



Statement of Environmental Effects

Proposed Demolition of Existing Structures and Construction of Residential Flat
Building

36-38 Rodley Ave, Penrith

August 2018

Inglow Investment Two Pty Ltd



Statement of Environmental Effects

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Client and Land Details

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PO Box 170
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Subject Site: Lot 58 and Lot 59, DP33490, 36-38 Rodley Ave, Penrith
Proposal: Proposed Demolition of Existing Structures and Construction of Residential Flat Building



Warwick Stimson MPlA CPP
Director



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1 Introduction

1.1 Project Overview

Stimson & Baker Planning has been engaged by Inglow Investment Two Pty Ltd to prepare a Statement of Environmental Effects in relation to a proposed residential flat building on the property known as 36-38 Rodley Avenue, Penrith.

The proposed development includes the demolition of all existing structures and the construction of a new 6 storey flat building. Associated basement car parking and landscaping also form part of the application.

The site is zoned *R4 High Density Residential* under *Penrith Local Environmental Plan 2010* with the proposal being permissible with consent.

The proposal is defined as *development* in Section 4 of the *Environmental Planning and Assessment Act 1979* (EPA Act). The EPA Act stipulates that the development must not be carried out on the subject site until consent has been obtained. Furthermore, the application does not trigger any of the 'integrated development' provisions of the Act and so no third party approvals are required.

This report describes the proposed development and subject site in detail and undertakes an assessment of the proposal against the relevant aims, objectives and development provisions of Council's LEP and DCP, and Section 4.15 of the EPA Act.

1.2 Report Structure

This Statement of Environmental Effects is structured as follows:

- Section 1: Introduction – provides an overview of the proposal, planning history for the site and background to the application.
- Section 2: The Site and Surrounds – provides an analysis of the subject site, development within the locality and a consideration of the local and regional context.
- Section 3: Development Proposal – provides a detailed description of the proposed development and its characteristics.
- Section 4: Statutory Context – provides for consideration of the proposal against the specific planning instruments and policies that are applicable.
- Section 5: Section 79C Assessment – provides an assessment against section 79C of the EPA Act.
- Section 6: Conclusion and Recommendation – summarises the report and presents a recommendation.

1.3 History of the Application

1.3.1 Urban Design Review Panel Meeting

The proposal was discussed at an urban design review meeting held with the relevant officers at Penrith Council on 9 May 2018

Key Issue	Consideration
The proposed side access arrangements do not provide for suitable lines of sight from the lobby to the street and currently provide poor surveillance / CPTED outcomes as the entry point is recessed behind waste storage areas.	Direct street access is provided in the accompanying plans.
The resulting reconfiguration of the ground floor and landscape design would benefit from a reduction in the width of the driveway to a single width within the site (dual width for basement circulation), increased side setbacks, revised ground floor apartment configuration and relocated waste facilities.	Access arrangements have been amended accordingly.
The proposed common open space location is not supported and results in increasing amenity impacts for the neighbouring property. The site adjoins a raceway with opportunities to orientate open space / congregation opportunities towards this land use and not habitable rooms of adjoining developments. The common open space should normally be located off the ground floor lobby in the rear setback (subject to suitable solar access) however in this instance opportunity exists for roof top common open space with expansive views over the raceway. This requires configuration and yield amendment to the top floor but provides a far better planning and amenity outcome noting that the proposed noncompliance to building height requires a clause 4.6 variation. If the roof top open space is not pursued, a compliant 6.0m rear setback is required which maximises common open space with sufficient solar access on the ground floor.	Rooftop common open space is now provided. The yield has been adjusted accordingly.
The proposal does not comply with the ADG and SEPP 65 principles in terms of boundary setbacks.	Side setbacks have been amended in response.
The rear setback also requires amendment. The proposed bedrooms can maintain a reduced setback such as 3.0m, however balcony and living areas must comply with the 6.0m requirements to enable sufficient spatial separation between the built form and boundary for sizeable tree planting.	Distances provided in the ADG relate to tower separation as opposed to being a prescribed setback. Acceptable separation would be provided with any potential development to the south because of the drainage channel to the south. It is highly likely the channel would ever be constructed over and therefore the separation prescribed by the ADG could be satisfied.
The proposed drainage solution and easement relocation (or creation) must have suitable regard to planting requirements at the boundary edges.	Noted and included in the design.
The proposed basement setback at the south-western corner is supported and necessary to provide for suitable deep root landscaping. The same setback is to be replicated at the south- eastern corner of the basement.	Responded to in the submitted plans.
The proposed elevated planter boxes are not deemed a suitable outcome with minimal ability for maintenance. The design and finishes of the building should provide sufficient street presentation without reliance on narrow planter boxes.	These have been deleted.
Balcony air-conditioning units is a poor outcome from both an amenity and visual perspective and an integrated ducted system with basement or roof plant is required.	Screening has been provided in the submitted plans.
Staggered or varied window locations / treatments should be considered to provide visual interest and reduced uniformity.	Noted and provided for in the plans.

Key Issue	Consideration
Waste management requirements need to be verified through pre- lodgement discussions with Council's planning officers prior to lodgement. The site does not enable basement access (due to lot depth, required driveway grade and resulting truck clearance floor heights). At grade collection would necessitate expansive driveways splays which are unsupportable and undermine the streetscape requirements of SEPP 65. From an urban design perspective alone, on street collection is likely the only suitable option however collection cannot block the road. The provision of indented bay(s) within the verge width of 6.5m (estimated) provides opportunities which could also accommodate parking with tree planting	The DA Plans respond to these comments accordingly.

