

## Statement of Environmental Effects

LOT CONSOLIDATION, DEMOLITION OF EXISTING STRUCTURES AND THE CONSTRUCTION OF A 6 STOREY RESIDENTIAL FLAT DEVELOPMENT CONTAINING 38 APARTMENTS OVER BASEMENT CARPARKING FOR 61 VEHICLES AT 26-30 HOPE STREET, PENRITH



*Prepared by:* Think Planners Pty Ltd  
*Document Date:* 17 June 2020  
*Consent Authority:* Penrith City Council

**QUALITY ASSURANCE**

**PROJECT:** 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
21 August 2019	Review Application	Final	JW	JW
17 June 2020	New DA	Final	JW	JW

<b><i>Integrated Development (under S91 of the EP&amp;A Act). Does the development require approvals under any of the following legislation?</i></b>	
<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>
<b><i>Concurrence</i></b>	
<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 Statement of Environmental Effects has been prepared in support of a new 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 new DA has been prepared in response to a refusal of DA18/0488, primarily for reasons relating to building height, cut, solar access, and cross-ventilation. Ongoing revisions have been made to lower the yield, lower the building height substantially through removal of the full level of common area above the height limit, and design refinement to deal with the issue of solar access and natural ventilation. Ongoing discussions with Council staff have also occurred regarding the amended scheme.

The new proposal now consists of 38 residential units (reduction by 2) with a total of 61 car parking spaces within 2 basement levels. The revised proposal incorporates the following dwelling mix:

- 12 x 1-bedroom units
- 20 x 2-bedroom units
- 6 x 3-bedroom units.

Changes to the plans have been made to respond to the reasons for refusal as follows:

### Ground Floor

- Amended turn table size to suit smaller 10m garbage truck;
- Increased floor level height ( 550mm) to this area for the truck as new smaller truck has less head height requirements,
- Removal of a further unit- Resulting in resolution to the 'subterranean' unit issue and extent of cut at the rear noting the use of a common room leading to the rear COS area at the GF.

### 1st/ 2nd/ 3rd Floors

- Redesign of foyer area to make it more open and make entries more visible where possible- to respond to the concern about the separate foyer space raised by the panel.
- Renumbered units,
- Redesign of unit layouts along eastern façade to increase solar access, primarily revising balcony locations and also cutting back the unit on the corner of the building to enable the balcony edges to be pulled out and get the living room windows to 'see' the sun to the back units.
- Adjustment to Unit 10 to adopt a 1.5m frosted glass screen and planter bed to separate from the common area.

### 4th/ 5th floors

- Renumbered units,
- Redesign of unit layouts along eastern façade to increase solar access, primarily revising balcony locations.
- Deletion of full rooftop COS and replacement with COS on the north-western corner with associated facilities with an area of 133sqm.

## **Elevations**

- The revision to the building and removal of the full rooftop common area means that the elevations have been revised and the extent of departure to the height limit is significantly reduced noting the only areas of departure are to the very top of Unit 36 owing to the cross-fall on the site and these departures are centrally located to the building. The variation is now only 150mm.

In addition the Clause 4.6 variation request has been revised.

On the basis of these amendments it is requested that the DA Application be determined by way of approval subject to conditions.

