

# PENRITH CITY COUNCIL

## MAJOR ASSESSMENT REPORT

<b>Application number:</b>	DA18/0488
<b>Proposed development:</b>	Demolition of Existing Structures & Construction of Six (6) Storey Residential Flat Building containing 42 Apartments with Communal Roof Top Terrace & Two (2) Levels of Basement Car Parking
<b>Property address:</b>	28 Hope Street, PENRITH NSW 2750 30 Hope Street, PENRITH NSW 2750 26 Hope Street, PENRITH NSW 2750
<b>Property description:</b>	Lot 35 DP 31239 Lot 36 DP 31239 Lot 34 DP 31239
<b>Date received:</b>	14 May 2018
<b>Assessing officer</b>	Gemma Bennett
<b>Zoning:</b>	Zone R4 High Density Residential - LEP 2010
<b>Class of building:</b>	Class 2 , Class 7a
<b>Recommendations:</b>	Refuse

## Executive Summary

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Council is in receipt of a development application from Mark Makhoul, Building Design & Technology Pty Ltd, proposing the demolition of existing structures and construction of a six (6) storey residential flat building containing forty two (42) apartments and two (2) levels of basement car parking at 26-30 Hope Street, Penrith.

The subject site is zoned R4 High Density Residential under Penrith Local Environmental Plan 2010 (PLEP 2010). Development for the purposes of a residential flat building is permissible within the R4 High Density Residential zone.

The Minister for Planning has given directions under Section 9.1 of the Environmental Planning and Assessment Act 1979 on the development applications that are to be determined on behalf of Council by a Local Planning Panel. These directions, dated 23 February 2018, outline development within the Penrith Local Government Area that is for a residential flat building under the provisions of State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development require determination by a Local Planning Panel.

The proposed development was advertised in the local newspaper and notified to the owners and occupiers of adjoining and nearby properties. The initial public exhibition period for the proposal was from between the 1 June 2018 and 15 June 2018. During this period, no submissions were received. Following significant redesigns, the proposal was re-notified to adjoining and nearby residences between 19 November 2018 and 3 December 2018. During this period, no submissions were received.

Key issues identified for the proposed development include:

### **Non compliance with maximum height requirements**

The application proposes a numerical non compliance to the maximum 18m building height with an exceedance above the maximum building height of 20% to the lift overrun and 4% to the uppermost habitable floor area. In this regard, the application has been accompanied with a Clause 4.6 variation request prepared by Think Planners requesting a variation to the development standard.

### **Excavation**

Penrith Development Control Plan 2014 clause D2.5.7 specifies that cut and fill is to be limited to 500mm in order to minimise disturbance to existing topography and natural soil profiles. The proposal includes a maximum 2.3m cut to the south east corner of the building.

### **Non compliance with ADG requirements**

The built form is considered to provide for appropriate articulation to the Hope Street frontage with the proposal maintaining an articulated ground floor base presentation, well proportioned balcony layout and window openings to the upper levels and architectural features serving to diminish scale and bulk for the built form and provide depth to each façade. It is noted that the proposal is compliant with building separation requirements as provided by the Apartment Design Guide (ADG). However, non-compliances with the ADG have been identified in a number of areas, including solar access, cross-ventilation, unit depth, units per floor plate, and ground level private open space.

An assessment under Section 4.15 of the EP&A Act 1979 (as amended) has been undertaken and, on balance, the application is recommended for refusal.

## Site & Surrounds

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The subject site is known as 26 - 30 Hope Street, Penrith and is legally known as Lots 34, 35 and 36, DP 31239. The allotment is rectangular in shape with a frontage onto Hope Street of 47m and a depth of 40m resulting in an overall site area of 1,880m<sup>2</sup>. Each lot is currently provided with a single storey residential dwelling and associated structures. The subject site falls from the rear to the front with a fall of 2m across the depth of the site towards Hope Street.

This section of Hope Street is currently in a state of transition from traditional detached dwellings to higher density development with a number of approvals recently granted for the construction of residential flat buildings. In this regard, to the west of the subject site (No. 38-40 Hope Street) is a constructed 5 storey residential flat building containing 24 apartments with basement car parking (approved under DA15/0683) while to the north of the subject site along the opposite side of Hope Street (25-31 Hope Street) are two 6 storey residential flat buildings containing 61 apartments with basement car parking currently under construction under DA15/1185.

To the east of the subject site at No. 12 - 14 Hope Street is a five storey residential flat building containing 27 apartments and basement car parking approved under DA16/0123 currently under construction. Council is also currently in receipt of a development application at 16-24 Hope Street (2 x 6 storey residential apartment developments including 76 apartments and 2 levels of basement car parking under DA18/0792) which is currently under assessment and is yet to be determined.

It is noted that a development application at No. 32 - 36 Hope Street (6 storey residential flat building containing 45 apartments and 2 levels of basement car parking under DA18/0488) was provided to the Local Planning Panel who determined to refuse the proposal on 12 March, 2019 as the applicant's clause 4.6 request to vary a development standard relating to a building height was not considered to be well founded for the following reasons:

- A development with a height of 22.45 metres would not be compatible with the height, bulk and scale of the desired future character of the locality;
- It will not provide a high quality urban form; and
- It will not be consistent with the objectives of the R4 zone because it will not achieve a high level of residential amenity, and does not reflect the desired future character of the area.

## Proposal

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The development proposes the demolition of existing structures and construction of a six -storey residential flat building containing 42 apartments and two levels of basement car parking. Specifically, the proposed development includes the following key aspects;

### Lower Basement

- The provision of a total of thirty seven residential car parking spaces including one accessible space,
- Bicycle parking containing eight spaces,
- Thirty residential storage spaces,
- Ramp access for vehicles to upper level, and
- One lift, two fire stairs and plant room.

### Upper Basement

- The provision of a total of twenty five car parking spaces including fourteen residential spaces, four accessible spaces, ten visitor spaces and one loading space,
- Bicycle parking containing eight spaces,
- Eighteen residential storage spaces,
- Ramp access for vehicles to ground level, and
- One lift, two fire stairs and mechanical plant room.

### Ground Floor Level

- Vehicular access to the basement level from Hope Street,

- Provision of a garbage truck / loading bay including 10.5m turntable, garbage room, bulky waste room and bin lift. The garbage truck / loading bay area is provided with a separate access way for service vehicles along the western boundary of the subject site to and from Hope Street,
- Pedestrian access to the proposed residential flat building and associated site landscaping,
- Provision of 1 x 3 bedroom unit, 3 x 2 bedroom units and 1 x 1 bedroom unit, each provided with a separate courtyard area, and
- Foyer entry area and circulation core providing for lift and fire stairs.

#### Level 1

- The provision of 5 x 2 bedroom units and 2 x 1 bedroom units each with an associated balcony, and
- Lobby area with circulation core providing for lift, fire stairs, waste chutes, 4 storage areas and service cupboard.

#### Level 2-3

- The provision of 1 x 3 bedroom unit, 5 x 2 bedroom units, and 3 x 1 bedroom units each with an associated balcony, and
- Lobby area with circulation core providing for lift, fire stairs, waste chutes and service cupboard.

#### Level 4

- The provision of 2 x 3 bedroom units, 2 x 2 bedroom units, 1 x 1 bedroom units, and 1 x 1 bedroom unit with study each with an associated balcony, and
- Lobby area with circulation core providing for lift, fire stairs, waste chutes and service cupboard.

#### Level 5

- The provision of 1 x 3 bedroom unit, 3 x 2 bedroom units, 1 x 1 bedroom units, and 1 x 1 bedroom unit with study each with an associated balcony, and
- Lobby area with circulation core providing for lift, fire stairs, waste chutes and service cupboard.

#### Rooftop Level

- The provision of a communal open space area consisting of planter walls, tables and chairs, BBQ area and toilet, and
- Circulation core providing for lift and fire stairs.

The proposed apartment mix is provided by the following table below;

<b>Unit Type</b>	<b>No of units</b>
1 bedroom unit	12
1 bedroom unit with study	2
2 bedroom unit	24
3 bedroom unit	5

#### Background

The application was subject to a pre-lodgement meeting held with relevant Council staff members on the 10 October 2017. In addition, the application has been subject to an Urban Design Review Panel Meeting (UDRP) held with Council on the 24 January 2018. The application was also subject to a further UDRP meeting since the receipt of the application and the matters raised during the panel meetings have been addressed in the proposed design.



## Plans that apply

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- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy No 65—Design Quality of Residential Flat Development
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

## Planning Assessment

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### • Section 4.15 - Evaluation

The development has been assessed in accordance with the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, and having regard to those matters, the following issues have been identified for further consideration:

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

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

This Policy ensures the implementation of the BASIX scheme that encourages sustainable residential development. It requires certain kinds of residential development to be accompanied by a list of commitments to be carried out by applicants.

This application is subject to these requirements as it involves BASIX affected development.

BASIX Certificate No. 919932M\_02 was submitted with the Development Application and following modifications demonstrating compliance with set sustainability targets for water and energy efficiency and thermal comfort.

Should the application be approved, any development consent would include a standard condition to ensure the commitments in the Certificate are maintained during the life of the proposed development.

#### **State Environmental Planning Policy No 55—Remediation of Land**

Clause 7 of State Environmental Planning Policy No. 55 (SEPP 55) outlines the following requirements that a consent authority must consider prior to the issue of a consent for any development:

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

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

There is no record that the subject site is contaminated. The proponent has outlined that the site has been historically used for residential purposes while the surrounding area is also used for residential purposes. In this regard, given the residential use of the subject site and surrounding properties, it is not considered that further analysis is required as the proposal is not a change of land use being residential to residential. While so, should any 'unexpected findings' occur during excavation and earthworks, work is to cease immediately and Penrith City Council is to be notified. This may be addressed by way of recommended conditions of consent should the application be approved.

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

An assessment has been undertaken of the development proposal against the aims and objectives and specific provisions of State Environmental Planning Policy No. 65—Design Quality of Residential Apartment Development. In particular, the development proposal has been assessed against Clause 30 of the Policy which states that:

*"Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to the design quality principles, and the objectives specified in the Apartment Design Guide for the relevant design criteria"*

Clause 50 (1A)(1AB) of the Environmental Planning and Assessment Regulation 2000 specifies:

*50(1A) If a development application that relates to residential apartment development is made on or after the commencement of the Environmental Planning and Assessment Amendment (Residential Apartment Development) Regulation 2015, the application must be accompanied by a statement by a qualified designer.*

*50 (1AB) The statement by the qualified designer must:*

- (a) verify that he or she designed, or directed the design, of the development, and*
- (b) provide an explanation that verifies how the development:*
  - (i) addresses how the design quality principles are achieved, and*
  - (ii) demonstrates, in terms of the Apartment Design Guide, how the objectives in Parts 3 and 4 of that guide have been achieved.*

The development application as amended was not submitted with a design verification statement.

An assessment against Schedule 1 'Design Quality Principles', of the Policy has been undertaken and is included in **Table 1** and an assessment against the accompanying Apartment Design Guide is also provided in **Table 2** below.

<b>Table 1: Assessment Against Schedule 1 - Design Quality Principles</b>		Officer Discussion
Assessment Against Schedule 1 - Design Quality Principles		
Principle 1: Context and neighbourhood character	<p>Good design responds and contributes to its context.</p> <p>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.</p> <p>Responding to context involves identifying the desirable elements of an area's existing or future character.</p> <p>Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</p> <p>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</p>	<p>The design is not considered to respond to the context of the site.</p> <p>While the development as proposed does have regard to the recommended building separation distances and is considered to respond adequately to the approved and constructed development in the streetscape, the proposal is not viewed as having proper consideration to the existing natural contours of the subject site. This has resulted in a significant amount of subterranean area being provided to ground floor units especially along the eastern elevation which is not a desirable design solution.</p>

Principle 2: Built form and scale	<p>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>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.</p> <p>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</p>	<p>The development does adequately respond to the site's context and is considered to be sympathetic with the bulk and scale of surrounding approved residential flat buildings. The visual presentation of the built form is also considered an acceptable addition to a streetscape which is currently in transition from older low scale residential dwellings to larger residential flat buildings.</p>
Principle 3: Density	<p>Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</p> <p>Appropriate densities are consistent with the area's existing or projected population.</p> <p>Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</p>	<p>The development is considered to be of an appropriate bulk and scale and does provide for acceptable internal or external amenity for residents.</p> <p>The density of the development is not considered excessive for the subject site resulting in appropriate unit amenity, car parking and waste collection and common open space proposed.</p>
Principle 4: Sustainability	<p>Good design combines positive environmental, social and economic outcomes.</p> <p>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.</p> <p>Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.</p>	<p>The application is not considered to adequately identify that solar access and natural ventilation is provided in accordance with the Apartment Design Guide rates.</p>

<p>Principle 5: Landscape</p>	<p>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity.</p> <p>A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.</p> <p>Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.</p> <p>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.</p>	<p>Deep soil has been co-located with private open space areas for ground floor apartments.</p> <p>Landscaping provided to the street frontage is considered to enhance the built form while boundary landscaping is also considered to improve the presentation of the proposed built form to direct adjoining neighbours. In addition, landscaping to the communal roof area is considered to offer areas of relief for future residents using this area.</p> <p>However, functionality of the private open spaces on the ground floor is limited by the splitting of the paved and terraced levels. Future occupants will be required to access the upper levels by a flight of stairs, which is likely to inhibit maintenance and usability. The retaining walls are considered to overshadow planter boxes to the rear units limiting their ability to provide green space which is not considered an appropriate response to the constraints of the subject site.</p>
<p>Principle 6: Amenity</p>	<p>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.</p> <p>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 service areas and ease of access for all age groups and degrees of mobility.</p>	<p>The proposal is considered to provide for an appropriate level of amenity for the majority of future occupants in accordance with the requirements of the Apartment Design Guide in regard to room dimensions and privacy.</p> <p>However, solar access and ventilation are not considered to have been adequately addressed, in particular to the amenity for occupants of units 3, 4 and 5. It is considered that these occupants will be unacceptably impacted by the location of the units below the natural ground level. Access to sunlight, natural ventilation and outlook will be poor and the location of the private courtyards accessed by between 7 to 11 steps above the paved patio areas limits their functionality and makes them inaccessible for occupants with mobility challenges.</p> <p>The amenity of unit 1 in relation to acoustic privacy is considered to be adversely impacted by its location adjacent to the waste turntable and overlooking the driveways to the waste area and basement parking.</p>

Principle 7: Safety	<p>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.</p> <p>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.</p>	<p>The application is considered to have appropriate regard to the principles of Crime Prevention through Environmental Design. The proposal will present to Hope Street with casual surveillance achieved via the location of balconies and windows to all elevations.</p> <p>The building design is not considered to create areas of concealment with clear lines provided in separating public and private areas.</p>
Principle 8: Housing Diversity and Social Interaction	<p>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</p> <p>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.</p>	<p>The mix of units in the development is acceptable.</p>
Principle 9: Aesthetics	<p>Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.</p> <p>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.</p>	<p>The development is assessed to be appropriate in bulk and scale.</p> <p>As detailed elsewhere in this table and in the assessment of the development against the Apartment Design Guide (ADG) below, the development is considered to be generally consistent with the design criteria and design guidance statements of the ADG, however, non-compliances in relation to solar access, cross-ventilation, unit depth, units per floor plate and ground level private open space have been identified.</p> <p>In terms of the streetscape, the development is considered an acceptable addition to the streetscape providing for adequate landscaping, deep soil and canopy tree planting along the frontage of the site.</p>

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

Assessment Against the Apartment Design Guide (ADG)

Part 3	Required	Discussion	Complies
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3A-1	Each element in the Site Analysis Checklist should be assessed.	A Site Analysis plan was included in the original package of documents and modified ADG compliance table included on the amended plans to identify applicable elements as required within the Checklist.	Yes.
3B-1	Buildings to address street frontages.	The building frontage onto Hope Street is naturally orientated to north and allows for direct access from the street.	Yes.
3B-2	Living areas, Private Open Space (POS) and Communal Open Space (COS) to received compliant levels of solar access.	Refer discussion under Part 3D and 4A.	N/A.
	Solar access to living rooms, balconies and private spaces of neighbours should be considered.	The submitted shadow diagrams have identified that the adjoining properties to the south, east and west of the subject site will be impacted by additional overshadowing but while so, noting the compliant setbacks provided to all boundaries as well as to the upper levels, the proposal is not considered to create an inappropriate relationship with surrounding lots and is considered to allow for the opportunity for these adjoining properties to be appropriately developed in accordance with the requirements of the ADG.	Yes.
	If the proposal will significantly reduce the solar access of neighbours, building separation should be increased.	As discussed above, adequate information has been submitted with the development application to enable an accurate assessment in this regard. It is also noted that the proposed building has been orientated at 90 degrees to the boundary with neighbouring properties to minimise overshadowing created, also noting the compliant building separations provided to each boundary.	Yes.
3C-1	Terraces, balconies and courtyard apartments should have direct street entry, where appropriate.	One of the three ground floor apartments with street frontage to Hope Street is provided with direct access to the street, while the remaining two have external access via the main pedestrian entry to the building.	Yes.
	Changes in level between private terraces, front gardens and dwelling entries above the street level provide surveillance and improve visual privacy for ground level dwellings.	Limited level difference (up to 250mm) is provided between the pavement height and the finished floor height of the ground floor apartments fronting .	Yes.
	Upper level balconies and windows to overlook the street.	All apartments along the street frontage overlook Hope Street.	Yes.

	Length of solid walls should be limited along street frontages.	The presentation of the northern elevation fronting Hope Street is provided with acceptable openings, including slat fencing, which has minimised the presentation of any solid walls.	Yes.
	Opportunity for concealment to be minimised.	Due to the central location of the lobby, areas of concealment and crime are not considered to be provided along the main ground floor lobby entry. The entry from Hope Street is considered to be distinguished and linear in nature maintaining a straight line to the ground floor lobby area so as to minimise and areas of concealment.  The lift also faces internally and is located in sight of the front entry door.	Yes.
	Opportunities should be provided for casual interaction between residents and the public domain.  Design solutions may include seating at building entries, near letter boxes and in private courtyards adjacent to streets.	No seat is provided near the building entry. The ground floor lobby contains planter boxes rather than seating, and no seating is provided on other levels.	No.
3C-2	Mail boxes should be located in lobbies, perpendicular to the street alignment or integrated into front fences where individual street entries are provided.	The mail box location is nominated on plans perpendicular to the front boundary which is considered an appropriate design solution.	Yes.
	Substations, pump rooms, garbage storage areas and other service requirements should be located in basement carpark or out of view.	A hydrant location has been indicated on the north east corner of the site. Garbage storage rooms are adequately integrated into the building with the entry proposed along the western elevation and not in view from the street. This location is considered appropriate and is not considered to create a negative streetscape or visual impacts.  A potential location for an electrical substation has not been identified and there is limited opportunity in the front setback to include a substation without substantially impacting on landscaping treatment.	Partial non compliance.

3D-1	Communal Open Space (COS) to have minimum area of 25% of site.	<p>473.6m<sup>2</sup> of COS is required under the ADG (25% of total site area). Submitted plans state that 478m<sup>2</sup> of the site is provided as COS. The area of COS is provided to the roof top level.</p> <p>The proposed COS area is assessed to be a high amenity and usable space for residents with equitable access to this area provided from all levels via a lift core.</p>	Yes.
	Achieve a minimum of 50% direct sunlight to the principle usable part of the communal open space.	As the communal open space is proposed to the roof area adequate solar access is maintained throughout the day.	Yes.
	COS to be consolidated into a well-designed, usable area.	Refer to discussion above.	Yes.
	COS to be co-located with deep soil.	As the communal open space is located to the roof level, co-existence with deep soil area is not provided for. While so, it is considered that a range of vegetation features has been provided for to the roof top area within planter box areas (provided with a depth of up to 1.2m) to allow for some form of natural relief for users.	No, but acceptable in this instance.
3D-2	COS is to be provided with facilities such as barbeque areas and seating.	Seating and barbeque areas are provided within the COS area.	Yes.
	COS is to be well lit and readily visible from habitable rooms.	The location of the communal open space to the roof level does not provide for visibility from habitable rooms, but while so, this area is not considered to provide for any areas of entrapment, is allowed equitable access via the proposed lift service with the location on the roof considered to allow for a greater area of use as compared to a confined location along a side boundary or a rear corner of the subject site.	No, but acceptable in this instance.
3D-4	Boundaries should be clearly defined between public open space and private areas.	<p>Boundaries between public and private space are clear noting the continuation of front courtyard fencing and low sandstone wall along the street frontage.</p> <p>In addition, it is also considered that appropriate fencing has been provided between private open space areas on the ground floor and areas accessible from Hope Street to minimise inappropriate movement of persons.</p>	Yes.



3E-1	Deep soil is to be provided at a rate 15% with a minimum dimension of 6m.	<p>132.6m<sup>2</sup> of deep soil is required under the ADG (15% of total site area).</p> <p>Submitted plans state that 161m<sup>2</sup> of the site is provided as deep soil and is provided in a 6m wide strip primarily along the rear of the site.</p> <p>Small pockets of deep soil are provided within the front and eastern side setback which will allow for landscaping to be provided to assist in screening courtyard areas fronting Hope Street.</p>	Yes.
3F-1	Minimum required shared separation distances between habitable rooms and balconies are to be as follows: 1-4 Storeys – 12m 5-8 storeys – 18m	<p>Building separation is as follows (measured from the face of the balcony/building to the side boundary):</p> <p><u>South Separation</u></p> <p>A setback of 6m is provided to the ground to the third levels. A setback of 9m is provided for level 4 upwards.</p> <p><u>Western Separation</u></p> <p>A setback of 7.9m is provided to the ground, and 6m setback the first, second and third levels. A setback of 9m is provided for level 4 upwards.</p> <p><u>East Separation</u></p> <p>A setback of 6m is provided to the ground to the third levels. A setback of 9m is provided for level 4 upwards.</p>	Yes.
3F-2	Communal open space, common areas and access paths to be separated from private open space and windows to apartments.	The proposal is provided with landscaping and fencing to allow for appropriate separation.	Yes.
	Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.	An acceptable separation has been provided between habitable rooms and circulation spaces.	Yes.
	Balconies, and private terraces should be located in front of living rooms to increase internal privacy.	Balconies are generally provided adjacent living rooms.	Yes.
	Windows should be offset from the windows of adjacent buildings.	An acceptable separation is provided between proposed windows and openings on adjoining properties, particularly in consideration of likely redevelopment of sites to the east and west of the site.	Yes.

3G-1	Building entries to be clearly identifiable.	The entryway is adequately articulated with landscaping and the sandstone wall at the rear of the letterboxes provides a feature that allows it be clearly identifiable from Hope Street.	Yes.
3G-2	Building access ways and lift lobbies to be clearly visible from the public domain and communal spaces.	The main pedestrian entry is visible from the street.  The lift faces into the lobby entry and is visible from the front door.	Yes.
3H-1	Carpark access should be integrated with the building's overall façade.	The entry to the basement carpark is adequately integrated into the building with access directly off Hope Street.  The location of the driveway has also allowed for the provision of a splayed landscaped buffer along the northern boundary fronting Hope Street which will serve to minimise the visual impact of the basement entry.	Yes.
	Clear sight lines to be provided for drivers and pedestrians.	Adequate sight lines are provided for pedestrians or drivers exiting the basement.	Yes.
	Garbage collection, loading and servicing areas are screened.	The bulky waste and garbage areas are screened from the street.	Yes.
3J-1	The site is not located within 800m of a railway station and is required to comply with the car parking rates as stipulated within the Penrith DCP 2014.	Refer discussion under Penrith DCP 2014.	N/A
3J-2	Secure undercover bicycle parking should be provided for motorbikes and scooters.	16 secure bicycle parking spaces are provided within the basement levels.	Yes.
3J-3	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.	Lift lobby areas within Basement 1 and 2 are clearly defined and appropriately located.	Yes.

4A-1	Living rooms and private open spaces of at least 70% of apartments to receive 2 hours direct sunlight between 9am and 3pm mid-winter.	<p>Submitted plans are not considered to demonstrate that compliance with this design criteria is met in that 26 of the proposed 42 units (62%) will receive adequate solar access.</p> <p>A review of the submitted Solar Access Plan (Dwg. No. A1.13A, dated 08/04/19) has been undertaken and it considered that the diagrams have not appropriately indicated solar access to living zones and open spaces, in particular the ground floor unit 5 will receive obstructed solar access due to its location below the natural ground level. East facing units on floors 1-5 (numbers 10, 11, 17, 18, 26, 27, 34 and 40) are not considered to achieve the full 2 hours of solar access due to oblique window angles and windows being inset by balconies.</p>	No.
	A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid winter.	Submitted plans are considered to demonstrate that a total of 7 units (17%) will not receive any solar access which is not an appropriate design solution.	No.
4A-2	Courtyards, skylights and high level windows (with sills of 1,500mm or greater) are used only as a secondary light source in habitable rooms.	<p>The application is not provided with any highlight windows. It is noted that a roof dormer window is indicated on the Roof Plan (Dwg. No. A1.09, dated 25/10/18) however the dormer is a similar height to, and set behind, the rooftop planter boxes. This limits the effectiveness of the window in terms of acting as a light source for the unit.</p> <p>Units 8, 15, 24 and 32 from the level 1 to level 4 respectively are provided with a 'snorkel bedroom' with the window to the bedroom setback 3.9-4.6m from the buildings northern façade. The setback of these windows to the façade is considered to provide a limited degree of amenity within the bedrooms, however it is noted that only 4 of the overall proposed 76 bedrooms (5.2%) are provided in a snorkel manner which is considered an acceptable design outcome. As these bedrooms are also provided with a northern aspect, the amenity of these rooms is considered appropriate in terms of solar access.</p>	Yes.