1.3.2 Pre-Lodgement Meeting

The proposal was discussed at a pre-lodgement meeting held with the relevant officers at Penrith Council on 8 May 2018 where a range of issues were discussed. Whilst it was considered that the proposal could be supported, this Statement of Environmental Effects and accompanying information addresses the technical and planning compliance issues raised in that meeting and in summary include:

Key Issue	Requirement for Consideration
PLANNING REQUIREMENTS	
<ul style="list-style-type: none"> You are to demonstrate compliance with SEPP 65 Design quality of residential apartment development, and the associated design guidelines. Commentary on aspects of this policy was deferred to the future UDRP meeting. However, concerns raised at the pre-lodgement are: <ul style="list-style-type: none"> deep soil available considering new drainage easement proposed and extent of basement setback variation, particularly to the Strata Plan to the east 	<p>Commentary on SEPP65 and the ADG's is provided within the plan set and this report.</p>
<ul style="list-style-type: none"> The height of building map within Local Environmental Plan (LEP) 2010 is limited to 18 metres. Compliance with this height limit is required. Any variation sought for this aspect is to address Clause 5.6 (Architectural roof features) as applicable. Consideration will need to be given to the impacts arising from any variation. Any variation to Penrith LEP will need to be addressed through a Clause 4.6 variation. 	<p>A Clause 4.6 variation accompanies this submission.</p>
<ul style="list-style-type: none"> Early consultation with an energy provider and Sydney Water is required regarding the need and location of any required infrastructure. 	<p>Noted. This is still being undertaken by the client.</p>
<ul style="list-style-type: none"> The waste collection proposed is unsupportable. Waste collection should be further investigated, and possible alternative solutions explored. The applicant will need to demonstrate the difference scenarios considered and the resulting outcomes. 	<p>The waste collection arrangements have been redesigned and reflects comments and advice provided by Council's UDRP.</p>
ENVIRONMENTAL MANAGEMENT REQUIREMENTS	
<ul style="list-style-type: none"> Contamination (SEPP 55) The application is to address all relevant requirements under State Environmental Planning Policy 55 Remediation of Land (SEPP 55). Council cannot consent to any development unless these requirements have been satisfied. A Stage 1 - Preliminary Site Investigation (PSI) report is required to support the application, as a minimum. Should the PSI determine the need for further investigation, a Detailed Site Investigation shall be required. Should remediation be required this will require development consent. The application is to demonstrate that the land is suitable for the proposed purpose. 	<p>The site has historically been used for residential purposes. It is highly unlikely that contamination would be present. A PSI is considered to be onerous and we note it has not been required on other flat building developments in this locality.</p>

Key Issue	Requirement for Consideration
<p>• Noise Impacts</p> <p>An Acoustic Report is required to be submitted as a part of the development application to demonstrate that the development can achieve the internal noise criteria, and that it will not have any impact on adjoining premises.</p>	<p>An Acoustic Report accompanies this application.</p>
<p>• Waste Management</p> <p>A Waste Management Plan is to be provided addressing waste produced during the demolition, construction and operational phases of the development. It should address waste quantities, storage locations and removal.</p>	<p>A Waste Management Plan accompanies this application.</p>
ENGINEERING REQUIREMENTS	
<p>Stormwater</p> <p>• Stormwater drainage for the site must be in accordance with the following:</p> <ul style="list-style-type: none"> - Council's Development Control Plan, - Stormwater Drainage Specification for Building Developments policy, and - Water Sensitive Urban Design Policy and Technical Guidelines. <p>• A stormwater concept plan accompanied by a supporting report and calculations, shall be submitted with the application.</p> <p>• An easement will be required over the relocated pipe to benefit Council. The width of the easement will be in accordance of Section 2.6 of Council's Stormwater Drainage Guidelines for Building Developments Policy.</p> <p>• No large tree planting is permitted in the easement.</p> <p>• A water sensitive urban design strategy prepared by a suitably qualified person is to be provided for the site. The strategy shall address water conservation, water quality, water quantity, and operation and maintenance.</p>	<p>Noted. A Stormwater concept plan accompanies the application.</p> <p>A WSUD Strategy is also included.</p> <p>An easement is shown on the submitted plans.</p>
<p>Local Overland Flows</p> <p>• The site is affected by local overland flow flooding.</p>	<p>A suitable Flood Analysis accompanies the application.</p>
TRAFFIC COMMENTS	
<p>• The application must demonstrate that the proposed parking, access, clearances and servicing comply with AS2890 Parts 1 & 6 and Council's Development Control Plan. Any non-compliance, and specifically those that may be associated with an elevated driveway crest to provide required freeboard with regard to flood levels, must be clearly and adequately demonstrated to not compromise access and manoeuvring.</p> <p>In order to do this amelioration measures must be clearly outlined.</p> <p>• All accessible car parking spaces are to comply with AS2890.6.</p> <p>• All vehicles must enter and exit in a forward direction.</p> <p>• The loss of on-street parking associated with on-street collection of large (660L – 1100L) bins, whether via a restricted parking zone or via an indented waste collection bay, is not supported.</p> <p>• The tugging of large bins (660L – 1100L required for the internal chute system) across pedestrian areas/paths is a matter of concern with regard to pedestrian safety, therefore on-street collection of large bins is not supported.</p> <p>• The required sight lines for drivers/vehicles exiting the site are not to be compromised by signage, fencing or structures.</p>	<p>Noted on the submitted plans. A Traffic and Parking Assessment also accompanies the application addressing these matters.</p>

