)**

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

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

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

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

50 **H042 - Adaptable Dwelling Certification**

The Construction Certificate must be accompanied by certification from an accredited Access Consultant confirming that the adaptable units are capable of being modified, when required by the occupant, to comply with the Australian Housing Standard (AS4299- 2009).

51 **H Special Detailed requirements for waste areas**

All onsite waste infrastructure including the Waste Chute Room, Temporary Waste Storage Room, Waste Collection Room and Bulky Household goods room will need to incorporate the following minimum design specifications and shall be shown on the plans submitted with the Construction Certificate:

- The floor must be finished so that it is non-slip and has a smooth and even surface covered at all intersections
- Floor graded to a central drainage point connected to the sewer, enabling all waste to be contained and safely disposed of
- Fully enclosed and roofed with a minimum internal room height in accordance with the Building Code of Australia 2016 (BCA)
- The room is to be provided with an adequate supply of water through a centralized mixing valve with hose cock
- Incorporation of adequate lighting and naturally/mechanical ventilation to meet Building Code of Australia 2016 requirements

Engineering

52 **K101 - Works at no cost to Council**

All roadworks, stormwater drainage works, associated civil works and dedications, required to effect the consented development shall be undertaken at no cost to Penrith City Council.

53 **K201 - Infrastructure Bond**

An Infrastructure Restoration Bond is to be lodged with Penrith City Council for development involving works around Penrith City Council's Public Infrastructure Assets. The bond is to be lodged with Penrith City Council prior to the issue of any Construction Certificate. The bond and applicable fees are in accordance with Council's adopted Fees and Charges.

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

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

54 **K202 - S138 Roads Act – Works and Structures - Minor Works in the public road DRIVEWAYS ROAD OPENINGS**

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

- a) Vehicular crossings (including kerb reinstatement of redundant vehicular crossings)
- b) Concrete footpaths and or cycleways
- c) Road opening for utilities and stormwater (including stormwater connection to Penrith City Council roads and other Penrith City Council owned drainage)
- d) Road occupancy or road closures
- e) The placement of hoardings, structures, containers, waster skips, signs etc. in the road reserve
- f) Temporary construction access

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

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

Note:

- a) Where Penrith City Council is the Certifying Authority for the development, the Roads Act approval for the above works may be issued concurrently with the Construction Certificate.
- b) Separate approvals may also be required from the Roads and Maritime Services for classified roads.
- c) All works associated with the Roads Act approval must be completed prior to the issue of any Occupation Certificate.
- d) On completion of any awning over the road reserve, a certificate from a practising structural engineer certifying the structural adequacy of the awning is to be submitted to Council before Council will inspect the works and issue its final approval under the Roads Act

55 **K209 - Stormwater Discharge – Minor Development**

Stormwater drainage from the site shall be discharged to the:

- a) Street drainage system

The proposed development and stormwater drainage system shall be designed to ensure no adverse impact on adjoining properties by the diversion, damming or concentration of stormwater flows.

The proposed method of stormwater discharge shall be detailed in the Construction Certificate issued by the Certifying Authority.

56 **K210 - Stormwater Management**

The stormwater management system shall be provided generally in accordance with the concept plan/s lodged for development approval, prepared by Northrop, reference number 151404 - DA-C1.00 to DA-C3.01, revision 4, dated 06.10.16.

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

Prior to the issue of any Construction Certificate, the Certifying Authority shall ensure that the stormwater management system has been designed in accordance with Penrith City Council's Stormwater Drainage for Building Developments and Water Sensitive Urban Design (WSUD) policies.

57 **K211 - Stormwater Discharge – Basement Car parks**

Prior to the issue of any Construction Certificate, the Certifying Authority shall ensure that the stormwater drainage system for the basement car park has been designed in accordance with the requirements for pumped systems in AS3500.3 (or as amended) (Plumbing and Drainage – Stormwater Drainage).

