# STATEMENT OF ENVIRONMENTAL EFFECTS

For a Proposed Residential Flat Building at 28-32 Evan St, Penrith, NSW, 2750

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Revision: A_DA Submission

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## Revision History

| Version | Author | Reviewed | |
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## Authorship

This statement is prepared by Kim Rothe, Bachelor of Applied Science (Environmental Science) (Hons) of Matsuplan Planning Services. 23 Years of Experience in Assessment Planning both in a public and private capacity.

# CONTENTS

## 1. INTRODUCTION

This Statement of Environmental Effects is prepared for the consideration of Penrith Council in support of development of three existing allotments for a new residential flat building. It involves the demolition of the three existing dwelling houses and construction of a six storey residential flat building comprising 40 apartments and basement parking for 49 cars, at 28-32 Evan Street, Penrith. The purpose of this report is to describe the development and review the relevant planning requirements relating to the proposal.

The proposal has been designed to relate to its site, surrounding uses, and minimise impacts to the surrounding residential or heritage affected premises. It also provides for an assessment of the proposal, having regard to relevant legislation and the Penrith Council Policies. The preparation of this Statement is pursuant to Section 4.12 of the *Environmental Planning and Assessment Act 1979* (As amended) and Clause 50 of the *Environmental Planning and Assessment Regulation 2000*.

In the preparation of this Statement of Environmental Effects the site considers the following drawings and documents:

- Architectural Plan suite prepared by Morson Group PTY LTD
  - DA00 – Views and Schedules
  - DA01 – SEPP 65 Compliance Schedule
  - DA02 – SEPP 65 Design Criteria and Objectives
  - DA03 – Demolition Plan
  - DA04 – Site Plan
  - DA05 – DA11 – Floor Plans Ground level to Level 5 and Roof
  - DA12 – DA13 – Basement 1 and 2
  - DA14 – DA20 – Sections 1 to 7
  - DA21 – DA24 – Elevations
  - DA25 – Shadows
  - DA27 – Views
  - DA28 – Detailed slab Section
  - DA29 – Detailed Section North

Other plan documentation included in the package includes:

- Survey Plan, by Higgins Surveyors;
- BCA Assessment Report;
- Landscape Plan, by Conzept Landscape Architects;
- Stormwater Drainage Layout Plans and Stormwater Drainage Report, by LAM Consulting;
- Statement of Compliance Access for People with a Disability, by Accessible Building Solutions;

- BASIX Certificate and NatHERS Certificate, by Eco Certifiers;
- Traffic and Parking Assessment Report;
- Statement of Heritage Impact by Heritage 21 dated March 2019
- Construction and Demolition Waste Management Plan;
- Operational Waste Management Plan, by Elephants Foot; and

Documentation directly attached to this Statement of Environmental Effects includes:

- Clause 4.6 Exception to Development Standards submission relative to Height of Buildings at Clause 4.3 of Penrith Local Environmental Plan 2010 (LEP 2010), by MPS;
- Site Isolation Documentation, letters of offer and correspondence regarding the purchase of 34 Evan Street, Penrith, by Agile Conveyancing.
- Quantity Surveyors Cost Summary Report, by WT Partnership;

## 2. CAPITAL INVESTMENT VALUE

As detailed in the associated Development Cost Report by WT Partnership submitted separately, the project has a development cost of $22,600,000.00. Therefore, the Penrith Council Local Planning Panel is the consent authority.

## 3. THE LOCALITY AND THE SITE

The site comprises three allotments on the eastern side of Evan Street near the intersection of Evan Street with Lethbridge Street

The legal property descriptions of the sites are as follows:

- Lot A in Deposited Plan No. 324069, 28 Evan Street; Penrith
- Lot A in Deposited Plan No. 355720, 30 Evan Street; Penrith
- Lot 1 in Deposited Plan No. 510281, 32 Evan Street; Penrith

The overall cumulative subject site has an approximate primary frontage of 49.18 metres to Evans Street, and a length of 34.28 m along the northern boundary, and a length of 32.12 m along the southern boundary and rear eastern boundary of 49.23 m.

Each individual allotment which comprise the site contain single detached dwellings with some limited trees principally in the front yards of the lots. Vehicular access is from Evan Street only.

Adjoining development includes dwellings to the north and south, a physiotherapy premises in a former dwelling to the south east and cemetery attached to the rear of Penrith St Stephens Church which fronts high street.

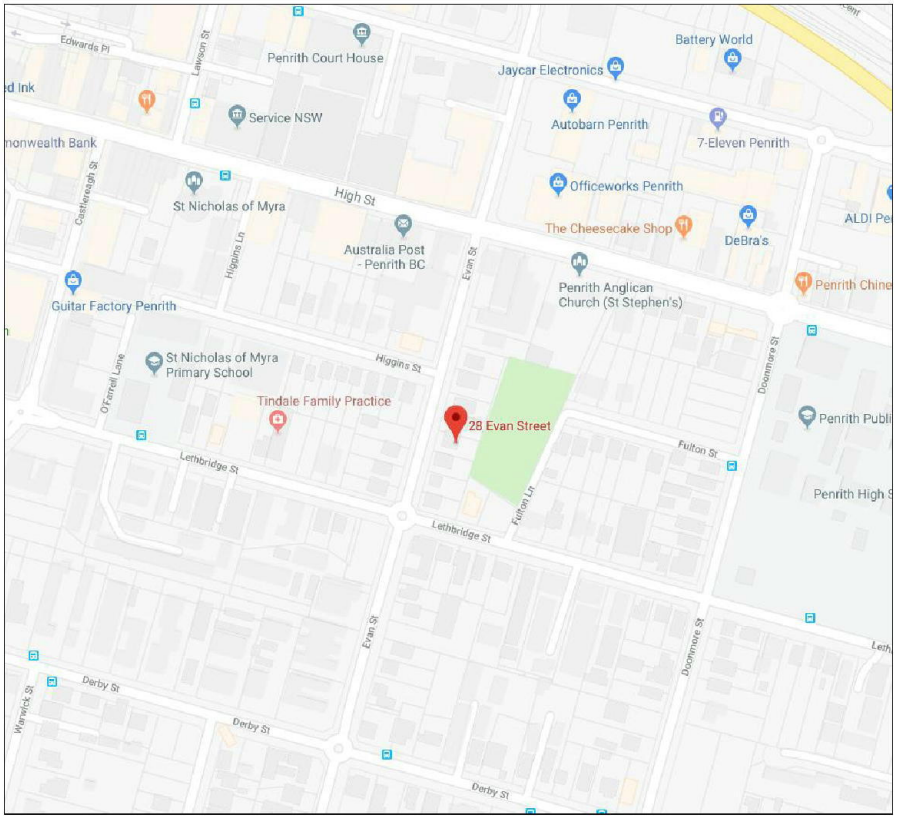


***Figure 1:*** Location Plan of the site (Source Google.com)


***Figure 2:*** Aerial of the site (Source Google.com)

The immediate locality is principally low density single dwellings interspersed with some medical facilities in former dwellings. Further norther and north west, the residential density increases into medium density forms until transitioning into the Penrith City centre commercial district and train interchange.

***Figure 3:*** 32 Evan Street looking north (Source Google.com)

***Figure 4:*** 28 Evan Street looking south (Source Google.com)

The site is not a heritage item nor located in an indefinable conservation area however does back onto an identified Heritage item of St Stephen's Anglican Church, Hall and Cemetery (I206) at 258-280 High Street. The item is identified as being an item with local Heritage significance.

## 4. BACKGROUND / RELEVANT HISTORY

Relevant history

This application is preceded by an earlier application DA17/1359 Demolition of Existing Structures & Construction of Six (6) Storey Residential Flat Building containing 54 Apartments & Three (3) Levels of Basement Car Parking. The application was lodged 22 December 2017. Council raised a number of issues associated with the proposal in a letter dated 21 May 2018. The client nominated to withdraw the application.

The subject application is a similar application however the architectural suite is prepared by a new design firm and has had multiple consultations with Council to respond to the issues as raised in the preceding application.

Initial consultation on the revised design occurred on 14 November 2018 for Councils Urban Design Review Panel. Written feedback was provided by Council and included concerns relating to:

- Context and neighbourhood character
- Appropriateness of development to future character
- Built form, scale and character matter including setbacks, site isolation to 95 Lethbridge Street, front/side setback variations.
- Building height variation
- Landscaping and Open Space issues including heritage matters, waste collection location, deep soil plantings and locations.
- General apartment amenity design issues.

A further pre-lodgement meeting occurred on 22 November 2018 with written follow up advice provided on 28 November 2018. This included matters including:

- Concerns relating to site isolation
- Geotechnical report required
- Height Variation request required
- SEPP 65 statement required
- Contamination report required
- Acoustic impacts / noise report
- Waste management, Waste water management details required.
- Engineering (Stormwater, Earthworks and Traffic) matters and criteria provided.
- BCA report required details fire safety, accessibility
- Bin requirements detailed including garbage truck collection and waste chute matters.

Prior to lodgement of this subject application, a second Urban Design Review Panel Advice meeting occurred at Council on 20 March 2019 with further written advice provided including

- Concerns maintained of the extent of variation to Clause 4.3 Building Height control

- Clause 4.6 is insufficient and does not address key Land and Environment Court judgements.
- Landscaping character is improved with refinements recommended to basement configuration for further deep soil opportunities.
- Relocation of substation recommended
- Landscaping plans require significant amendment to reflect the landscape character of suburban Penrith.
- Ground floor communal area to be update to incorporate a room and BBQ facilities
- Southern landscaped area more appropriate as a planted area and not an active usable space. Roof space area recommended in lieu of less available ground areas for communal space.
- Commentary provided on solar access
- Alternative design treatments recommended to be applied to northern elevation of apartments on level 3.
- Heritage report required to embellish on current built form and reasoning why current design is suitable.

