



CITY OF HOBART

MINUTES ATTACHMENT

CITY PLANNING COMMITTEE MEETING

OPEN PORTION OF THE MEETING

MONDAY, 15 MARCH 2021

AT 5:00 PM

VENUE: COUNCIL CHAMBER, TOWN HALL

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7.1.2 PLN-18-351 20 Runnymede Street Battery Point - Appeal

A. Original Report - 20 Runnymede Street2

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6 PLN-18-351 20 Runnymede Street Battery Point - Appeal
File Ref: F21/20051; PLN-18-351

LG(MP)R 15(4)(a) - legal action taken by, or involving, the council

Memorandum of the Legal Officer and the Acting Director City Planning
of 11 March 2021 and attachments.

Delegation: Council



City of HOBART

MEMORANDUM: CITY PLANNING COMMITTEE

PLN-18-351 20 Runnymede Street Battery Point - Appeal**1. Background**

- 1.1 The Council at its meeting on 17 December 2018 determined that the application for partial demolition, new building for residential hotel, restaurant/cafe, unlisted use (bar) and shops, subdivision (one additional road lot), alterations to carparking, and associated works in the road reserve at 20 Runnymede Street and adjacent road reserve, Battery Point be refused (see item 11 of the agenda for City Planning Meeting 10 December 2018).
- 1.2 The Council resolved to refuse the application in accordance with officer recommendation for the following reasons:
 1. *The proposal does not meet objective (a) and the associated performance criteria with respect to clause 16.2 of the Sullivans Cove Planning Scheme 1997 because it fails to respect the cultural heritage and character of the Activity Area and fails to demonstrably contribute to, and enhance the cultural heritage, built form (bulk, height, volume, urban detail) and spatial characteristics of the Activity Area.*
 2. *The proposal does not meet the 'deemed to comply' provisions of clause 22.4.4 and fails to meet the associated performance criteria with respect to clause 22.4.5 of the Sullivans Cove Planning Scheme 1997 because: (a) it fails to complement and contribute to the cultural significance, character and appearance of the place (20 Runnymede Street) and its setting; (b) the location, bulk and appearance of the proposal adversely affects the heritage values of places of cultural significance (including the Salamanca Place warehouses and Princes Park); and (c) the proposal will be individually prominent contrary to the cultural resource principles espoused in clause 7.3.2 of the Sullivans Cove Planning Scheme 1997.*
 3. *The proposal does not meet the 'permitted' standards of clause 23.6.1 (Building Form) of the Sullivans Cove Planning Scheme 1997 and fails to comply with the associated performance criteria of clause 23.6.2 which require consideration of the objectives of clause 23.2. The proposal does not meet the objectives of clause 23.2 of the Sullivans Cove Planning Scheme 1997 because it fails to conserve the traditional urban pattern of Sullivans Cove, it does not have a respectful relationship to buildings of identified cultural significance, and it will be individually prominent in terms*

of contrast with neighbouring buildings, by being significantly higher or having a larger apparent size when viewed in street elevations.

- 1.3 The applicant appealed the refusal of the Council to the Resource Management and Planning Appeal Tribunal (**the Tribunal**).

2. The Appeal

- 2.1 The appeal was lodged on 21 December 2018 and the Tribunal convened the first directions hearing on 15 January 2019.
- 2.2 Superwool Store Pty Ltd was joined as a party. Superwool Store Pty Ltd is represented by Don Armstrong and has engaged Neil Shephard to provide planning advice and Graeme Corney to provide heritage advice.
- 2.3 During 2019 and 2020 the applicant made a series of modifications to the proposal in an attempt to address the grounds of refusal.

3. Amended Plans

- 3.1 In October 2020 the applicant filed an application pursuant to section 22 of the *Resource Management and Planning Appeal Tribunal Act 1993* seeking to amend the proposal. The amendments generally reduce the scale of the proposal through reduced height and increased setbacks and alter external detailing (see **Attachment A** for amended plans).
- 3.2 Although Council filed submissions that having regard to the elapse of time since the application was determined by Council (over 2 years), it was in the public interest the amended application be subject to public notification, the Tribunal did not accept that the amended application should be a new application and the Tribunal made an order amending the application on 4 February 2021 (**Attachment B**).
- 3.3 The applicant has requested the amended plans be considered by the Planning Authority (see **Attachment A**).
- 3.4 The applicant provided material in support of the amended plans including a planning assessment by JMG (**Attachment C**) and a heritage assessment (**Attachment D**) provided under cover of correspondence from Page Seager (**Attachment E**).
- 3.5 Superwool Store Pty Ltd has provided material advising they do not support the amended proposal. See **Attachment F** and **Attachment G**.
- 3.6 Council's former Senior Cultural Heritage Officer, Brendan Lennard, remains engaged by Council for this appeal. Mr Lennard has considered the amended plans and has advised he now supports approval of the proposal (**Attachment H**). In summary he concludes:

The height, scale and bulk of the proposed new building (as amended) is now more responsive to its immediate context. The amended proposal achieves a more respectful relationship with the 1973 hotel building and with its neighbours.

It is considered that the various modifications made to the design of the proposed building, particularly its reduction in height and increased setback would make it difficult to sustain the grounds of refusal with respect to the planning scheme's cultural heritage provisions.

- 3.7 Council's Development Appraisal Officer, Helen Ayers, has also assessed the amended plans and advised that she remains of the opinion the proposal does not satisfy the relevant provisions of the *Sullivans Cove Planning Scheme 1997 (Attachment I)*.
- 3.8 In summary, while Ms Ayers notes that the design is a significant improvement from the earlier design she remains concerned that the design of the building is not responsive to the original hotel building and the scale of the surrounding buildings. As a result, the Ms Ayers maintains the proposal should be refused.

4. Options going forward

- 4.1 Council's external legal representative in this matter, Naomi Billett has provided advice (**Attachment J**).

Option 1 - Council can maintain its refusal on amended grounds and proceed to a full merits based hearing. This is recommended.

- 4.2 In accordance with the advice of Ms Billett, having regard to the expert opinion of Ms Ayers there remains a reasonable basis to refuse the application having regard to the objectives set out in clause 23.2 of the Scheme.
- 4.3 Ground 1 and 2 of the original grounds of refusal would need to be abandoned and Ground 3 appropriately modified to exclude reference to impact upon cultural heritage.

Option 2 - Council can maintain its refusal on the original grounds of refusal. This is not recommended.

- 4.4 The Council may agree with Ms Ayers that the proposal does not satisfy clause 23.2 of the Scheme but disagree with Mr Lennard and prefer the opinion of Mr Corney which contends the proposal does not meet clause 16.2 and clause 22.4.5.
- 4.5 As advised by Ms Billett, if Council were to adopt such a position it would be necessary to canvas other heritage experts to determine if anyone was available and could support that position. Without other heritage evidence, the Council could not present an arguable case that departed from the position of Mr Lennard.

Option 3 - Council agree to support approval of the amended proposal subject to the imposition of conditions. This is not recommended.

- 4.6 The Council may agree with Mr Lennard that the proposal satisfies the heritage provisions of the Scheme but disagree with Ms Ayers and prefer the opinion of Mr Clark which contents the proposal complies with clause 23.2.
- 4.7 Similar to the position above and in accordance with the advice of Ms Billet, if Council were to adopt such a position it would be necessary to canvas other planning experts to determine if anyone was available and could support that position. Without planning evidence, the Council could not present an arguable case that departed from the position of Ms Ayers.

RECOMMENDATION

That Council oppose approval of the plans amended by RMPAT on 4 February 2021 for application for partial demolition, new building for residential hotel, restaurant/cafe, unlisted use (bar) and shops, subdivision (one additional road lot), alterations to carparking, and associated works in the road reserve at 20 Runnymede Street and adjacent road reserve, Battery Point for the following reason:

The proposal does not meet the 'permitted' standards of clause 23.6.1 (Building Form) of the Sullivans Cove Planning Scheme 1997 and fails to meet with the objectives of clause 23.2, which must be considered in the exercise of discretion under clause 23.6.2, because it fails to conserve the traditional urban pattern of Sullivans Cove, it fails to reflect the natural topography of the planning area and it will be individually prominent in terms of contrast with neighbouring buildings by being significantly higher or having a larger apparent size when viewed in street elevation

As signatory to this report, I certify that, pursuant to Section 55(1) of the Local Government Act 1993, I hold no interest, as referred to in Section 49 of the Local Government Act 1993, in matters contained in this report.




Tom Rolfe
LEGAL OFFICER



Karen Abey
ACTING DIRECTOR CITY PLANNING










Date: 11 March 2021
File Reference: F21/20051; PLN-18-351

Attachment A: Amended Plans ↴ 

Item No. 6

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15/3/2021

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- Attachment B: s22 RMPAT Decision ↓ 
- Attachment C: Assessment by JMG obo applicant ↓ 
- Attachment D: Heritage Assessment by Peter Lovell obo applicant ↓ 
- Attachment E: Correspondence from Page Seager obo applicant ↓ 
- Attachment F: Correspondence from Don Armstrong obo Superwool Store Pty Ltd ↓ 
- Attachment G: Heritage Assessment by Graeme Corney obo Superwool Store
↓ 
- Attachment H: Heritage Assessment by Brendan Lennard obo HCC ↓ 
- Attachment I: Planning Assessment by Helen Ayers obo HCC ↓ 
- Attachment J: Advice from Naomi Billett ↓ 

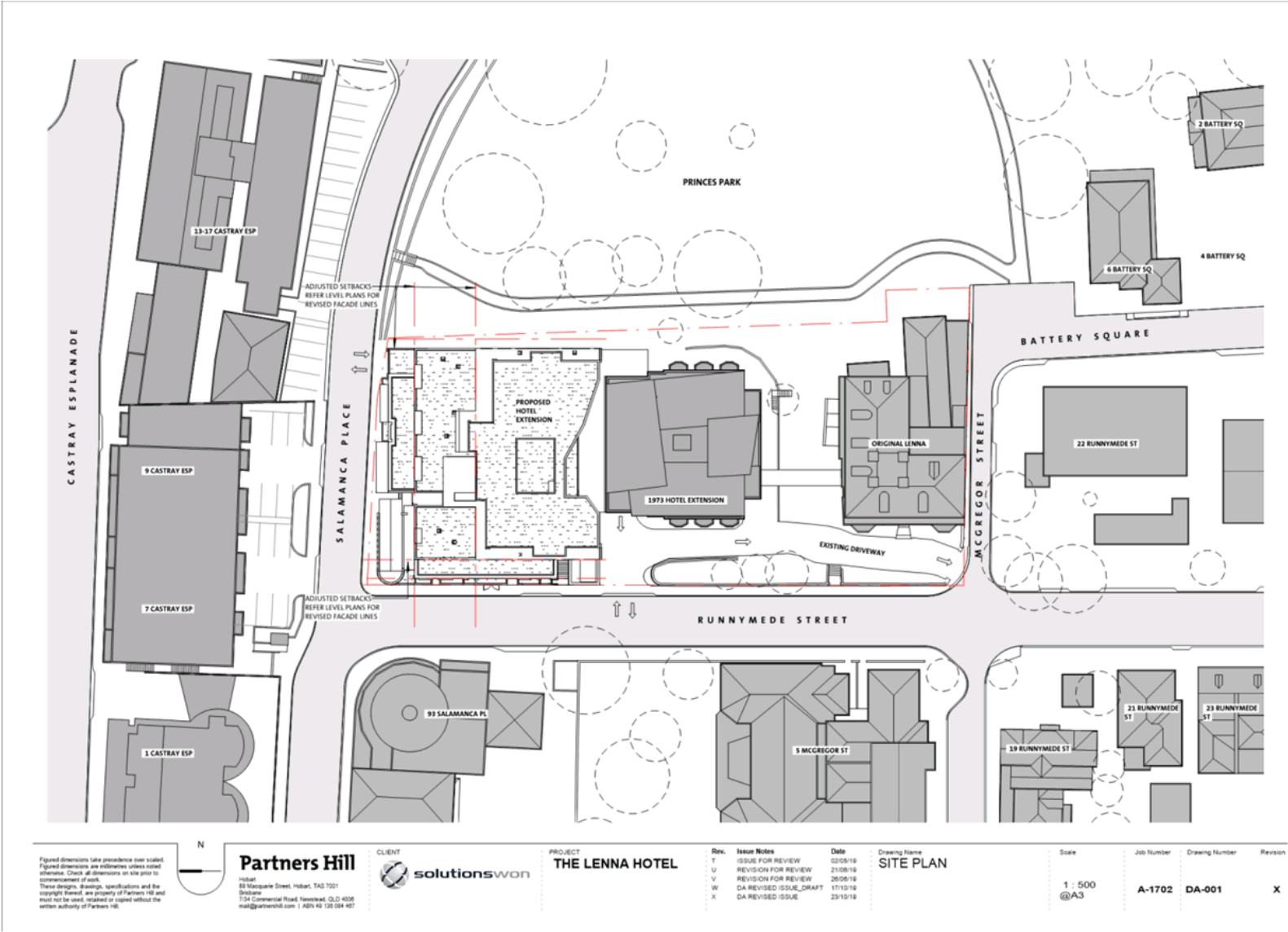


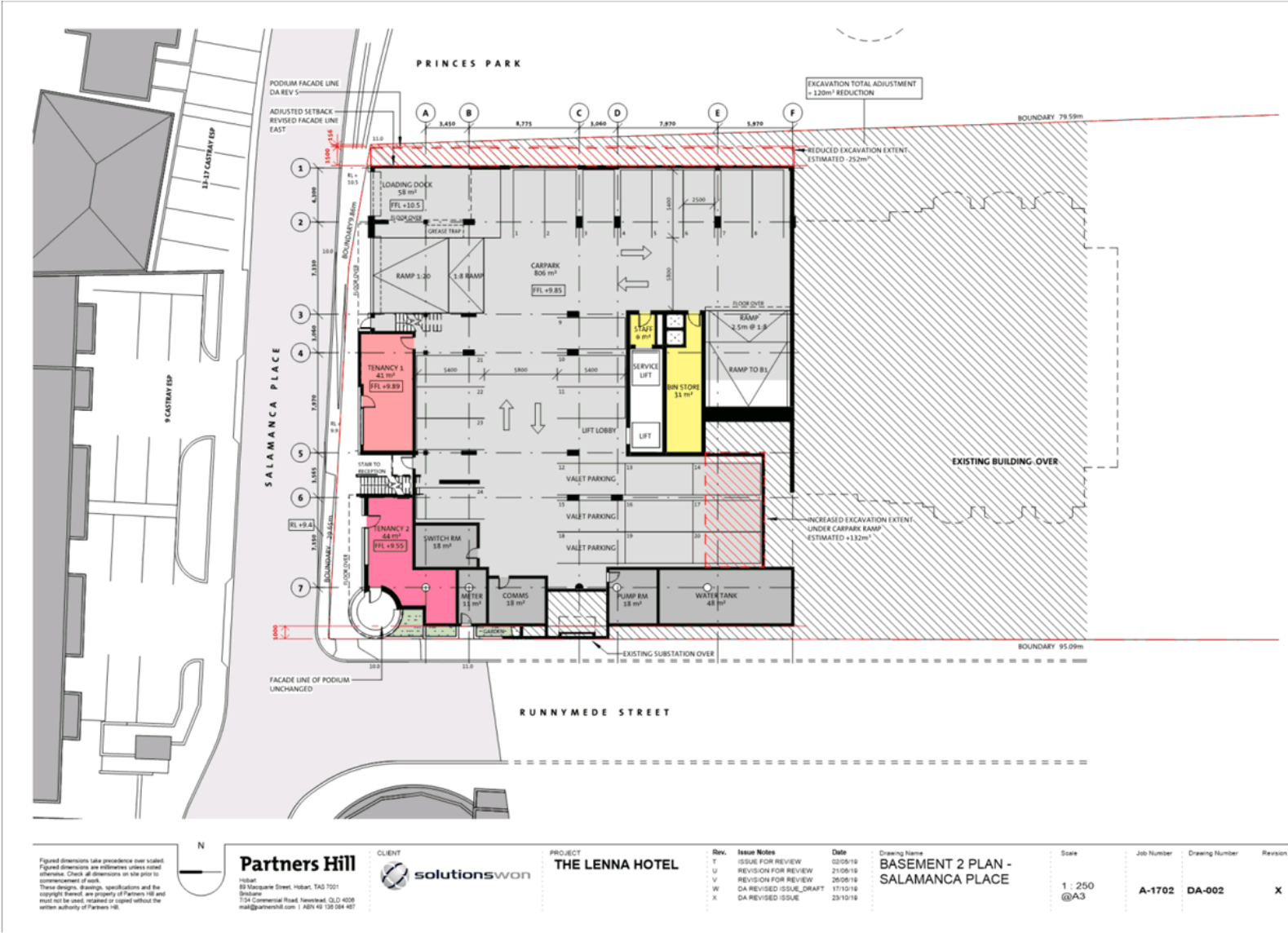
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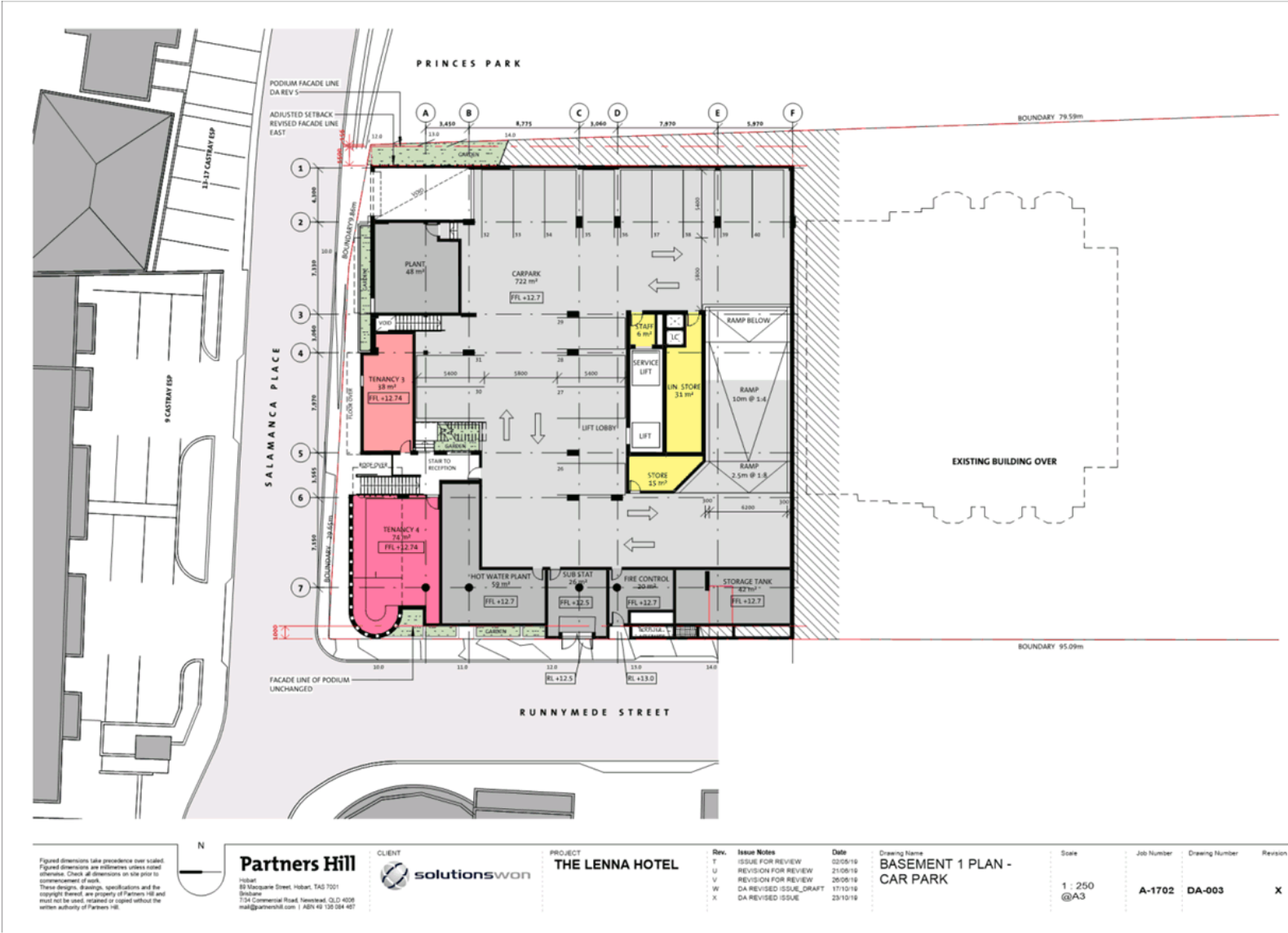


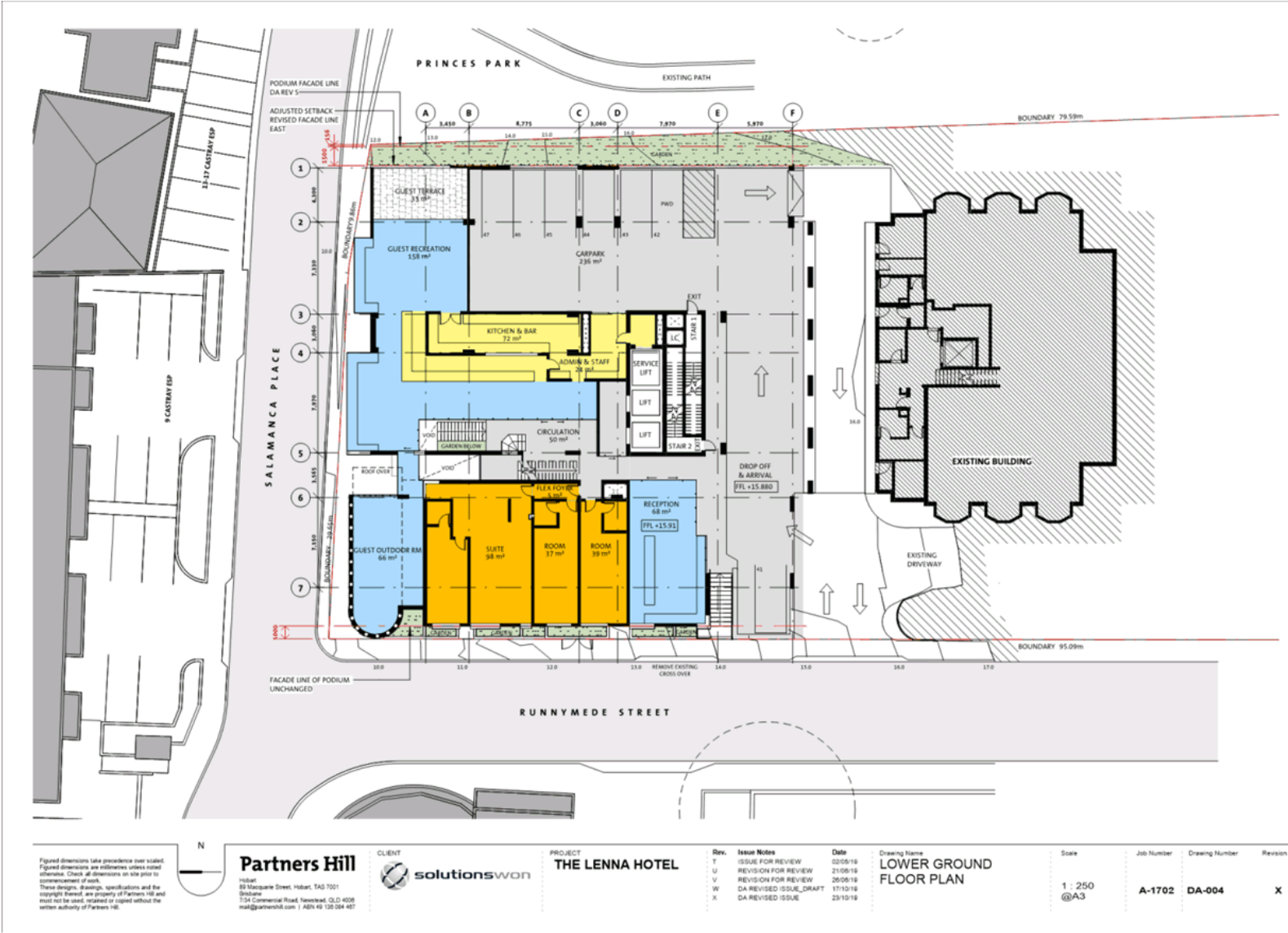
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SHEET LIST			
SHEET NUMBER	SHEET NAME	REVISION	ISSUE DATE
DA-000	COVER	Z3	03/08/2020
DA-001	SITE PLAN	X	23/10/2019
DA-002	BASEMENT 2 PLAN - SALAMANCA PLACE	X	23/10/2019
DA-003	BASEMENT 1 PLAN - CAR PARK	X	23/10/2019
DA-004	LOWER GROUND FLOOR PLAN	X	23/10/2019
DA-005	GROUND FLOOR PLAN	Y	11/06/2020
DA-006	LEVEL 1 FLOOR PLAN	Y	11/06/2020
DA-007	LEVEL 2 FLOOR PLAN	Z1	10/07/2020
DA-008	ROOF PLAN	Y	11/06/2020
DA-009	No Longer in Use		
DA-010	No Longer in Use		
DA-011	No Longer in Use		
DA-012	NORTH ELEVATION SALAMANCA PLACE	Z	03/08/2020
DA-013	WEST ELEVATION RUNNYMEDE STREET	Z3	03/08/2020
DA-015	EAST ELEVATION PRINCES PARK	Z	03/08/2020
DA-016	SECTION	Y	03/08/2020
DA-017	SECTION	Y	03/08/2020
DA-018	SECTION	Z2	03/08/2020
DA-019	SITE SECTIONS	X	23/10/2019
DA-020	PERSPECTIVE SKETCHES	X	23/10/2019
DA-021	PERSPECTIVE SKETCHES	X	23/10/2019
DA-022	PERSPECTIVE SKETCHES	X	23/10/2019
DA-023	GFA SCHEDULE - BUILDING TOTAL	X	23/10/2019
DA-024	GFA SCHEDULE - FLOOR BREAKDOWN	X	23/10/2019
DA-025	SAMPLES COLLAGE	Y	04/03/2020