## 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.

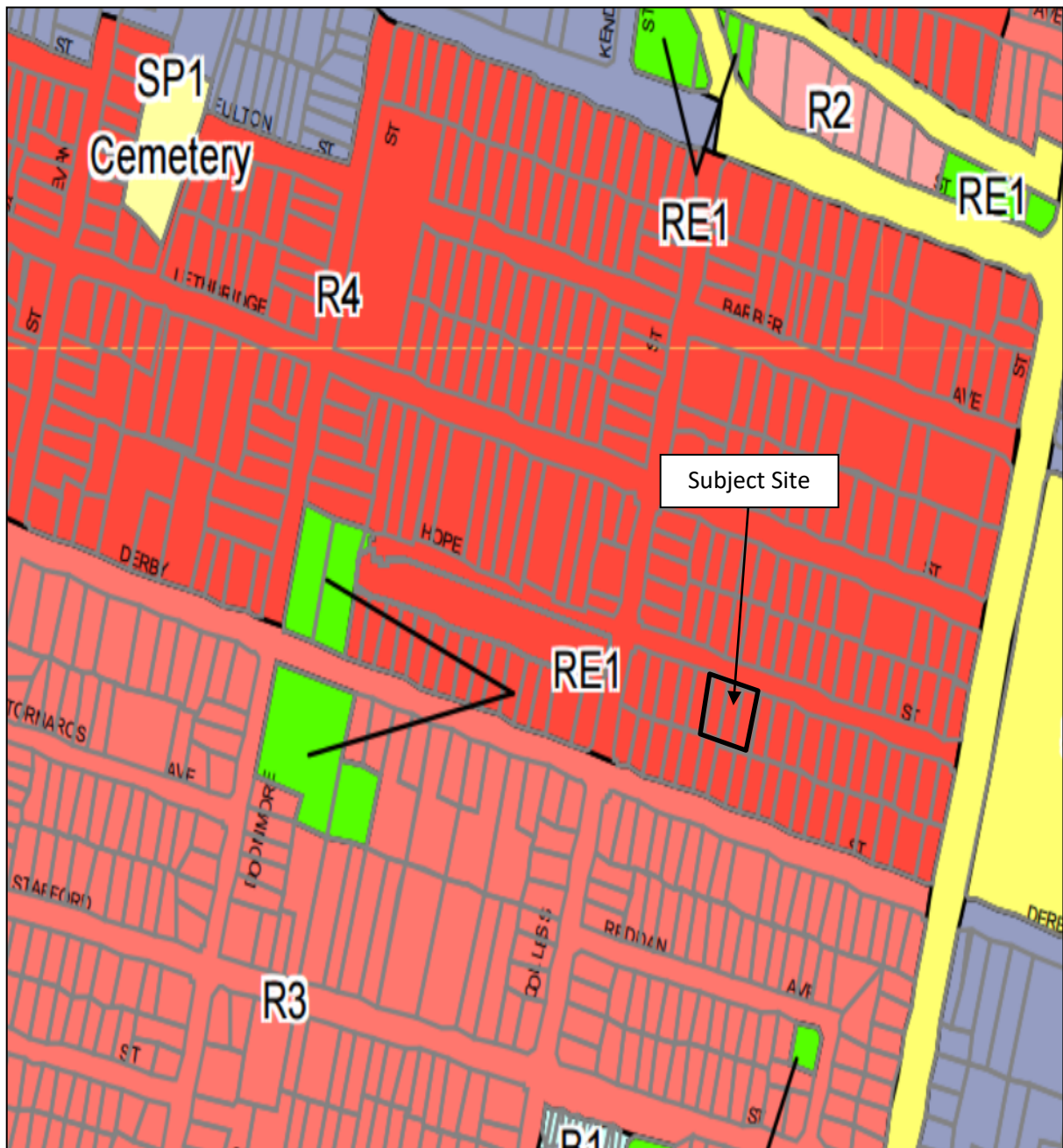
The proposal will also incorporate high quality landscape embellishment works along with appropriate replacement plantings to help reduce the physical bulk and scale of the development while also enhancing privacy levels and amenity within a garden setting in accordance with the landscape plan.

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.

