

STATEMENT OF ENVIRONMENTAL EFFECTS  
Penrith City Council  
Subdivision into 3 lots and construction of a two-storey boarding house on each lot  
with associated site works  
at 31-32 Park Avenue Kingswood

Date October 2020

MMDC Pty Ltd

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## 1.0 EXECUTIVE SUMMARY

This report has been prepared to accompany a Development Application for subdivision into 3 lots and construction of a boarding house on each lot at 31-32 Park Avenue Kingswood.

The land is currently zoned R3 Medium Density Residential under Penrith Local Environmental Plan (PLEP) 2010. The proposed development is permissible with consent within the R3 Medium Density Residential zone. The subject site is located within 800m walking distance from Kingswood train station and as such, is located within an accessible area for the purposes of SEPP (Affordable Rental Housing) 2009.

The proposed development has been designed to minimise any potential adverse amenity impacts to adjoining properties whilst maximising internal amenity within the site and complies with the requirements of SEPP (Affordable Rental Housing) 2009. The proposal generally complies with the requirements of the PLEP 2010 with the exception of a minor variation in relation to the minimum battle-axe lot areas, which is considered acceptable given the proposal results in a better planning outcome with reduced bulk and scale at the rear of the site and less visual bulk and overshadowing to adjoining properties compared to an otherwise compliant lot layout and building envelope. A Clause 4.6 request is attached at Appendix D.

The proposed development has been assessed against the matters for consideration listed in Section 4.15 of the Environmental Planning & Assessment Act 1979 and is considered to be satisfactory. The proposal also complies with the main essential criteria set out in the Penrith Development Control Plan 2014, and is considered satisfactory with regard to relevant matters such as Urban Design, Access, Traffic Impact, Drainage, ESD, Site Contamination, Amenity, Social and Economic Impacts and the like, subject to the imposition of suitable conditions of any consent to satisfactorily control the development. In this regard it is considered that the subject site is suitable for the proposed development and that the proposal, providing much needed affordable housing and housing choice, is in the public interest.

## 2.0 INTRODUCTION

This report has been prepared to accompany a Development Application for subdivision into 3 lots and construction of a two-storey boarding house on each lot at Lots 15 and 16, DP 29528, known as 31-32 Park Avenue Kingswood. No demolition is proposed as a part of this application.

The proposed development is permissible with consent in the R3 – medium density residential zoning under the Penrith Local Environmental Plan (PLEP) 2010 and generally consistent with the provisions of PLEP 2010 and the Penrith Development Control Plan (BDCP) 2014.

The locality is a mix of nearby residential uses with associated recreational, educational and commercial areas, comprising single and double storey detached dwellings and townhouses, industrial buildings and mixed use commercial and retail. The proposed development will be compatible with the existing form of residential development.

This statement will address the proposal in the context of the applicable planning legislation including:

- State Environmental Planning Policy (Affordable Rental Housing) 2009;
- Penrith Local Environmental Plan 2010; and
- Penrith Development Control Plan 2014.

This report is to be read in conjunction with the following associated documents and plans prepared as a part of this Development Application:

- Architectural Plans
- Landscape Plans
- Stormwater Plans
- Arborist's Report
- Acoustic Report
- BCA Report
- Accessibility Report
- BASIX Certificate
- Survey Plan
- Waste Management Plan
- Plan of Management

### 3.0 BACKGROUND

#### 3.1 Relevant Site Application History

A search of Council's DA tracker does not reveal any previous application history on the subject site.

#### 3.2 Adjoining Site Application History

A search of Council's DA tracker reveals the following previous application history on adjoining sites:

- *DA14/0639 – Demolition of Existing Structures and Construction of 4 x 2 Bedroom and 6 x 3 Bedroom Attic Style Villas with Associated Car Parking, Landscaping and Drainage Works at 28-30 Joseph Street Kingswood approved by Council under Delegated Authority on 12 May 2015.*
- *DA14/0995 - Demolition of Existing Structures and Construction of 12 x Attic Style Villas and Associated Car Parking, Drainage and Landscaping Works at 24-26 Joseph Street Kingswood approved by Council under Delegated Authority on 23 March 2015.*
- *DA15/0171 – Demolition of Existing Structures, Lot Consolidation and Construction of 10 x Two Storey Town Houses (Multi Unit Housing) comprising 1 x 5 bedroom, 1 x 4 bedroom, 4 x 3 bedroom and 4 x 2 bedroom with a study room with Associated Car Parking, Landscaping and Drainage Works at 29-30 Park Avenue Kingswood approved by Council under Delegated Authority on 10 August 2015.*
- *DA16/0374 – Demolition of Existing Structures and Construction of a 28 Room Boarding House with Basement Car Parking and Associated Works at 45 Park Avenue Kingswood approved by Council under Delegated Authority on 21 December 2016.*
- *DA18/0428 – Demolition of Existing Structures and Construction of 4 x Town Houses pursuant to State Environmental Planning Policy (Affordable Rental Housing) 2009 at 32 Joseph Street Kingswood approved by Council under Delegated Authority on 26 July 2018.*
- *DA18/1171 - Lot Consolidation, Demolition of Existing Structures and Construction of 8 x Town Houses at 25-26 Park Avenue Kingswood approved by Council under Delegated Authority on 12 June 2019.*

#### 3.3 Explanation of Intended Effect for Draft Housing Diversity SEPP

The Explanation of Intended Effect for the draft Housing Diversity SEPP was recently exhibited from 29 July 2020 to 9 September 2020 and is a matter for consideration as a draft environmental planning instrument.

As outlined by the Department, in summary, it is proposed that the new SEPP will:

- Consolidate three existing, housing-related SEPPs:
  - *State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP);*
  - *State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 (Seniors SEPP); and*
  - *State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes) (SEPP 70).*
- Introduce new definitions into the Standard Instrument – Principal Local Environmental Plan (Standard Instrument LEP) for build-to-rent housing, student housing and co-living developments.

- Amend the boarding house provisions to:
  - remove the requirement for boarding houses to be mandated within the R2 – Low Density Residential zone;
  - amend the floor space ratio (FSR) bonus for boarding house development to a standard 20%; and
  - include a requirement for affordability of boarding house developments.
- Amend the provisions of the ARHSEPP to:
  - ensure that councils can continue to mitigate the loss of existing affordable housing by requiring monetary contributions;
  - provide a quicker and easier process to allow an existing dwelling to be used as a group home; and
  - allow councils to set the maximum size for a secondary dwelling in a rural zone.
- Amend the Seniors SEPP to:
  - clarify how the SEPP applies to land being used for the purposes of a registered club;
  - update the provisions of Schedule 1 – Environmentally sensitive land to align with current legislative and planning conditions;
  - amend the ‘location and access to facilities’ provisions so that point-to-point transport such as taxis, hire cars and ride share services cannot be used for the purpose of meeting the accessibility requirements;
  - extend the validity of a SCC to 5 years, provided that a development application is lodged within 12 months of the date on which the SCC is issued; and
  - clarify that development standards in a local environmental plan prevail to the extent of any inconsistency with the SEPP.
- Amend the Seniors SEPP, the ARHSEPP and the State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP) to support the delivery of social housing by the NSW Land and Housing Corporation (LAHC) on government-owned land.

The Draft Housing Diversity SEPP also seeks to introduce a requirement for boarding houses to be managed by registered Community Housing Providers. However, the Draft Housing Diversity SEPP is not considered to be imminent or certain in the absence of the terms of the draft instrument and following consideration of any public submissions and as such, little to any weight to the Explanation of Intended Effect can be applied to the subject proposal. For instance, it is possible that in response to the public submissions all or part of the Housing Diversity is amended and re-exhibited or only parts of the proposed Housing Diversity SEPP are finalised. Therefore, there is no basis to require the proposal to be managed by a registered community housing provider. Further, it is assumed that the Minister will impose a savings provision as a part of any final instrument to ensure that any application lodged but not finally determined prior to the commencement of the Housing Diversity SEPP is assessed under the current planning controls.

## 4.0 SITE LOCATION

### 4.1 Context and Location

The subject site is located on the northern side of Park Avenue, between Heath Street and Walter Street. Kingswood train station is approximately 700m walking distance from the site to the west.



Figure 1: Site Context (Source Google Maps)

The site enjoys excellent proximity to nearby services and amenities including the adjoining local playground, Shaw Park, Chapman Gardens Oval, Werrington Public School, Cambridge Park High School, St Dominic's College, St Joseph's Primary School, Western Sydney University, TAFE (Nepean Kingswood), Nepean Hospital and Penrith Westfield.

The area surrounding the site is predominantly characterised by a mix of residential uses with associated recreational, educational and commercial areas. The existing built form in the locality comprises a mixture of established single storey cottages and newer double storey detached dwellings and townhouses.

The subject site is well serviced by nearby bus and train public transport and enjoys vehicular access to the nearby surrounding regional road network of The Northern Road and Great Western Highway via Richmond Road.



## 4.2 Site Details

The subject land, being Lots 15 and 16 in DP 29528, is trapezoidal in shape with a total area of 1,476.7sqm and dimensions of 31.61m (street frontage), 30.48m (northern rear boundary), 44.265m (eastern side boundary), and 52.625m (western park frontage). The land is bounded by Park Avenue to the south; public reserve to the west; and existing residential properties to the north and east.



Figure 2: Site Details (Source Six Maps)



Figure 3: Existing site views looking west (left photo) and east (right photo) (Source Google Maps)

Each lot currently has a single storey clad dwelling and associated structures, metal fencing, garden planting and trees, with driveway access off Park Avenue.

The topography of the development site is generally flat with a slight fall of approximately 2.56m across the site from north (rear) to south (front). Power and water are available to the site. The land is unaffected by any land reservation acquisition, view corridor, heritage, acid sulfate soils, contamination or biodiversity constraints, but is partly affected by local overland (flooding) flows.

## 5.0 DEVELOPMENT PROPOSAL

The proposal seeks development consent for the following:

- Subdivision into 3 lots; and
- Construction of a two-storey boarding house with associated fencing, car parking, tree removal, landscaping and drainage works on each lot.

No demolition is proposed as a part of this application.

The proposal represents a specifically tailored development outcome where the built form has been designed alongside the proposed subdivision lot layout and access arrangements and is intended to be undertaken as an 'integrated' form of development where construction of all dwellings would occur prior to registration of subdivision.

The proposed subdivision seeks to create 3 lots with Lot 1 being 497.5sqm, Lot 2 being 407.31sqm (excluding the access handle) and Lot 3 being 415.07sqm (excluding the access handle). A 5m wide shared access handle with an easement for reciprocal rights of way is proposed. The purpose of the proposed paper-plan subdivision is to facilitate the staging/financing of the proposed development.

The design and configuration of the development responds to the existing local streetscape and allows solar access opportunities to be maximised, whilst minimising potential amenity impacts on adjoining dwellings. In this regard, the proposal complies with building height, setbacks, landscaping, parking, waste, solar access and private open space requirements and is consistent with and of a lesser scale and intensity of residential development that could otherwise be reasonably accommodated noting Council has approved a total of 10 x 3-5 bedroom dwellings at 29-30 Park Avenue under DA15/0171.

Each proposed boarding house accommodates a total of 8 rooms (inclusive of a manager's room), with 4 double and 4 single rooms on both Lots 1 and 2 (12 occupants each) and 1 double and 7 single rooms on Lot 3 (9 occupants). Each room is self-contained with private kitchen and bathroom facilities.

A communal ground floor living room, laundry facilities, storage, bin room, external communal open space and separate private open space for the manager are provided on each lot.

A total of 4 car spaces (inclusive of an accessible car space with shared zone), 2 motorcycle spaces and 2 bicycle spaces are proposed on each lot.

To facilitate vehicular access, a 5m and variable width driveway is proposed for two-way vehicular movement and entry and exit.

A system of pits and pipes and onsite detention are proposed to control the discharge of stormwater to the Council drainage system within the street. No retaining walls are necessitated by the proposal. The proposal involves the removal of existing garden trees with detailed replacement landscaping.

