

Our Ref: 18.027  
Your Ref: DA18/0890



22 August 2019

General Manager  
Penrith City Council  
PO Box 60  
Penrith NSW 2751

**Penrith**  
Suite 5 488 High Street  
P 4731 2730

**Tamworth**  
Suite 6, 493 Peel Street

**All mail to**  
PO Box 1912 Penrith NSW 2751

Dear Sir,

**Re: Division 8.2 Review Request – DA18/0890, 36-38 Rodley Ave, Penrith**

This correspondence forms the basis of a request to review a decision relating to DA18/0890, 36-38 Rodley Avenue, Penrith, in accordance with Division 8.2 of the *Environmental Planning and Assessment Act 1979*.

Section 8.3(3) of the Act allows the applicant to amend the proposal, so long as the consent authority is satisfied that the proposal is substantially the same to that which was originally considered. In this context, discussions have been undertaken with the Council, pre-lodgement and Urban Design Review Panel meetings have been attended to and through those discussions, no concern has been raised on that point. We submit the proposed development remains substantially the same and that the amendments represented in these plans reflect design changes that will further improve the general amenity of the development. Council can have comfort that the same land use is proposed, and that the scale of the development is no greater than that which was originally proposed.

The main amendments proposed as part of this scheme include the following:

1. The building is 5 levels only. Residential units on Level 6 have been deleted.
2. Communal open space occupies the entire rooftop.
3. The rear setback to the water course boundary has been increased to 6m.
4. Side setbacks for the 'Bedroom Wings' only reduced to 4m (as supported by Gabriel Morrish in the UDRP Meeting).
5. Waste collection is on site within the basement.
6. Stormwater and flood storage design has been coordinated into the design.
7. Landscape Plan – an amended plan accompanies this submission incorporating the revised design.

We have considered below the proposed amendments in the context of the reasons for refusal issued for the original proposal.

Reason for Refusal	Comment
1. The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with the provisions of Penrith Local Environmental Plan 2010 as follows:  (i) Clause 1.2 Aims of the Plan The proposal is inconsistent with the aims of the Plan in relation to promotion of development consistent with Council's vision for Penrith, to meet the emerging needs of Penrith's communities while safeguarding residential amenity and ensuring that the development incorporates the principles of sustainable development.	The proposed design has been amended significantly from the time at which this decision was initially made. Primarily, boundary setbacks have been increased, and waste collection has been incorporated on-site. These measures will ensure the amenity of adjoining residents will be preserved.

(ii) Clause 2.3 Zone Objectives The proposal is inconsistent with the objectives of the R4 High Density Residential zone, particularly (d) The design of the proposed development does not ensure that a high level of residential amenity is achieved and maintained, and (f) to ensure that development reflects the desired future character and dwelling density of the area.	Increased setbacks and reduced height and overlooking opportunities in the amended scheme, will significantly improve the general amenity enjoyed by adjoining neighbours.
(iii) Clause 7.2 The proposal does not comply with Council's Policy in relation to overland flow management on the site.	These aspects are now incorporated into the current design documentation.
(iv) Clause 7.6 The proposal has not provided sufficient information to assess the impact of the development on salinity.	A report responding to this matter accompanies this submission.
(v) Clause 7.7 The proposal does not meet the requirements for waste and stormwater servicing.	These aspects are now incorporated into the current design documentation.
2. The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the <i>Environmental Planning and Assessment Act 1979</i> as the proposal is inconsistent with the provisions of State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development and the accompanying Apartment Design Guide as follows: ...	A revised statement against the provisions of SEPP 65 accompanies this submission. In summary, the design amendments proposed with the increased setbacks, reduced yield and on-site waste collection, will ensure these provisions are satisfied.
3. The development application is not satisfactory for the purpose of Section 4.15(1)(a)(iii) of the <i>Environmental Planning and Assessment Act 1979</i> , as the proposal is inconsistent with the following provisions of Penrith Development Control Plan 2014:	
(i) The application has not satisfied Council with respect to the requirements under Part B - 'DCP Principles', specifically:  - The proposal has not been designed with consideration for the health, recreational and social needs of residents, and the proposal does not minimise its ecological footprint or promote sustainable production and consumption	This reason for refusal has not been clarified. The proposal does incorporate a range of measures that broadly support this principle that have been accepted by the Council in other like developments.
(ii) The application has not satisfied Council with respect to the requirements under Section C1 'Site Planning and Design Principles', specifically:  - The built form and scale of the proposal does not adequately respond to the context of the site.	The amended design is intended to respond to these concerns raised.
(iii) The application has not satisfied Council with respect to the requirements under Section C5 'Waste Management', specifically:  - The proposal provides for street collection and waste bin storage rooms on the ground floor.	On site collection is now proposed as part of this amended design.
(iv) The application has not satisfied Council with respect to the requirements under Section C6 'Landscape Design', specifically:  - The proposal does not include landscaping to the site that responds to the context of the site or complements the built form or minimises the impacts of the scale of the development.	An amended landscape plan accompanies this submission. We submit this plan responds to this reason for refusal.
(v) The application has not satisfied Council with respect to the requirements under Section C10 'Transport, Access and Parking', specifically:	