The as submitted architectural package, associated report and plans have considered and responded to the as raised concerns.

## 5. DESCRIPTION OF PROPOSAL

The proposal involves the demolition of the three existing dwelling houses and the construction of a five to six storey residential flat building containing 40 apartments with the following unit mix:

| Unit type | Number | Percentage |
|---|---|---|
| 1 bedroom | 9 | 22.5% |
| 2 bedroom | 29 | 72.5% |
| 3 bedroom | 2 | 5% |
| **Total** | 40 | 100% |

Four apartments within the proposal are adaptable.

The development also proposes two (2) basement levels to contain the car parking and principle services and associated storage and service areas with parking for forty nine (49) cars inclusive of:

- Four (4) disabled spaces,
- Six (6) visitor spaces.
- One (1) washing / service bay

The basement area also has sufficient space and clearance for one medium rigid garbage vehicle to internally collect rubbish in the basement or provide for an internalised furniture loading area.

In detail the floors are described as follows:

**Demolition**

All existing buildings and structures will be demolished as part of the proposed development. Please refer to the Demolition Plan prepared by Morson Group Architects. All demolition work will be undertaken in accordance with Clause 92 of the Regulation requiring the consent authority to consider *AS 2601 - 1991: The Demolition of Structures*.

**Tree Removal**

The proposal includes the removal of 3 trees significant from the subject site. The trees are not home to any significant habitats of flora and fauna and are either not suitable to be considered for retention or require removal to facilitate the building envelope of the proposed development. No adverse impacts in relation to habitats or amenity is likely, as these trees will be replaced as part of the proposed landscape treatment.

**Excavation and Filling**

Excavation is proposed for the subject site to provide two levels of basement car parking, residential storage, vehicle manoeuvring area and servicing. At its deepest point, excavation will occur to a level of RL29.455. This will involve an excavation area of approximately 7800 $m^3$ of material from the site. Generally, the proposed development will not have any detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

**Basement Car Park**

The vehicle access to the site in on the southwestern side of the frontage to Evan Street. The pedestrian entrance is in about the middle of the frontage and includes an accessible ramp and path up to the main entrance to the building at Ground level.

A two-way ramp curves down to the first basement level where there is access to a loading facility, four (4) disable car parking spaces and eight (8) car parking spaces (total 12 spaces). There is also access at this level to the main garbage room, the lift and fire stairs, storage and on site detention.

The ramp winds down another level to the lower basement level of the building. The lower basement comprises the lift, fire exit stair and parking for thirty-five (35) cars. It is to be noted that the footprint of the lower basement is larger than the upper basement level principally over the east side of the footprint. Above the level basement at this point is further deep soil planting.

There are dedicated rooms for residential storage on level 1 as well as a separate bicycle storage area

**Ground Floor**

This level is at street level and includes the main vehicular and pedestrian entrances to the building.

This level also contains four (4) apartments consisting of one (1) x 1 bedroom apartment and three (3) x 2 bedroom apartments. Three units directly face Evan Street. Two (2) of the apartments are adaptable. All ground floor apartments have outdoor terraces.

This level also contains the common lift facility, fire stairs, pump and services rooms. There is also a separate room for residential storage.

The pedestrian entry is identifiable from the street and has generous proportions.

There is access at the rear of this level towards the rear of the site with a dedicated common room (26.5 $m^2$) and part covered, part open communal open space area at the rear of the building that has a total area of 246 $m^2$.

**Level 1**

There are eight (8) apartments on this level consisting of one (1) x 1 bedroom apartment and seven (7) x 2 bedroom apartments. Each apartment has a private balcony which exceeds a minimum of 10 $m^2$.

Service risers, Lift and fire stair access are also provided. The corridor ends to the north and south are recessed from their principle building facades.

**Level 2**

There are eight (8) apartments on this level consisting of one (1) x 1 bedroom apartment and seven (7) x 2 bedroom apartments. Each apartment has a private balcony which exceeds a minimum of 10 $m^2$.

Service risers, Lift and fire stair access are also provided. The corridor ends to the north and south are recessed from their principle building facades.

**Level 3**

There are eight (8) apartments on this level consisting of one (1) x 1 bedroom apartment and seven (7) x 2 bedroom apartments. Each apartment has a private balcony which exceeds a minimum of 10 $m^2$.

Service risers, Lift and fire stair access are also provided. The corridor ends to the north and south are recessed from their principle building facades.

**Level 4**

There are six (6) apartments on this level consisting of two (2) x 1 bedroom apartments, two (2) x 2 bedroom apartments and two (2) x 3 bedroom apartments. Each apartment has a private balcony which exceeds a minimum of 10 $m^2$. The three bedroom apartments have a secondary balcony.

Service risers, Lift and fire stair access are also provided. The corridor ends to the north and south are recessed from their principle building facades.

The foot print of this floor is reduced from the levels below.

**Level 5**

There are six (6) apartments on this level consisting of three (3) x 1 bedroom apartments and three (3) x 2 bedroom apartments. Each apartment has a private balcony which exceeds a minimum of 10 $m^2$.

Service risers, Lift and fire stair access are also provided. The corridor ends to the north and south are recessed from their principle building facades.

The foot print of this floor is reduced from the levels below.

**Roof Level**

There is no direct access to the principle roof level. The highest structural feature will be the lift overrun at RL 55.8 but well recessed from the principle roof edge. The visible roof parapet will be RL54.9.

**Materials and Finishes**

The materials and finishes include a combination of face brick, rendered and painted masonry walls. Windows and main doors to be aluminium framing and privacy screens to also be composed of Aluminium. The balustrades to the balconies and terraces are principally glass

Anodised aluminium windows frames and external doors are proposed in a colour to complement the colours of the building.

Details of the materials and colours are shown on Drawing Elevations

**Works on Council Property**

The proposal will require removal of the existing residential vehicular crossovers and construction of a new principle vehicular crossover into the basement and pedestrian connection. Details of the works will be provided to meet Council's minimum engineering standard.

**Utilities**

The utility services available to the site including electricity (including a new electricity substation), telecommunications, sewer and stormwater may require some augmentation. It is not anticipated that the proposal will have an adverse impact on the provision or availability of these services.

**Waste**

A Waste Management Plan has been prepared for the demolition, construction and operational phases of the development and is included in this application. The building can comply with any appropriate condition of consent imposed in relation to waste management.

**Stormwater**

A stormwater management system has been developed to accommodate the development works, as well as comply with Council's requirements. This includes provision for *Water Sensitive Urban Design (WSUD).* A Stormwater Management Report and Plans have been prepared by LAM Consulting Engineers and included with the application.

## 6. ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

The following matters are to be considered in the assessment of this development application under Section 4.15 of the Environmental Planning & Assessment Act, 1979 (As amended).

## 6.1 SECTION 4.15(1)(a) ENVIRONMENTAL PLANNING INSTRUMENTS

### 6.2 Integrated Development

The proposal does not constitute Integrated Development and does not require concurrent approval from any other State Government Bodies.

### 6.3 Relevant State Instruments and Legislation

**State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development**

The proposed development is subject to the provisions of SEPP 65 because in accordance with Clause 4(b) the policy applies to the erection of a new residential flat building comprising 3 or more storeys and 4 or more dwellings, whether or not the building includes uses for other purposes, such as shops and is therefore subject to the SEPP.

This Policy aims to improve the design quality of residential flat development to:

- Ensure such buildings contribute to sustainable development
- Provide sustainable housing in social and environmental terms.
- Achieve better built form and aesthetics of buildings, streetscapes and the public spaces they define.
- Better satisfy the increasing demand, changing social and demographic profile of the community.
- Maximise amenity, safety and security for the benefit of occupants and the wider community.
- Minimise the consumption of energy from non-renewable resources

To support these aims the SEPP introduces 9 design quality principles. These principles do not generate design solutions but provide a guide to achieving good design and the means of evaluating the merit of proposed solutions.

An assessment has been made of the proposal against the relevant design quality principles of Schedule 1 of the SEPP as well as consideration of the objectives of Part 3 and Part 4 of the Apartment Design Code.

In summary, the proposed development provides a positive contribution to its locality in terms of its design quality, the internal and external amenity it provides and an increase in housing choice and stock in the area. Furthermore, the proposed development is significantly consistent with the aims and provisions of the ADG as indicated in the following ADG Compliance Table:

| **Table 1:** Assessment Against Schedule 1 Design Quality Principles | | Comments |
|---|---|---|
| **Principle 1: Context and neighbourhood character** | Good design responds and contributes to its context.<br>Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.<br><br>Responding to context involves identifying the desirable elements of an area's existing or future character.<br><br>Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.<br><br>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change. | The proposed development significantly contributes to the local context & character of the area. The site(s) have only recently undergone rezoning for high density purposes and the locality is under transition from low density to high density in accordance with the zone provisions.<br><br>By providing a diverse range of apartment options which are affordable for a wider demographic of people, it not only assists with the population intensification issue currently within Sydney, but also provides social & economic benefits for the community.<br><br>These include new homes for workers in businesses, improvement to environmental conditions ie. parks, roads (through contributions) and social interaction & participation in community events just to name a few.<br><br>The Landscaping strategy has been critically analysed to ensure that is not only enhances the existing character of the neighbourhood, but also the future character. If each development can do the same, it will create a continuous green network of planting. By doing so, it will not only acknowledge the key built & natural features of the area, but also improve them. |
| **Principle 2: Built form and scale** | Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.<br><br>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. | If you were to walk down Evan St. today, the local neighbourhood character is best summarised by single storey, detached residences with 1-2 buildings under construction.<br><br>This however is not an accurate depiction of the intended future character of Evan St. Currently, a few developments around are under construction, approved, or under review; all of which are six storey, residential flat buildings. With this in mind some critical design decisions were made to appropriately consider the future neighbourhood context. |