Key Issue	Requirement for Consideration
BUILDING REQUIREMENTS	
<ul style="list-style-type: none"> • Ensure combustible cladding is not used. • Hydrant protection of the building is required, it is likely an on-site hydrant and booster assembly will be necessary. Please provide details of location. • 2 exits from the basement are required. Alternatively, a Performance Solution may be provided • The basement will need to be sprinkler protected if more than 40 car spaces are provided • Make one of the visitor carparking spaces accessible • 3 adaptable units are to be provided 	Noted and incorporated into the design.
WASTE REQUIREMENTS	
<p>The current proposal will consist of 21 x dwellings. The submitted plans do not address the DCP provisions or provide a 'improved planning outcome' for the site. The proposal in its current state is not supported and requires amended plans addressing the respective provisions.</p>	A Waste Management Plan accompanies the application addressing these matters. The design reflects the advice provided by Councils UDRP and is considered acceptable in that context.
<p>Alternate Waste Collection Proposal</p> <p>Alternated Waste Collection solutions may be proposed in accordance with section 2.5 of the 'Residential Flat Building Guideline' document. An extract is provided below (including but not limited to):</p> <p>To apply for alternative solutions on restricted sites the following will need to be addressed and submitted:</p> <ul style="list-style-type: none"> - <i>The onus is on the applicant to demonstrate that:</i> - <i>An improved planning outcome is achieved for the site;</i> - <i>All alternative solutions will be viewed and assessed by Council's Waste Management Department.</i> 	Alternatives have been considered prior to the UDRP and at that meeting, advice was provided that the proposed arrangements are likely to be the most suitable.
<p>Waste Onsite Loading Bay</p> <p>Residential Flat Building developments as outlined in the C5 Waste Management DCP 2014, Section 5.2.2.4;</p> <p><i>Subsection 2: Developments comprising three or more storeys, the development is to incorporate a waste chute system.</i></p> <p><i>Subsection 5: On-site collection is required to service the development. Adequate and safe access must be provided for Council's Standard Waste Collection Vehicles and waste collection staff</i></p>	Provided for in the accompanying plans.
<p>Waste Chute System</p> <p>RFB developments are required to install a dual chute system for residual and recyclable waste streams. This is outlined in section 5.2.2.4 Residential Flat Buildings.</p>	Amendments have been made to the plans to reflect this advice.
<p>Bulky Households Goods Room</p>	A bulky waste room has been provided for as per the requirements.

1.4 Supporting Documentation

The proposed development is accompanied by the following documentation:

Documentation	Prepared by
Survey	John Lowe & Associates P/L
Architectural Drawings	Morson Group
Hydraulic Report/Stormwater Plans	SGC
Landscape Plan	Conzept Landscape Architects
Traffic Impact Assessment	Stanbury Traffic Planning
Noise Impact Assessment	Rodney Stevens Acoustics
Access Report	Vista Access Architects
Flood Impact Statement	SGC

1.5 Legislation, Environmental Planning Instruments and Policies to be considered

- *Penrith Local Environmental Plan 2010*
- *Penrith Development Control Plan 2014*
- *Sydney Regional Environmental Plan No 20 – Hawkesbury Nepean River (No 2 - 1997)*
- *State Environmental Planning Policy No 55 – Remediation of Land*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*

1.6 Consent Authority

The consent authority for this application is Penrith City Council.

2 The Site and Surrounds

2.1 The Subject Site

The subject site and its surrounds have the following characteristics.

Site Address	36-38 Rodley Ave, Penrith
Lot/DP	Lot 58 DP 33490 & Lot 59 DP 33490
Local Government Area	Penrith City Council
Site Area	1112.8 sqm (by survey)
Zoning	R4 High Density
Current Land Use	Residential
Proposed Land Use	Residential
Surrounding Land Uses	Residential, transitioning from low density to high density.
Topography	Generally flat
Terrestrial Biodiversity	Not mapped in LEP
Vegetation	Not mapped in LEP
Heritage	None with the vicinity
Flooding/Overland Flow	Noted. Details in Pre DA advice
Bushfire	Not mapped



Figure 1 Subject Site- Aerial

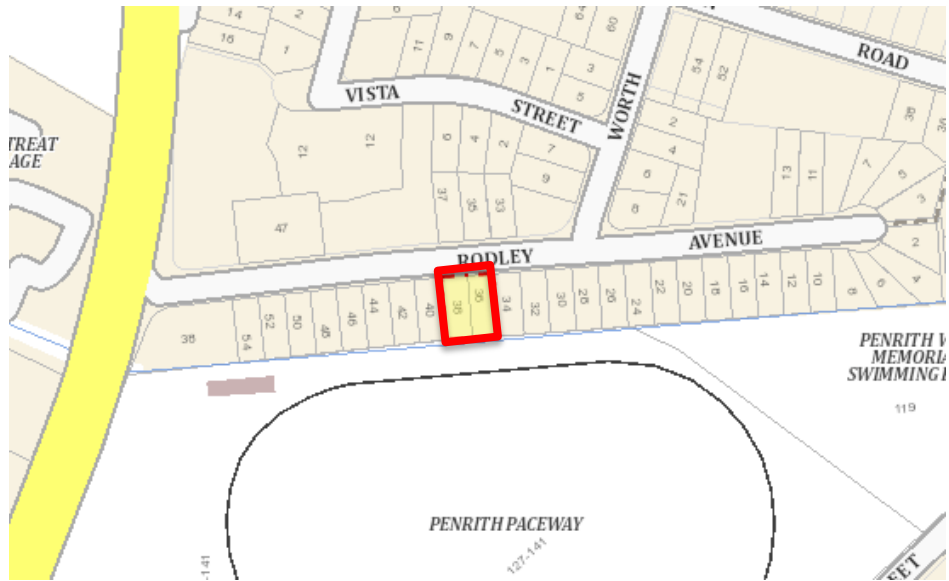


Figure 2 Subject Site- Cadastre

3 Project Description

3.1 Overview

The proposal is for the demolition of all existing structures, site clearing and preparation, and the construction of a residential flat building and associated basement car parking, stormwater and landscape works.



Figure 3 Development perspective

3.2 Unit Mix

The building is proposed to include the following detailed elements:

- Residential flat building over 6 storeys
- A total of 21 apartments (9 x 2br. 3 x 2br adaptable, 9 x 3br)
- Gross floor area of 2095sqm, equating to a Floor Space Ratio of 1.88:1

3.3 Vehicular Elements

The proposal includes the provision of 37 car spaces comprising 32 residential spaces. 1 service (wash bay) space and 4 visitor spaces. The controls require 36 spaces to be provided in total.

The proposed parking spaces are to be provided over two basement levels.