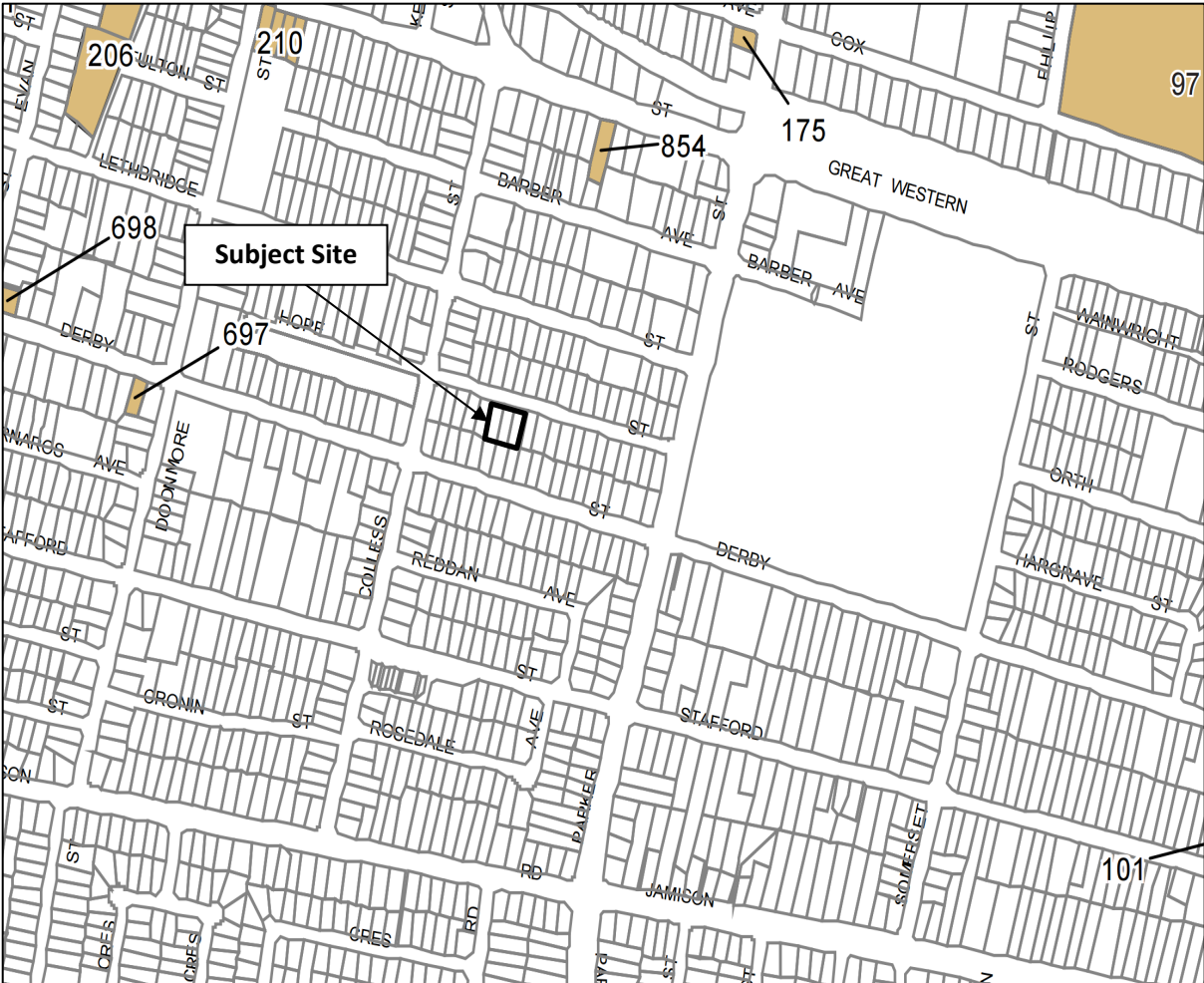


Figure 5: Heritage Map Sheet HER\_013 Extract (Source: Penrith LEP 2010)

## Description of Proposal

The proposal involves the amalgamation of the existing allotments, demolition of existing structures and construction of a 6-storey residential flat building with the following aspects:

### Unit Mix

The proposal incorporates a total of 38 units with the following dwelling mix:

- 12 x 1 bedroom units
- 20 x 2 bedroom units
- 6 x 3 bedroom units.

### Parking

The development proposal includes a total of 61 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 61 car parking spaces including 5 accessible parking spaces broken down into:

- 50 residential spaces
- 10 visitor spaces
- Including 1 car wash bay.

### Waste Collection

The 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.

### Communal Open Space Areas

The development provides a series of COS areas:

- Rooftop COS at L5 with an area of 133sqm
- Ground Floor COS with 380sqm of COS
- Common room at the ground floor linking to the COS area with associated toilet.

## 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.

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.

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 513m<sup>2</sup> or 27% of the site area.</p> <p>The proposal complies with Council's DCP requirement for common open space and the ADG.</p> <p>The communal open space will receive adequate levels of sunlight noting the eastern area and rooftop achieve the required solar access.</p>	<p>No</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><u>Design Guidelines:</u></p> <p>On some sites, it may be possible to provide larger deep soil zones:</p> <ul style="list-style-type: none"> <li>• 10% of the site as deep soil on sites with an area of 650m<sup>2</sup>- 1,500m<sup>2</sup></li> <li>• 15% of the site as deep soil on sites greater than 1,500m<sup>2</sup></li> </ul>	<p>A deep soil area of 673m<sup>2</sup> or 35.5% of the site is provided. Complies.</p> <p>N/A</p> <p>Complies with minimum dimension of 6m.</p> <p>It is noted that the proposal provides a total of 35.5% of the site area for deep soil zones, which exceeds the control that requires 7% and is therefore compliant.</p>	<p>Yes</p> <p>N/A</p> <p>Yes</p> <p>Yes</p>

3F Visual Privacy	<u>Design Criteria:</u>	<u>Up to 4 storeys</u>	
Building Separation Up to 4 storeys (up to 12m)	12m between habitable rooms (6m)	The proposal achieves 6m up to the 4 <sup>th</sup> storey.	Yes
5-8 storeys (up to 25m)	18m between habitable rooms (9m)	The setbacks on the upper level and compliant to the main building. There are some balcony intrusions on the eastern side that are limited to the south-eastern corner and designed to maximise solar access to these areas and no discernible privacy impacts arise from the very minor encroachment.	Minor variation
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	N/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:	N/A as not within 800m of a railway station. Designed to Comply with the Penrith DCP 2014.	N/A