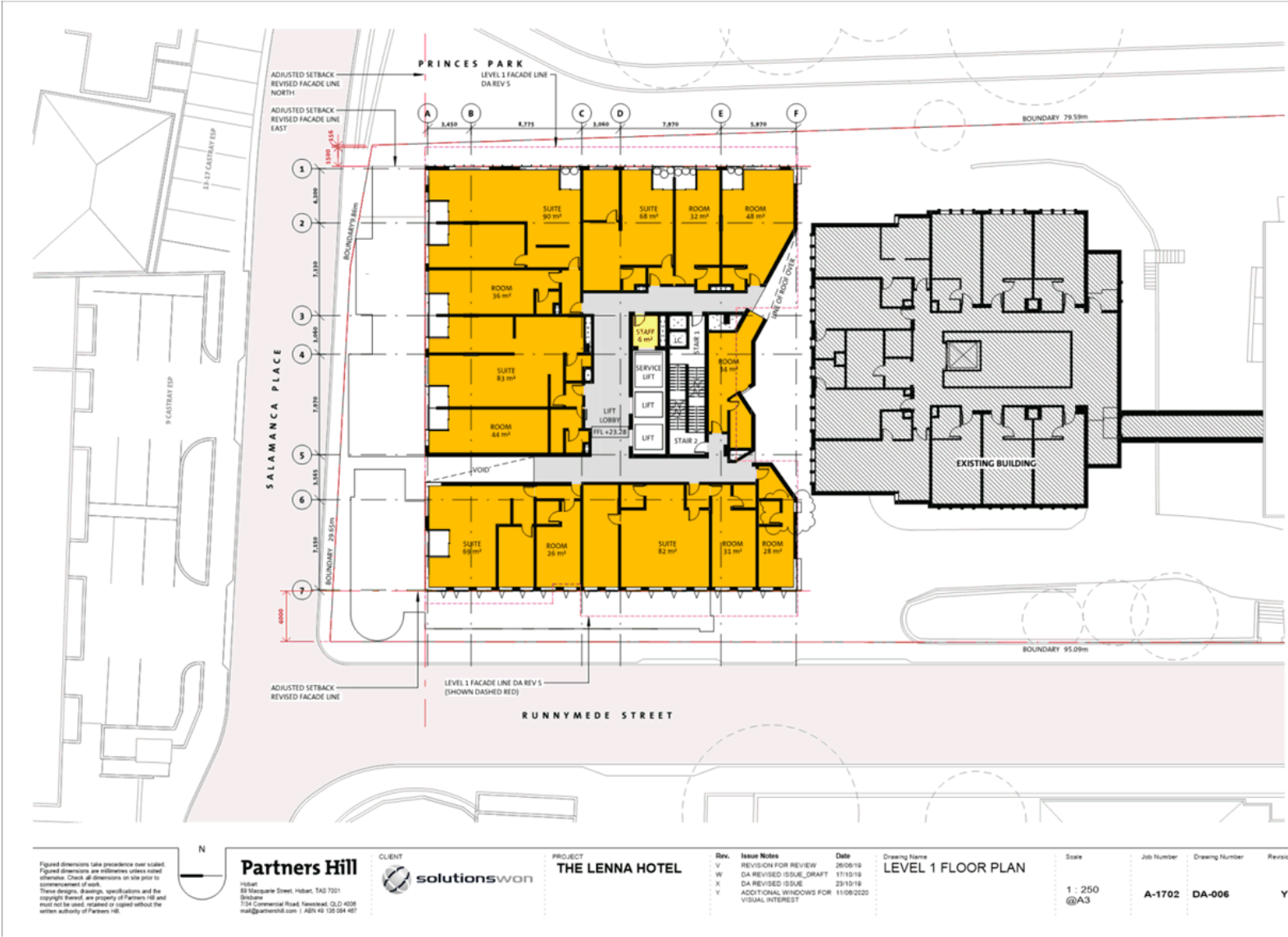


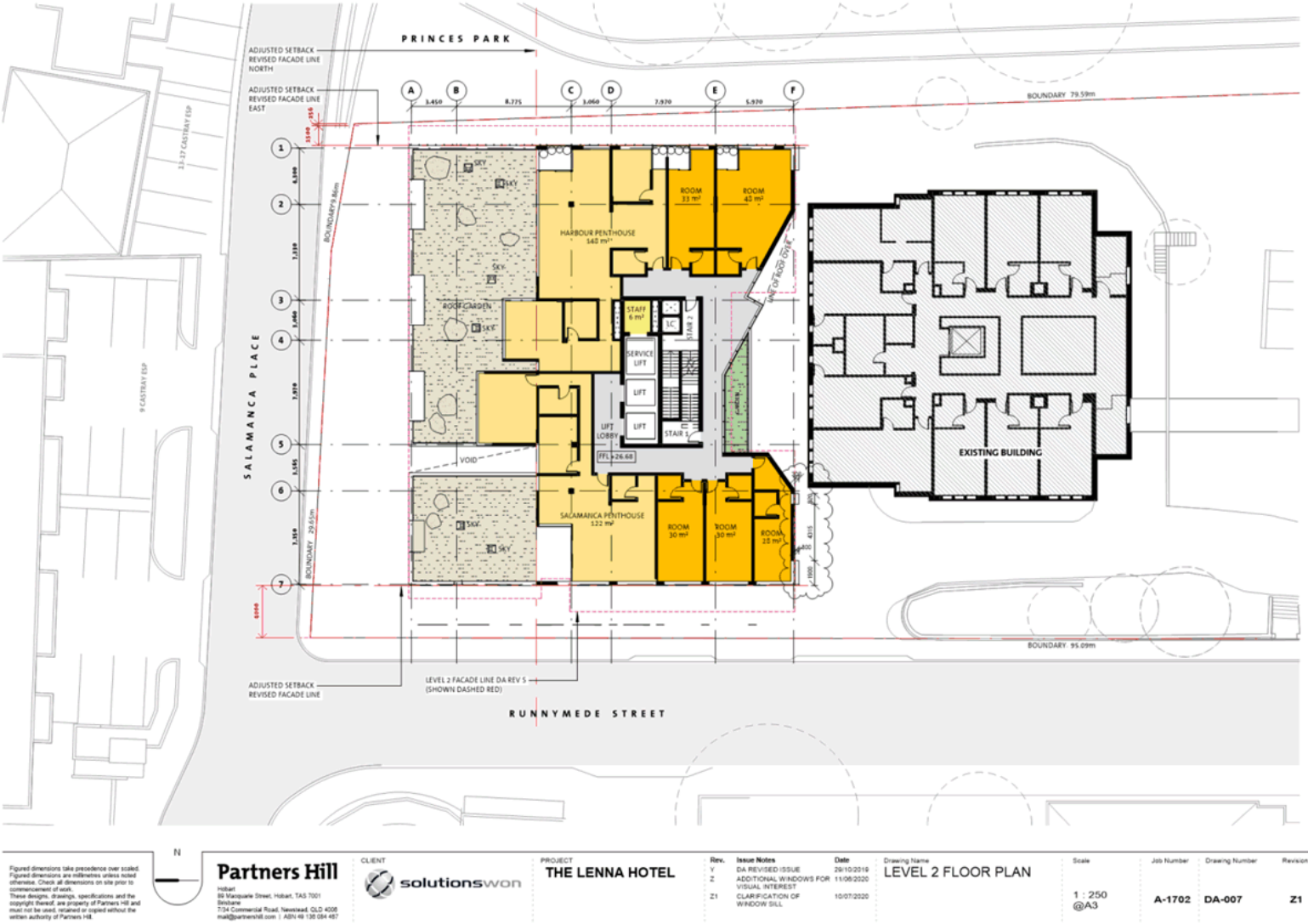


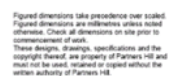


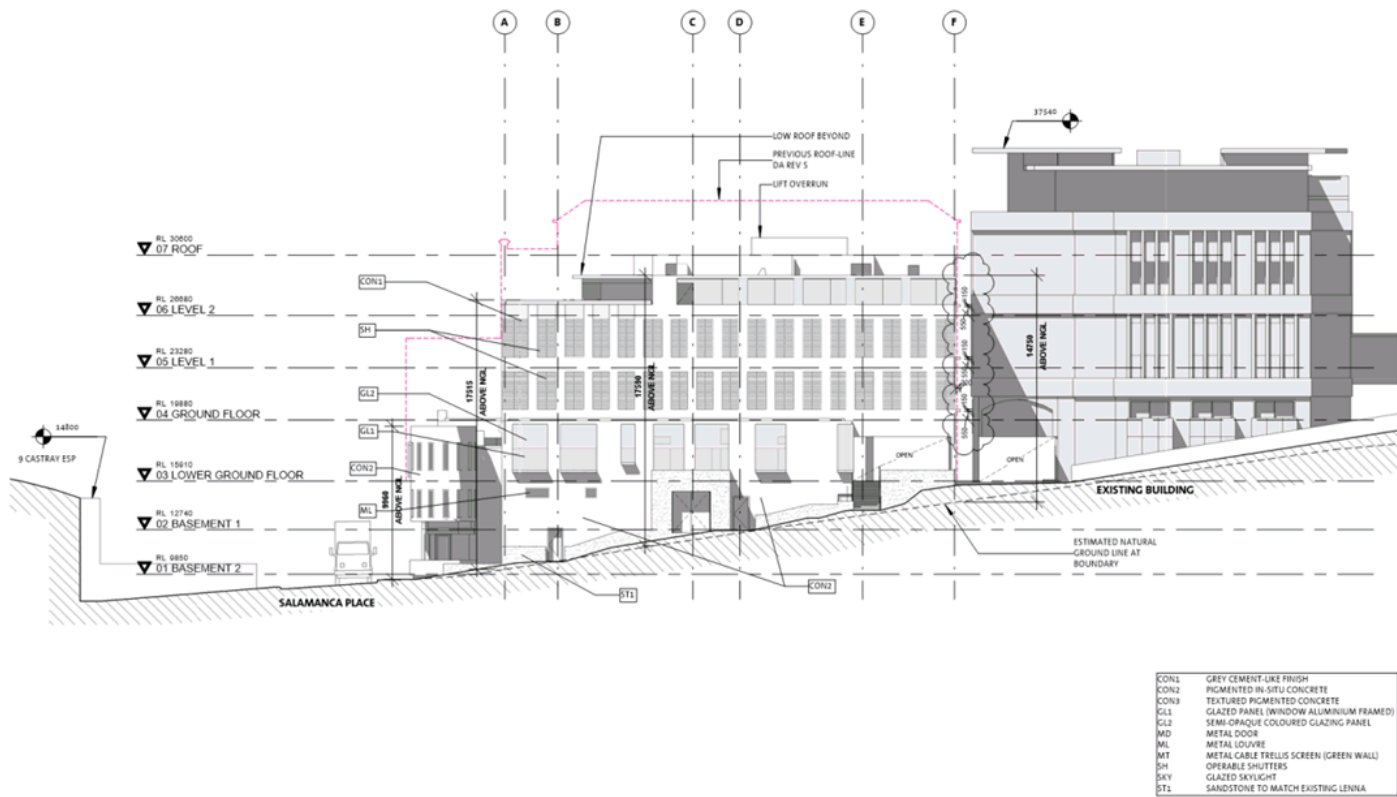












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Rev. Issue Notes
22 CLARIFICATION OF
23 WINDOW SILL
DIMENSIONS TO HGL
ADDED

Date
10/07/2020
03/08/2020

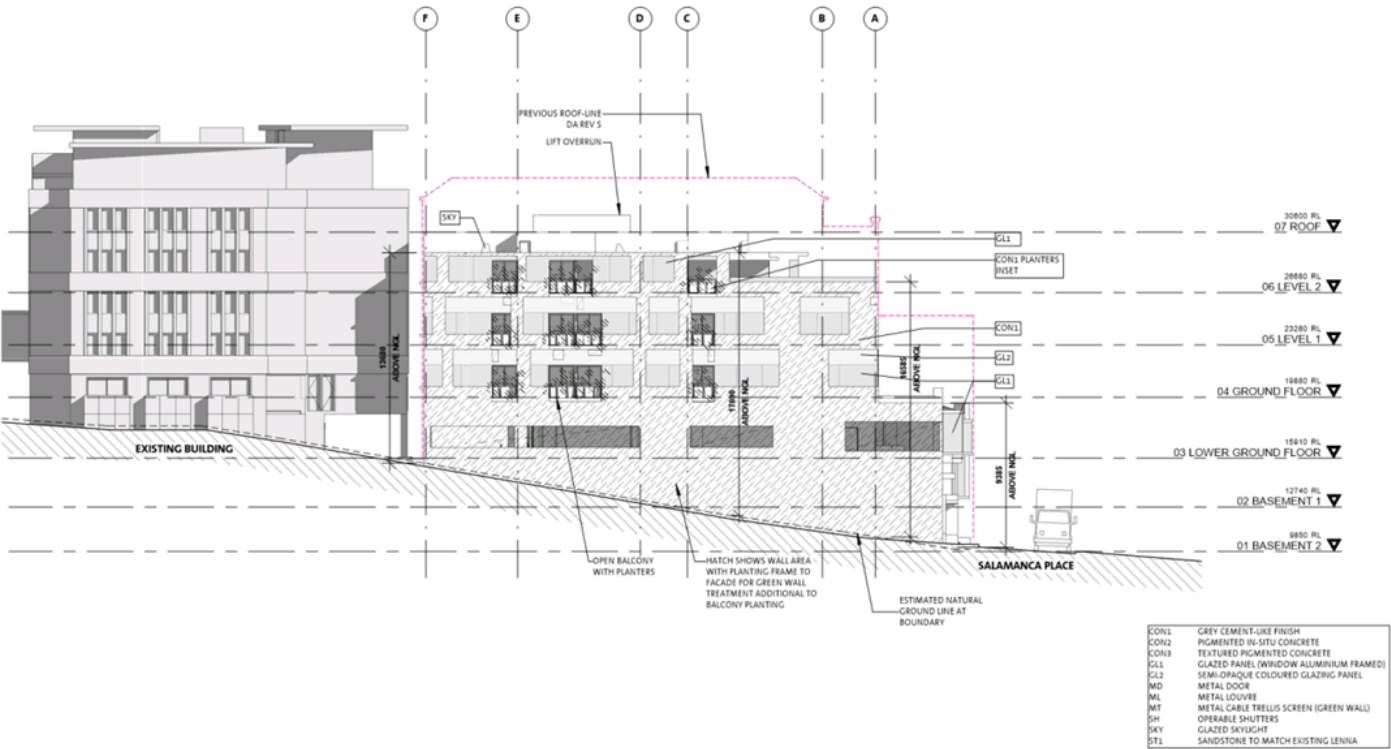
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**WEST ELEVATION
RUNNYMEDE STREET**

Scale
**1:250
@A3**

Job Number
A-1702

Drawing Number
DA-013

Revision
Z3



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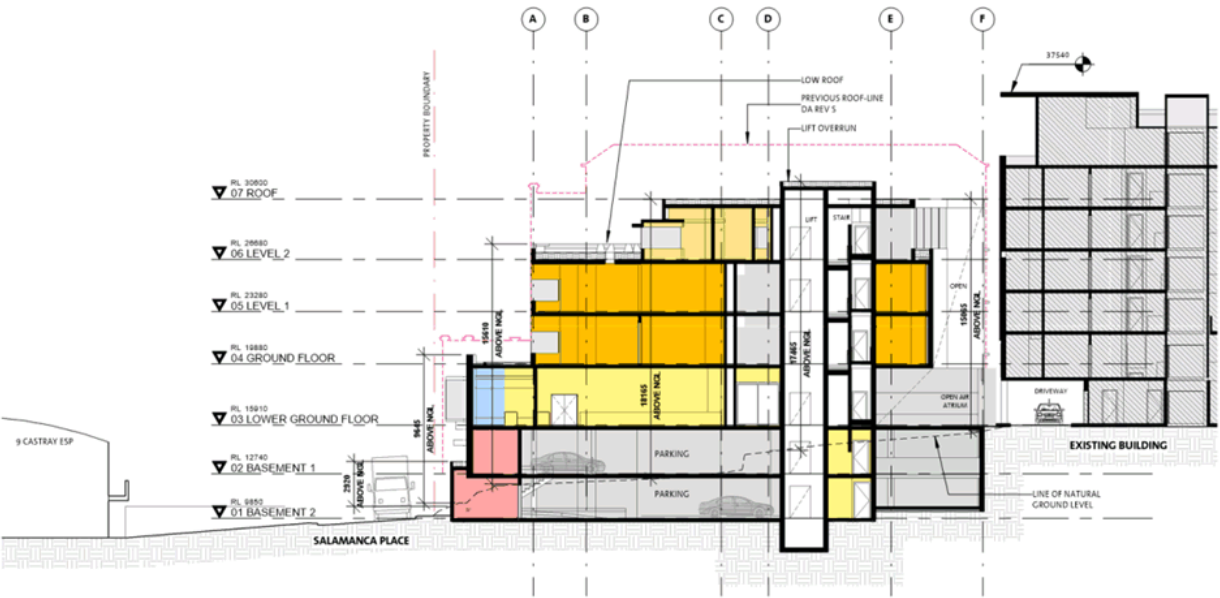
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Rev. Issue Notes Date
W DA REVISED ISSUE DRAFT 17/10/2019
X DA REVISED ISSUE 23/10/2019
Y DA REVISED ISSUE 29/10/2019
Z DIMENSIONS TO NGL ADDED 03/08/2020

Drawing Name
**EAST ELEVATION
PRINCES PARK**

Scale
**1:250
@A3**

Job Number Drawing Number Revision
A-1702 DA-015 Z



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V	REVISION FOR REVIEW	28/08/2019
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X	DA REVISED ISSUE	23/10/2019
Y	DIMENSIONS TO NGL ADDED	03/08/2020

Drawing Name
SECTION

Scale
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Job Number
A-1702

Drawing Number
DA-016

Revision
Y



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V	REVISION FOR REVIEW	26/06/2019
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X	DA REVISED - ISSUE	23/10/2019
Y	DIMENSIONS TO NGL ADDED	03/08/2020

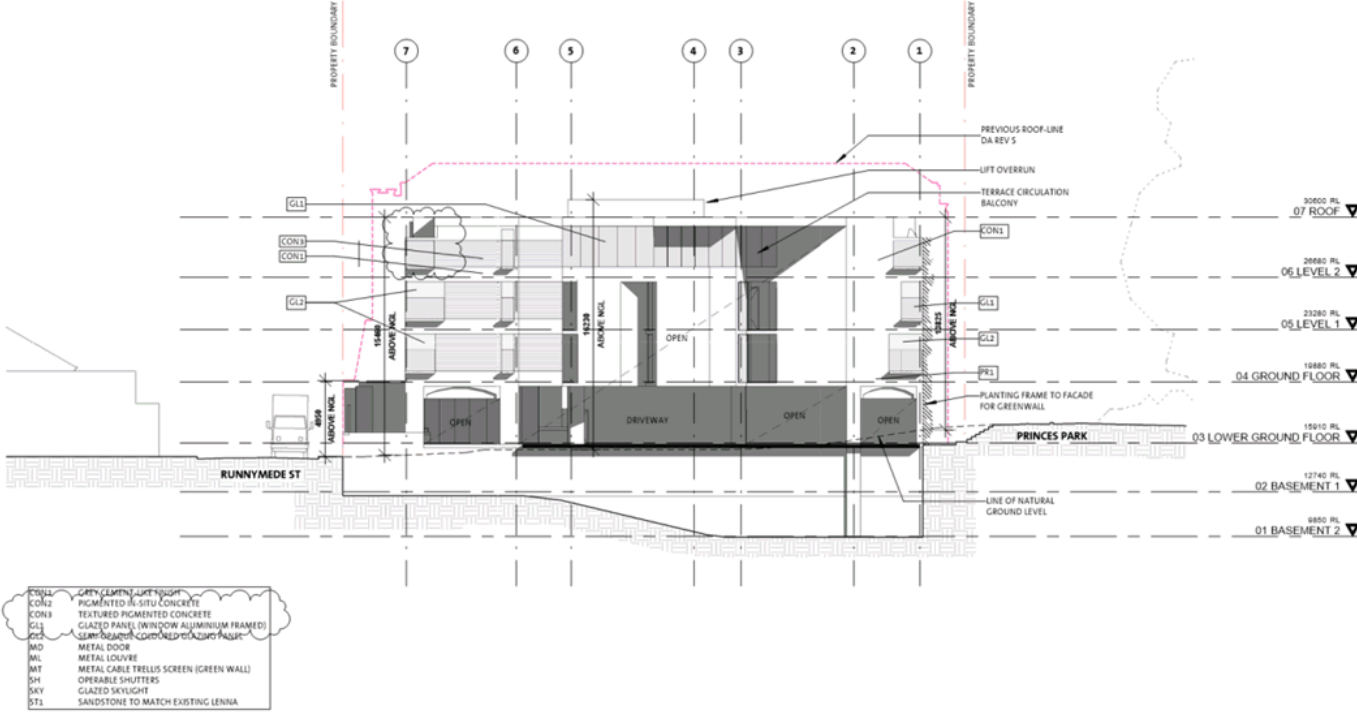
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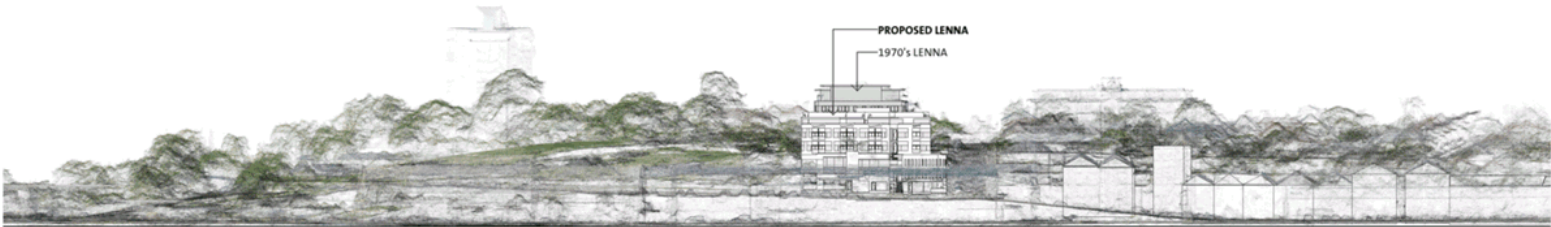
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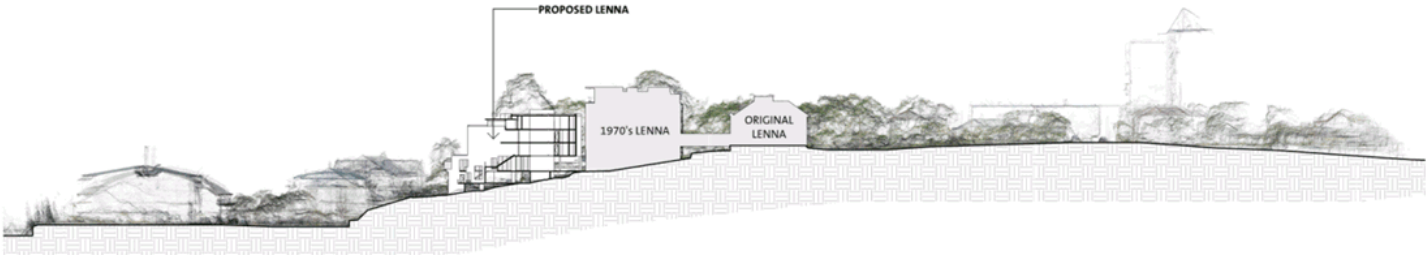
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Revision
Y