<ul style="list-style-type: none"> <li>- The indented bay for waste collection is not supported.</li> </ul>	<p>On site waste collection is now proposed within these amended plans.</p>
<p>(vi) The application has not satisfied Council with respect to the requirements under Section C13 'Infrastructure and Services', specifically:</p>	
<ul style="list-style-type: none"> <li>- The proposal does not meet the requirements for engineering works in relation to the stormwater easement.</li> </ul>	<p>Full documentation in relation to these matters has now been provided and accompanies the application.</p>
<p>(vii) The application has not satisfied Council with respect to the requirements under Section D2 'Residential Development', specifically:</p>	
<ul style="list-style-type: none"> <li>- Clause D2.5.5 The landscaped area does not meet the minimum 35% required for the site. The landscaping provided is compromised by servicing requirements.</li> </ul>	<p>An amended landscape plan accompanies this submission responding to Council's concerns. We are advised that the proposal may not require a substation to be constructed on the site. Whilst this has been allocated space on the accompanying plans, that space may revert to landscaped open space in the event it is confirmed the substation is not required.</p>
<ul style="list-style-type: none"> <li>- Clause 0 2.5.8 The proposal does not achieve a high level of visual or acoustic privacy for future occupants or adjoining neighbours.</li> </ul>	<p>Increased setbacks now provide ample separation and in turn, preserve the amenity currently enjoyed by adjoining neighbours.</p>
<p>Clause D2.5.9 The proposal results in overshadowing of the private open space of adjoining development.</p>	<p>Revised shadow diagrams based on the current scheme demonstrate that this aspect of the development is acceptable.</p>
<p>4. The application is not satisfactory for the purpose of Section 4.15(1)(a)(iv) of the <i>Environmental Planning and Assessment Act 1979</i> as the proposal was not accompanied by all of the information as required under Schedule 1 Forms of the Regulations or as required to properly consider the proposal, as follows:</p> <ul style="list-style-type: none"> <li>- Clause 50 (1A)(1AB) of the <i>Environmental Planning and Assessment Regulation 2000</i> requires a statement from a qualified designer to be submitted.</li> <li>- An updated BASIX Certificate.</li> <li>- A Geotechnical Report.</li> </ul>	<p>These inputs are now provided as part of this application.</p>
<p>5. The development application is not satisfactory for the purpose of Section 4.15(1)(b) of the <i>Environmental Planning and Assessment Act 1979</i> in terms of the likely impacts of that development including those related to:</p> <ul style="list-style-type: none"> <li>(i) Streetscape and character,</li> <li>(ii) Context and landscaping,</li> <li>(iii) Bulk and scale,</li> <li>(iv) Solar access and privacy impacts,</li> <li>(v) Amenity, safety and security impacts related to the ground floor layout,</li> <li>(vi) Communal open space,</li> <li>(vii) Access, traffic and parking,</li> <li>(viii) Energy efficiency,</li> </ul>	<p>The revised proposal is considered to be acceptable given the increased setbacks, reduced yield, and the relocation of the waste collection solution on to the site.</p>



(ix) Waste management impacts.