4A-3	Sun shading devices are to be utilised.	Shading devices are provided to the level 5 north facing units and on the rooftop communal open space.	Yes.
4B-3	60% of apartments are naturally ventilated and overall depth of cross-through apartments 18m maximum glass-to-glass line.	<p>The submitted plans indicate that 67% of apartments can achieve natural cross ventilation. This calculation includes unit 43 which is provided with a dormer roof design.</p> <p>However, the Ventilation Plan (Dwg. No. A1.13, dated 08/04/19) indicates that units 8, 15, 24, 32 and 38 rely on windows within 'snorkel' areas and are unlikely to provide for sufficient cross ventilation. This results in only 23 units or 55% being naturally cross ventilated.</p>	No.
4C-1	Finished floor to finished ceiling levels are to be 2.7m for habitable rooms, 2.4m for non-habitable rooms.	The proposal is for 3.1m measured from finished floor to finished floor level resulting in a 2.8m finished floor to underside of ceiling, which is compliant with the ADG. It is noted that units 1 and 2 are provided with a 4m floor to ceiling height noting the split level nature of the ground floor.	Yes.
4D-1	<p>Apartments are to have the following min. internal floor areas:</p> <p>1 bed – 50sqm 2 bed – 70sqm 3 bed – 90sqm</p> <p>Additional bathroom areas increase minimum area by 5sqm.</p>	<p>Most proposed apartment sizes comply with the ADG requirements.</p> <p>Minor non-compliances in units 19 and 28 (75m<sup>2</sup> required, 74m<sup>2</sup> provided).</p>	No, but acceptable in this instance.
4D-2	In open plan layouts the maximum habitable room depth is 8m from a window.	A small number of open plan units exceed the maximum 8m depth. Units 10, 17 and 26 are 8.5m in depth. It is noted that the plans generally indicate unit depth as measured from the window to the kitchen bench, rather than window to wall.	No.
4D-3	Master bedrooms to be 10sqm's and other rooms 9sqm's.	All units comply with this requirement.	Yes.
	Bedrooms to have a minimum dimension of 3m.	All units comply with this requirement.	Yes.
	Living rooms to have minimum width of 3.6m for a 1 bedroom unit and 4m for 2 & 3 bedrooms.	All units comply with this requirement.	Yes.

4E-1	<p>All units to have the following primary balcony areas:</p> <p>1 bed – 8sqm (2m deep)</p> <p>2 bed – 10sqm (2m deep)</p> <p>3 bed – 12sqm (2.4m deep)</p>	<p>All units comply with the balcony size and area requirements.</p> <p>However, ground level units should be provided with 15m<sup>2</sup> of private open space with a minimum depth of 3m. None of the ground level units meet these size and area requirements which is largely a consequence of the proposed cut.</p>	No.
4E-3	<p>Air-conditioning units should be located on roofs, in basements, or fully integrated into the building design.</p>	<p>No air conditioning is indicated on the plans.</p>	No.
4F-1	<p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>Where a development is unable to achieve the design criteria, a higher level of amenity for common lobbies, corridors and apartments should be demonstrated.</p>	<p>The application provides for a maximum of 9 units to levels 2 and 3 which is non compliant.</p> <p>No additional measures are proposed to achieve a higher level of amenity within the lobbies, corridors or apartments.</p>	No.
4F-1	<p>Daylight and natural ventilation to be provided to all common circulation spaces.</p>	<p>As the ground floor lobby area is provided with a northern facing entry onto Hope Street it is considered that an adequate amount of solar access is provided to this area.</p> <p>On levels 1-5, no natural light or ventilation is provided to common circulation spaces.</p>	Yes.
4F-1	<p>Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed.</p> <p>Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.</p>	<p>All primary bedroom and living room windows do not directly front onto common circulation spaces. In this regard, visual and acoustic privacy is considered to be maintained.</p>	Yes.
4G-1	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is to be provided:</p> <p>1 bed – 4m<sup>3</sup></p> <p>2 bed – 6m<sup>3</sup></p> <p>3 bed – 10m<sup>3</sup></p> <p>With 50% of the above to be provided within the Units.</p>	<p>Submitted plans indicate that storage cages are provided with the basement carpark.</p> <p>Adequate area for internal storage could be accommodated within apartments.</p>	Yes.
4H-1	<p>Noise transfer is minimised through the siting of buildings and building layout.</p>	<p>The amenity of unit 1 in relation to acoustic privacy is considered to be adversely impacted by its location adjacent to the waste turntable and overlooking the driveways to the waste area and basement parking.</p>	No.

4K-1	Flexible apartment configurations are provided to support diverse household types.	<p>The development proposes a range of unit sizes, configurations and number of bedrooms to accommodate change over time and cater for differing households. Unit mix is calculated as follows:</p> <p>13 x 1 bedroom apartments 23 x 2 bedroom apartments 6 x 3 bedroom units</p>	Yes.
4L-1	Direct street access should be provided to ground floor apartments.	Direct street access is provided for ground floor unit 3, and external entry from the main pedestrian building entry is provided to units 1 and 2.	Yes.
4M-1	Building facades to be well resolved with an appropriate scale and proportion to the streetscape and human scale.	<p>The proposed street elevation is considered to provide for a strong form and presence with the building design incorporating varied building elements to provide visual interest along the street. The façade is provided with both horizontal and vertical elements with stacked balconies creating clearly identifiable vertical lines while horizontal division is provided via dominant storey levels.</p> <p>The proposed building is also provided with a solid base, defined middle element forms and topped with recessed upper 2 levels.</p> <p>The materials proposed provide for a mixture of brick, render and cladding which are considered to be appropriately coloured to allow for a favourable addition to the existing streetscape.</p>	Yes.

4O-1	Landscape design to be sustainable and enhance environmental performance.	<p>The proposed landscaping design will allow for small sized trees (ranging in height from 3m to 5m when mature) to be incorporated within deep soil areas with planter boxes provided to the rooftop level.</p> <p>The nature of the landscaping proposed is considered to allow for subtle screening of apartments from adjoining premises in association with boundary fencing while also providing for an appropriate streetscape relationship along the sites northern façade. In this regard, the proposed landscaping is considered will enhance the environmental performance of the structure.</p> <p>In addition, sections are provided through upper level planting proposed via planter boxes which has identified that planting will be sustainable and practical with the depth of planter boxes equalling 1.2m.</p>	Yes.
4Q-2	Adaptable housing is to be provided in accordance with the relevant Council Policy.	A total of 4 adaptable units are proposed. With a total of 42 units identified, to meet Council's Policy in relation to adaptable units 4.2 units are required, which when rounded up equates to 5 units. In this regards, the proposal is not compliant by 1 unit.	No.
4U-1	Adequate natural light is provided to habitable rooms.	Apartment depths and open floor plan arrangements allow light into most kitchens, dining and living areas. However, as detailed previously non-compliant solar access and unit depths are indicated on plans.	No.
4V-2	Water sensitive urban design systems to be designed by suitably qualified professional.	The development application was referred to Council's internal Environmental Waterways Unit and was supported subject to the provision of appropriate conditions with and development consent granted.	Yes.
4W-1	A Waste Management Plan is to be provided.	A Waste Management Plan is generally acceptable subject to conditions.	Yes.
	Circulation design allows bins to be easily manoeuvred between storage and collection points.	Waste areas and manoeuvring is compliant with Council's DCP. Garbage collection will be provided onsite within a proposed garbage truck loading bay.	Yes.

## Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the application against relevant criteria with Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997). This Policy aims “to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context”. The Policy requires Council to assess development applications with regard to general and specific considerations, policies and strategies.

The proposal is not found to be contrary to these general and specific aims, planning considerations, planning policies and recommended strategies of the plan. The site is not located within a scenic corridor of local or regional significance and it is considered that the proposed development will not significantly impact on the environment of the Hawkesbury-Nepean River either in a local or regional context.

### Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Does not comply - See discussion
Clause 2.3 Permissibility	Complies
Clause 2.3 Zone objectives	Does not comply - See discussion
Clause 2.7 Demolition requires development consent	Complies
Clause 4.1A Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings	Complies - See discussion
Clause 4.3 Height of buildings	Does not comply - See discussion
Clause 4.4 Floor Space Ratio	N/A
Clause 4.6 Exceptions to development standards	Complies - See discussion
Clause 5.10 Heritage conservation	N/A
Clause 7.2 Flood planning	Complies
Clause 7.4 Sustainable development	Does not comply - See discussion
Clause 7.6 Salinity	Complies - See discussion
Clause 7.7 Servicing	Complies - See discussion

#### Clause 1.2 Aims of the plan

The proposal is not considered to comply with the following aims of the LEP:

*(b) to promote development that is consistent with the Council's vision for Penrith, namely, one of a sustainable and prosperous region with harmony of urban and rural qualities and with a strong commitment to healthy and safe communities and environmental protection and enhancement*

*(c) to accommodate and support Penrith's future population growth by providing a diversity of housing types, in areas well located with regard to services, facilities and transport, that meet the current and emerging needs of Penrith's communities and safeguard residential amenity*

*(h) to ensure that development incorporates the principles of sustainable development through the delivery of balanced social, economic and environmental outcomes, and that development is designed in a way that assists in reducing and adapting to the likely impacts of climate change*

The adverse amenity impacts on future occupants, in regards to the inadequate solar access and natural ventilation opportunities, is not aligned with Council's vision for development in Penrith.

The proposal does not incorporate the principles of sustainable development into the design in that the existing landform is not retained and site disturbance is considered excessive.



### **Clause 2.3 Zone objectives**

The subject site is located within the R4 High Density Residential zone. The objectives of the zone include:

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

The design of the proposed development does not ensure that a high level of residential amenity is achieved and maintained in that the application has not demonstrated that solar access and cross-ventilation standards have been satisfactorily achieved in accordance with the Apartment Design Guide. Additionally, the location of the ground floor units below existing ground level and the terraced nature of the private open space will limit amenity to those units and inhibit functionality of those spaces.

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

Once the three dwelling lots are consolidated, compliance with the minimum lot size of 800 square metres required by the LEP is achieved. Once consolidated, the total site area will be 1,884 square metres. Suitable conditions are recommended to require the lot consolidation to be created and registered on title prior to any Occupation Certificate should the application be approved.

### **Clause 4.3 Height of buildings**

The subject site is provided with a maximum building height of 18m under the LEP. The application is provided with a flat roof (RL63.82) which also incorporates a pergola for part of the roof area used for communal open space purposes which provides for a non compliance on the subject site of between 3.3m (overall height of 21.3m or 18.3% above the maximum height required) to the lift overrun and 1.2m (overall height of 19.2m or 6.6% above the maximum height required) to the uppermost habitable floor area (for units 37 and 42 on Level 5).

In this regard, the application was accompanied with a '4.6 Exception to development standard' document which has discussed the nature of the height non compliance. Discussion in regard to the non compliance is provided for under a separate title within this report.

### **Clause 4.6 Exceptions to development standards**

The application is non compliant with the height of buildings development standard under Clause 4.3 of the Penrith Local Environmental Plan 2010. The application is provided with a flat roof (RL63.82) which also incorporates a pergola for part of the roof area used for communal open space purposes which provides for a non compliance on the subject site of between 3.3m (overall height of 21.3m or 18.3% above the maximum height required) to the lift overrun and 1.2m (overall height of 19.2m or 6.6% above the maximum height required) to the uppermost habitable floor area (for units 37 and 42 on Level 5).

Clause 4.6 of the Penrith Local Environmental Plan 2010 provides that development consent may be granted for development even though the development would contravene a development standard. This is provided that the relevant provisions of the clause are addressed, in particular subclause 3-5 which provide:

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

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

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

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

*proposed to be carried out, and*

*(b) the concurrence of the Secretary has been obtained.*

*(5) In deciding whether to grant concurrence, the Secretary must consider:*

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

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

*(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

In this regard, the non compliance is to be discussed below;

#### Building Height

The application has been accompanied by a revised Clause 4.6 Variation Request prepared by Think Planners dated 11 April, 2019 in relation to the building height non-compliance. In this regard, the accompanying Variation request has provided for the following evaluation as to the identified variation in relation to Clause 4.3 of the PLEP;

*The current development proposal is predominantly consistent with the building height except for a portion of level 6 however, the proposal remains consistent with the objectives based on the following:*

- *Given the locality is in a state of transition from existing low density development to high density development the broad reference to compatibility with the existing character of the locality is not considered relevant in an R4 context with an 18m height limit (but would be relevant in an R2 or R3 context where an 8.5m height limit applies).*
- *The key requirement for development in the R4 zone is the desired future character of the locality. The building is compatible with the height, bulk and scale of the desired future character when having regard to the forms of development approved in the locality, and the approved building heights of those developments that are comparable in numerical terms to this proposal. This clearly shows the desired future character for the precinct being 6 storey residential flat buildings, with the majority of these buildings exceeding the 18m height limit to habitable areas (i.e. top most residential floor) as well as to the rooftop common areas and associated lift over-run and fire stairs. The numerical comparison provided on page 5 of this request demonstrates consistency and compatibility with those developments that are reflective of the desired future character of the locality on the basis that they have been granted development consent under the same set of planning controls.*
- *Providing for the rooftop communal open space area on top of the building that necessitates the provision of the lift over-run (for accessibility reasons) and the fire stair (fire safety and fire egress reasons). The provision of the rooftop common area enables the provision of a quality common open space area that achieves solar access for residents which is a response to the north-south orientation of the site- meaning any common open space at the ground level would be on the southern side of the building and would not receive adequate solar access. The provision of the rooftop common area is consistent with the desired future character of the locality when observing the other approved development in the locality that also feature rooftop common areas and comparable overall building heights. This aligns with the objective a) and d).*
- *The overall height of the development presents as a compatible form of development to the anticipated high density residential development that are emerging in the locality, noting that the emerging character is for 6 storey residential flat buildings in the locality and 6 storeys is the prevailing form of development being carried in the R4/18m height limit area. The 5th and 6th storey of the proposal is recessed behind the main building alignment to downplay visual dominance as viewed from the public domain and adjoining residential properties- this step in the façade provides for visual relief to the street as it presents a 4 storey street wall.*
- *The proposed buildings will present an appropriate bulk and scale on the site with 3 balanced vertical components/proportions that are consistent with other approved and already constructed 6 storey residential flat building developments in Hope Street and surrounding area. Further the building height*

*proposed provides for a high quality urban form consistent with objective (d) and the height departure to the habitable areas or the rooftop areas does not take away the fact the proposal presents a high quality urban form.*

- The additional height to the habitable areas or the rooftop areas does not generate any additional amenity impacts given the location of the site and the surrounding site context with regard to overshadowing, visual privacy or acoustic privacy. The recessed nature of the top floor mitigates additional overshadowing and the centrally located rooftop structures means that the visual, privacy and shadow impacts are also mitigated.*
- Given the scale of the proposal, and the extent of the variation is not perceptible at street level given the upper level of the building is setback behind the lower levels which means the additional height will not be seen from a pedestrian level when standing in the public domain and this offsets the additional height of the top most floor and the recessed nature of the roof structures also means they are not visible from the public domain which means the additional height continues to minimise visual impact to existing development and to public areas.*
- The proposal, and specifically the additional building height, has been carefully designed to ensure that privacy impacts are minimised and the proposal will not obstruct existing view corridors noting that no significant view corridors are identified for the site.*
- The proposal, and specifically the additional building height, does not result in any discernible increased shadow impact given the orientation of the site and setbacks that fully comply with the requirements of the Apartment Design Guide and the recessed upper levels relative to the levels below mean that the shadow cast is reduced. The centrally located rooftop elements are designed to be pulled away from the building edges to avoid generating additional overshadowing impacts.*
- The non-compliance to the height control has no impact on the setting of any items of environmental heritage or view corridors.*
- The proposal does not adjoin any low-density areas or sensitive interfaces and will integrate with future development to the north, east, south and west which will accommodate developments of comparable building height- and likely also breach the numerical height limit to the residential floor area at the upper level and to rooftop common areas.*

*As outlined above the proposal remains consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable.*

The accompanying Variation request has also provided the following discussion in relation to Clause 4.6(4) and 4.6(5) of the Penrith Local environmental Plan 2010;

*In accordance with the provisions of Clause 4.6(4)(a)(i) Council can be satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) for the reasons set out previously.*

*In relation to the provisions of Clause 4.5(4)(a)(ii) the consent authority can be satisfied that the development, including the numerical building height departure, is in the public interest given that:*

- The proposed development remains consistent with the objectives of the building height control.*
- The proposal is consistent with the objectives of the R4 zone, being:*
  - To provide a variety of housing types within a high density residential environment.*
  - To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
  - To ensure that a high level of residential amenity is achieved and maintained.*
  - To encourage the provision of affordable housing.*
  - To ensure that development reflects the desired future character and dwelling densities of the area.*
- The proposal will provide a high quality residential development in a strategic location within close proximity to the Penrith train station and CBD, bus interchange to maximise public transport patronage and to encourage walking and cycling. The scale of the development will help to revitalise*

*the area with delivery of an activated ground floor and an attractive overall development.*

- The development provides for the delivery of a variety of housing types in a high density residential environment. The development also provides for a high level of residential amenity, provides for additional housing to contribute to housing supply and affordability and reflects the desired future character and dwelling densities of the area.*
- The building height departure facilitates a better design response for the development with regard to waste collection, overland flow and finished floor levels, floor to ceiling heights and also in providing for high levels of residential amenity that is facilitated by the height departure in providing for the rooftop common open space. The rooftop common open space enables the achievement of high levels of residential amenity for residents owing to the northsouth lot orientation and the absence of the rooftop common open space, if strict compliance with the height limit was maintained, would reduce the level of amenity afforded to residents.*
- The development proposal, including the building height departure, is consistent with the desired future character of the locality as established by approved development in the locality.*

*On the basis of the above points the development is clearly in the public interest because it is consistent with the objectives of the building height standard, and the objectives of the R4 zone and the numerical departure from the building height control facilitates a better design outcome on the site*

#### *Clause 4.6(5)*

*As addressed, it is understood the concurrence of the Director-General may be assumed in this circumstance, however the following points are made in relation to this clause:*

- a) The contravention of the building height control does not raise any matter of significance for State or regional environmental planning given the nature of the development proposal; and*
- b) There is no public benefit in maintaining the development standard as it relates to the current proposal. The departure from the building height control is acceptable in the circumstances given the underlying objectives are achieved and it will not set an undesirable precedent for future development within the locality based on the observed building forms in the locality and the nature and height of approved developments in the locality.*

#### Discussion in regard to building height non-compliance

It is considered that the commentary provided by the accompanying 4.6 Variation in relation to the non compliant height has adequately addressed why compliance with the development standard is unreasonable and unnecessary in this instance. It is noted that the ground floor allows for the incorporation of a on site garbage truck loading bay area. This will provide for an increased overall height above the maximum development standard but is also considered an appropriate response to the constraints of the subject site and the provision of a functional garbage collection arrangement in this instance.

The application will also provide for compliant separation distances to all adjoining lot boundaries for the proposed building to both the rear and side elevations also noting that varied separations to be provided up to four levels and five levels and greater which has been achieved. In this regard, the position of the proposed building is considered appropriate with the amount of additional habitable area provided to the upper level not considered to create an additional amount of inappropriate overshadowing to adjoining properties. The upper levels are considered to be suitably stepped away from the lower levels to diminish the impact of the overall building height while items to the communal roof top level such as the lift overrun and pergola feature are not considered to be visually prominent from any public areas noting their centralised position.

The overall built form is considered consistent with the surrounding approvals granted for residential flat buildings currently under construction as well as applications received for residential flat buildings along Hope Street.

Noting the above, a departure from the height development standard is therefore considered acceptable in this instance. The section of the applicant's written request relating to height non compliance is considered to have provided for sufficient environmental planning grounds to justify contravening the development standard and is not inconsistent with the objectives of Clause 4.3.

#### **Clause 7.4 Sustainable development**

Clause 7.4 of the PLEP 2010 requires the consent authority to have regard to the principles of sustainable development as they relate to the development based on a "whole of building" approach and requires the consent authority to consider each of the following:

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

The application is considered to not have been accompanied with information sufficient to demonstrate that solar access and the opportunity for natural ventilation is achieved. Adaptive reuse of a number of units as well as a Basix Certificate is provided (to be updated to reflect modifications provided should the application be approved via a condition of consent) confirming the proposed development will meet the NSW Government's requirements for sustainability, if built in accordance with the identified commitments. In this regard, should the application be approved, the accompanying Basix Certificate will form part of the Development Consent.

#### **Clause 7.6 Salinity**

The subject site is affected by moderate salinity. While so, it is not considered necessary in this instance to include any specific condition(s) in relation to construction noting the nature of the proposed works.

#### **Clause 7.7 Servicing**

The proposed works provide connections to new and existing servicing infrastructure to facilitate adequate servicing for the proposal.

### **Section 79C(1)(a)(ii) The provisions of any draft environmental planning instrument**

There are no draft environmental planning instruments applicable to the subject site or to the proposed development.

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

### Development Control Plan 2014

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

## Section 79C(1)(a)(iiia) The provisions of any planning agreement

There are no planning agreements applying to this application.

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

The relevant prescribed conditions of the Regulations, such as the requirement for compliance with the Building Code of Australia and fire safety requirements, could be imposed as conditions of consent where applicable. Subject to the recommended conditions of consent, the proposed development complies with the requirements of the *Environmental Planning and Assessment Regulation 2000*.

As previously indicated, Clause 50 (1A)(1AB) of the Environmental Planning and Assessment Regulation 2000 specifies:

*50(1A) If a development application that relates to residential apartment development is made on or after the commencement of the Environmental Planning and Assessment Amendment (Residential Apartment Development) Regulation 2015, the application must be accompanied by a statement by a qualified designer.*

The development application as amended was not submitted with a design verification statement.

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

### Context and Setting

It is noted that the subject site and its surrounds is currently in a state of transition from a previously lower density zone to its current high density zoning, with Hope Street providing for a number of land parcels which are currently subject to or have been granted approval for the construction of residential flat buildings. This is evident in the provision of a new residential flat building directly opposite the subject site to the north and further construction works to the east and west of the subject site also providing for multi level apartment buildings. In this regard, the proposal is considered in keeping with the desired future character of the area allowing for an upgrade in structures from existing detached dwelling houses to large compact residential flat buildings.

The application is provided with compliant setbacks to each side and the rear boundary in accordance with the Apartment Design Guide. These setbacks have also incorporated greater setbacks to the fourth and fifth storeys to provide for a reduction in the visual impact of the building when viewed from both adjoining properties and surrounding public areas. The 6m building setback to the ground floor fronting Hope Street is also considered an appropriate separation to allow for landscaping to within the front setback area. This landscaping in the form of hedges, shrubs and trees to each front courtyard area is considered to minimise the visual impact of the building and allow for an improved integration with the existing streetscape.

### ***Solar Access***

The application has been accompanied by architectural plans which are considered to identify that 26 of the proposed 42 units (a total of 62%) will achieve a minimum 2 hours solar access between 9 am and 3 pm at mid-winter and is therefore non-compliant with the solar and daylight access requirements as provided by the Apartment Design Guide. In addition, 7 of the proposed 42 units (or 17%) will received no solar access which is non-compliant with the requirements provided by the Apartment Design Guide.

It is also noted that the ground floor units 3, 4 and 5 are located below the existing ground level and will receive restricted solar access in this regard. Unit 5 in particular, being located on the south eastern corner of the building, will provide little in the way of amenity for future occupants.

### ***Excavation and Terraces***

The proposed development includes a maximum cut of 2.3m on the rear south eastern corner of the building in order to maintain a consistent ground floor level and not exacerbate the overall building height which as proposed, exceeds the maximum height of buildings standard applicable to the site. It is considered that the degree of site disturbance proposed is excessive and therefore the design is unresponsive to the existing topography of the site. Terracing to the rear provides private open space to the ground floor units with split level design. However the functionality of and ability to maintain these spaces is impaired by the necessary flight of stairs to access the upper levels. The ground level paved patio areas are restricted in area and dimensions, and are likely to receive little sunlight due to the height retaining walls. This limits the usability of these spaces and ability to successfully maintain landscaped beds, and they are non-compliant with the standards required by the Apartment Design Guide.

### ***Overlooking***

The application is provided with a number of fixed timber louvre screens to each elevation along in part the front of balcony areas to minimise the potential for overlooking onto adjoining properties. In this regard and noting the compliant separations provided to the side and rear boundary in accordance with the requirements of the Apartment Design Guide, it is considered that appropriate measures have been incorporated into the design to minimise direct overlooking concerns.

### ***Landscaping***

The application has been accompanied with a landscape plan which has identified the provision of landscaping throughout the subject site in association with the proposal. In this regard, landscaping has identified bushes and trees to the front setback area which is considered to compliment the visual impact of any lightweight fencing and low sandstone walls proposed to ground floor unit courtyard areas fronting Hope Street. In addition to the mix of trees, shrubs and grasses provided to each of these courtyard areas, the nature of landscaping proposed to the northern elevation is considered to allow for an appropriate integration with the building design to minimise the impact of architectural features.

The proposal will provide for varied landscaping features to the eastern side setback in association with ground floor courtyard areas which will allow for mature tree planting to deep soil zones. This landscaping is considered to serve as a buffer between the adjoining neighbour while also providing for amenity for future occupants.

Elevated planter boxes associated with terrace areas are proposed, however Council's Landscape Architect has raised concerns in regard to their ongoing health and maintenance, particularly in relation to unit 5, that due to the high retaining walls any planting will receive inadequate sunlight.

The south western corner of the ground floor adjoining the garbage rooms and garbage truck loading bay are maintained as deep soil areas. While not a communal landscape area, plans have identified access to this part of the site to allow for vegetation maintenance.

The communal open space to the roof level is considered to have been appropriately treated with landscaping features for the use of future occupants. These planter boxes are 1.2m in depth and are considered to allow for an appropriate mix of plant and tree species to assist in softening the presentation of this common area.

### ***Access, Traffic and Parking***

The proposal will generate an increase in traffic volume, but while so, it is considered that the application has adequately demonstrated that the local road network has capacity to cater for the development. Off-street parking spaces are provided in accordance with the DCP requirements and this arrangement will reduce the incidence of off-street parking. Sight distances of the proposed driveway would be clear when in view from the street and vehicles can enter and leave in a forward direction.

### ***Noise***

The application has satisfactorily addressed the potential noise impacts from the development through provision of an Acoustic Report which was reviewed by Council's Environmental Management Team and considered acceptable.

### ***Accessibility***

The application was accompanied by an Accessibility Certificate of Design Compliance. This certificate confirms that the adaptable units provided can comply with the spatial requirements of Australia Standard 4299 for Adaptable Housing. While so, it is noted that a minimum of five accessible units are required to be provided in accordance with Council's controls, the proposal therefore deficit by one unit.

In addition to the above, it is noted that a total of five accessible car parking spaces have been provided, while appropriate access may be provided to the communal roof area via the use of lifts within the building.

### ***Waste Management***

The application was supported by a Waste Management Plan which has detailed the way in which all waste and materials resulting from the excavation, construction and on-going use of the building on the site are to be dealt with.

The application has indicated the provision of on-site collection by Council waste contractors and will incorporate waste collection/storage rooms and a bulky goods area to the ground floor plan. This waste area is serviced by a garbage truck loading bay area incorporating a turntable accessed by a driveway along the western boundary for the movement of service vehicles. In this regard, the application has been accompanied by swept path diagrams which have identified that a service vehicle may safely enter and exit the subject site in a forward direction with the assistance of the turntable within the loading bay. It is also noted that this area will serve as a loading bay for other trucks or vehicles (eg, removalist trucks or vans) who may be required to visit the subject site with a ramp from this area allowing for access to the ground floor lobby area and lifts.