The proposed development is to be accessed via a single lane, signalised driveway with priority given to vehicles entering the site.

Bicycle parking is provided for on-site as per NSW Government guidelines.

In terms of waste collection, the proposal includes an indented bay in Rodley Street, providing street pick up. Garbage would be stored internally on basement level 1 but transferred to a ground floor holding room on collection day.

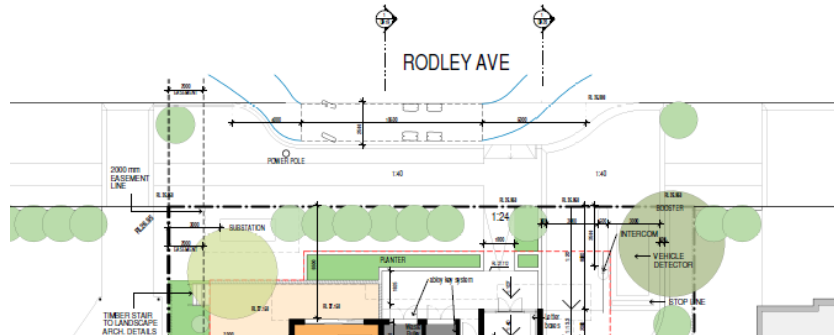


Figure 4 Waste collection arrangements at front of site

3.4 Landscaping and Open Space

A Landscape Plan accompanies the application and demonstrates high quality landscaping outcomes. We note the following aspects of the proposed landscaping approach:

- The easement and flood storage requirements have determined the type of species and location.
- Because of the above, large planter boxes on the basement are proposed in order to provide larger trees on site.
- A rooftop terrace is proposed as part of the development.

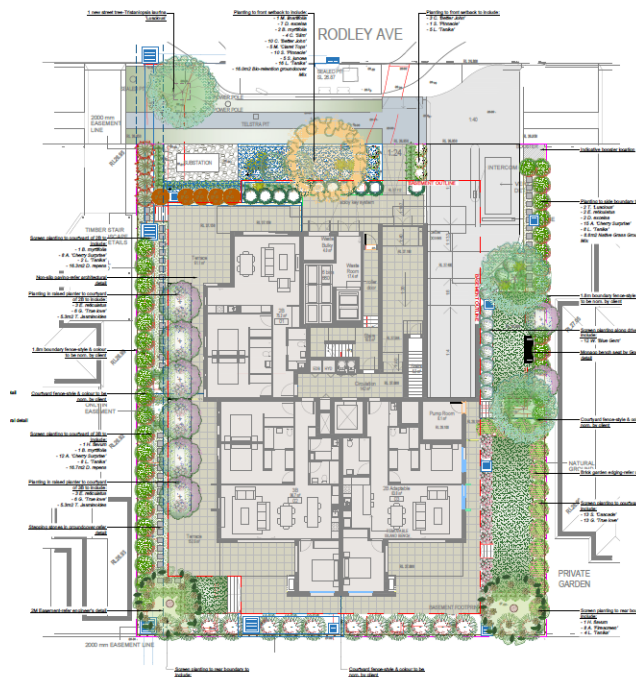


Figure 5 Site landscaping

3.5 Stormwater Drainage

A stormwater drainage concept plan accompanies the application and demonstrates compliance with Council’s controls.

Further information is appended to this application in regard to the stormwater management on the site. MUSIC modelling has been carried out and accompanies the application.

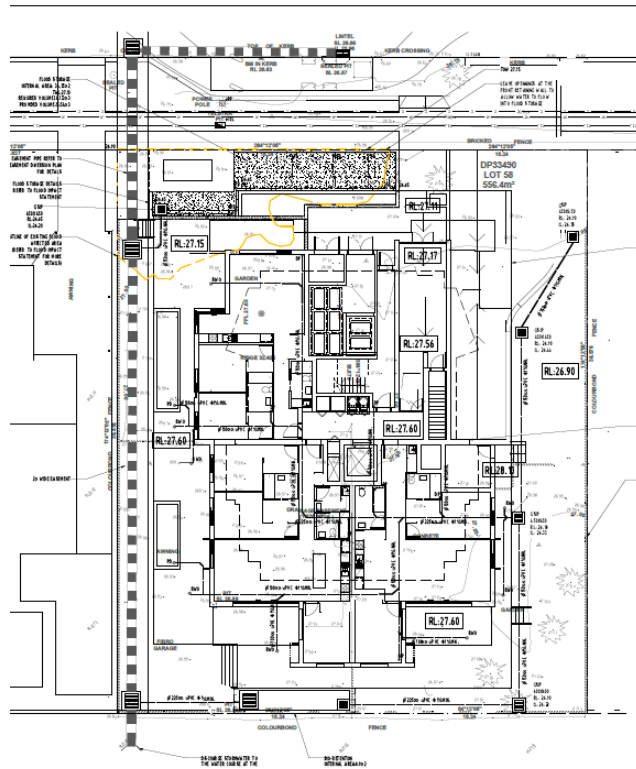


Figure 6 Stormwater arrangements including the proposed easement

3.6 Utilities

The site will be appropriately serviced to accommodate the proposed use. Some utility upgrades are likely to be required and will be confirmed with the relevant service authority.

3.7 Waste Management Strategy

Waste bins will be provided for each of the tenancies in dedicated waste storage areas at ground level and at the rear of the property. Waste will be collected by commercial contractors and organised through the owners/managers of the building or the body corporate if subject to strata subdivision in the future.

3.8 Contamination

The site has historically been used for residential purposes and so contamination is highly unlikely. Consideration of SEPP 55 is provided later in this report.

3.9 National Construction Code Compliance

All works will be carried and comply with the National Construction Code (now incorporating the BCA). A Construction Certificate will be required in relation to the proposal and it is expected that Council will require matters relating to NCC compliance.