The boarding house will operate in accordance with the noise management recommendations provided in the Acoustic Report and the operational management plan submitted with the proposal, with an on-site manager on each lot to ensure the satisfactory operation of the proposal.

## 6.0 PLANNING CONTROLS

### 6.1 LOCAL PLANNING CONTROLS

#### 6.1.1 Penrith Local Environmental Plan 2010

The subject site is zoned R3 – medium density residential pursuant to Penrith Local Environmental Plan (PLEP) 2010 as shown in Figure 4 below. The proposed development is permissible with consent.

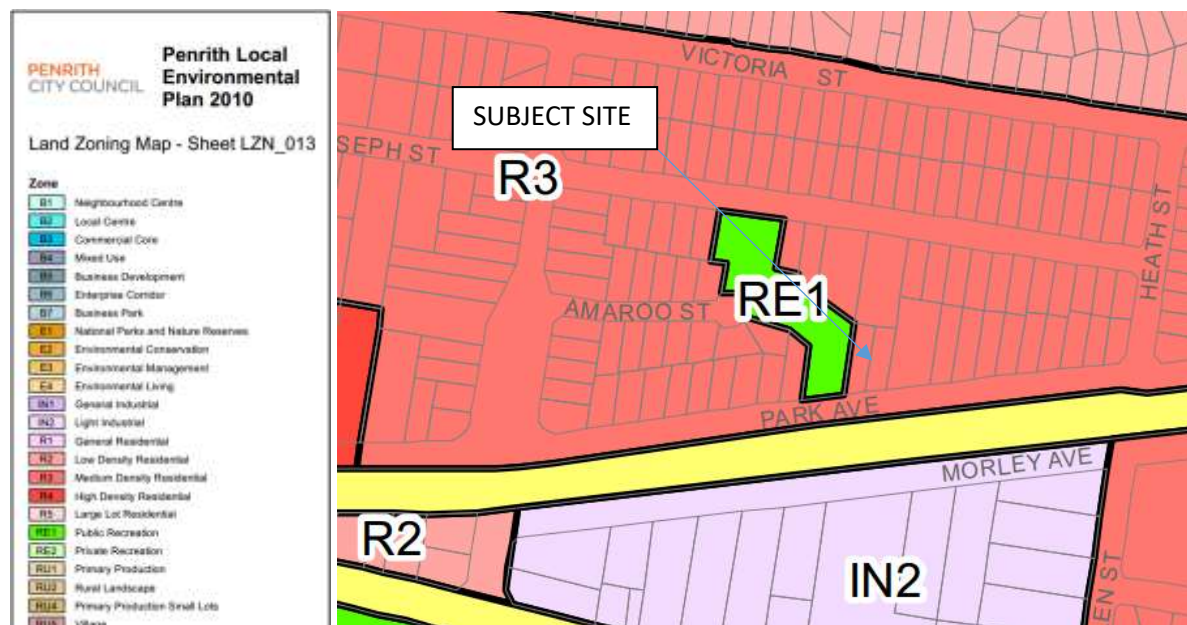


Figure 4: Zoning under PLEP 2010

The objectives of the zone are as follows:

#### 1 Objectives of zone

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide for a concentration of housing with access to services and facilities.
- To enhance the essential character and identity of established residential areas.
- To ensure that a high level of residential amenity is achieved and maintained.
- To ensure that development reflects the desired future character and dwelling densities of the area.

As the proposal is for residential development of the land, the first, second, fourth, fifth, sixth and seventh objectives are relevant. The proposed development provides for housing choice and needs consistent with the medium density residential environment with excellent access to services and



facilities and maintains a high level of residential amenity consistent with the existing and desired future character of the local area.

The following clauses apply to the proposed development:

- Clause 2.3 Zone objectives and Land Use Table,
- Clause 2.6 Subdivision consent requirements,
- Clause 4.1 Minimum subdivision lot size,
- Clause 4.3 Height of buildings,
- Clause 4.6 Exceptions to development standards,
- Clause 7.2 Flood planning,
- Clause 7.4 Sustainable development,
- Clause 7.6 Salinity, and
- Clause 7.7 Servicing.

#### Clause 4.1 Minimum subdivision lot size

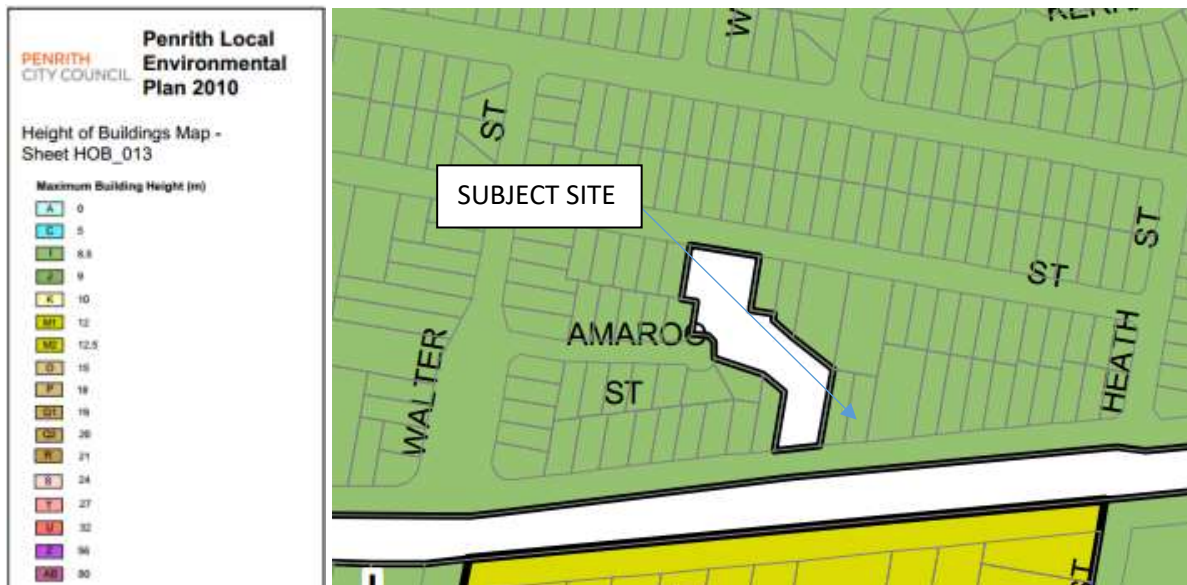
The Lot Size Map provides a minimum lot size of 400sqm as shown below. In this instance, the proposed subdivision creates lots greater than 400sqm excluding the area of the access handle.



However, Clause 4.1(4B) requires subdivision in the R3 zone to provide a minimum width of 12m for standard lots and a minimum width of 15m and minimum area of 450sqm for battle-axe lots. In this instance, whilst the proposed lots comply with the minimum width requirements for standard and battle-axe lots, variations of 43sqm (9.48%) and 35sqm (7.78%) are proposed to the minimum battle-axe lot area requirements for Lot 2 and Lot 3, respectively. A Clause 4.6 request to vary the battle-axe lot area requirement accompanies this submission.

#### Clause 4.3 Height of Building

The Height of Buildings Map provides that any building on the subject site is not to exceed a maximum height 8.5m as shown below. In this instance, the proposed development is compliant with the building height development standard.



#### Clause 4.6 – Exceptions to development standards

The proposal is accompanied with a written request to vary the minimum battle-axe lot area requirement of 450sqm under Clause 4.1(4B) of PLEP 2010.

Clause 4.6(3) states:

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

One of the ways of establishing that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance.

The objectives of the minimum subdivision lot size development standard are as follows:

- (a) to ensure that lot sizes are compatible with the environmental capabilities of the land being subdivided,*
- (b) to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,*
- (c) to ensure that lot sizes and dimensions allow developments to be sited to protect natural or cultural features including heritage items and retain special features such as trees and views,*

- (d) *to regulate the density of development and ensure that there is not an unreasonable increase in the demand for public services or public facilities,*
- (e) *to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.*

The proposed battle-axe lot area variations are considered acceptable in the circumstances of the case given there are sufficient environmental planning grounds and the objectives of the standard are achieved notwithstanding strict numerical non-compliance for the following reasons:

- The proposed battle-axe lot area variations are numerically minor variations of 43sqm (9.48%) and 35sqm (7.78%) for Lot 2 and Lot 3, respectively.
- Proposed Lot 1 is 97.5sqm larger than the minimum lot size requirement of 400sqm for a standard lot, which offsets the sum of the shortfall of 88sqm on battle-axe Lots 2 and 3, and as such, the proposed subdivision complies on an overall average lot size basis.
- The proposed variations relate to the paper plan subdivision lot boundaries only and would not be visually discernible given the proposed building siting and design, bulk and scale, landscaping, private open space, access, car parking and fencing would remain unchanged.
- Notwithstanding the above, the proposed subdivision facilitates the provision of new residential accommodation of a significantly lesser scale and intensity of development that could otherwise be achieved on an unsubdivided site noting Council's approval of a 28 room boarding house at 45 Park Avenue under D16/0374.
- The proposed lot layout results in a better planning outcome than an otherwise strictly compliant lot layout given the proposal minimises bulk and scale and overshadowing impacts to adjoining properties to the rear by providing for additional building area within Lot 1 facing the street, whereas a reduction in the size of Lot 1 and increase to the size of battle-axe Lots 2 and 3 would result in additional building area and bulk and scale at the rear of the site and additional visual bulk and overshadowing impacts to adjoining properties.
- The proposal is not an overdevelopment of the site given an overall yield of 3 lots in the form of two battle-axe lots of at least 450sqm excluding the access handle and one standard lot of 400sqm could otherwise be accommodated on the site.
- The proposed lot sizes ranging from 407sqm (excluding the access handle) and 497sqm are compatible with the environmental capabilities of the R3 medium density zoned land being subdivided.
- The proposed subdivision layout and building siting and design does minimise any likely adverse amenity impacts on adjoining properties in relation to bulk and scale, overshadowing, visual privacy and acoustic amenity.
- The proposed lot sizes and dimensions allow for the proposed building design and layout and detailed landscaping with additional canopy tree coverage to be suitably accommodated within the site in accordance with relevant development controls and do not result in any adverse heritage, tree or view impacts.
- The proposed lot sizes are wholly consistent with the planned residential density of the R3 zoned land given the yield is equivalent to an otherwise strictly compliant lot layout comprising 3 lots, but results in a better planning outcome in terms of reduced bulk and scale and overshadowing impacts to adjoining properties at the rear, and will ensure that there is not any unreasonable increase in demand for public services or public facilities.

- The variations do not result in additional floor area or an overdevelopment of the site.
- The proposal complies with relevant development controls including setbacks, building height, landscaping, private open space, solar access, visual privacy, car parking, access, stormwater and waste management.
- The proposal is in harmony with the bulk and scale of surrounding buildings and the streetscape and minimises the impacts of new development on adjoining or nearby properties from loss of privacy or acoustic amenity, overshadowing or visual intrusion.
- The proposal results in an improvement to the existing streetscape and park frontage and ensures a high visual quality of the development when viewed from adjoining properties, the adjoining public reserve to the west and the street frontage
- The proposal is consistent with the existing pattern of development and desired future character of this section of the street and the local area as shown in the aerial photo below.
- The proposal is a permitted form of development in the R3 zone and consistent with the relevant zone objectives to provide for the housing needs of the community and a variety of housing types within the medium density residential environment with excellent access to services and facilities and maintains a high level of residential amenity consistent with the existing and desired future character of the local area.
- The proposal is consistent with, and of a lesser scale and intensity of, residential development that could otherwise be reasonably accommodated noting Council has approved a total of 10 x 3-5 bedroom dwellings on the adjoining property to the east at 29-30 Park Avenue under DA15/0171 and 4 x 2-3 bedroom dwellings at 32 Joseph Street under DA18/0428.



### Clause 7.2 Flood planning

The subject site is partly affected by land at or below the flood planning level within the front setback area.