The application is provided with a dual chute system for normal waste and recycling waste from each upper



level to the ground floor with Council's Waste Services Section confirming that there is sufficient area to accommodate the required number of bins and allow for adequate manoeuvring.

In addition to the above, the proposed arrangements were reviewed by Council's Waste Officer and Traffic Engineer who have raised no objection to the proposal subject to appropriate conditions.

### ***Environmental Sustainability***

Notwithstanding the solar access non-compliances as discussed above, inadequate cross ventilation is provided to the proposed development. The submitted plans indicate that 67% of apartments can achieve natural cross ventilation. This calculation includes unit 43 which is provided with a dormer roof design. However, the Ventilation Plan indicates that units 8, 15, 24, 32 and 38 rely on windows within 'snorkel' areas and are unlikely to provide for sufficient cross ventilation. This results in only 23 units, or a total of 55% being naturally cross ventilated. A number of units have been identified as proposing unit depths greater than 8m as specified in the Apartment Design Guide.

Cumulatively, these aspects of the building design contribute to a development that does not adequately respond to the principles of sustainable development, and it is considered likely that future occupants will be over-reliant on artificial heating, cooling and lighting.

### ***Social and Socio-Economic Impacts***

The application is not considered likely to result in any negative social impact in the area. The proposal has been assessed against the principles and objectives contained within the DCP, specifically those related to safety and security and is compliant in this regard. The development of the site will facilitate the provision of high density residential accommodation in accordance with the aims of the LEP.

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

The site is considered to be unsuitable for the proposed development for the following reasons:

- The proposal does not respond to the site constraints in terms of grade and excavation required to accommodate a development of the scale proposed.
- The orientation of the building on the site does not provide for sufficient solar access to units or natural ventilation opportunities.

## **Section 79C(1)(d) Any Submissions**

### **Community Consultation**

The development application was originally advertised in the local newspaper and notified to owners and occupiers of adjoining and nearby properties pursuant to the recommendations of the Regulations and in accordance with Council's Development Control Plan. Affected property owners and occupiers were notified in the surrounding area and invited to make a submission on the proposal during the exhibition period from 1 June 2018 to 15 June 2018. During this period, no submissions were received.

Following amendments to the proposal, the development application was re-notified to owners and occupiers of adjoining and nearby properties from 19 November 2018 to 3 December 2018. During this period, no submissions were received.

### **Referrals**

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

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

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

The public interest is best served by the orderly and economic use of land for purposes permissible under the relevant planning regime and in accordance with the prevailing planning controls. In this regard, the proposed works are inconsistent with the relevant planning provisions related to the development of residential flat buildings and on balance, it is considered that the application is unsupportable due to the impacts on the topography of the site, lack of consideration for the principles of sustainable development, and adverse impacts on residential amenity for future occupants of the proposed development.

### **Section 94 - Developer Contributions Plans**

Development contributions apply to the subject proposal, however as the application is recommended for refusal, a condition of consent requiring their payment prior to the issue of a Construction Certificate is not recommended.

## Conclusion

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The proposed development has been assessed in accordance with the relevant provisions of the environmental planning instruments and Development Control Plan pertaining to the land. The provision of a residential flat building is a permissible use under the site's R4 High Density Residential zoning. As the development application is for a residential flat building under the provisions of State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development, the application is provided for determination to the Penrith Local Planning Panel.

While the proposal has provided for a height of building non compliance with the respective development standard under Clause 4.3 of the LEP, it is considered that the application has been accompanied by an acceptable 'Exception to Development Standards' variation request as required under Clause 4.6 of the Penrith LEP. The bulk, scale and presentation of the building is considered an appropriate inclusion to Hope Street, maintaining an acceptable relationship to adjoining properties while providing for a positive inclusion alongside the existing streetscape, surrounding buildings and public places. The proposal is considered to be compliant with the Apartment Design Guide requirements in relation to setbacks, building separation, deep soil zones, communal open space and apartment size.

Notwithstanding these positive attributes, the proposal is deficient in that it does not meet the objective of the R4 zone to ensure a high level of residential amenity is achieved and maintained. The application has not adequately demonstrated that an acceptable level of amenity will be provided to future occupants in relation to solar access, natural ventilation, and apartment depths. The excessive excavation at the south eastern corner of the site and terraced nature of the private open space will provide little amenity for occupants of the ground floor units. It is also noted that were the design to be amended to reflect the existing topography of the site, the potential may exist for a higher set building form and further non-compliance with the desired building height control.

Noting the above, the proposed development has been assessed against the relevant heads of consideration contained in Section 4.15 of the *Environmental Planning and Assessment Act, 1979* and on balance, has been found to be unsatisfactory. The site is unsuitable for the proposed development and the proposal in its current form is not considered to be in the public interest. The proposal is therefore recommended for refusal.

## Recommendation

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1. That DA17/1341 providing for the demolition of existing structures and construction of a six (6) storey residential flat building containing forty two (42) apartments and two (2) levels of basement car parking be refused subject to the attached conditions.

## Refusal

### 1 X Special 02 (Refusal under Section 79C(1)(a)(i) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the provisions of Penrith Local Environmental Plan 2010 as follows:

(i) Clause 1.2 Aims of the Plan - The proposal is inconsistent with the aims of the plan in relation to promotion of development consistent with Council's vision for Penrith, to meet the emerging needs of Penrith's communities while safeguarding residential amenity and ensuring that the development incorporates the principles of sustainable development.

(ii) Clause 2.3 Zone Objectives - The proposal is inconsistent with the objectives of the R4 High Density Residential zone, particularly (a) The design of the proposed development does not ensure that a high level of residential amenity is achieved and maintained.

(iii) Clause 7.4 Sustainable Development - The proposal does not demonstrate that the principles of sustainable development have been appropriately incorporated into the design.

### 2 X Special 03 (Refusal under Section 79C(1)(a)(i) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the provisions of State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development as follows:

(i) Clause 30(2)(a) - compliance with the design quality principles specified in the Apartment Design Guide:

- Principle 1: Context and Neighbourhood Character
- Principle 4: Sustainability
- Principle 5: Landscape
- Principle 6: Amenity

(ii) Clause 30(2)(b) - compliance with the objectives specified in the Apartment Design Guide:

- 3C Public domain interface
- 4A Solar and daylight access
- 4B Natural ventilation
- 4D Apartment design and layout
- 4E Private open space and balconies
- 4F Common circulation and spaces
- 4H Acoustic privacy
- 4Q universal design
- 4U Energy efficiency

3 **X Special 04 (Refusal under Section 79C(1)(a)(iii) of EPA Act 1979)**

The development application is not satisfactory for the purpose of Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, as the proposal is inconsistent with the following provisions of Penrith Development Control Plan 2014:

(i) The application has not satisfied Council with respect to the requirements under Part B - 'DCP Principles', specifically:

- The proposal does not recognise and protect the intrinsic value of natural systems, and the proposal does not minimise its ecological footprint or promote sustainable production and consumption.

(ii) The application has not satisfied Council with respect to the requirements under Section C1 'Site Planning and Design Principles', specifically:

- The proposal does not adequately respond to the natural topography of the site or attempted to minimise site disturbance.

(iii) The application has not satisfied Council with respect to the requirements under Section C4 'Land Management', specifically:

- Excavation of the site exceeds 1m from the natural ground level and extensive retaining walls are proposed to manage the cut.

(iv) The application has not satisfied Council with respect to the requirements under Section D2 'Residential Development', specifically:

- Clause D2.5.13 The building design does not promote cross-ventilation standards.
- Clause D2.5.14 The design of ground floor courtyards for units 3, 4 and 5 includes terraces higher than 1.5m above ground level.
- Clause D2.5.18 Retaining walls are greater than 500mm.
- Clause D2.5.20 Insufficient adaptable units have been provided to meet a 10% minimum overall units.

4 **X Special 06 (Refusal under Section 79C(1)(a)(iv) of EPA Act 1979)**

The application is not satisfactory for the purpose of Section 4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the regulations as follows:

- Clause 50 (1A)(1AB) of the *Environmental Planning and Assessment Regulation 2000* requires a statement from a qualified designer to be submitted.

5 **X Special 07 (Refusal under Section 79C(1)(b) of EPA Act 1979)**

The development application is not satisfactory for the purpose of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in terms of the likely impacts of that development including those related to:

(i) Solar access,

(ii) Excavation and terraces,

(iii) Landscaping, and

(iv) Environmental sustainability.

6 **X Special 08 (Refusal under Section 79C(1)(c) of EPA Act 1979)**

The application is not satisfactory for the purpose of Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979* as the grade and orientation of the site is not suitable for the proposed development.

7 **X Special 10 (Refusal under Section 79C(1)(e) of EPA Act 1979)**

The application is not satisfactory for the purpose of Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, as the proposal is not in the public interest.

# Appendix - Development Control Plan Compliance

## Development Control Plan 2014

### Part B - DCP Principles

The proposal is contrary to the principles, commitments and objectives of the DCP, specifically as follows:

*Principle 3: Recognise the intrinsic value of biodiversity and natural ecosystems, and protect and restore them.*

The design of the development is not considered to be site responsive in that a significant excavation at the south eastern corner if the building is proposed. The cut creates ground floor units that are largely sited below natural ground level, in effect providing for subterranean levels, and will receive limited solar access, cross-ventilation and are provided with undersized private open space areas.

*Principle 4: Enable communities to minimise their ecological footprint.*

The proposed development does not provide for adequate solar access or cross-ventilation, as described in the SEPP 65 section of this report. This will inhibit the ability of future occupants to naturally regulate temperatures and increase reliance on artificial heating and cooling.

### Part C - City-wide Controls

#### C1 Site Planning

Clause C1.2.4 of the DCP specifies the following:

- a) Applicants must demonstrate how the development responds to the natural topography and landform of the site based on analysis drawings.*
- b) Any built form should be located, oriented and designed to minimise excavation, cut and fill in accordance with the requirements of the Land Management Section of this Plan.*
- c) The built form should respond to the natural topography by:*
  - i) Avoiding steep slopes for buildings;*
  - ii) Aligning the built form with the contours; and*
  - iii) Utilising split level design on gentler slopes.*

It is considered that the applicant has not adequately responded to the natural landform or attempted to minimise excavation of the site as the development includes a proposal to excavate up to a maximum of 2.3m at the south east corner of the building. The built form does not incorporate a split level design to assist in reducing the impact of the cut.

#### C4 Land Management

Clause 4.1(B)(4) Limitations on Earthworks includes controls to limit cut and fill on development sites, including:

- a) Earthworks to create a building platform shall not be undertaken where excavation and/or filling would exceed 1m from the existing natural ground level of the site.*
- b) On sloping sites, site disturbance is to be minimised by using split level or pier foundation building designs.*
- c) All retaining walls proposed for the site are to be identified in the development application for the proposed development. Retaining walls are to be kept to a minimum to reduce earthworks. Use of materials that complement the natural environment is encouraged.*
- d) During any earthworks, any topsoil should be preserved on site for re-use and should be stockpiled and covered to avoid dust or loss of topsoil. Refer to the Landscape Design Section of this Plan for controls on stockpiling topsoil on site.*

Notwithstanding the basement construction, the proposed development includes excavation exceeding the 1m maximum cut. No attempt has been made to minimise site disturbance in the building design. Extensive retaining walls are proposed to manage the cut, and these retaining walls incorporate between 7 to 11 stairs for ground floor units to access the proposed upper levels as extended private courtyards. The number of stairs from the proposed ground

level private open space to access what will become the upper level private open space, but is in fact the existing ground level, further illustrates the unresponsive nature of the building design.

### ***C10 Transport, Access and Parking***

The following on-site car parking rate is required to be provided in relation to the proposed residential flat building development;

<b><i>Land Use Element</i></b>	<b><i>Parking Rate</i></b>	<b><i>Required</i></b>
Residential Flat Buildings	1 space per 1 or 2 bedrooms	36
	2 spaces per 3 or more bedrooms	12
	1 space per 40 units for service vehicles	1
	Visitor parking: 1 space per 5 dwellings	8.4
	1 space for car washing for every 50 units	1
<b><i>Total Required</i></b>		<b><i>58.4 spaces</i></b>

It is noted that the application is compliant with the required car parking rate, via the provision of a total of 62 parking spaces over two basement levels. These parking spaces have also included a designated car wash bay, service vehicle bay and five accessible car parking spaces associated with the provision of adaptable apartments. In this regard, it is considered that adequate parking facilities are provided to cater for future occupants and visitors of the proposed apartments. It is also noted that the application was referred to Council's Traffic Engineering Section who raised no objection to the application subject to the provision of appropriate conditions with any development consent granted.

## **D2 Residential Development**

The proposal has been assessed against the applicable provisions of this section and is found to be generally acceptable. Particular clauses which have provided for non compliances or relevant discussion points are identified below:

### ***Clause D2.5.5 Landscaped Area***

Clause D2.5.5 Landscaped Area of the DCP provides the following development control in relation to landscaped area for a R4 High Density Residential in which the subject site is located;

#### ***Zone: R4 High Density Residential***

#### ***Minimum Landscaped area % of the site: 35%***

In addition to the above, landscaped areas are to have a minimum width of 2m, with no basement encroachment, may include terraces and patios located no higher than 0.5m above ground and pedestrian pathways to building and dwelling entrances but does not include substantially-paved areas such as buildings, driveways and covered garages. Noting these controls, an assessment of the provided plans has identified that with a site area of 1,894m<sup>2</sup>, a total of 663m<sup>2</sup> landscaping area is required. While so, only 594m<sup>2</sup> (31% of the total site area) landscaping area is considered to have been provided with the proposal and is therefore non compliant by 69m<sup>2</sup>.

While it is acknowledged that the proposal is non compliant, it is noted that the proposal has provided for a compliant deep soil zone, building separations to the boundaries as well as a compliant communal open space to the rooftop level. In this regard, it is considered that the proposal has provided for a good use of landscaping opportunities and noting that the deep soil

and communal open space areas are in accordance with the Apartment Design Guide, the variation of this control in this instance is considered acceptable.

#### *Clause D2.5.6 Front Setback*

Clause D2.5.6 Front and Rear Setbacks within the DCP provides the following development control in relation to front setbacks:

*Determine an appropriate front setback:*

- a) either average the setbacks of the immediate neighbours; or*
- b) 5.5m minimum whichever is the greater dimension.*

The existing setbacks of the adjoining dwellings is 5.5m (32 Hope Street) and 6.7m (24 Hope Street) which provides an average of 6.1m. The development provides a 6m front setback which is considered consistent with the immediate neighbours.

#### *Clause D2.5.13 Energy Efficiency*

Clause D2.5.13 Energy Efficiency includes the following controls:

*1) Adopt a configuration for dwellings that promotes cross-ventilation:*

- a) corner apartments with two external walls;*
- b) apartments that sit between two opposite external walls.*

Minimum cross-ventilation standards specified in the ADG have not been achieved as discussed earlier in this report.

#### *Clause D2.5.14 Design of Dwellings and Private Courtyards*

Clause D2.5.14 Design of Dwellings and Private Courtyards includes the following control:

*2) A reasonable area of private open space should be provided for each dwelling:*

- a) for dwellings at ground level:*
  - i) a minimum of 20m<sup>2</sup>;*
  - ii) as courtyards at ground level; and / or*
  - iii) terraces located not higher than 1.5m above ground level; and*

Ground level units as proposed do not comply with the control due to the undersized and dimensioned paved patio areas, combined with terraces greater than 1.5m above ground level for units 3, 4 and 5.

#### *Clause D2.5.18 Fences and Retaining Walls*

Clause D2.5.18 Fences and Retaining Walls in the DCP requires that fences shall be no taller than 1.8m generally and walls of solid construction and taller than 1.2m shall be of see through construction. Retaining walls are identified as being no taller than 500mm.

An assessment of the provided plans has identified the provision of a front fence also serving as the boundary to private open space for ground floor Hope Street facing apartments. This fencing is to be provided as a horizontal colorbond fence with open spacing, measuring to a maximum height of 1.8m in line with the contours of the subject sites frontage. Noting the open nature of this fencing, the design is therefore compliant.

Retaining walls are proposed to the courtyard areas of all ground floor units. While the height is not noted on the plans, they will exceed 500mm based on the degree of cut proposed. Council's Landscape Architect has reviewed the plans and comments that the retaining walls to the rear unit 5 will not provide sufficient natural light to the planting beds proposed. The ability to maintain landscaping on the upper terraced levels and the safety of those accessing those parts of the private open space is therefore not considered an



appropriate design solution.

*Clause D2.5.20 Accessibility and Adaptability*

*Clause D2.5.20 of the DCP specifies that '10% of all dwellings or a minimum one dwelling, whichever is greater, must be designed in accordance with the Australian Adaptable Housing Standard (AS4299-1995), to be capable of adaptation for people with a disability or elderly residents'.*

The proposal includes 42 units, including 4 adaptable units. To meet the control a minimum of 5 adaptable units are required.

## Clause 4.6 Variation: Building Height

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LOT CONSOLIDATION, DEMOLITION OF EXISTING STRUCTURES AND THE CONSTRUCTION OF A 6 STOREY RESIDENTIAL FLAT DEVELOPMENT CONTAINING AT 26-30 HOPE STREET, PENRITH



*Prepared by:* Think Planners Pty Ltd  
*Document Date:* 11 April 2019  
*Consent Authority:* Penrith City Council

## QUALITY ASSURANCE

**PROJECT:** Statement of Environmental Effects – 6 Storey RFB  
**ADDRESS:** 26-30 Hope Street, PENRITH  
**COUNCIL:** Penrith City Council  
**AUTHOR:** Think Planners Pty Ltd

Date	Purpose of Issue	Rev	Reviewed	Authorised
6 December 2017	Draft Issue	Draft	SR	SF
April 2019	Final Issue for DA	Final	JW	JW

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## Background to Building Height

Clause 4.3 under the Penrith LEP stipulates a maximum building height of 18m for the subject site and broader locality- as indicated on the height of building map extract below, noting the 'P' notation reflects the area showing the 18m building height limit. The star shows the location of the subject site.



The LEP amendment rezoning the land and applying the 18m height limit came into effect on 25 February 2015. At the time the amendment was made:

- The Residential Flat Design Code was in force that only required 3m floor to ceiling heights;
- There was no requirement for on-site waste collection, with garbage bins presented to the street or alternatively collected via an indented waste bay.

The building height control of 18m at the time of the amendment coming into force, contemplated 6 storey development with 3m floor to floor height, which equates to 18m height limits. There was no implication from waste servicing clearances and the like at that time also.

Subsequent to the height control coming into force there were 2 key changes relating to building height, without a correlating change to the 18m height limit:

1. Adoption of the Apartment Design Guide (ADG) in July 2015 which prescribed a minimum floor to floor height of 3.1m. This increased the effective height of RFB's to 18.6m minimum;
2. Penrith City Council's adoption of an On-Site Waste Collection Policy for Residential Flat Building Development in July 2016. This requirement for garbage trucks to enter the site, collect waste, and enter and leave in a forward direction, meant the height of the ground level floor to floor height was required to be increased to 4.2m to achieve the truck clearances, as compared to 3.1m which is an increase of 1.1m.

When taken together the building height required to achieve 6 storeys has gone from 18m to a total of 19.7m minimum to achieve the required floor to floor heights and requisite clearances for garbage trucks- which equates to a 10% variation if a building is of 6 storeys.

It is also noted that areas through the precinct are also affected by overland flow/flooding (including the subject site) that also requires an increase in the finished floor level of the ground floor to achieve required freeboard.

This is a key contextual consideration relating to development in the R4 zone and the area nominated with an 18m height limit as the 'goalposts' have shifted in terms of the building height provisions when factoring in the ADG and waste collection requirements.

As outlined further in this request the Council has taken a practical and pragmatic approach to building height in permitting 6 storey development in the locality with exceedance of the control to habitable floor areas as well as lift over-runs and fire stairs beyond the 18m.

## Other Development in the Locality & Context & Desired Future Character

A review of relevant approvals in the locality, being the area of Barber Avenue, Lethbridge Street, Colless Street, Hope Street and Derby Street has been conducted.

This shows a total of 14 relevant development applications either approved or in varying states of assessment, with only 2 of the 14 being 5 storey buildings and the remainder being 6 storeys and above the height limit to habitable areas.

- 16 Colless Street: 19.9m;
- 18-22 Colless Street: 22m;
- 41-43 Barber Ave: 19.34m;
- 36-38 Barber Ave: 19.6m;
- 32-36 Lethbridge Street: 19.88m;
- 25-31 Hope Street: 19.1m;
- 2-8 Lethbridge Street: 19.68m;
- 16-24 Hope Street: 20.04m;
- 26-30 Hope Street: 19.2m;
- 42-44 Lethbridge Street: 19.4 (LEC approved);
- 74-74 Lethbridge Street: 21.1m.

The current proposal is 19.2m to habitable areas and comparable with the identified developments. When adding back lift over-runs and fire stairs the heights of the above mentioned developments further increase by approximately 2.7m which is again comparable with the current proposal.

The development proposal is for a 6 storey residential flat building, consistent with the height of many residential flat buildings in the locality and consistent with the Councils approach of endorsing 6 storey buildings in the 18m height limit area even where the 18m is exceeded. In effect the maximum height control is 6 storeys that is applied consistently, rather than technical compliance with the 18m control.

Therefore the proposal is entirely consistent with the desired future character observed in the locality given the above developments that are either approved or constructed in the immediate locality.

## Relevant Case Law

There are a number of recent Land and Environment Court cases including *Four 2 Five v Ashfield* and *Micaul Holdings Pty Ltd v Randwick City Council* and *Moskovich v Waverley Council*, as well as *Zhang v Council of the City of Ryde*.

In addition a recent judgement in *Initial Action Pty Ltd v Woollahra Municipal Council (2018) NSWLEC 118* confirmed that it is not necessary for a non-compliant scheme to be a better or neutral outcome and that an absence of impact is a way of demonstrating consistency with the objectives of a development standard. Therefore this must be considered when evaluating the merit of the building height departure.

Further a decision in *Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245* has adopted further consideration of this matter which requires that a consent authority must be satisfied that:

- The written request addresses the relevant matters at Clause 4.6 (3) and demonstrates compliance is unreasonable or unnecessary and that there are sufficient environmental planning grounds; and
- The consent authority must consider that there are planning grounds to warrant the departure in their own mind and there is an obligation to give reasons in arriving at a decision.

The key tests or requirements arising from the above judgements is that:

- The consent authority be satisfied the proposed development will be in the public interest because it is “consistent with” the objectives of the development standard and zone is not a requirement to “achieve” those objectives. It is a requirement that the development be compatible with the objectives, rather than having to ‘achieve’ the objectives.
- Establishing that ‘compliance with the standard is unreasonable or unnecessary in the circumstances of the case’ does not always require the applicant to show that the relevant objectives of the standard are achieved by the proposal (Wehbe “test” 1). Other methods are available as per the previous 5 tests applying to SEPP 1, set out in *Wehbe v Pittwater*.
- The proposal is required to be in ‘the public interest’.



In relation to the current proposal the keys are:

- Demonstrating that the development remains consistent with the objectives of the maximum building height control' and on that basis that compliance is unreasonable or unnecessary;
- Demonstrating consistency with the R4 zoning;
- Demonstrating there are sufficient environmental planning grounds to vary the standard; and
- Satisfying the relevant provisions of Clause 4.6.

## The Variation & Design Response

Clause 4.3 under the Penrith LEP stipulates a maximum building height of 18m for the subject site. The development exhibits the following building height elements:

<b>Portion</b>	<b>Maximum Height</b>	<b>Departure</b>
Upper level of residential units (i.e. habitable floor area)	19.2m	1.2m & 6.6%
Lift Over-run and Fire Stair providing access to the common open space area as well as the bathroom and cleaner room in proximity to this area.	21.3m	3.3m & 18.3%

It is noted that these departures are a function of four (4) fundamental matters:

1. ADG 3.1m floor to floor heights;
2. Waste collection vehicle 4.2m clearance requirement;
3. Providing for the rooftop communal open space area on top of the building that necessitates the provision of the lift over-run (for accessibility reasons) and the fire stair (fire safety and fire egress reasons). The provision of the rooftop common area enables the provision of a quality common open space area that achieves solar access for residents which is a response to the north-south orientation of the site- meaning any common open space at the ground level would be on the southern side of the building and would not receive adequate solar access. Therefore the provision of this additional height to the rooftop area facilitates a good planning outcome- that strict compliance with the control would prevent from occurring and hence flexibility in the application of the height control enables a better design outcome and provides planning grounds to support such a departure to the height control. The provision of the toilet at the rooftop level also improves amenity and functionality for users and is also facilitated through the departure to the building height control.

Items 1-2 increases the height of a 6 storey building 19.7m to achieve the required floor to floor heights and waste infrastructure.

As addressed above Item 3 achieves a better urban design outcome in terms of amenity for residents of the development in providing a quality common open space area good solar access.

## Address of Clause 4.6 Provisions

A detailed discussion against the relevant provisions of Clause 4.6 are provided below. As shown on the sections below, the proposed development varies the height control to a portion of the upper level, roof form, lift overrun and shade structures within the rooftop common open space.

This is a function of the waste servicing requirements and relevant clearances to the basement, topography of the site, ADG floor to floor heights, overland flow and architectural features of the proposed building. Further the rooftop common area necessitates the provision of the lift over-run (for accessibility reasons) and the fire stair (fire safety and fire egress reasons).

The provision of the rooftop common area, and associated infrastructure including the toilet and cleaners room, enables the provision of a quality common open space area that achieves solar access for residents which is a response to the north-south orientation of the site-meaning any common open space at the ground level would be on the southern side of the building and would not receive adequate solar access. Therefore the provision of this additional height to the rooftop area facilitates a good planning outcome- that strict compliance with the control would prevent from occurring and hence flexibility in the application of the height control enables a better design outcome and provides planning grounds to support such a departure to the height control.

The location of the building height departure will ensure that they are not readily viewable from the street level from Hope Street given the design steps back the upper 2 levels and therefore the recessed nature of the upper level means it will not be visually dominant.

Clause 4.6 of the Penrith Local Environmental Plan 2010 provides that development consent may be granted for development even though the development would contravene a development standard. This is provided that the relevant provisions of the clause are addressed, in particular subclause 3-5 which provide:

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless:*
  - (a) the consent authority is satisfied that:*
    - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for*

*development within the zone in which the development is proposed to be carried out, and*  
*(b) the concurrence of the Director-General has been obtained.*

- (5) In deciding whether to grant concurrence, the Director-General must consider:*  
*(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*  
*(b) the public benefit of maintaining the development standard, and*  
*(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*

Each of these provisions are addressed individually below.