6. The application is not satisfactory for the purpose of Section 4.15(1)(c) of the <i>Environmental Planning and Assessment Act 1979</i> as the site is not suitable for the scale of the proposed development.	The site is zoned to allow for this proposal, and the revised scheme forming this application demonstrates there are no unacceptable impacts arising from it.
7. Based on the above deficiencies and submissions received, approval of the proposed development would not be in the public interest pursuant to Section 4.15(1)(d) of the <i>Environmental Planning and Assessment Act 1979</i> .	Given the amendments made, the development is considered to be in the public interest and can be supported by Council accordingly.
8. The application fails to satisfy the development standard for building height and the request for a variation to the development standard is not supported because the proposed development will not be in the public interest as it will not ensure a high level of a residential amenity, provide a high quality urban form or reflect the desired future character of the area, being the objectives of the zone and height standard	The attached Request to Vary a Development Standard under Clause 4.6 of the LEP respond to this matter in more detail.

We trust this satisfies the concerns raised by Council in the original application. Please contact me on 0401 449 101 if you would like any further information.

Sincerely

**Stimson & Baker Planning**



**Warwick Stimson RPIA**

Director

Att: Request to Vary Development Standard under Clause 4.6 of the Penrith LEP



## **Amended Clause 4.6 Variation Request**

Proposed Demolition of Existing Structures and Construction of a Residential Flat  
Building

36-38 Rodley Ave, Penrith

August 2019

Inglow Investment Two Pty Ltd

Stimson & Baker Planning  
ACN: 167 096 371  
ABN: 34 824 672 534

Suite 5,  
488 High Street  
Penrith NSW 2750

P 02 4731 2730  
F 02 4731 2370

[www.stimsonandbaker.com.au](http://www.stimsonandbaker.com.au)

This submission has been prepared by



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**Warwick Stimson** MP/IA CPP  
Director



This submission dated August 2019 is provided to 'the client' exclusively. No liability is extended for any other use or to any other party. Whilst the report is derived in part from our knowledge and expertise, it is based on the conditions prevailing at the time of the report and upon the information provided by the client.

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## 1 Introduction

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The NSW planning system provides flexibility in planning controls by providing the ability for a council to vary development standards in certain circumstances.

Stimson & Baker Planning has been engaged by Inglow Investment Two Pty Ltd to prepare a request to vary one development standard in respect of its proposed residential flat building at 36-38 Rodley Avenue, Penrith. This submission accompanies plans that have been separately submitted to Council.

The development proposes a breach in the *height of building* development standard and this submission aims to address those aspects of the application.

The proposed breach in height is considered to be minor, with the resultant built form not resulting in any unacceptable visual impact, or any unacceptable impacts on neighbouring properties. The breach arises from the need to raise the freeboard of the building to accommodate local overland flooding.

It is also noted that the breach occurs in a very localised position on the roof top, being the lift overrun and pergola. This is a very minor portion of the entire site.

It is considered there are sufficient environmental planning grounds to support the variations. Primarily these include the ability for the development to, at the same time, accommodate the physical constraints of the land, whilst also delivering the envisaged built form and housing numbers within the zone in this locality.

Significantly, we note the approach of Council to new development in this locality and cite specific examples of breaches that have been supported by the relevant consent authority. The proposed breach is consistent with that approach.



## 2 Variation Consideration

The NSW Land and Environment Court has resolved a number of matters that have guided the way in which requests to vary development standards are to be considered by the consent authority.

### 2.1 NSW Land and Environment Court: Case Law (tests)

The key elements are outlined below.

#### Winten v North Sydney Council

The decision in *Winten v North Sydney Council* established the basis on which the former Department of Planning and Infrastructure's Guidelines for varying development standards was formulated.

The questions that needed to be considered included:

- Is the planning control in question a development standard?
- What is the underlying object or purpose of the standard?
- Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP&A Act?
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)? and
- Is the objection well founded?

#### Wehbe v Pittwater [2007] NSW LEC 827

The decision in *Wehbe v Pittwater [2007] NSW LEC 827* expanded on the findings in *Winten v North Sydney Council* and established a five (5) part test to determine whether compliance with a development standard is unreasonable or unnecessary considering the following questions:

- Would the proposal, despite numerical non-compliance be consistent with the relevant environmental or planning objectives;
- Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard is unnecessary;
- Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable;
- Has Council by its own actions, abandoned or destroyed the development standard, by granting consents that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable; or
- Is the "zoning of particular land" unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable and unnecessary as it applied

to that land. Consequently, compliance with that development standard is unnecessary and unreasonable.

*Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*

In the matter of *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater [2007] NSW LEC 827* and demonstrate the following:

- Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
- Whether there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
- That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs; and
- All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential

*Moskovich v Waverley Council [2016] NSWLEC 1015*

The court further reflected on the recent Four2Five decisions and noted:

- Clause 4.6(3)(a) is similar to clause 6 of SEPP 1 and the *Wehbe* ways of establishing compliance are equally appropriate. One of the most common ways is because the objectives of the development standard are achieved.
- Whereas clause 4.6(4)(a)(ii) is worded differently and is focused on consistency with objectives of a standard. Consequently, a consideration of consistency with the objectives of the standard required under clause 4.6(4)(a)(ii) to determine whether non-compliance with the standard would be in the public interest is different to consideration of achievement of the objectives of the standard under clause 4.6(3).
- The written request should address the considerations in the granting of concurrence under clause 4.6(5).

## 2.2 What is the name of the environmental planning instrument that applies to the land?

Penrith Local Environmental Plan 2010.

## 2.3 What is the zoning of that land?

The subject site is zoned R4 High Density Residential.

## 2.4 What are the objectives of the zone?

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that a high level of residential amenity is achieved and maintained.*
- *To encourage the provision of affordable housing.*
- *To ensure that development reflects the desired future character and dwelling densities of the area.*

The proposed development is consistent with the objectives in that:

- The additional high-density development in this locality is consistent with the zoning controls and will contribute to the housing needs and diversity in the area.
- As the proposal largely satisfies the planning controls, SEPP 65 and AGD provisions, a high level of amenity will be provided for.
- The proposal is consistent with the future character of this high-density locality.

## 2.5 What is the development standard being varied?

Height of Building

## 2.6 Under what clause is the development standard listed in the environmental planning instrument?

Clause 4.3 Height of Building.



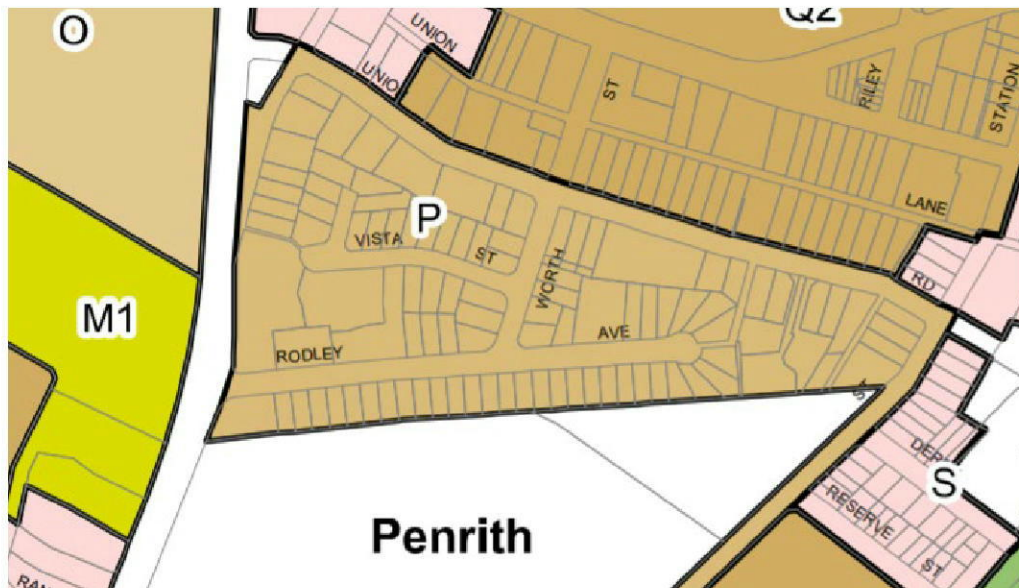


Figure 1: Height of Buildings Map (extract Penrith Local Environmental Plan 2010)

## 2.7 What are the objectives of the development standard?

Clause 4.3 Height of Building objectives include:

- (a) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*
- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas, including parks, streets and lanes,*
- (c) *to minimise the adverse impact of development on heritage items, heritage conservation areas and areas of scenic or visual importance,*
- (d) *to nominate heights that will provide a high quality urban form for all buildings and a transition in built form and land use intensity.*

## 2.8 What is the numeric value of the development standard in the environmental planning instrument?

The maximum building height is 18m.