Council's flood advice indicates that the subject site is marginally affected by 1% AEP local catchment overland flow path within the front setback area up to RL 37.3 within 32 Park Avenue and RL37.2 within 31 Park Avenue as shown in the extracts below.



The proposal is accompanied with a letter from a suitably qualified hydraulic engineer confirming that the extent of affectation from local overland flow path within the front setback area is considered minor and that the proposal has been designed to satisfactorily mitigate potential flood risk based on the proposed finished floor levels and is considered unlikely to result in any adverse flooding impacts.

#### Clause 7.4 Sustainable development

Clause 7.4 states:

*In deciding whether to grant development consent for development, the consent authority must have regard to the principles of sustainable development as they relate to the development based on a "whole of building" approach by considering each of the following—*

- (a) conserving energy and reducing carbon dioxide emissions,*
- (b) embodied energy in materials and building processes,*
- (c) building design and orientation,*
- (d) passive solar design and day lighting,*
- (e) natural ventilation,*
- (f) energy efficiency and conservation,*
- (g) water conservation and water reuse,*
- (h) waste minimisation and recycling,*
- (i) reduction of vehicle dependence,*
- (j) potential for adaptive reuse.*

The proposal is considered to satisfactorily incorporate the principles of sustainable development based on a whole of building approach and has been designed to maximise natural ventilation,



energy efficiency, passive solar design and daylight access, waste conservation and reuse, and minimise emissions, waste and car dependency.

Clause 7.6 Salinity

The proposal is unlikely to result in any adverse salinity impacts given minimal cut and fill and subject to suitable conditions or any approval.

Clause 7.7 Servicing

Existing services are available to the site and will be connected to the proposal in accordance with relevant authority requirements subject to suitable conditions of any approval.

### 6.1.2 Penrith Development Control Plan 2014

The Penrith Development Control Plan 2014 was prepared and exhibited in accordance with the Environmental Planning and Assessment Act 1979. It is a detailed document providing controls and design recommendations for all land as defined pursuant to the DCP. The DCP covers performance and design guidelines and controls related to environmental performance, social performance, amenity issues and design elements. The subject proposal has been assessed against the controls and guidelines of the DCP and is considered to be compliant with the principle standards and consistent with the intent of the development standards.

Section 5.11 under Part D5 of Penrith Development Control Plan 2014 provides development controls in relation to boarding houses and a discussion is provided below.

#### **1) Local Character**

Refer to character analysis under Clause 30A of State Environmental Planning Policy (Affordable Rental Housing) 2009. The proposal is compatible with the existing and desired future character of this section of Park Avenue and the local area.

#### **2) Built Form, Street Impact and Appearance**

The proposal generally complies with the built form and design controls for multi-dwelling housing that could otherwise be reasonably accommodated within the site and does not result in any adverse streetscape or amenity impacts to adjoining properties. The findings of the DCP multi-dwelling housing assessment are tabulated in Table 1 below.

#### **3) Compatibility with Streetscape in the Front Setback**

The proposal complies with the minimum 18sqm deep soil area within the front setback with a minimum dimension of 3m and suitable conditions can be imposed as a part of any approval to ensure a watering system is implemented that does not rely on lodgers to maintain plantings.

#### **4) Tenant Amenity, Safety and Privacy**

The proposal maintains a high level of tenant amenity, safety and privacy with proposed communal living areas, laundry, waste facilities and open space accessible to all lodgers. An accessible room is provided in each boarding house. All communal living areas, corridors, laundries, waste facilities and private rooms are cross ventilated. Each room contains private kitchen and bathroom facilities and common living areas (excluding circulation, laundry, and waste facilities) are provided at a rate of 2sqm per lodger. Suitable conditions can be imposed as a part of any approval requiring all windows to be fitted with fly screens and secure mailboxes to be provided for resident only access.

#### **5) Visual and Acoustic Amenity Impacts**

The proposal has been sited and designed to maximise internal amenity to the occupants and minimise any potential adverse amenity, noise or privacy impacts to adjoining properties.

## 6) Location

The proposal is not located in a cul-de-sac.

## 7) Plan of Management

The proposal is accompanied with a Plan of Management incorporating suitable details to ensure the satisfactory operation of the proposal. Suitable conditions of any approval can be imposed to ensure that the relevant requirements incorporated within the Plan of Management are adhered to as a part of the operation of the proposal.

**Table 1: Compliance Table: Penrith Development Control Plan 2014**

<b>Penrith DCP 2014, Section 2.4 Multi dwelling housing</b>		
<b>Requirement</b>	<b>Comment</b>	<b>Complies</b>
2.4.1 Residential Character	Complies	✓
2.4.1 Preferred Configuration for New Dwellings	Complies	✓
2.4.3 Development Site 1a) Min. lot width 22m	Subject site has a frontage of 31.6m	✓
2.4.4 Urban Form 3a) Max. 20m length for each building 3b) Min. 4m separation between building 4a) Min. 3m wide courtyards 4b) Max. 5m wall length without indent	Complies with 20m building length requirement, with building lengths of 8.6m on Lot 3, 10.8m on Lot 2 and 14.5m on Lot 1.  Building separations of 3.5 to 4m are provided, which equates to a 0.5m variation. However, this is considered acceptable as the overall building length of 34m is separated into 3 buildings varying from 8.6m to 14.5m in length instead of only 2 longer building forms and as such, the proposal provides an additional 3.5m of separation compared to an otherwise compliant proposal comprising two buildings. Further, suitable access is still maintained for each lot and the proposal complies with overall landscaped area, private open space, and siting requirements and does not result in any adverse streetscape or amenity impacts. The overall design of the proposal incorporates suitable variety in finishes and architectural articulation.	Acceptable on merit
2.4.5 Front and Rear Setbacks 1a) Min. 4m rear (single storey)* 1b) Min. 6m rear (two storey)* 3b) Min. 5.5m front	Complies  5.5m to 6.5m provided to Park Avenue which is compatible with the prevailing streetscape character.  The proposal provides a 4m ground floor and 6m first floor rear setback, which complies.	✓

4a) Min. 4.5m front for porches or pergolas; max. 50% of elevation		
2.4.6 Building Envelope and Side Setbacks  1. Building Envelope 6.5m high at boundary with 45 degree height plane  4a) Max. FFL 1m above NGL  4b) Max. 500mm cut/fill  5. Max. 25 degree roof pitch  7.Min. 2m side setback for <50% of boundary	Complies  The eastern side boundary has a length of 44.265m and as such, a 2m side setback may be provided for a maximum building length of 22.1m. The proposal has been designed with a minimum 5m side setback to the eastern side boundary, which complies.  The western side boundary has a length of 52.625m and as such, a 2m side setback may be provided for a building length of 26.3m. A 2m side setback is proposed for a total building length of 13m, which complies. The remaining building length maintains a minimum 3m side setback to the western boundary. Further, the setback to the western park frontage complies with the requirements under Section 2.4.11. In this regard, the proposal has been designed to maximise internal amenity and outlook, while minimising any adverse amenity impacts and providing casual surveillance and visual interest by addressing the park at the rear with a balcony.	✓
2.4.7 Driveways and Parking Areas  2a) Min. 3m wide  2b) Passing bay for driveways >30m length  2d) Min. 1m wide landscape setback to dwellings  3a)&b) Garages not in front setbacks or facing the street  3c) Min. 6.5m from the outside driveway kerb	Complies  The shared driveway is at least 5m and variable width with suitable areas provided for passing opportunities and manoeuvring as shown on the swept path diagrams.  No garages are proposed within front setbacks or facing the street.  Suitable landscaping is provided in front of the buildings facing the driveway.	✓
2.4.8 Landscaped Area  1f) COS req. if >10 dwellings, min. 10% of the min. landscape area requirement  2a) Min. 40% landscaped area  2b) Min. 2m width  2c) May include terraces and patios (<0.5m above ground) and pedestrian pathways to buildings	Not applicable given the Affordable Rental Housing SEPP landscape area requirements prevail over the DCP provision.  The proposal provides a landscaped treatment within the front setback area that results in a significant improvement to the existing streetscape.	✓
2.4.9 Solar Planning  1d) Windows provided on walls exposed to northern sun	Not applicable given the Affordable Rental Housing SEPP solar access requirements prevail over the DCP provision.	✓

1e) Min. 4 hours between 9am to 3pm on 21 June to internal living areas  1f) Min. 3 hours between 9am to 3pm on 21 June to 40% of main POS areas	The proposal does not result in any adverse overshadowing impacts to adjoining private open space or living areas.	
2.4.10 Significant Townscapes and Landscapes	N/A	✓
2.4.11 Corner Sites and Park Frontages  4a) Dwelling and POS should face the park  4b) Min. 2m setback to dwelling or verandah facing the park	Complies  The proposal has been designed to maximise internal amenity and outlook, while minimising any adverse amenity impacts and providing casual surveillance and visual interest by addressing the park. A min. 2m setback has been provided to the western park frontage.	✓
2.4.12 Building Design	Complies	✓
2.4.13 Energy Efficiency	Complies	✓
2.4.14 Design of Dwelling and Private Courtyards  1a) Min. 25sqm POS  1b) Min. 5m x 4m main area  1d) Min. 2m width	Not applicable given the Affordable Rental Housing SEPP private open space requirements prevail over the DCP provision.	✓
2.4.15 Garage Design	Complies	✓
2.4.16 Garden Design	Complies	✓
2.4.17 Paving Design	Complies	✓
2.4.18 Fences and Retaining Walls  1b) Side and Rear Fence max. height 2.4m including any retaining wall  2a) Front fence max. 1.2m high or of 'see-through' construction  2b) Solid front fence >1.2m permitted with 2m front setback for max. 50% of site width	Complies	✓
2.4.19 Visual and Acoustic Privacy and Outlook  1a) Min. 3m between windows to adjacent dwellings with privacy screening  1d) Min. 1.7m sill height or fixed obscure glazing up to 1.7m for windows with direct outlook onto windows to adjacent dwellings	Complies  First floor windows incorporate min. 1.7m sill heights and high use living areas are generally located at ground floor with suitable screening from boundary fencing.	✓
2.4.20 Safety and Security	Complies	✓

2.4.21 Accessibility and Adaptability	Complies	✓
2.4.22 Storage and Services	Complies	✓

While some minor departures to the multi-dwelling housing requirements for urban form, landscape area and solar access are evident, it is noted that the proposed development complies with the SEPP requirements (which prevail to the extent of any inconsistency) and is generally consistent with the requirements of PLEP 2010 and PDCP 2014.

In this regard, the following comments are provided in support of the proposal:

- Section 2.4.4 Urban Form under PDCP 2014 provides a minimum building separation requirement of 4m. As noted previously, the proposal provides a building separation of 3.5m equating to a variation of 0.5m to the minimum separation requirement.
- The stated objective of Section 2.4.4 Urban Form is to ensure that: ‘new buildings show characteristics of traditional suburban development - dwellings are oriented to face the street, building forms are stepped or articulated, and integrated with the shape of surrounding garden areas’.
- In this instance, the overall design presents a suitable form of development on the site that achieves the underlying intent of the building separation control based on the following:
  - The proposal provides three detached buildings with defined breaks between the buildings to avoid “gun-barrel” style development that is consistent with the intent of the control;
  - The overall building length of 34m is separated into 3 buildings varying from 8.6m to 14.5m in length instead of only 2 building forms and as such, the proposal provides an additional 3.5m of separation compared to an otherwise compliant proposal comprising two buildings;
  - The areas in front of the units are provided with landscaped beds that accommodate a number of small to medium sized shrubs that will soften the building form;
  - The buildings along the common driveway are articulated through a series of projecting entry porticos, change in roof forms, garages concealed behind built form, and use of shadow casting features with irregularly shaped garden courts;
  - The extent of departure is minor and would be imperceptible as viewed from the street or park frontage;
  - The proposed separations allow for additional visual breaks between the buildings as viewed from the park frontage and adjoining properties;
  - The proposal provides for a vegetated landscape bed with large canopy trees within the front and rear setback areas, and planting within garden courts adjacent to neighbouring garden courts consistent with the existing pattern of development;
  - The proposal complies with landscaped area, private open space, setback and building length requirements.
  - In this regard, the proposal maintains a significant proportion in excess of the minimum setback to both the eastern and western side boundaries to more than offset the internal building separation variation and allow for a distinct open space corridor.
  - Based on the existing pattern of development for this section of Park Avenue, the proposal is an appropriate design response for the site and has a high degree of

contextual fit with adjoining development. It is sited and designed in a location where it can be reasonably assumed development can occur and does not result in any adverse streetscape or amenity impacts.