	<u><i>Design Guidelines:</i></u> Secure undercover bicycle parking should be provided that is easily accessible from both the public domain and common areas	The proposal provides appropriate undercover and secure residential bicycle parking spaces within the upper basement level.	Yes
<b>Part 4 – Designing the Building</b>			
4A Solar Access	<u><i>Design Criteria:</i></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  A maximum of 15% of apartments receive no direct sunlight between 9am and 3pm Mid-Winter	The DVS says that 84% of units achieve the required 2 hours of solar access at mid-winter.  6/38 units face only south which is 15.7% which aligns with the control albeit a fraction beyond in % terms but the intent of the control is clearly achieved.	Yes  Yes
4B Natural Ventilation	<u><i>Design Criteria:</i></u>  60% of Units are cross ventilated in a building up to 9 storeys  Overall width of a cross over or cross through apartment is < 18m <u><i>Design Guidelines:</i></u>  The building should include dual aspect apartments, cross through apartments and corner apartments and limit apartment depths	The DVS confirms 23/38 or 60% of units are cross ventilated.  > 18m complies  Development has a mix of dual aspect apartments, single aspect and corner apartments. See attached architectural plans for detail.	Yes  Yes  Yes
4C Ceiling Height	<u><i>Design Criteria:</i></u>  2.7m for habitable and 2.4m for non-habitable.	Complies	Yes

<p>4D Unit Sizes</p> <p>Studio 1 bed 2 bed 3 bed</p> <p>+ 5m<sup>2</sup> for each unit with more than 1 bathroom.</p> <p>Habitable Room Depths</p> <p>Bedroom sizes Master Other</p> <p>Living rooms/dining areas have a minimum width of: 3.6m 4m</p> <p>Open plan layouts that include a living, dining room and kitchen.</p>	<p><u>Design Criteria:</u></p> <p>35m<sup>2</sup> 50m<sup>2</sup> 70m<sup>2</sup> 90m<sup>2</sup></p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10%</p> <p><u>Design Guidelines:</u> Limited to 2.5m x Ceiling Height</p> <p>10m<sup>2</sup> 9m<sup>2</sup></p> <p>Studio/1 br 2br/ 3br</p> <p>8m to a window</p>	<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></p> <p>Every habitable room is provided with a window.</p> <p>N/A as open plan layouts provided</p> <p>Comply Comply</p> <p>Comply Comply</p> <p>Complies given unit depths and design layouts.</p>	<p>Yes</p> <p>Yes</p> <p>N/A</p> <p>Yes Yes</p> <p>Yes Yes</p> <p>Yes</p>
<p>4E Private Open Space</p> <p>Balcony Sizes 1 bed 2 bed 3 bed Ground level/ podium apartments</p>	<p><u>Design Criteria:</u></p> <p>8m<sup>2</sup> &amp; 2m depth 10m<sup>2</sup> &amp; 2m depth 12m<sup>2</sup> &amp; 2.4m depth 15m<sup>2</sup> &amp; 3m depth</p>	<p>Complies Complies Complies Complies.</p>	<p>Yes Yes Yes Yes</p>

<p>4F Common Circulation and Spaces Common Circulation Units per Plate</p> <p>Corridors &gt; 12m</p>	<p><u>Design Criteria:</u></p> <p>8 unit per plate</p> <p>Are articulated</p>	<p>The development provides 1 lift core for a maximum of 8 units on all levels with the exception of the second and third floor where there are 9 units. The remaining floors are compliant and in most instances much less- GF = 3 units FF = 7 and top floors are 5-6 units.</p> <p>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 these 2 levels within the development which is a very minor variation.</p> <p>The proposed access corridors provide good amenity with the extra lobby space to encourage resident interaction and place making. The access corridor is well lit with natural lighting and the potential for natural ventilation. The access corridor splits off into 2 arms which meet at the lift core. The effect of this is that the access corridor does not appear as a single gun-barrel hall.</p> <p>The corridors are articulated, vary in width and have access to natural light.</p>	<p>Minor variation</p> <p>Yes</p>
<p>4G Storage</p>	<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>Yes</p>

		The proposed development is considered to offer storage space that aligns with the provisions of the ADG.	
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>12 x 1 bedroom unit 20 x 2 bedroom unit 6 x 3 bedroom unit.</p> <p>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.</p>	Yes
4M Facades	Building facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale	The proposed facades are well articulated with a mixture of vertical and horizontal features including windows, projecting walls and balconies and framed elements.	Yes

		Overall the proposed facade is considered a quality design outcome that is compatible with other comparable modern RFB within the wider Penrith LGA.	
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		The future development application will be accompanied by a BASIX certificate indicating energy efficiency for each residential unit provided.  Furthermore, it is noted that ??% of units achieve the minimum 2 hours of solar access at mid-winter and over ??% units achieve natural ventilation.	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  Allocate storage area	Provided  Appropriate waste storage areas are provided.	Yes  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.