## 2.9 What is proposed numeric value of the development standard in your development application?

The proposal exceeds the building height at varying heights across the building to accommodate the design and to fully utilise the building envelope. Plan DA11 details the height breach across the roof top area.

As has been the case with other residential development in Penrith, the levels associated with localised overland flow flooding require the floor levels of buildings to be raised. In this instance, we are advised that the building has had to be placed 650mm above the street RL. In addition to that, the architect has designed a floor to floor height of 3.1m (instead of the usual 3m) in order to guarantee 2.7m internal height clearances.

The end result is that the lift overrun rises above the 18m height limit by 2.79m (15.5%). The north-western corner exceeds the height limit by 1.47m (8.2%), the north-eastern corner by 1.6m (8.8%), the south-western corner by 1.63m (9%) and the south-eastern corner by 1.52m (8.4%).

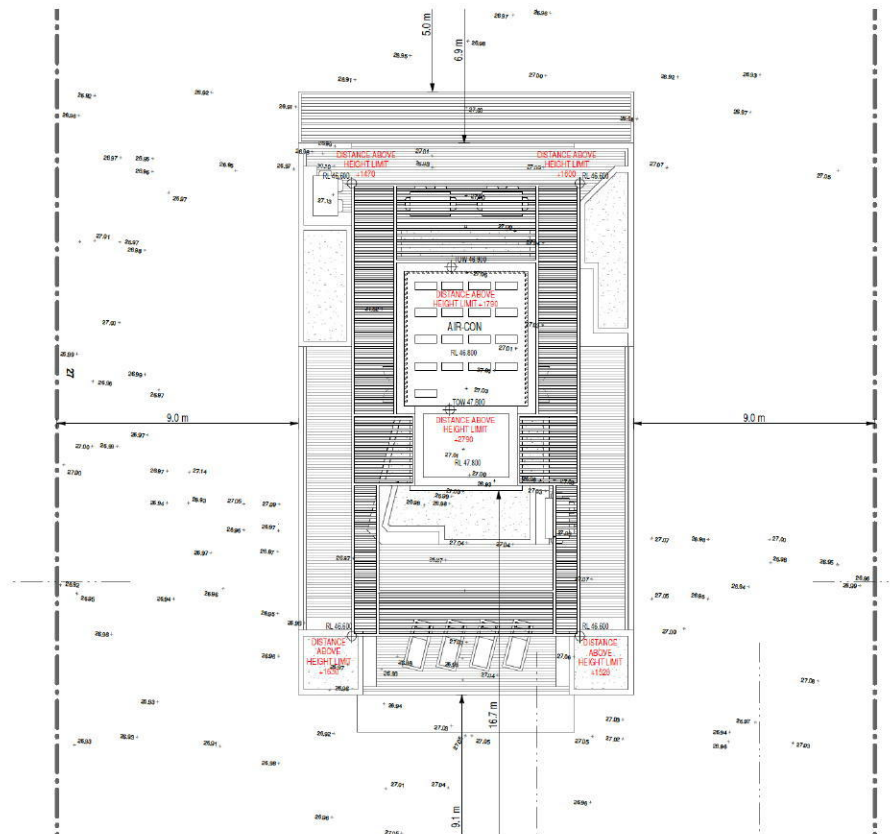
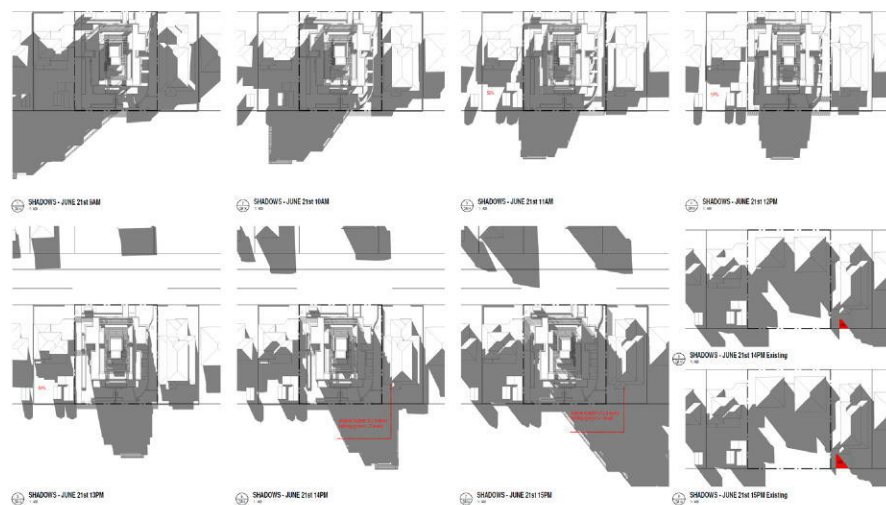