Figure 7 Streetscape elevation

4 Statutory Context

4.1 Sydney Regional Environmental Plan No 20 – Hawkesbury Nepean River

The aim of SREP 20 is to protect the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context.

Appropriate conditions of consent would normally be applied to any approval to ensure the health of the river system is not compromised by way of sediment or erosion from the works or use.

4.2 State Environmental Planning Policy. No 55 – Remediation of Land

The historic use of this site for residential purposes suggests there have been no uses that could potentially pose a contamination risk on the land, and therefore not triggering the SEPP. Further studies are therefore not required.

4.3 State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development

The objectives of the SEPP are as follows:

- (1) *This Policy aims to improve the design quality of residential apartment development in New South Wales.*
- (2) *This Policy recognises that the design quality of residential apartment development is of significance for environmental planning for the State due to the economic, environmental, cultural and social benefits of high quality design.*
- (3) *Improving the design quality of residential apartment development aims:*
 - (a) *to ensure that it contributes to the sustainable development of New South Wales:*
 - (i) *by providing sustainable housing in social and environmental terms, and*
 - (ii) *by being a long-term asset to its neighbourhood, and*
 - (iii) *by achieving the urban planning policies for its regional and local contexts, and*
 - (b) *to achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define, and*
 - (c) *to better satisfy the increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of people from childhood to old age, including those with disabilities, and*
 - (d) *to maximise amenity, safety and security for the benefit of its occupants and the wider community, and*
 - (e) *to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions, and*

- (f) to contribute to the provision of a variety of dwelling types to meet population growth, and*
- (g) to support housing affordability, and*
- (h) to facilitate the timely and efficient assessment of applications for development to which this Policy applies.*
- (4) This Policy aims to provide:**
 - (a) consistency of policy and mechanisms across the State, and*
 - (b) a framework for local and regional planning to achieve identified outcomes for specific places.*

A full assessment of the proposal against the SEPP and the Apartment Design Guidelines (ADG's) are within the architectural set of plans. Compliance with the ADG's has been achieved.

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

The application is accompanied by the required BASIX documentation.

4.5 Penrith Local Environmental Plan 2010

The Penrith LEP is the main environmental planning instrument applicable to the subject site. The objectives of the LEP are as follows:

- (a) to provide the mechanism and planning framework for the management, orderly and economic development, and conservation of land in Penrith,*
- (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,*
- (d) to foster viable employment, transport, education, agricultural production and future investment opportunities and recreational activities that are suitable for the needs and skills of residents, the workforce and visitors, allowing Penrith to fulfil its role as a regional city in the Sydney Metropolitan Region,*
- (e) to reinforce Penrith's urban growth limits by allowing rural living opportunities where they will promote the intrinsic rural values and functions of Penrith's rural lands and the social well-being of its rural communities,*
- (f) to protect and enhance the environmental values and heritage of Penrith, including places of historical, aesthetic, architectural, natural, cultural, visual and Aboriginal significance,*
- (g) to minimise the risk to the community in areas subject to environmental hazards, particularly flooding and bushfire, by managing development in sensitive areas,*

(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.

It is submitted that the proposed development is not inconsistent with these objectives.

The subject site is zoned *R4 High Density Residential* with the following zone objectives applying to that zone.

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

The proposed development is consistent with the objectives of the zone in that:

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

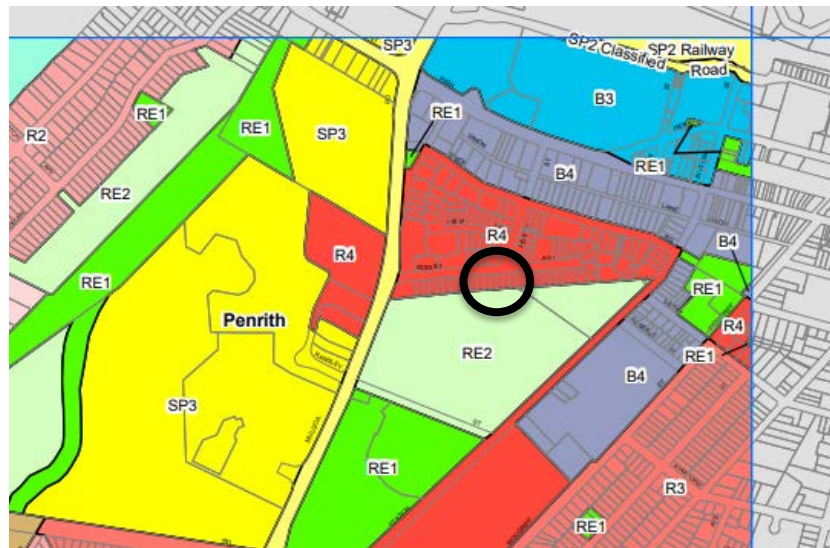


Figure 8 Land use zoning map

The Land Use Table of the LEP nominates *residential flat building* as a permissible form of development in the zone, given the notation on the zoning. The Dictionary definition of *residential flat building* is:

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

The following relevant clauses have also been considered in respect of this development proposal.

Part 4 Principal Development Standards:				
Standard	Permitted	Proposed	Comment	
4.1A Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings	800sqm	1112.8sqm	Complies	
4.3 Height of Buildings:	18m	20.19m	Refer to appended Clause 4.6 report	
4.4 Floor Space Ratio	N/A	N/A	N/A	

Part 5 Miscellaneous Provisions		
Provision	Comment	
5.1 Relevant acquisition authority	N/A	
5.2 Classification and reclassification of public land	N/A	
5.3 Development near zone boundaries	N/A	
5.4 Controls relating to miscellaneous permissible uses	N/A	
5.5 Development within the coastal zone	N/A	
5.6 Architectural roof features	N/A	
5.7 Development below mean high water mark	N/A	
5.8 Conversion of fire alarms	N/A	
5.10 Heritage conservation	N/A	
5.11 Bush fire hazard reduction	N/A	
5.12 Infrastructure development and use of existing buildings of the Crown	N/A	
5.13 Eco-tourist facilities	N/A	
5.14 Siding Spring Observatory—maintaining dark sky	N/A	
5.15 Defence communications facility	N/A	