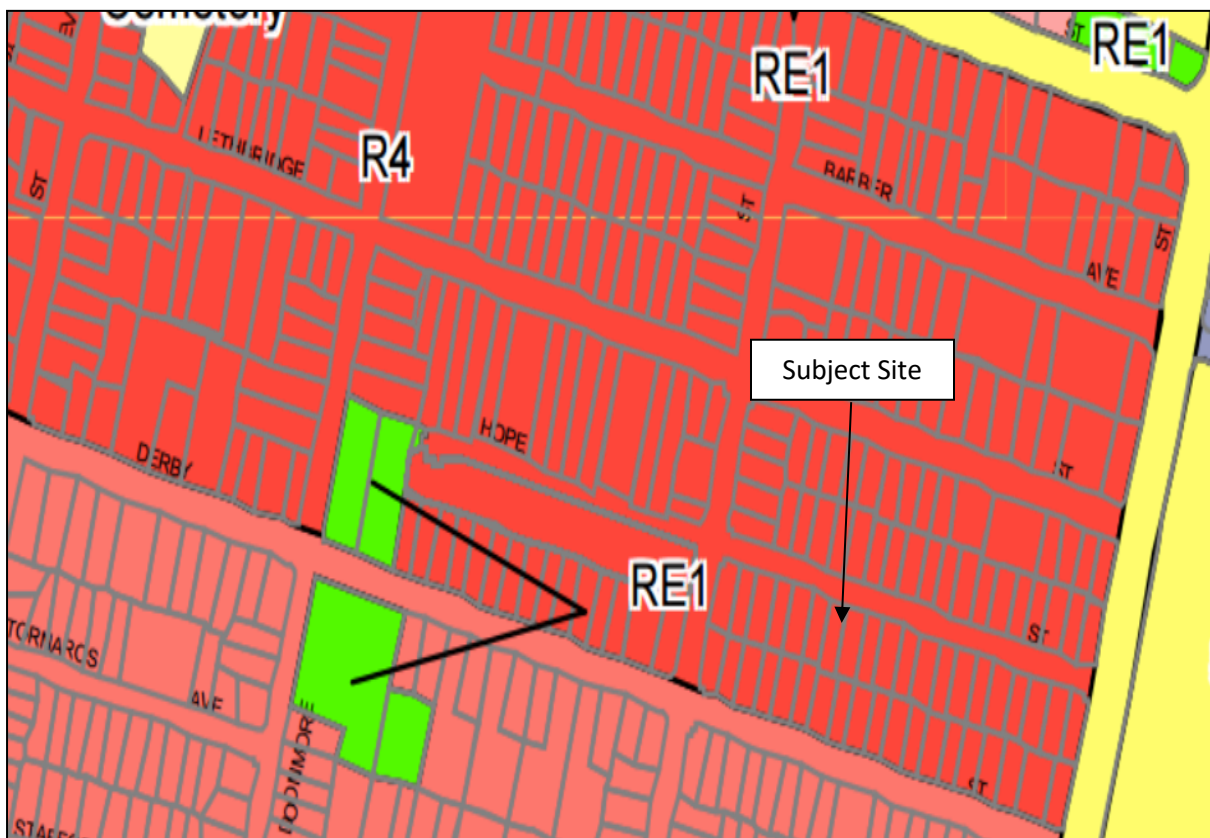


Figure 6: Zoning Map Sheet LZN\_013 Extract (Source: Penrith LEP 2010)

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 whilst 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

2.6	Subdivision – Consent Requirements	No subdivision is proposed. Not applicable.	N/A
2.7	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>			
4.1A	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.  The subject site has a total site area of 1,894.4m <sup>2</sup> . Complies.	Yes
4.3	Height of Buildings - 18m	Penrith Local Environmental Plan states that the maximum building height within the subject site is 18m.  The development exceeds the maximum height limit; however this is due to the cross-fall on the site and 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 an additional 150mm to Unit 36.  This proposed variation is addressed in Annexure A through the provisions of Clause 4.6.	Variation
4.4	Floor Space Ratio	No FSR control applies to the subject site. Not relevant.	N/A
4.6	Variations to development standards	Addressed in Annexure A. The proposed building exceeds the maximum building height by around 150mm.	Variation sought under clause 4.6.
<b>Part 5 Miscellaneous Provisions</b>			
5.9	Preservation of trees or vegetation	Repealed	N/A
5.10	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	<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. 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. 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> <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>	Yes
<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>	Yes

		<p><i>(c) building design and orientation,</i> <i>(d) passive solar design and day lighting,</i> <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> <i>(g) water conservation and water reuse,</i></p> <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 Drutt 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	<p><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.</p> <p><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.</p> <p>Not applicable.</p>	<p>Yes</p> <p>N/A</p>
1.2	Design Principles	<p><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.</p> <p><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.</p> <p>The site exceeds the maximum height limit of 18m required by the Penrith DCP, however justification is provided.</p> <p>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>	<p>Yes</p> <p>Yes</p>