58 **K222 - Access, Car Parking and Manoeuvring – General**

Prior to the issue of any Construction Certificate, the Certifying Authority shall ensure that vehicular access, circulation, manoeuvring, pedestrian and parking areas associated with the subject development are in accordance with AS 2890.1, AS2890.2, AS2890.6 and Penrith City Council's Development Control Plan.

59 **K302 - Traffic Control Plan**

Prior to commencement of any works associated with the development, a Traffic Control Plan, including details for pedestrian management, shall be prepared in accordance with AS1742.3 "Traffic Control Devices for Works on Roads" and the Roads and Maritime Services' publication "Traffic Control at Worksites" and certified by an appropriately accredited Roads and Maritime Services 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.

Note:

- a) A copy of the Traffic Control Plan shall accompany the Notice of Commencement to Penrith City Council.
- b) Traffic control measures may require road occupancy / road closure approvals issued under Section 138 of the Roads Act by Penrith City Council prior to Construction Certificate.

60 **K403 - Major Filling/ Earthworks**

All earthworks shall be undertaken in accordance with AS 3798 and Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Developments and Engineering Construction Specification for Civil Works.

The level of testing shall be determined by the Geotechnical Testing Authority/ Superintendent in consultation with the Principal Certifying Authority.

61 **K405 - Turf to Verge**

Upon completion of all works in the road reserve, all verge areas fronting and within 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.

62 **K406 - Underground Services**

All existing (aerial) and proposed services for the development, including those across the frontage of the development are to be located or relocated underground in accordance with the relevant authorities regulations and standards.

63 **K501 - Penrith City Council clearance – Roads Act/ Local Government Act**

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

64 **K504 - Stormwater Compliance**

Prior to the issue of any Occupation Certificate, the Principal Certifying Authority shall ensure that the:

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

65 **K505 - Restriction as to User and Positive Covenant**

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

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

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

66 **K511 - Directional signage**

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

67 **K - Waterways - Stormwater Management system operation and maintenance**

The stormwater management systems shall continue to be operated and maintained in perpetuity to the satisfaction of Council in accordance with the final operation and maintenance management plan. Regular inspection records are required to be maintained and made available to Council upon request. All necessary improvements are required to be made immediately upon awareness of any deficiencies in the treatment measure/s

Landscaping

68 **L001 - General**

All landscape works are to be constructed in accordance with the stamped approved plans, subject to the revisions shown on the stamped approved architectural plans, and Sections C6 of Penrith Development Control Plan 2014.

Landscaping shall be maintained:

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

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

69 **L002 - Landscape construction**

The approved landscaping for the site must be constructed by a suitably qualified and experienced landscape professional.

70 **L003 - Report requirement**

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

i. Implementation Report

Upon completion of the landscape works associated with the development and prior to the issue of an Occupation Certificate, an Implementation Report must be submitted to the Principal Certifying Authority attesting to the satisfactory completion of the landscaping works for the development. The report is to be prepared by a suitably qualified and experienced landscape professional.

An Occupation Certificate, for the relevant stage, 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 being issued, 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.

This report is to be prepared by a suitably qualified and experienced landscape professional.

iii Three Year Landscaping Report

Three years after an Occupation Certificate was issued for the relevant stage of the development, a suitably qualified and experienced landscape professional shall prepare a Landscaping Report for Council's consideration and approval, certifying one of the following:

- (a) The landscaping on site has matured and is in accordance with the original landscape approval.
- (b) The landscaping on site has not matured in accordance with the original design philosophy and requires significant restoration.

In this case, restoration plans are to be submitted to Council for its consideration and approval. The approved plans shall be implemented at the expense of the property owners.

71 **L005 - Planting of plant**

All plant material associated with the construction of approved landscaping is to be planted in accordance with the Tree Planting Specification prescribed in Penrith Council's Development Control Plan 2014.

72 **L006 - Aust Standard**

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.

73 **L007 - Tree protectionmeasures–no TMPwith DA**

All trees that are required to be retained as part of the development are to be protected in accordance with the minimum tree protection standards prescribed in the Landscape Section of Penrith Development Control Plan 2014.