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| | Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook | The built form & public domain is clearly defined by a row of canopy trees lining the site. To minimise visual & acoustic privacy issues, we located all of the private balcony areas to the North-West (Evan St) & South-East (Cementery). This will provide a more desirable outlook and increase activation specifically to Evan St.<br><br>All side & rear setback are generally compliant in order to reduce overshadowing on the surrounding properties. See 'Principle 9: Aesthetics' for further information. |
| **Principle 3: Density** | Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.<br><br>Appropriate densities are consistent with the area's existing or projected population.<br><br>Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment. | Housing affordability is a key issue within Sydney that affects both Individuals & Families. Increased supply of various housing options delivered through increased density at an affordable price is key in dealing with the increased levels of densification.<br><br>The proposal aims to cater for a diverse number of individuals & families looking to get into the housing market. Located within walking distance to the Nepean hospital, it provides good potential renting possibilities for owners. Similarly, the number of jobs & community facilities within Penrith (and the greater region) continues to increase, not to mention the work being done on the local environment; specifically, at the Nepean River.<br><br>Both Penrith & Kingwood train stations are in close proximity to the development, as well as local buses which frequently operate along the Northern Rd (150m walk). |
| **Principle 4: Sustainability** | Good design combines positive environmental, social and economic outcomes.<br><br>Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs.<br><br>Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep | As Penrith has a large temperature variation between Winter & Summer Solstice, the need to provide sustainability and amenity through passive design was one of the key drivers for the proposal. By creating numerous corner apartments, it allows natural ventilation rather than mechanical heating or cooling. We have well exceeded the minimum requirement (62%) for cross ventilation in SEPP65.<br><br>Additional to this, we have ensured that over 70% of the apartments will have great access to daylight all year round. This will reduce the reliance on artificial lighting and in turn, energy.<br><br>On each level, we have provided a Bin Chute system with both Residual & Recycling options. This is to be stored within the waste room |

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| | soil zones for groundwater recharge and vegetation. | (Basement) and be collected multiple times throughout the week to ensure it is being dealt with responsively. |
| **Principle 5: Landscape** | Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity.<br><br>A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.<br><br>Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, coordinating water and soil management, solar access, microclimate, tree canopy, habitat values and preserving green networks.<br><br>Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management. | We have worked closely with our Landscape Architect to ensure that the Landscape design achieves our intent. To improve the local context, neighbourhood character screen the building & connecting an existing green network,<br><br>we propose a continuous tree row of canopy trees. They will have a mature growth height of approximately 9m, which will assist in bringing down the scale of the built form.<br><br>We have consciously created a large area of Deep Soil to the proposal. This will allow us to have significant planting in that area.<br><br>We want the Landscaping & Building to work together & complement one another. |
| **Principle 6: Amenity** | Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.<br><br>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and | Providing greater than adequate amenity for the future inhabitants of the proposal is critically important to us. The shape and general arrangement of the apartments are efficient; spacious & a large majority allow for natural ventilation.<br><br>Over 70% of the apartments will receive great access to sunlight all year round; reducing the requirements for artificial lighting.<br><br>To mitigate visual privacy concerns associated to building separation, we propose a variety of external elements which, when placed in the |

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| | service areas and ease of access for all age groups and degrees of mobility. | correct position, completely eliminate any privacy issues.<br><br>As we have carefully considered the landscaping strategy, residents are generally screened by large canopy trees, which also contribute towards shielding the hot summer sun whilst providing another level of privacy/acoustic treatment to the surrounding context. |
| **Principle 7: Safety** | Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.<br><br>A positive relationship between public and private spaces is achieved through clearly defined secure access points and well-lit and visible areas that are easily maintained and appropriate to the location and purpose. | Residents enter through a walkway through a secure, clearly defined access point & into the entry foyer. Not only will the main entry be adequately lit at night, the window provided next to the car park entry overlooks this area; encouraging passive surveillance at all times.<br><br>All of the public & private spaces are clearly defined and well integrated to the local neighbourhood. |
| **Principle 8: Housing Diversity and Social Interaction** | Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.<br><br>Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.<br><br>Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents. | We have created a distinctively different Common Areas for the residents being under cover but also open air transitioning to full outdoor area. The facilities provided in the space will suit both the existing & future social mix of the development.<br><br>There are a variety of apartment sizes in the development. They range from 50m² to 120m². Although a majority of the apartments are two bedrooms and approximately 80m², they vary significantly in terms of general arrangement, amenity, location and outlook.<br><br>The common outdoor area also includes a room and quality space for social interaction including BBQ facilities and high quality landscape setting to further promote social interaction. |
| **Principle 9: Aesthetics** | Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout | Typically, the streetscape character of the area is predominantly individual, free standing houses. Now re-zoned for increased densification, we believe it is important to bring that character |

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| | and structure. Good design uses a variety of materials, colours and textures.<br><br>The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape. | through in our facade treatment & overall building envelope.<br><br>Along Evan St, the proposal reads as four individual towers. This has been achieved by altering the scale, composition, colours & textures of each tower. The design similarly considers the internal layout & structure of the building as a priority to ensure amenity & functionally is not sacrificed.<br>The East & West elevations have been carefully considered. Using a variety of colours, horizontal & vertical elements, we have broken down the scale of the building and provided a suitable transition between the North & South facade differences. |

**Table 2: Assessment Against the Apartment Design Guide (ADG)**

| Part 3 | Required | Discussion |
|---|---|---|
| **3A-1 Site Analysis** | Each element in the Site Analysis Checklist should be assessed. | A Site Analysis plan was submitted with the application and identifies applicable elements as required within the Checklist.<br><br>A written description of the proposal and subject site are also included in this submitted Statement of Environmental Effects and accompanying plans and reports. |
| **3B1 Orientation** | Buildings to address street frontages. | Building has been designed to have principle pedestrian, vehicular and a significant number of apartments addressing Evan Street. |
| **3B-2 Orientation** | Living areas, Private Open Space (POS) and Communal Open Space (COS) to receive compliant levels of solar access.<br><br>Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20% | The proposal has been designed to maximise solar access to apartments and the common outdoor open spaces. The development achieves this by providing principle unit orientations to the east or west. The outdoor space at the ground level gets solar access from the east and north.<br><br>Adjoining dwellings and buildings to the south benefit for the subject building being sited to maximise separate to those to the south. Accordingly, adjoining sites receive adequate solar access |
| **3C-1 3C-2 Public Domain Interface** | Terraces, balconies and courtyard apartments should have direct street entry, where appropriate.<br><br>Changes in level between private terraces, front gardens and dwelling entries above the street level provide | There are courtyards attached to the street orientated ground level apartments including their adjoining living rooms which will enable passive surveillance to the street. There is however no direct access from these apartments to the street for general for basic security. |

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| | surveillance and improve visual privacy for ground level dwellings. | Balconies orientated to the street allow for further passive surveillance to the street.<br><br>The principle building entry is wide and visible from the street. Mailboxes are provided within this foyer area |
| **3D-1 Communal and Public Open Space** | Communal Open Space (COS) to have minimum area of 25% of site.<br><br>Achieve a minimum of 50% direct sunlight to the principle usable part of the communal open space.<br><br>COS to be consolidated into a well designed, usable area.<br><br>COS to be collocated with deep soil. | There is a total combined Communal Open Space Area of 250m². As a percentage of the site, this equates to 15%; falling short of the minimum requirement however the shortfall is overcome by the provision of quality spaces for the residents to socially interact.<br><br>The total Communal Open Space achieves a minimum of 50% direct sunlight to the principle, usable parts for a minimum of 2 hours between 9am and 3pm on 21 June. See 'Principle 9: Housing Diversity & Social Interaction' below for further details. |
| **3D-2 Communal and Public Open Space** | COS is to be provided with facilities such as barbeque areas and seating.<br><br>COS is to be well lit and readily visible from habitable rooms. | The principle ground floor open space area is serviced with communal facilities such as a BBQ, fixed seating and quality landscaped setting.<br><br>The principle communal spaces are accessed from communal circulation areas. Being located at he rear of the site assist in maintaining privacy and security for the residents. |
| **3D-4 Communal and Public Open Space** | Boundaries should be clearly defined between public open space and private areas. | All ground floor communal spaces are well separated from private outdoor spaces by both siting and orientation. |
| **3E-1 Deep Soil Zones** | Deep soil is to be provided at a rate 15% with a minimum dimension of 6m. | There is a total combined Deep Soil Area of 596.7 m². As a percentage of the site, this equates to 36.54%; exceeding the minimum requirement. Along the Eastern boundary, there is a large strip of deep soil which provides an opportunity for extensive planting. |
| **3F-1 Visual Privacy** | Minimum required shared separation distances between habitable rooms and balconies are to be as follows:<br>1 - 4 Storeys – 12m<br>5 – 8 storeys – 18m | Refer to discussion of this table in the Statement of Environmental Effects (SEE) for a detailed building separation discussion. |
| **3F-2 Visual Privacy** | Communal open space, common areas and access paths to be separated from private open space and windows to apartments.<br><br>Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open | Separation is provided to all communal spaces.<br><br>All apartments are separated from circulation areas and communal spaces.<br><br>All living rooms in apartments have adjoin outdoor private spaces or balconies which enhance privacy. |