		<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	Parking, Access and Driveways  Parking Rates  1 space per 1 or 2 br unit (32 spaces required) 2 spaces per 3 br unit (12 spaces required) Resident: 44 spaces required. Visitor: 1 space for every 5 dwellings: 8  1 space per 40 units for car washing =1	Proposed dimensions for car parking spaces are consistent with Council control. See plan for detail.  Utilising the DCP rates, the development requires: Resident Spaces: 44 Visitor Spaces: 8 Carwash bays: 1 Service bay: 1  Total: 54 (including car wash bay)  The proposal provides a total of 61 spaces composed of: - 50 residential spaces - 10 visitor space - including 1 car wash bay. - 1 service bay.	Yes
<b>C11 Subdivision</b>			
<b>D2 Residential Development</b>			
2.5	Residential Flat Buildings  New residential flat building development should adopt key features of established suburban design.  Within the relevant zones, established development provides parking areas which are concealed from the street and consequently avoids the appearance of "garage architecture"	<u>2.4.2 Preferred Configuration for Residential Flat Buildings</u>  The development has courtyards and private open space areas that front Hope Street  The development provides basement level parking.  The proposed layout and siting of the units are consistent with the layout patterns of other comparable RFB developments within the Penrith LGA.	Yes  N/A  Yes
2.5.3	Development Site  Minimum lot width of 20m in the R4 High Density Residential zone.	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	Urban Form	Units 1, 2, 3 front Hope Street and adopt a tradition orientation with their living room and courtyards addressing the site's front setbacks. Where appropriate,	Yes

	<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>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>the front setback 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>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> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
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	f) Windows should be inserted into every elevation.		
2.5.5	<p>Landscaped Area</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.</p> <p>The proposal provides a landscaped area of 35% of landscaped area.</p>	<p>Yes</p> <p>Yes</p>
2.5.6	<p>Front and Rear Setbacks</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 5.5m 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>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 slightly elevated over the street level which is an appropriate response to provide privacy and passive surveillance over the street.</p> <p>The roof pitch is &lt;25 degrees.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</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>	N/A	N/A
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>Solar Planning</p> <p>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>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 84% 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>Yes – ADG Prevails</p>

	Where the existing overshadowing by buildings and fences reduces sunlight to less than the minimums noted above, the development is to not further reduce sunlight to the specified areas by more than 20%.	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.	Yes
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>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>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
2.5.13	Energy Efficiency	The application has been provided with a BASIX certificate indicating appropriate energy efficiency for each residential unit is provided.	Yes

		<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>85% of units will achieve more than 2 hours solar access at mid-winter (ADG prevails) and the building depth and apartment design ensures 60% 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>	
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>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.</p>	<p>Comply.</p> <p>Complies.</p> <p>All upper storey apartments have a minimum area &gt; 8m<sup>2</sup> and have room for an outdoor drying area.</p>	<p>Yes</p> <p>Yes</p> <p>Complies with ADG</p>
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	<p>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.</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. The proposed development is appropriate and provides measures, built elements, landscaping and design features that are consistent with CPTED principles.</p>	Yes
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	Storage and Services 10m <sup>3</sup> of storage per unit	The proposal provides >8m <sup>3</sup> of storage through a combination of basement storage areas and areas within the units and is compliant with the ADG.  Letter boxes and other services are provided.	Yes – complies with ADG  Yes
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## 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.

## Clause 4.6 Variation: Building Height

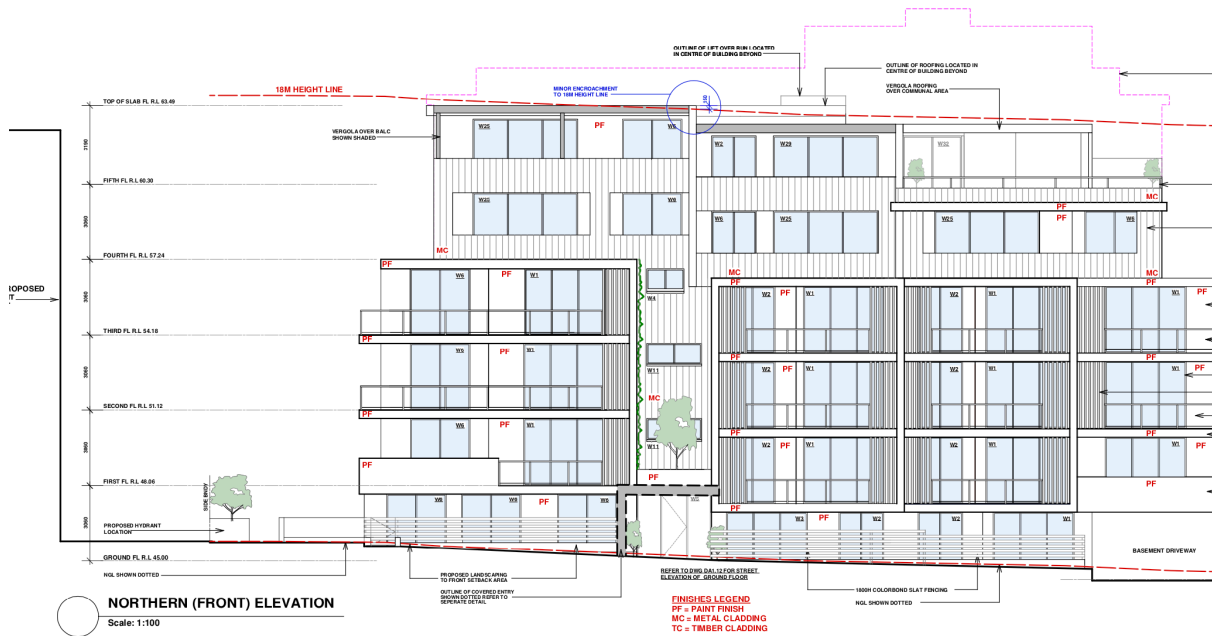
### The development standard & variation