- Furthermore, individual open space access is still maintained for each lot, satisfactory architectural articulation and steps in the building design are provided, no adverse streetscape, overshadowing, privacy or amenity impacts, and overall compliance with landscaped area, private open space and setback requirements are achieved.
- Therefore, it is considered that the proposed 0.5m variation to the 4m separation requirement achieves the objective of the control, is acceptable in the circumstances of the case, and will not result in any adverse precedent and as such, should be supported for this development.
- In circumstances where the objectives of Council's building separation control are achieved notwithstanding minor non-compliance and the built form outcome is demonstrably in keeping with the desired future character of the locality and does not result in any adverse streetscape or amenity impacts, it is considered that the proposal is an acceptable design outcome and should be supported.
- In this regard, the overall siting and design of the proposal is considered an appropriate response in this instance and sits harmoniously with both the existing and likely future forms of development in this locality. This is consistent with the planning principle found in *Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191* for compatibility in the urban environment, which is taken to mean "capable of existing together in harmony" and is thus different from sameness. On this basis, the proposed building separation and overall siting and design of the development is compatible in the circumstances of the case and should be supported by Council.
- The proposal is generally consistent with the existing and desired future character of the locality and generally complies with the objectives and requirements of PDCP 2014 and Penrith Local Environmental Plan 2010

Further, it is noted that the consent authority is required to take a flexible approach in the application of DCP provisions, such as building separation, and allow reasonable alternative solutions that achieve the object of those standards given the circumstances of the case pursuant to section 4.15(3A) of the Environmental Planning and Assessment Act 1979. It is contended that the relevant objectives of these provisions have been achieved in this instance, noting that the likely impacts of the proposed development, such as privacy and overshadowing, traffic, stormwater runoff and streetscape appearance, have been adequately addressed through the design of the development.

## 6.2 STATE ENVIRONMENTAL PLANNING POLICIES

### 6.2.1 State Environmental Planning Policy No. 55 (Remediation of Land)

SEPP 55 specifies certain considerations for development on land with respect to the potential for contamination, particularly for sensitive land uses such as development for residential, educational or recreational purposes.

The subject site has been used in the past for residential purposes, which indicates that it is suitable for residential re-development. No change in land use is proposed and future demolition of existing structures will be undertaken under a separate application.

Therefore, in the absence of any evidence of potential contamination and ongoing residential use, it is considered that the requirements of Clause 7 – "Contamination and remediation to be considered in the determination of development applications" have been satisfactorily addressed.

### 6.2.2 State Environmental Planning Policy (BASIX) 2004

SEPP BASIX 2004 aims to encourage sustainable residential development by specifying commitments to be implemented as a part of the development to reduce water and energy consumption and improve thermal performance of the building. The proposed development is accompanied by a valid BASIX Certificate.

### 6.2.3 State Environmental Planning Policy (Infrastructure) 2007

The aim of the Infrastructure SEPP is to facilitate the effective delivery of infrastructure by 'identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure' and "providing for consultation with relevant public authorities about certain development during the assessment process".

The proposal does not constitute traffic generating development and the subject site does not have frontage to a classified road. Whilst a railway corridor is located opposite the site, the subject site is not located on or adjacent to railway corridor land and as such, no external referrals are required and Clause 87 does not strictly apply. Notwithstanding the above, the proposal has taken into consideration potential acoustic impacts from rail noise and adopts suitable noise mitigation measures as a part of the design of the development in accordance with Part C12.2 of Penrith DCP 2014.

### 6.2.4 State Environmental Planning Policy (Affordable Rental Housing) 2009

The State Environmental Planning Policy (Affordable Rental Housing) 2009 provides the relevant planning controls for boarding house development. Pursuant to Clause 8 of the Policy the provisions within the State Policy prevail over any provisions within any Local Environmental Plan where an inconsistency between standards occurs.

The relevant provisions are outlined below:

#### **25 Definition**



*In this Division—*

**communal living room** means a room within a boarding house or on site that is available to all lodgers for recreational purposes, such as a lounge room, dining room, recreation room or games room.

**26 Land to which Division applies**

*This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones—*

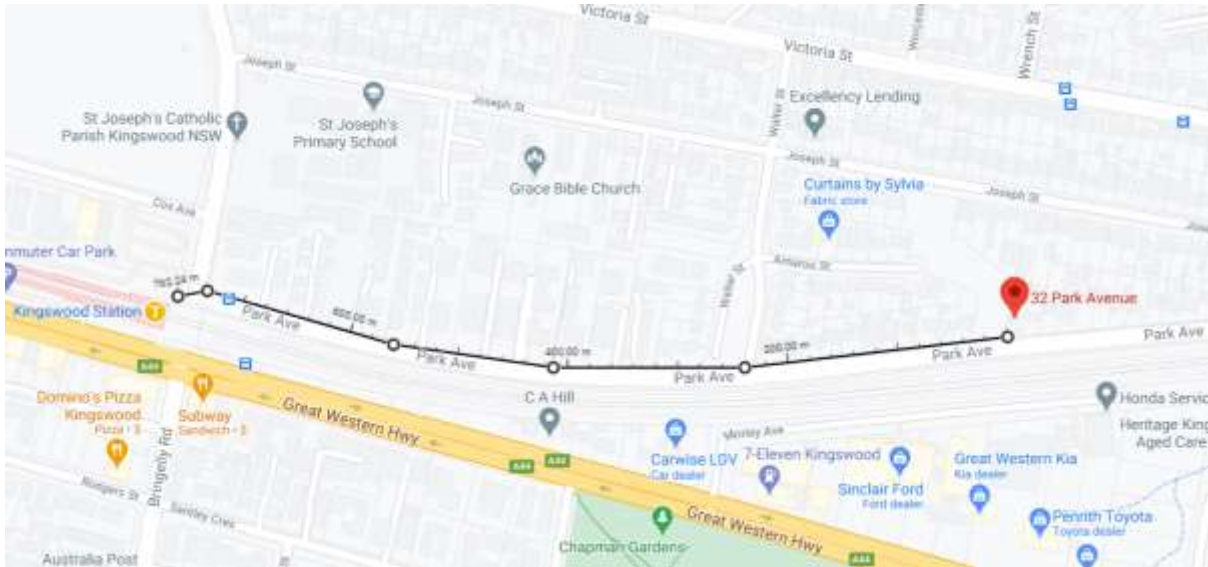
- (a) Zone R1 General Residential,*
- (b) Zone R3 medium Density Residential,*
- (c) Zone R3 Medium Density Residential,*
- (d) Zone R4 High Density Residential,*
- (e) Zone B1 Neighbourhood Centre,*
- (f) Zone B2 Local Centre,*
- (g) Zone B4 Mixed Use.*

Comment: The land is zoned R3 medium Density Residential.

**27 Development to which Division applies**

- (1) This Division applies to development, on land to which this Division applies, for the purposes of boarding houses.*
- (2) Despite subclause (1), clauses 29, 30 and 30A do not apply to development on land within Zone R3 medium Density Residential or within a land use zone that is equivalent to that zone in the Sydney region unless the land is within an accessible area.*
- (3) Despite subclause (1), clauses 29, 30 and 30A do not apply to development on land within Zone R3 medium Density Residential or within a land use zone that is equivalent to that zone that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use or within a land use zone that is equivalent to any of those zones.*

Comment: The land is within an accessible area given it is within 800m walking distance of Kingswood train station and as such, Clauses 29, 30 and 30A apply. An extract of the walking route from the site to Kingswood train station is provided below.



## **28 Development may be carried out with consent**

*Development to which this Division applies may be carried out with consent.*

Comment: This application seeks consent for the proposed boarding house development.

## **29 Standards that cannot be used to refuse consent**

- (1) *A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than—*
  - (a) *the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or*
  - (b) *if the development is on land within a zone in which no residential accommodation is permitted—the existing maximum floor space ratio for any form of development permitted on the land, or*
  - (c) *if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register—the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus—*
    - (i) *0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or*
    - (ii) *20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.*

Comment: No FSR applies to the proposal and no bonus FSR is sought.

(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds—

**(a) building height**

*if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land,*

Comment: The proposal complies with the applicable 8.5m building height limit.

**(b) landscaped area**

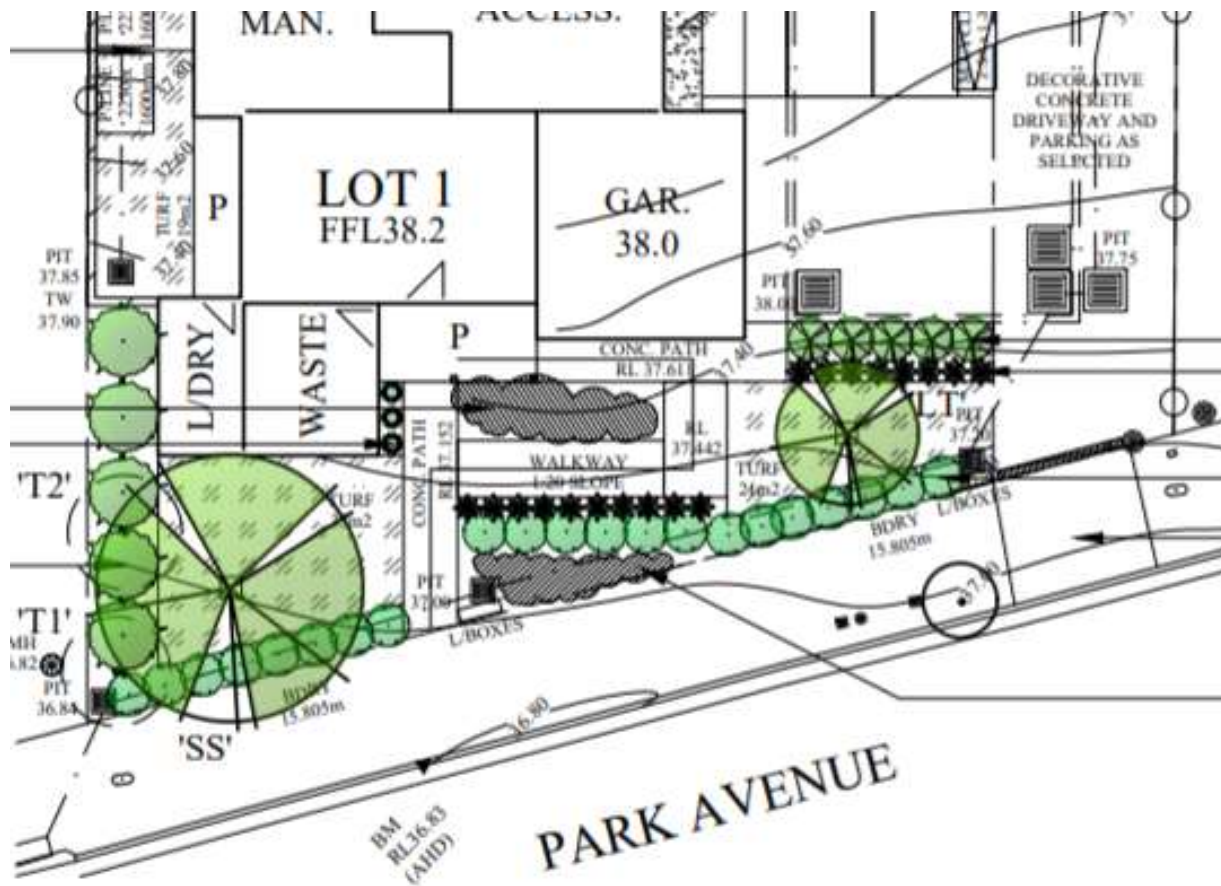
*if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,*

Comment: The front setback complies with the requirements of PDCP 2014 and the proposal is accompanied with a detailed Landscape Plan that provides for suitable landscape treatment of the front setback area that is compatible with the streetscape of Park Avenue.