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| | circulation space by the apartment's service areas.<br><br>Balconies, and private terraces should be located in front of living rooms to increase internal privacy.<br><br>Balconies are generally provided adjacent living rooms. Windows should be offset from the windows of adjacent buildings. | |
| **3G-1 Pedestrian Access and Entries** | Building entries to be clearly identifiable. | Principle building pedestrian entry identifiable from Evan Street. |
| **3G-2 Pedestrian Access and Entries** | Building access ways and lift lobbies to be clearly visible from the public domain and communal spaces. | The lift lies in the corridor which connects the foyer to the communal open space. There are minimal concealable spaces. Ground floor apartments provide for further opportunities for additional passive surveillance |
| **3H-1 Vehicle Access** | Carpark access should be integrated with the building's overall façade.<br><br>Clear sight lines to be provided for drivers and pedestrians.<br><br>Garbage collection, loading and servicing areas are screened. | The basement access point is integrated with the façade and comprises a minimal part of the overall façade presented to Evan Street.<br><br>Basement access is separated from pedestrian access.<br><br>All garbage collection will occur in the basement area. |
| **3J-1 Bicycle and Car Parking** | The site is located within 800m of a railway station and is required to comply with the car parking rates in the ADG. | The site is not within 800 metres of a railway station but is in reasonable close proximity to the Penrith Town Centre.<br><br>Notwithstanding this, an adequate amount of parking is provided to the development. |
| **3J-2 Bicycle and Car Parking** | Secure undercover bicycle parking should be provided for motorbikes and scooters. | Space in the basement area provides for bicycle parking and motorbikes. |
| **3J-3 Bicycle and Car Parking** | Carpark design and access is safe and secure A clearly defined and visible lobby area or waiting area should be provided to lifts and stairs. | Basement car parking area is secured.<br><br>The lift area is visible and separate from the main parking areas. |
| **Part 4** | Required | Discussion |
| **4A-1 Solar and daylight access** | Living rooms and private open spaces of at least 70% of apartments to receive 2 hours direct sunlight between 9am and 3pm midwinter. | A total of 28/40 apartments receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid winter. This equates to 70%.<br><br>100% of apartments receive direct sunlight between 9am and 3pm at mid winter |

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| **4A-2 Solar and daylight access** | Courtyards, skylights and high level windows (with sills of 1,500mm or greater) are used only as a secondary light source in habitable rooms. | All apartments have windows with a favourable solar orientation which do not impact upon privacy and does not rely on any high sill windows to overcome solar access matters. |
| **4A-3 Solar and daylight access** | Sun shading devices are to be utilised. | Sun shading devices are provided. |
| **4B-3 Natural ventilation** | 60% of apartments are naturally ventilated and overall depth of cross through apartments 18m maximum glass to glass line. | A total of 24/40 apartments are naturally cross ventilated. This equates to 60% and well exceeds to minimum of 60%. Due to the nature of the design and creation of corner apartments, this will provide great amenity.<br><br>There are no cross-over apartments in the proposed design. |
| **4C-1 Ceiling heights** | Finished floor to finished ceiling levels are to be 2.7m for habitable rooms, 2.4m for non-habitable rooms. | The design has allowed 3040mm between each level, all minimum ceiling heights can be achieved. Refer to detailed cross section provided in the architectural suite. |
| **4D-1 Apartment size and layout** | Apartments are to have the following min.<br>Internal floor areas:<br>1 bed – 50sqm<br>2 bed – 70sqm<br>3 bed – 90sqm<br>Additional bathroom areas increase minimum area by 5sqm. | All minimum apartment sizes are achieved |
| **4D-2 Apartment size and layout** | 1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height<br>2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window | All habitable room depths comply with the calculation (2.5 x ceiling height)<br><br>All habitable room depths, with open plan layouts, are less than 8m from a window |
| **4D-3 Apartment size and layout** | Master bedrooms to be 10sqm's and other rooms 9sqm's.<br><br>Bedrooms to have a minimum dimension of 3m.<br><br>Living rooms to have minimum width of 3.6m for a 1 bedroom unit and 4m for 2 & 3 bedrooms. | All Master Bedrooms have a minimum area of 10m². In a majority of the apartments, the second bedroom is also 10m². |
| **4E-1 Private open space and balconies** | All units to have the following primary balcony areas:<br>1 bed – 8sqm (2m deep)<br>2 bed – 10sqm (2m deep)<br>3 bed – 12sqm (2.4m deep) | All minimum primary balcony sizes are met.<br><br>Many upper floor apartments also benefit from a secondary balcony. |

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| **4E-3 Private open space and balconies** | Air-conditioning units should be located on roofs, in basements, or fully integrated into the building design. | Air-conditioning to be located on basement area, which will also help minimalize breaches to the height control. |
| **4F-1 Common circulation and spaces** | Daylight and natural ventilation to be provided to all common circulation spaces.<br><br>Maximum 8 units off single core corridor. | Circulation spaces are provided with natural light.<br><br>There are maximum 8 apartments per level. |
| **4F-2 Common circulation and spaces** | Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed.<br><br>Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled. | All apartments comply. |
| **4G-1 Storage** | In addition to storage in kitchens, bathrooms and bedrooms, the following storage is to be provided:<br>1 bed – 4m3<br>2 bed – 6m3<br>3 bed – 10m3<br>With 50% of the above to be provided within the Units. | All minimum storages are met. Refer to storage schedule in the architectural suite. |
| **4K-1 Apartment mix** | Flexible apartment configurations are provided to support diverse household types. | The development proposes a range of unit sizes, configurations and number of bedrooms to accommodate change over time and cater for differing households. |
| **4L-1 Ground floor apartments** | Direct street access should be provided to ground floor apartments. | No direct street access is provided for ground floor apartments whilst preserving the passive surveillance features oft eh development. |
| **4M-1 Facades** | Building facades to be well resolved with an appropriate scale and proportion to the streetscape and human scale. | It is understood the proposal will be subject to review by Council's Urban Design Review Panel.<br><br>The design has well-articulated and modulated facades with shadow lines, material changes and built form changes. It is submitted that the development accords with these requirements. |
| **4O-1 Landscape design** | Landscape design to be sustainable and enhance environmental performance. | Refer to the submitted landscaping plan |
| **4Q-2 Universal design** | Adaptable housing is to be provided in accordance with the relevant Council Policy. | Four (4) adaptable apartments are proposed which comply with Councils requirements. |
| **4U-1 Energy efficiency** | Adequate natural light is provided to habitable rooms. | Apartment depths and open floor plan arrangements allow light into kitchens, dining and living areas. |

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| **4V-2 Water management and conservation** | Water sensitive urban design systems to be designed by suitably qualified professional. | Refer to the separate Engineering Plans. On site detention and a rain water tank are included in the design. |
| **4W-1 Waste management** | A Waste Management Plan is to be provided.<br><br>. | A waste management plan has been submitted dealing with demolition, excavation, construction and ongoing waste management at the site. |
| **4W-1 Waste management** | Circulation design allows bins to be easily maneuvered between storage and collection points | General circulation is maximised throughout the development. Furniture can be easily moved from the basement to the floors.<br><br>Garbage can be collected from within the basement area, with sufficient areas for collection, separation and temporary storage provided before off site disposal. |

Separation Discussion

The building has been redesigned to improve upon separations to adjoining properties. In this regard, separations to the existing single dwelling property to the south (34 Evan Street, Penrith) have been increased to be 50% of the required separation distances for 1-4 storeys being 6 metres. The 5th and 6th storeys of the building are further setback. A near compliant but slightly reduced separation requirement is utilised to the northern extent of the building.

Diagrammatically, the separation compliance is shown in the following figure:

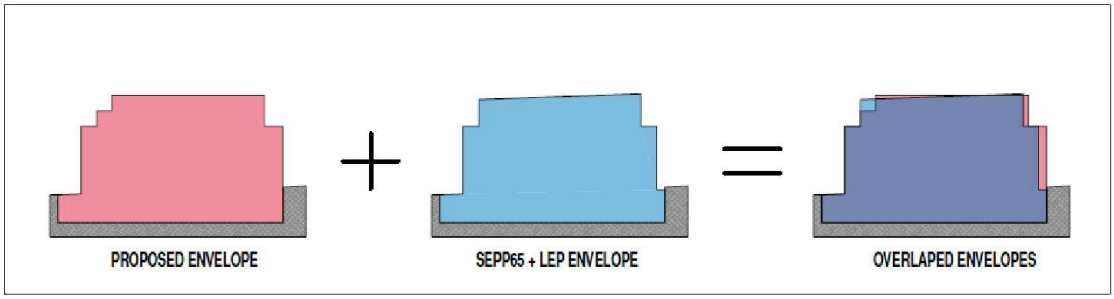


Figure **: Building separation envelope diagrams

The full sized diagrams are depicted in the architectural suite on drawing number DA30.

34 Evan Street is a potentially isolated site and the setback/separation is fully compliant with SEPP 65 requirements and maximised a far as reasonably possible. Any future development on 34 Evan Street, Penrith can benefit of having two principle orientations and any design can put servicing areas and secondary rooms of apartments on its northern side to maximise privacy and separations.

A slightly smaller separation / setback distance is utilised on the northern extent of the proposed building. The reduced setback is suitable this elevation for the following reasons:

- The is no overshadowing impacts at this location to the existing adjoining properties

- Walls to the northern side of the building are to be acoustically treated to ensure there will be no adverse noise transmission.
- Orientation of the apartments is to the east or west (and for the entire building). Principle living area outlook is in these directions and not directly north. This is supported by the modular apartment design and layout of the building (Refer to drawing SK0)
- Privacy screening, window sizing and other privacy measures are utilised in these locations to further mitigate privacy concerns.

Councils Favourable consideration is requested in this regard.

**State Environmental Planning Policy No. 55 - Remediation of Land**

This SEPP provides a state-wide practice for the remediation of contaminated land. Under clause 7 (1) (a) of State Environmental Planning Policy No. 55 – Remediation of Land, requires the contamination and remediation of land to be considered in determining development applications.

The land has in the past been used exclusively for residential purposes. There is no property history to suggest that any contaminating uses occurred on the site. Council can therefore be satisfied that the land is not contaminated and remediation of the land is not required. The land is therefore suitable for its continued use for residential purposes. No further consideration is therefore required under clause 7 (1) (b) and (c) of SEPP 55.