HARBOUR FRONT ELEVATION



SITE LONGITUDINAL SECTION

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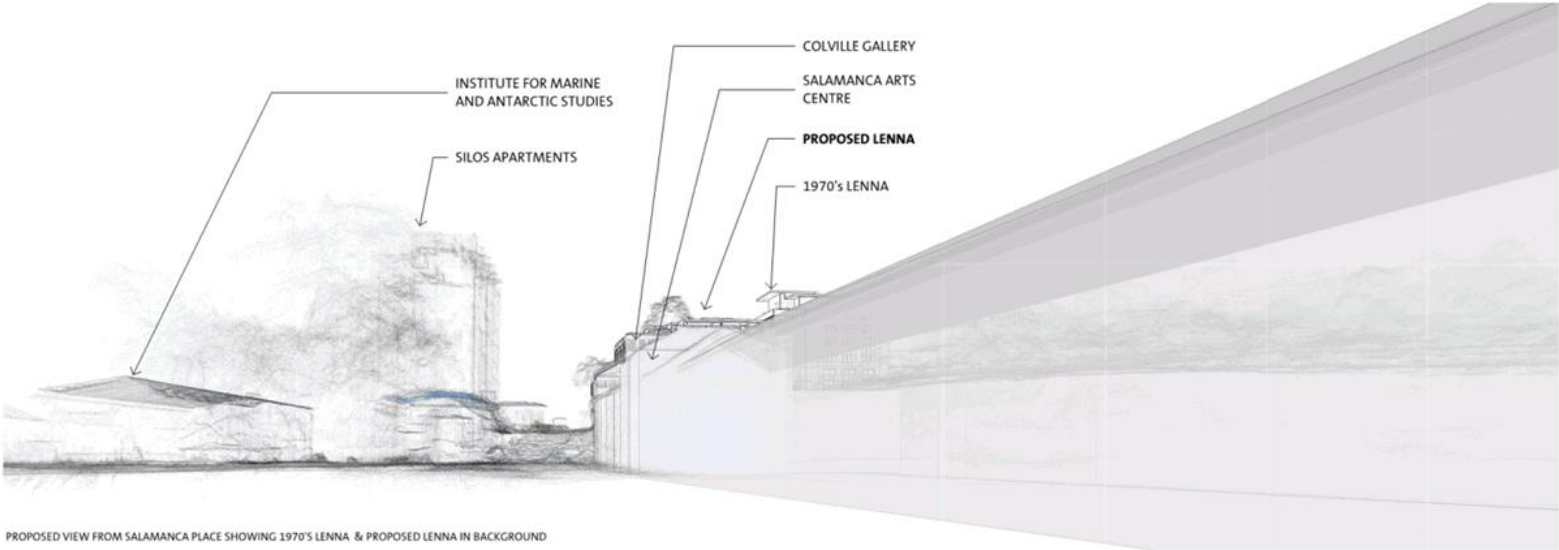
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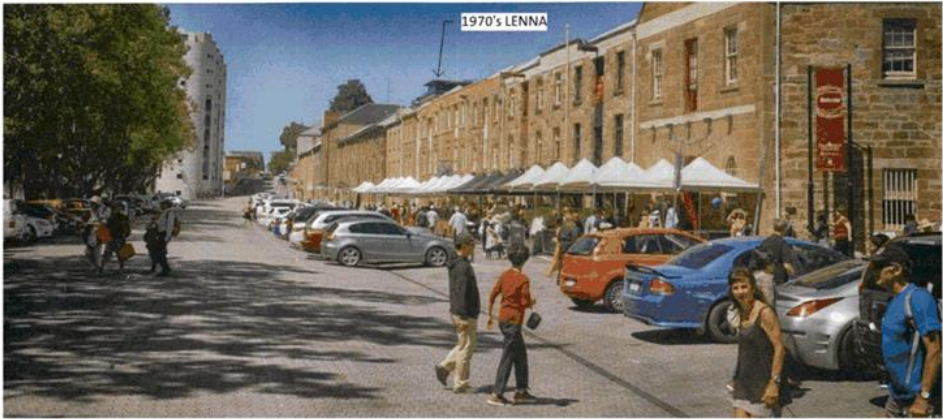
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V	REVISION FOR REVIEW	26/06/19
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X	DA REVISED ISSUE	23/10/19

Drawing Name
SITE SECTIONS

Scale	Job Number	Drawing Number	Revision
1 : 1000 @A3	A-1702	DA-019	X



PROPOSED VIEW FROM SALAMANCA PLACE SHOWING 1970'S LENNA & PROPOSED LENNA IN BACKGROUND



CURRENT VIEW FROM SALAMANCA PLACE SHOWING 1970'S LENNA IN BACKGROUND (Photo Peter Lovell)



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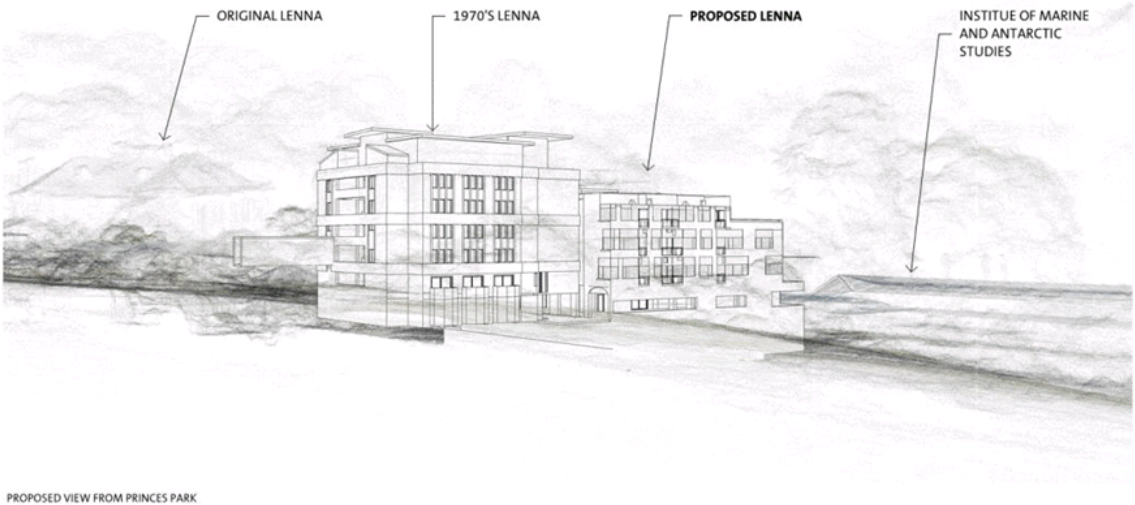
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V	REVISION FOR REVIEW	26/06/19
W	DA REVISED - ISSUE DRAFT	17/10/19
X	DA REVISED - ISSUE	23/10/19

Drawing Name
PERSPECTIVE SKETCHES

Scale	Job Number	Drawing Number	Revision
1 : 5000 @A3	A-1702	DA-020	X



PROPOSED VIEW FROM PRINCES PARK



2 DETAIL PLAN
D - VIEW LOCATIONS - EAST 1 : 5000

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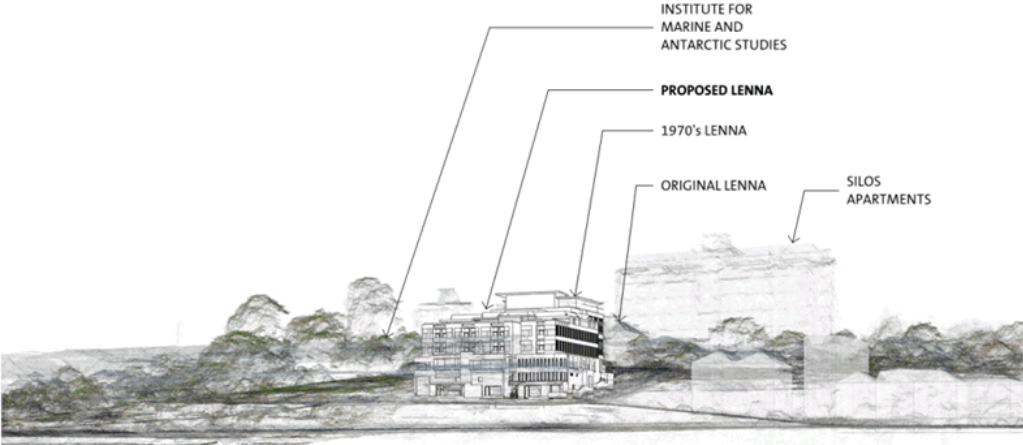


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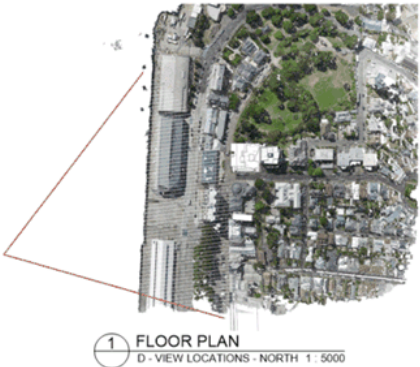
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X	DA REVISED - ISSUE	23/10/19

Drawing Name
**PERSPECTIVE
SKETCHES**

Scale	Job Number	Drawing Number	Revision
1 : 5000 @A3	A-1702	DA-021	X



PROPOSED VIEW FROM ELIZABETH STREET PIER



1 FLOOR PLAN
D - VIEW LOCATIONS - NORTH 1 : 5000

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W	DA REVISED - ISSUED DRAFT	17/10/19
X	DA REVISED - ISSUE	23/10/19

Drawing Name
**PERSPECTIVE
SKETCHES**

Scale	Job Number	Drawing Number	Revision
1 : 5000 @A3	A-1702	DA-022	X

GFA - BUILDING TOTAL	
LEVEL	AREA
06 LEVEL 2	598 m²
05 LEVEL 1	868 m²
04 GROUND FLOOR	848 m²
03 LOWER GROUND FLOOR	1259 m²
02 BASEMENT 1	1117 m²
01 BASEMENT 2	1103 m²
Not Placed	0 m²
TOTAL	5793 m²

GFA - BREAKDOWN BY USE	
OCCUPANCY	AREA
ACCOMMODATION	1957 m²
CARPARK	2108 m²
CIRCULATION	391 m²
CORE & RISER	199 m²
GUEST RECREATION	258 m²
PLANT	337 m²
PUBLIC	118 m²
STAFF	209 m²
TENANCY	217 m²
TOTAL	5793 m²

ROOM COUNT			
LEVEL	OCCUPANCY	NAME	COUNT
06 LEVEL 2	ACCOMMODATION	HARBOUR PENTHOUSE	1
06 LEVEL 2	ACCOMMODATION	ROOM	5
06 LEVEL 2	ACCOMMODATION	SALAMANCA PENTHOUSE	1
05 LEVEL 1	ACCOMMODATION	ROOM	8
05 LEVEL 1	ACCOMMODATION	SUITE	5
04 GROUND FLOOR	ACCOMMODATION	ROOM	8
04 GROUND FLOOR	ACCOMMODATION	SUITE	5
03 LOWER GROUND FLOOR	ACCOMMODATION	ROOM	2
03 LOWER GROUND FLOOR	ACCOMMODATION	SUITE	1
36		TOTAL	36



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W	DA REVISED - ISSUE DRAFT	17/10/19
X	DA REVISED - ISSUE	23/10/19

Drawing Name
**GFA SCHEDULE -
BUILDING TOTAL**

Scale
**1:500
@A3**

Job Number	Drawing Number	Revision
A-1702	DA-023	X



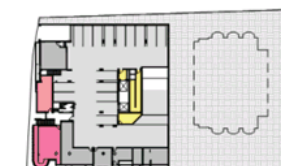
1 FLOOR PLAN
 GFA - B2 - CARPARK & PLANT 1 : 1000

GFA - B2 - CAR PARK & PLANT		
Name	Count	Area
BIN STORE	1	31 m ²
CARPARK	1	806 m ²
COMMS	1	18 m ²
LOADING DOCK	1	58 m ²
METER	1	11 m ²
PUMP RM	1	18 m ²
RISER	3	6 m ²
STAFF	1	6 m ²
SWITCH RM	1	18 m ²
TENANCY 1	1	41 m ²
TENANCY 2	1	44 m ²
WATER TANK	1	48 m ²
TOTAL		1103 m²



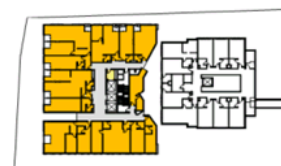
4 FLOOR PLAN
 GFA - GF - ACCOMMODATION 1 : 1000

GFA - GF - ACCOMMODATION		
Name	Count	Area
CIRCULATION	2	101 m ²
FIRE STAIR	1	31 m ²
FLEX FOYER	3	14 m ²
LOBBY	1	28 m ²
PLANT	2	5 m ²
RISER	4	8 m ²
ROOM	8	274 m ²
STAFF	1	6 m ²
SUITE	5	382 m ²
TOTAL		848 m²



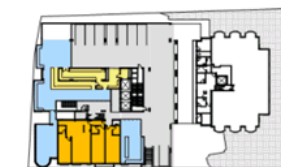
2 FLOOR PLAN
 GFA - B1 - CARPARK & PLANT 1 : 1000

GFA - B1 - CAR PARK & PLANT		
Name	Count	Area
CARPARK	1	722 m ²
CIRCULATION	1	30 m ²
FIRE CONTROL	1	20 m ²
HOT WATER PLANT	1	59 m ²
LIN. STORE	1	31 m ²
PLANT	1	48 m ²
RISER	3	6 m ²
STAFF	1	6 m ²
STORAGE TANK	1	42 m ²
STORE	1	15 m ²
SUB STAT	1	26 m ²
TENANCY 3	1	38 m ²
TENANCY 4	1	74 m ²
TOTAL		1117 m²



5 FLOOR PLAN
 GFA - 1F - ACCOMMODATION 1 : 1000

GFA - 1F - ACCOMMODATION		
Name	Count	Area
CIRCULATION	2	103 m ²
FIRE STAIR	1	31 m ²
FLEX FOYER	4	18 m ²
LOBBY	1	28 m ²
PLANT	2	5 m ²
RISER	4	8 m ²
ROOM	8	278 m ²
STAFF	1	6 m ²
SUITE	5	392 m ²
TOTAL		868 m²



3 FLOOR PLAN
 GFA - LOWER GF - ARRIVAL 1 : 1000

GFA - LGF - ARRIVAL		
Name	Count	Area
ADMIN & STAFF	1	24 m ²
ARRIVAL TERRACE	1	287 m ²
CARPARK	1	236 m ²
CIRCULATION	2	75 m ²
FIRE STAIR	2	31 m ²
FLEX FOYER	1	5 m ²
GUEST OUTDOOR RM	1	66 m ²
GUEST RECREATION	1	158 m ²
GUEST TERRACE	1	33 m ²
KITCHEN & BAR	1	72 m ²
LOBBY	1	15 m ²
RECEPTION	1	68 m ²
RISER	5	11 m ²
ROOM	2	75 m ²
STAFF	1	6 m ²
SUITE	1	98 m ²
TOTAL		1259 m²



6 FLOOR PLAN
 GFA - 2F - ACCOMMODATION 1 : 1000

GFA - 2F - ACCOMMODATION		
Name	Count	Area
CIRCULATION	2	95 m ²
FIRE STAIR	1	31 m ²
HARBOUR PENTHOUSE	1	148 m ²
LOBBY	1	17 m ²
RISER	4	8 m ²
ROOM	5	170 m ²
SALAMANCA PENTHOUSE	1	122 m ²
STAFF	1	6 m ²
TOTAL		598 m²

Figured dimensions take precedence over scaled.
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THE LENNA HOTEL

Rev.	Issue Notes	Date
F	ISSUE FOR REVIEW	02/05/19
U	REVISION FOR REVIEW	21/06/19
V	REVISION FOR REVIEW	26/06/19
W	DA REVISED ISSUE DRAFT	17/10/19
X	DA REVISED ISSUE	23/10/19

Drawing Name
GFA SCHEDULE - FLOOR BREAKDOWN

Scale	Job Number	Drawing Number	Revision
1 : 1000 @A3	A-1702	DA-024	X

KEY	DESCRIPTION	GRAPHIC EXAMPLE	KEY	DESCRIPTION	GRAPHIC EXAMPLE
CON1	GREY CEMENT-LIKE FINISH		SH	OPERABLE SHUTTERS	
CON2	PIGMENTED IN-SITU CONCRETE, PIGMENTED COLOUR TO RESEMBLE MASONRY		SKY	GLAZED SKYLIGHT TERRACE FINISH	
CON3	TEXTURED PIGMENTED CONCRETE, PIGMENTED COLOUR TO RESEMBLE MASONRY		ST1	PREFERENCE FOR STONE EXCAVATED FROM SITE	
GL1	GLAZED PANEL CLEAR GLAZING		EASTERN ELEVATION	COMBINATION OF CREEPER AND POT PLANTS	
GL2	SEMI-OPAQUE GLAZING PANEL LUMINOUS GLASS ABOVE TRANSOM				

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PROJECT

THE LENNA HOTEL

Rev.

Issue Notes

Date

U	REVISION FOR REVIEW	21/06/19
V	REVISION FOR REVIEW	26/08/19
W	DA REVISED ISSUE_DRAFT	17/10/19
X	DA REVISED ISSUE	23/10/19
Y	APPEAL ISSUE	4/3/20

Drawing Name

SAMPLES COLLAGE

Scale

@A3

Job Number

A-1702

Drawing Number

DA-025

Revision

Y



RESOURCE MANAGEMENT AND PLANNING APPEAL TRIBUNAL

Citation: Lenna Motor-Inn Pty Ltd v Hobart City Council and Ors [2021] TASRMPAT 05

Parties:

<i>Appellant:</i>	Lenna Motor-Inn Pty Ltd
<i>Respondent:</i>	Hobart City Council
<i>First Party Joined:</i>	Super Woolstore Pty Ltd
<i>Second Party Joined:</i>	Tasmanian Water & Sewerage Corporation Pty Ltd

Subject Land: 20 Runnymede Street, Battery Point and adjacent Road Reserve

Appeal No: I57/I8P

Jurisdiction: Planning Appeal

Hearing Date(s): Submissions were made and responded to in writing

Decision Date: 4 February 2021

Delivered At: Hobart

Before: M Duvnjak, Chairperson

Representation:

<i>Appellant:</i>	Mr A Spence SC, Page Seager
<i>Respondent:</i>	Ms N Billett, Billett Legal
<i>First Party Joined - :</i>	Mr D Armstrong
<i>Second Party Joined:</i>	Self-represented

Catchwords: Planning Appeal

REASONS FOR DECISION**Introduction**

1. This appeal relates to a proposal, as identified in development application PLN 18-351, for partial demolition, new building for residential hotel, restaurant/café, unlisted use (bar) and shops, subdivision (one additional road lot), alterations to carparking and associated works in the Road Reserve (the Proposal) with respect to the property at 21 Runnymede Street, Battery Point (the Subject Site) comprised in three Certificates of Title, namely:
 - Volume 52051, Folio 1;
 - Volume 206692, Folio 1; and
 - Volume 234529, Folio 1.
2. The Appellant, Lenna Motor-Inn Pty Ltd, owns the subject site. The Hobart City Council (the Council) refused to grant a permit for the Proposal on 17 December 2018. The Super Woolstore Pty Ltd (the First Party Joined) made an application to join the proceedings in reliance upon its representation submitted as part of the public advertising of the development application. That application to join was granted by the Tribunal.
3. The Tasmanian Water & Sewerage Corporation Pty Ltd is the Second Party Joined.
4. By this appeal, the Appellant challenges Council's refusal of the proposal.
5. The Appellant has made an application pursuant to s22(3) of the *Resource Management & Planning Appeal Tribunal Act 1993* (the RMPAT Act) to make modifications to the development application.
6. The proposed amendments to the plans that comprised the original development application are opposed by the Council and the First Party Joined. The Second Party Joined did not seek to be heard with respect to the application.
7. The changes to the development application have been particularised by the Appellant as follows:
 - “(a) Setback of basement level car parking from eastern boundary by 1.5m min;
 - (b) Increased articulation of Salamanca Place façade;
 - (c) Removal of external planter tubs and cone on Runnymede Street;
 - (d) Removal of mast-like detailing elements;
 - (e) Enclosure of guest terrace on Salamanca Place;
 - (f) Increased masonry/glazing detail on corner turret;
 - (g) Removal of sloped roof on penthouse level;
 - (h) Replacement of the climbing frame for the vegetated wall on the Princes Park elevation;
 - (i) Provision of planter boxes at each level to stimulate quick vegetation coverage of the Princes Park façade and a deep soil area at the base of the building due to the setback of the basement carpark;
 - (j) Plantroom reduced in size and height (1.1m) to the minimum required for the lift overrun;

- (k) The Princes Park façade set back 1.5m and the upper floor is also set back a further 0.5m-1.9m;
 - (l) The upper roof height (excluding the plant) reduced to RL 30600;
 - (m) Increased setback of the Runnymede Street elevation by 3m above the podium (including balconies);
 - (n) Change from horizontal to vertical glazing to the penthouse level facing Runnymede Street;
 - (o) Detailing of the south facing façade on the Runnymede Street end including:
 - (i) Window number/size/locations,
 - (ii) Recessed corner, and
 - (iii) Materials finishing/shadow-lines.
 - (p) General façade adjustments:
 - (i) Mullion adjustments
 - (ii) Sill projection adjustments
 - (iii) Rear window panel adjustments
 - (iv) Dimension of sill shadows shadow-lines, and
 - (v) Location of some finishes."
8. It appears that it is not in contention that the proposed amendments reduce the scale and scope of the development and do not enliven any additional discretions under the Sullivans Cove Planning Scheme 1997 (the Scheme). The Tribunal so finds.
9. While Council's position is that the proposed amendments reduce the scale of the development, bringing the application into closer conformity with the requirements of the Scheme, Council is not prepared to offer a concluded view with respect to whether the proposed amendments are significant. Council submitted that *"the qualitative nature of the Scheme and changes to the design are relevant considerations that inform whether the changes can be classified as modifications having regard to the interests of the public and their opportunity to be heard in respect of changes to the development."* Council has submitted that the passage of time that has elapsed since the filing of the appeal and the making of this application is a relevant factor affecting the interests of the public insofar as they inform an assessment of whether the changes to the proposal can properly be regarded as a 'modification' because members of the public may hold a legitimate expectation of a right to be heard with respect to an alternative form of development upon the subject site that was to proceed some two years after the matter was first refused by Council.
10. The position of Council, supported by the First Joined Party, is that the effluxion of in excess of two years since Council determined to refuse to grant a permit with respect to the proposal is a relevant factor in the determination of an application made pursuant to s22(3) of the RMPAT Act.
11. S22(3) of the RMPAT Act provides:
- "S22(3)** Where a person appeals to the Appeal Tribunal and it appears to the Appeal Tribunal that –

- (a) the appeal relates to an application made by one party to the appeal to another party to the appeal; and
 - (b) the appeal could be resolved in a manner that is fair to all parties if certain modifications to the application were made; and
 - (c) it would be conducive to the expeditious administration of justice if the powers conferred by this subsection were exercised –
- the Appeal Tribunal may, by order, amend the application accordingly.”