An image of the existing landscape treatment of the front setback area within the adjoining development at 29-30 Park Avenue is provided below.



As shown in the extract of the proposed landscape plan below, suitable replacement canopy tree planting, shrubs and turf are proposed within the front setback area, which results in an improvement to the existing streetscape given no waste storage enclosures and private open space areas with fencing are proposed forward of the building line.



**(c) solar access**

where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,

Comment: The proposal maintains at least 3 hours direct sunlight between 9am and 3pm at midwinter to the communal living room of each boarding house.

**(d) private open space**

if at least the following private open space areas are provided (other than the front setback area)—

(i) one area of at least 20 square metres with a minimum dimension of 3 metres is provided for the use of the lodgers,

Comment: The proposal provides a communal private open space area for each boarding house of at least 20sqm and 3m dimension wholly behind the front building line and as such, complies with this requirement.

- (ii) if accommodation is provided on site for a boarding house manager—one area of at least 8 square metres with a minimum dimension of 2.5 metres is provided adjacent to that accommodation*

Comment: The proposal provides a private open space area for the manager adjacent to the manager's room of each boarding house of at least 8sqm and 2.5m dimension.

**(e) parking**

*if—*

- (i) in the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and*
- (ii) in the case of development carried out by or on behalf of a social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and*
- (iii) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and*

Comment: At least 0.5 spaces per room (including an accessible space) is provided. A total of 4 car spaces are required and 4 are provided per boarding house and as such, the proposal complies.

- (iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,*

Comment: One space will be allocated to the boarding house manager of each boarding house.

**(f) accommodation size**

*if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least—*

- (i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or*
- (ii) 16 square metres in any other case.*

Comment: Each boarding room is at least 12sqm for single lodgers and 16sqm for double lodgers, (excluding private kitchen and bathroom facilities).

- (3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.*

Comment: Private kitchen and bathroom facilities are provided for each room.

- (4) *A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).*

Comment: The proposal complies with the above standards.

- (5) *In this clause—*

**social housing provider** *does not include a registered community housing provider unless the registered community housing provider is a registered entity within the meaning of the [Australian Charities and Not-for-profits Commission Act 2012](#) of the Commonwealth.*

### **30 Standards for boarding houses**

- (1) *A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following—*
- (a) *if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,*

Comment: A communal living room is provided.

- (b) *no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25 square metres,*

Comment: No boarding room will exceed 25sqm.

- (c) *no boarding room will be occupied by more than 2 adult lodgers,*

Comment: No boarding room will exceed 2 lodgers.

- (d) *adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,*

Comment: Adequate bathroom and kitchen facilities are available for each lodger within each room.

*(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,*

Comment: Whilst the proposal has a capacity of less than 20 lodgers, a boarding room will be provided for a boarding house manager.

*(f) (Repealed)*

*(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,*

*(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.*

Comment: The proposal has at least 2 bicycle spaces and 2 motorcycle spaces for each boarding house.

*(2) Subclause (1) does not apply to development for the purposes of minor alterations or additions to an existing boarding house.*

Comment: The proposal is not for minor alterations or additions to an existing boarding house.

### **30AA Boarding houses in Zone R3 medium Density Residential**

*A consent authority must not grant development consent to a boarding house on land within Zone R3 medium Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.*

Comment: Not applicable given the proposal is within land zoned R3 medium density. However, each boarding house has no more than 12 boarding rooms.

### **30A Character of local area**

*A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.*

Comment:



The relevant planning principle for compatibility with surrounding development in the urban context under Project Ventures, refers to physical and visual impacts and means “capable of existing together in harmony”, not “sameness”.

Physical impacts include noise, overlooking and overshadowing. Visual impacts refer to the essential elements that relate to built form, including building height, setbacks and landscaping that make up the existing and desired future character.

As shown in the images below, this section of Park Avenue contains one and two storey dwellings with landscaped front setbacks and driveways and is characterized by a variety of older style fibro-clad and tiled roof single storey post-war dwellings likely to be replaced in line with Council’s planning controls and new two storey townhouses and dwellings.



The image above shows the recently constructed existing two storey townhouses at 29-30 Park Avenue approved under DA15/0171.



The image above shows the approved two-storey townhouses at 25-26 Park Avenue under DA18/1171.





The image above shows the existing single storey post-war fibro clad dwellings from 37 to 39 Park Avenue.



The image above shows the recently constructed two-storey townhouses at 44 Park Avenue approved under DA18/0292.



The image above shows the approved three-storey boarding house at 45 Park Avenue currently under construction.

The proposal is accompanied with acoustic and traffic reports prepared by suitably qualified consultants that confirm no adverse noise or traffic impacts arise from the subject proposal. High sill windows are provided to prevent overlooking to adjoining properties. The shadow diagrams confirm that compliant solar access is maintained to the private open space and living areas of adjoining properties.

The siting and design of the proposal is considered to be a reasonable design response that is a permissible form of development in the R3 medium density zone, and complies with Council's controls.

As shown in the streetscape elevation below, the proposal is not excessive or overbearing in the immediate context and accommodates safe and convenient access and car parking provision with suitable landscaped areas within the front setback area.



Furthermore, as shown in the proposed park frontage elevation below, the proposal has been designed to provide suitable surveillance, orientation and articulation to the park frontage, which is considered an improvement to the existing context as shown in the images below.



An assessment under the relevant controls of PDCP 2014 confirms that the siting and design of the proposal is consistent with built form controls for multi-dwelling housing that would otherwise be reasonably accommodated within the site and as such, it can be reasonably concluded that the built form of the proposal is consistent with the existing and desired future character of the area and this section of the street.

In addition, it is noted that the proposal maintains excellent internal amenity with north facing communal living areas and common open space to maximise solar access as well as natural cross-ventilation for each room and the proposal will result in an improvement to the existing streetscape appearance through a contemporary design with a variety of openings and selected materials and finishes.

In light of the above, the proposal is considered to be compatible with the character of the local area.

## 7.0 KEY CONSIDERATIONS

### 7.1 Design & Planning Principles

The proposed development has been designed to reflect current trends and to accommodate a future building form which will be compatible with the Council's vision for the locality. The design has particular regard to:

- the scale and form of development on nearby and adjoining lands;
- the existing form of development along Park Avenue;
- the appearance and scale of the buildings when viewed from Park Avenue;
- the high accessibility of the site and likely minimal amenity impacts.

The outcome of these considerations is, it is contended, a residential development which:

- will be of a high quality appearance and finish;
- compliments the existing and likely scale of development on adjoining land; and
- has minimal impact on the amenity of the locality due to its positioning and orientation.

### 7.2 Traffic and Pedestrian Access/Circulation

The proposed development provides an additional lot with direct street frontage to Park Avenue and the traffic generation is considered to be acceptable in this residential location with a local distributor road. The land holding is 1,476.7m<sup>2</sup>. Hence it is considered that the residential density proposed on the land, and the likely traffic generation, have been acknowledged as part of the R3 zoning for the land.

It is thus considered that the development as proposed is an acceptable form of development within this precinct and generates vehicular movements capable of being catered for by the existing road system in this locality.

### 7.3 Streetscape Appearance

The existing streetscape of this locality is a mixture of new and old development, one and two storey residential dwellings along Park Avenue and in the suburb generally. Nearby streets are characterized by one and two storey residential buildings.

The finished elevations for the proposed buildings will be generally compatible with mixed material finishes, brick, tile, colorbond and cladding of existing housing in this locality. The proposed housing will be compatible with the scale of built form in this locality, being one and two storey dwellings. The final design has resulted in a residential development which will be of a high quality finish and has interesting texture and material finish variations and variety in its openings.

This will be further complemented by proposed landscaping to soften the appearance of the development. Therefore, the proposal will maintain a consistent relationship with the existing scale and character of the streetscape.

#### **7.4 Solar Access & Overshadowing**

The height and setback of the proposed development ensures that adequate solar access is maintained and no adverse overshadowing impacts will arise. Solar diagrams have been prepared to accompany the development application.

#### **7.5 Privacy & Amenity**

The design of the development has had regard to the orientation and design of adjoining buildings in determining the final built form with the intent of minimizing any potential adverse impacts for existing neighbours where possible.

#### **7.6 Waste Management**

No demolition is proposed as part of the application. Any waste during the construction works phase will be removed from the site at regular intervals and disposed of at an approved waste dump in accordance with the waste management plan attached to this development application. The site will be kept clean and tidy at all times. Operational waste management will be managed by the onsite manager in accordance with Council's requirements and conditions to this effect can be imposed as a part of any approval. A Waste Management Plan accompanies this application.

#### **7.7 Stormwater Drainage**

A stormwater drainage scheme has been prepared and submitted as part of the development plans for this proposal. The Stormwater Concept Plan attached to the development application provides for the collection of any runoff from the roofs with below ground Onsite Stormwater Detention. The scheme generally entails a roof water collection system, comprising eaves gutters designed to a 20 year ARI standard. The surface runoffs are collected in pits and pipes, and transferred back to Council's drainage system within Park Avenue.

The engineering plans for this stormwater concept accompany this application.

#### **7.8 General Services**

##### **7.8.1 Sewer and Water**

Reticulated water and sewer are available to the site and will be connected to the proposal in accordance with the Authority requirements.

##### **7.8.2 Electricity Supply**

Electricity is available to the site and will be connected to the proposal in accordance with the Authority requirements.

#### **7.9 Cut and Fill**

The proposal does not necessitate any retaining works with only minimal cut and fill within the building and parking area footprint.

#### **7.10 Social and Economic Impacts**

In general terms the proposal is not considered to result in any adverse social or economic impacts that would otherwise not be reasonably acknowledged for a permitted form of development in the R3 medium density residential zone and subject to suitable conditions of consent to satisfactorily

control the construction and operation of the development. A Social Impact Assessment is held at Appendix B of this Report.

### 7.11 CPTED

CPTED is the term that encompasses the philosophical theory and practical application of design practices for buildings and places that seek to prevent crime with the following aims:

- deterring crime by increasing the perception and chance of crime being detected, witnessed, challenged or criminals captured;
- making the opportunities for crime occurrence more difficult; and
- limiting or concealing opportunities for crime.

The NSW Police Force describe the “Safer by Design” approach in the following manner:

*Crime Prevention through Environmental Design (CPTED) is a crime prevention strategy that focuses on the planning, design and structure of cities and neighbourhoods. It reduces opportunities for crime by using design and place management principles that reduce the likelihood of essential crime ingredients (law, offender, victim or target, opportunity) from intersecting in time and space. Predatory offenders often make cost-benefit assessment of potential victims and locations before committing crime. CPTED aims to create the reality (or perception) that the costs of committing crime are greater than the likely benefits. This is achieved by creating environmental and social conditions that:*

- *Maximise risk to offenders (increasing the likelihood of detection, challenge and apprehension);*
- *Maximise the effort required to commit crime (increasing the time, energy and resources required to commit crime);*
- *Minimise the actual and perceived benefits of crime (removing, minimising or concealing crime attractors and rewards); and*
- *Minimise excuse making opportunities (removing conditions that encourage/facilitate rationalisation of inappropriate behaviour).*

*CPTED employs four key strategies. These are territorial re-enforcement, surveillance, access control and space/activity management. All CPTED strategies aim to create the perception or reality of capable guardianship.*

The four key strategies have been satisfactorily incorporated within the design of the development proposal.

A CPTED checklist assessment is held at Appendix C of this Report.