Part 7 Additional Local Provisions		
Provision	Comment	
7.1 Earthworks	N/A	
7.2 Flood planning	A flood analysis has been undertaken on the site and accompanies the application. The design accommodates the required freeboard, and this is a contributing factor with the overall height of the building.	
7.3 Development on natural resources sensitive land	N/A	
7.4 Sustainable Development	A 'whole of building' approach has been taken with the design of the proposed building. It is also noted that compliance is achieved with both the ADG's and the development can satisfy the BASIX requirements.	
7.5 Protection of scenic character and landscape values	N/A	

7.6	Salinity	N/A
7.7	Servicing	The site can be appropriately serviced to accommodate the proposal.
7.8	Active street frontages	N/A
7.9	Development of land in flight path of proposed Second Sydney Airport	N/A
7.10	Dual occupancies and secondary dwellings in certain rural and environmental zones	N/A
7.11	Penrith Health and Education Precinct	N/A
7.12	Maximum gross floor area of commercial premises	N/A
7.13	Exhibition homes limited to 2 years	N/A
7.14	Cherrywood Village	N/A
7.15	Claremont Meadows	N/A
7.16	Glenmore Park Stage 2	N/A
7.17	Dwelling houses on certain land in Castlereagh, Cranebrook, Llandilo, Londonderry, Kemps Creek and Mulgoa	N/A
7.18	Mulgoa Valley	N/A
7.19	Villages of Mulgoa and Wallacia	N/A
7.20	Orchard Hills	N/A
7.21	Twin Creeks	N/A
7.22	Waterside Corporate	N/A
7.23	Location of sex services premises and restricted premises	N/A
7.24	Sydney Science Park	N/A
7.25	Warehouses and distribution centres on land zoned B7 Business Park	N/A

4.6 Penrith Development Control Plan 2014

The Penrith DCP contains finer grain controls, and these have been considered in the following context.

Part C1: Site Planning and Design Principles

The design methodology is explained on the accompanying plans. The site has been responded to with the proposed development and a Context and Site Analysis Plan accompanies the application.

Part C2: Vegetation Management

A Landscape Concept Plan accompanies the application and provides for a mix of planting that integrates with the development and surrounding area. Good deep soil areas can accommodate deep rooted tree planting. The required flood storage and easements have been incorporated into the design.

Part C3: Water Management

Appropriate initiatives are proposed for on-site stormwater management and a BASIX assessment has been carried out. These have been incorporated into the design of the development. A Stormwater Concept Plan accompanies the application demonstrating suitable management of stormwater quality and quantity. A WSUD Strategy also accompanies the application and addresses the requirements of the DCP.

Part C4: Land Management

Appropriate measures will be put in place to ensure the site is protected from erosion and sedimentation. An erosion and sedimentation control plan is provided. It is submitted that there are no concerns around potential contamination of the site given the historical residential use.

Part C5: Waste Management

The provision for waste management on site is considered satisfactory and there is provision for a waste chute, waste room sufficient for the scale and size of the building. A Waste Management Plan accompanies the application outlining the waste requirements.

C6: Landscape Design

A detailed Landscape Concept Plan accompanies this application. The provisions of SEPP 65 have been considered in respect of the landscaping proposed and the stormwater requirements for the site have also been accommodated.

The plants that will be used in the landscaping will be varieties that require low levels of maintenance and are drought resistant to reduce water use within the development. The proposal also includes rooftop communal space.

C7: Culture and Heritage

The site is not a heritage item and does not adjoin a heritage item or precinct.

C10: Transport, Access and Parking

A Traffic Impact Assessment accompanies the application. The report concludes that the proposed development is satisfactory in terms of car parking, vehicular access and traffic generation.

There is also provision for bicycle parking areas

C12: Noise and Vibration

There is no anticipated noise or vibration generated from the proposed development. However, the adjoining Paceway Club has been considered in the Acoustic Impact Assessment that accompanies this application. The proposal is considered to be satisfactory.

C13: Infrastructure and Services

As stated previously, the subject site is already serviced to accommodate the proposed development and any augmentation required will be confirmed with the relevant service providers.

D2 – Residential Development

2.5 Residential Flat Buildings

The proposal generally satisfies the SEPP 65 and ADG requirements.

5 Section 4.15 Assessment

An assessment of the proposal has been undertaken in accordance with the statutory requirements of the EPA Act. The following assessment against Section 4.15 of the EPA Act has been undertaken.

5.1 Section 4.15(1)(a)(i) – Any Environmental Planning Instruments

The relevant environmental planning instruments have been considered earlier in this report.

The proposal is permissible with consent and is considered satisfactory when assessed against the relevant requirements.

5.2 Section 4.15(1)(a)(ii) – Any Draft Environmental Planning Instrument

There are no known draft Environmental Planning Instruments applicable to the subject site.

5.3 Section 4.15(1)(a)(iii) – Any Development Control Plan

Compliance against the relevant DCP's has been considered earlier in this report.

5.4 Section 4.15(1)(a)(iiia) – Any Planning Agreement or Draft Planning Agreement entered into under Section 93f

There are no known planning agreements that apply to the site or development.

5.5 Section 4.15(1)(a)(iv) – The Regulations

There are no sections of the regulations that are relevant to the proposal at this stage.

5.6 Section 4.15(1)(b) – The Likely Impacts of the Development

The following impacts have been considered in the preparation of this development proposal.

5.6.1 Flora and Fauna

There are no significant examples of vegetation on the site, nor any evidence of any fauna communities. No negative impacts are expected in this regard.

5.6.2 Stormwater and Flooding

A stormwater concept plan has been submitted with the development application demonstrating compliance with Council's requirements in this regard and is consistent with the discussions held at the pre-lodgement meeting. An easement has been accommodated along with the required on-site flood storage.