Figure 2 Height limit breaches

## 2.10 What is the percentage variation (between your proposal and the environmental planning instrument)?

In simplistic terms, the maximum variation to the height of building control (top of lift) is 15.5% although this is limited to a very small area of the roof top that is centrally located. The remaining breaches range between 8.2% and 9.9%.





- The proposal does not impact on the visual amenity, reduces views or minimises loss of privacy or solar access.
- There is no heritage item on the site.
- The proposal provides a high-quality urban form and provides a building that can contribute to a varying skyline given the recent increase in height limit in this area.
- The high-quality form of the proposal has been supported through the Council's own Urban Design Review Panel process.
- It is unreasonable to apply the height limit across the site in this case as the proposal does not impact on the visual amenity nor does it reduce views or minimises loss of privacy or solar access. The orientation of the building, the stepping of the building and façade treatment minimises shadow impacts with the majority of the shadow falling on the Paceway site to the south.
- The proposed development meets the objectives of the zone and the height of building clause, it contributes to the provision of necessary land uses within the Penrith City in locations in close proximity to services and facilities.

Given the spatial context of the building, the proposed encroachment will not present as an overly perceptible element. It is considered that the proposal is in the public interest and strict compliance with the standard in this instance is both unreasonable and unnecessary.

## 2.12 How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act?

Section 5(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979* provide:

*The objects of this Act are:*

(a) *to encourage:*

- (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) *the promotion and co-ordination of the orderly and economic use and development of land,*
- (iii) *the protection, provision and co-ordination of communication and utility services,*
- (iv) *the provision of land for public purposes,*
- (v) *the provision and co-ordination of community services and facilities, and*
- (vi) *the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and*
- (vii) *ecologically sustainable development, and*
- (viii) *the provision and maintenance of affordable housing, and*

(b) *to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and*

(c) *to provide increased opportunity for public involvement and participation in environmental planning and assessment.*

It is submitted that the height encroachment still maintains an appropriate bulk and scale, and also maintains the objectives of the clause within the LEP that relate to the zone and the height of building. The objects of the Act are not hindered through the proposed variation being supported.

Complying with the height will not alter the outcome in relation to visual bulk, scale, amenity and solar access and it is considered the proposal provides a good planning outcome. To require compliance with the height limit, an entire level of apartments would need to be deleted.

It is against the objects of the Act and not in the public interest to comply with the 18m height limit as this would not be orderly and economic use of the land and its would reduce the opportunity for additional residential accommodation to be provided within the Penrith City Centre.

## 2.13 Is the development standard a performance-based control?

No, it is prescriptive.

## 2.14 Would strict compliance with the standard, in your particular case, would be unreasonable or unnecessary?

### 2.14.1 Height of Building

Strict compliance with the standard in this particular case is unreasonable and unnecessary as the variation sought as part of this development application is considered appropriate in the context and setting of the site. The proposed development meets the objectives of the zone, it meets the objectives of the height of buildings clause and it is considered that the objectives of the Act would not be undermined by supporting the variation.

It is submitted that the development standard is unnecessary given the negligible resultant environmental impacts arising from the proposal and is unreasonable given the benefits that the development as proposed would bring to the City of Penrith, over a strictly compliant development.

In supporting the variation, it is noted that the public interest is retained in that some key objectives of the planning controls have been achieved as a result of the development. Those include:

- Compliance with the objects of the zone.
- Compliance with the objects of the development standard.
- Consistent with all other planning controls applicable to the site.
- Building Alignment to existing context - Preparing for future context and potential neighbouring buildings
- Minimal Shadow Impacts as it has the Paceway site located to the south

It is also important to note the consistent approach by Council to the issue of height breaches in this locality. Often justified on the same basis, relating to responding to overland flood controls in the locality, the relevant consent authority has supported several breaches of this nature.