## **8.0 CONCLUSION**

The proposed development has been assessed against the matters for consideration listed in Section 4.15 of the Environmental Planning & Assessment Act 1979 and is considered to be satisfactory. In this regard it is considered that the likely impacts of the development have been satisfactorily addressed and that the proposal is in the public interest. Further, the subject site is considered suitable for the proposed development.

The proposal is consistent with the objectives of the Penrith Local Environmental Plan 2010 and is permissible in the R3 zone with development consent. The proposal also complies with the main essential criteria set out in the Penrith Development Control Plan 2014, and is considered satisfactory with regard to relevant matters such as Urban Design, Access, Traffic Impact, Drainage, ESD, Site Contamination, Amenity, Social and Economic Impacts and the like, subject to the imposition of suitable conditions of consent to satisfactorily control the development.



## 9.0 APPENDIX A – SECTION 4.15 MATTERS FOR CONSIDERATION

HEADS OF CONSIDERATION	RESPONSE
<p><i>(a) the provisions of –</i></p> <p><i>(i) any environmental planning instrument, and</i></p> <p><i>(ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and</i></p> <p><i>(iii) any development control plan, and</i></p> <p><i>(iv) any matters prescribed by the regulations, that apply to the land to which the development application relates,</i></p>	<p>The proposal's compliance and consistency with the provisions of the PLEP 2010 and PDCP 2014 have been addressed in detail at Section 4.1 of this Statement. In general terms the proposed development is permissible within the R3 zone and is consistent with the aims and objectives of the LEP and DCP.</p>
<p><i>(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,</i></p>	<p>The likely impact of the proposal have been addressed in detail at Section 5 of this Statement. The proposal is considered satisfactory with regard to relevant matters such as Built Form, Access, Amenity, Privacy, Traffic Impact, Stormwater Drainage, ESD and the like, subject to the imposition of suitable conditions of consent to satisfactorily control the development.</p>
<p><i>(c) the suitability of the site for the development</i></p>	<p>The site being a regular allotment previously used for residential purposes has frontage to Park Avenue with moderate through traffic flows. This promotes the site as a relatively safe site for this form of housing. The proposed development is designed with respect to the slope of the site and previous residential uses, while the proposed vegetation details are noted on the Landscape Plan accompanying this application.</p>
<p><i>(d) any submissions made in accordance with this Act or the regulations,</i></p>	<p>This matter would relate to Council's public exhibition of the development.</p>
<p><i>(e) the public interest.</i></p>	<p>The proposed development provides housing choice to the community that is in keeping with the desired character of the area, and as such is considered to be in the public interest.</p>



## 10.0 APPENDIX B – Social Impact Assessment

Noting the absence of any specific DCP requirements in relation to social and/or economic impacts, in general terms the proposal is not considered to result in any adverse social or economic impacts that would otherwise not be reasonably acknowledged for a permitted form of development in the R3 medium density residential zone.

The proposal will provide employment through the construction phase and any temporary construction impacts will be managed by suitable conditions of any approval.

The siting and design of the built form is considered to result in an improvement to the existing housing stock and streetscape appearance. The proposal will replace an existing single storey aging fibro clad post-war dwelling with a new 2-storey residential development. Each proposed boarding house accommodates a total of 8 rooms (inclusive of a manager's room), and a total of 33 occupants. Each room is self-contained with private kitchen and bathroom facilities.

The proposal complies with building height, setbacks, landscaping, parking, waste, solar access and private open space requirements and is consistent with and of a lesser scale and intensity of residential development that could otherwise be reasonably accommodated noting Council has approved a total of 10 x 3-5 bedroom dwellings (equating to approximately 40 occupants in total) at 29-30 Park Avenue under DA15/0171.

In this regard, the built form is considered to be a reasonable design response that is a permissible form of development in the R3 medium density zone, complies with Council's controls, is not excessive or overbearing in the immediate context and accommodates safe and convenient access and car parking provision with suitable landscaped areas within the front setback area.

In addition, it is noted that the proposal maintains excellent internal amenity with north facing communal living areas and common open space to maximise solar access as well as natural cross-ventilation for each room and the proposal will result in an improvement to the existing streetscape appearance through a contemporary design with a variety of openings and selected materials and finishes.

The proposal is accompanied with acoustic and traffic reports prepared by suitably qualified consultants that confirm no adverse noise or traffic impacts arise from the subject proposal. High sill windows are provided to prevent overlooking to adjoining properties. The shadow diagrams confirm that compliant solar access is maintained to adjoining private open space. Compliance is achieved with the relevant BCA, fire safety and accessibility requirements.

The proposal has been designed having regard to the principles of Crime Prevention Through Environmental Design, and ensures suitable passive surveillance with visible entries and clear sightlines, secure entries and lockable windows, security lighting in communal areas and travel paths and boundary fencing.

The proposal will add to housing choice in the form of self-contained and fully furnished rooms with private kitchens and bathrooms (for rent at market value to single or double lodgers for this form of self-contained and fully furnished accommodation being comparatively affordable next to other housing options) in excellent proximity to public transport, services, employment and amenities at Kingswood including Local Schools, TAFE, University of Western Sydney and Nepean Hospital and the regional centre of Penrith.

The proposal will be managed by an onsite manager to ensure satisfactory operation in accordance with the Plan of Management, including House Rules, and suitable operational conditions of any approval.

The subject site represents a suitable and appropriate location for a Boarding House given its close proximity to public transport, local shops and services such as medical centres.

The proposal will also provide Section 7.11 contributions as a part of any approval towards the demand generated for local open space and community facilities in accordance with the adopted Contributions Plan.

The proposed development is unlikely to generate any long term negative social impacts, but has the potential to generate a number of positive impacts, including:

- provision of comparatively affordable, lower market rental housing, for residents including key workers, older people, students, people with a disability, and those on low incomes;
- increasing the diversity of residents of the area;
- contribution to housing choice in the Blacktown LGA; and
- employment in the construction and fit out of the proposed boarding house.

Therefore, the overall social and economic benefits of the proposal are considered to outweigh any potential disbenefits and as such, the proposal is considered to be acceptable subject to suitable conditions.

## 11.0 APPENDIX C – CPTED

CPTED MEASURES	RECOMMENDATIONS	COMPLY *  YES ✓ and description	IF NO, PLEASE PROVIDE JUSTIFICATION
<p><b>* Where relevant, each item is to be shown on the architectural plans. A description of how the development complies, together with the corresponding plan reference number, should also be provided.</b></p>			
<p><b>1. STREET NUMBER / WAY FINDING SIGNAGE</b></p>	<p>1.1 The street number must be clearly visible from the street.</p> <p>1.2 The street number must be visible at night.</p> <p>1.3 Unit block identification signage must be visible from the street frontage.</p>	<p>YES, existing street number will be maintained visible from the street</p>	
<p><b>2. SIGNAGE</b></p>	<p>2.1 There must be directional signage located at the entry to the estate/complex clearly indicating location of estate managers office, building names and unit numbers.</p> <p>2.2 There must be warning signs displayed.</p> <p>2.3 The warning signs must be appropriate.</p> <p>2.4 A map must be displayed of the complex.</p>	<p>YES, any required signage can be detailed prior to issue of CC</p>	
<p><b>3. BUILDING DESIGN</b></p>	<p>3.1 The orientation of buildings must allow for easy natural surveillance between the street, neighbouring property and the buildings.</p> <p>3.2 The floors, walls and ceilings must be of solid construction.</p> <p>3.3 There must be adequate steps taken to ensure that persons cannot utilise the design of the premises to climb structures from the outside.</p> <p>3.4 Have entry/exit points to the estate and/ or buildings been limited? If yes please comment.</p> <p>3.5 At entry/exit points there must be electronic entry for example keypad or swipe card entry.</p>	<p>YES, existing building is of suitable layout and construction to facilitate safety and security and doors and windows will be provided with locks.</p> <p>Suitable conditions can be imposed if required in relation to CCTV, waste, and graffiti</p>	

	<p>3.6 Alcoves or recesses must be monitored by CCTV.</p> <p>3.7 Garbage bays must be locked to restrict unauthorised entry.</p> <p>3.8 There must be a 'Rapid Removal' policy for graffiti.</p> <p>3.9 There must be graffiti resistant materials utilised in the design of the building. For example painted on masonry garden walls, fencing.</p>		
<b>4. FENCES AND GATES</b>	<p>4.1 There must be perimeter fences erected around the property.</p> <p>4.2 Access must not be restricted.</p> <p>4.3 Fences must be fitted with locks.</p> <p>4.4 Fences and gates must be in good condition.</p> <p>4.5 Fences must be constructed of appropriate materials.</p> <p>4.6 Gates must be secured.</p> <p>4.7 If the estate complex is a gated complex local Ambulance, Fire Brigade and Police must have keys/swipe cards etc for access in an emergency.</p>	Yes, existing fencing will be maintained.	
<b>5. LANDSCAPING</b>	<p>5.1 People must be able to see your unit/premises clearly from the street.</p> <p>5.2 Landscaping must be regularly maintained.</p> <p>5.3 No person should be able to conceal themselves behind vegetation or gardens.</p>	Yes, existing landscaping will be maintained to ensure no hiding opportunities	
<b>6. SECURITY LIGHTING</b>	<p>6.1 Security lighting must be installed.</p> <p>6.2 Security lighting must be operating.</p> <p>6.3 The entry and exit points must be adequately lit.</p> <p>6.4 Lighting must be positioned in a way to reduce opportunities for vandalism?</p> <p>6.5 The lighting must be sufficient to support images obtained from CCTV footage.</p>	Yes, suitable conditions in relation to lighting can be provided prior to issue of CC	

	<p>6.6 Light switches for all lights must be located in a secure area within the premises.</p> <p>6.7 There must be light timers.</p>		
<b>7. POWER BOARD &amp; LETTERBOX</b>	<p>7.1 The power board must be enclosed in a cabinet or room.</p> <p>7.2 The cabinet or room must be fitted with a lock set approved by the local authority.</p> <p>7.3 The cabinet or room must be kept locked?</p> <p>7.4 The letter box must be fitted with an appropriate lock set and kept locked.</p> <p>7.5 The letter box collection facility must be enclosed in the foyer window of the property that has street frontage.</p>	Yes, locks to be provided to power board and letterbox	
<b>8. GARAGE</b>	<p>8.1 The garage must be lockable.</p> <p>8.2 The garage 'tilta' door must have a bolt lock installed.</p> <p>8.3 The garage facility must have floor to ceiling wall. For example strong mesh or masonry walls.</p> <p>8.4 The garage ceiling and walls must be painted white.</p> <p>8.5 The contents inside the garage facility must not be able to be visible from the outside.</p> <p>8.6 The garage facilities must have CCTV coverage.</p> <p>8.7 The garage facility area must be restricted to non-residents by way of security gates.</p>	Yes, garage is lockable and CCTV can be provided as a condition if required.	