#### **Clause 4.6(3)- Compliance Unreasonable and Unnecessary**

In accordance with the provisions of this clause it is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as:

- The underlying objectives of the control are satisfied.

In addition it is noted that the 18m numerical requirement has been regularly applied as a 6 storey maximum height control- In effect the maximum height control is 6 storeys that is applied consistently. This sets the desired future character for development in the R4 zone in the immediate locality and as demonstrated on the discussion on page 5 the current proposal is consistent with the approved building heights for other development in the locality which clearly establishes the desired future character of the locality.

#### ***Underlying Objectives are Satisfied***

In *Wehbe v Pittwater* it was set out that compliance can be considered unreasonable or unnecessary where:

- (i) The objectives of the standard are achieved notwithstanding non-compliance with the standard*

It is considered that this approach can be followed in this instance.

The objectives of the Height development standard are stated as:

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

The proposal, despite the numerical non-compliance identified, remains consistent with the objectives based on the following:

- Given the locality is in a state of transition from existing low density development to high density development the broad reference to compatibility with the existing character of the locality is not considered relevant in an R4 context with an 18m height limit (but would be relevant in an R2 or R3 context where an 8.5m height limit applies).
- The key requirement for development in the R4 zone is the desired future character of the locality. The building is compatible with the height, bulk and scale of the desired future character when having regard to the forms of development approved in the locality, and the approved building heights of those developments that are comparable in numerical terms to this proposal. This clearly shows the desired future character for the precinct being 6 storey residential flat buildings, with the majority of these buildings exceeding the 18m height limit to habitable areas (i.e. top most residential floor) as well as to the rooftop common areas and associated lift over-run and fire stairs. The numerical comparison provided on page 5 of this request demonstrates consistency and compatibility with those developments that are reflective of the desired future character of the locality on the basis that they have been granted development consent under the same set of planning controls.
- Providing for the rooftop communal open space area on top of the building that necessitates the provision of the lift over-run (for accessibility reasons) and the fire stair (fire safety and fire egress reasons). The provision of the rooftop common area enables the provision of a quality common open space area that achieves solar access for residents which is a response to the north-south orientation of the site- meaning any common open space at the ground level would be on the southern side of the building and would not receive adequate solar access. The provision of the rooftop common area is consistent with the desired future character of the locality when observing the other approved development in the locality that also feature rooftop common areas and comparable overall building heights. This aligns with the objective a) and d).
- The overall height of the development presents as a compatible form of development to the anticipated high density residential development that are emerging in the locality, noting that the emerging character is for 6 storey residential flat buildings in the locality and 6 storeys is the prevailing form of development being carried in the R4/18m height limit area. The 5<sup>th</sup> and 6<sup>th</sup> storey of the proposal is recessed behind the main building alignment to downplay visual dominance as viewed from the public domain and adjoining residential properties- this step in the façade provides for visual relief to the street as it presents a 4 storey street wall.
- The proposed buildings will present an appropriate bulk and scale on the site with 3 balanced vertical components/proportions that are consistent with other approved and already constructed 6 storey residential flat building developments in Hope Street and surrounding area. Further the building height proposed provides for a high quality urban form consistent with objective (d) and the height departure to the habitable areas or the rooftop areas does not take away the fact the proposal presents a high quality urban form.
- The additional height to the habitable areas or the rooftop areas does not generate any additional amenity impacts given the location of the site and the surrounding site context with regard to overshadowing, visual privacy or acoustic privacy. The recessed nature of the top floor mitigates additional overshadowing and the centrally located rooftop structures means that the visual, privacy and shadow impacts are also mitigated.

- Given the scale of the proposal, and the extent of the variation is not perceptible at street level given the upper level of the building is setback behind the lower levels which means the additional height will not be seen from a pedestrian level when standing in the public domain and this offsets the additional height of the top most floor and the recessed nature of the roof structures also means they are not visible from the public domain which means the additional height continues to minimise visual impact to existing development and to public areas.
- The proposal, and specifically the additional building height, has been carefully designed to ensure that privacy impacts are minimised and the proposal will not obstruct existing view corridors noting that no significant view corridors are identified for the site.
- The proposal, and specifically the additional building height, does not result in any discernible increased shadow impact given the orientation of the site and setbacks that fully comply with the requirements of the Apartment Design Guide and the recessed upper levels relative to the levels below mean that the shadow cast is reduced. The centrally located rooftop elements are designed to be pulled away from the building edges to avoid generating additional overshadowing impacts.
- The non-compliance to the height control has no impact on the setting of any items of environmental heritage or view corridors.
- The proposal does not adjoin any low-density areas or sensitive interfaces and will integrate with future development to the north, east, south and west which will accommodate developments of comparable building height- and likely also breach the numerical height limit to the residential floor area at the upper level and to rooftop common areas.

As outlined above the proposal remains consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable.

### ***Sufficient Environmental Planning Grounds & Better Design Response on the Subject Site***

The below points demonstrate suitable environmental planning grounds exist to justify contravening the height development standard and further demonstrates that the height departure of 19.2m and 21.3m facilitates a better design response for the subject site:

- The variation to the height control to the habitable areas up to 19.2m, arising from the ADG 3.1m floor to floor heights, overland flow impact, and provision of on-site waste collection, enables delivery of a residential flat building that maximises amenity for residents and ensures suitable on-site waste collection arrangements that align with the adopted policy of the Council with regard to waste collection. Therefore the height departure facilitates compliance with these aspects.
- The provision of the rooftop communal open space area on top of the building necessitates the provision of the lift over-run (for accessibility reasons) and the fire stair (fire safety and fire egress reasons) to a height of 21.3m. The provision of the rooftop common area enables the provision of a quality common open space area that achieves solar access for residents which is a response to the north-south orientation of the site- meaning any common open space at the ground level would be on the southern side of the building and would not receive adequate solar access. Therefore the provision of this additional height to the rooftop area facilitates a good planning outcome- that strict compliance with the control would prevent

from occurring and hence flexibility in the application of the height control enables a better design outcome on this site and provides planning grounds to support such a departure to the height control. The provision of the rooftop common area is consistent with the desired future character of the locality when observing the other approved development in the locality that also feature rooftop common areas.

- The variation to the height control does not generate unacceptable adverse impacts to surrounding properties or as viewed from the public domain;
- The variation to the height control does not result in unacceptable overshadowing and privacy impacts to the adjoining residential properties;
- The variation to the height control enables a development form on the site that presents a suitable bulk and scale and intensity of development on the land having regard to the desired 6 storey form of development in the 18m height area as reflected by past approvals of similar developments;
- There are also circumstances that relate to the topographical fall of the site and the relationship to the levels in Hope Street. This fall means that to achieve strict compliance results in the floor levels to be further stepped and cut into the site which results in a poor outcome for the ground floor units and it would result in a suboptimal outcome as compared to the current situation which results in the non-compliance to the building height control. Strict compliance is clearly not a preferred outcome.
- The proposal provides for a suitable planning outcome through limiting south facing units. Therefore the design response has been to maximise the amenity of apartments through a cut-out in the building and suitable recessed elements rather than a 'square' building utilising every available area of floor space.
- In the absence of additional height, the ability to deliver a satisfactory waste management and truck turning areas within the site is not achievable or feasible- again noting the requirement for on-site collection came into effect after the adoption of the LEP amendments- and therefore nearly all residential flat buildings represent a degree of departure from the 18m control to facilitate this. The additional floor to ceiling height needed for truck turning areas for a heavy rigid vehicle is 4.5m which is significantly larger than the normal requirements for floor to floor heights within a residential development and is a key driver of the extent of the height non-compliance.
- The proportion of the building that protrudes above the 18m height limit contains limited habitable floor space and continues to be 6 storeys, reinforcing that the breach to the height standard does not result in the development representing an overdevelopment of the site but rather a suitable contextual response to the topographical fall on the site in order to achieve a suitable ground floor outcome with sufficient amenity for the apartments at this level as well as catering for the additional height required for waste servicing trucks- which is a requirement that has been adopted by Council well after the adoption of the 18m height limit control in the LEP and therefore results in an increased height beyond the 18m.

- The proposal ensures that the area is provided with high density residential development to support the growth of Penrith and to align with the principles of urban consolidation that seek to ensure the efficient use of community infrastructure by providing higher density residential development at strategic locations, noting that both the Penrith train station and CBD are located within walking distance as well as arterial roads that service the area.

Therefore, the current proposal is a suitable outcome from an environmental planning perspective and demonstrates that there is merit in varying the height control to achieve a better design response on the site.

#### **Clause 4.6(4) Zone Objectives & The Public Interest**

In accordance with the provisions of Clause 4.6(4)(a)(i) Council can be satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) for the reasons set out previously.

In relation to the provisions of Clause 4.5(4)(a)(ii) the consent authority can be satisfied that the development, including the numerical building height departure, is in the public interest given that:

- The proposed development remains consistent with the objectives of the building height control.
- The proposal is consistent with the objectives of the R4 zone, being:
  - *To provide a variety of housing types within a high density residential environment.*
  - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
  - *To ensure that a high level of residential amenity is achieved and maintained.*
  - *To encourage the provision of affordable housing.*
  - *To ensure that development reflects the desired future character and dwelling densities of the area.*

The proposal will provide a high quality residential development in a strategic location within close proximity to the Penrith train station and CBD, bus interchange to maximise public transport patronage and to encourage walking and cycling. The scale of the development will help to revitalise the area with delivery of an activated ground floor and an attractive overall development.

The development provides for the delivery of a variety of housing types in a high density residential environment. The development also provides for a high level of residential amenity, provides for additional housing to contribute to housing supply and affordability and reflects the desired future character and dwelling densities of the area.

- The building height departure facilitates a better design response for the development with regard to waste collection, overland flow and finished floor levels, floor to ceiling heights and also in providing for high levels of residential amenity that is facilitated by the height departure in providing for the rooftop common open space. The rooftop common open space enables the achievement of high levels of residential amenity for residents owing to the north-south lot orientation and the absence of the rooftop common open space, if strict compliance with the height limit was maintained, would reduce the level of amenity afforded to residents.



- The development proposal, including the building height departure, is consistent with the desired future character of the locality as established by approved development in the locality.

On the basis of the above points the development is clearly in the public interest because it is consistent with the objectives of the building height standard, and the objectives of the R4 zone and the numerical departure from the building height control facilitates a better design outcome on the site

#### **Clause 4.6(5)**

As addressed, it is understood the concurrence of the Director-General may be assumed in this circumstance, however the following points are made in relation to this clause:

- a) The contravention of the building height control does not raise any matter of significance for State or regional environmental planning given the nature of the development proposal; and
- b) There is no public benefit in maintaining the development standard as it relates to the current proposal. The departure from the building height control is acceptable in the circumstances given the underlying objectives are achieved and it will not set an undesirable precedent for future development within the locality based on the observed building forms in the locality and the nature and height of approved developments in the locality.

#### **Conclusion**

Strict compliance with the prescriptive building height requirement is unreasonable and unnecessary in the context of the proposal and its unique circumstances. The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

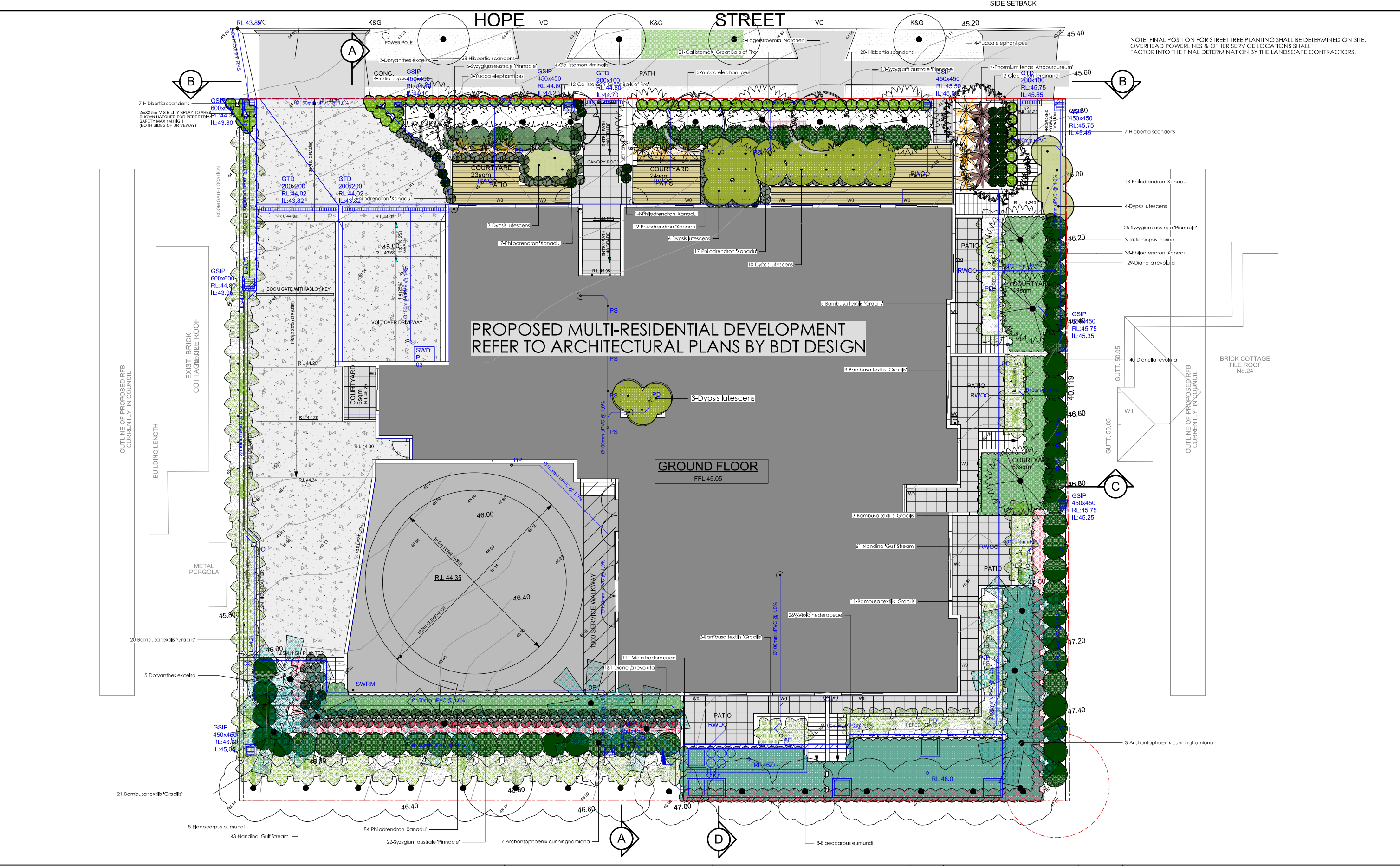
The design response aligns with the intent of the control and provides for an appropriate transition to the adjoining properties.

The proposal promotes the economic use and development of the land consistent with its zone and purpose. Council is requested to invoke its powers under Clause 4.6 to permit the variation proposed.

The objection is well founded and considering the absence of adverse environmental, social or economic impacts, it is requested that Council support the development proposal.

Strict compliance with the prescriptive building height control is unreasonable and unnecessary in the context of the proposal and its particular circumstances. The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The proposal will not have any adverse effect on the surrounding locality, and is consistent with the future character envisioned, while supporting the role of Penrith as a strategic centre. The proposal promotes the economic use and development of the land consistent with its zone and purpose. Council is requested to invoke its powers under Clause 4.6 to permit the proposed variation.



**Legend**

	PROPOSED PAVED AREA		EXISTING TREE TO BE REMOVED
	PROPOSED MASONRY RETAINING WALL		EXISTING TREE TO BE RETAINED
	GRASSCRETE AREA		PIT
	PROPOSED CONCRETE DRIVEWAY		

**Project**

**BDT** BUILDING DESIGN & TECHNOLOGY Pty Ltd  
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Revision	Description	Date
B	ARCHITECTURAL AMENDMENT	13/04/18
C	EXISTING TREE ADJUSTMENTS	23/04/18
D	ARCHITECTURAL AMENDMENT	06/09/18
E	ARCHITECTURAL AMENDMENT	12/10/18
F	STORMWATER PLAN	19/10/18
G	STORMWATER PLAN	24/10/18
H	ARCHITECTURAL AMENDMENT	30/10/18

**DRAWING**  
**PROPOSED LANDSCAPE PLAN - GROUND FLOOR**

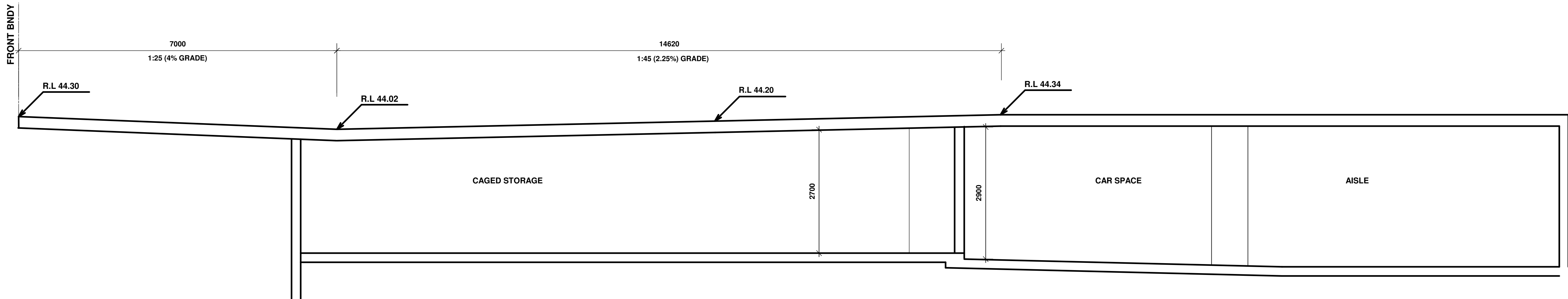
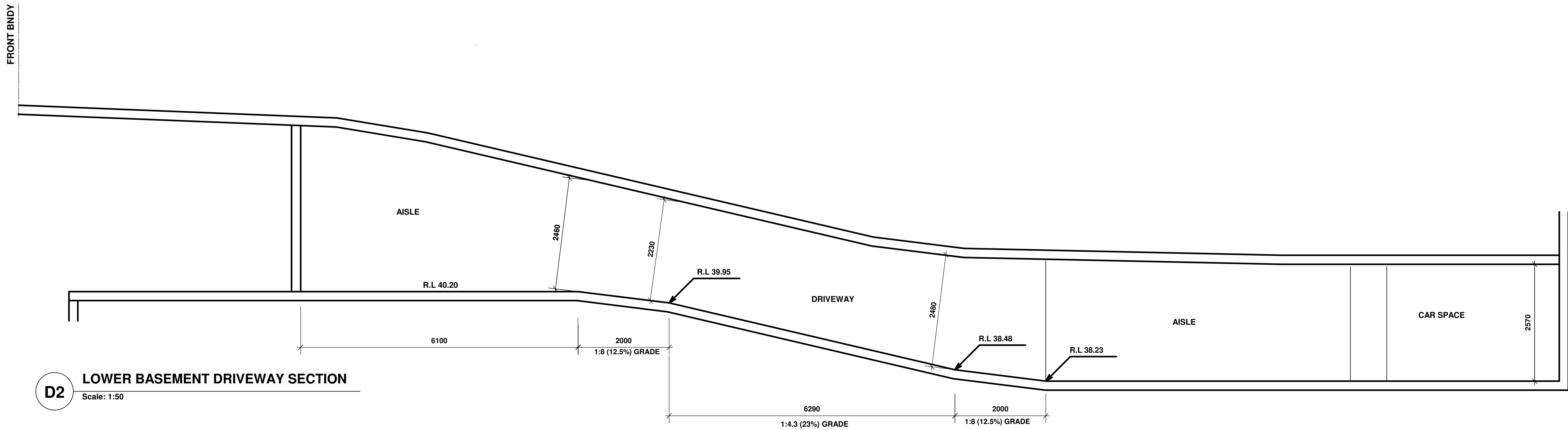
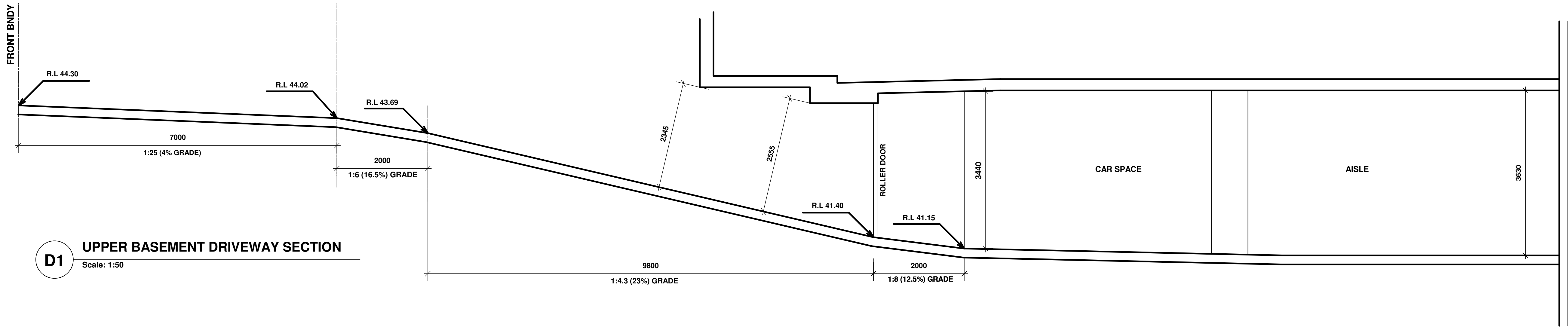
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**atc**  
a total concept  
landscape architects & swimming pool designers

DATE #	18/12/17	
SCALE @ A1	1:100	
CHKD	SW	
PROJECT #		

DWG # **L/01**



25.08.18	B	AMENDED DRIVEWAY PROFILES
DATE	REV	AMENDMENTS

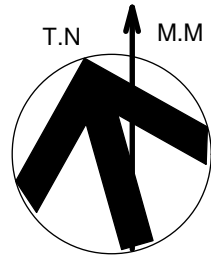
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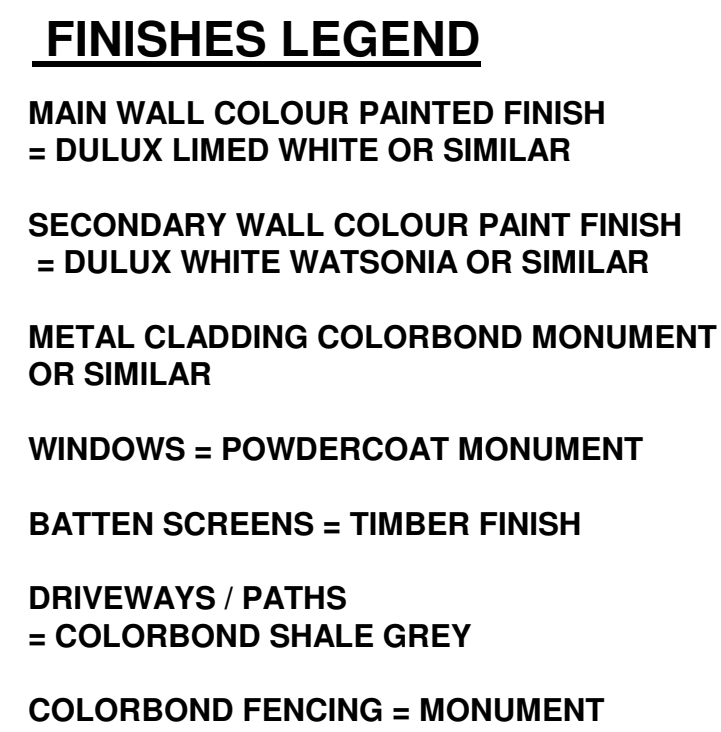
**BDT**

**BUILDING DESIGN & TECHNOLOGY Pty Ltd**  
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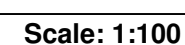
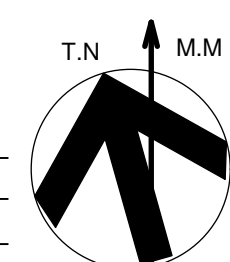
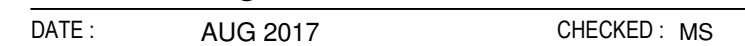
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TITLE :	BASEMENT DRIVEWAY SECTIONS		
SCALE :	A1 @ 1:50	DRAWN :	MM
DATE :	AUG 2017	CHECKED :	REV : B
PROJECT No.	201727	DWG No.	A1.02A







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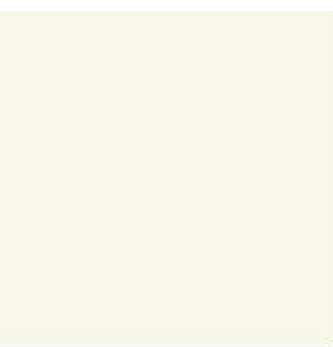


SOUTHERN (REAR) ELEVATION  
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**FINISHES LEGEND**

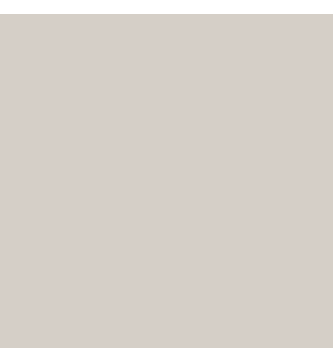
- MAIN WALL COLOUR PAINTED FINISH  
= DULUX LIMED WHITE OR SIMILAR
- SECONDARY WALL COLOUR PAINT FINISH  
= DULUX WHITE WATSONIA OR SIMILAR
- METAL CLADDING COLORBOND MONUMENT  
OR SIMILAR
- WINDOWS = POWDERCOAT MONUMENT
- BATTEN SCREENS = TIMBER FINISH
- DRIVEWAYS / PATHS  
= COLORBOND SHALE GREY
- COLORBOND FENCING = MONUMENT