**State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

BASIX, the Building Sustainability Index, ensures residential developments are designed to use less potable water and are responsible for fewer greenhouse gas emissions by setting energy and water reduction targets for houses and units.

A BASIX assessment has been carried out and a BASIX certificate has been obtained confirming that the targets for thermal and energy efficiency and water conservation have been met.

The BASIX Certificate is submitted with the development application and the BASIX commitments and plans are endorsed with independent ABSA certification.

**State Environmental Planning Policy (Infrastructure) 2007**

The proposal does not constitute traffic generating development or development of a kind listed in Clause 104 and the related Schedule 3 of the SEPP nor is adjacent to an identified classified road.

Notwithstanding this, a Traffic Impact Assessment Report is submitted with the development application. The report addresses the existing traffic conditions in the locality, parking rates

under the Penrith DCP and the design and access and egress to and from the basement car park.

The report concludes that the proposal is satisfactory. It will comply with the design requirements of AS2890.1 and will not create any unsatisfactory traffic conditions for the locality.

### 6.4 Penrith Local Environmental Plan 2010

**Aims and objectives of zone**

The site is zoned "*R4 High Density Residential" Zone* under the provisions of the Penrith Local Environmental Plan 2010. The objectives and permissibility characteristics of the zone are:

*"**1 Objectives of 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.*

*"Residential Accommodation"* which includes "*Residential Flat Buildings*" are a permissible form of development with consent of Council in the zone.

The proposal will be consistent with the zone objectives because it provides for the housing needs of the community in this high density residential area of Penrith. It will not compromise the amenity of the surrounding area and is of a height, scale and density that is envisaged by the planning controls. It will also achieve a high standard of design quality and amenity for residents.

The proposed development is for a residential flat building and provides for the needs of its residents in a manner which is generally compliant with objectives and provisions outlined in the PLEP and PDCP. The proposed development does not preclude the development of other land uses in the R4 zone

The proposed development is of a high quality design which promotes the desired future residential character and amenity of the surrounding area.

Demolition is permissible pursuant to Clause 2.7 of the LEP 2010 and permission is also sought as part of this application.

**Penrith Local Environmental Plan 2010 Controls**

**Clause 4.1A Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings**

The cumulative site exceeds the required minimum area for Residential Flat Building Development in accordance with this clause.

It is noted that 34 Evan Street, Penrith to the south will be a residual allotment if the subject development is approved. It is to be noted that the Development has proceed to make independent valuations and reasonable market offers to the current owner of the land to amalgamate the lot into the overall development site and not result in isolated sites. This documentation has been prepared in accordance with the procedure as set out in *Melissa Grech v Auburn Council [2004] NSWLEC 40*. This documentation is included as an attachment to this application.

**Clause 4.3 - Height of Buildings**

The maximum permitted building height for the subject site is 18 metres.

As a result of the proposed development the maximum overall height of the residential flat building is proposed to be 18.730 m to the lift overrun. The height of the building varies from a compliant 17.68 m in height at the northern end of the proposed building to the roof at RL54.680, with the height increasing towards the southern end of the building and exceeds the height of buildings standard to a maximum height of 18.220 metres.

The height of the lift overrun will be RL54.80 or overall height of 18.730 metres and will also exceed the height of buildings standard.

A written exception to the height of buildings standard in accordance with Clause 4.6 of the LEP is submitted with the development application. The exception to the height standard is considered to be well founded and Council and the consent authority can be satisfied for the reasons outlined, that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives of the zone. The breach in height is considered minor and principally as a result of the topography of the site does not result in any additional impact on adjoining residents, nor the public domain.

**Clause 5.10 - Heritage Conservation**

The site is not identified as a heritage item or part of a heritage conservation area (HCA) nor is it located near an HCA. The principle heritage items which is in close proximity to the site is the cemetery attached to Penrith St Stephens Anglican Church. Given the proposed land use and the location of these heritage items, the proposed development is unlikely to adversely

impact these items of heritage. Please refer to the associated Heritage Report which details the significance of the item and the potential impacts from the proposed development.

**Clause 7.1 - Earthworks**

Part of the site will be excavated to accommodate the basement and lower ground levels. These two levels will comprise basement car and bicycle parking, residential storage and a loading and servicing areas. At its deepest point, excavation will occur to a level of RL 30.255. This will involve an excavation area of 7800 $m^2$.

The excavation area has been setback from all boundaries to ensure there is no impact on the adjoining buildings and to also allow for deep soil landscaping between the boundaries and the basement area.

**Clause 7.4 – Sustainable Development**

The development will incorporate a site of sustainable features to minimise materials and resources consumption.

**Clause 7.7 Servicing**

The site is currently serviced and proposed development is capable of being serviced with augmentation of services as required.

## 7.0 Section 4.15(1)(a)(ii) DRAFT AMENDMENTS TO STATUTORY CONTROLS

There are no draft amendments noted to any statutory controls applicable to the proposal.

## 8.0 Section 4.15(1)(a)(iii) DEVELOPMENT CONTROL PLANS

### 8.1 Penrith Development Control Plan 2014

Sections of the DCP not directly applicable to the development have been omitted from the table.

| CL. | Standard/Control | Complies | Comment |
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| **C1 Site Planning and Design Principles** | | | |
| **1.1.1 Site Analysis** | | Yes | Provided in architectural suite and adheres to the requirements of the DCP. Adjoining sites identified and opportunities created for separation and privacy through design. The Heritage Listed cemetery site also affords an ongoing opportunity for long-term outlook to the east north east. |

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| **1.1.2. Key Areas with Scenic and Landscape Values** | N/A | Site not identified as a key site with landscape value. |
| **1.2. Design Principles** | Yes | The revised design has had regard for the general design principles and issues raised in the previous application. |
| **1.2.2. Built Form - Energy Efficiency and Conservation** | Yes | Energy efficiency is achieved principally via BASIX certification and incorporation of as many passive energy efficient features such as solar orientation, cross ventilation etc. |
| **1.2.3. Building Form - Height, Bulk and Scale** | Yes | The built form is considered to be of high quality, articulated and modulated. As detailed throughout this statement, we consider the proposal to be of appropriate high and general density for the future intentions of the site based on the zone and local conditions. The building is contextually appropriate given the future intention of the site, zoning and for a suburb in transition from low to high density development. |
| **1.2.4. Responding to the Site's Topography and Landform** | Yes | The sites general topography is generally level and will not be significantly altered beyond creation of the basement and building itself. Given the zoning of the site and surrounding land, if development on surrounding sites is fully achieved then the surrounding sites will also be of high density. |
| **1.2.5. Safety and Security (Principles of Crime Prevention through Environmental Design)** | Yes | The design of the building will include well defined secured entry points, passive surveillance to the street, high quality and secured open space areas.<br><br>The main lift is visible from the main entry lobby area.<br><br>Access to the basement is secured with lift access so does not require tenants to exit to the street to enter the building. |
| **1.2.6 Maximising Access and Adaptability** | Yes | The development is accessible and provides sufficient numbers of fully adaptable apartments. |
| **C2 Vegetation Management** | | |
| **2.1. Preservation of Trees and Vegetation** | Yes | Development consent is sought for the removal of all existing vegetation. The site is not identified bushland area nor bushfire prone land.<br><br>Appropriate replacement landscaping is proposed which will positively contribute to the locality's landscape and scenic quality. Refer to the Landscape Plan submitted separately. |

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| **C3 Water Management** | | |
| **3.6. Stormwater Management and Drainage** | Yes | The site is not in proximity to any natural watercourse or lakes or significantly flood prone areas. Stormwater Management plans are submitted as a separate plan suite and include for on site detention and reuse? basement pump out and Water Sensitive Urban Design (WSUD). |
| **C4 Land Management** | | |
| **4.1. Site Stability and Earthworks** | Yes | Excavation required for basement area only and given the general level topography and lack of proximity to the side boundaries, no special structural support will be required. |
| **4.2. Landfill** | Yes | Some soil will be able to be reused on site however the majority of fill will need to be taken off site to approved landfill sites. This requirement can also be readily conditioned by Council. |
| **4.3. Erosion and Sedimentation** | Yes | Sedimentation and Erosion Control Plans are included in the Engineering plan suite. |
| **4.4. Contaminated Lands** | Yes | Site has an extended history of residential occupation. Please refer to SEPP 55 Heading of SEE. |
| **4.5. Salinity** | Yes | The site is not subject to agriculture or routine inundation and given the extended residential history of the site, is unlikely to be impacted by Salinity issues. |
| **C5 Waste Management** | | |
| **5.1. Waste Management Plans** | Yes | A waste management plan is provided with the application and deals with the demolition, excavation, construction and ongoing waste management upon the site. Demolition materials to be sent to construction waste management and recycling facilities as appropriate. |
| **5.2.2.4 Residential Flat Buildings** | Yes | Ongoing waste management include chute access on each floor, elephants foot compactus in the basement with sufficient ancillary storage area to hold rubbish bins until collection from within the basement. The basement design has provided for sufficient manoeuvring area for a garbage truck to enter, manoeuvre, collect and exit the site in a forward direction.<br><br>Separate chutes are provided for general and recyclable wastes. Waste holding area can be conditioned to meet construction requirements. |