<p><b>9. BALCONY</b></p>	<p>9.1 The balcony must be designed so as not to act as a natural ladder.</p> <p>9.2 The balcony must be adequately designed so as not to allow hand and foot holds to potential offenders trying to scale up the outside of the building.</p> <p>9.3 The railings must be designed so that foot or hand grips cannot be used by offenders.</p> <p>9.4 The balcony must have a sensor light to automatically activate when motion is detected.</p> <p>9.5 Sliding doors and windows adjacent to balconies must be re-enforced with adequate locks etc to restrict unauthorised access.</p>	<p>Yes, balcony does not provide climbing opportunities.</p>	
<p><b>10. DOORS AND FIRE EXITS</b></p>	<p>10.1 The external doors must be of solid construction.</p> <p>10.2 The door frames must be of solid construction.</p> <p>10.3 The doors must be fitted with quality lock sets to restrict access when not in use.</p> <p>10.4 The locks must be in good working order.</p> <p>10.5 A peep hole (door viewer) must be installed.</p> <p>10.6 Keys must be removed from locks when house is unoccupied.</p> <p>10.7 An Australian standard security/screen door must be installed on all doors.</p> <p>10.8 Sliding doors must be fitted with a suitable lock sets.</p> <p>10.9 Entry/exit points must be clearly identified.</p> <p>10.10 All fire exit doors must be self-closing.</p> <p>10.11 Fire exit doors must be used appropriately.</p> <p>10.12 All exit doors must be free from obstructions and/or rubbish.</p> <p>10.13 All high risk doors must be locked at all times?</p>	<p>Yes, doors will be fitted with locks, and exit doors will be free of obstruction at all times.</p>	

	10.14	All external door hinges must be mounted so they cannot be removed?		
<b>11. WINDOWS</b>	11.1	All external windows must be solidly constructed.	Yes, windows will be fitted with locks	
	11.2	All windows must be fitted with quality lock sets.		
	11.3	All unused windows must be permanently closed & secured.		
	11.4	Windows must be able to be locked in a partially open position. For example with a bolt lock.		
	11.5	Skylights must be suitably secured.		
	11.6	Keys must be removed from locks when no persons are home.		
<b>12. CARPARK</b>	12.1	There must be security car parking facilities available.	Yes, secure parking will be available within the existing garage.	
	12.2	Residents must have an individual secured garage spaces.		
	12.3	The access to residential car park must be restricted to residents only.		
	12.4	Access and control must be restricted to residents only by keypad, swipe card or remote system.		
	12.5	'Park Smarter' signage must be displayed within this area to warn motorists to secure their vehicle and property.		
	12.6	CCTV system must be installed and monitor inside the car park facility.		
	12.7	All residents must be supplied with additional storage facilities so that items are not left in areas where they can be seen or easily removed.		
	12.8	The car park must be well lit.		
	12.9	The ceiling of the car park must be painted white.		
	12.10	The car park entry must be restricted by a security roller shutter.		

	<p>12.11 Access to the security roller shutter must have access control measures such as swipe card, key pad or remote system.</p> <p>12.12 Bicycle racks must be positioned in visible areas from the street.</p> <p>12.13 Emergency Services parking should be provided in a large unit complex.</p>		
<b>13. SURVEILLANCE SYSTEM</b>	<p>13.1 CCTV systems must be installed at vehicle entry points.</p> <p>13.2 CCTV systems must be installed at all foyer entry points.</p> <p>13.3 CCTV systems must be installed on the perimeter of the building.</p> <p>13.4 CCTV systems must be installed near to letter box collection facilities.</p> <p>13.5 CCTV systems must be installed near to waste facilities.</p> <p>13.6 CCTV systems must be installed near to fire exits.</p> <p>13.7 Footage must be recorded appropriately.</p> <p>13.8 Footage must be kept for a minimum of 14 days.</p> <p>13.9 The property must be free of dummy cameras.</p> <p>13.10 The cameras must be placed in suitable locations to positively identify an individual from recorded images.</p>	Yes, suitable operational conditions can be imposed if required	
<b>14. FIRE SAFETY</b>	<p>14.1 Smoke detectors must be installed within foyer areas and garages of unit blocks to comply with the Building Code of Australia?</p> <p>14.2 Smoke detector must be installed in the unit complex.</p> <p>14.3 14.3 Gutters must be kept clean.</p> <p>14.4 The unit complex must have a site plan displayed in a prominent position.</p>	Yes, details will be provided as a part of the CC.	

	14.5	14.5 Waste bins must be stored in a secure place after hours.		
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## 12.0 APPENDIX D – Clause 4.6 request to vary battle-axe lot size standard

### 1.0 Introduction

This is a written request to seek an exception to a development standard pursuant to clause 4.6 in respect of the minimum 450sqm battle-axe lot size development standard for a proposed residential development at 31-32 Park Avenue Kingswood. Relevantly, clause 4.1(4B) of Penrith Local Environmental Plan 2010 provides that:

#### **4.1 Minimum subdivision lot size**

(1) *The objectives of this clause are as follows—*

- (a) *to ensure that lot sizes are compatible with the environmental capabilities of the land being subdivided,*
  - (b) *to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,*
  - (c) *to ensure that lot sizes and dimensions allow developments to be sited to protect natural or cultural features including heritage items and retain special features such as trees and views,*
  - (d) *to regulate the density of development and ensure that there is not an unreasonable increase in the demand for public services or public facilities,*
  - (e) *to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.*
- (2) *This clause applies to a subdivision of any land shown on the [Lot Size Map](#) that requires development consent and that is carried out after the commencement of this Plan.*
- (3) *The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the [Lot Size Map](#) in relation to that land.*

...

(4B) *Despite subclause (3), development consent must not be granted for the subdivision of land in Zone R3 Medium Density Residential unless each lot to be created by the subdivision would have—*

- (a) *if it is a standard lot—a minimum width of 12 metres, or*
- (b) *if it is a battle-axe lot—a minimum width of 15 metres and a minimum area of 450 square metres.*

(4C) *For the purposes of this clause, if a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size.*

Clause 4.1(4B) requires subdivision in the R3 zone to provide a minimum width of 12m for standard lots and a minimum width of 15m and minimum area of 450sqm for battle-axe lots. In this instance, whilst the proposed lots comply with the minimum width requirements for standard and battle-axe lots, variations of 43sqm (9.48%) and 35sqm (7.78%) are proposed to the minimum battle-axe lot area requirements for Lot 2 and Lot 3, respectively.

Accordingly, this Clause 4.6 request to vary the maximum height of building development standard has been prepared having regard to *Four2Five Pty Ltd v Ashfield Council [2015]* and *Wehbe v Pittwater Council 120071*. In this regard, it is noted that Wehbe sets out five ways of demonstrating that compliance is unreasonable or unnecessary, one of which is that the objectives of the standard are achieved. Noting the requirements of Clause 4.6 as opposed to SEPP No. 1, it is also necessary to demonstrate that there are sufficient environmental planning grounds to justify contravening the standard and that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development in the zone.

It is contended that compliance with the minimum 450sqm battle-axe lot size standard is unreasonable and unnecessary in the circumstances of the case given there are sufficient environmental planning grounds and the objectives of the standard are achieved nonetheless as follows:

- The proposed variations relate to the paper plan subdivision lot boundaries only and would not be visually discernible given the proposed building siting and design, bulk and scale, landscaping, private open space, access, car parking and fencing would remain unchanged.
- Notwithstanding the above, the proposed subdivision facilitates the provision of new residential accommodation of a significantly lesser scale and intensity of development that could otherwise be achieved on an unsubdivided site noting Council's approval of a 28 room boarding house at 45 Park Avenue under D16/0374.
- The proposed lot layout results in a better planning outcome than an otherwise strictly compliant lot layout given the proposal minimises bulk and scale and overshadowing impacts to adjoining properties to the rear by providing for additional building area within Lot 1 facing the street, whereas a reduction in the size of Lot 1 and increase to the size of battle-axe Lots 2 and 3 would result in additional building area and bulk and scale at the rear of the site and additional visual bulk and overshadowing impacts to adjoining properties.
- The proposed battle-axe lot area variations are numerically minor variations of 43sqm (9.48%) and 35sqm (7.78%) for Lot 2 and Lot 3, respectively.
- Proposed Lot 1 is 97.5sqm larger than the minimum lot size requirement of 400sqm for a standard lot, which offsets the sum of the shortfall of 88sqm on battle-axe Lots 2 and 3, and as such, the proposed subdivision complies on an overall average lot size basis.
- The proposal is not an overdevelopment of the site given an overall yield of 3 lots in the form of two battle-axe lots of at least 450sqm excluding the access handle and one standard lot of 400sqm could otherwise be accommodated on the site.
- The proposed lot sizes ranging from 407sqm (excluding the access handle) and 497sqm are compatible with the environmental capabilities of the R3 medium density zoned land being subdivided.
- The proposed subdivision layout and building design and layout does minimise any likely adverse amenity impacts on adjoining properties in relation to bulk and scale, overshadowing, visual privacy and acoustic amenity.
- The proposed lot sizes and dimensions allow for the proposed building design and layout and detailed landscaping with additional canopy tree coverage to be suitably accommodated within the site in accordance with relevant development controls and do not result in any adverse heritage, tree or view impacts.



- The proposed lot sizes are wholly consistent with the planned residential density of the R3 zoned land given the yield is equivalent to an otherwise strictly compliant lot layout comprising 3 lots, but results in a better planning outcome in terms of reduced bulk and scale and overshadowing impacts to adjoining properties at the rear, and will ensure that there is not any unreasonable increase in demand for public services or public facilities.
- The variations do not result in additional floor area or an overdevelopment of the site.
- The proposal complies with relevant development controls including setbacks, building height, landscaping, private open space, solar access, visual privacy, car parking, access, stormwater and waste management.
- The proposal is in harmony with the bulk and scale of surrounding buildings and the streetscape and minimises the impacts of new development on adjoining or nearby properties from loss of privacy or acoustic amenity, overshadowing or visual intrusion.
- The proposal results in an improvement to the existing streetscape and park frontage and ensures a high visual quality of the development when viewed from adjoining properties, the adjoining public reserve to the west and the street frontage
- The proposal is consistent with the existing pattern of development and desired future character of this section of the street and the local area as shown in the aerial photo below.
- The proposal is a permitted form of development in the R3 zone and consistent with the relevant zone objectives to provide for the housing needs of the community and a variety of housing types within the medium density residential environment with excellent access to services and facilities and maintains a high level of residential amenity consistent with the existing and desired future character of the local area.
- The proposal is consistent with, and of a lesser scale and intensity of, residential development that could otherwise be reasonably accommodated noting Council has approved a total of 10 x 3-5 bedroom dwellings on the adjoining property to the east at 29-30 Park Avenue under DA15/0171 and 4 x 2-3 bedroom dwellings at 32 Joseph Street under DA18/0428.



## **2.0 Penrith Local Environmental Plan 2010**

### **2.1 Clause 4.6(1) – Flexibility and Better Outcomes**

Subclause 4.6(1) states the objectives of the clause as follows:

*“(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*

*(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.”*

The proposal is considered to be compatible with these objectives and a response to the objectives is contained within this submission.

### **2.2 Subclause 4.6(2) – Consent may be granted**

Subclause 4.6(2) provides that:

*(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

The minimum battle-axe lot size development standard is not expressly excluded from the operation of clause 4.6 and accordingly, consent may be granted.

### **2.3 Subclause 4.6(3) – Written Request**

Subclause 4.6(3) relates to the making of a written request to justify an exception to a development standard and states:

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

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.”*

The proposed development does not comply with the minimum battle-axe lot size development standard. However, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as justified in this written variation request.

## 2.4 Subclause 4.6(4) – Written Request

Subclause 4.6(4) provides that consent must not be granted for development that contravenes a development standard unless:

*“(a) the consent authority is satisfied that:*

- (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

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

The remainder of this written request for exception to the development standard addresses the matters required under subclause 4.6(4) the LEP, as follows.

Furthermore, subclause 4.6(5) provides that in deciding whether to grant concurrence, the Director General must consider:

*“(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

*(b) the public benefit of maintaining the development standard, and (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.”*

It is contended that the proposed development is a form of development that is most appropriate for this R3 medium density residential site as it will have minimal, if any, detrimental impacts on the surrounding amenity or the long term development potential of the neighbouring lands. As part of any consideration of this matter the Director-General can accept that the variation of the battle-axe lot size standard is a local matter, given the minor extent and overall compliance with the requirements of SEPP Affordable Rental Housing 2009, Penrith Local Environmental Plan 2010 and Penrith DCP 2014.

## 2.5 The Nature of the Variation

Clause 4.1(4B) requires subdivision in the R3 zone to provide a minimum area of 450sqm for battle-axe lots. In this instance, proposed Lot 2 is 407sqm and proposed Lot 3 is 415sqm, equating to variations of 43sqm (9.48%) and 35sqm (7.78%) are proposed to the minimum battle-axe lot area requirements for Lot 2 and Lot 3, respectively.