DULUX WHITE WATSONIA



COLORBOND MONUMENT



DULUX LIMED WHITE

WINDOW/SCHEDULE				
WINDOW NO	WIDTH	HEIGHT	TOTAL	TYPE
1	1800	1550	9	SLIDING WINDOW
2	2400	2800	9	SLIDING DOOR
3	3250	2800	6	SLIDING DOOR
4	2400	1550	20	SLIDING WINDOW
5	2200	2800	1	HINGED DOOR & SIDELITE
6	1580	2400	1	DELETED
7	2400	2680	33	SLIDING DOOR
8	3250	2680	29	SLIDING DOOR
9	1800	600	4	SLIDING WINDOW
10	2400	850	3	SLIDING WINDOW
11	600	850	3	AWNING WINDOW
12	2400	1200	11	SLIDING WINDOW
13	850	1200	5	DOUBLE HUNG
14	1800	1800	5	SLIDING WINDOW
15	2770	1200	2	SLIDING WINDOW
16	1400	1400	3	SLIDING WINDOW
17	4210	2680	6	SLIDING DOOR
18	1200	1800	2	DOUBLE HUNG
19	730	2150	4	DOUBLE HUNG
20	1800	1200	3	SLIDING WINDOW
21	600	1200	2	AWNING WINDOW
22	2000	1000	1	LOUVRE WINDOW
			161	



WESTERN (SIDE) ELEVATION  
Scale: 1:100

DATE	REV	AMENDMENTS
08.04.19	C	AMENDED GROUND FLOOR TO SUIT PLAN CHANGES

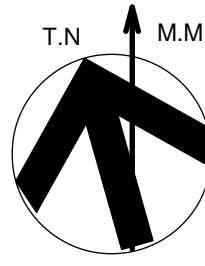
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PROJECT : PROPOSED UNIT DEVELOPMENT LOCATED  
AT 26-30 HOPE ST PENRITH  
TITLE: ELEVATIONS 2 ( SOUTH & WEST)

SCALE: A1 @ 1:100 DRAWN: MM  
DATE: AUG 2017 CHECKED: REV: C  
PROJECT No: 201727 DWG No: A1.11







North Elevation



West Elevation



South Elevation



East Elevation



3D View

DATE	REV	AMENDMENTS
25.10.18	B	AMENDED DA ISSUE
11.04.18	A	DA ISSUE

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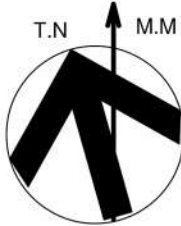


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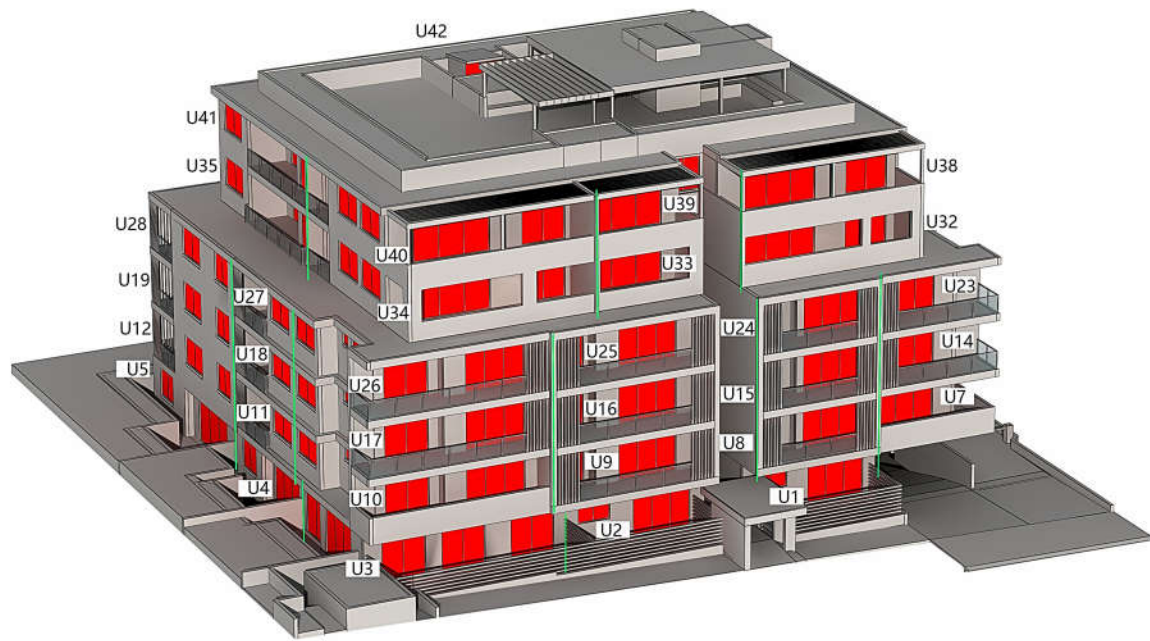
PROJECT : PROPOSED UNIT DEVELOPMENT LOCATED  
AT 26-30 HOPE ST PENRITH

TITLE: SIDE ELEVATION HEIGHT LINES

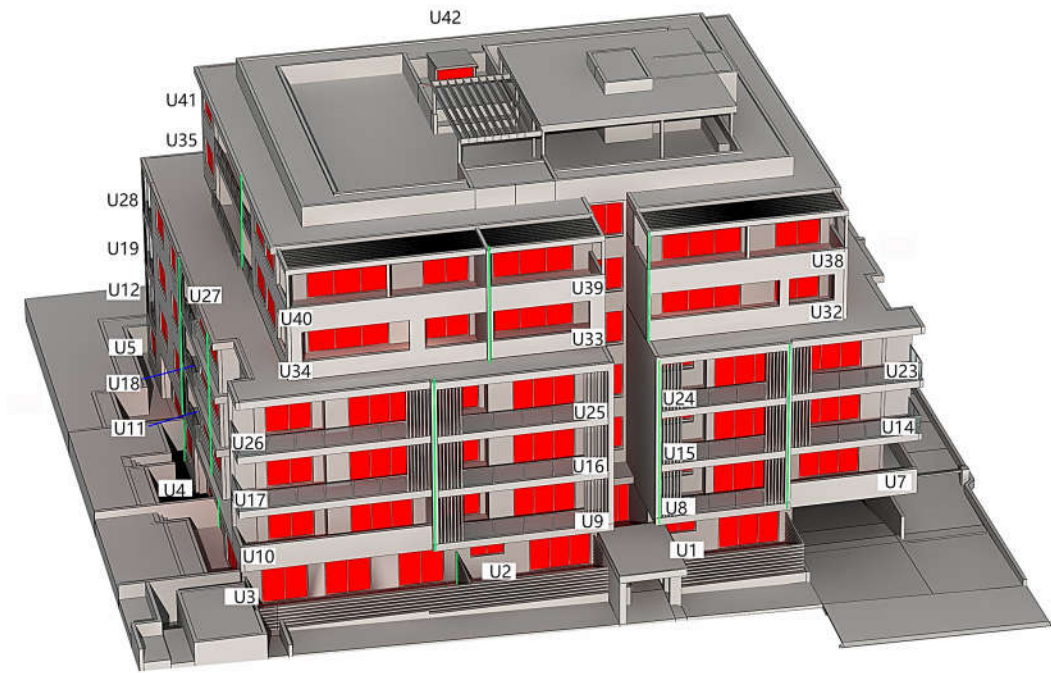
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DATE :	AUG 2017	CHECKED :	MS REV : B
PROJECT No.	201727	DWG No.	A1.11B



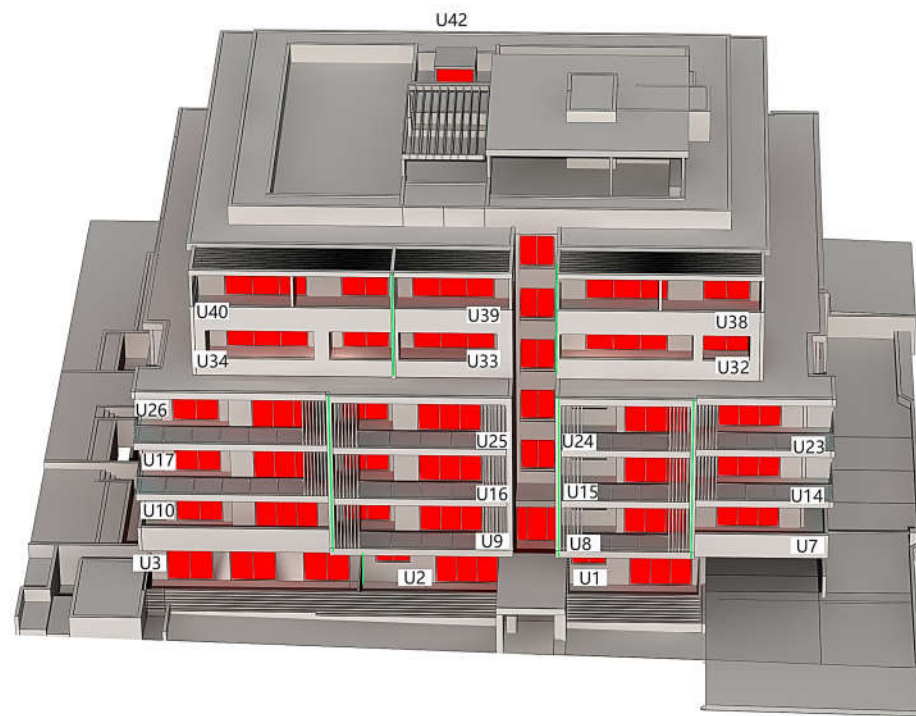




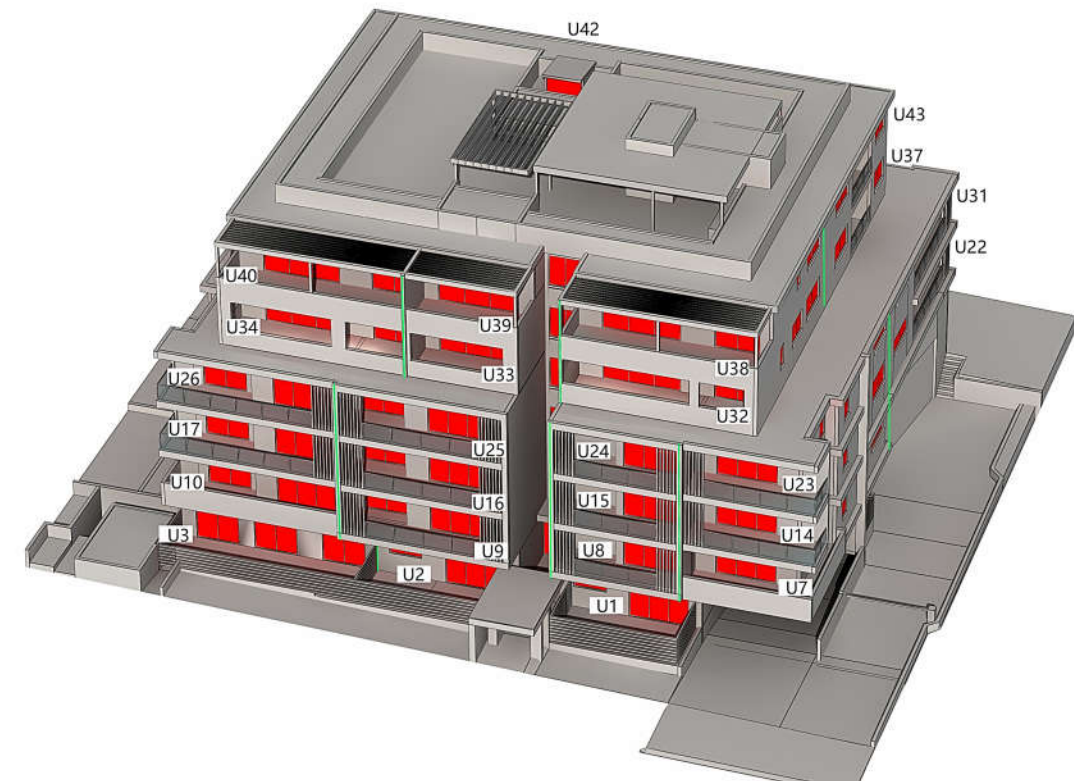
9AM-VIEW FROM THE SUN



10AM-VIEW FROM THE SUN



11AM-VIEW FROM THE SUN



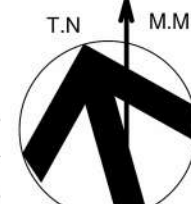
12PM-VIEW FROM THE SUN

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25.10.18	A	DA ISSUE
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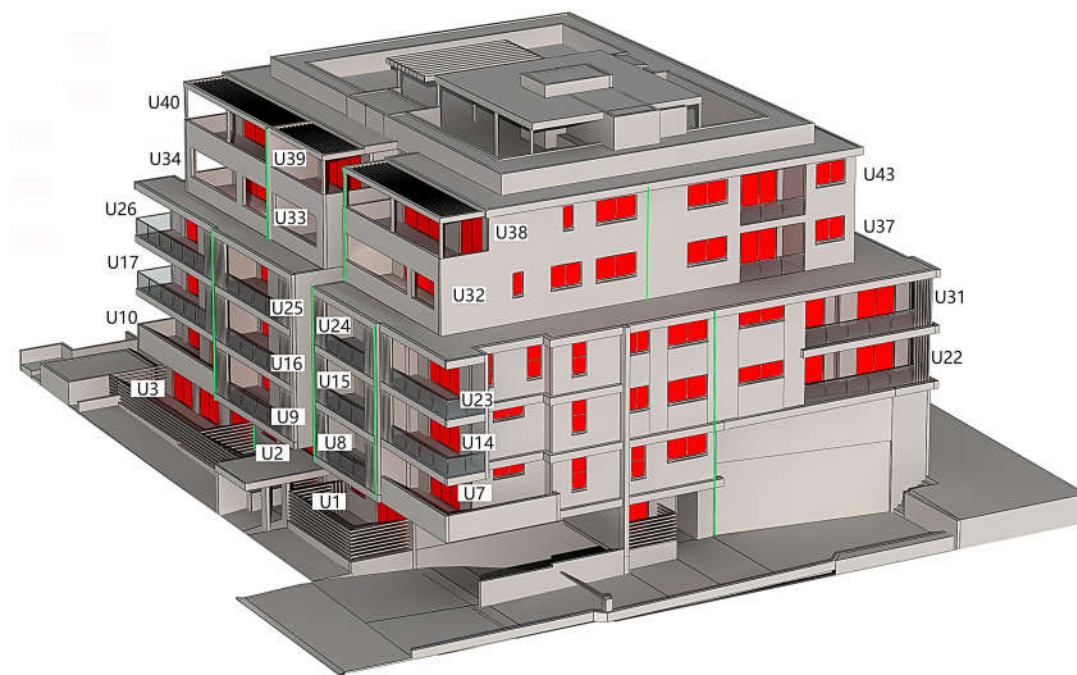
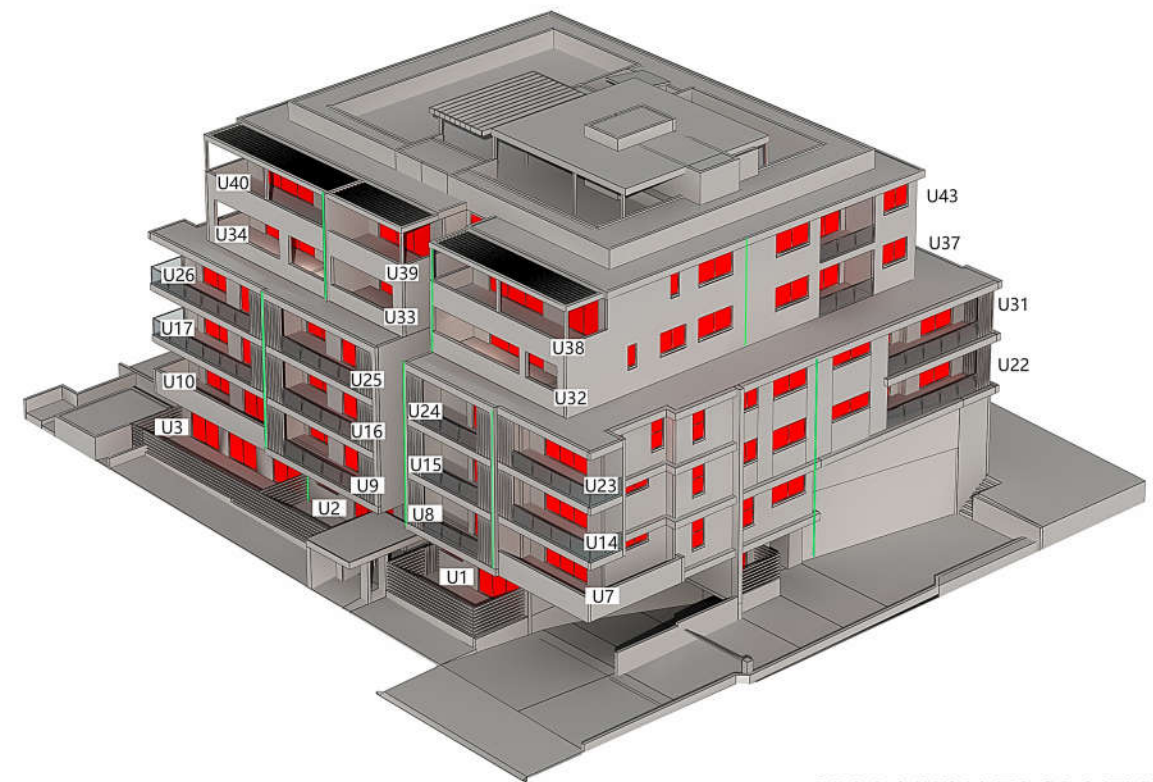
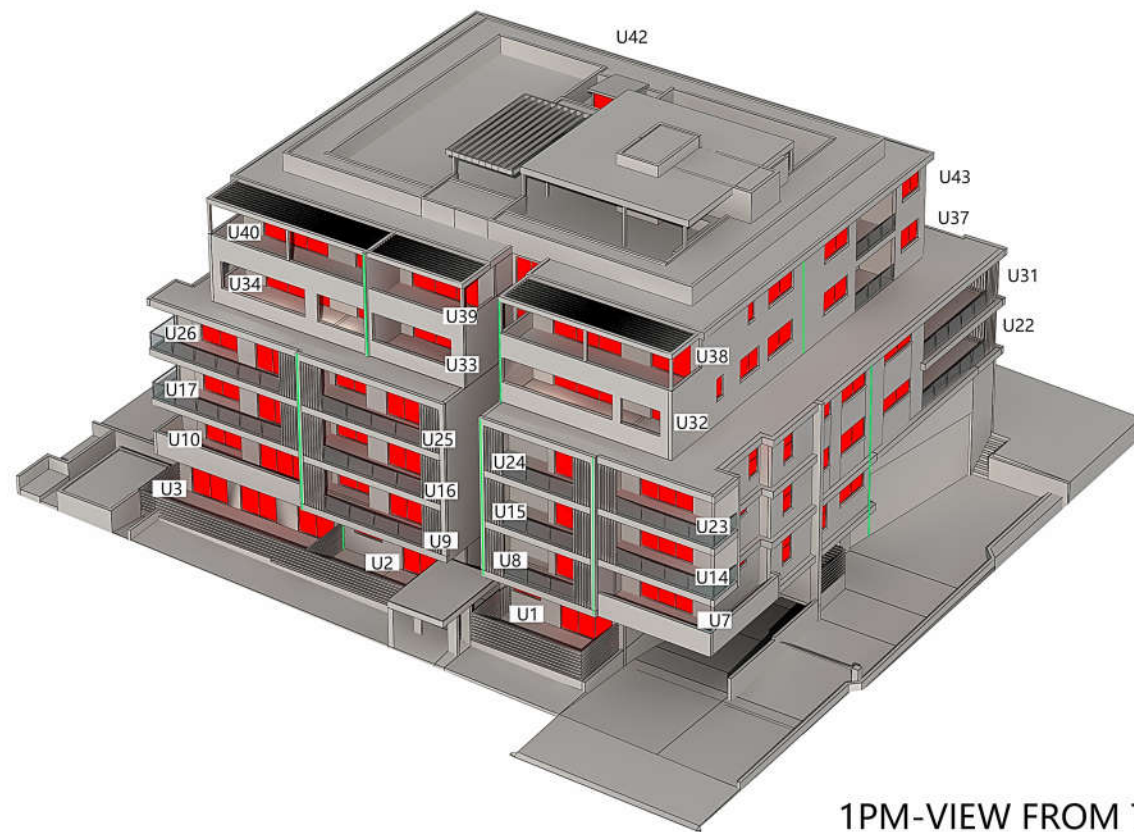


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PROJECT : <b>PROPOSED UNIT DEVELOPMENT LOCATED AT 26-30 HOPE ST PENRITH</b>			
TITLE: <b>9AM-NOON SUN VIEWS</b>			
SCALE :	A1 @ NTS	DRAWN :	MM
DATE :	OCT 2018	CHECKED :	MS
PROJECT No.	201727	REV :	A
		DWG No.	A1.13B







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<b>DATE</b>	<b>REV</b>	<b>AMENDMENTS</b>

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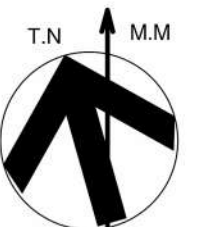
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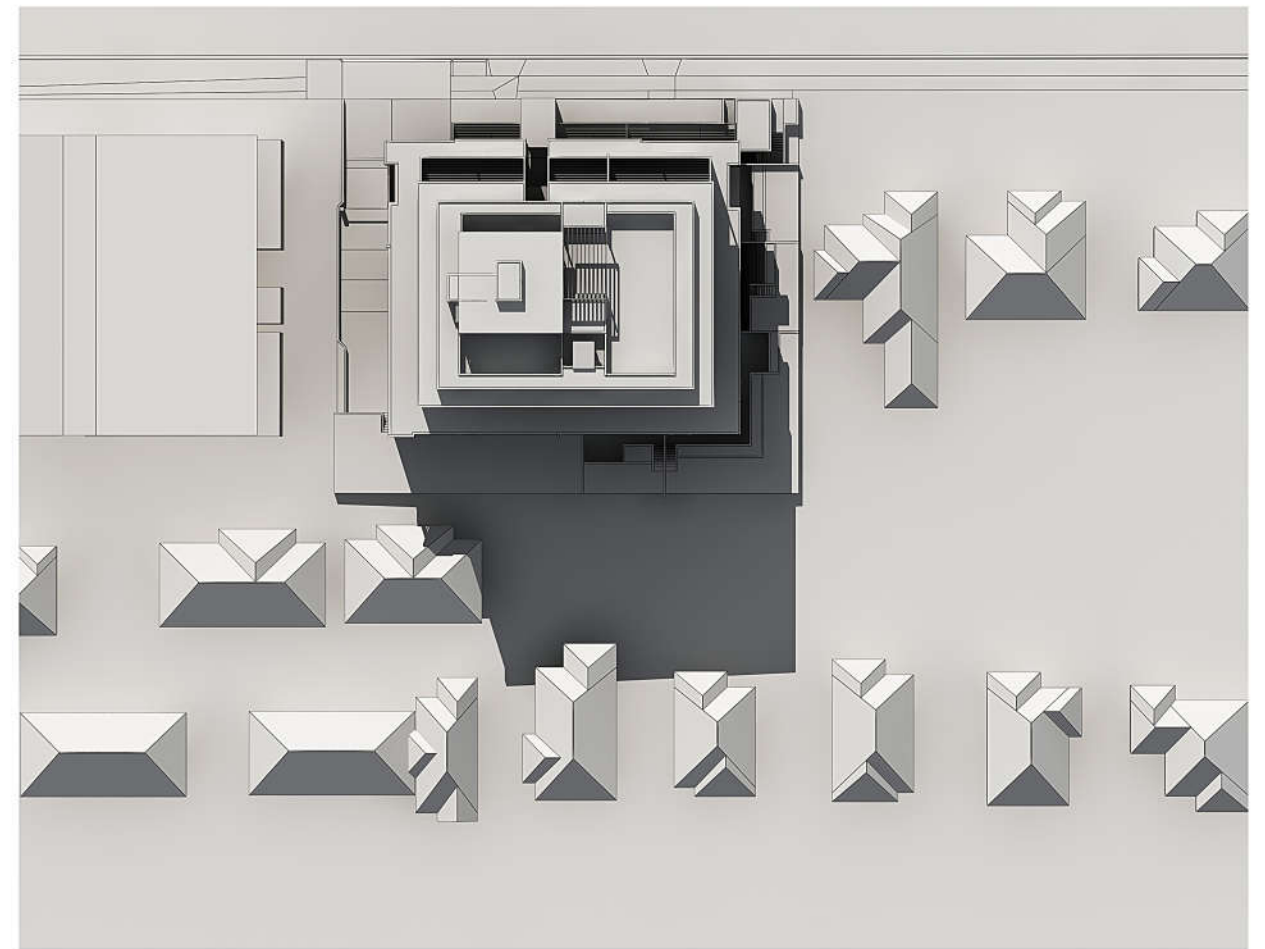
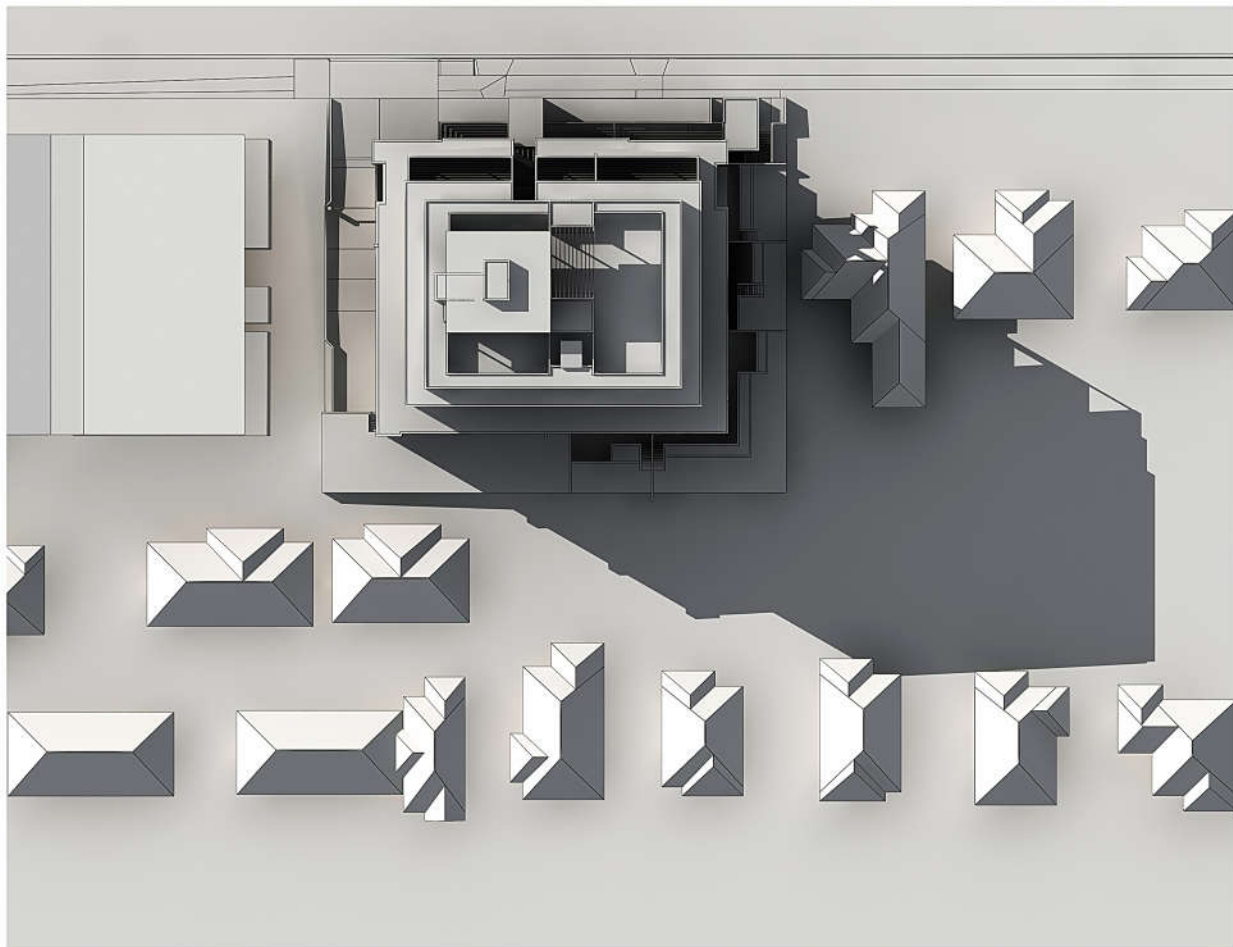
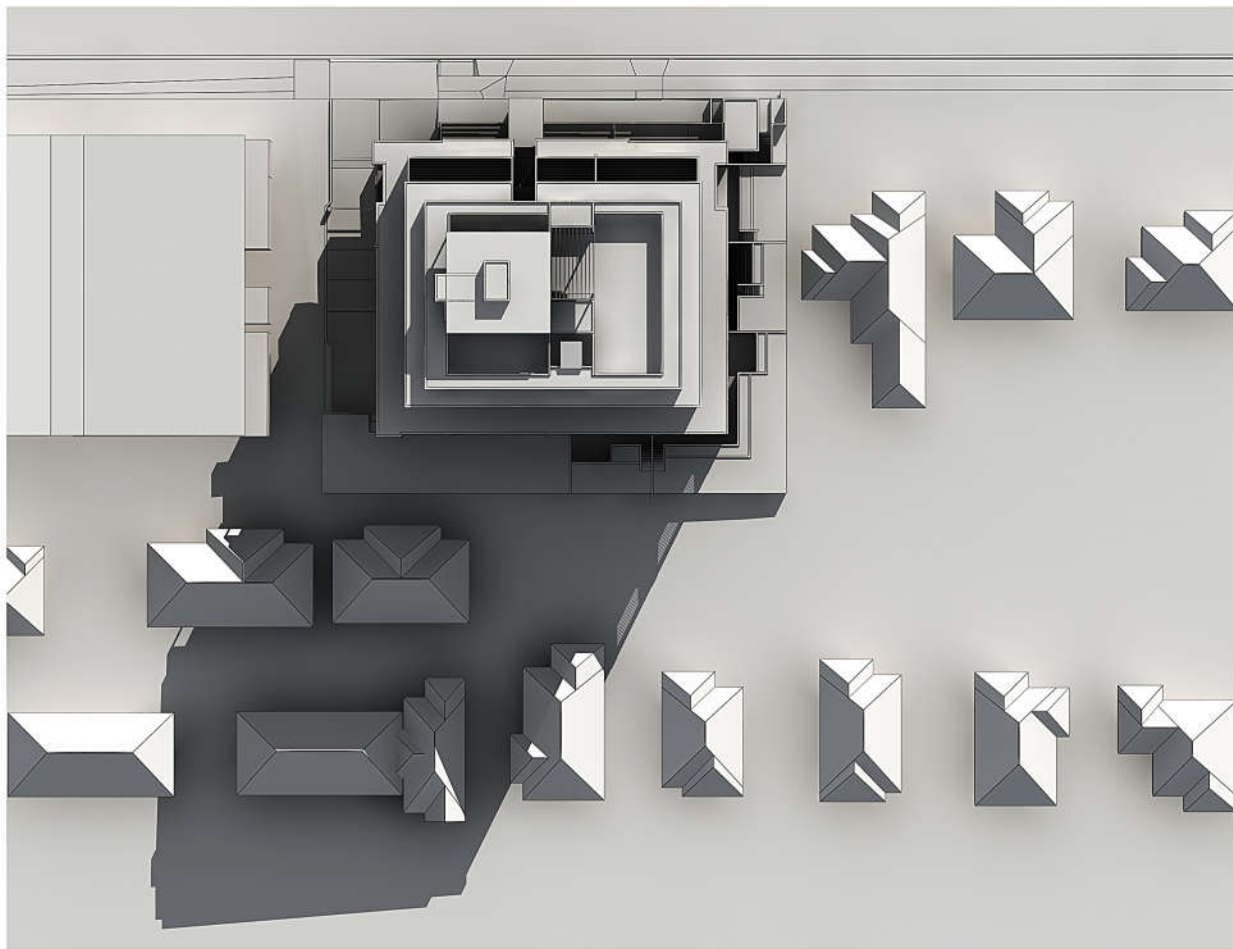
PROJECT : **PROPOSED UNIT DEVELOPMENT LOCATED  
AT 26-30 HOPE ST PENRITH**