The following diagram shows the breaches that have occurred in the locality. The average height of these developments is 20.4m, and the proposed development is below this.





## 2.15 Are there sufficient environmental planning grounds to justify contravening the development standard?

There are a number of positive environmental planning grounds that arise as a result of this development, and specifically the breach in the height limit, as follows.

1. The physical constraints are accommodated on the site whilst still achieving the development outcomes sought under the LEP.
2. High quality design being achieved through the Council Urban Design Review Panel process.
3. The Council has acknowledged the specific development constraints within the locality and has responded by supporting reasonable variations to the height limit in order to support appropriate development within this zone.

### 3 Specific consideration of cl4.6(4) of Penrith Local Environmental Plan 2010

A recent decision of the NSW Land and Environment Court (*Initial Action Pty Ltd v Woollahra Municipal Council*) further clarified the correct approach to the consideration of Clause 4.6 requests. This included clarifying that the Clause does not require that a development that contravenes a development standard must have a neutral or better environmental planning outcome than one that does not.

Clause 4.6 of a standard instrument LEP permits a consent authority to grant development consent for development that would contravene a development standard where the consent authority is satisfied that:

- cl4.6(4)(a)(i): a written request from the applicant adequately demonstrates that compliance with the development standard is unreasonable or unnecessary (cl4.6(3)(a)), and that there are sufficient environmental planning grounds to justify the contravention (cl4.6(3)(b)), and
- cl4.6(4)(a)(ii): the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development within the relevant zone.

To clearly consider this case and its applicability to the proposed development, the clauses have been tabulated below, and considered against the above Court case, the proposal, and this very submission.

Penrith Local Environmental Plan 2010	36-38 Rodley Avenue, Penrith
(4) Development consent must not be granted for development that contravenes a development standard unless:	
(a) the consent authority is satisfied that:	
(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and	Subclause (3) requires the following to be demonstrated for the purposes of this consideration:
	(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.
	In respect of the <b>height of building</b> variation, the reasons why compliance is unreasonable or unnecessary are provided in Section 2.11.1.
	We also note that the objectives of the standards have been achieved notwithstanding the non-compliance with those standards ( <i>Wehbe v Pittwater Council</i> ) as follows:
	<b>Height of Building</b>
	<ul style="list-style-type: none"> <li>• The height, bulk and scale of the proposal is consistent with that of the desired future character of</li> </ul>



the locality, as demonstrated in the accompanying architectural plans.

- There will be no loss of views to or from public areas, nor any loss of solar access.
- The height proposed is considered to result in a building that will present as a high-quality architectural element in this locality, represents a scale and bulk generally consistent with the desired future character.
- The proposed development is able to achieve design excellence, as evidenced by progressing through Council's own Urban Design Panel.

The objective of each of the development standards can be satisfied through this development as proposed.

It follows that this aspect of Clause 4.6 has been satisfied.

As to there being 'sufficient environmental planning' grounds to justify the variation, the focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. In this context the following is submitted in relation to the two development standards:

#### **Height of Building**

The position we submit has been (we believe) adequately presented earlier in this submission. In summary, strict compliance of the development standard would limit the amount of residential development envisaged for this precinct. The benefits outweigh the non-compliance, noting the non-compliance is limited to small areas of the buildings roof, and there being no perceptible impacts arising as a result. We also note the ability for the proposal to achieve a high-quality design as demonstrated by the positive comments from Council's own Urban Design Panel. We believe that we have adequately addressed this matter.

(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*

The proposed development is consistent with both the development standards that are proposed to be varied, as well as the objectives of development in the zone. The development is therefore in the public interest (see para 27 of the judgement).

Given the assessment above, it is considered the Clause 4.6 is well founded and can be supported in the context of this most recent court case.

## 4 Conclusion

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This submission provides the required form requesting a variation to the height of building development standard within the LEP. It is considered that the proposed variation is warranted, and that the development as proposed provides a better planning outcome as detailed in this request.

Compliance with the development standard in relation to the maximum height of building control is unnecessary and unreasonable in the circumstances of this development and there are sufficient planning grounds to justify the variation. It satisfies the consideration required under Clause 4.6 of the LEP and can be supported on that basis.