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. The 'P' notation reflects the area showing the 18m building height limit. The star shows the location of the subject site.



The current proposal is 18.15m at the highest point and the variation to the development standard is limited to a portion of the roof form as reflected on the 3D images below.

The extent of the non-compliance is 150mm or 2.8% and is reflected on the elevation extract over the page.



## 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.

## Clause 4.6 – Exceptions to Development Standards of LEP 2010

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. It is submitted that cl.4.3(2) of LEP 2010 is consistent with the definition of “development standard” contained in s.1.4(1) of the *Environmental Planning and Assessment Act 1979 (the Act)*, being:

*..... provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of—*

*.....*

*(c) the character, location, siting, bulk, scale, shape, size, **height**, density, design or external appearance of a building or work,*

Clause 4.6(3) to (5) of LEP 2010 follows:

- (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)(a) - 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, known as the first way in the decision of *Wehbe v Pittwater Council* (2007) 156 LGERA 446;

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

The objectives of the 'Height of Buildings' 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, is consistent with the objectives of cl. 4.3 – Height of Buildings of LEP 2010. Each objectives is considered below.

- **Objective (a):** The locality is in a state of transition from existing low density to high density development. The existing character is therefore characterised by a mix of low density dwelling houses (constructed under previous environmental planning instruments) and new high density apartment developments (constructed under the current planning instrument). The current planning controls aim to create a new character, making the existing character of less relevance: *Veloshin v Randwick Council* [2007] NSWLEC 428 at [32]; *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191 at [23].

The proposed development, however, is not incompatible with the existing character of the locality, being one of divergent building heights, bulks and scales. The development, being surrounded by generous landscaped areas, is also consistent with the character of landscaping in the local area.

The building is compatible with the height, bulk and scale of the desired future character when having regard to recent development constructed in the locality, and to the suite of applicable planning controls. The desired future character for the precinct, as evidence by the planning controls and zone objectives, is high density residential development surrounded by generous landscaped areas.



The proposed development is compatible with the height, bulk and scale of development constructed under the current planning controls, adopting highly articulate facades, significant setbacks to boundaries, and generous landscaped areas with canopy plantings.

The 5<sup>th</sup> and 6<sup>th</sup> storey of the proposal is recessed behind the main building alignment to reduce the visual dominance of the building when viewed from the public domain and adjoining residential properties. The step in the façade provides for visual relief to the street as it presents a 4 storey street wall with recessed upper levels. This is a similar design approach adopted in other recent development in the locality. The resulting development has a height, bulk and scale that is harmonious and sympathetic to development in the Hope Street streetscape and broader locality.

**Objective (b):** The additional height does not generate any additional amenity impacts with regard to overshadowing, visual privacy, acoustic privacy or view loss. To reduce the impact of the proposed development on its adjoining neighbours and the public domain in terms of overshadowing and overlooking, the development's top floors are stepped in, and the communal open space on level 5 is concentrated towards the north-western corner of the building. As such the non-compliant portions of the buildings do not increase the shadows cast by the building. The proposed development as a whole would not have an unacceptable impact on the amenity of adjoining properties in terms of overlooking or overshadowing.

In regards to visual impact, the area of the development which contravenes the development standard is not perceptible at street level given that the upper level of the building is setback behind the lower levels. The building appears as a 5-6 storey building when viewed from adjoining rear properties with the introduction of a communal open spaces on Level 5. As such the rear portion of the building is well below the 18m height limit, and the only departure is to a small part of the roof to Unit 36.