TITLE: 1PM-3PM SUN VIEWS

SCALE :	A1 @ NTS	DRAWN :	MM
DATE :	OCT 2018	CHECKED :	MS      REV : A
PROJECT No.	201727	DWG No.	A1.13C







1	2
3	

1. 9am June 21 Winter Shadows
2. Noon June 21 Winter Shadows
3. 3pm June 21 Winter Shadows

DATE	REV	AMENDMENTS
25.10.18	B	AMENDED DA ISSUE
11.04.18	A	DA ISSUE

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PROJECT : PROPOSED UNIT DEVELOPMENT LOCATED  
 AT 26-30 HOPE ST PENRITH

TITLE: JUNE 21 WINTER SHADOW PLAN

SCALE : A1 @ 1:300

DRAWN : MM

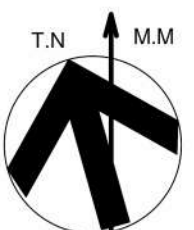
DATE : AUG 2017

CHECKED : MS

REV : B

PROJECT No. 201727

DWG No. A1.15









PROPOSED RESIDENTIAL FLAT BUILDING 26-30 HOPE ST PENRITH FINISHES SCHEDULE



TIMBER SCREENING



1.TIMBER SCREENING

HANDRAILING/ WALL CLADDING,  
WINDOWS & COURTYARD FENCING



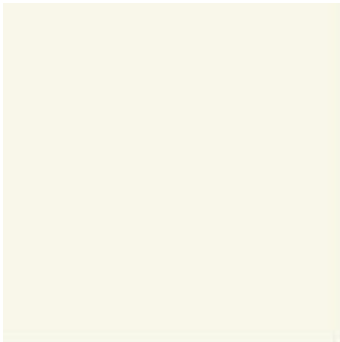
2.COLORBOND MONUMENT

MAIN EXTERNAL FAÇADE



3. DULUX LIMED WHITE

SECONDARY EXTERNAL FAÇADE



4. DULUX WHITE WATSONIA

GROUND FLOOR FEATURE WALLS



5. SANDSTONE CLADDING

TOP FLOOR CLADDING



6. METAL WALL CLADDING

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DATE	REV	AMENDMENTS	

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NOMINATED ARCHITECT: MARTINA STRANDBERG BMS 0000

PROJECT :	PROPOSED UNIT DEVELOPMENT LOCATED AT 26-30 HOPE ST PENRITH				
TITLE:	FINISHES SCHEDULE				
SCALE :	A3 @ NTS	DRAWN :	MM		
DATE :	AUG 2017	CHECKED :	MS		REV : A
PROJECT No.	201727	DWG No.	A1.16		

## Revised Statement of Environmental Effects

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LOT CONSOLIDATION, DEMOLITION OF EXISTING STRUCTURES AND THE CONSTRUCTION OF A 6 STOREY RESIDENTIAL FLAT DEVELOPMENT CONTAINING 43 APARTMENTS OVER BASEMENT CARPARKING FOR 62 VEHICLES AT 26-30 HOPE STREET, PENRITH



*Prepared by:* Think Planners Pty Ltd  
*Document Date:* 2 November 2018  
*Consent Authority:* Penrith City Council

**QUALITY ASSURANCE**

**PROJECT:** Revised Statement of Environmental Effects – 6 Storey RFB

**ADDRESS:** Lot 34, 35 and 36 DP 31239: 26-30 Hope Street, Penrith

**COUNCIL:** Penrith City Council

**AUTHOR:** Think Planners Pty Ltd

**ARCHITECT:** Building Design and Technology

Date	Purpose of Issue	Rev	Reviewed	Authorised
17 April 2018	Draft Issue	Draft	SF	SF
20 April 2018	Updated	Draft	SF	JW
9 May 2018	Lodgement Issue	Final	JW	JW
2 Nov 2018	Revised DA Issue	Final	JW	JW

***Integrated Development (under S91 of the EP&A Act). Does the development require approvals under any of the following legislation?***

<i>Fisheries Management Act 1994</i>	<i>No</i>
<i>Heritage Act 1977</i>	<i>No</i>
<i>Mine Subsidence Act 1992</i>	<i>No</i>
<i>Mining Act 1992</i>	<i>No</i>
<i>National Parks and Wildlife Act 1974</i>	<i>No</i>
<i>Petroleum (Onshore) Act 1991</i>	<i>No</i>
<i>Protection of the Environment Operations Act 1997</i>	<i>No</i>
<i>Roads Act 1993</i>	<i>No</i>
<i>Rural Fires Act 1997</i>	<i>No</i>
<i>Water Management Act 2000</i>	<i>No</i>

***Concurrence***

<i>SEPP 1- Development Standards</i>	<i>No</i>
<i>SEPP 64- Advertising and Signage</i>	<i>No</i>
<i>SEPP 71 – Coastal Protection</i>	<i>No</i>
<i>SEPP (Infrastructure) 2007</i>	<i>No</i>
<i>SEPP (Major Development) 2005</i>	<i>No</i>
<i>SREP (Sydney Harbour Catchment) 2005</i>	<i>No</i>

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## Executive Summary

This revised Statement of Environmental Effects has been prepared in support of a Development Application for the consolidation of 3 lots, demolition of existing structures and the construction of a 6 storey '*Residential Flat Building*' at 26-30 Hope Street, Penrith.

The revised proposal consists of 43 residential units (reduction of 2 units) with a total of 62 car parking spaces within 2 basement levels (reduction of 9 parking spaces). The revised proposal incorporates the following dwelling mix:

- 10 x 1 bedroom units
- 2 x 1 bedroom plus study units
- 26 x 2-bedroom units
- 5 x 3-bedroom units.

The revised proposal has sought to respond to issues raised by Council, with the key issues being on-site waste collection arrangements and building separation. Compliance on both of these matters is now achieved. It is noted that the building does exceed the height limit which is a function of the rooftop common area and waste collection arrangements however the proposal continues to adopt a 6 storey form.

The site comprises of 3 separate allotments and once consolidated will result in creating a regular shaped land parcel with a frontage of 47m to Hope Street, a site depth of 40m, resulting in a with a total site area of 1,884m<sup>2</sup>. The allotment currently contains a dwelling on each lot. The site has been zoned R4 High Density Residential with a maximum height limit of 18m, under the Penrith Local Environmental Plan 2010.

With the Penrith Local Environmental Plan zoning land within the subject residential block for higher residential densities up to 18m it is anticipated that the built form character of existing low-density housing within the subject block will undergo a substantial shift towards higher densities over the medium term. This is evident with multiple DAs currently with Council for comparable RFB and mixed-use development within the wider locality.

The subject area is ideal for future urban intensification as it is located within proximity to a large commercial centre, regional hospital, schools, public transportation and recreational opportunities.

The amalgamation of the two land parcels will permit an orderly development of the site and permitting the site to fulfil its zoning potential while being consistent with Council's vision for this precinct.

Having regard to the benefits of the proposal and considering the absence of adverse environmental, social or economic impacts, and that the proposal represents an appropriate use of well-located land, the application is submitted to Council for assessment. Think Planners Pty Ltd recommends the approval of the application, subject to necessary, relevant and appropriate conditions of consent.



## Site and Locality

The subject site is legally described as Lots 34, 35 and 36 DP 31239, known as 26-30 Hope Street, Penrith.

Located within proximity to Nepean Hospital, a large regional hospital servicing Western Sydney, the subject site resides along the southern side of Hope Street, approximately 200m west of the intersection of the Northern Road and Hope Street. Nestled between Penrith CBD to the north west, Kingswood Train Station and commercial strip to the north east, the site is also within walking distance to a small neighbourhood shop, medical centres, Penrith High School and local parks. Bus stops with services between Penrith and Mt Druitt (774, 775 & 776) is within a 250m radius of the development site.

The site comprises of 3 separate allotments and once consolidated will result in creating a regular shaped land parcel with a frontage of 47m to Hope Street, a site depth of 40m, resulting in a with a total site area of 1894.4m<sup>2</sup> with a dwelling currently located on each lot. The site falls from the rear south east corner (RL 47.63) towards the north western corner of Hope Street (RL 44.23), with a cross-fall of 3.4m. Located within an established residential area, the subject site currently accommodates 3 older style residential dwellings and associated structures, as demonstrated by Photograph 1 below.

**Photograph 1:** Shows 26 Hope Street, Penrith



The subject site is surrounded by older style single storey residential dwellings with Hope Street separating the site from low density housing to the north. It is noted that the site currently accommodates three single storey residential dwellings and associated structures that are to be demolished as part of the proposal. The site also contains existing trees and vegetation, with the majority of the trees to be removed to accommodate the proposal.



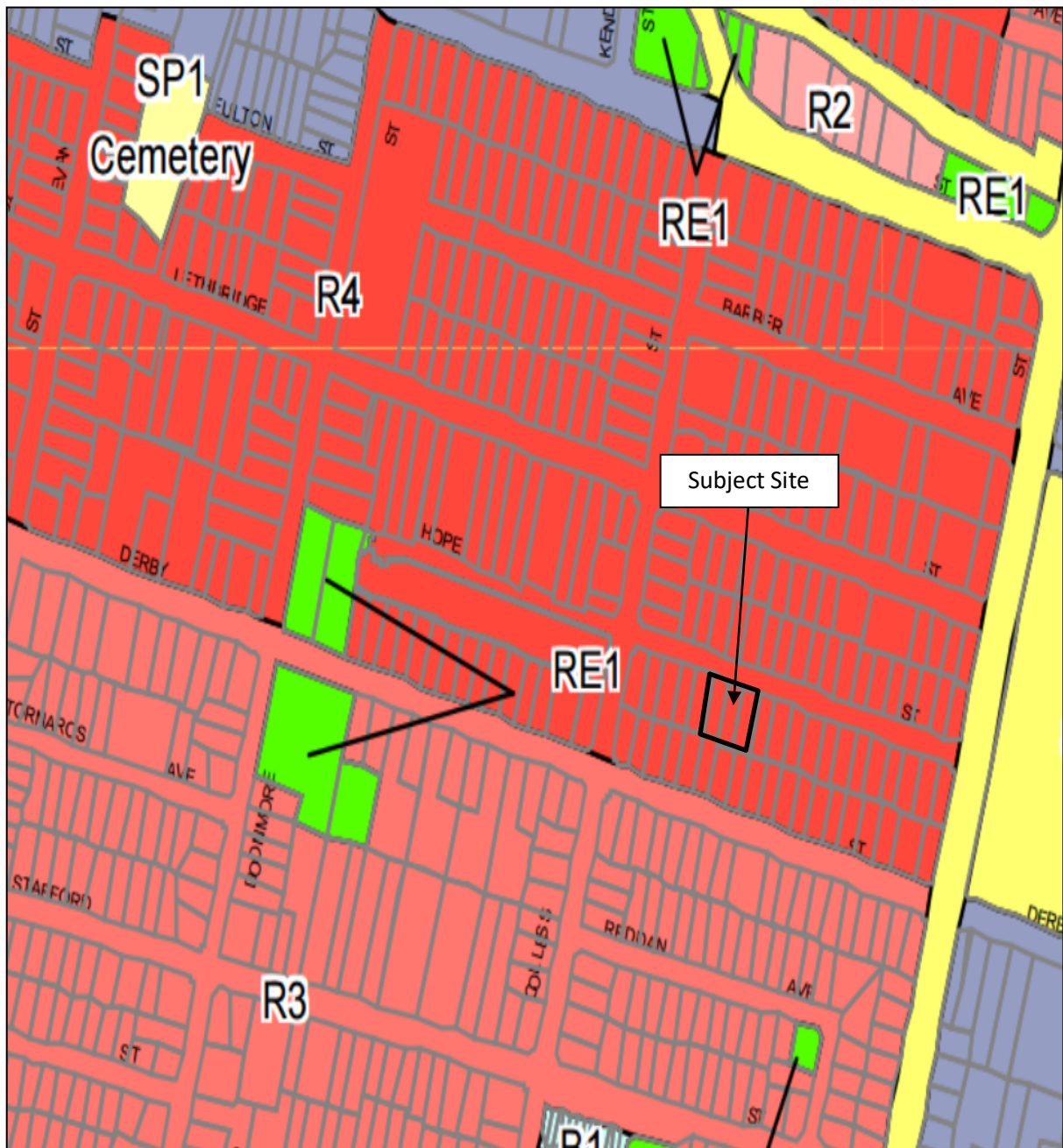
The proposal will also incorporate high quality landscape embellishment works along with appropriate replacement plantings to help reduce the physical bulk and scale of the development while also enhancing privacy levels and amenity within a garden setting in accordance with the landscape plan.

The dwellings are in a reasonable condition; however, they are significantly underutilising the sites full development potential given the R4 High Density Residential zone permits higher density residential developments such as residential flat buildings of up to 18m. The aerial extract and photographs of the locality below provides context to the development site.



**Figure 1:** Locality Map (Source: SixMaps)

As outlined above, the development site is zoned R4 High Density Residential under the provisions of the Penrith Local Environmental Plan 2010 as illustrated by Council's zoning map extract below. '*Residential Flat Buildings*' are permissible with consent within the R4 zone and the subject site is permitted a maximum building height of 18m.



**Figure 2:** Zoning Map Sheet LZN\_013 Extract (Source: Penrith LEP 2010)

The site is located within a large residential block bounded by the Northern Road to the east, Hope Street to the south, Derby Street to the south and Colless Street to the west. The existing built form character within the residential block comprises predominantly of older style one and two storey residential dwellings of mixed ages and architectural styles on modest lots interspersed by a large multi-dwelling housing complex situated on a corner block to the far south-western portion of the block. This is illustrated by an aerial map in the following page.





**Figure 3:** Aerial Map of Subject Residential Block (Source: Google Maps)

With the Penrith Local Environmental Plan zoning land within the subject residential block for higher residential density with building permitted up to 18m and considering its proximity to both Penrith CBD, Kingswood commercial strip, a major regional hospital and considering the current high demand of housing combined with an absence of heritage items, it is anticipated that the built form character of existing low density housing within the subject block will undergo a substantial shift towards higher densities over the medium term. This is evident with multiple DAs currently with Council for comparable RFBs and mixed-use development within the wider locality.

The Greater Sydney Region Plan and the Western City District Plan support higher density residential developments in strategic locations to accommodate future population growth. The subject area is ideal for future urban intensification as it is located within proximity to a large commercial centre, industrial precincts, regional hospital, schools, public transportation and recreational opportunities. The amalgamation of the 3 land parcels will permit an orderly development of the site and also permitting the site to fulfil its zoning potential while being consistent with Council's vision for the subject area.



The proposal also seeks to provide an important streetscape presence beyond the existing facades currently present in the locality and play a key role in the renewal process by setting the design standard and tone for future character and residential built forms along the southern side of Hope Street and also within the subject residential block.

The development site is also located near key arterial roads such as the Great Western Highway and The Northern Road. An aerial photograph, that demonstrates the sites location within the wider locality, is provided below:



**Figure 4:** Broader Locality Map (Source: Google Maps)

Photographs are provided below that give context to the locality and also the relationship of the development site with adjoining developments.



**Photograph 2:** Shows the existing streetscape in Hope Street looking eastwards, noting the narrow width of the road along with construction taking place opposite the subject site.



**Photograph 3:** Shows the existing streetscape in Hope Street looking westwards, noting the narrow width of the road as well as development under construction at the western end of Hope Street.



## Heritage

The site is not identified as a heritage item, it is not located within a heritage conservation area nor is it in the vicinity of any surrounding heritage items as illustrated by the heritage extract map below.



**Figure 5:** Heritage Map Sheet HER\_013 Extract (Source: Penrith LEP 2010)

## Description of Revised Proposal

The revised proposal consists of 43 residential units (reduction of 2 units) with a total of 62 car parking spaces within 2 basement levels (reduction of 9 parking spaces). The revised proposal incorporates the following dwelling mix:

- 10 x 1 bedroom units
- 2 x 1 bedroom plus study units
- 26 x 2-bedroom units
- 5 x 3-bedroom units.

The revised proposal has sought to respond to issues raised by Council, with the key issues being on-site waste collection arrangements and building separation. Compliance on both of these matters is now achieved. It is noted that the building does exceed the height limit which is a function of the rooftop common area and waste collection arrangements however the proposal continues to adopt a 6 storey form.

## Unit Mix

The proposal incorporates a total of 43 units with the following dwelling mix:

- 10 x 1 bedroom units
- 2 x 1 bedroom plus study units
- 26 x 2-bedroom units
- 5 x 3-bedroom units.

## Parking

The development proposal includes a total of 62 parking spaces within two basement levels, and the access ramp to the basement is located on the north-western section of the site. The parking breakdown is as follows:

A total of 62 car parking spaces including 5 accessible parking spaces broken down into:

- 51 residential spaces
- 10 visitor spaces
- Including 1 service bay.

## Waste Collection

The revised development provides a garbage truck loading bay, accessed via Hope Street which is at ground level, which also provides a vehicle turning system. The turning mechanism allows the truck to enter and exit in a forward direction. This has been the outcome of exhaustive discussions with Council staff with regard to waste collection and adopts a similar configuration to the adjoining development to the west. Care has been taken to avoid visual impact of this waste area as far as practicable and locating it at the rear in an 'enclosed' area will mitigate visual and acoustic privacy matters associated with the waste collection areas.



## Response to Council Issues Raised

Council provided a detailed assessment in June 2018, with a number of subsequent meetings and discussions with regard to the amendments to the design and the waste collection arrangements in order to resolve these issues.

The table below provides detail on the key matters raised and how the proposal has addressed the comments.

Key Issue Raised	Response
Waste	<p>The proposed waste management on site has been designed to comply with Council's requirements under Section 4.2 of the DCP through the adoption of the rear enclosed truck collection area that has undergone substantive revision in collaboration with Council.</p> <p>This has sought to balance the waste collection requirements with the servicing needs and importantly the urban design outcome and integration with the streetscape. This has resulted in a loss of yield to the scheme but now presents a suitable balance between design and waste collection.</p>
Acoustic Report	An Acoustic Report by Acoustic Logic has been prepared as part of the revised development.
Urban design matters & Façade Expression	<p>The façade design has been rationalised, in conjunction with the reconfiguration of the building and building separation that provides for a similar and more cohesive building form to address the comments raised.</p> <p>This has involved the more solid base and lighter weight upper levels of the building and a larger variety of balustrading types are provided with screen elements to break up the façade width.</p> <p>An active street frontage is achieved with courtyards and landscaping elements to vastly improve the public domain.</p>



	Features have been included in the common outdoor open space area including a BBQ and pergolas to enhance the use of the ground floor space. An additional area of common space is provided at the roof top. This area is orientated north and will provide a high-quality space for the residents.
Front Setback	The front setback of the development is proposed to be 6m as requested.
Balcony Design	The balcony elements have been simplified and the returns reduced to simplify the building and the separation is now designed to be compliant with the control.
Communal Open Space	The communal open space area has been increased through the provision of this area across the full rooftop and the area equates to 25% and compliance is achieved.
Solar access	69% of the units meet the ADG requirements for solar access as demonstrated in the development plans.
Deep Soil	The rear deep soil area is accessed either via the units or the driveway area for access and maintenance. The extent of deep soil is 161sqm that exceeds the 133sqm required.
Cross Ventilation	The plans show that 65% of units achieve cross-ventilation with a plan nominating which units achieve compliance.
Revised Clause 4.6	A Revised Clause 4.6 variation is provided at the end of this statement.
Substation	The proponent is to share the substation facility with the adjoining development to the west which is a positive outcome.
Stormwater	Revised stormwater plans have been provided as part of the package.
Basement Lift and Spaces	The basement has been revised to provide accessible spaces in proximity to lift areas

Letterboxes	The letterbox and front fence have been revised, however the location maintained to enable Australia Post requirements to be satisfied.
Other matters	These detailed matters have been incorporated into the design of the scheme.

All key issues arising from these meetings have been addressed and details are provided in the plans submitted with this development application.

## Planning Controls

### Statutory Controls

The relevant Statutory Planning Controls include:

- State Environmental Planning Policy (BASIX)
- State Environmental Planning Policy No.55- Remediation of Land
- State Environmental Planning Policy No.65 –Design Quality of Residential Apartment Development
- Sydney Regional Environmental Plan No. 20- Hawkesbury Nepean River
- Penrith Local Environmental Plan 2010.

### Policy Controls

The applicable policy control documents are:

- Penrith Development Control Plan 2014
- The Apartment Design Guide.

## Consideration of Planning Controls

The following summarises the relevant planning controls in relation to the proposal and the compliance of each.

### State Environmental Planning Policy BASIX

The application has been assessed and is accompanied by a complying BASIX certificate demonstrating a commitment to thermal and water efficiency.

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

Given the historical use of the site for urban purposes, land contamination is not likely. Further investigation and reporting under SEPP 55 is not considered necessary given the residential use of the site and no indication of potentially contaminated materials on the site.

Council can be satisfied that the provisions of Clause 7 of the SEPP is satisfied. If any contaminated material or suspected contaminated material is unearthed during the construction process, then actions consistent with the legislative requirements and guideline document will be undertaken.

### SEPP 65 Design Quality of Residential Apartment Development and the Apartment Design Guide

The development application is accompanied by a design verification statement prepared by Martha Strangas, verifying that she has directed and designed the proposal, and that the design quality principles set out in the SEPP are achieved for the residential flat development.