12. For the purposes of whether a change amounts to a modification as contemplated by s22(3)(b) of the RMPAT Act requires a consideration of whether the amendment results in a significantly different proposal to the proposal applied for.¹ It is not a substitute for the making of a fresh application which would bypass the required statutory procedures, including the requirement for public exhibition and receipt of representations.²
13. The Tribunal was referred by Council and the Appellant to the decision of the Full Court of the Supreme Court in *St Helen's Area Landcare & Coast Care Group Inc. v Break O'Day Council*³ (St Helens Landcare). That decision related to an appeal from a decision of the Tribunal varying permits appealed against, the effect of which was it allow development on only part of land proposed to be developed⁴. The Appellant appealed to the Supreme Court and the appeal was dismissed. The Appellant then appealed to the Full Court of the Supreme Court. One of the grounds raised by the Appellant required the Court to consider whether the permit granted by the Tribunal for the development was significantly different from the development that was the subject of the development approved by the Tribunal's determination. It is this aspect of the decision that is relevant to this application.
14. Crawford J said at paragraph 17:

“Whether differences are significant will depend on the circumstances of the particular case. Differences may be significant for several reasons. One concerns the interests of the developer, a second concerns the interests of the appellant or of some other party and a third concerns the interests of the public. No other basis comes to my mind for this case and it was not raised by the parties.”
15. With respect to the interest of the public, Crawford J said at paragraph 19:

“It was submitted for the Appellant that the central objective of public notification representation would be undermined if approval was to be given for a development that was significantly different from that which had been publically notified. No doubt this submissions is sound, it is the significance of the difference in light of the central objective, which is the issue. A significant difference will not be one that is merely a substantial difference. It will be a difference which, in light of the provisions for public notification and representations, and as a matter of judgment, is of such substance, consequence or significance as to call for fresh notification.”
16. It is in circumstances where the modifications are significant, as identified by Crawford J, that the interests of the public are likely to be detrimentally affected.

¹ *St Helens Landcare & Coastcare Group Inc v Break O'Day Council* [2007] 16 TAS R 169 (St Helens Landcare).

² *A & J De Cesare v Clarence City Council* [2010] TASRMPAT 50.

³ [2007] 16 TASR 169.

⁴ Development on the western part of the land was permitted, but development on the eastern part of the land, as proposed, was not.

17. The Tribunal has considered the submissions of the parties and reviewed the proposed amended plans, together with the plans that form part of the original development application. The Tribunal accepts that the changes do not involve any increase in numerical or quantifiable value of the building. There is a reduction in floor area, and a reduction in height, with a narrower footprint and with greater setbacks to Princes Park, as well as Runnymede Street. There are additional setbacks to some elements on upper levels to Salamanca Place. The Tribunal accepts that the Proposal, as modified, is clearly in greater compliance with the Scheme, although its discretionary nature overall remains.
18. In the Tribunal's view, there is no quantitative standard that is detrimentally affected or offended to a greater extent by the changes proposed. In terms of change of design impacting qualitative standards such as the impact upon streetscape, the building has now, *prima facie*, less visual prominence, softer surfacing and more modest architectural treatment overall.
19. This is not a new proposal, nor could it be identified as being a significantly different proposal to that the subject of the original development application. It remains a hotel expansion with retail tenancies, two levels of carparking and it has the same overall form and shape. This is evident when one compares the sections and floor plans. The lift and stairs are generally in the same location and the circulation is similar within the building, which is demonstrated on a comparison of the floorplans. The orientation and dimensions of rooms and shops has had minor changes but these are more properly identified as internal matters that do not affect external appearance to any great extent. The levels of the buildings have been modified, but again very slightly.⁵ The overall height of the proposal has been reduced by a whole floor so minor variations within the structure do not cause any offence under the Scheme standards.
20. The top floor of the original plans has one large penthouse with a deck, the new plans have two penthouses with roof gardens. The amended plans show an overall floor area of this top floor as smaller. There are less hotel rooms overall but the arrangement of the rooms is similar. In the Tribunal's view, these changes cannot be categorised as significant.
21. The new element of the roof garden above the top floor is different from the original proposal that provided for a roof only. However, the roof garden will have no impact on the appearance of the building from the street or the residential neighbours in Salamanca Place (due to its distance away and height) and only serves the hotel itself.
22. The shape and impact of the building is generally the same as before, being a building which fully utilises the corner space of Runnymede Street and Salamanca Place with a full width façade to both streets as well as to the park. The building however, as proposed by the modified plans, has less impact on street vistas along Runnymede Street. Similarly, the setbacks to the park will reduce the prominence of the building, regardless of whether the vegetation does or does not grow. The reduction in height of the building will reduce the visual impact from Salamanca Place.⁶
23. With respect to the changed architectural treatment of the Runnymede Street façade, the Tribunal observes that the proposed changes are consistent with the qualitative standards of the Scheme as these reference the solid sandstone walls of Salamanca Place, with their regular cut out windows. In all other respects, the Tribunal is satisfied that the proposal is not significantly different from that previously applied for.
24. With respect to the submissions from the First Party Joined and Council, the Tribunal cannot envisage the interests of any one of the parties: developer, joined parties, Council, the general public; being detrimentally affected by the application being granted. Although the application before the

⁵ Basement 1 was RL 10,000 and is now RL 9,850, while the ground floor was RL 19,000 but is not RL 19,880.

⁶ See Photomontage, page 1 of the original proposal.

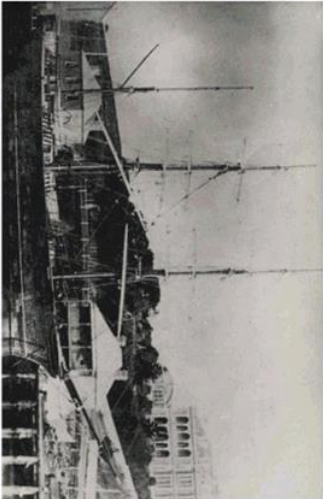
Tribunal discloses many minor changes to the proposal by way of the amended plans, the Tribunal is not satisfied that those changes could be categorised as so significant such that it could be determined that the interests of the general public could be detrimentally affected by the granting of the application. The proposal remains the same development but with reduced dimensions, height and a simpler architectural treatment. Whether those amendments achieve compliance of the Proposal with Scheme standards will be determined following receipt of evidence and submissions at the substantive hearing of this appeal. The application for amendment to PLN-18-351 is granted.

25. Accordingly, the Tribunal makes the following orders:


- a) That PLN-18-351 is amended by substituting the plans dated 3 August 2020, being Annexure "A" hereto for the plans dated 8 June 2018.

Annexure "A"

TABLE NUMBER	SHEET NAME	SECTION	REVISION
TABLE 1	TABLE 1	SECTION 1	REVISION 1
TABLE 2	TABLE 2	SECTION 2	REVISION 2
TABLE 3	TABLE 3	SECTION 3	REVISION 3
TABLE 4	TABLE 4	SECTION 4	REVISION 4
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TABLE 100	TABLE 100	SECTION 100	REVISION 100



(Note the addition of the conservatory) State Library of Victoria, A17566/775



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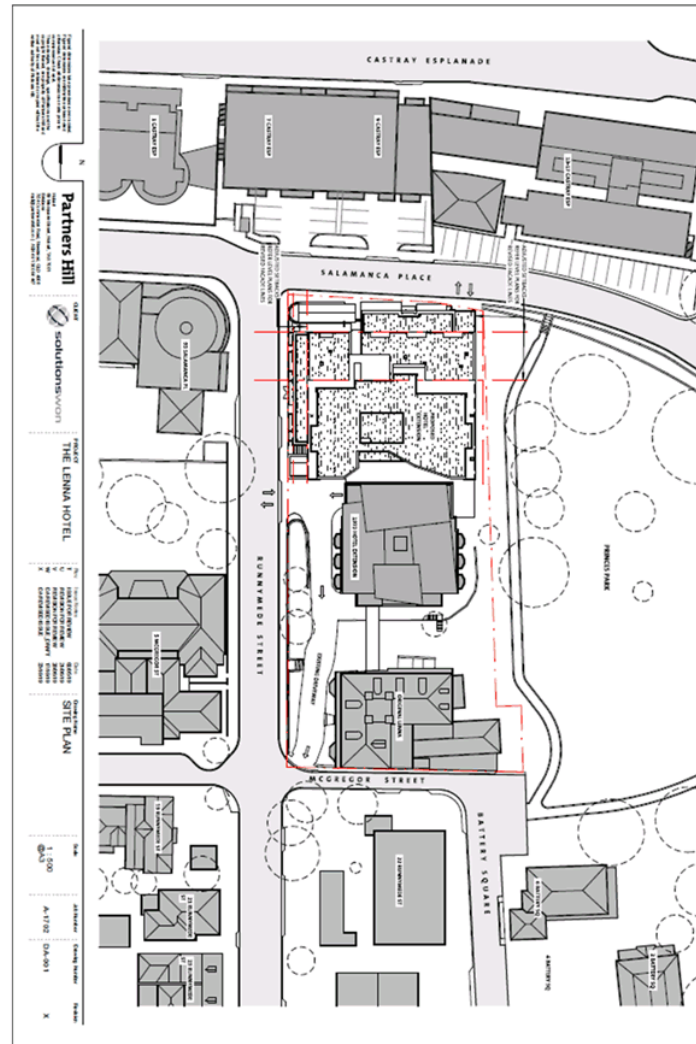
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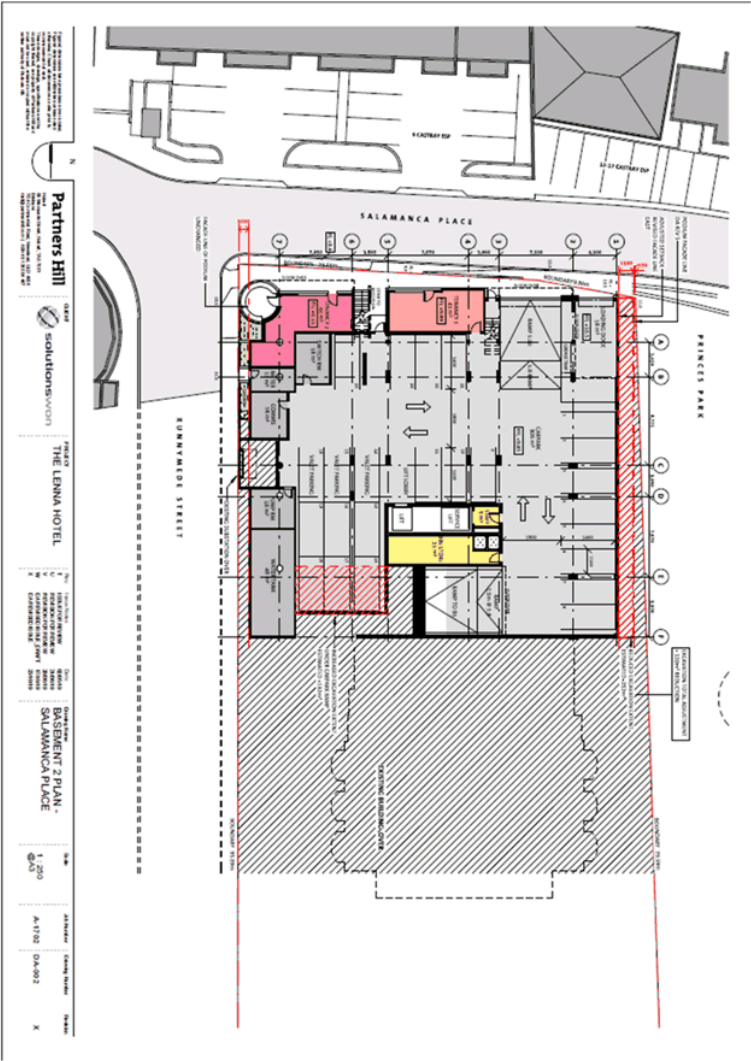
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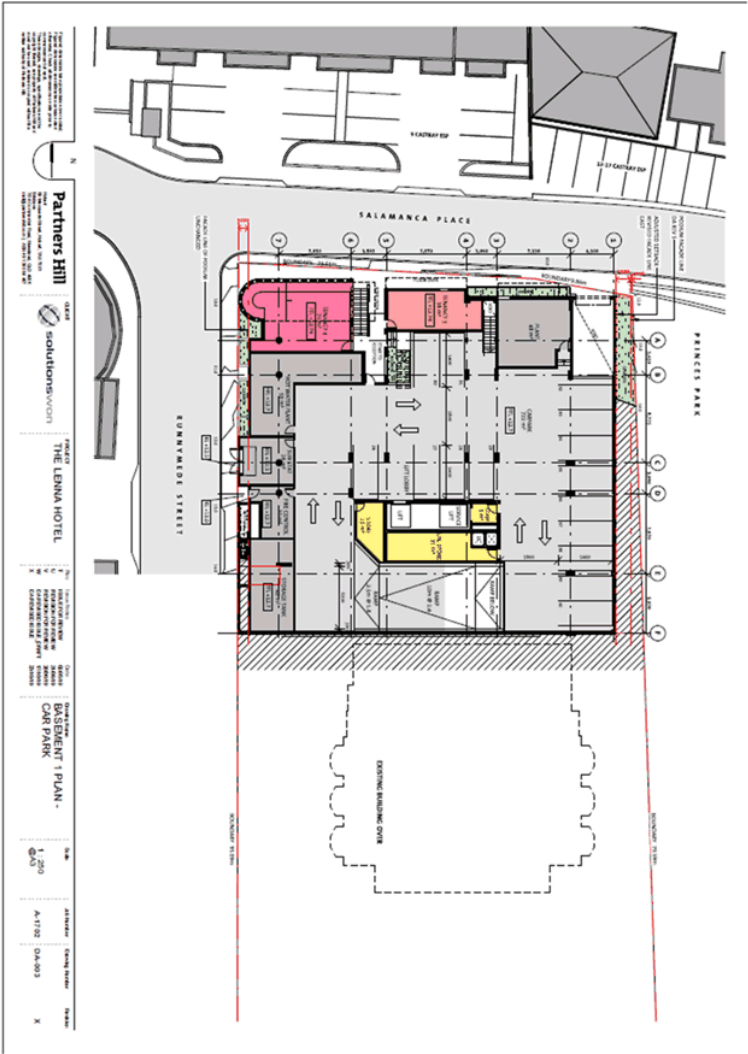
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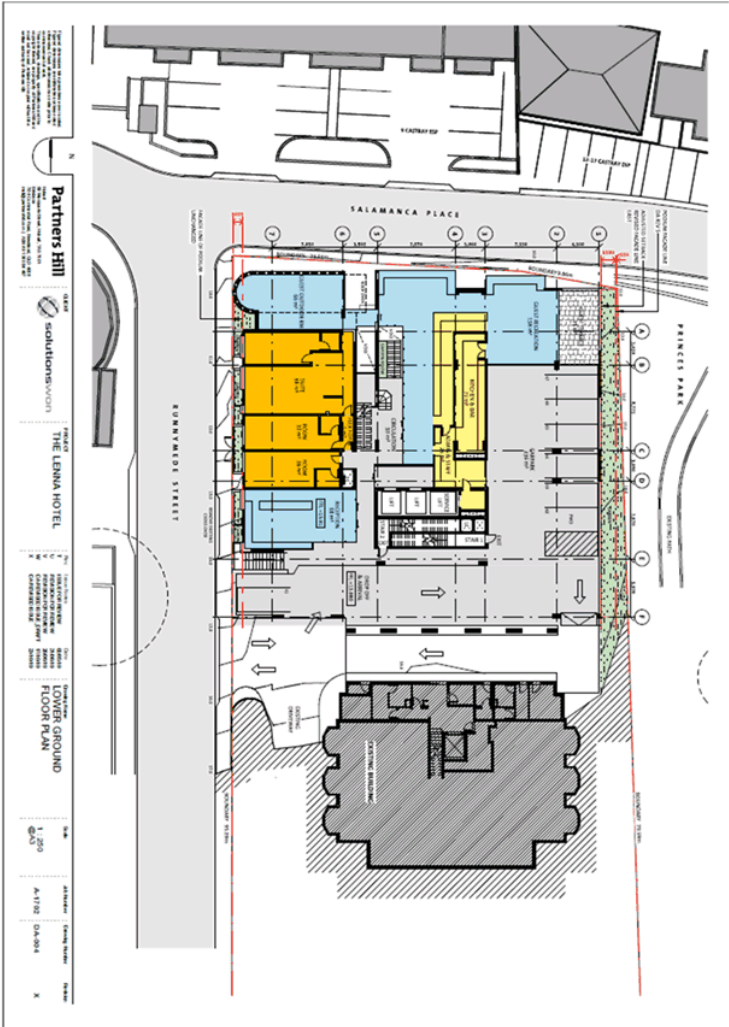
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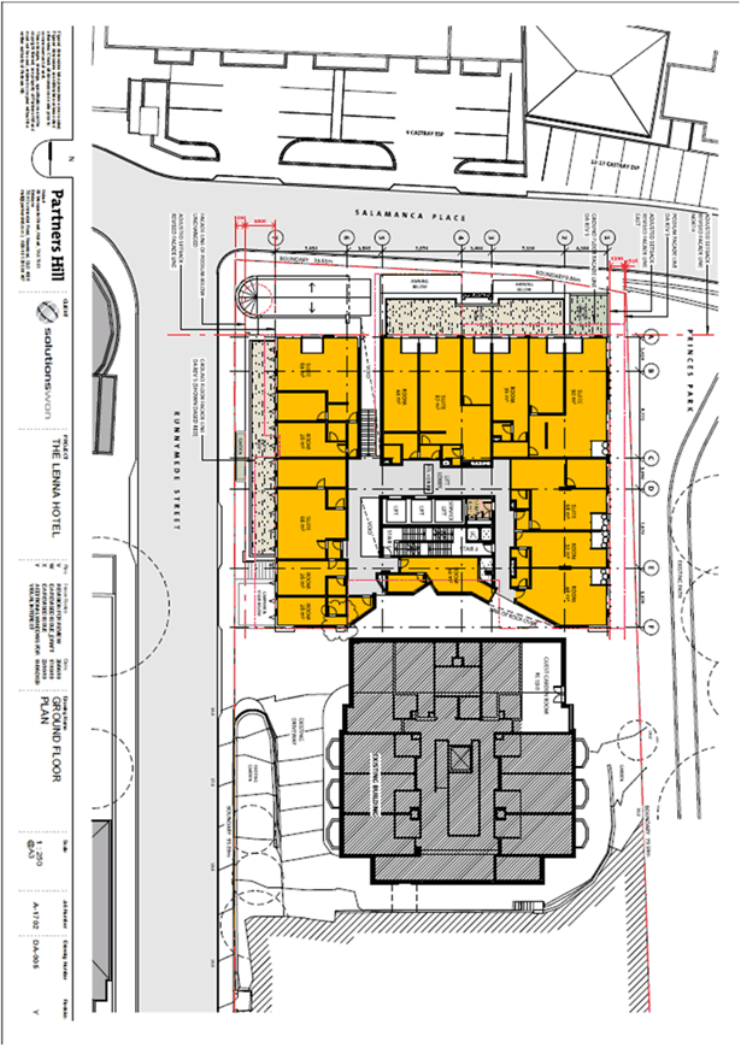
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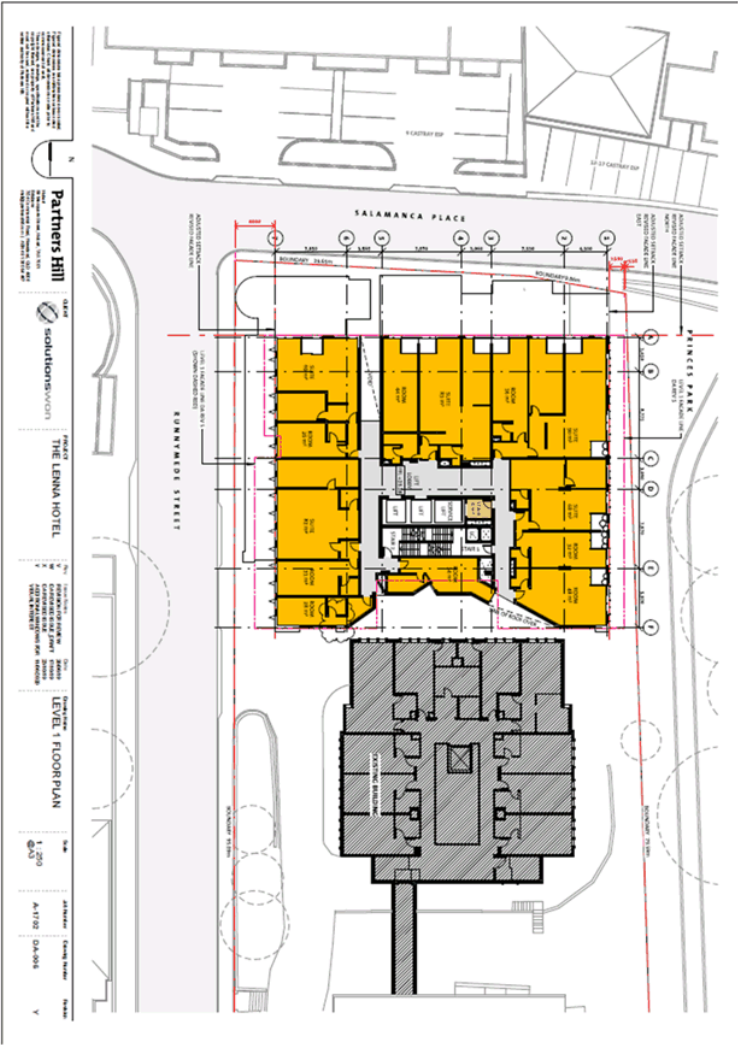