74 **L008 - Tree PreservationOrder**

No trees are to be removed, ringbarked, cut, topped or lopped or wilfully destroyed (other than those within the proposed building footprint or as shown on the approved plans) without the prior consent of Penrith City Council and in accordance with Council's Tree Preservation Order and Policy.

75 **L Special (Trees of public property)**

All precautions shall be taken to adequately protect trees on public property (ie. footpaths, roads, reserves, etc.) against damage during construction. No trees on public property shall be removed, pruned or damaged during construction – this includes the erection of any fences, hoardings or other temporary works. The placement of construction materials beneath the canopy of street trees is prohibited.

Development Contributions

76 **N001 - Section 94 contribution (apply separate condition for each Contribution Plan)**

This condition is imposed in accordance with Penrith City Council's Section 94 Contributions Plan for Cultural Facilities. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$17,370.00 to be paid to Council prior to the issue of a Construction Certificate (the rates are subject to quarterly reviews and indexed according to the Consumer Price Index). The final Section 94 invoice will be issued for each respective stage to facilitate staged payment of development contributions.

If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 94 plan. The projected rates of this contribution amount are listed in Council's Fees and Charges Schedule.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The S94 invoice accompanying this consent should accompany the contribution payment. The Section 94 Contributions Plan for Cultural Facilities may be inspected at Council's Civic Centre, 601 High Street, Penrith.

77 **N001 - Section 94 contribution (apply separate condition for each Contribution Plan)**

This condition is imposed in accordance with Penrith City Council's Section 94 Contributions Plan for District Open Space. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$176,994.00 to be paid to Council prior to the issue of a Construction Certificate (the rates are subject to quarterly reviews and indexed according to the Consumer Price Index). The final Section 94 invoice will be issued for each respective stage to facilitate staged payment of development contributions.

If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 94 plan. The projected rates of this contribution amount are listed in Council's Fees and Charges Schedule. Council should be contacted prior to payment to ascertain the rate for the current quarterly period.

The S94 invoice accompanying this consent should accompany the contribution payment. The Section 94 Contributions Plan for District Open Space be inspected at Council's Civic Centre, 601 High Street, Penrith.

78 **N001 - Section 94 contribution (apply separate condition for each Contribution Plan)**

This condition is imposed in accordance with Penrith City Council's Section 94 Contributions Plan for Local Open Space. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$64,017.00 to be paid to Council prior to the issue of a Construction Certificate (the rates are subject to quarterly reviews and indexed according to the Consumer Price Index). The final Section 94 invoice will be issued for each respective stage to facilitate staged payment of development contributions.

If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 94 plan. The projected rates of this contribution amount are listed in Council's Fees and Charges Schedule.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The S94 invoice accompanying this consent should accompany the contribution payment. The Section 94 Contributions Plan for Local Open Space be inspected at Council's Civic Centre, 601 High Street, Penrith.

Certification

79 **Q01F - Notice of Commencement & Appointment of PCA2 (use for Fast Light only)**

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

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

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

Information to accompany the Notice of Commencement

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

80 **Q05F - Occupation Certificate for Class10**

An Occupation Certificate is to be obtained from the Principal Certifying Authority on completion of all works and prior to the occupation/use of the development

The Certificate shall not be issued if any conditions of this consent, but not the conditions relating to the operation of the development, are outstanding.

A copy of the Occupation Certificate and all necessary documentation supporting the issue of the Certificate is to 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

The proposed development is generally compliant with the requirements of the DCP, however the following issues are noted for consideration.

C5 Waste Management

There are two waste rooms and a bin collection area with a waste vehicle loading zone located on Basement 1. The first room contains both garbage chutes, and linear carousel system for bin rotation, the second room provides storage for the required bin tug and additional bin storage. The chute is accessible via designated, air-tight, mechanically ventilated rooms adjacent to the lift on each level. The development has the capacity for a total of 8 x 1100L bins total as per preliminary discussions with Council.