5.6.3 Erosion and Sediment Control

It is expected that Council would impose appropriate conditions of consent to ensure that erosion and sediment control measures were installed on the site prior to construction commencing.

5.6.4 Traffic Generation and Parking

The proposed development does not propose any significant increase in traffic generation as a result of the proposed development. On site car parking is also considered to be adequate and this is supported in the accompanying Traffic Impact Assessment.

The Assessment also supports the kerbside collection of household waste.

5.6.5 Noise Impacts

Whilst there will be some noise associated with the construction of the development, longer term there is not expected to be any noise impacts above and beyond what might normally be associated with a residential environment. Notwithstanding an acoustic report has been commissioned and accompanies the application giving consideration to the adjoining Paceway Club. No unacceptable impacts are expected.

5.6.6 Heritage Issues

There are no unacceptable heritage impacts arising from the proposed development.

5.6.7 Services

The site is appropriately serviced to allow for the proposed development.

5.6.8 Overshadowing

There will be no unacceptable overshadowing impacts as a result of the proposed development. This is largely due to the central location of the building and the substantial setbacks that are proposed.

5.6.9 Social and Economic

There are no negative economic or social impacts considered relevant to the proposed development.

5.6.10 Crime Prevention Through Environmental Design (CPTED)

The consideration of CPTED issues has been prepared having regard to various published CPTED literature and academic works, and specifically includes the “*Crime Prevention and Assessment of Development Application Guidelines under Section 4.15 of the Environmental Planning and Assessment Act 1979*” published by the former Department of Urban Affairs and Planning.

The advice is structured in accordance with Part B of the above guidelines – *Principles for Minimising Crime Risk*. In this regard, the advice considers the responsiveness of the proposed design to each of the adopted four principles for CPTED (surveillance; access control; territorial reinforcement and space management).

CPTED principles have been adopted by the NSW Police Force, based on recognition that the design of spaces plays a pivotal role in facilitating the safety and security of its users. The NSW Police Force has identified key principles of CPTED being:

- Establish opportunities for **good surveillance**, both casually and technically.
- Provide legible barriers for **access control** for spatial definition.
- Create a sense of ownership over spaces that are also clearly demarcated between public and private ownership for **territorial reinforcement**.
- Establish spaces that are utilised appropriately through **proper space management**, relating to litter and graffiti removal, and ensuring lighting fixtures are working.

When implemented, these measures are likely to reduce opportunities for crime by using design and place management principles.

Surveillance

The proposed development will provide numerous opportunities for surveillance. The following casual surveillance opportunities have been provided through the design of the project:

- Opportunities for visual observance through a high percent of transparent glazing along all frontages allow normal space users to see and be seen by others.
- Entries are located in highly visible locations.
- Active communal areas at the front and rear of the building are well positioned.
- Clear visual pathways within resident areas as well as from public streets to private entrances.
- Areas of entrapment are limited due to multiple exit points from around the development.

Access Control

Access control to public, semi public and private areas of the development is considered to be well managed and effective. Access control to the building can be effectively managed through lockable entry doors. Common areas at all locations and levels should have access control measure in place. With respect to fire escape points and building services rooms, the location of these access points, the use of lockable doors and other environmental cues will make it

clear that these are not public entry points. Access to the basement level will be via lockable roller door.

Overall access to the building will be managed by the on-site manager/body corporate.

Territorial Reinforcement

Clear separation exists between public and private space in terms of the relationship between the proposal and the public domain. Appropriate signage, landscaping, site furnishings and paving will provide good environmental cues about the transition or movement from public to private domain.

Space Management

For most modern residential developments, space management is increasingly carried out in a professional manner, often by third party specialist building management businesses. Therefore, the effectiveness of management systems such as light globe replacement, removing graffiti, and fixing broken site furnishings will influence the perceived level of care of the project. In this case, the on-site manager/body corporate will ensure that processes are established to respond to and fix services and structures and under whose responsibilities these services are assigned.

Site cleanliness is also a factor that influences the perceived and actual level of care of an area.

Cleanliness of the project is dependent upon the management practices of individual tenants as well as the implementation of waste removal and street cleaning processes. This will be overseen by the on-site manager. The selection of lighting should also be vandal proof, and materials facilitate ease of maintenance in the long-term, to delay the appearance of decay.

5.7 Section 4.15(1)(c) – The Suitability of the Site

The proposal is generally consistent with the planning controls that apply in this zone. Moreover, the objectives of the zone have been satisfied, ensuring the proposal would not result in any unacceptable impact on any adjoining landowners or buildings.

For the reasons outlined in this report the site is considered suitable for this development proposal.

5.8 Section 4.15(1)(d) – Any Submission Made

Council will undertake a notification process in accordance with its controls and policies. We welcome the opportunity to provide additional information in response to those.

5.9 Section 4.15(1)(e) – The Public Interest

Given the type of development, its general compliance with the planning controls, how the objectives are satisfied and the suitability of the site it is considered that the public interest would not be jeopardised as a result of this development.

6 Conclusion and Recommendation

The proposed development has been assessed against the requirements of the Penrith LEP and DCP and is considered to represent a form of development that is acceptable.

The proposed residential flat building would not result in any unacceptable impact on the locality. The site is considered quite suitable for a use of this nature and is consistent with nearby and adjoining development.

An assessment against section 4.15 of the EPA Act has not resulted in any significant issues arising.

Accordingly, it is recommended that the proposed development of a residential flat building at 36-38 Rodley Street, Penrith, be approved.



Appendix A

Clause 4.6 Variation Request



Clause 4.6 Variation Request

Proposed Demolition of Existing Structures and Construction of a Residential Flat
Building
36-38 Rodley Ave, Penrith

August 2018

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This submission dated August 2018 is provided to 'the client' exclusively. No liability is extended for any other use or to any other party. Whilst the report is derived in part from our knowledge and expertise, it is based on the conditions prevailing at the time of the report and upon the information provided by the client.