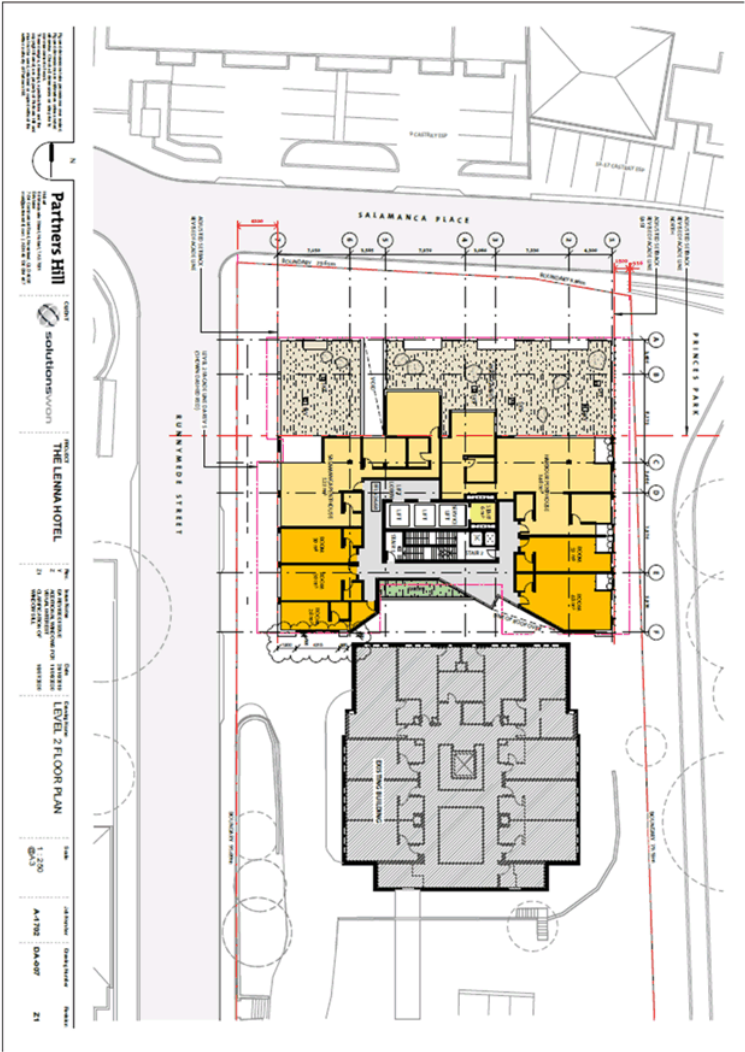


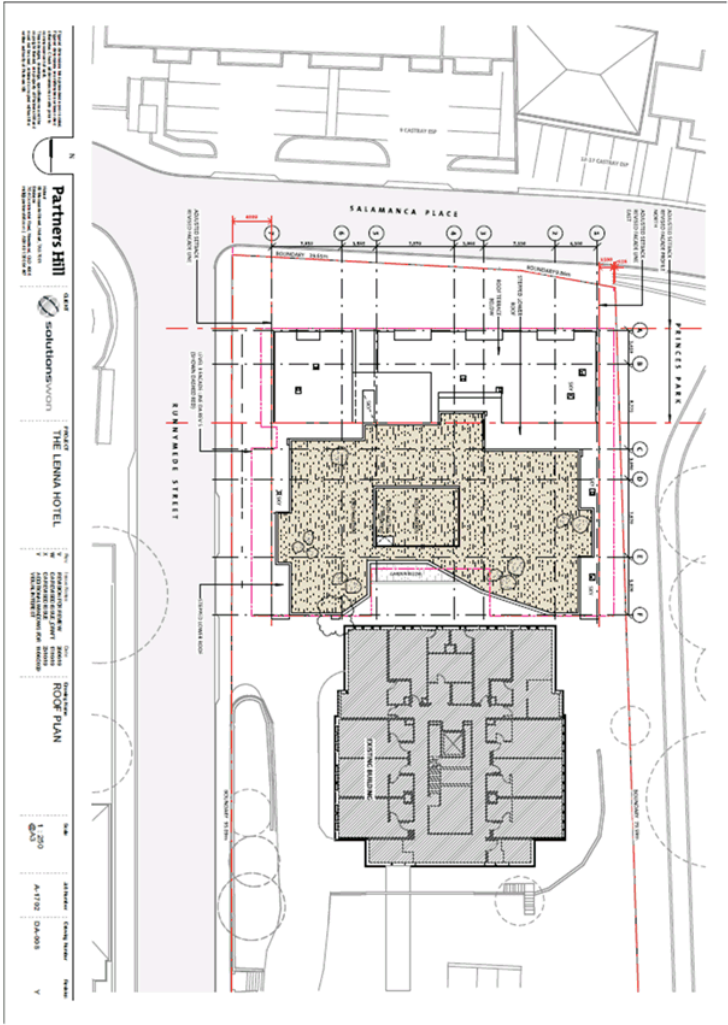


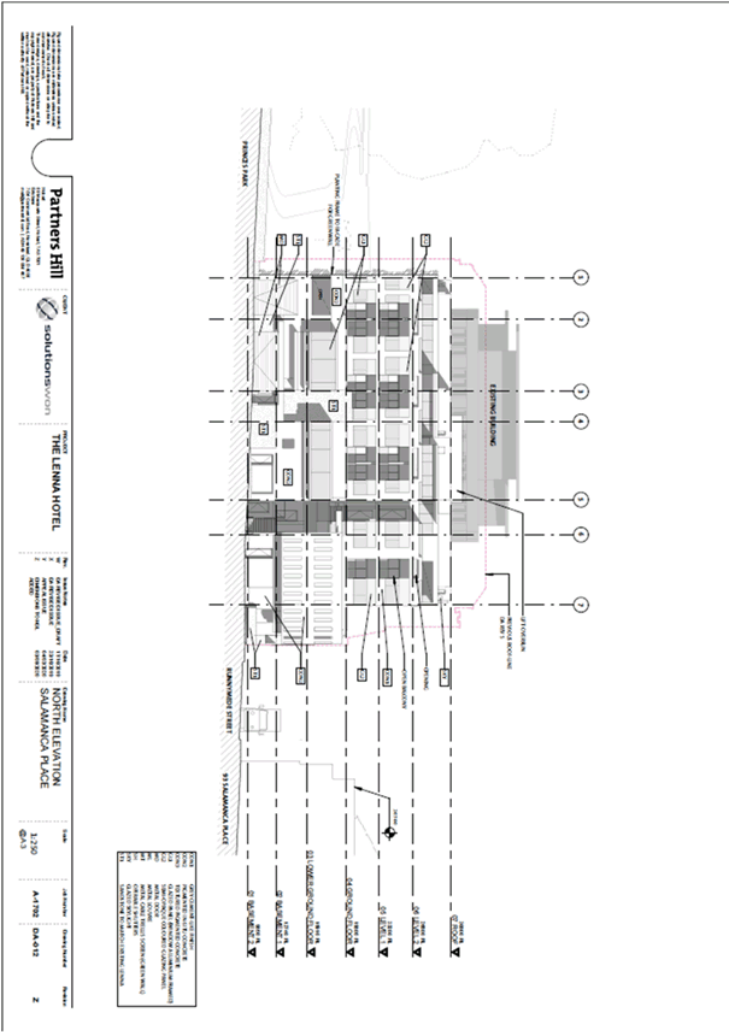


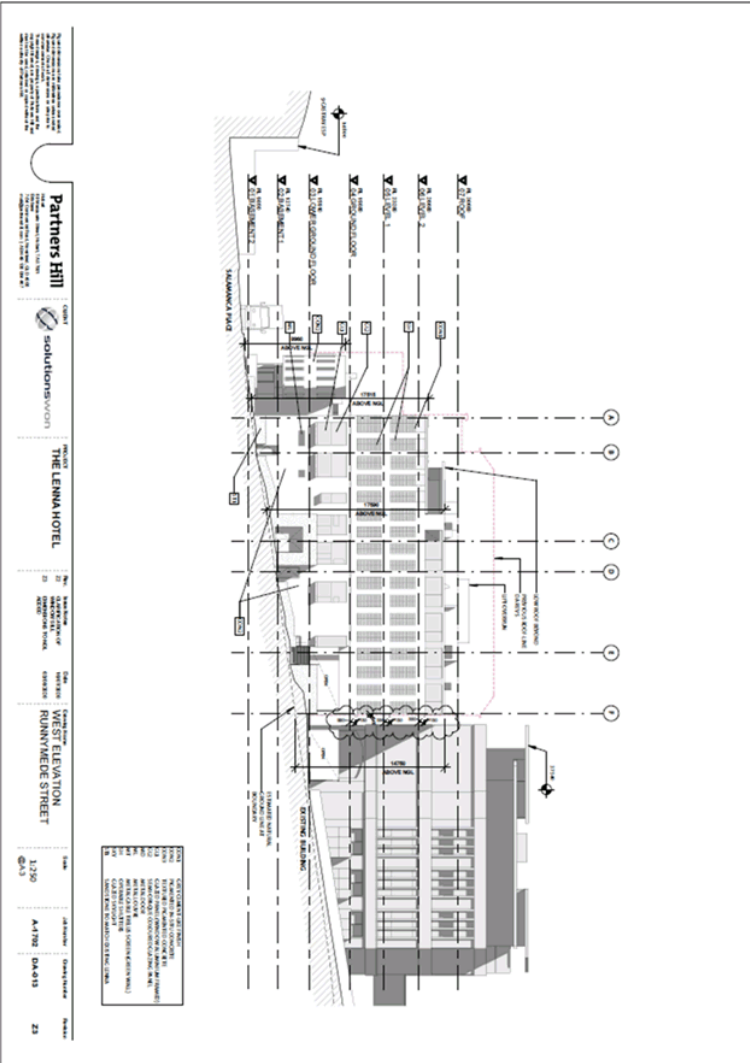


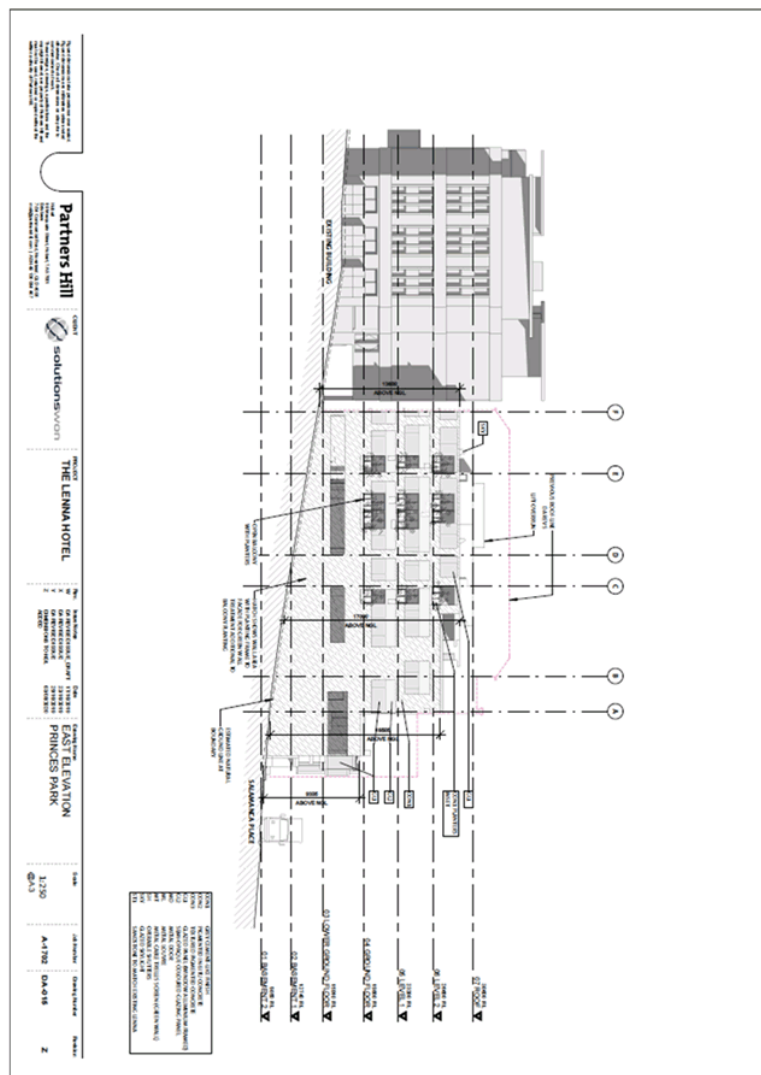


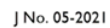


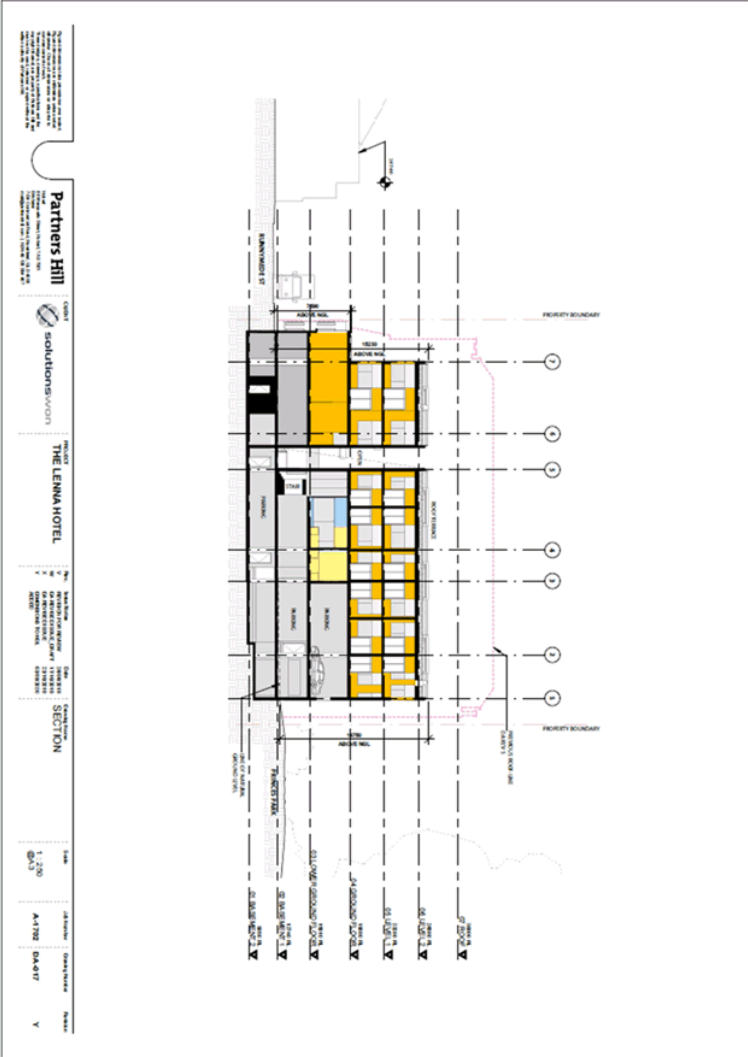


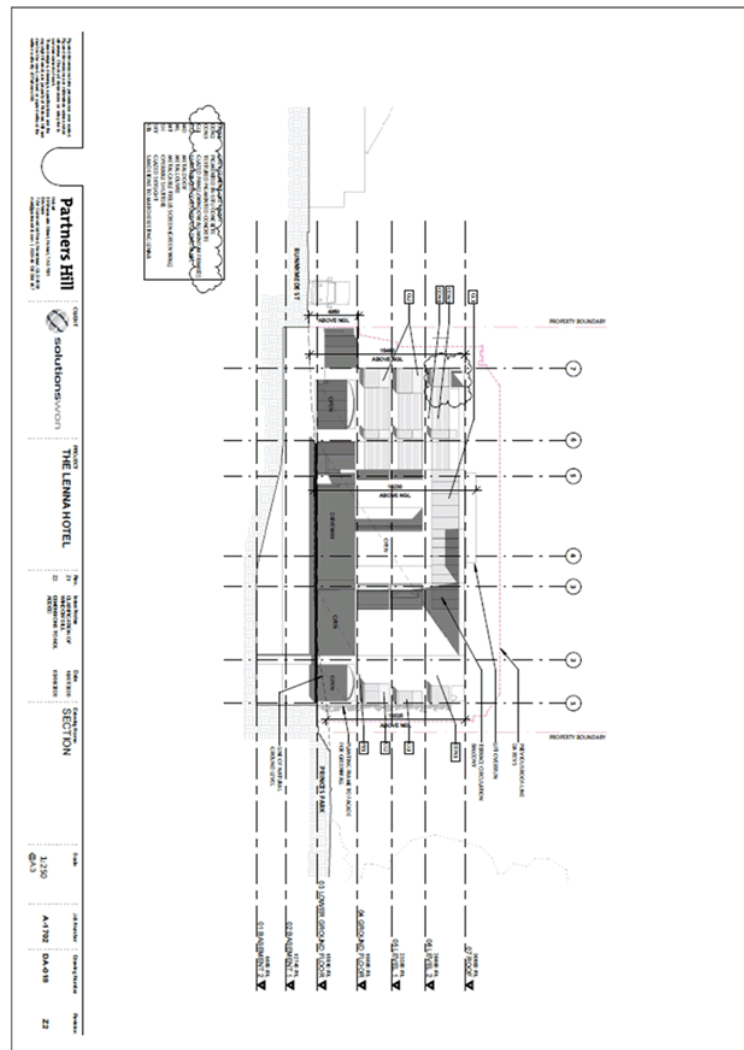


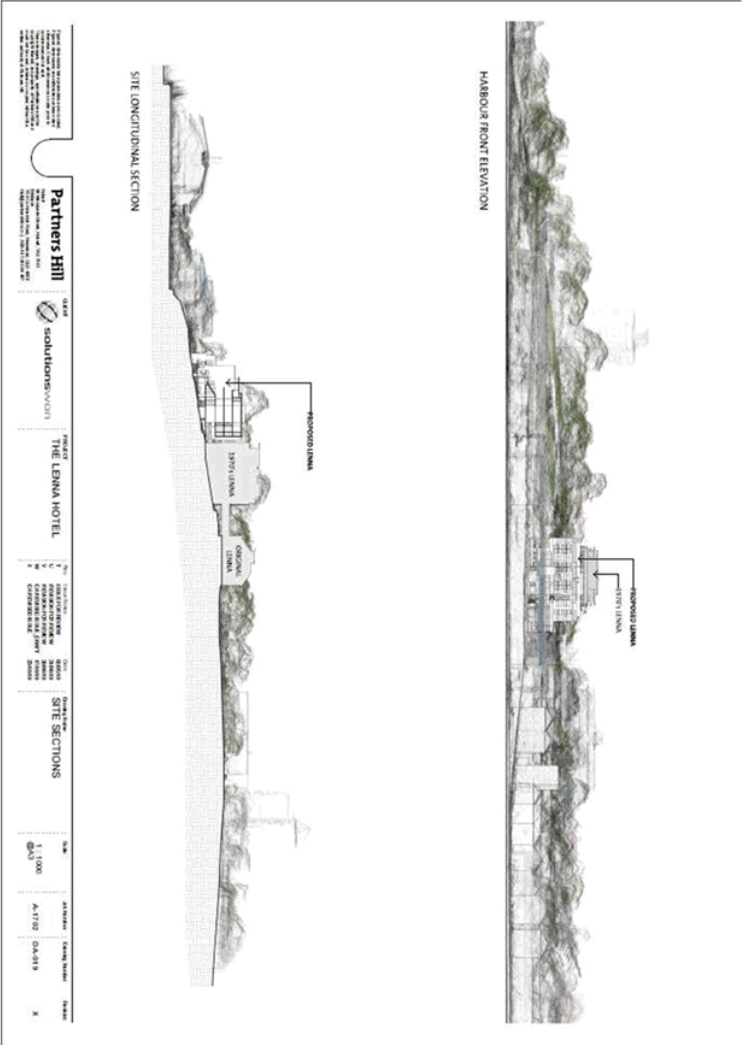


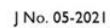


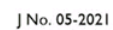


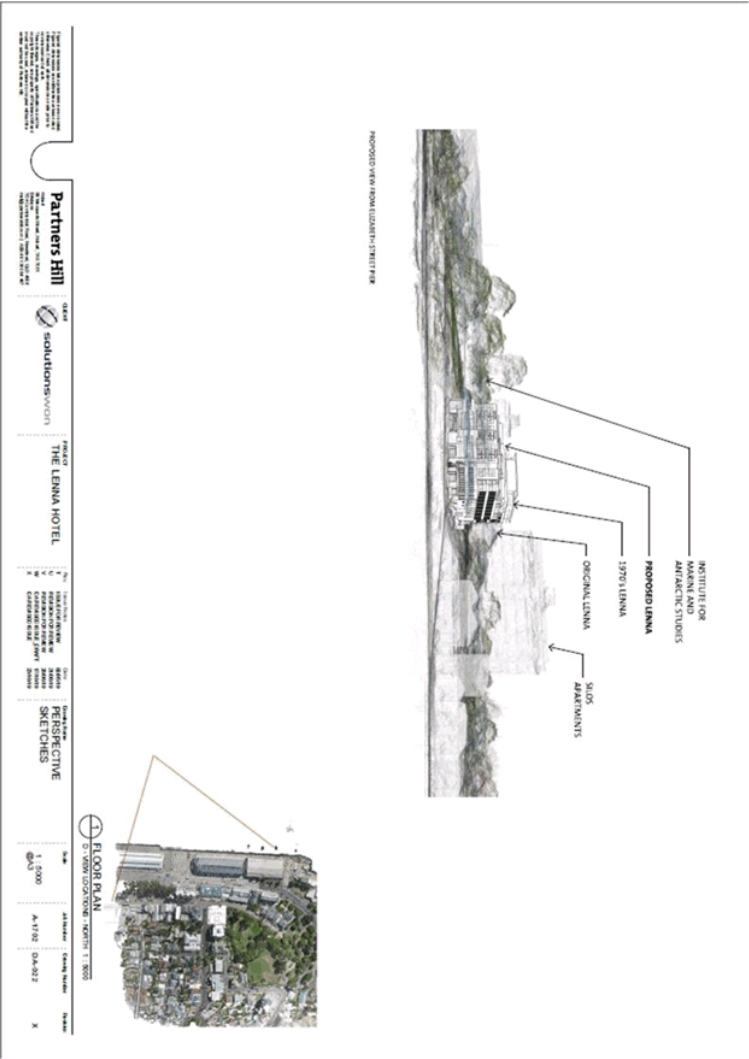


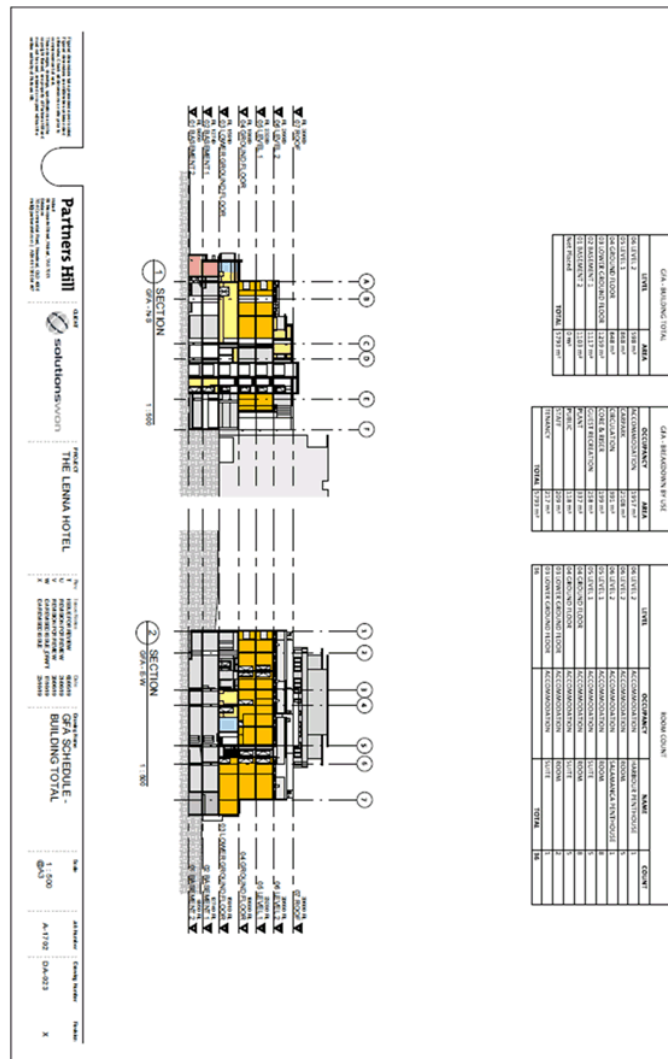


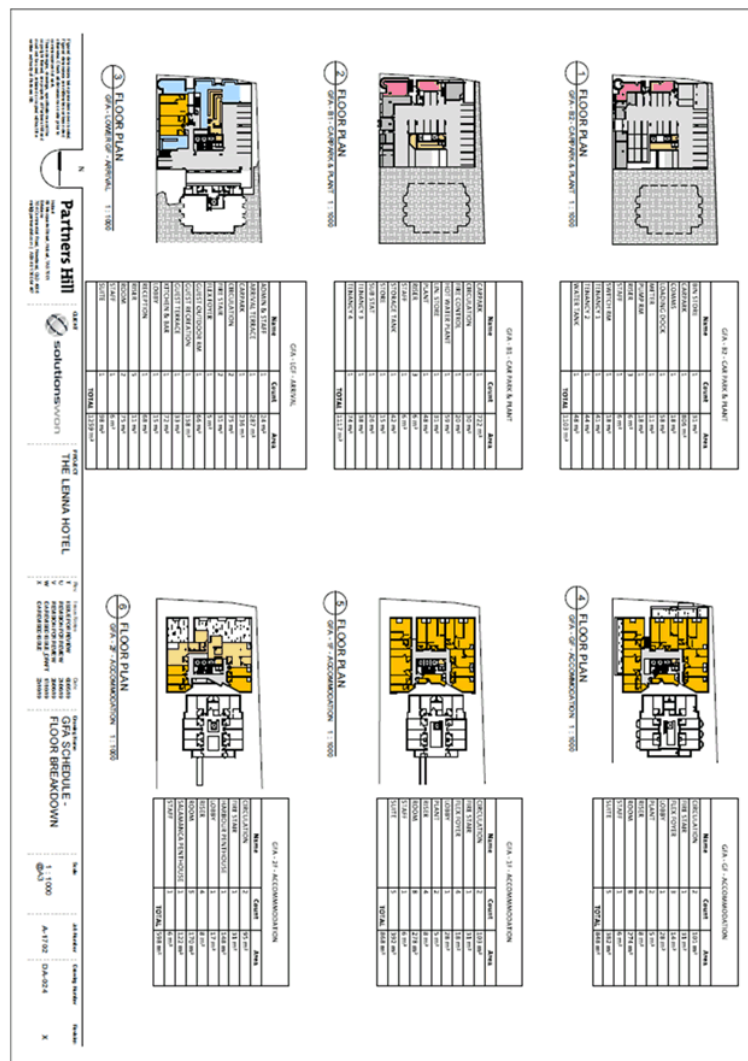





















KEY	DESCRIPTION	GRAPHIC EXAMPLE	KEY	DESCRIPTION	GRAPHIC EXAMPLE
CON1	CONCRETE AND FINISH		SH	ORIGINAL SHUTTERS	
CON2	POINTERED MASTU CONCRETE POINTERED MASTU		SKY	GLASS SKULPTURE THROUGH FINISH	
CON3	TEXTURED POINTERED CONCRETE POINTERED MASTU		ST1	INTERMEDIATE FORM STONE BLOCKED— FINISH STONE	
GL1	GLASS FINISH GLASS GLASS		EASTERN ELEVATION	COMBINATION OF CONCRETE AND STONE	
GL2	TEXTURED GLASS FINISH LUMINOUS GLASS FINISH THROUGH				

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GL1
 A1792 GLASS

GL2
 A1792 GLASS

Y



JMG Ref: J153081PH

15th February 2021

Anthony Spence

Page Seager Lawyers

Level 2 179 Murray Street

Via email: aspence@pageaseager.com.au

Dear Anthony,

**SOLUTIONSWON GROUP PTY LTD V HOBART CITY COUNCIL (157/18P) - 20
 RUNNYMEDE STREET HOBART**

Further to the approval of the Section 22 application by the Resource Management and Planning Appeals Tribunal on the 4th February, this letter is to confirm that in our view the application is compliant with the Sullivans Cove Planning Scheme 1997. JMG prepared the development application on behalf of Solutionswon Group Pty Ltd.