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| **C6 Landscape Design** | | |
| **6.1 Controls** | Yes | The development is a category 3 development and a detailed Landscaping Plan has been submitted with the application which addresses the requirements of this section of the DCP. |
| **6.1.2. Protection of the Environment** | Yes | An appropriate suite of low water use plantings has been selected or can be easily altered should Council deem any plantings inappropriate. |
| **6.1.4. Site Amenity** | Yes | Landscape design has been utilised to enhance the general setting of the building and also the communal outdoor areas within the building.<br><br>Deep soil area is provided in accordance with the residential section of the DCP. |
| **C7 Culture and Heritage** | | |
| **7.1. European Heritage** | Yes | Refer to independent Heritage Report prepared to detail the significance of the cemetery attached to Penrith St Stephens Anglican Church and discuss the lack of impact to this site. |
| **C8 Public Domain** | | |
| **8.1. Pedestrian Amenity** | Yes | Pedestrian and vehicular access to the site is separated. Pedestrian entry point is easily identifiable from Evan Street, with all-weather protection. |
| **C10 Transport, Access and Parking** | | |
| **10.1. Transport and Land Use** | Yes | The building is in close proximity to the Penrith town centre with public transport links. the proposal can assist in reducing car usage. |
| **10.2. Traffic Management and Safety** | Yes | The proposal is not a traffic generating development as defined by SEPP Infrastructure. A traffic report accompanies the application which details the proposals acceptability from a parking, manoeuvring and access standpoint. |
| **10.3. Key Transport Corridor** | N/A | The proposal is not located adjacent to an identified key transport corridor. |
| **10.5. Parking, Access and Driveways** | Yes | A traffic report accompanies the application which details the proposals acceptability from a parking, manoeuvring and access standpoint. Parking and Manoeuvring area has been designed to AS2890 standard requirements including adequate basement space for clearance and turning circles for a medium rigid truck. |

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| | | The proposal provides for 49 car parking spaces and includes six (6) visitor spaces one (1) of which is a car wash bay and four (4) are accessible.<br><br>There is sufficient space in the basement for 1 garbage truck or small removalist truck space for servicing. |
| **10.6. Pedestrian Connections** | Yes | The pedestrian entry is separate from the vehicular entry and easily identifiable from Evan Street. |
| **10.7 Bicycle Facilities** | Yes | Bicycle facilities are provided in the basement area. |
| **C11 Subdivision** | | |
| **11.1. General Subdivision Requirements** | Yes | Strata subdivision of the development will be sought post approval and consolidation of the development |
| **C12 Noise and Vibration** | | |
| **12.1. – 12.3 Road Rail Traffic Aircraft Noise** | N/A | The site is not unreasonably affected by any external noise sources which require additional abatement for residential amenity. |
| **C13 Infrastructure and Services** | | |
| **C13 Infrastructure and Services** | Yes | The site currently has access to all necessary infrastructures services such as roads, water and sewer and electricity. Where necessary, these can be augmented. Such matters are typically conditional matter of any approval. This will include any requirements for the new substation.<br><br>The site is no burdened by any known easements. |
| **PART D LAND USE CONTROLS**<br><br>**D2 RESIDENTIAL DEVELOPMENT** | | |

The development is subject to the control as set out under this section of the DCP specifically, those of Section 2.5 Residential Flat Buildings

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| **2.5 Residential Flat Buildings** | | |
| **2.5.1 Residential Character** | Yes | The development will be in accordance with the zoning and the desired future character of the locality. The immediate area is in transition as per the zoning intention. |

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| **2.5.2 Preferred Configuration for Residential Flat Buildings** | Yes | The building is designed to be a high quality traditional single block form over basement with surrounding landscaping. This statement also covers the design principles and general controls of SEPP 65. |
| **2.5.3 The Development Site** | Yes | The cumulative site meets the zoning, minimum frontage and site area requirement. |
| **2.5.4. Urban Form** | Yes | The proposed building has the elements of traditional orientation but is articulated via differing built form and materials.<br><br>Ground level dwellings to the street have private and raised gardens directly adjacent to internal living areas as well as the rear orientated apartments.<br><br>Garage level is in the form of a basement with the vehicular access being the only principle form visible from Evan Street. |
| **2.5.5 Landscaped Area** | Yes | 596.7 $m^2$ or 36.5% of the site will be dedicated deep soil is proposed including the area located over the basement. Significant swathes of the setback areas are capable of supporting significant vegetation.<br><br>Communal open space is provided at 15% principally from the semi outdoor area provided to the north eastern ground floor of the site. |
| **2.5.6 Front and Rear Setbacks** | Part | The proposal generally complies with the stipulated front (western) and rear (eastern) setbacks with small exceptions to the zig zagging front and rear proposed built form principally for articulation and privacy reasons. Generally, the majority of the building is complaint or exceeds the minimum setback requirements. The modulated design however does result in non-compliances with the setback requirements. This is more accurately depicted in drawing SK01 of the architectural suite.<br><br>There is an all-weather cover over the entrance and which is within the front setback area however this is in line with the articulation requirements of B.(4)(a).<br><br>Rear setback wise, the building is orientated towards the non-habitable cemetery to the east north east and commercial operations to the east south east. |
| **2.5.7 Side Setbacks** | Yes | There are no zero-line side setbacks proposed however appropriate setbacks are proposed to the northern and southern aside elevations for privacy and separate |

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| | | purposes. Refer to the SEPP 65 Separation distances discussion earlier in this statement. |
| **2.5.8 Visual and Acoustic Privacy and Outlook** | Yes | The design intends to maximise privacy with the modulated and articulated façade to create spaces of privacy for apartments on the front and rear setback alignments. Fixed screens to the balconies supplement the privacy and add shadowing to outdoor areas.<br><br>Apartment layouts and separation provide for privacy to future buildings either to the north or south. Buildings in these location will also need to adhere to principle street frontages. Secondary rooms and non-habitable areas of apartments are laid out in the side setback areas to minimise separations requirements and not provide for constraints to future adjoining development to the north. |
| **2.5.9 Solar Planning** | Yes | Refer to submitted solar access diagram suite. Generally, apartments will receive adequate solar access complying with the minimum required 2 hours of solar access either in the morning or afternoon depending on their orientation on the building which will be either east or west.<br><br>There are no directly southern orientated apartments in the proposal. |
| **2.5.10 Significant Townscapes & Landscapes** | Yes | The building is a new and articulated design which does not replicate existing surrounding development or recent new residential flat building developments.<br><br>Sufficient space is provided around the building for landscaping and softening of the façade of the building.<br><br>The building is plat roof however the angled façade and balconies with create articulation and shadow lines. There are no featureless stretches of straight walls on the building. |
| **2.5.11 Corner Sites and Park Frontages** | N/A | The site is not a corner site or have any outlook to public parks. |
| **2.5.12 Building Design** | Yes | A high quality and articulated architecturally designed built form with appropriate landscaped gardens is proposed.<br><br>The site is within an identified redevelopment precinct which is evolving from traditional low density single dwellings to multi storey and high density residential apartment buildings.<br><br>The proposal responds and contributes to its desired context by engaging and appropriate density with articulated high quality design. The existing low density forms of the |

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| | | surrounding are unlikely to remain in its current built form for long. The built form (including its height, bulk and scale) is compatible with the future intended high density residential apartment building anticipated by the zoning and that which has been approved on adjacent properties. |
| **2.5.13 Energy Efficiency** | Yes | The design is supported by a valid BASIX certificate to accompany the development. The design has utilised as many passive features as possible with no directly southern orientated apartments, dual orientation where available and shallow apartment depths.<br><br>Shading devices are utilised as appropriate. |
| **2.5.14 Design of Dwellings and Private Courtyards** | Yes | The design of the building is such that privacy is promoted between apartments (both in a horizontal and vertical plane) whilst still providing for solar access.<br><br>Ground floor apartments have private courtyards which exceed 25 $m^2$ and are generally at ground level.<br><br>Above ground level apartments are provided with balconies which exceed the minimum 10 $m^2$ minimum requirement. |
| **2.5.15 Garages** | Yes | The basement generally will not project above natural ground level and entry point is setback behind primary building line. Basement will be secured. |
| **2.5.16 Garden Design** | Yes | The rear boundary setback area provides a combination of private gardens and communal open space.<br><br>The proposed landscape design will positively contribute to the locality's landscape and scenic quality. Refer to the Landscape Plans submitted separately. |
| **2.5.17 Paving Design** | Yes | Paving has generally been minimised in favour of providing sufficient landscaping. The covered communal open space area maximises landscaping outside of the building footprint. |
| **2.5.18 Fences and Retaining Walls** | Yes | Fencing to Evan Street to be low masonry with landscaping beds proposed to Street orientated apartments to be used to create privacy.<br><br>Boundary fences to be typical 1.8 metre high colourbond. |
| **2.5.19 Safety and Security** | Yes | Entry foyer is large and directly visible from the street. |

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|---|---|---|
| | | Dwellings are either orientated to the front or rear of the site with living rooms adjacent to outdoor area or balcony for passive surveillance.<br><br>There is no more than a maximum of 8 dwellings per floor. |
| **2.5.20 Accessibility and Adaptability** | Yes | There are a total four or five apartments proposed within the development are capable of being adapted for use by people with disabilities.<br><br>The building is serviced by a lift and the entirety of the building will be visitable.<br><br>A Statement of Compliance Access for People with a Disability Report, by Accessible Building Solutions is submitted separately. |
| **2.5.21 Storage and Services** | Yes | All building services to be provided in basement. Apartments will be served by a combination of in apartment and further storage to be provided in basement. |

## 9.0 Section 4.15(1)(a)(iv) APPLICABLE REGULATIONS

Unreasonable accessibility related impacts are not anticipated as part of the proposal. The site is located in a highly accessible area close to Penrith Town centre, major roads and is also within proximity to public bus stops and Penrith Station (1.5km).

Nonetheless, Access consultants were engaged to determine whether the proposal would comply with onsite related accessibility standards or other relevant legislation. In summary, their assessment concludes that the proposal is capable of complying with relevant accessibility standards. This is largely because the proposal provides 2 accessible units with respective disabled car parking spaces, achieves level or close to level access between the adjoining public domain, and one lift will service all above ground residential levels.