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1 Introduction

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

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

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

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

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

2 Variation Consideration

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

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

The key elements are outlined below.

Winten v North Sydney Council

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

The questions that needed to be considered included:

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

Wehbe v Pittwater [2007] NSW LEC 827

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

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

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

Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC

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

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

Moskovich v Waverley Council [2016] NSWLEC 1015

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

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

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

Penrith Local Environmental Plan 2010.

2.3 What is the zoning of that land?

The subject site is zoned R4 High Density Residential.

2.4 What are the objectives of the zone?

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

The proposed development is consistent with the objectives in that:

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

2.5 What is the development standard being varied?

Height of Building

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

Clause 4.3 Height of Building.

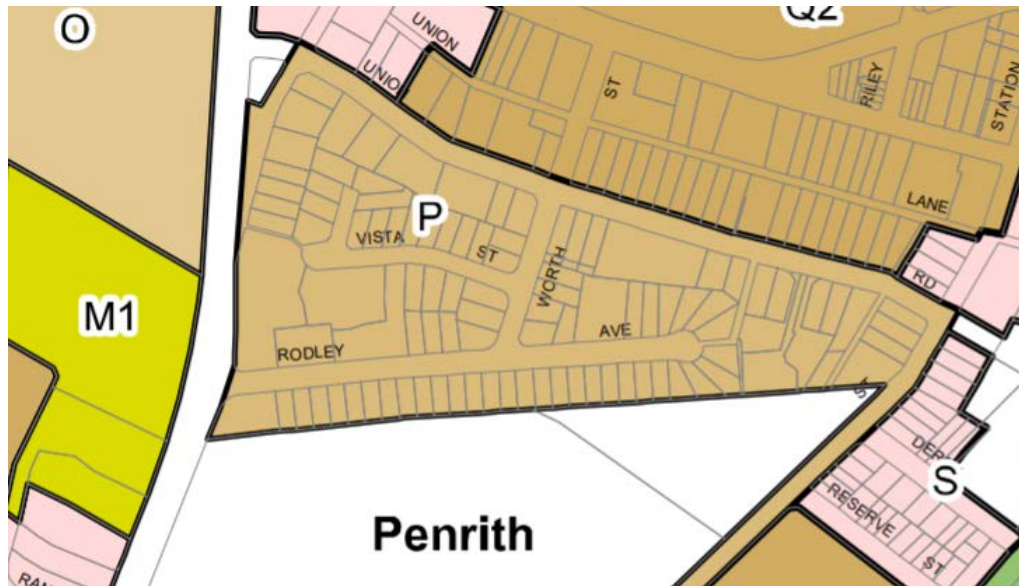


Figure 1: Height of Buildings Map (extract Penrith Local Environmental Plan 2010)

2.7 What are the objectives of the development standard?

Clause 4.3 Height of Building objectives include:

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

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

The maximum building height is 18m.

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

The proposal exceeds the building height at varying heights across the building to accommodate the design and to fully utilise the building envelope.

The roof edge rises a maximum of only 1.287m above the 18m height limit, while the central lift core rises 2.19m above the 18m height limit resulting in a total building height of 20.19m.

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

The maximum variation to the height of building control (top of lift) is 12.1%.

2.11 How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

2.11.1 Height of Building

The proposal meets the general intent of clause 4.3 *Height of Buildings* and complies with the objectives of this development standard and more generally the zone as follows:

- The proposal is compatible with the height, bulk and scale of the emerging and desired future character of the locality and with the surrounding development. This is demonstrated within the submitted plans, showing the breach in height would not create any impacts on nearby or adjoining properties.



Figure 2 Shadow Diagram

- The proposal does not impact on the visual amenity, reduces views or minimises loss of privacy or solar access.
- There is no heritage item on the site.
- The proposal provides a high quality urban form and provides a building that can contribute to a varying skyline given the recent increase in height limit in this area.

- The high-quality form of the proposal has been supported through the Council's own Urban Design Review Panel process.
- It is unreasonable to apply the height limit across the site in this case as the proposal does not impact on the visual amenity nor does it reduce views or minimises loss of privacy or solar access. The orientation of the building, the stepping of the building and façade treatment minimises shadow impacts with the majority of the shadow falling on the Paceway site to the south.
- The proposed development meets the objectives of the zone and the height of building clause, it contributes to the provision of necessary land uses within the Penrith City in locations in close proximity to services and facilities.

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

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

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

The objects of this Act are:

(a) *to encourage:*

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

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

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

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

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

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

2.13 Is the development standard a performance-based control?

No, they are prescriptive.

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

2.14.1 Height of Building

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

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

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

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

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

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

1. The physical constraints are accommodated on the site whilst still achieving the development outcomes sought under the LEP.
2. High quality design being achieved through the Council Urban Design Review Panel process.

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

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

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

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

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

Penrith Local Environmental Plan 2010	21-25 Woodriff Street, Penrith
<p>(4) <i>Development consent must not be granted for development that contravenes a development standard unless:</i></p> <p>(a) <i>the consent authority is satisfied that:</i></p> <p>(i) <i>the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</i></p>	<p>Subclause (3) requires the following to be demonstrated for the purposes of this consideration:</p> <p>(a) <i>that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</i></p> <p>(b) <i>that there are sufficient environmental planning grounds to justify contravening the development standard.</i></p> <p>In respect of the height of building variation, the reasons why compliance is unreasonable or unnecessary are provided in Section 2.11.1.</p> <p>We also note that the objectives of the standards have been achieved notwithstanding the non-compliance with those standards (<i>Wehbe v Pittwater Council</i>) as follows:</p> <p>Height of Building</p> <ul style="list-style-type: none"> • The height, bulk and scale of the proposal is consistent with that of the desired future character of

the locality, as demonstrated in the accompanying architectural plans.

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

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

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

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

Height of Building

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

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

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

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

4 Conclusion

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

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