The application was submitted on the 8th June 2018 and recommended for approval by the City Planning Committee meeting on 10 December 2018 but then refused by full Council at the 17 December 2018 meeting. The proposal involves Council consent as land owner, but only for a non-standard vehicle entrance and changes to on-street parking.

The site is bounded by Salamanca Place, Runnymede Street and 'Princes Park'. There are two existing buildings on the site: The historic Lenna of Hobart and what is known as the 1970's Lenna building. The Lenna of Hobart building is State heritage listed and Heritage Tasmania have been consistently supportive of the proposal. The 1970's Lenna Building (adjacent to the development area) is not listed. JMG are not cultural heritage experts as such we leave this matter to Lovell Chen.

The site is located in the 'Mixed Use Activity Area 2.0' under the Sullivans Cove Planning Scheme 1997. The revised Section 22 proposal involves the construction of an six storey hotel building containing 34 hotel suites, 2 penthouse suites, 4 retail tenancies (2 at street level, 2 accessed from either street level or reception), and onsite parking for 47 vehicles.

Note whilst the Sullivans Cove Planning Scheme is a performance based scheme, the terminology is different from the interim planning schemes. The proposed development generates the following discretions under the Scheme:

- Clause 16.2 Activity Area Controls (Use)
- Clause 22.4.5 Buildings or Works on a Place of Cultural Heritage Significance;
- Clause 23.6.2A New Buildings:
 - Height,
 - Alignment -Secondary Space;
 - Plot Ratio, and

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- Apparent Size Façade;
- Clause 26.4.1 Traffic Generation
- Clause 26.4.2 Access Requirements,
- Clause 26.4.3 Parking Standards,
- Clause 26.4.4 Nature of Parking,
- Clause 27.4 Subdivision, and
- Clause 28.6 Demolition.

Whilst uses are discretionary, the new and intensified existing uses (such as the hotel use) comply with the Performance Criteria of the scheme.

The 'permitted' Height is 12m above ground level in the Mixed Use 2.0 Activity Area and the existing 1970's Lenna is 22.1m. The Section 22 proposal is 18.17m above ground level at its highest point which is approximately one floor below the penthouse level of the 1970's Lenna building. Whilst much is made of the prominence of the building, it is not visible from the warehouse stretch of Salamanca Place, from most views around Sullivans Cove it is viewed against the backdrop of the 1970's Lenna, and from Princes Park it will be viewed as a green wall.

The 'permitted' zero alignment to a secondary space (note both Salamanca Place in this section and Runnymede Street are defined as a secondary spaces) is not met primarily because the building is set back from Salamanca place to widen the public footpath to acceptable standards. Note the setbacks referred to in the Section 22 modifications are to the upper levels - not at the street.

The 'permitted' plot ratio for the site is 2.0, the S22 plot ratio over the whole site is just under 2.0.

Runnymede Street is 12.5m wide, and Salamanca Place is 8.5m wide. Therefore the permitted apparent size for Runnymede Street is 25m, and 17m for Salamanca Place. The proposed building will have a length of 37m on the Runnymede Street frontage and 41 m on the Salamanca Place frontage. However both facades are articulated with a number of vertical steps which reduce the apparent length by breaking up the form of the façade at street level (the stair to the reception off Salamanca Place is an example). The longest length of façade at street level is 14.9m.

A Traffic Impact Assessment (TIA) detailing the impacts of the development on the safety and function of the surrounding road network has been undertaken. It addressed the proposed car parking numbers and operation of the proposal. Council's Road, Traffic and Development Engineers have assessed the TIA and advised that the proposed development is acceptable in the proposed location and that it provides adequate / appropriate safety and car parking for the proposed use, subject to conditions.

The subdivision and demolition clauses are technical discretions only.

Based on the above, we are of the view that the revised S22 design complies with the requirements of the Sullivans Cove Planning Scheme.

If you require any further information or clarification with respect to the above, please contact me on 6231 2555 or at mclark@jmg.net.au.



Yours faithfully

JOHNSTONE MCGEE & GANDY PTY LTD

Mat Clark

PRINCIPAL/SENIOR TOWN PLANNER

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Mr Anthony Spence SC
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Level 2 179 Murray Street
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Tasmania 7001

aspence@pageaseager.com.au

11 February 2021

Dear Mr Spence

Re: Solutionswon Group Pty Ltd v Hobart City Council (157/18P) 20 Runnymede Street Hobart

I understand that on 4 February 2021 the Resource Management and Planning Appeal Tribunal made an order to amend the above application by substituting plans dated 3 August 2020 (amended plans), for the plans dated 8 June 2018 (2018 plans). Further, I understand that Hobart City Council will consider the amended plans for the purposes of instruction on the future course of the appeal, identifying a position on whether the application satisfies the relevant provisions of the Sullivans Cove Planning Scheme (SCPS).

This letter summarises my involvement in this matter and support for the amended plans.

I am Founding Principal of Lovell Chen Pty Ltd, Architects and Heritage Consultants, which I established with Richard Allom in 1981. Over the past 39 years I have worked in the field of building conservation and have been involved in, and responsible for, a wide range of conservation related projects.

I was first informed of this matter in correspondence from Page Seager dated 14 February 2019 which provided background information on the initial application and refusal.

On 19 March 2019, I was requested to undertake a site visit and to provide views on the 2018 plans. On 7 April 2019, I provided a summary of my initial views recommending consideration of modifications to the design to respond to the relevant criteria in the SCPS. In summary, I recommended modification to the overall scale, height, footprint and external design complexity of the proposed development. In May 2019, I received and reviewed revised plans prepared by Partners Hill architects which I considered addressed these concerns.

On 3 June 2019, I met with Brendan Lennard, heritage advisor for Hobart City Council, to discuss remaining heritage issues. Following this discussion, I provided further comments to Partners Hill on

LOVELL CHEN

refinement of plans. On 4 May 2020, I was again requested to arrange a 'without prejudice' informal meeting with Brendan Lennard to discuss revised plans and identify any remaining design issues. Following communication with Brendan Lennard, I provided further comments to Partners Hill on remaining heritage issues to assist in finalising the amended plans.

I have now had the opportunity to review the amended plans. It is my view that the amendments have addressed the relevant criteria to be considered in a discretionary approval under Schedule 1 of the SPCS. I express my support for the amended plans.

Yours sincerely
Lovell Chen



Peter Lovell
Founding Principal

CURRICULUM VITAE

PETER LOVELL
DIRECTOR**QUALIFICATIONS**

B Building (Melbourne), 1977; Hon FRAIA,
MICOMOS

PROFESSIONAL DETAILS

Established in 1981, Peter Lovell is a founding partner of Lovell Chen Pty Ltd (formerly Allom Lovell & Associates), Architects and Heritage Consultants. Over the past 38 years Peter has been a key participant in the field of heritage practice and the development of a firm which is a leader in design and management associated with heritage places.

The primary focus of his current work is in the development of strategies to address the complexities which arise in new design and development in a heritage context. He brings to this work both a detailed knowledge of traditional building and conservation practice, and a comprehensive understanding of the issues faced in the adaptation and reuse of heritage buildings and sites. While often involved in a leadership capacity across all project phases, the emphasis of his work is in the development of concepts and in steering a course to achieve appropriately balanced outcomes. In this regard he is frequently called upon as an expert witness and to provide advice on heritage issues for both public and private sector clients.

More broadly Peter has been an active participant in the profession, involved in lectures, conferences and speaking engagements. His contribution was recognized in 2007 with the award of honorary fellow of the Royal Australian Institute of Architects. As a member of heritage committees and organizations, he has contributed to the growth and development of the profession and the promotion of conservation practice.

LOVELL CHEN
ARCHITECTS & HERITAGE CONSULTANTS**PROFESSIONAL ACTIVITIES**

Past and present professional activities and associations include long standing membership of Australia ICOMOS (International Council on Monuments and Sites) – member, and past member of the executive.

Honorary Fellow of the Royal Australian Institute of Architects – Awarded 2007

Victorian Heritage Council Archaeological Advisory Committee – past member

Victorian Heritage Council Technical Advisory Committee – past member

Flinders Street Station Design Competition 2013 – jury member

National Trust of Australia (Victoria) – member

AusHeritage – former member and board member

CURRICULUM VITAE

EXPERTISE

Peter's experience in conservation includes detailed research and investigation of heritage places, the assessment of heritage significance as related to statutory heritage listing, the provision of strategic advice regarding the management of heritage place and survey, assessment and delivery of conservation and adaptive reuse works.

Projects in which he has actively participated in a research and assessment capacity include the preparation of conservation/heritage studies for the Borough of Queenscliffe, the former City of South Melbourne, the former City of Fitzroy and the former City of Port Melbourne. In addition, he has acted as heritage advisor to the Borough of Queenscliffe and the former City of South Melbourne. In the area of conservation management planning he has been responsible for the preparation of a wide range of conservation analyses and plans including those for the Melbourne Town Hall and Administration Building, the State Library and Museum, the Supreme Court of Victoria, Werribee Park, the Regent Theatre, the Bendigo Post Office, Flinders Street Station, the Old Melbourne Observatory and the Mt Buffalo Chalet. He has been responsible for the preparation of strategic planning reports for Government House, Canberra, the Melbourne Town Hall and the Supreme Court of Victoria.

In the area of applied conservation he has been responsible for the design, documentation and administration of a wide range of projects. Key projects include:

The ANZ Gothic Bank at 380 Collins Street, Melbourne

The Collingwood, Melbourne and Fitzroy Town Halls.

The Princess, Athenaeum and Regent Theatres
Parliament House, Melbourne

Government Houses in Canberra and Perth

The Victorian Court of Appeal and the Supreme Court of Victoria

The Old Customs House Immigration Museum, Melbourne

140 William Street, Perth

His involvement in these projects includes survey and assessment of fabric, scoping and specification

PETER LOVELL

LOVELL CHEN
ARCHITECTS & HERITAGE CONSULTANTS

of repair restoration and reconstruction works and site attendance and contract administration.

Major redevelopment and adaptive reuse projects in which he has provided strategic heritage advice include the former Victoria Brewery, East Melbourne; Waverley Park; the MCG; the former Richmond Power Station; Young & Jackson's Hotel; the Camp Street Precinct in Ballarat and the Melbourne GPO.

In many of these projects he has also prepared expert reports and evidence. He has also appeared frequently before the Victorian Heritage Council and its predecessor, and the Victorian Civil and Administrative Tribunal in relation to matters relating to conservation, adaptation and redevelopment of historic places.

Current project involvement includes the provision of specialist heritage advice and services in relation to the development of a heritage framework for the ANU, a review of the Borough of Queenscliffe heritage controls and policy, strategic advice on the redevelopment of the Preston Market, preparation of conservation management plans for the Domain campus of UTAS and a feasibility study of the Melbourne Town Hall and Administration Building.

PAPERS AND PRESENTATIONS

Flinders Street Station Restoration Project.
Occasional lecture, Parliament House Library, Melbourne, May 2019

The Gothic Bank: creation and rediscovery.
February 2018

Finding the Balance, Guest lecturer, Melbourne School of Design, July 2016

Urban Heritage in the 21st Century; Keynote speaker at the Canterbury Heritage Awards, Christchurch New Zealand, June 2016

Guest speaker, Developing Industrial Sites, Australian Institute of Architects, Professional Development Seminar, November 2015

The Heritage of Central Melbourne, Australian Institute of Art History, International Conference, September 2014

Video Interview Government House Victoria, Fireplaces, June 2013

CURRICULUM VITAE

Roundtable Panel, University of Melbourne - Missing Links: Heritage Education and Heritage Practice, Series 1, 16 July 2012

Video Guest Interview, Deakin University, Masters of Cultural Heritage and Museum Studies AIM703 - Introduction to Heritage Planning, 30 May 2012

Guest Speaker Collingwood Historical Society - The Challenge of Adaptive Reuse, 8 February 2012

Heritage Conservation International Conference Hong Kong - The Challenge of Adaptive Reuse, 12-13 December 2011

ICOMOS Watermarks: Water's Heritage - Melbourne's Historic Piers: Managing Heritage in a Maritime Environment, 27-30 October 2011

Melbourne School of Design Directors Series - Heritage and Development: Second Rate Outcomes for Second Rate Buildings? 26 July 2011

Guest Speaker Heritage Workshop for Commonwealth Agencies, Canberra - Australia Post - Identifying, Assessing and Nominating Heritage Properties, 12 May 2011

Keynote Speaker Melbourne Club Foundation Dinner - The Melbourne Club and Its Architects, 18 November 2010

Guest Speaker Australian Institute of Architects (Western Australia), Adaptive Reuse - A New Future for Our Past...21 October 2010

Keynote Speaker Australian Institute of Architects (Perth), Adaptive Reuse - A New Future for our Past.... 3 August 2010

Guest Speaker RAIA Continuing Education Series 2006-2009

Guest Speaker ARBV Melbourne Open House Speaker Series 2010 - Speaker Series 1, House This! Density in Melbourne - ANZ Gothic Bank, 6 July 2010

Paper, Architect Victoria - Post-War heritage Overlooked Success of a sort, autumn 2010

Guest Speaker Melbourne Museum National Archaeology Week - Reinvigorating Heritage Sites - Goods Shed North, 18 May 2010

Guest Speaker Royal Australian Institute of Architects (Victoria) - Refuel, Reinvigorating Heritage Sites - Goods Shed North, 17 May 2010

Paper, Victorian Stucco, 2009

PETER LOVELL

LOVELL CHEN
ARCHITECTS & HERITAGE CONSULTANTS

Guest Speaker (Un)Loved Modern Conference, Paper 'Heritage Conservation and Postwar Modernist Houses - The Single House Under Threat', Sydney 2009

Paper, Melbourne University, Heritage Planning, Melbourne 2009

Latrobe University - Cultural Heritage Workshop, Curriculum Development, Archaeology Program, Melbourne 2009

Publication, Historic Environment, National Trust of Australia (WA), Melbourne Docklands 'Workaday yet Relentlessly Romantic', 2009

Guest Speaker Melbourne University, National Workshop on Hospitals and Heritage, 'Historic Hospitals', Melbourne 2009

Paper, ICOMOS - Victorian Stucco Seminar, Case Studies (Peter Lovell & Fraser Brown), 2007

10th World Historical Conference of Historical Cities, 'Conservation & Development Balance & Compromise', Ballarat 2006

Preservation of Historic Heritage Symposium, Tunxi, Huanshan Province, China 1996

Guest Lecturer, University of Canberra, Summer School, The Conservation of Traditional Buildings, 1991, 1993, 1995

Guest Lecturer on Conservation, University of Melbourne, Department of Architecture, 1980 - 1986

EXPERT WITNESS WORK

Heritage Council of Victoria Registrations and Permit Hearings

Flemington Racecourse P30168 [2019] VHerCI 4 (22 May 2019)

Christ Church Complex, 14 Acland Street and 1 St Leonards Avenue St Kilda P28298 [2019] VHerCI 9 (5 August 2019)

Federation Square, 2-20 Swanston Street Melbourne, H8586 [2019] VHerCI 11 (26 August 2019)

ANZ Bank, 376-390 Collins Street, Melbourne P29660 [2019] VHerCI 13 (2 September 2019)

Preston Market, The Centreway, Preston H8612 [2019] VHerCI 14 (18 September 2019)

Robur Tea Building H8359 [2018] VHerCI 10 (18 Jul 2018)

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CURRICULUM VITAE

Festival Hall H8484 [2018] VHerCI 13 (15 November 2018)

Spurling House, 38 Black Street Brighton P26464 [2017] VHerCI 9 (21 August 2017)

Camperdown Botanic Gardens and Arboretum P24319 [2016] VHerCI 6 (4 August 2016)

Richmond Maltings H7776 [2016] VHerCI 10 (23 December 2016)

Ngara H7149 [2015] VHerCI 6 (26 June 2015)

Former Oriental Hotel H6993 [2014] VHerCI 9 (31 October 2014)

Former Hoyts Cinema Centre H6953 [2014] VHerCI 6 (21 July 2014)

Palace Theatre H7009 [2014] VHerCI 5 (3 July 2014)

Exford Homestead H6455 [2013] VHerCI 10 (3 December 2013)

Domain Parklands H6300 [2013] VHerCI 4 (27 June 2013)

Former Melford Motors H6299 [2013] VHerCI 3 (26 February 2013)

Ford Motor Company Complex H6395 (21 September 2012)

Former Ballarat Orphanage R9660 [2011] VHerCI 12 (20 December 2011)

Brenan Hall R9512 [2011] VHerCI 8 (30 September 2011)

MCG Hotel R9621 [2011] VHerCI 7 (27 September 2011)

Hotel Windsor P15781 [2010] VHerCI 14 (8 November 2010)

Mayfield Drystone Walls [2010] VHerCI 10 (27 October 2010)

New Zealandia Milking Machine R9496 [2010] VHerCI 11 (27 October 2010)

Clonard Homestead Dairy Complex R9449 [2010] VHerCI 12 (27 October 2010)

Palais Theatre R9309 [2009] VHerCI 8 (26 June 2010)

State Library of Victoria P13956 [2009] VHerCI 2 (25 March 2009)

Grainger Museum P13953 (16 March 2009)

PETER LOVELL

LOVELL CHEN
ARCHITECTS & HERITAGE CONSULTANTS

Former Eastern Arcade R2690 [2008] VHerCI 4 (12 February 2008)

Planning Panels

Peter Lovell has appeared as an expert heritage consultant at many hearings before Planning Panels Victoria over the past 20 years, including on the following matters:

East West Link Assessment Committee (AC) [2014] PPV 76 (30 May 2014)

Moonee Valley Racecourse (AC) [2013] PPV 154 (19 December 2013)

Mornington Safe Harbour (EES) [2011] PPV 47 (4 May 2011)

Stockyard Hill Wind Farm (PCI) [2010] PPV 84 (30 August 2010)

Barwon Heads Bridge (AC) [2007] PPV 10 (31 January 2007)

Queenscliffe C14 (PSA) [2004] PPV 86 (15 July 2004)

Games Village (AC) [2003] PPV 64 (30 June 2003)

Herald & Weekly Times (AC) [2002] PPV 52 (7 June 2002)

Beacon Cove Stage 2 (AC) [2002] PPV 45 (24 May 2002)

Commonwealth Games 2006 - MCG Redevelopment (AC) [2001] PPV 126 (14 November 2001)

Burnham Beeches Heritage Appeal Call-In (Call-In) (4 June 1999)

Victorian Civil and Administrative Tribunal

Peter Lovell has appeared as an expert heritage consultant at numerous hearings before the VCAT over the past 20 years.

4

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16 February 2021

Ms Naomi Billett
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By email: naomi@billettlegal.com.au

Dear Ms Billett

SOLUTIONSWON GROUP PTY LTD V HOBART CITY COUNCIL (157/18P)

Firstly, thank you for the opportunity of providing material to Council for submission to the Counsellors in considering Council's position in respect of the amended plans following the Tribunal's decision, *Lenna Motor-Inn Pty Ltd v Hobart City Council and Ors* (2021) TASRMPAT 05.

This site and hotel is iconic in Hobart in general and Battery Point in particular.

You are aware that this proposal has been an iterative process. Mr and Mrs Clark has had an extensive design team to craft an appropriate and sympathetic proposal for the site.

Upon the proposal being refused by Council, and an appeal being lodged, my client had sought to mediate with Council to explore the possibilities of a resolution which is acceptable to Council.

As you are aware, I instructed a senior heritage consultant who had not been involved with the development application. I instructed Peter Lovell, who is a leading heritage consultant, his CV is **attached**.

Whilst he is based in Melbourne he has undertaken work in Hobart and indeed had occasion to work with Council's then senior heritage officer Brendan Lennard.

Mr Lovell has given evidence in the Tribunal in a case where he was acting for an applicant on the same side as Council, his evidence was accepted, see *P Tomaszewski and R Heath v Hobart City Council and Willar Pty Ltd and Anor* (2020) TASRMPAT 5.

I again express my gratitude with Council making Mr Lennard available for consultation with Mr Lovell.

I note that the consultation was not without difficulty given it was in the Covid period.

However, as a result of the ongoing consultation between Mr Lennard and Mr Lovell, and then with the involvement of Timothy Hill, an architect, a revised set of plans were prepared which I understand to be acceptable to Mr Lennard.

I **attach** Mr Lovell's submission.

In respect of planning controls under the *Sullivans Cove Planning Scheme*, I **attach** a supplementary note from Mat Clarke, Principal JMG, in support of the revised plans.

2

If I can clarify any matter, please do not hesitate to contact me.

Yours sincerely



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Principal
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E-mail: aspence@pageseager.com.au

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Telephone: (03) 6224 5600

OUR REF: DA: 18007
YOUR REF:

16 February 2021

Ms N Billett
Billett Legal
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NORTH HOBART TAS 7002

Dear Ms Billett

PLANNING APPEAL 157/18P – LENNA MOTOR INN v HOBART CITY COUNCIL

I refer to your email of 9 February 2021 in relation to this matter.

My client has sought advice from Planning Consultant, Mr N Shephard, as follows:

As much as the s.22 plans are a significant improvement on the original plans, it is my view that the Grounds of Refusal remain relevant.

Graeme Corney can comment on the impact on the cultural heritage (Grounds 1 and 2), but my concern remains that in respect of the setbacks to Runnymede St and Princes Park the s.22 plans:

- fail to preserve the traditional urban pattern of Sullivans Cove;
- do not have a respectful relationship to buildings of identified cultural significance in Runnymede St (namely 20 Runnymede); and
- will be individually prominent in terms of contrast with neighbouring buildings by having a larger apparent size when viewed in street elevation from Princes Park, Salamanca Place and Runnymede St.