A description of compliance with the applicable development controls such as setbacks, building depth, separation, height, etc. is provided in the local planning controls discussion and tables below. The table below provides a detailed discussion against the relevant provisions of the Apartment Design Guide, noting that a number of these provisions are embodied within the Penrith Local Environmental Plan 2010 and supporting Penrith Development Control Plan 2014.

Clause 6A of the amended SEPP states that development control plans cannot be inconsistent with the Apartment Design Guide for the following matters set out in parts 3 and 4 of the guide:

- (a) visual privacy,
- (b) solar and daylight access,
- (c) common circulation and spaces,
- (d) apartment size and layout,
- (e) ceiling heights,
- (f) private open space and balconies,
- (g) natural ventilation,
- (h) storage.

The SEPP states that if a development control plan contains provisions that specify requirements, standards or controls in relation to a matter to which clause 6A applies, those provisions are of no effect.

A summary table is provided below- noting that data is drawn from the plans and 'ADG compliance table' as well as the solar and cross-ventilation drawings.

ADG Element	Design Criteria/Design Guideline	Proposed	Compliance
<b>Part 3 – Siting the Development</b>			
3A Site Analysis	Appendix 1 of the ADG	Provided	Yes
3B Orientation	Building to define the street, by facing it and incorporating direct access from the street	The proposed residential flat building has been designed to address and provide direct pedestrian access via Hope Street. Passive surveillance opportunities are provided from primary living areas and balconies that overlook all streets. Direct pedestrian access to the proposed 6 storey building is provided through the centre of the site.	Yes
	Where an adjoining building does not currently receive 2 hours of sunlight in midwinter, solar access should not be further reduced by > 20%	Not applicable	N/A
	4 hours of solar access should be retained to solar collectors on neighbouring buildings	Adjoining properties do not contain solar collectors	N/A
3C Public Domain Interface	Terraces, balconies should have direct street entry, where appropriate.	Units 1, 2, & 3 have direct access to their courtyards from Hope Street.	Yes
	Mail boxes should be located in lobbies, perpendicular to the street alignment or integrated into front fences where individual street entries are provided	Appropriate location of mail boxes is provided. Complies.	Yes

	Substations, pump rooms, garbage storage rooms and other service rooms should be located in the basement carpark or out of view	The garbage storage rooms is located within the ground floor level, it is provided with its own room and is out of view from the street. The room is accessed from the central foyer.	Yes
3D Communal and Public Open Space	<p><u>Design Criteria:</u></p> <p>Communal open space has a minimum area equal to 25% of the site</p> <p>50% of the principal COS should receive 2 hours of sunlight between 9am and 3pm</p>	<p>The development provides a communal open space area of 25% of the site area and now complies.</p> <p>The communal open space will receive adequate levels of sunlight.</p>	<p>Yes</p> <p>Yes</p>
3E Deep Soil Zones	<p><u>Design Criteria:</u></p> <p>A deep soil zone equivalent to 7% of the site area must be provided</p> <p>If the site is between 650m<sup>2</sup> to 1500m<sup>2</sup> then the DSZ must have minimum dimensions of 3m</p> <p>If over 1500m<sup>2</sup> then min dimensions of 6m</p>	<p>A deep soil area of 161m<sup>2</sup> or 8.5% of the site is provided. Complies.</p> <p>N/A</p> <p>Complies with minimum dimension of 6m.</p>	<p>Yes</p> <p>N/A</p> <p>Yes</p>
3F Visual Privacy	<p><u>Design Criteria:</u></p> <p>12m between habitable rooms (6m)</p> <p>18m between habitable rooms (9m)</p>	<p><u>Up to 4 storeys</u></p> <p>The revised proposal adopts a 6m separation for the lower 4 storeys.</p> <p>The setbacks on the upper level and compliant to the main building. There are some balcony intrusions but these are design features and have no impact on privacy and they articulate the building and are considered to be acceptable.</p>	<p>Yes</p> <p>Yes- Minor Balcony Encroach</p>

Note: When adjacent to a lower density residential zone an additional 3m rear/ side setback is required	The adjoining land is also zoned R4 High Density Residential.	N/A	/A
3G Pedestrian Access and Entries	Building entries should be clearly identifiable and communal entries should be clearly distinguished from private areas	The building provides clearly distinguishable entry points from Hope Street.	Yes
3H Vehicle Access	Car park access should be integrated with the building's overall façade  Car park entry and access should be located on secondary streets or lanes where available	The vehicular access point from Hope Street place is to the side of the building, however integrates with the overall design of the building. N/A	Yes  N/A
3J Carparking	<u>Design Criteria:</u> Carparking for sites within 800m of a railway station or light rail stop can provide parking at the rate of:  <u>Design Guidelines:</u> Secure undercover bicycle parking should be provided that is easily accessible from both the public domain and common areas	N/A as not within 800m of a railway station. Designed to Comply with the Penrith DCP 2014.  The proposal provides appropriate undercover and secure residential bicycle parking spaces within the upper basement level.	N/A  Yes
<b>Part 4 – Designing the Building</b>			
4A Solar Access	<u>Design Criteria:</u>  Living rooms and private open space of at least 70% of units to receive 2 Hours Solar Access between 9am and 3pm Mid-Winter	80% of units achieve the required 2 hours of solar access at mid-winter per the solar access diagram.	Yes

	A maximum of 15% of apartments receive no direct sunlight between 9am and 3pm Mid-Winter	There are 8 units that do not achieve solar access which is marginally greater than 15%. This is a function of the lot width and orientation as well as the garbage collection area that eliminates the ability to achieve a south westerly orientation to the ground and first floor area. The minor departure is considered reasonable given that all other units comply and the layouts of the units are designed with a shallow depth to maximise daylight access (as compared to direct solar access).	Minor Variation
4B Natural Ventilation	<p><u>Design Criteria:</u></p> <p>60% of Units are cross ventilated in a building up to 9 storeys</p> <p>Overall width of a cross over or cross through apartment is &lt; 18m</p> <p><u>Design Guidelines:</u></p> <p>The building should include dual aspect apartments, cross through apartments and corner apartments and limit apartment depths</p>	<p>65% of units are cross ventilated.</p> <p>&gt; 18m complies</p> <p>Development has a mix of dual aspect apartments, single aspect and corner apartments. See attached architectural plans for detail.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
4C Ceiling Height	<p><u>Design Criteria:</u></p> <p>2.7m for habitable and 2.4m for non-habitable.</p>	Complies	Yes
4D Unit Sizes	<p><u>Design Criteria:</u></p> <p>Studio 35m<sup>2</sup> 1 bed 50m<sup>2</sup> 2 bed 70m<sup>2</sup> 3 bed 90m<sup>2</sup></p> <p>+ 5m<sup>2</sup> for each unit with more than 1 bathroom.</p>	All units comply with many units exceeding. Where additional bathrooms have been provided unit, sizes have been increased by at least 5m <sup>2</sup>	Yes

Habitable Room Depths	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10%	Every habitable room is provided with a window.	Yes
Bedroom sizes Master Other			
Living rooms/dining areas have a minimum width of: 3.6m 4m	<u>Design Guidelines:</u> Limited to 2.5m x Ceiling Height	N/A as open plan layouts provided	N/A
Open plan layouts that include a living, dining room and kitchen.	10m <sup>2</sup> 9m <sup>2</sup>	Comply Comply	Yes Yes
	Studio/1 br 2br/ 3br	Comply Comply	Yes Yes
	8m to a window	Complies given unit depths and design layouts.	Yes
4E Private Open Space	<u>Design Criteria:</u>		
Balcony Sizes			
1 bed	8m <sup>2</sup> & 2m depth	Complies	Yes
2 bed	10m <sup>2</sup> & 2m depth	Complies	Yes
3 bed	12m <sup>2</sup> & 2.4m depth	Complies	Yes
Ground level/ podium apartments	15m <sup>2</sup> & 3m depth	Complies.	Yes
4F Common Circulation and Spaces	<u>Design Criteria:</u>		
Common Circulation Units per Plate	8 unit per plate	The development provides 1 lift core for a maximum of 8 units on all levels with the exception of the 3 <sup>rd</sup> floor where there are 9 units.  The proposal remains able to meet the intention of these controls by providing a safe, amenable and durable development. There is only 1 additional unit on this level within the development which is a very minor variation.	Minor variation



Corridors > 12m	Are articulated	The corridors are articulated, vary in width and are suitably designed such that the minor departure to the lift control has no bearing on the functionality and useability of the space.	Yes
4G Storage	<p>1 bed 6m<sup>3</sup> 2 bed 8m<sup>3</sup> 3 bed 10m<sup>3</sup></p> <p>Min 50% of required storage is within the apartment</p>	<p>The proposal provides: 1 bed: &gt;6m<sup>3</sup> 2 bed: &gt;8m<sup>3</sup> 3 bed: &gt;10m<sup>3</sup></p> <p>This is provided within the basement/ground floor and within the units themselves, with a minimum of 50% of storage to be provided within each individual unit.</p> <p>The proposed development is considered to offer storage space that aligns with the provisions of the ADG.</p>	Yes
4H Acoustic Privacy	<p>Adequate building separation is provided within the development and from neighboring buildings/adjacent uses</p> <p>Windows and door openings are generally orientated away from noise sources.</p> <p>Noisy areas within buildings including building enters and corridors should be located next to or above each other and quieter areas next to or above quieter areas.</p>	<p>Development has provided adequate separation from neighbor buildings/properties in-line with 3F Visual Privacy – design criteria above.</p> <p>Where appropriate windows and door openings are orientated away from noise sources.</p> <p>The application is designed to create different ‘zones’ with more active areas clustered together and more passive areas also clustered together to maximise acoustic privacy and also take advantage of the lot orientation.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
4K Apartment Mix	A variety of apartment types is provided	<p>A diversity of apartments is proposed as follows:</p> <p>Studio x 1 12 x 1 bedroom unit 26 x 2 bedroom unit 5 x 3 bedroom unit.</p>	Yes

		The proposed unit mix will offer a variety of housing choice. The proposal is designed with a mix of units to provide a variety of housing choices that responds to market demand, noting that the bedroom numbers and size of units are varied that will provide for a range of sizes to meet the needs of occupants and also provide different pricing points for the alternative sizes which will contribute to affordability.	
4M Facades	Building facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale	<p>The proposed facades are well articulated with a mixture of vertical and horizontal features including windows, projecting walls and balconies and framed elements.</p> <p>Overall the proposed facade is considered a quality design outcome that is compatible with other comparable modern RFB within the wider Penrith LGA.</p>	Yes
4O Landscape Design	1 large tree or 2 medium trees per 80m <sup>2</sup> of DSZ	Consistent as per landscaping, noting where appropriate existing trees are to be retained.	Yes
4Q Universal Design  20% of the total apartments	Achieve Liveable House Guidelines silver level universal design features	Meets Penrith DCP of 10% adaptable and 20% Liveable Housing.	Yes
4U Energy Efficiency		<p>The development application is accompanied by a BASIX certificate indicating energy efficiency for each residential unit provided.</p> <p>Furthermore, it is noted that 80% of units achieve the minimum 2 hours of solar access at mid-winter and over 65% units achieve natural ventilation.</p>	Yes

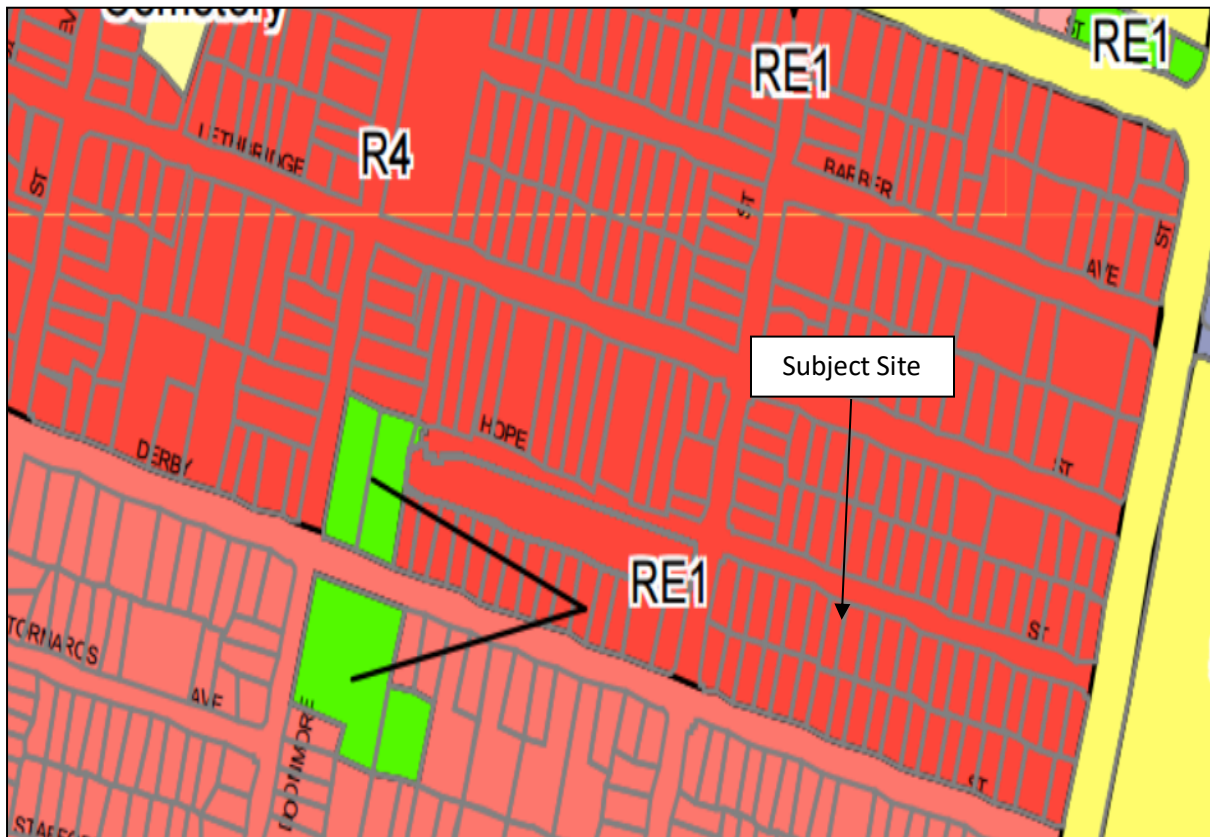
4V Water Management and Conservation	Reduce mains consumption, and reduce the quantity of storm water runoff.	The application has been provided with a BASIX certificate indicating energy efficiency for each residential unit provided.	Yes
4W Waste Management	Supply WMP	Provided	Yes
	Allocate storage area	Appropriate waste storage areas are provided.	Yes
4X Building Maintenance	To ensure long life and ease of maintenance for the development.	The proposed material is considered durable which may be easily cleaned.	Yes

### Sydney Regional Environmental Plan (SREP) No. 20 Hawkesbury Nepean River

The development proposal incorporates a drainage concept that demonstrates that stormwater can be adequately conveyed to the existing street network. Appropriate erosion and sediment controls can be implemented throughout construction and it is anticipated that conditions of consent will reinforce this. It is noted that the proposal meets the recently adopted WSUD measures required to achieve appropriate water quality for stormwater discharge.

## Penrith Local Environmental Plan 2010

The subject site is zoned R4 High Density Residential under the provisions of the Penrith LEP 2010 as indicated on the zoning extract map below.



**Figure 6:** Zoning Map Sheet LZN\_013 Extract (Source: Penrith LEP 2010)

A Residential Flat Building is permissible with consent and the proposal is consistent with the definition contained within the LEP:

**Residential flat building** means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.

The development proposal is also consistent with the prescribed R4 zone objectives that are stipulated as:

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

The proposed development provides a residential flat building that will provide a variety of housing types and contribute towards increasing the housing stock of Penrith, while being consistent with the emerging high-density character of the subject area. The site is well located and provides access to essential services, public transportation, schools, shops and recreation opportunities.

The residential flat development incorporates a contemporary design that achieves good presentation to both streets. The locality has been zoned for high density development and as such it is expected to transform over the next 5 to 10 years with planning controls permitting greater density in the locality. The proposal aims to provide a strong interface to Hope Street while being consistent with the future high-density character of the precinct.

The table below provides detail on the development standards relevant to the current proposal as well as other relevant LEP provisions.

Penrith Local Environmental Plan 2010 - Compliance Table			
Relevant Clause	Control	Comment	Complies
Zoning	R4 – High Density	Residential Flat Buildings are permissible with Council consent in the R4 – High Density Residential zone.	Yes
<b>Part 2 Permitted or Prohibited Development</b>			
<b>2.3</b>	Zone Objectives and Land Use Table	The proposal is consistent with the zone objectives of the R4 – High Density zone and will provide additional housing in the catchment of public transport and services while contributing to range of housing types to suit the needs of residents within a high-density context. The proposal will appropriately fulfil the site's zoning potential, provide an attractive built form that will address the public domain and increase housing stock within the locality.	Yes
<b>2.6</b>	Subdivision – Consent Requirements	No subdivision is proposed. Not applicable.	N/A
<b>2.7</b>	Demolition Requires Consent	Council consent is sought for the demolition of the existing structures on the site.	Yes
<b>Part 4 Principal Development Standards</b>			
<b>4.1A</b>	Minimum Subdivision Lot Size:  Residential Flat Building: 800m <sup>2</sup>	A minimum lot size of 800m <sup>2</sup> is identified for the site under the Penrith Local Environmental Plan 2011 Clause 4.1A.	Yes

		The subject site has a total site area of 1,894.4m <sup>2</sup> . Complies.	
<b>4.3</b>	Height of Buildings - 18m	<p>Penrith Local Environmental Plan states that the maximum building height within the subject site is 18m.</p> <p>The development exceeds the maximum height limit; however this is due to the elevation of the ground floor to allow for the garbage truck access from the street to the waste storage area, which has raised the height of the building and due to other related design features of this building which are addressed in detail in Annexure A.</p> <p>This proposed variation is addressed in Annexure A through the provisions of Clause 4.6.</p>	Variation
<b>4.4</b>	Floor Space Ratio	No FSR control applies to the subject site. Not relevant.	N/A
<b>4.6</b>	Variations to development standards	Addressed in Annexure A. The proposed building exceeds the maximum building height.	Variation sought under clause 4.6.
<b>Part 5 Miscellaneous Provisions</b>			
<b>5.9</b>	Preservation of trees or vegetation	Repealed	N/A
<b>5.10</b>	Heritage	The site does not contain a heritage item and is not located within proximity to a heritage item or a heritage conservation area.	N/A
<b>Part 7 Additional Local Provisions</b>			
<b>7.1</b>	Earthworks	This application seeks Council consent for the excavation of the site as per the attached plans. It is considered that the proposed excavation will have minimal adverse environmental or amenity impact. The proposal results in an appropriate outcome when considering the nature of the development, the unique characteristics of the site and compliance with relevant Council controls.	Yes

		<p>The proposal will not adversely affect or disrupt drainage and flood patterns, flood storage or soil stability in the area. The proposed excavation is consistent with the current and future use of the land and will develop the site into context with its surrounds and in accordance with Council's current and proposed planning strategies.</p> <p>It is considered unlikely due to the location of the site as well as previous development that excavation will lead to the disturbance of relics.</p>	
<b>7.2</b>	Flood planning	The site is not identified as being flood prone by Council's flood planning land map sheet FLD_013. However, the site is affected by local overland flows and the proposed stormwater management design has taken this into consideration to accommodate for these flows. Habitable floor levels are above the levels advised by Council's development engineer.	Yes
<b>7.3</b>	Development on Natural Resources Sensitivity Land	The site is not identified on the Natural Resources Sensitive Map. Not applicable.	N/A
<b>7.4</b>	Sustainable Development	<p>The proposal satisfies the LEP in that:</p> <p><i>(a) conserving energy and reducing carbon dioxide emissions,</i></p> <p><i>(b) embodied energy in materials and building processes,</i></p> <p>Proposal incorporates a BASIX certificate relating to energy efficiency.</p> <p><i>(c) building design and orientation,</i></p> <p><i>(d) passive solar design and day lighting,</i></p> <p><i>(e) natural ventilation,</i></p> <p>The majority of units receive good solar access and natural ventilation.</p> <p><i>(f) energy efficiency and conservation,</i></p> <p><i>(g) water conservation and water reuse,</i></p>	Yes

		<p>Proposal incorporates a BASIX certificate relating to energy/water efficiency.</p> <p><i>(h) waste minimisation and recycling,</i></p> <p>Waste management and recycling is addressed through the attached waste management plan.</p> <p><i>(i) reduction of vehicle dependence,</i></p> <p>Proposal is located within a 280m radius of bus stops with regular services to Penrith and Mt Druitt that gives alternative means of transport.</p> <p><i>(j) potential for adaptive reuse.</i></p> <p>Given the zoning of the site as R4 there is limited adaptive re-use potential on the site.</p>	
<b>7.5</b>	Protection of Scenic Character and Landscape Values	The site is not identified on the Land with Scenic and Landscape Values Map. (SLV_013). Not applicable.	N/A
<b>7.6</b>	Salinity	Due to the nature and location of the site it is not likely to be affected by Saline Soils. Not applicable.	N/A
<b>7.7</b>	Servicing	The development site is well serviced by water and sewer and the required utility clearances will be obtained prior to works commencing on site.	Yes



## Penrith Development Control Plan 2014

The key DCP controls are contained in the table below.

Penrith Development Control Plan 2014 – Compliance Table			
Clause	Controls	Comment	Complies
<b>C1 Site Planning and Design Principles</b>			
1.1	Site Planning	<u>1.1.1 Site Analysis</u> A Site Analysis has been prepared and is attached as part of this application. The site analysis identifies the relevant considerations required by Council and acknowledges the unique opportunities and constraints of the site that have informed the design of the development proposal.	Yes
		<u>1.1.2 Key Areas with Scenic and Landscape Values</u> The subject site is not located within the Scenic and Landscape Values Map under the Penrith LEP 2010.	N/A
		Not applicable.	
1.2	Design Principles	<u>1.2.2 Built Form – Energy Efficiency and Conservation</u> The proposed development maximise solar access to units and is designed in a manner that achieves natural light and ventilation. A BASIX certificate is attached to this statement.	Yes
		<u>1.2.3 Building Form – Height, Bulk and Scale</u> It is considered that the proposal will result in an appropriate outcome on site that responds to the unique characteristics of the site.	Yes
		The site exceeds the maximum height limit of 18m required by the Penrith DCP, however justification is provided.  It is noted that the subject area is currently ongoing a transformation from low density residential dwelling to a high-density housing, with the proposal designed to be consistent with the future high density built form character of the precinct.	