It is argued in this request that this variation is unlikely to result in any significant environmental impacts but does assist in achieving a higher quality building design and a yield that is entirely consistent with the density projections for this site and the desired future character of the locality.

To require strict compliance would result in a building form with additional bulk and scale to the rear and increased visual bulk and overshadowing impacts to adjoining properties compared to the proposed scheme. In this way the underlying objectives of the development standard are achieved by the proposal to an equivalent or better degree than a development that complied with the standard and strict compliance would be unreasonable or unnecessary in these circumstances.

Further, the proposal provides public benefits arising through employment during the construction phase and ongoing employment opportunities upon completion. The proposal represents an appropriate increase and replenishment of the available housing stock that is wholly in keeping with the desired future character of the locality, noting the need to provide housing choice and affordability for a growing population in close proximity to local train and bus services, major regional road networks, access to areas of employment, educational facilities, entertainment and open space.

## 2.6 The Objectives of the Development Standard

(1) The objectives of this clause are as follows:

- (a) to ensure that lot sizes are compatible with the environmental capabilities of the land being subdivided,*
- (b) to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,*
- (c) to ensure that lot sizes and dimensions allow developments to be sited to protect natural or cultural features including heritage items and retain special features such as trees and views,*
- (d) to regulate the density of development and ensure that there is not an unreasonable increase in the demand for public services or public facilities,*
- (e) to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.*

The proposed development is considered to achieve the above objectives as follows:

- The proposed variations relate to the paper plan subdivision lot boundaries only and would not be visually discernible given the proposed building siting and design, bulk and scale, landscaping, private open space, access, car parking and fencing would remain unchanged.
- Notwithstanding the above, the proposed subdivision facilitates the provision of new residential accommodation of a significantly lesser scale and intensity of development that could otherwise be achieved on an unsubdivided site noting Council's approval of a 28 room boarding house at 45 Park Avenue under D16/0374.
- The proposed lot layout results in a better planning outcome than an otherwise strictly compliant lot layout given the proposal minimises bulk and scale and overshadowing impacts to adjoining properties to the rear by providing for additional building area within Lot 1 facing the street, whereas a reduction in the size of Lot 1 and increase to the size of battle-axe Lots 2 and 3 would result in additional building area and bulk and scale at the rear of the site and additional visual bulk and overshadowing impacts to adjoining properties.

- The proposed battle-axe lot area variations are numerically minor variations of 43sqm (9.48%) and 35sqm (7.78%) for Lot 2 and Lot 3, respectively.
- Proposed Lot 1 is 97.5sqm larger than the minimum lot size requirement of 400sqm for a standard lot, which offsets the sum of the shortfall of 88sqm on battle-axe Lots 2 and 3, and as such, the proposed subdivision complies on an overall average lot size basis.
- The proposal is not an overdevelopment of the site given an overall yield of 3 lots in the form of two battle-axe lots of at least 450sqm excluding the access handle and one standard lot of 400sqm could otherwise be accommodated on the site.
- The proposed lot sizes ranging from 407sqm (excluding the access handle) and 497sqm are compatible with the environmental capabilities of the R3 medium density zoned land being subdivided.
- The proposed subdivision layout and building design and layout does minimise any likely adverse amenity impacts on adjoining properties in relation to bulk and scale, overshadowing, visual privacy and acoustic amenity.
- The proposed lot sizes and dimensions allow for the proposed building design and layout and detailed landscaping with additional canopy tree coverage to be suitably accommodated within the site in accordance with relevant development controls and do not result in any adverse heritage, tree or view impacts.
- The proposed lot sizes are wholly consistent with the planned residential density of the R3 zoned land given the yield is equivalent to an otherwise strictly compliant lot layout comprising 3 lots, but results in a better planning outcome in terms of reduced bulk and scale and overshadowing impacts to adjoining properties at the rear, and will ensure that there is not any unreasonable increase in demand for public services or public facilities.
- The variations do not result in additional floor area or an overdevelopment of the site.
- The proposal complies with relevant development controls including setbacks, building height, landscaping, private open space, solar access, visual privacy, car parking, access, stormwater and waste management.
- The proposal is in harmony with the bulk and scale of surrounding buildings and the streetscape and minimises the impacts of new development on adjoining or nearby properties from loss of privacy or acoustic amenity, overshadowing or visual intrusion.
- The proposal results in an improvement to the existing streetscape and park frontage and ensures a high visual quality of the development when viewed from adjoining properties, the adjoining public reserve to the west and the street frontage
- The proposal is consistent with the existing pattern of development and desired future character of this section of the street and the local area as shown in the aerial photo below.
- The proposal is a permitted form of development in the R3 zone and consistent with the relevant zone objectives to provide for the housing needs of the community and a variety of housing types within the medium density residential environment with excellent access to services and facilities and maintains a high level of residential amenity consistent with the existing and desired future character of the local area.
- The proposal is consistent with, and of a lesser scale and intensity of, residential development that could otherwise be reasonably accommodated noting Council has approved a total of 10 x 3-5 bedroom dwellings on the adjoining property to the east at 29-



30 Park Avenue under DA15/0171 and 4 x 2-3 bedroom dwellings at 32 Joseph Street under DA18/0428.



## 2.7 The Objectives of the Zone

The land use table states the objectives of the Zone as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a concentration of housing with access to services and facilities.*
- *To enhance the essential character and identity of established residential areas.*
- *To ensure that a high level of residential amenity is achieved and maintained.*
- *To ensure that development reflects the desired future character and dwelling densities of the area.*

As the proposal is for residential development of the land, the first, second, fourth, fifth, sixth and seventh objectives are relevant. The proposed development provides for housing choice and variety consistent with the medium density residential environment with excellent access to services and facilities and maintains a high level of residential amenity consistent with the existing and desired future character of the local area.

The proposal provides for the housing needs of the community within a medium density residential environment and represents a significant improvement to the existing streetscape and local context.

The proposal will cater for the expected traffic generation through off-street parking and will be adequately serviced in accordance with authority requirements. The proposed development is located in an area well serviced by public transport, roads, services, amenities, employment and entertainment areas, educational facilities and open space.

It is considered that the proposal is consistent with the objectives of the zone, complies with the requirements of SEPP Affordable Rental Housing and is generally compliant with the requirements of Penrith LEP and DCP. In this regard, it is noted that the proposal represents a carefully considered design outcome having regard to the existing streetscape and the desired future character of the streetscape. Overall, the proposal provides a residential form of development that minimises any potential adverse amenity or streetscape impacts and maximises internal residential amenity, which is entirely in keeping with the objectives of the zone and the desired future character of the locality.

## **2.8 The Grounds of the Objection**

The proposed variation to the development standard has been considered in light of the abovementioned objectives and potential environmental impacts and hence, strict compliance with the Battle-axe Lot Site Control in this particular instance is considered to be unreasonable and unnecessary for the following reasons:

- The proposed variations relate to the paper plan subdivision lot boundaries only and would not be visually discernible given the proposed building siting and design, bulk and scale, landscaping, private open space, access, car parking and fencing would remain unchanged.
- Notwithstanding the above, the proposed subdivision facilitates the provision of new residential accommodation of a significantly lesser scale and intensity of development that could otherwise be achieved on an unsubdivided site noting Council's approval of a 28 room boarding house at 45 Park Avenue under D16/0374.
- The proposed lot layout results in a better planning outcome than an otherwise strictly compliant lot layout given the proposal minimises bulk and scale and overshadowing impacts to adjoining properties to the rear by providing for additional building area within Lot 1 facing the street, whereas a reduction in the size of Lot 1 and increase to the size of battle-axe Lots 2 and 3 would result in additional building area and bulk and scale at the rear of the site and additional visual bulk and overshadowing impacts to adjoining properties.
- The proposed battle-axe lot area variations are numerically minor variations of 43sqm (9.48%) and 35sqm (7.78%) for Lot 2 and Lot 3, respectively.
- Proposed Lot 1 is 97.5sqm larger than the minimum lot size requirement of 400sqm for a standard lot, which offsets the sum of the shortfall of 88sqm on battle-axe Lots 2 and 3, and as such, the proposed subdivision complies on an overall average lot size basis.
- The proposal is not an overdevelopment of the site given an overall yield of 3 lots in the form of two battle-axe lots of at least 450sqm excluding the access handle and one standard lot of 400sqm could otherwise be accommodated on the site.
- The proposed lot sizes ranging from 407sqm (excluding the access handle) and 497sqm are compatible with the environmental capabilities of the R3 medium density zoned land being subdivided.



- The proposed subdivision layout and building design and layout does minimise any likely adverse amenity impacts on adjoining properties in relation to bulk and scale, overshadowing, visual privacy and acoustic amenity.
- The proposed lot sizes and dimensions allow for the proposed building design and layout and detailed landscaping with additional canopy tree coverage to be suitably accommodated within the site in accordance with relevant development controls and do not result in any adverse heritage, tree or view impacts.
- The proposed lot sizes are wholly consistent with the planned residential density of the R3 zoned land given the yield is equivalent to an otherwise strictly compliant lot layout comprising 3 lots, but results in a better planning outcome in terms of reduced bulk and scale and overshadowing impacts to adjoining properties at the rear, and will ensure that there is not any unreasonable increase in demand for public services or public facilities.
- The variations do not result in additional floor area or an overdevelopment of the site.
- The proposal complies with relevant development controls including setbacks, building height, landscaping, private open space, solar access, visual privacy, car parking, access, stormwater and waste management.
- The proposal is in harmony with the bulk and scale of surrounding buildings and the streetscape and minimises the impacts of new development on adjoining or nearby properties from loss of privacy or acoustic amenity, overshadowing or visual intrusion.
- The proposal results in an improvement to the existing streetscape and park frontage and ensures a high visual quality of the development when viewed from adjoining properties, the adjoining public reserve to the west and the street frontage
- The proposal is consistent with the existing pattern of development and desired future character of this section of the street and the local area as shown in the aerial photo below.
- The proposal is a permitted form of development in the R3 zone and consistent with the relevant zone objectives to provide for the housing needs of the community and a variety of housing types within the medium density residential environment with excellent access to services and facilities and maintains a high level of residential amenity consistent with the existing and desired future character of the local area.
- The proposal is consistent with, and of a lesser scale and intensity of, residential development that could otherwise be reasonably accommodated noting Council has approved a total of 10 x 3-5 bedroom dwellings on the adjoining property to the east at 29-30 Park Avenue under DA15/0171 and 4 x 2-3 bedroom dwellings at 32 Joseph Street under DA18/0428.

The proposal promotes the objects of the Act in terms of the orderly and economic use and development of land in an ecologically sustainable manner and promotes the social and economic welfare of the community and a better urban environment. It is considered that compliance with the development standard is unreasonable in this instance in light of these similar applicable circumstances.

## 2.9 Director-General's Considerations

As indicated above, subclause 4.6(5) of the LEP also requires the Director-General, in deciding whether to grant concurrence, to consider the following:

*“(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,”*

The breach of height of building limit is not a matter of state or regional significance.

*“(b) the public benefit of maintaining the development standard,”*

There is a public benefit in allowing the development to proceed. The proposed development would be consistent with anticipated development for the site, comparable in character with the scale of new built form for this locality, provides a high quality design outcome and would result in an appropriate housing yield for this site and adds to housing choice.

*“(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.”*

Approval will result in a better planning outcome and would be in the public interest.

### **3.0 Conclusion and Recommendations**

The proposed residential development has been assessed against the relevant statutory provisions of clause 4.6 and this written request has provided justification that compliance with the site width development standard is unreasonable or unnecessary in the circumstances of this particular case.

Further, the proposal provides public benefits arising through employment during the construction phase and at completion and is entirely in keeping with the desired future character of the locality. The proposal represents an appropriate increase in the available housing stock that is wholly consistent with the desired medium density outcome of the locality, noting the close proximity to local train and bus services, major regional road networks, access to areas of employment, services, amenities, educational facilities, entertainment and open space. Accordingly, the justification within this written request is considered to be well founded.