All of the plans and elevations demonstrate a much larger footprint and bulk of building than either the original Lenna building or the 1973 extension. To that end the plans and montages speak for themselves.

Advice has also been obtained from Heritage Consultant, Mr G Corney. His advice is fully set out in the document attached and you will see that there are significant concerns from a heritage perspective.

2

My client requests that the issues raised by Mr Shephard and Mr Corney be taken into account when the Council considers its response to the amended plans.

My client urges the Council to maintain its opposition to the proposed development.

Could you also please advise if the opportunity will be available for a deputation to be received on behalf of my client.

Yours faithfully



DON ARMSTRONG

Attachment: Advice from Mr G Corney

COMMENTS ON REVISED DA PROPOSED EXTENSIONS TO LENNA 20 RUNNYMEDE STREET, BATTERY POINT

There are many aspects of the Planning Scheme that are not met by the current proposal. I have discussed some of those heritage-related aspects below, but there are I believe at least 2 parts of the scheme which provide fundamentally important planning scheme context:

In the Scheme heritage needs to take precedence over non-heritage planning requirements.

"22.1 Introduction

Conservation of the cultural heritage values of Sullivans Cove is the primary objective of the Scheme. Where there is an apparent conflict with other objectives, the conservation of cultural heritage values takes precedence."

It is clear to me that even if proposed heights, street setbacks, plot ration etc comply, if the proposed development has potential impacts on heritage values then those heritage considerations must be satisfied.

When measuring various performance requirements of the proposal against the scheme, particularly when comparing 'bulk', the comparison must be against the heritage place. The comparison must be against historic Lenna, not the 1973 addition.

"22.4.5 Discretionary Building or Works

(...)

The following criteria must be taken into consideration in the assessment of all proposals to undertake 'building or works' on places of cultural significance:

Building or works

- **'Building or works' must complement and contribute to the cultural significance, character and appearance of the place and its setting;**
- 'Building or works' must be in compliance with the conservation strategy of an approved Conservation Plan, where required and/or provided;
- **The location, bulk and appearance of 'building or works' must not adversely affect the heritage values of any place of cultural significance;**
- 'Building or works' must not reduce the apparent authenticity of places of cultural significance by mimicking historic forms;
- **'Building or works' may be recognisable as new but must not be individually prominent;**
- The painting of previously unpainted surfaces is discouraged."

1. The proposal is for an extension of Lenna.
2. The bulk of the proposed building must be considered against the bulk of historic Lenna.
3. The overall bulk of both the 1973 extension and the current proposed extension should be added together when considering bulk against the bulk of historic Lenna. Otherwise any heritage site could fall victim to 2 or 5 or 10 subsequent small extensions which individually could have only a small impact but when added together could overwhelm a heritage building.
4. The bulk of the proposed addition is greater than the 1973 extension and also much greater than the bulk of historic Lenna.

5. The consideration of bulk of an extension proposal shall not be determined by the standing point of the viewer, it shall be determined as a comparison of bulk per se. (see S Visagie v HCC and Ors (2017) TASRMPAT 2)
6. In consideration of 22.4.5 **it simply cannot be that** a new building extension close to the street and much larger in volume than historic Lenna and clearly visible at the end of the Salamanca Place warehouse vista and of architecture foreign to the local townscape is not **individually prominent**.

In consideration of 'bulk' and 'prominence' of this proposal we need look no further in refusing the development. Notwithstanding I have repeated other parts of my initial analysis below.

The proposal needs to do more than merely satisfy normal urban planning strategies.

Importantly any new elevation to Runnymede Street should be no closer to the street edge than the front of the 1973 extension.

Importance of views to and from *Lenna*

It is very clear that Captain Bayley placed much importance on the views from *Lenna* cottage to the harbour, he orientated his house directly towards that view.

It is not so well understood that Alexander McGregor also placed much importance on those views. It can be seen on a closer examination of his two storey townhouse.

A consistent and fundamental pattern of traditional architecture is that the facade facing the public street is presented with more elaborate detailing and ornamentation than the side elevations. The exception to this pattern is where a side elevation is intended to be publicly visible or where it acted as a 'garden front'. That is where it faced the 'pleasure gardens' where the garden would be enjoyed by the owners and their guests. Elevations that faced towards 'pleasure gardens' invariably were richly detailed and elaborate -commonly an extension of the street facade. Windows from those garden fronts encouraged outlook from the house towards those views. Further the use of bay windows were designed specifically to capture that outlook.

The popularisation of the bay window as a view window emerged from the enormous influence of John Claudius Loudon in his two 1835 classic pattern books, An Encyclopaedia of Gardening and An Encyclopaedia of Cottage, Farm and Villa Architecture.

Depends on the thickness of the walls, the width of the window and the distance of the spectator from the aperture...to obtain as much of the view from a room as possible, there should not only be windows on two sides of a room, but one in the angle, or an oblique or bow-window on each side, instead of the common form.¹

William Porden Kay was greatly influence by Loudon's two pattern books in his seminal work, the design of Government House, Hobart. McGregor also employed oblique windows to the front facade -to gain views to the harbour. He also employed picture windows to the side, again to gain views towards his pleasure gardens and to the harbour. The elaborate side elevation detailing of string course, bracketed cornice, elaborate parapet, pilasters to the parapet, dentils, the use of two stone colours etc which all carry the facade elaboration to the side elevation, all demonstrate an elevation that was intended to be looked at and to have views from.

There is crucially a part of that side elevation still unencumbered by modern development –see figure 3 below. That part elevation still demonstrates McGregor's importance of the views to and from *Lenna*. Those

¹ Loudon, John Claudius, An Encyclopaedia of Gardening. London, 1835 pp.1183-1186

views both to and from *Lenna* were important to McGregor and continue to be significant to the heritage values of the place. They must be preserved.



Figure 3 Remaining public view of important side elevation of *Lenna*.



Figure 4 Note the architectural importance of the side elevation of *Lenna*.

Despite the ravages of modern development, there is still a remnant view of the harbour and Hunter Street surviving from the ground floor oblique window and from the side picture windows. Undoubtedly those views are even stronger from the first floor side picture windows.



Figure 5 Remaining view of harbour and Hunter Street from *Lenna* oblique ground floor window. This view of the harbour and Hunter Street will be lost by the development proposal.

The proposed development conveniently has many of its drawings showing its relationship with the 1973 extension. This is not what the planning scheme requires. It requires its relationship with historic *Lenna* to be considered. The combination of the proposal together with the 1973 extension will overwhelm historic *Lenna* in floor area, mass and presentation to Runnymede Street.

The round corners, stepped facade setbacks, podium and overall design treatment all provide no references to historic *Lenna* nor Salamanca Place.

The planning scheme in 16.2; 22.4.4; 22.4.5; 23.2; 23.6.1 and 23.6.2 provide the strong heritage protections for refusal.

The reasons for refusal by the HCC in my view all apply.

It seems to me that the bulk and prominence of the proposed extension is fatal to the application. All the more so if, as I contend, that both the 1973 extension AND the proposed extension need to be considered together when assessing bulk and prominence and their associated impact on the heritage significance of historic *Lenna*.

Graeme Corney

DATE: 13 Feb 2021

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PLN-18-351

20 Runnymede Street, Battery Point and adjacent road reserve

Partial demolition, new building for residential hotel, restaurant/café, unlisted use (bar) and shops, subdivision (one additional road lot), alterations to car parking and associated works in the road reserve

RMPAT s.22(3) amended plans

Cultural Heritage Officer Assessment:

This assessment is in relation to an amended proposal, which has been endorsed as a substitute proposal by the Resource Management and Planning Appeal Tribunal. The amended proposal dated 3 August 2020 now replaces the original proposal dated 8 June 2018. The original proposal was refused by council upon the following grounds (as amended):

1. The proposal does not meet objective (a) and the associated performance criteria with respect to clause 16.2 of the *Sullivans Cove Planning Scheme 1997* because it fails to respect the cultural heritage and character of the Activity Area and fails to demonstrably contribute to, and enhance the cultural heritage, built form (bulk, height, volume, urban detail) and spatial characteristics of the Activity Area.
2. The proposal does not meet the 'deemed to comply' provisions of clause 22.4.4 of the *Sullivans Cove Planning Scheme 1997* and fails to meet the criteria under clause 22.4.5 because: (a) it fails to complement and contribute to the cultural significance, character and appearance of the place (20 Runnymede Street) and its setting; (b) the location, bulk and appearance of the proposal adversely affects the heritage values of places of cultural significance (the Salamanca Place warehouses at 21-89 Salamanca Place, and Princes Park); and (c) the proposal will be individually prominent.
3. The proposal does not meet the 'permitted' standards of clause 23.6.1 (Building Form) of the *Sullivans Cove Planning Scheme 1997* and fails to meet with the objectives of clause 23.2, which must be considered in the exercise of discretion under clause 23.6.2, because it fails to conserve the traditional urban pattern of Sullivans Cove, it fails to reflect the natural topography of the planning area, it does not have a respectful relationship to buildings of identified cultural significance within Runnymede Street and Salamanca Place (namely 20 Runnymede Street and the Salamanca Place warehouses at 21-89 Salamanca Place), and it will be individually prominent in terms of contrast with neighbouring buildings by being significantly higher or having a larger apparent size when viewed in street elevation.

The amended proposal has been developed in response to these grounds, with the aim of achieving greater compliance with the planning scheme's discretionary provisions. The revised concept also reflects suggestions made by the proponent's cultural heritage consultants with the support of the Council's heritage officer. The amended proposal is lower than the original scheme, and

incorporates greater setbacks. It also includes modification to facade treatments and fenestration, and the deletion of incongruous 'feature' elements such as the conical cairn-like structure.

The changes

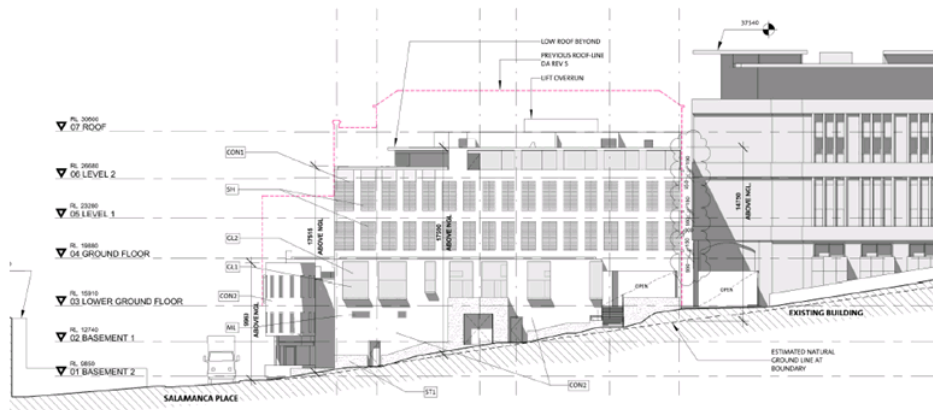
The Tribunal's decision in relation to the amended proposal details the changes made as 'particularised by the Appellant':

- (a) Setback of basement level car parking from eastern boundary by 1.5m min;
- (b) Increased articulation of Salamanca Place façade;
- (c) Removal of external planter tubs and cone on Runnymede Street;
- (d) Removal of mast-like detailing elements;
- (e) Enclosure of guest terrace on Salamanca Place;
- (f) Increased masonry/glazing detail on corner turret;
- (g) Removal of sloped roof on penthouse level;
- (h) Replacement of the climbing frame for the vegetated wall on the Princes Park elevation;
- (i) Provision of planter boxes at each level to stimulate quick vegetation coverage of the Princes Park façade and a deep soil area at the base of the building due to the setback of the basement carpark;
- (j) Plantroom reduced in size and height (1.1m) to the minimum required for the lift overrun;
- (k) The Princes Park façade set back 1.5m and the upper floor is also set back a further 0.5m-1.9m;
- (l) The upper roof height (excluding the plant) reduced to RL 30600;
- (m) Increased setback of the Runnymede Street elevation by 3m above the podium (including balconies),
- (n) Change from horizontal to vertical glazing to the penthouse level facing Runnymede Street;
- (o) Detailing of the south facing façade on the Runnymede Street end including:
 - (i) Window number/size/locations,
 - (ii) Recessed corner, and
 - (iii) Materials finishing/shadow-lines.
- (p) General façade adjustments:
 - (i) Mullion adjustments
 - (ii) Sill projection adjustments
 - (iii) Rear window panel adjustments
 - (iv) Dimension of sill shadows shadow-lines, and
 - (v) Location of some finishes."

The modifications incorporated within the amended proposal are clearly intended to achieve greater compliance with the planning scheme.

The Tribunal decision notes that the proposal has 'reduced dimensions, height and a simpler architectural treatment'. The decision includes the following relevant observations:

18. ... the building has now, *prima facie*, less visual prominence, softer surfacing and more modest architectural treatment overall.
19. ... The overall height of the proposal has been reduced by a whole floor so minor variations within the structure do not cause any offence under the Scheme standards.
20. ... The amended plans show an overall floor area of this top floor as smaller. There are less hotel rooms overall but the arrangement of the rooms is similar.
21. The new element of the roof garden above the top floor is different from the original proposal that provided for a roof only. However, the roof garden will have no impact on the appearance of the building from the street or the residential neighbours in Salamanca Place (due to its distance away and height) and only serves the hotel itself.
22. ... The building ..., as proposed by the modified plans, has less impact on street vistas along Runnymede Street. Similarly, the setbacks to the park will reduce the prominence of the building, regardless of whether the vegetation does or does not grow. The reduction in height of the building will reduce the visual impact from Salamanca Place.
23. With respect to the changed architectural treatment of the Runnymede Street façade, the Tribunal observes that the proposed changes are consistent with the qualitative standards of the Scheme as these reference the solid sandstone walls of Salamanca Place, with their regular cut out windows. In all other respects, the Tribunal is satisfied that the proposal is not significantly different from that previously applied for.



Runnymede Street elevation of amended proposal, showing outline of earlier scheme in pink line

Description

The proposal involves demolition of existing retaining walls to Salamanca Place and Runnymede Street, removal of the existing open car park area (including removal of associated landscaping) and the construction of a 6-storey hotel building next to the 1973 Innkeepers Hotel, built as a pavilion extension to Lenna.

The building has a three-storey 'podium' element facing the Salamanca Place frontage. The first two levels (facing Salamanca Place) include car parking (partially excavated) with four commercial tenancies (two on each both level) addressing the Salamanca Place frontage. The two car parking levels will be below the ground level of the existing 1973 building.

The top storey (denoted as Level 2) includes two penthouse suites set behind roof gardens, and five hotel rooms. Access to and egress from the two levels of parking will be located on the Salamanca Place frontage, at the eastern (Princes Park) end of the site. A two storey loading bay is also located off Salamanca Place immediately adjacent Princes Park. The third level (Lower Ground Floor) of the development includes vehicular access from Runnymede Street (drop off / arrival) adjacent to the lift lobby reception lounge.

Activity Area 2.0

The proposal is located within Activity Area 2.0 Sullivans Cove 'Mixed Use'. The planning scheme notes that this Activity Area "includes a great diversity in architectural style and spatial characteristics."

The scheme recognises that "there are many buildings, objects and spaces of cultural heritage in this Activity Area, including the Salamanca Place buildings, Parliament House and other governmental and institutional buildings," but also acknowledges the "range of mid and late 20th century buildings as well, from the 'silos', to the Grand Chancellor Hotel, HEC Building and the Antarctic Centre (sic)."

Clause 16.2 sets out various objectives and performance criteria, applying to all use and development within the Activity Area. Among these are the following:

<i>Objectives</i>	<i>Performance Criteria</i>
<i>(a) To ensure that activities within the Cove respect the cultural heritage and character of the Activity Area.</i>	<p><i>All use and development within the Activity Area must demonstrably contribute to, and enhance the cultural heritage, built form (bulk, height, volume, urban detail) and spatial characteristics of the activity area.</i></p> <p><i>Activities requiring large, undifferentiated floor areas shall be discouraged in the activity area, except where such activities can be accommodated within existing buildings.</i></p>
<i>(b) To ensure that the amenity, character and cultural heritage values of the Cove's roads and other public spaces are conserved and enhanced.</i>	<i>Use and development on road reserves, public parks and other public spaces within the activity area shall only be 'permitted' where they do not detract from the space's amenity or heritage value.</i>

The emphasis is upon conserving and enhancing the cultural heritage attributes of the area. The amended proposal will represent a substantial, but generally sympathetic infill addition to the 1973 building. The amended design of the new building incorporates greater articulation than the previous proposal, and is significantly lower. It achieves a more satisfactory visual response to the existing built form and spatial characteristics of the activity area. The modifications included in the amended proposal are considered sufficient to satisfy the objectives of clause 16.2, which require that activities within the Cove respect the cultural heritage and character of the Activity Area.

Schedule 1 – Conservation of Cultural Heritage Values

The introduction to Schedule 1 of the *Sullivans Cove Planning Scheme 1997* states (22.1):

Conservation of the cultural heritage values of Sullivans Cove is the primary objective of the Scheme. Where there is an apparent conflict with other objectives, the conservation of cultural heritage values takes precedence.

The subject site, 20 Runnymede Street (consisting of two lots) is a place of cultural significance listed within Table 1 of Schedule 1 of the *Sullivans Cove Planning Scheme 1997*. 'Place' is defined as the site, area, building or work, group of buildings or works with associated contents and surroundings. The status afforded to identified places applies to all land within the title boundary (unless otherwise indicated). The only building or works that are 'permitted' for places of cultural significance are works related to the conservation of a place. The proposal falls outside that scope and must therefore be assessed against the provisions of clause 22.4.5 of the scheme. Among the mandatory tests within that clause are the following:

- *'Building or works' must complement and contribute to the cultural significance, character and appearance of the place and its setting;*
- *The location, bulk and appearance of 'building or works' must not adversely affect the heritage values of any place of cultural significance;*
- *'Building or works' may be recognisable as new but must not be individually prominent;*

The original Lenna building once had an extensive ornamental garden, with large trees, exotic shrubs and a large fountain. This garden provided the setting of Lenna's northern façade, overlooking the waterfront. This setting was lost with the construction of the 1973 building, though isolated vegetation remnants can be seen near site's the eastern boundary. The present car park makes no contribution to the cultural heritage significance of Lenna. It is unlikely that the form of the original garden could or would ever be reinstated, especially given the presence of the 1973 structure.

The amended proposal continues a sequence of development on the site that commenced 50 years ago, gradually filling in the site with new structures. To this extent, the new building may be regarded as 'complementing' the overall site. Given its physical separation from the original Lenna building, and its reduced scale, the new building will have negligible adverse impact upon the heritage values of the place. Lenna will be clearly legible as the original structure on the site – the structure of primary heritage significance. Both the 1973 hotel building and the new building will be read as later phases of development. When viewed in its primary context, near its front entrance at the corner of McGregor Street and Runnymede Street, the original Lenna building will retain its visual importance, and will not be unduly dominated by the proposed new building.

The location, bulk and appearance of the proposed building (as amended) still has the potential to have an impact upon the heritage values (including the aesthetic values and setting) of various nearby places of cultural significance. The primary places to be affected are Princes Park (adjacent) and the row of warehouse buildings in Salamanca Place.

In relation to Princes Park, the amended proposal includes greater setbacks, and its overall height is substantially lower. While the new building will increase the enclosure of the park on its western boundary, this aspect of the park is already compromised by the existence of the 1973 building. The overall cultural heritage values of Princes Park will be impaired only to a minimal degree, and insufficiently to warrant refusal of the amended proposal on the basis of its impact on an adjacent heritage place.

In terms of the row of warehouse buildings in Salamanca Place, the amended proposal is now significantly lower, and incorporates increased setbacks, to the degree that its presence in the background could now be regarded as inoffensive. The amended proposal will not dominate views along Salamanca Place, and the heritage attributes of the group of warehouses will be unaffected.

The scheme states that building may be recognisable as new (which the proposal will be), but also requires that buildings must not be individually prominent. The term 'prominent' implies something that is readily noticeable or conspicuous. The amended proposal reduces the prominence of the development substantially, achieved by a reduction in overall height and the inclusion of greater setbacks. While the new building (as amended) will be noticeable, in the context of its surrounding area and nearby structures (including the 1973 hotel building), the amended proposal will not necessarily be 'individually prominent' – and arguably not sufficiently prominent to warrant refusal under the discretionary provisions of Schedule 1 – Conservation of Cultural Heritage Values.

Schedule 2

In addition to Schedule 1, the provisions of Schedule 2 –Urban Form also apply. As noted above, the proposal does not meet the ‘deemed to comply’ height provisions for the site. It must therefore be assessed against the objectives of clause 23.2. Amongst other things, these objectives require the traditional urban pattern of the Cove to be conserved, buildings to have a respectful relationship to each other and to buildings of identified cultural significance, and buildings not being individually prominent in terms of contrast with neighbouring buildings by being significantly higher or having a larger apparent size when viewed in street elevation.

The height, scale and bulk of the proposed new building (as amended) is now more responsive to its immediate context. The amended proposal achieves a more respectful relationship with the 1973 hotel building and with its neighbours.

The over-arching principles of the Sullivans Cove Strategic Framework (within clauses 5, 6 and 7 of the Scheme) also provide general guidance on the nature of new development, responding to the quality of spaces and buildings in the Cove, with future development respecting the scale and general character of the Cove.

Conclusion

As previously observed (in relation to the original proposal), the subject site clearly offers some scope for a better use than the existing carpark. The changes incorporated within the amended proposal are considered sufficient to comply with the planning scheme’s discretionary provisions in terms conservation of cultural heritage values and urban form.

The earlier proposal was refused on three grounds, namely

1. The proposal does not meet objective (a) and the associated performance criteria with respect to clause 16.2 of the *Sullivans Cove Planning Scheme 1997* because it fails to respect the cultural heritage and character of the Activity Area and fails to demonstrably contribute to, and enhance the cultural heritage, built form (bulk, height, volume, urban detail) and spatial characteristics of the Activity Area.
2. The proposal does not meet the ‘deemed to comply’ provisions of clause 22.4.4 of the *Sullivans Cove Planning Scheme 1997* and fails to meet the criteria under clause 22.4.5 because: (a) it fails to complement and contribute to the cultural significance, character and appearance of the place (20 Runnymede Street) and its setting; (b) the location, bulk and appearance of the proposal adversely affects the heritage values of places of cultural significance (the Salamanca Place warehouses at 21-89 Salamanca Place, and Princes Park); and (c) the proposal will be individually prominent.
3. The proposal does not meet the ‘permitted’ standards of clause 23.6.1 (Building Form) of the *Sullivans Cove Planning Scheme 1997* and fails to meet with the objectives of clause 23.2, which must be considered in the exercise of discretion under clause 23.6.2, because it fails to conserve the traditional urban pattern of Sullivans Cove, it fails to reflect the natural

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topography of the planning area, it does not have a respectful relationship to buildings of identified cultural significance within Runnymede Street and Salamanca Place (namely 20 Runnymede Street and the Salamanca Place warehouses at 21-89 Salamanca Place), and it will be individually prominent in terms of contrast with neighbouring buildings by being significantly higher or having a larger apparent size when viewed in street elevation.

The question is whether the same or similar grounds could now be applied to the amended proposal. It is considered that the various modifications made to the design of the proposed building, particularly its reduction in height and increased setback would make it difficult to sustain the grounds of refusal with respect to the planning scheme's cultural heritage provisions.