Garbage collection will be managed by a nominated building caretaker/contractor and through the use of towing wheelie bin trailer. The bins are proposed to be transported from the basement bin storage room to a temporary bin storage area adjacent to the loading bay still within B1. The council garbage truck has the ability to enter and exit the site in a forward direction, load the garbage and efficiency move out of the zone with as little disruption as possible. Once emptied, the caretaker will then collect the bins, returning them to the waste chute room and/or additional bin storage areas.

All bulky waste can be stored in the designated 'bulky waste' room located at ground floor level and then subsequently then taken away for disposal.

It is noted that the required reversing maneuvers for the waste collection vehicle to access the waste loading bay is contrary to the preference of Council's Waste and Traffic departments. These concerns are best addressed directly beneath their referral responses in the relevant section of this report.

C10 Transport, Access and Car Parking

The proposal provides for 77 on site parking spaces within a 2 level basement. These spaces are allocated as follows:

<i>Land Use Element</i>	<i>Rate</i>	<i>Required</i>	<i>Provided</i>
Residential	1 or 2 bed: 1 space 3 bed: 2 spaces	18 x 1 bed: 18 31 x 2 bed: 31 3 x 3 bed: 6 Total = 55	57 (6 of these are accessible spaces that are allocated to adaptable units and 6 of the spaces shall be allocated to the 3 bedroom units)
Residential Service Vehicle	1 per 40 units	52/40: 1	0 (dedicated space however waste collection vehicle loading zone may serve as service space outside of collection times as well as for use by moving vehicles)

Residential Car Washing	1 per 50 units	52/50: 1	1 (shown as shared visitor) on plans but will be conditioned as a dedicated car washing space)
Residential Visitor	1 space per 5 units	52/5: 10	10 (with an additional shared visitor/car wash bay shown on plans which will be conditioned to be dedicated wash bay)
Commercial	1 space per 40 sqm	183/40: 5	5
Total		72	73

Accordingly the proposal complies with Council's car parking rates despite the ADG requiring far less onerous requirements.

E12 Penrith Health and Education Precinct

Section 12.2.1 Mixed Use Development Controls

The DCP calls for commercial development on the ground and first floors in large swathes of the Hospital Precinct. During pre-lodgement discussions, the applicant demonstrated that there is insufficient market depth to support such a large amount of commercial floor space outside certain core areas. It was then agreed in principle with Council officers that the provision of single ground floor commercial tenancy at the corner of Somerset and Hargrave Streets was a "reasonable response" to the DCP objectives. As such, the proposed development includes a commercial tenancy at ground floor, which will be able to accommodate a range of uses (subject to future consents being in place). The commercial frontage has been appropriately located on Somerset Street, which along with the active residential frontages will result in complete street activation for this length of Somerset Street.

The proposed floor to ceiling heights of ground and first floor do not comply with Council's requirements. Note that ADG ceiling heights prevail over the DCP, pursuant to SEPP 65, which calls for 3.3 m for ground floor in mixed use zones. The proposed floor to ceiling heights of 3.1 m on the ground floor reflect the fact that most of the ground floor is residential and that 3.1 m is adequate for the proposed commercial tenancy.

Residential entries to ground floor apartments along Somerset Street, and the residential lobby entry to Somerset Street will be clearly marked, providing direct access to the street. Vehicular access is to be located at Hargrave Street, at the south-eastern corner of the site. The commercial and residential uses will have clearly separate entries, and security access passes will be provided to all entrances into private areas, including the car park and communal open space.

Section 12.3.3 Boundary Setbacks and Building Separation

SEPP 65 and the Apartment Design Guide override the DCP in relation to side boundary setbacks and building separation. Refer to that section of this report for specific commentary in relation to the proposed boundary and setbacks and separation distances.

Section 12.4.2.4 Awnings

The DCP identifies awnings along the full eastern frontage of Somerset Street. While covered entries are provided for residents and commercial tenants, the proposed development does not provide awnings along Somerset Street. Awnings are not considered appropriate given the largely residential activities on-site. However, the proposal meets Council's objectives of contributing to a visually integrated, high quality streetscape within the Hospital Precinct.