Clause 92 of the EPA Regulation 2000 requires consideration of Australian Standard AS 2601-1991: The demolition of structures. It also requires compliance with this, by standard by condition of consent.

It is intended that any noise generated from the site will comply with the relevant provisions of *the Protection of Environment Operations Act* and the *NSW EPA Environmental Noise Manual* for the control of construction noise. The proposal can meet applicable noise criteria to protect the amenity of the nearby industrial and residential premises.

Despite these comments, it is to be noted, at the time of consideration of the application, the resultant will be in operation and beyond any conditional requirements, there should be no new construction required. The use in itself should not result in any ongoing or unreasonable noise generation occurring from the premises.

## 10.0 Section 4.15(1)(b) THE LIKELY IMPACTS OF THE PROPOSAL

The proposed development will result in additional housing stock being provided to the area in the form of one, two and three bedroom apartments. This will assist in achieving Council's housing targets and will improve the housing choice for residents wishing to reside in the local area.

There are no negative social or economic impacts as a result of the proposed development. The proposed development will not have any adverse impacts to the streetscape character of Evan Street.

The proposed development will have a positive economic impact by providing a higher standard of architectural design than the existing low density residential development. The development will also offer a positive contribution to Sydney's property market and the variety of housing choice throughout Sydney, by providing a diverse range of residential units that are complemented by a high standard of design.

## 11.0 Section 4.15(1)(c) THE SUITABILITY OF THE SITE

The development proposed is such that it would not affect the suitability of the site to accommodate the development nor impact upon adjoining sites in the locality ability to support new development in accordance with the zoning and desired future character of the zone.

The ongoing use is considered to be within the public interest for the following reasons:

1. The site is appropriately zoned and the construction of a residential flat building is permissible with consent of Council in the zone.
2. The proposal can site comfortably within the locality without adverse impacts to any adjoining residential premises;
3. The use will support the local workers and residents.
4. The proposal will improve the usage and residential density on the site and assist in maintaining the vitality of the area;
5. There are no precipitate constraints posed by adjacent land uses, this includes the cemetery.

The application therefore satisfies this section of the Act.

## 12.0 Section 4.15(1)(e) THE PUBLIC INTEREST - CONCLUSION

This DA seeks approval for the construction of a part 5 part 6 storey residential flat building at 28-32 Evan Street, Penrith. Pursuant to case law of Ex *Gratia P/L v Dungog Council (NSWLEC 148),* the question that needs to be answered is "Whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development".

There are no unreasonable impacts that will result from the proposed development, therefore, the benefits of providing additional housing supply in a highly accessible and well serviced area outweigh any disadvantage and as such the proposed development will have an overall public benefit.

The SEE provides an assessment of the proposal against the relevant environmental planning framework. The framework in this case includes *State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development*, the Penrith Local Environmental Plan 2010, as well as the Penrith Development Control Plan 2014.

This SEE has undertaken an environmental assessment of the proposal and has concluded that the proposal is consistent with the outcomes sought by the relevant planning controls and is appropriate given the unique physical characteristics of the site.

There are no unreasonable impacts that will result from the proposed development, therefore, the benefits of providing additional housing supply in a highly accessible and well serviced area outweigh any disadvantage and as such the proposed development will have an overall public benefit.

In particular, the proposal would increase the diversity of housing available in the region, achieve compatibility with the future built form character anticipated by the planning controls, and improve the current built form.

In summary, the proposal is considered to:

- be an appropriate response to the context, setting, planning instruments and development guidelines and other considerations outlined in Section 4.15(1) of the Environmental Planning and Assessment Act, 1979;
- provide a built form of high architectural standard and consistent with the desired future character of the site;
- Provide a high quality of amenity for residents by enhancing privacy and maximising solar access;
- have no adverse impacts on the environment, traffic, parking, drainage or other external features or services.

The. benefits provided by the proposed development outweigh any potential impacts and is it is therefore considered to be in the public interest. The proposal will deliver a suitable and appropriate development and is worthy of approval.

## APPENDIX 1 – Clause 4.6 Request for Variation – Clause 4.3 Building Height

### 1. INTRODUCTION

This is a formal written request that has been prepared in accordance with Clause 4.6 of the Penrith Local Environmental Plan 2010 to support a development application submitted to Penrith Council for a proposed part 5/part 6 storey residential flat building at 28-32 Evan Street, Penrith ("the site").

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development.

As the following request demonstrates, by exercising the flexibility afforded by Clause 4.6 in the particular circumstances of this application, not only would the variation be in the public interest because it satisfies objectives of the subject R4 High Density Residential zone and the standard, but it would also result in a better planning outcome.

The development standard that this request seeks approval to vary is the Height of Buildings control in Clause 4.3 of the Penrith Local Environmental Plan 2010 (PLEP). It is acknowledged that the maximum height prescribed for this site according to the NSLEP is 18m. This request seeks to vary / request exception to the proposed maximum height of 18m, specifically, the development proposes to vary the maximum height by 1.2m, at the highest point.

Cl 4.6(2) states that development consent may be granted for development even though the development would contravene a development standard. However, this does not apply to a development standard that is expressly excluded under cl 4.6(8) of the PLEP 2010. The maximum height development standard is not identified under subclause 4.6(8) and therefore is not specifically excluded from the operation of Cl 4.6 of NSLEP 2013.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 201 1) and relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal

In Sections 3, 4 and 5 of this request, flexibility is justified in this case in terms of the matters explicitly required by clause 4.6 to be addressed in a written request from the applicant. In Sections 6 and 7, additional matters that the consent authority is required to be satisfied of when exercising either the discretion afforded by Clause 4.6 or the assumed concurrence of the Secretary is addressed.

### 2. NSW LAND AND ENVIRONMENT COURT: CASE LAW (TESTS)

Planning principles and judgements issued by the Land and Environment Court (NSW LEC) provide guidance in relation to requests to vary a development standard under clause 4.6 of the NSLEP 2013. The case law that has been considered in the preparation of this clause 4.6 request are as follows:

- Winten v North Sydney Council
- Wehbe v Pittwater [2007] NSW LEC 827
- Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC

- Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC
- Moskovich v Waverley Council [2016] NSWLEC 1015
- Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118

**Winten v North Sydney Council**

The decision of Justice Lloyd 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. Initially this applied to State Environmental Planning Policy – Development Standards (SEPP 1) and was subsequently updated to address clause 4.6 of the Standard Instrument templates.
These principles for assessment and determination of applications to vary development standards are relevant and include:

- 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 Environmental Planning & Assessment Act 1979 (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 of Justice Preston in Wehbe v Pittwater [2007] NSW LEC 827 expanded on the findings in Winten v North Sydney Council and established the 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**

More recently in the matter of Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, 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;
- That 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.

**Randwick City Council v Micaul Holdings Pty Ltd [2016] NSW LEC 7**

In Randwick City Council v Micaul Holdings Pty Ltd [2016] NSW LEC 7 Preston CJ noted at paragraph 7 that development consent cannot be granted for development that contravenes a development standard unless the consent authority:

- Considers the cl 4.6 objections (the requirement in cl 4.6(3)); and
- Was satisfied that, first, the cl 4.6 objections adequately addressed the matters required to be demonstrated by cl 4.6(3) (the requirement in cl 4.6(4)(a)(i)) and, second, the development will be in the public interest because it is consistent with the objectives of the height standard and the FSR standard and the objectives for development within the R3 zone in which the development is proposed to be carried out (the requirement in cl 4.6(4)(a)(ii)).

The consent authority does not have to be directly satisfied that compliance with each development standard is unreasonable or unnecessary in the circumstances of case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matters in 4.6(3)(a) and (b). In this respect he also noted that in assessing whether compliance with the development standards was unreasonable or unnecessary an established test is consistency with the objectives of the standard and the absence of environmental harm.

**Moskovich v Waverley Council [2016] NSWLEC 1015**

Commissioner Tour reflected on the recent Four2Five decisions and said:

- Clause 4.6(3)(a) is similar to clause 6 of SEPP 1 and the Wehbe ways of establishing compliance are equally appropriate [at 50]. One of the most common ways is because the objectives of the development standard are achieved – as per Preston CJ in Wehbe at 42-43.
- Whereas clause 4.6(4)(a)(ii) has different wording and is focused on consistency with objectives of a standard. One is achieving, the other is consistency. 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 latter being more onerous requires additional considerations such as the matters outlined in Wehbe at 70-76. Such as consideration of whether the proposed development would achieve the objectives of the standard to an equal or better degree than a development that complied with the standard.

**Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118**

Most recently, in reflecting upon recent case law regarding clause 4.6 variation requests, Chief Judge Preston confirmed (in this judgement):

- The consent authority must, primarily, be satisfied the applicant's written request adequately addresses the 'unreasonable and unnecessary' and 'sufficient environmental planning grounds' tests:

  *"that the applicant's written request … has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case … and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard …" [15]*

- On the 'Five Part Test' established under Wehbe v Pittwater Council [2007] NSWLEC 827:

  *"The five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way…" [22]*

- That clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development:

  *"Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard." [88]*

This clause 4.6 variation has specifically responded to the matters outlined above and demonstrates that the request meets the relevant tests with regard to recent case law.

## 3. EXTENT OF VARIATION

### Site

This submission is made in support of a Development Application (DA) for the construction of a residential flat building. This request specifically seeks to vary the maximum building height standard that applies to the subject site.