Brendan Lennard

Senior Cultural Heritage Officer

16 February 2021

PLN-18-351

20 Runnymede Street, Battery Point and adjacent road reserve

Partial demolition, new building for residential hotel, restaurant/café, unlisted use (bar) and shops, subdivision (one additional road lot), alterations to car parking and associated works in the road reserve

RMPAT s.22(3) amended plans

Development Appraisal Planner Assessment:

This assessment is in relation to an amended proposal, which has been endorsed as a substitute proposal by the Resource Management and Planning Appeal Tribunal. The amended proposal dated 3 August 2020 now replaces the original proposal dated 8 June 2018. The original proposal was refused by council upon the following grounds (as amended):

1. The proposal does not meet objective (a) and the associated performance criteria with respect to clause 16.2 of the *Sullivans Cove Planning Scheme 1997* because it fails to respect the cultural heritage and character of the Activity Area and fails to demonstrably contribute to, and enhance the cultural heritage, built form (bulk, height, volume, urban detail) and spatial characteristics of the Activity Area.
2. The proposal does not meet the 'deemed to comply' provisions of clause 22.4.4 of the *Sullivans Cove Planning Scheme 1997* and fails to meet the criteria under clause 22.4.5 because: (a) it fails to complement and contribute to the cultural significance, character and appearance of the place (20 Runnymede Street) and its setting; (b) the location, bulk and appearance of the proposal adversely affects the heritage values of places of cultural significance (the Salamanca Place warehouses at 21-89 Salamanca Place, and Princes Park); and (c) the proposal will be individually prominent.
3. The proposal does not meet the 'permitted' standards of clause 23.6.1 (Building Form) of the *Sullivans Cove Planning Scheme 1997* and fails to meet with the objectives of clause 23.2, which must be considered in the exercise of discretion under clause 23.6.2, because it fails to conserve the traditional urban pattern of Sullivans Cove, it fails to reflect the natural topography of the planning area, it does not have a respectful relationship to buildings of identified cultural significance within Runnymede Street and Salamanca Place (namely 20 Runnymede Street and the Salamanca Place warehouses at 21-89 Salamanca Place), and it will be individually prominent in terms of contrast with neighbouring buildings by being significantly higher or having a larger apparent size when viewed in street elevation.

The amended proposal has been developed in response to these grounds, with the aim of achieving greater compliance with the planning scheme's discretionary provisions. The amended proposal is lower than the original scheme, and incorporates greater setbacks. It also includes modification to

façade treatments and fenestration, and the deletion of incongruous 'feature' elements such as the conical cairn-like structure.

The changes

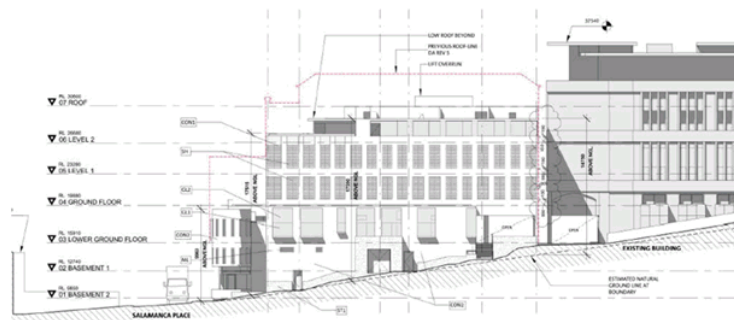
The Tribunal's decision in relation to the amended proposal details the changes made as 'particularised by the Appellant':

- (a) Setback of basement level car parking from eastern boundary by 1.5m min;
- (b) Increased articulation of Salamanca Place façade;
- (c) Removal of external planter tubs and cone on Runnymede Street;
- (d) Removal of mast-like detailing elements;
- (e) Enclosure of guest terrace on Salamanca Place;
- (f) Increased masonry/glazing detail on corner turret;
- (g) Removal of sloped roof on penthouse level;
- (h) Replacement of the climbing frame for the vegetated wall on the Princes Park elevation;
- (i) Provision of planter boxes at each level to stimulate quick vegetation coverage of the Princes Park façade and a deep soil area at the base of the building due to the setback of the basement carpark;
- (j) Plantroom reduced in size and height (1.1m) to the minimum required for the lift overrun;
- (k) The Princes Park façade set back 1.5m and the upper floor is also set back a further 0.5m-1.9m;
- (l) The upper roof height (excluding the plant) reduced to RL 30600;
- (m) Increased setback of the Runnymede Street elevation by 3m above the podium (including balconies),
- (n) Change from horizontal to vertical glazing to the penthouse level facing Runnymede Street;
- (o) Detailing of the south facing façade on the Runnymede Street end including:
 - (i) Window number/size/locations,
 - (ii) Recessed corner, and
 - (iii) Materials finishing/shadow-lines.
- (p) General façade adjustments:
 - (i) Mullion adjustments
 - (ii) Sill projection adjustments
 - (iii) Rear window panel adjustments
 - (iv) Dimension of sill shadows shadow-lines, and
 - (v) Location of some finishes."

The modifications incorporated within the amended proposal are clearly intended to achieve greater compliance with the planning scheme.

The Tribunal decision notes that the proposal has 'reduced dimensions, height and a simpler architectural treatment'. The decision includes the following relevant observations:

18. ... the building has now, *prima facie*, less visual prominence, softer surfacing and more modest architectural treatment overall.
19. ... The overall height of the proposal has been reduced by a whole floor so minor variations within the structure do not cause any offence under the Scheme standards.
20. ... The amended plans show an overall floor area of this top floor as smaller. There are less hotel rooms overall but the arrangement of the rooms is similar.
21. The new element of the roof garden above the top floor is different from the original proposal that provided for a roof only. However, the roof garden will have no impact on the appearance of the building from the street or the residential neighbours in Salamanca Place (due to its distance away and height) and only serves the hotel itself.
22. ... The building ..., as proposed by the modified plans, has less impact on street vistas along Runnymede Street. Similarly, the setbacks to the park will reduce the prominence of the building, regardless of whether the vegetation does or does not grow. The reduction in height of the building will reduce the visual impact from Salamanca Place.
23. With respect to the changed architectural treatment of the Runnymede Street façade, the Tribunal observes that the proposed changes are consistent with the qualitative standards of the Scheme as these reference the solid sandstone walls of Salamanca Place, with their regular cut out windows. In all other respects, the Tribunal is satisfied that the proposal is not significantly different from that previously applied for.



Runnymede Street elevation of amended proposal, showing outline of earlier scheme in pink line

Description

The proposal involves:

- Demolition of existing retaining walls to Salamanca Place and Runnymede Street, thus removing the existing open car park area and associated landscaping.
- Construction of a new six floor building to the north of the 1970's building, in close proximity to the western, northern and eastern boundaries of the site, to act as an extension to the existing hotel use of the site.

The new building will include:

- Two levels of basement car parking providing 38 spaces, which start at ground level on Salamanca Place, but are excavated back up Runnymede Street to create a level floor area.
- Four shops, over two levels, fronting Salamanca Place in front of the basement car parking.
- Level entry to the lower ground floor building from Runnymede Street at the south western corner of the proposed new building, with short term car parking at the south eastern side of this level.
- Three hotel rooms, a reception area and a guest recreation / café / bar / restaurant space are also located on the lower ground floor.
- Thirteen hotel rooms each on the ground and first floor.
- Five hotel rooms and two penthouse suites, with roof gardens facing Salamanca Place on the second floor.
- Adhesion of the two lots over which the building is proposed.
- Subdivision of a piece of road reservation from the Salamanca Place frontage of the site to facilitate footpath widening.

The relevant ground of refusal for consideration in the Development Appraisal Planner assessment of the S22 plans is ground 3:

The proposal does not meet the 'permitted' standards of clause 23.6.1 (Building Form) of the Sullivans Cove Planning Scheme 1997 and fails to meet with the objectives of clause 23.2, which must be considered in the exercise of discretion under clause 23.6.2, because it fails to conserve the traditional urban pattern of Sullivans Cove, it fails to reflect the natural topography of the planning area, it does not have a respectful relationship to buildings of identified cultural significance within Runnymede Street and Salamanca Place (namely 20 Runnymede Street and the Salamanca Place warehouses at 21-89 Salamanca Place), and it will be individually prominent in terms of contrast with neighbouring buildings by being significantly higher or having a larger apparent size when viewed in street elevation.

This relates to Schedule 2 – Urban Form of the Sullivans Cove Planning Scheme 1997. Specifically, the proposal has been amended to be for a six storey, 17.57m high building, accommodating a number of uses. The planning scheme at clause 23.6.1 sets out that for this site:

- The permitted height is 12m. The amended proposal remains 5.57m in excess of this.
- The permitted apparent size for Runnymede Street is 25m. The amended proposed building will have a length of approximately 35m on the Runnymede Street frontage. That is 10m more than the permitted apparent size.

- The permitted apparent size for Salamanca Place is 17m. The amended proposed building will have a length of approximately 37m on the Salamanca Place frontage. That is 20m more than the permitted apparent size.

Because the proposal does not meet the above permitted standards, it must be assessed against the applicable performance criteria at clause 23.7.2 of the planning scheme. This clause requires the development to be assessed against the objectives of the Urban Form Schedule, as set out at clause 23.2, and reproduced below.

The following objectives apply to the application of this Schedule:

1. *The traditional urban pattern of Sullivans Cove is to be conserved. A contemporary adaptation is to be created in development/redevelopment areas.*

Runnymede Street presents a natural break in the urban pattern of Battery Point separating the larger originally more industrial buildings that are located on the cove floor, from the more residential scaled buildings and uses located to the east of the street. It is considered that further development to the east of Runnymede Street should therefore reflect a more domestic scale, which the current proposal does not. As such, the current proposal is not considered to conserve the traditional urban pattern of the Cove.

2. *Views to Sullivans Cove along primary spaces are to be retained, especially to the River Derwent.*

The application site does not front any primary spaces and as such views to Sullivans Cove along primary spaces are not relevant to the assessment of the proposal.

3. *Views over the land bounded by Tasman Highway, Brooker Avenue and Liverpool Street from the City and Wapping to the Domain and from the Domain and Tasman Highway to the City are to be retained.*

The application site does not enjoy or impinge upon the views over the land bounded by Tasman Highway, Brooker Avenue and Liverpool Street from the City and Wapping to the Domain and from the Domain and Tasman Highway to the City and as such they are not a relevant consideration for assessment.

4. *Expression of the Wall of the Cove is to be encouraged where possible.*

The Cove Wall, and with it the warehouse style development which abuts front boundaries, is identified under the planning scheme as being situated along Salamanca Place to the western corner of Runnymede Street, and is stepped down to continue along Castray Esplanade from the front of the silos toward the east. Generally, the Cove Wall is located close to the water level, and ceases as the land slopes up away from the water. The Planning Scheme does not recognise a continuation of the Cove Wall in the location of the application site, and as such, is provision is not relevant to the assessment of the application.

5. *The bulk and height of buildings must reflect the natural topography of the Sullivans Cove Planning Area, the amphitheatre sloping down to the Cove and the Macquarie Street and Regatta Point Ridges.*

The proposal endeavours to respond to the topography of the site by stepping down in height from the 1970s extension to the substantive portion of the proposed building, and stepping down again to

a lower podium level on Salamanca Place creating a three storey podium element that then steps up to an eight storey second element.

Whilst it is considered that the step down from the 1970's building is a significant improvement from the earlier design and is appropriate, the stepping within the building is still not adequate, given the length of the Runnymede Street façade to adequately reflect the topography of the site or the Cove more generally.

Further, the stepping cannot be considered as an isolated comparison between the 1970's building and the proposed new building. A more proper consideration of stepping in response to the topography of the site would include a wider streetscape, and therefore include the height of the original Lenna building, to thus incorporate all buildings within the block, and may go on to consider buildings both further up Runnymede Street, and on the opposite side of the road.

When including these other surrounding buildings, and their response to the topography of the site and surrounds, it is further evident that there is not sufficient stepping of the building to respond to the topography of the site and surrounds.

6. *A diversity of building heights and volumes will be encouraged within this over-riding pattern, but buildings must have a respectful relationship to each other and to buildings of identified cultural significance within a street.*

Whilst a diversity of building heights is broadly supported, this must be within the context of the surrounding buildings, and must respect the scale of any buildings of cultural significance within the street. As the development site fronts two streets, the relationship to other buildings in both streets must be considered.

In the section of Salamanca Place the development site fronts, there are no buildings on the same side of the road, so reference is made to the buildings opposite. To the east, the buildings are all of a domestic scale, with a maximum of two storeys. To the west are the Silo apartments. The Silos are not considered the norm for the area, but rather an exception, so scale for future development of the surrounding area should not be considered with this height in mind. As such, it is difficult to say that the proposed development is of a scale that is consistent with this domestic scaled streetscape.

For the Runnymede Street frontage, the existing 1970s Lenna hotel building sets the scale for the largest building in the area with a maximum height of approximately seven storeys. The development on the opposite corner to the site has a maximum height of four storeys, with development up Runnymede Street toward Arthur Circus having heights between one and three storeys. As such, it is difficult to say that the proposed development is of a scale that is consistent with this streetscape.

7. *New buildings must not be individually prominent in terms of contrast with neighbouring buildings by being significantly higher or having a larger apparent size when viewed in street elevation.*

The proposed new building will be individually visually prominent from a number of aspects. When viewed down Runnymede Street, the protrusion beyond the building line of the existing Lenna buildings give it a larger apparent size than the existing site development and will make the building individually prominent. Similarly, when viewed from Salamanca Place looking toward Princes Park, the building will be individually prominent as a consequence of the corner location of the site and the lack of any adjacent buildings to the east to assist in recessing the building into the streetscape.

8. *New buildings should facilitate the creation of 'secondary spaces' on lots in the Cove. Such spaces should be encouraged where they demonstrably create useable pedestrian environments and facilitate pedestrian movement and views.*

The proposal does not create any 'secondary spaces' which can be utilised by pedestrians for movement through the site, or to provide views for pedestrians.

9. *New urban gardens are to be encouraged in secondary spaces only.*

No urban gardens are proposed, but as there are no secondary spaces provided, this is acceptable. Landscaping elements are provided around the site to soften the development, including through the use of planter pots boxes along the Runnymede Street and Salamanca Place facades, and along the Princes Park façade at ground level, as well as through the provision of a rudimentary green wall facing Princes Park.

10. *On the land bounded by the Tasman Highway, Brooker Avenue and Liverpool Street the landscaping should reflect the variety of garden areas and parkland styles that exist in the immediate surrounding area and that mark the transition to the Domain.*

The site is not on land bounded by the Tasman Highway, Brooker Avenue and Liverpool Street.

Conclusion

The changes incorporated within the amended proposal are not considered sufficient to comply with the planning scheme's discretionary provisions in terms of urban form. As such, the underlined element of the below refusal ground still stands in relation to the built form now proposed:

3 - The proposal does not meet the 'permitted' standards of clause 23.6.1 (Building Form) of the Sullivans Cove Planning Scheme 1997 and fails to meet with the objectives of clause 23.2, which must be considered in the exercise of discretion under clause 23.6.2, because it fails to conserve the traditional urban pattern of Sullivans Cove, it fails to reflect the natural topography of the planning area, it does not have a respectful relationship to buildings of identified cultural significance within Runnymede Street and Salamanca Place (namely 20 Runnymede Street and the Salamanca Place warehouses at 21-89 Salamanca Place), and it will be individually prominent in terms of contrast with neighbouring buildings by being significantly higher or having a larger apparent size when viewed in street elevation.

Helen Ayers

Development Appraisal Planner

10 March 2021

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10 March 2021

Ms Kirsten Turner and Mr Tom Rolfe
Hobart City CouncilBy email: appeals@hobartcity.com.au

Dear Kirsten and Tom

PLANNING APPEAL - 20 RUNNYMEDE STREET, BATTERY POINT**1 BACKGROUND**

The Council is the Respondent to the appeal by the landowner/applicant, Lenna Motor Inn Pty Ltd, which challenges the decision of the council from December 2018 by which an application for the use and development of an additional hotel building located at 20 Runnymede Street Battery Point was refused.

The applicant has applied for and obtained an amendment to their application in reliance upon the Tribunal's powers under s.22(3) of the *Resource Management and Planning Appeals Tribunal Act 1993*.

The matter has been listed for hearing commencing on 25 May 2021. There remains an interested representor who has been joined as a party to the appeal and continues to maintain the view that the application should be refused.

The modified proposal is such that it is appropriate that the Council consider its position in this appeal to determine whether it would maintain its original decision to the effect that the proposal did not meet the requirements of the *Sullivans Cove Planning Scheme 1997 (Scheme)* and as such required refusal.

The purpose of this advice is to review the Council's case in preparation for the hearing so that the Council may provide instructions as to what position it intends to adopt at the hearing.

In preparing this advice I have reviewed the opinions provided by Mr Lennard and Ms Ayres. The focus of this advice is upon whether or not there is an arguable case for refusal of the application as was the original decision of the Council, or whether, in consequence of the amendments that have been made, that arguable case has been removed such that the Council should alter its position and support and approval of the application.

2 ARGUABLE CASE

In determining whether the Council has an arguable case, it is necessary to have regard to the evidence available. Whether the council has requisite opinions that support a particular outcome is a critical factor. Consideration must also be given to how the statutory tests are to be construed and to ensure that the evidence responds to those tests.

For the reasons that are set out below, it is my opinion that there remains a reasonable basis to refuse the application under cl.23.6.3 (Urban Form) of the Scheme based upon a consideration of the objectives in cl.23.2. The grounds of refusal would need to be modified to exclude reliance upon cl.22.4.5 and cl.16.2(a) which Council relied upon in its original refusal on the basis of the impact upon cultural heritage values.

3 RELEVANT GROUNDS OF REFUSAL**3.1 Ground 1**

A discretionary use is required to demonstrate that it satisfies the objectives and performance criteria applicable within the Activity Area. The application has been assessed as a discretionary use. Cl.10 of the

Scheme requires that the Objectives for the Activity Area are considered in determining an application, and, as relevant here, cl.16.2 directs that the objectives apply to all use and development within the Activity Area.

The application has accordingly been assessed for compliance with cl.16.2(a) the objective of which is to ensure that activities within the Cove respect the cultural heritage and character of the area. This objective, relevantly, corresponds with the following performance criterion:

"All use and development within the Activity Area must demonstrably contribute to, and enhance the cultural heritage, built form (bulk, height, volume, urban detail) and spatial characteristics of the activity area"

The objective is achieved by the performance criterion being met; *Sultan Holdings Pty Ltd v John Fuglsang Developments Pty Ltd* [2017] TASFC 14 at [50] and [51].

The application was refused for non-compliance with cl.16.2(a) with concern expressed about the impact of the proposal upon heritage values and, related to this, the character of the area.

Mr Lennard has provided an opinion regarding the proposal's impact upon cultural heritage values. He concludes that the amended form of the proposal satisfies cl.16.2(a) because it is considered to be a sympathetic infill development.

Given the conclusions expressed by Mr Lennard, refusal in reliance upon cl.16.2(a) can no longer be maintained.

3.2 Ground 2

The application relies upon cl.22.4.5 and was refused under this provision because:

- the proposed building failed to compliments and contribute to the cultural significance, character and appearance of the place and its setting
- the location, bulk and appearance of the building adversely affected the heritage values of places of cultural significance and their setting
- the building was individually prominent.

Mr Lennard has provided an opinion concerning the amended proposal's compliance with these discretionary criteria and concluded, from a heritage perspective, that the amended proposal addresses his concerns regarding the non-compliance of the original form.

Given the conclusions expressed by Mr Lennard, refusal in reliance upon cl. 22.4.5 can no longer be maintained.

3.3 Ground 3

The application relies upon cl. 23.6.2 (Urban Form) in so far as discretion is created concerning the height and apparent size of the proposed building.

The permitted criteria regulating height creates a maximum height of 12 m for this site. The permitted criteria regulating apparent size (wall length in street edge elevation) limits the length of walls to a width that is not more than twice that of the abutting street. Discretion arises in relation to the proposed height and both the Runnymede Street and Salamanca Place frontages.

The performance criteria create a discretion to approve the development which must be exercised taking into consideration the objectives under cl.23.2.

The following objectives are considered to be relevant to the present assessment:

- The traditional urban pattern of Sullivans Cove is to be conserved. A contemporary adaptation is to be created in development/redevelopment areas.
- The bulk and height of buildings must reflect the natural topography of the Sullivans Cove planning area, the amphitheatre sloping down to the Cove and Macquarie Street and Regatta point ridges.
- A diversity of building heights and volumes will be encouraged within this overriding pattern, but buildings must have a respectful relationship to each other and two buildings of identified cultural significance within a Street.
- New buildings must not be individually prominent in terms of contrast with neighbouring buildings by being significantly higher for having a larger apparent size when viewed in Street elevation.

Ms Ayres has provided an assessment of the amended proposal which takes into consideration these objectives. Her conclusion is that refusal remains warranted having regard to these matters.

Without wishing to oversimplify or do an injustice to Ms Ayres opinion, the critical issue with the amended proposal appears to be the failure of the form to sufficiently resolve its relationship to surrounding smaller-scale development. While the height of the building upon both the Runnymede Street and Salamanca Place frontages has been limited to that of a 3-storey building, with the taller elements then setback from each Street frontage by at least 4m, the scale of the proposal remains in excess of the surrounding pattern of development particularly the domestic scale further along Runnymede Street and extending east along Salamanca Place.

In summary, there remains arguable case for refusal of the development under cl. 23.2 of the scheme.

I note that Mr Lennard has provided an opinion concerning the urban form. His view is that the height, scale, and bulk of the amended proposal is more responsive to its immediate context and achieves a more respectful relationship with the 1973 hotel building and its neighbours. While there is a certain tension between Mr Lennard's and Ms Ayres' opinions, this can perhaps be understood by reference to the broader level of analysis that Ms Ayres provides beyond the immediate heritage context considered by Mr Lennard. The differing opinions serve to emphasise the fact that reasonable minds on this point may differ.

4 RECOMMENDATION

Based on the opinions provided, I recommend that the Council maintain its position in favour of refusal of the application. The grounds of refusal would need to be modified to limit any challenge to planning matters as supported by Ms Ayres. I set out the proposed remaining and modified ground below:

- 3 The proposal does not meet the 'permitted' standards of clause 23.6.1 (Building Form) of the *Sullivans Cove Planning Scheme* 1997 and fails to meet with the objectives of clause 23.2, which must be considered in the exercise of discretion under clause 23.6.2, because it fails to conserve the traditional urban pattern of Sullivans Cove, it fails to reflect the natural topography of the planning area,¹ and it will be individually prominent in terms of contrast with neighbouring buildings by being significantly higher or having a larger apparent size when viewed in street elevation.

¹ Contention regarding impact upon heritage places removed:
~~"it does not have a respectful relationship to buildings of identified cultural significance within Runnymede Street and Salamanca Place (namely 20 Runnymede Street and the Salamanca Place warehouses at 21-89 Salamanca Place),"~~

5 ALTERNATE COURSE

The Council may choose to adopt a different position. The qualitative nature of the discretions that arise in this case is such that different experts may reasonably hold different opinions.

The Council may choose to prefer the opinion provided by Mr Clark on behalf of the proponent which suggests that the application could be approved as compliant with the Scheme standards, in particular cl.23.6.2. The Council may choose to prefer the opinion of Mr Corney on behalf of the party joined which contends that the proposal does not meet the Scheme requirements concerning cultural heritage.

If the Council were to adopt such a position it would be necessary for us to canvas other experts to determine if anyone was available and could support that position. Without evidence, the Council could not present an arguable case that departed from the opinions that have been expressed by Mr Lennard and Ms Ayres.

6 COUNCIL'S ROLE IN THE APPEAL PROCEEDINGS

I understand that, following the Tribunal's decision to amend the proposal, there have been concerns expressed to the Council by members of the community and an opportunity is to be provided for interested members of the public to address Council. This extends beyond the parties to the proceedings.

While the Council may listen to and be informed by information provided by the parties or members of the community, the Council's role in the present appeal is not as the decision-maker. The Council's decision gave rise to the appeal however the Council does not participate in the proceedings to advocate for a particular outcome or to defend its decision. The Council is of course always on one side of the debate and it is not unusual for an applicant or interested parties to attempt to persuade the Council to adopt a particular position.

The Council is entitled to take an active role in the appeal and that role is directed to uphold the Scheme. This is achieved by providing evidentiary material that provides an assessment of the proposal against the Scheme and submissions concerning its interpretation. To that end, the focus for Council's decision as to the course it adopts in an appeal must be upon the expert evidence that is available to it and directed to secure compliance with the Scheme controls.

As I have already observed, the qualitative nature of the discretions that arise in this case gives rise to the fact that reasonable minds may hold different opinions regarding a proposal's compliance and how the discretion should be exercised. If the Council determines that it prefers an alternate approach, whether the position is supportable at the hearing will depend upon us obtaining an opinion from external advisors.

Yours faithfully



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