		<p><u>1.2.4 Responding to the Site's Topography and Landform</u></p> <p>The subject site which has a moderate fall from the rear boundary to the street, and will not impact upon the site's ability to accommodate the proposed Residential Flat Development noting the minor excavation proposed at the rear of the site.</p> <p><u>1.2.5 Safety and Security (Principles of Crime Prevention through Environmental Design)</u></p> <p>The proposed development incorporates active façades that will permit casual surveillance of Hope Street as well as the common areas of the proposal.</p> <p>The proposal incorporates open space and landscaped areas that will contribute to activity and natural surveillance of the area.</p> <p>The proposed landscaping and fencing is appropriate when considering CPTED principles and will not permit easy concealment of intruders.</p> <p>The proposed development is appropriate and provides measures, built elements, landscaping and design features that are consistent with CPTED principles.</p> <p><u>1.2.6 Maximising Access and Adaptability</u></p> <p>Proposal has been designed to provide access to and from the site for people with mobility issues.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
<b>C2 Vegetation Management</b>			
2.1	Preservation of Trees and Vegetation	<p>Council consent is sought for the removal of identified trees from the site, noting that where appropriate, existing trees are to be retained.</p> <p>The site is not identified as being located within the Natural Resources Sensitive Map under Penrith LEP 2010.</p>	Yes

		<p>Proposed extensive landscape treatment seek to soften the built form and integrate with the development and the site's context within a high residential density context.</p> <p>It is highlighted that no significant vegetation is to be impacted as part of the proposal.</p> <p>Landscaping of the site is to be undertaken in accordance with the attached Landscape Plan.</p>	
2.2	Biodiversity Corridors and Areas of Remnant Indigenous Vegetation in Non-Urban Areas	The subject site is not identified as being within a Natural Resource Sensitive Land under Penrith LEP 2010. Not applicable.	N/A
2.3	Bushfire Management	Subject site is not identified as being within a Bushfire Prone Land under Penrith LEP 2010. Not applicable.	N/A
<b>C3 Water Management</b>			
3.1	Water Conservation	The development application is accompanied by a complying BASIX certificate that outlines how water usage will be minimised.	Yes
3.2	Catchment Management and Water Quality	<p>Appropriate management of the site during the demolition and construction phases will contribute towards protecting the catchments natural water systems.</p> <p>A Stormwater Management Plan has been prepared and is attached as part of this application.</p>	Yes
3.3	Watercourses, Wetlands and Riparian Corridors	Subject site is not located within proximity to a watercourse, wetland or riparian corridor. Not applicable.	N/A
3.4	Groundwater	The proposed development is to be for an RFB development. Although the proposal contains a 2 level basement it is not considered that the proposal will impede existing ground water flows.	N/A

		It is considered that the risk of site contamination occurring during construction and future use of the site is low. Not applicable.	
3.5	Flood Planning	The subject site is not identified as being flood prone. Not applicable.	N/A
3.6	Stormwater Management and Drainage	<p>The proposed development incorporates Water Sensitive Urban Design (WSUD) principles that seek to minimise and manage the impact of stormwater on site and within the area. The proposed development appropriately addresses the unique characteristics of the site and will allow for the efficient management of stormwater.</p> <p>A Stormwater Management Plan has been prepared and is attached as part of this application.</p>	Yes
<b>C4 Land Management</b>			
4.1	Site Stability and Earthworks	<p>This application seeks Council consent for the excavation of the site as per the attached plans. It is considered that the proposed excavation, will have minimal adverse environmental or amenity impact.</p> <p>The proposal results in an appropriate outcome when considering the nature of the development, the unique characteristics of the site and compliance with relevant Council controls.</p> <p>The proposal will not adversely affect or disrupt drainage and flood patterns, flood storage or soil stability in the area.</p> <p>The proposed excavation is consistent with the current and future use of the land and will develop the site into context with its surrounds and in accordance with Councils current and proposed planning strategies.</p>	Yes

		It is considered unlikely due to the location of the site as well as previous development that excavation will lead to the disturbance of relics.	
4.3	Erosion and Sedimentation	<p>This application seeks Council consent for the excavation of the site as per the attached plans. It is considered that the proposed excavation, will have minimal adverse environmental or amenity impact.</p> <p>The proposal results in an appropriate outcome when considering the nature of the development, the unique characteristics of the site and compliance with relevant Council controls.</p> <p>An Erosion and Sediment Control Plan is attached as part of this application.</p>	Yes
4.4	Contaminated Lands	<p>The site is currently used for urban purposes. The land is not known to have been used for any purposes that may give rise to the likelihood of contamination. Nothing on site indicates a previous contaminating use.</p> <p>If any contaminated material or suspected material is unearthed during the construction process, then actions consistent with the legislative requirements and guideline documents will be undertaken.</p>	Yes
4.5	Salinity	Due to the nature and location of the site it is not likely to be affected by Saline Soils. Not relevant.	N/A
<b>C5 Waste Management</b>			
	A bin chute is to be provide to all RFBs over 3 storeys in height.	<p>A Waste Management Plan is attached as part of this application.</p> <p>Notwithstanding this it is noted that waste is to be appropriately managed during the demolition and construction stages of the development.</p> <p>A communal bin area is located within the ground floor level.</p>	Yes

		<p>A chute system is proposed with waste area provided in every habitable level that allow the disposal of waste.</p> <p>There is also a bulk waste storage room at the ground level.</p> <p>Trucks can enter the site and position onto a turning circle to make the required manoeuvres in accordance with AS2890 requirements. Waste trucks are able to enter and leave in a forward direction.</p>	
<b>C6 Landscape Design</b>			
		<p>A landscape concept plan, prepared by a Landscape Architect, accompanies this development application.</p> <p>The concept plan details the landscape embellishment works proposed and these works will substantially improve the streetscape presentation of the site as well as softening the proposed built form.</p>	Yes
<b>C7 Culture and Heritage</b>			
7.1	European Heritage	The site does not contain a heritage item and is not located within proximity to a heritage item or a heritage conservation area. Not relevant.	N/A
7.3	Significant Trees and Gardens	The subject site does not contain any trees or gardens that is considered to be of cultural, historical, scientific or aesthetic significance. Not relevant.	N/A
<b>C10 Transport, Access and Parking</b>			
10.2	Traffic Management and Safety	It is considered that the vehicular access and exit points are clearly defined and provide for the safe and efficient movement of vehicular traffic on site and for entering and exiting the site. The proposed parking area and ancillary driveways will not contribute to the creation of traffic hazards. The proposal provides for the safe and efficient movement of pedestrian and vehicular traffic within the site and both entering and exiting the site. Vehicle and pedestrian routes are clearly indicated and accessible.	Yes

10.3	Key Transport Corridors	The subject site is not located with a key transport corridor. Not relevant.	N/A
10.5	<p>Parking, Access and Driveways</p> <p>Parking Rates</p> <p>1 space per 1 or 2 br unit (38 spaces required) 2 spaces per 3 br unit (10 spaces required) Resident: 48 spaces required. Visitor: 1 space for every 5 dwellings: 9</p> <p>1 space per 40 units for car washing =1</p> <p>Total: 58 required plus wash bay.</p>	<p>Proposed dimensions for car parking spaces are consistent with Council control. See plan for detail.</p> <p>The development proposes the construction of 45 units comprising of:</p> <ul style="list-style-type: none"> <li>- studio x 1</li> <li>- 12 x 1 bedroom units</li> <li>- 25 x 2 bedroom units</li> <li>- 5 x 3 bedroom units.</li> </ul> <p>Utilising the DCP rates, the development requires:</p> <p>Resident Spaces: 48 Visitor Spaces: 9 Carwash bays: 1</p> <p>Total: 58 (including car wash bay)</p> <p>The proposal provides a total of 62 spaces composed of:</p> <ul style="list-style-type: none"> <li>- 51 residential spaces</li> <li>- 10 visitor space</li> <li>- including 1 car wash bay.</li> </ul>	Yes
<b>C11 Subdivision</b>			
<b>D2 Residential Development</b>			
2.5	<p>Residential Flat Buildings</p> <p>New residential flat building development should adopt key features of established suburban design.</p> <p>Within the relevant zones, established development provides parking areas which are concealed from the street and consequently avoids the appearance of "garage architecture"</p>	<p><u>2.4.2 Preferred Configuration for Residential Flat Buildings</u></p> <p>The development has courtyards and private open space areas that front Hope Street</p> <p>The development provides basement level parking.</p> <p>The proposed layout and siting of the units are consistent with the layout patterns of other comparable RFB developments within the Penrith LGA.</p>	<p>Yes</p> <p>N/A</p> <p>Yes</p>

2.5.3	<p>Development Site</p> <p>Minimum lot width of 20m in the R4 High Density Residential zone.</p>	The proposal has a site frontage of 47m and as such complies with Council's minimum lot width requirements for Residential Flat Buildings within the R4 zone.	Yes
2.5.4	<p>Urban Form</p> <p>1. For dwellings fronting the street, adopt a traditional orientation:</p> <p>a) living rooms, verandahs and the paths to entrances face the street rather than neighbouring properties; and</p> <p>b) private gardens fill the front setback area;</p> <p>and c) garages are concealed behind dwellings.</p> <p>2. Dwellings behind the street frontage should adopt similar principles:</p> <p>a) living rooms and entrances face the street, and / or the landscaped rear boundary setback;</p> <p>and b) private gardens fill the rear setback area.</p> <p>3. Avoid "gun-barrel" style developments with long rows of attached dwellings, long straight driveways and rows of uniform width side setback:</p> <p>a) step the alignment of all facades – generally one corner and a substantial indentation for every 10m run of wall;</p> <p>b) divide buildings into separate wings – a deep indentation located centrally in the longest walls; or a central garden courtyard;</p> <p>c) vary the width of side setbacks – a combination of garden courtyards and access ways; and</p>	<p>Units 1, 2, 3 front Hope Street and adopt a traditional orientation with their living room and courtyards addressing the site's front setbacks. Where appropriate, the front setbacks are to be landscaped and parking is provided within the basement so as not to dominate the streetscape.</p> <p>Where appropriate private open space is provided within the rear setback area.</p> <p>The development avoids the visual appearance of a 'gun barrel' style development by adopting the design suggestions within this section of the DCP.</p> <p>The building has a number of steps and indents with a larger indent in the middle of the site that visually breaks up the bulk of the building.</p> <p>The building when viewed from adjoining properties will appear as two wings with a deep indentation implemented in the centre of the building.</p> <p>The development has been articulated through shadow casting features and stepping external walls.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>



	<p>d) lined by an “avenue” of shady overhanging trees;</p> <p>e) cap the stepped floor plan with a variety of pitched roof forms;</p> <p>f) Windows should be inserted into every elevation.</p>	<p>Deep rooted landscaping is provided along the perimeter of all boundaries.</p> <p>The indented roof provides visual relief to the development.</p> <p>Windows are provided along all elevations.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
2.5.5	<p><b>Landscaped Area</b></p> <p>Where more than 10 dwellings are proposed, a centrally located communal open space area that is accessible and available to all residents of the development, comprising 10% of the minimum landscaped area requirement.</p> <p>Landscaped area equivalent to 35% of the site with a minimum width of 2m and no basement encroaching.</p>	<p>An area is provided which exceeds 10% of landscaped area and meets the 25% in the ADG.</p> <p>The proposal provides a landscaped area of 669m<sup>2</sup> or 35% of landscaped area.</p>	<p>Yes</p> <p>Yes</p>
2.5.6	<p><b>Front and Rear Setbacks</b></p> <p>Rear Setback: 6m</p> <p>Front Setback: Average of neighbouring development or 5.5m minimum.</p> <p>Balconies can have a 4.5m setback provided less than 50% of the elevation</p> <p>Garages and parking space are not to be located within the front setback.</p>	<p>6m to the building line. Complies</p> <p>The proposal provides a front setback of 6m that is in conjunction with the neighbouring properties.</p> <p>Balconies are setback 4.5m and are less than 50% of the elevation. Complies</p> <p>Garages and parking space are not located within the front setback. Complies.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

2.5.7	<p>Building Envelope and Side Setbacks</p> <p>Cut and fill and maximum ground floor heights: a) on sloping sites provide stepping building platforms in line with existing topography with floors no higher than 1m above natural ground level; b) restrict cut-and-fill to a maximum of 500mm;</p> <p>Pitches for main roofs are not to be in excess of 25 degrees in order to reduce the visual scale.</p> <p>Zero setbacks are not permitted</p>	<p>The proposal is within the building envelope.</p> <p>Cut and fill is limited noting that the building is designed mainly to match existing ground levels with the front of the building designed to be at NGL which has necessitated the lowering of the rear portion noting the desire to limit the height and avoid the need for internal stairs. The rear area has been terraced to U5 and U6 to minimise the impact of the amount of cut.</p> <p>The roof pitch is &lt;25 degrees.</p> <p>N/A</p>	<p>Yes</p> <p>Variation to Rear</p> <p>Yes</p> <p>N/A</p>
2.5.8	<p>Visual and Acoustic Privacy and Outlook</p> <p>Windows oriented towards their own private garden courtyard;</p> <p>At least 9m between any windows that face each other</p>	<p>Windows from primary living are orientated towards private open space areas to provide an appropriate outlook.</p> <p>With the likely redevelopment of the adjoining site to the east and west for future residential flat building a building separation of around 12m is likely to be provided as per the ADG.</p> <p>It is considered that the proposed development produces an appropriate outcome on site that will provide a high level of residential amenity for future residents and will not adversely impact upon residential amenity currently enjoyed by adjoining properties.</p>	<p>Yes</p> <p>Yes</p>

2.5.9	<p><b>Solar Planning</b> A minimum of 4 hours sunlight between 9am and 3pm on 21 June, to living zones (i.e. areas other than bedrooms, bathrooms, kitchen and laundry) of each dwelling, and the living zones of any adjoining dwellings;</p> <p>A minimum of 3 hours sunlight between 9am and 3pm on 21 June, to 40% of the main private open spaces of the dwelling and main private open spaces of any adjoining dwellings</p> <p>Where the existing overshadowing by buildings and fences reduces sunlight to less than the minimums noted above, the development is to not further reduced sunlight to the specified areas by more than 20%.</p>	<p>The proposal incorporates appropriate design features including window size and location that will permit adequate solar penetration as well as cross ventilation of the proposed dwellings. It is noted that 80% of dwellings receive a minimum of 2 hours sunlight between 9am and 3pm during winter and all private courtyards, which are oriented to the north to receive adequate solar access.</p> <p>The proposal does not result in unacceptable overshadowing of adjoining residential properties. Appropriate setbacks are employed to ensure solar access and privacy to adjoining development.</p>	<p>Yes – ADG Prevails</p> <p>Yes</p>
2.5.10	Significant Townscapes & Landscapes	The site is not within an area of townscape or landscape significance.	N/A
2.5.12	Building Design	<p>1. The development adopts a variety of architectural features designed to minimise the apparent scale and bulk of the proposed RFB by:</p> <ul style="list-style-type: none"> <li>- Incorporation of stepping alignment of walls;</li> <li>- Indents to the building</li> <li>- Stepping the building, providing greater setbacks for level the upper levels</li> <li>- Projecting balconies and awnings.</li> </ul> <p>2. The proposal incorporates physical articulation of the built form and a mixed palette of building materials and finishes that are typical of comparable newer MDH and RFBs within the Penrith LGA.</p>	<p>Yes</p> <p>Yes</p>

		<p>Materials used are consistent with that existing in the area while being contemporary in character, including wall and awning cladding and a mix of brickworks.</p> <p>The range of materials significantly contributes to the articulation of the building and reducing the overall bulk and mass of the building.</p> <p>3. The facades of the proposed units include windows and doors along all visible walls and the use projecting verandahs to provide an attractive built form.</p>	Yes
2.5.13	Energy Efficiency	<p>The application has been provided with a BASIX certificate indicating appropriate energy efficiency for each residential unit is provided.</p> <p>Furthermore, living rooms have been oriented to the north with the proposal incorporates appropriate design features including window size and location that will permit adequate solar penetration as well as natural ventilation.</p> <p>80% of units will achieve more than 2 hours solar access at mid-winter (ADG prevails) and the building depth and apartment design ensures 65% of units are naturally cross-ventilated.</p> <p>Appropriate shading devices including overhanging eaves are proposed to provide adequate shading from the summer sun.</p>	Yes
2.5.14	<p>Design of Dwelling and Private Courtyards</p> <p>Corridors at least 1.2m wide and stairs with landings at least 1.2m deep.</p> <p>Ground floor courtyards minimum 20m<sup>2</sup></p>	<p>Comply.</p> <p>Complies.</p>	<p>Yes</p> <p>Yes</p>

	Upper courtyards 10m <sup>2</sup> and 2.5m x 2.5m and incorporate an outdoor drying area that is screened to 1.5m above floor level.	All upper storey apartments have a minimum area > 8m <sup>2</sup> and have room for an outdoor drying area.	Complies with ADG
2.5.15	<p>Garage Design</p> <p>Basements should have a low appearance, rising no higher than 1.5m above ground;</p> <p>Vehicle entrances designed to complement the architecture and landscaping of each building:</p> <p>Individual up and down ramps;</p> <p>undercover storage:</p>	<p>The basement does not protrude above natural ground level.</p> <p>The vehicle entrance and egress to Hope Street is consistent with the existing character of the area and will assist with ensuring compatibility with the surrounding built form.</p> <p>Provided. Complies.</p> <p>Provided. Complies</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
2.5.16	Garden Design	<p>Where appropriate, small to medium trees are to be planted along the sites front and side boundaries.</p> <p>See landscaping plans for detail.</p>	Yes
2.5.17	Paving Design	<p>Where appropriate, hard paved surfaces are minimised to maximise landscaping and gardens.</p> <p>The proposal provides attractive driveways and provide for verge plantings beside driveways and paths.</p>	Yes
2.5.18	Fencing and Retaining Walls	Proposed fencing is to be consistent with that existing within Penrith Local Government Area of similar residential flat buildings. The proposed fencing is compliant with Council controls.	Yes
2.5.19	Safety and Security	The proposed development incorporates an active façade that will permit casual surveillance to Hope Street as well as to driveways and landscaped areas of the proposal.	Yes

		<p>The proposal incorporates open space and landscaped areas that will contribute to activity and natural surveillance of the area.</p> <p>The proposed landscaping and fencing is appropriate when considering CPTED principles and will not permit easy concealment of intruders. The proposed development is appropriate and provides measures, built elements, landscaping and design features that are consistent with CPTED principles.</p>	
2.5.20	<p>Accessibility and Adaptability</p> <p>10% of dwellings must be adaptable</p>	<p>10% adaptable units are provided.</p> <p>Proposal has been designed to provide access to and from the site for people with a disability.</p>	Yes
2.4.22	<p>Storage and Services</p> <p>10m<sup>3</sup> of storage per unit</p>	<p>The proposal provides &gt;8m<sup>3</sup> of storage through a combination of basement storage areas and areas within the units and is compliant with the ADG.</p> <p>Letter boxes and other services are provided.</p>	<p>Yes – complies with ADG</p> <p>Yes</p>

## Conclusion

Following a review of the relevant planning controls, it is concluded that the proposed development is consistent with the objectives, planning strategies and detailed controls of these planning documents.

Consideration has been given to the potential environmental and amenity impacts that are relevant to the proposed development and this report addresses these impacts.

Having regard to the benefits of the proposal and taking into account the absence of adverse environmental, social or economic impacts, and that the proposal represents an appropriate use of well-located land, the application is submitted to Council for assessment. Think Planners Pty Ltd recommends the approval of the application, subject to necessary, relevant and appropriate conditions of consent.

## Annexure A: Clause 4.6 Variation

### Maximum Building Height Departure

Clause 4.3 under the Penrith LEP stipulates a maximum building height of 18m for the subject site. The development proposal is for a 6 storey residential flat building, consistent with the height of many residential flat buildings in the locality, however varies the 18m height limit.

The development exhibits the following building height elements:

<b>Portion</b>	<b>Maximum Height</b>	<b>Departure</b>
Upper level of residential units (i.e. habitable floor area)	18m	Nil
Lift Over-run and Fire Stair and Roof to Common Area	21-m-21.6m	3.6 & 20%

Given the height departure a Clause 4.6 variation request has been prepared, noting that the request addresses a number of recent Land and Environment Court cases including *Four 2 Five v Ashfield* and *Micaul Holdings Pty Ltd v Randwick City Council* and *Moskovich v Waverley Council*, as well as *Zhang v Council of the City of Ryde*.

In addition a recent judgement in *Initial Action Pty Ltd v Woollahra Municipal Council (2018) NSWLEC 118* confirmed that it is not necessary for a non-compliant scheme to be a better or neutral outcome and that an absence of impact is a way of demonstrating consistency with the objectives of a development standard. Therefore this must be considered when evaluating the merit of the building height departure.

The key tests or requirements arising from the above judgements is that:

- The consent authority be satisfied the proposed development will be in the public interest because it is “consistent with” the objectives of the development standard and zone is not a requirement to “achieve” those objectives. It is a requirement that the development be compatible with the objectives, rather than having to ‘achieve’ the objectives.

- Establishing that ‘compliance with the standard is unreasonable or unnecessary in the circumstances of the case’ does not always require the applicant to show that the relevant objectives of the standard are achieved by the proposal (Wehbe “test” 1). Other methods are available as per the previous 5 tests applying to SEPP 1, set out in *Wehbe v Pittwater*.
- The proposal is required to be in ‘the public interest’.

In relation to the current proposal the keys are:

- Demonstrating that the development remains consistent with the objectives of the maximum building height control’
- Demonstrating consistency with the R4 zoning;
- Demonstrating there are sufficient environmental planning grounds to vary the standard; and
- Satisfying the relevant provisions of Clause 4.6.

### Address of Clause 4.6 Provisions

As shown on the sections and 3D height plane the proposed development varies the height control to a portion of the upper level, roof form, lift overrun and shade structures within the rooftop common open space.

This is a function of the waste servicing requirements and relevant clearances to the basement, topography of the site, architectural features of the proposed building and additional amenity provided to the common open space area with a small scale pergola structure.

The numerical departure is listed in the table above.

Two 3D height plans are provided below and a section drawing to demonstrate the nature of the departure and the portion of the building height control that is exceeded.



A detailed discussion against the relevant provisions of Clause 4.6 are provided below with further discussion against the relevant case law 'tests' set down by the Land and Environment Court.

As shown on the sections below, the proposed development varies the height control to a portion of the upper level, roof form and lift overrun.

This is a function of the flood level requirement, the waste servicing requirements, topography of the site and architectural features of the proposed building.



Therefore, the proposal is noncompliant with Clause 4.3 – height of buildings that stipulates that the height of a building is not to exceed 18m on the subject site.

The location of the building height departure will ensure that they are not viewable from the street level from Hope Street and the recessed nature of the upper level means it will not be visually dominant.

Clause 4.6 of the Penrith Local Environmental Plan 2010 provides that development consent may be granted for development even though the development would contravene a development standard. This is provided that the relevant provisions of the clause are addressed, in particular subclause 3-5 which provide:

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

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

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

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

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

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

*(5) In deciding whether to grant concurrence, the Director-General must consider:*

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*

Each of these provisions are addressed individually below.

#### **Clause 4.6(3)**

In accordance with the provisions of this clause it is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as the underlying objectives of the control are achieved. The objectives of the Height development standard are stated as:

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

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

The current development proposal is predominantly consistent with the building height except for a portion of level 6 however, the proposal remains consistent with the objectives based on the following:

- The overall height of the development presents as a compatible form of development to the anticipated high density residential development that are emerging in the locality, noting that the emerging character is for 6 storey residential flat buildings in the locality and 6 storeys is the prevailing form of development being carried in the R4/18m height limit area. The 6<sup>th</sup> storey of the proposal is recessed behind the main building alignment to downplay visual dominance as viewed from the public domain and adjoining residential properties.
- The proposed buildings will present an appropriate bulk and scale on the site with 3 balanced vertical components/proportions that are consistent with other approved and already constructed 6 storey residential flat building developments in Hope Street and surrounding area.
- The additional height does not generate any additional amenity impacts given the location of the site and the surrounding site context.
- Given the scale of the proposal, and the extent of the variation is not perceptible at street level given the upper level of the building is setback behind the lower levels which means the additional height will not be seen from a pedestrian level when standing in the public domain.
- The proposal provides for a suitable planning outcome through limiting south facing units. Therefore the design response has been to maximise the amenity of apartments through a cut-out in the building and suitable recessed elements rather than a 'square' building utilising every available area of floor space.
- In the absence of additional height, the ability to deliver a satisfactory waste management and truck turning areas within the site is not achievable or feasible-again noting the requirement for on-site collection came into effect after the adoption of the LEP amendments- and therefore nearly all residential flat buildings represent a degree of departure from the 18m control to facilitate this. The additional floor to ceiling height needed for truck turning areas for a heavy rigid vehicle is 4.5m which is significantly larger than the normal requirements for floor to floor heights within a residential development and is a key driver of the extent of the height non-compliance.
- The proposal ensures that the area is provided with high density residential development to support the growth of Penrith and to align with the principles of urban consolidation that seek to ensure the efficient use of community infrastructure by providing higher density residential development at strategic locations, noting that both the Penrith train station and CBD are located within walking distance as well as arterial roads that service the area.
- The proposal has been designed to ensure that privacy impacts are mitigated against and that the proposal will not obstruct existing view corridors.

- The proposal does not result in any discernible increased shadow impact given the orientation of the site and setbacks that fully comply with the requirements of the Apartment Design Guide.
- The non-compliance to the height control has no impact on the setting of any items of environmental heritage or view corridors.
- The proposal does not adjoin any low-density areas or sensitive interfaces and will integrate with future development to the north, east, south and west.

As outlined above the proposal remains consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable.

#### **Clause 4.6(4)**

In accordance with the provisions of Clause 4.6(4) Council can be satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3). As addressed the proposed development is in the public interest as it remains consistent with the objectives of the building height control. In addition, the proposal is consistent with the objectives of the R4 zone, being:

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

The proposal will provide a high quality residential development in a strategic location within close proximity to the Penrith train station and CBD, bus interchange to maximise public transport patronage and to encourage walking and cycling. The scale of the development will help to revitalise the area with delivery of an activated ground floor and an attractive overall development.

As a result, the development will contribute towards creating a vibrant and sustainable neighbourhood that will support both the function and growth of Penrith.

Furthermore, the proposal will complement and enhance the local streetscape by virtue of the strong articulated built form and recessed upper level and will provide clear legibility building at the street level.

It is understood that the concurrence of the Director-General can be assumed in the current circumstances.

#### **Clause 4.6(5)**

As addressed, it is understood the concurrence of the Director-General may be assumed in this circumstance, however the following points are made in relation to this clause:

- a) The contravention of the building height control does not raise any matter of significance for State or regional environmental planning given the nature of the development proposal; and
- b) There is no public benefit in maintaining the development standard as it relates to the current proposal. The departure from the building height control is acceptable in the circumstances given the underlying objectives are achieved and it will not set an undesirable precedent for future development within the locality based on the observed building forms in the locality. The significant benefits of the proposal must be emphasised in considering the merits of the departure to the height control and the proposal is a site-specific response and is not replicated elsewhere as such 'precedent' issues are not relevant.

Strict compliance with the prescriptive building height requirement is unreasonable and unnecessary in the context of the proposal and its unique circumstances. The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The design response aligns with the intent of the control and provides for an appropriate transition to the adjoining properties.

The proposal promotes the economic use and development of the land consistent with its zone and purpose. Council is requested to invoke its powers under Clause 4.6 to permit the variation proposed.

The objection is well founded and considering the absence of adverse environmental, social or economic impacts, it is requested that Council support the development proposal.

#### **Land and Environment Court Case Law**

The Land and Environment Court, through case law, provides guidelines for the consideration of Clause 4.6 departures.

Two cases that it is appropriate to discuss are:

- *Wehbe v Pittwater Council* (2007) NSWLEC 872; and

*Wehbe v Pittwater Council* *Wehbe v Pittwater* related to a SEPP 1 objection and outlines that there are 5 methods to establish that the application of a development standard is unreasonable or unnecessary in the circumstances of the case.

1. The development achieves the objectives of the development standard;
2. The underlying objective or purpose of the development standard is not relevant to the development with the consequence that compliance is unnecessary;

3. The underlying objective or purpose of the development standard would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; and
5. The zoning of particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in that case would also be unreasonable or unnecessary.

The case law indicates that if **any** of these methods are satisfied then the departure to the standard can be supported. In respect of this site, it is considered that the proposal satisfies method 1 for the reasons outlined above.

Further, the requirement in cl4.6(3)(b) to justify that there are sufficient environmental planning grounds for the variation.

There are particular circumstances associated with this site and the building height departure. The proposal seeks to deliver a building that is 6 storeys which is consistent with the emerging high-density character of developments along Hope Street and in the surrounding R4 zone. The additional height is needed to comply with Council's stringent on-site waste collection requirements which require a heavy rigid vehicle to gain access to the site for pickup of bulk waste storage. This means that an additional floor to ceiling height is required at the ground floor effectively increasing the overall building height. The proposal provides a better outcome as waste servicing can occur on site to meet Council's requirements.

The proposed building has been designed to present with 2 vertical proportions, the more solid lower level, moving up to the recessed upper 2 level component with balconies and lots of large window features then into the top proportion which has a winged architectural feature as viewed from Hope Street.

The largest variation to the building height is on the rooftop where there is common open space. The architect has taken into consideration Council's advice about the need to create a variety of interesting gathering spaces on the rooftop garden and this has resulted in an area with a small pergola. This will ensure the space is shaded during the summer months and offers the residents with a high level of amenity. There is also a portion of the fire stairs that protrudes into the building height plane, however, this is to ensure accessible lift access to all levels within the building and does not add to the bulk and scale of the development. Higher amenity for the rooftop common open space is delivering a better environmental planning outcome.

Along the southern façade the architect has incorporated an interesting design feature which creates an indent in the building which then creates a small space within the access corridor where people can meet or wait for visitors/residents. This indent also permits the building to have more dual aspect units and cross through ventilation.

Therefore, the current proposal is a preferable outcome from an environmental planning perspective and demonstrates that there is merit in varying the height control to achieve a suitable design response.

## **Conclusion**

Strict compliance with the prescriptive building height control is unreasonable and unnecessary in the context of the proposal and its particular circumstances. The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The proposal will not have any adverse effect on the surrounding locality, and is consistent with the future character envisioned, while supporting the role of Penrith as a strategic centre. The proposal promotes the economic use and development of the land consistent with its zone and purpose. Council is requested to invoke its powers under Clause 4.6 to permit the proposed variation.