The site comprises three allotments on the eastern side of Evan Street near the intersection of Evan Street with Lethbridge Street

The legal property descriptions of the sites are as follows:

- Lot A in Deposited Plan No. 324069, 28 Evan Street; Penrith
- Lot A in Deposited Plan No. 355720, 30 Evan Street; Penrith

- Lot 1 in Deposited Plan No. 510281, 32 Evan Street; Penrith

The overall cumulative subject site has an approximate primary frontage of 49.18 metres to Evans Street, and a length of 34.28 m along the northern boundary, and a length of 32.12 m along the southern boundary and rear eastern boundary of 49.23 m

The immediate locality is principally low density singles dwellings interspersed with some medical facilities in former dwellings. Further norther and north west, the residential density increases into medium density forms until transitioning into the Penrith City centre commercial district and train interchange.

**Control and Variation Sought**

Under the PLEP, the subject site is located in an area with a prescribed height of 18m, as shown in the Height of Building Map.

The proposal has a maximum building height in the north western through to the south western corner of the site measured from ground level 'existing', of 18.220 metres as detailed in the architectural package by Morson Group Architects.

The height of the lift overrun will be RL55.80 or overall height of 18.730 metres and will also exceed the height of buildings standard.

Therefore, the proposal breaches the standard by 730 mm on the lift overrun and 220 mm to the general roof level. Specifically, the portions of the building above the 18m height limit includes part of a portion of the western roof and parapet, Nonetheless, the overwhelming majority of the proposed envelope is, below the 18 m height limit. This is depicted in the figure provided below:


***Figure 5:*** Extract of height plane diagram sheet 1 (Morson Group Architects)

The proposed development seeks a variation to the height standard whilst ensuring that the proposal delivers an appropriate built form that is consistent with the zone objective as outlined in the PLEP and the desired future character of the area as outlined in the Penrith DCP.

The breach of the standard has been proposed to provide a built form that is compatible with the existing and anticipated future character of the area.

## 4 COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THIS CASE. Clause 4.6 (3(a)

The following sections provide a comprehensive assessment of the request to vary the HOB development standard in accordance with clause 4.6 of the PLEP 2010. Detailed consideration has been given to the NSW LEC case law identified when undertaking this assessment.

### Is the Planning Control a Development Standard?

The maximum height of buildings control prescribed under Clause 4.3 of the PLEP 2010 is a development standard capable of being varied under Clause 4.6 of PLEP 2010.

**Is the Development Standard Excluded from the Operation of Clause 4.6?**
The development standard is not excluded from the operation of Clause 4.6 as it is not listed within Clause 4.6(6) or Clause 4.6(8) of PLEP 2010.

**What is the Underlying Object or Purpose of the Standard?**

Compliance with the Height of Buildings development standard is unreasonable or unnecessary in the circumstances of this case because, as detailed below, the objectives of the development standard are achieved, notwithstanding non-compliance with the standard

| PLEP 2010 Clause 4.3 Objectives | Comments |
|---|---|
| (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality, | The building proposal will not be compatible with the current low density development prevalent in the locality however the proposal is entirely consistent with the desired future character of the locality and substantially compliant with the height control and hence intended bulk and scale as established in the PLEP 2010. |
| (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, | The development will not result in the unreasonable loss of solar access to any adjoining properties including potential future development. No public parks or critical infrastructure will be adversely impacted as a result of the development. |
| (c) to minimise the adverse impact of development on heritage items, heritage conservation areas and areas of scenic or visual importance, | The adjoining cemetery grounds will not be adversely impacted as a result of the development receiving uninterrupted solar access in the morning and how relatively minimal overshadowing in the afternoon.<br><br>No scenic or visually important areas will be impacted by the development. |
| (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. | The height of the proposal is substantially compliant and the areas in breach of the control does not contain tangible development yield. The design is also stepped to provide transitions to potential future development to the north and south. |

As noted above in the objective analysis, the breach of the standard allows a built form that is consistent with the desired future character of the surrounding area, particularly the buildings that are located on the adjoining properties or recent approvals in the area.

The proposal responds to the natural gradient of the site and the breach is a result of the design of the proposal providing minor breaches to maintain floor levels and not from large topographical changes

From an objective standpoint, the proposed development will not offend any of the objectives of the Development Standard.

## 5. THERE ARE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE STANDARD. (cl. 4.6(3(b))

The following environmental planning grounds justify the breach of the standard and are summarised as follows:

- The proposal will continue to provide opportunity and view sharing to which will not materially change as a result of strict compliance with the height standard;
- The proposed non-compliance does not generally result in any additional environmental impacts, when compared to a development that is located wholly below the maximum HOB standard;
- The variation of the standard allows for a development that is consistent with the desired future character of the area,
- The proposed non-compliance is minor and will not be noticeable to the general public,
- The variation of the height standard does not result in significant additional overshadowing from the proposal and will have only a minimal impact on adjoining existing and future potential developments. The proposal demonstrably complies with solar access requirements.
- Compliance with the standard would be incongruous with the recent approvals in the area and desired future built form character in the surrounding area, resulting in a building which has an abrupt change in height relative to its neighbours;
- The proposed RFB is designed with regard to building modulation, orientation and window positioning as to consider the visual privacy of surrounding buildings. In particular, there are no privacy impacts caused by the variation itself as no windows are situated within the portions of the building which are setback above the 18m height limit;
- The proposal would not result in an improved planning outcome than if compliance were to be achieved.

## 6. THE PROPOSAL WILL BE IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE STANDARD AND THE OBJECTIVES OF THE ZONE. [cl.4.6(4)(a)(ii)]

In Section 4 (above), it was demonstrated that the proposal is consistent with the objectives of the development standard. The proposal is also consistent with the objectives of the zone as explained in Table 2 (below).

| R4 High Density Residential Zone objective | Comments |
|---|---|
| To provide for the housing needs of the community within a high density residential environment. | The existing buildings on the site provides three low density dwellings and associated car parking. The proposal provides 40 new units achieving additional housing capacity for the community. The breach of the standard does not result in any inconsistency with this objective. |
| To provide a variety of housing types within a high density residential environment. | The proposal is for a residential flat building within a high density residential zone. The development is permissible with consent and the proposal provides increased housing stock to the locality. |

| | |
|---|---|
| | The proposal provides a mix of 1, 2 and 3 bedroom units. The breach of the standard does not result in an inconsistency with this objective. |
| To enable other land uses that provide facilities or services to meet the day to day needs of residents. | Not applicable to the proposed development. The proposal is entirely residential.<br><br>The breach of the standard does not result in an inconsistency with this objective. |
| To ensure that a high level of residential amenity is achieved and maintained. | The proposal achieves a high level of amenity for its residents. The proposed residential flat building has no adverse privacy impacts on the adjoining buildings due to the orientation of apartments, balconies and most windows to the front<br>and rear of the site. Any side facing windows in the proposal have been designed as highlight windows or have privacy measures. The development provides ADG compliant solar access to the proposed units and produces minimal solar impacts on surrounding built forms as evident in the shadow diagrams within the Architectural Plans.<br><br>Generously sized units are proposed which each have access to ample useable private open space, as per ADG requirements.<br><br>As noted earlier, it is noted the locality is in transition from low density to high density.<br><br>The proposed breach would not affect the high level of amenity achieved by adjoining residential flat buildings by way of views, privacy or overshadowing. As such, the breach of the standard is consistent with this objective. |
| To encourage the provision of affordable housing. | With significant increase in housing stock in the locality, this can put downward pressure on existing housing prices. This development is however not specifically intended to be an affordable low cost housing scheme. |
| To ensure that development reflects the desired future character and dwelling densities of the area. | It is contended the development is substantially in accordance with this objective. The development represents some of the earliest development in the area in accordance with the zoning of the site. |

As can be seen from Table 1 in Section 4 and Table 2 in Section 6, the proposal is consistent with the objectives of the standard and the objectives of the zone and is therefore considered to be in the public interest.

## 7. CONTRAVENTION OF THE DEVELOPMENT STANDARD DOES NOT RAISE ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING. [CL. 4.6(5)(A)]

Varying the development standard as proposed by this application, will not result in any outcome which would be prejudicial to planning matters of state or regional significance.

It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

## 8. THERE IS NO PUBLIC BENEFIT OF MAINTAINING THE STANDARD. [cl.4.6(5)(b)]

The breach of the standard is minor and is principally concerned with limited roof, roof parapet and the lift overrun. The minor breach in height will not result in material additional visual bulk or scale of the building when viewed from the public domain.

The variance maintains no additional privacy impacts and continues to allow satisfactory sunlight to the adjoining buildings. The maximum variation is measured to be approximately 730 mm at Its largest extent to ancillary plant only and thus is considered minor in nature.

Furthermore, the overwhelming majority of the building is in compliance with the control.

Accordingly, there is no public benefit in maintaining strict compliance with the development standard given that there are no unreasonable impacts that will result from the variation to the Height of Buildings standard and hence there are very minor disadvantages.

The benefits of the proposal therefore outweigh any disadvantage and as such the proposal will have an overall public benefit.

## 9. Clause 4.6(5)(c) – Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?

There are no additional matters that need to be considered within the assessment of the Clause 4.6 Request and prior to granting concurrence, should it be required.

## 10. CONCLUSION

This Clause 4.6 variation request demonstrates, as required by Clause 4.6 of the Penrith Local Environmental Plan 2010, that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- There are sufficient environmental planning grounds to justify the contravention;
- The development achieves the objectives of the development standard and is consistent with both the objectives of the R4 High Density Residential Zone and Clause 4.3 Height of Buildings clauses of PLEP 2010.
- The proposed development, notwithstanding the variation, is in the public interest with there being no public benefit in maintaining strict adherence to the standard; and
- The variation does not raise any matter of State or Regional Significance.

- The proposed non-compliance does not generally result in any additional environmental impacts.

Based on the reasons outlined above, it is considered that maintaining strict compliance with the development standard would be unreasonable and unnecessary in the circumstances of the case and thus, not be in the public interest. Accordingly, it is concluded that this clause 4.6 request is well founded and that the particular circumstances of the case warrant flexibility in the application of the HOB development standard.