A development of a compliant height would have a similar visual appearance when viewed from the public domain and adjoining properties.

The proposal, and specifically the additional building height, will not impact on views enjoyed from the public domain or adjoining residential properties.

- **Objective (c):** The subject property is not proximate to *heritage items, heritage conservation areas and areas of scenic or visual importance*. This objective is not relevant to the proposed development.
- **Objective (d):** The subject property is not on the interface with an area of lesser intensity, with surrounding and nearby properties being similarly zoned and having similar restrictions on height and FSR. The subject height has not been nominated to provide a transition on the subject property to an area of lesser intensity.

The proposed development has been designed to provide visual interest and a high quality urban form. The facades have been articulated by building modulation, material selection and glazing location. As such the development is visually interesting from ground level to the highest level. The development also reads as one development, yet at the same time extenuates the bottom 4 levels whilst recessing the upper two levels. This design approach has been adopted provide visual interest to the development, and a roof form that is consistent with the emerging character.

Objective (d) is satisfied by the proposed development, notwithstanding the variation to the numerical standard. The variation does not jeopardise development on adjoining properties from complying with this objective and providing high quality developments which are harmonious with the proposed development. A variation of the height standard in this instances would not force development on adjoining properties to also vary the height standard to provide an appropriate and compatible development in the streetscape.

#### **Clause 4.6(3)(b) - Sufficient Environmental Planning Grounds**

Pain J held in *Four2Five vs Ashfield Council* [2015] NSWLEC 90 that to satisfy clause 4.6(3)(b), a clause 4.6 variation must do more than demonstrate that the development meets the objectives of the development standard and the zone – it must also demonstrate that there are other environmental planning grounds that justify contravening the development standard, being grounds that are specific to the site.

Pursuant to clause 4.6(3)(b) of the LEP, there are sufficient environmental planning grounds to justify the variation to the height development standard because:

- The variation permits the creation of a roof top communal area. The communal space located on the roof top will be a high quality passive recreation area exposed to generous solar access.. The site orientation of the property is a constraint, as the rear boundary is the southern boundary of the property. As such the provision of a communal open space solely at ground level would be primarily to the south side of the new structure, given the need to keep such a space away from side boundaries and windows on adjoining dwellings. The provision of a communal open space at Level 5 provides a superior result in terms of potential solar penetration whilst balancing this with the ground floor COS for use in the hotter months.

The provision of an upper level communal space facilitates a good planning outcome.

- The variation to the height control does not generate unacceptable adverse impacts to surrounding properties, in terms of overshadowing or privacy impacts. The variation to the height control enables a development to be provided on the site that presents a suitable bulk, scale and intensity. The resulting development would be compatible with other development in the streetscape.

- 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. The subject property is walking distant to both the Penrith train station and CBD . The current developments existing on the subject property (single dwellings), or a development of a lesser intensity would not achieve this planning objective to the same degree.

The proposed development and in particular the variation to the Height of Buildings Standard would further the following objectives of the Act specified in s.1.3:

*(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*

Comment:

As stated above, the provision of roof top communal facilities in an area that is subjected to high levels of sunlight will increase opportunities for social interaction due to increased likelihood that the area will be utilised. A breach of the height standard is required to provide this communal area, due to the lift overrun.

*(c) to promote the orderly and economic use and development of land,*

Comment:

The provision of a quality residential flat building, providing housing over six levels is a promotion of the orderly and economic use and development of the subject property. The upper storey would not be achievable without the minor breach of the development standard, given floor to ceiling requirements associated with apartments and garbage loading facilities.

*(d) to promote the delivery and maintenance of affordable housing,*

Comment:

The proposed development, whilst not providing "affordable housing" as defined by *State Environmental Planning Policy (Affordable Rental Housing) 2009* does increase the housing variety in the locality, and offer a range of apartment sizes to accommodate different household types.

*(g) to promote good design and amenity of the built environment,*

Comment:

The proposed development has been designed having regard to *State Environmental Planning Policy No 65*, the *Apartment Design Guide*, relevant planning controls and the nature of development in the streetscape. The resulting development is of a good design and will be a positive contribution to the streetscape.

The building will have a harmonious relationship with neighbouring development, and will not harm the amenity of the built environment.

**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 is consistent with the objectives of the building height control (see above), and is consistent with objectives of the R4 zone (see below):

The relevant objectives of the R4 - High Density Residential zone follow:

- *To provide a variety of housing types within a high density residential environment.*
- .....
- *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 would be replacing single dwelling houses, which by their low density nature, are not consistent with the objectives of the R4 zone.

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 proposed development would provide high levels of amenity for future occupants, with generously sized apartments, useable communal areas and adequate on-site facilities. The development would not reduce residential amenity levels enjoyed on the adjoining properties.

On the basis of the above points the development is 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.