



**D-PLAN**  
URBAN PLANNING CONSULTANTS PTY LTD

STATEMENT  
OF  
ENVIRONMENTAL EFFECTS

**D-PLAN URBAN PLANNING CONSULTANTS PTY LTD**

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**TO DEMOLISH THE EXISTING  
DWELLING WITH ASSOCIATED  
STRUCTURES & CONSTRUCT A  
MULTI DWELLING HOUSING  
DEVELOPMENT COMPRISING FIVE  
(5) UNITS WITH AT GRADE  
PARKING & STRATA TITLE  
SUBDIVISION**

**54 CANBERRA STREET, OXLEY PARK  
(LOT 213 DP 16937)**

20/12/2021

D-Plan Urban Planning Consultants Pty Ltd

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## ATTACHMENTS

1. Variation Request (Site Area)
2. Compliance Table

# 1.0 EXECUTIVE SUMMARY

The subject site is located close to public transport links to Penrith CBD as well as other infrastructure, which provides good opportunity for redevelopment. This has been recognised through the current zoning of land in the general locality which allows various forms of residential development including multi dwelling housing development.

Multi dwelling housing development is an acceptable form of housing when good planning and urban design controls are established to guide the building industry. Penrith Council has comprehensive planning and urban design standards to ensure that this form of development complements existing residential areas.

Desired outcomes such as, limiting the bulk and scale of the development and streetscape amenity were prime considerations in the design option for the site.

The urban design qualities of the proposed development are complementary to the established character of Canberra Street and will substantially improve the streetscape amenity by incorporating the following:

- Entry porch, window openings and design features on the front elevation of the street fronting unit;
- A well-articulated two storey design;
- Adequate setbacks from all boundaries;
- Adequate off-street parking;
- Functional internal and external arrangement;
- Reasonable private open space areas; and
- Passive surveillance opportunities from habitable room windows.

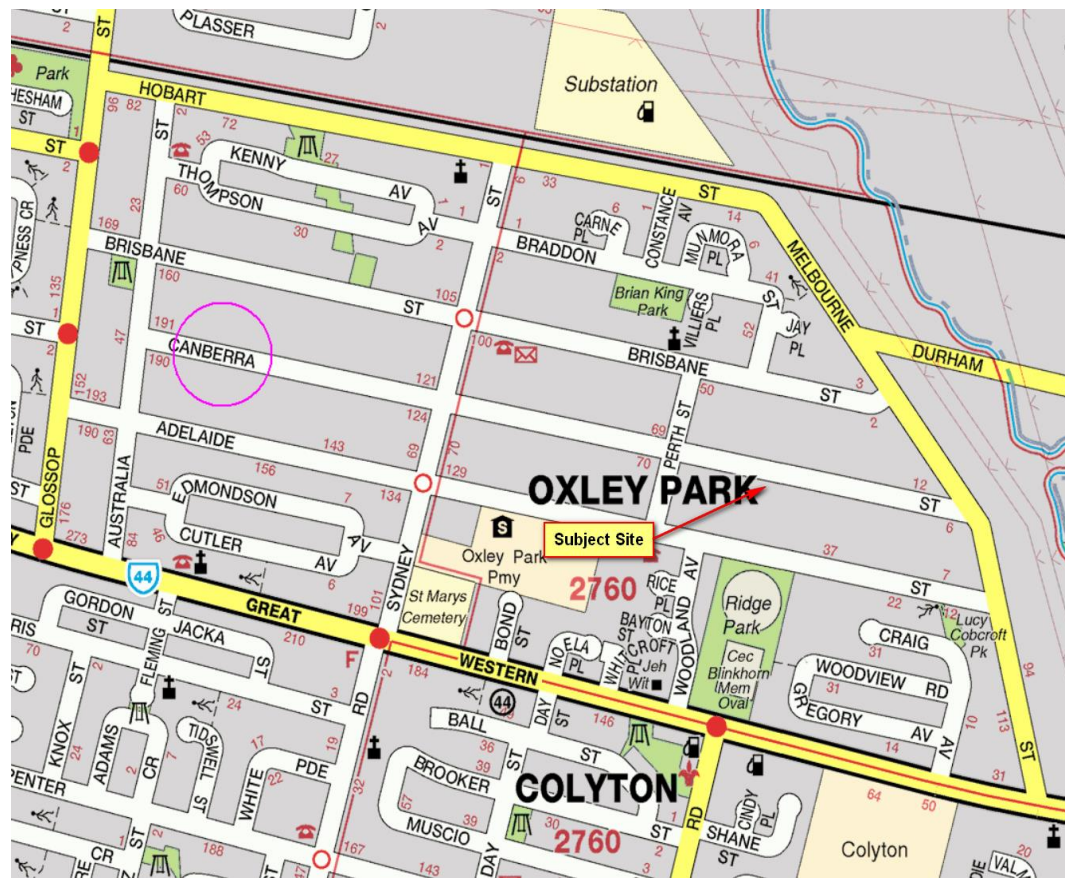
The proposed design promotes best planning practice and complies with most of Council's LEP/DCP requirements, resulting in a high-quality development that will enhance the amenity of the locality and warrants approval.

## 2.0 SITE/LOCALITY DESCRIPTION

The subject land, No. 54 (Lot 213 DP 16937) Canberra Street, Oxley Park is located on the southern side of the street, between Perth Street and Melbourne Street. The site is rectangular in shape with a frontage of 15.24m and a minimum length of 70.815m, comprising a total site area of **1077.8m<sup>2</sup>**.

There is currently a single storey clad dwelling with associated structures on the site which will be demolished to make way for the proposed development. The locality is characterised by the following:

- One and two storey dwelling houses of various building materials and architectural styles;
- Interspersed dual occupancy and multi dwelling housing development;
- Relatively level terrain;
- Standard width nature strips with an inconsistent street tree planting theme;
- Mixture of front fencing styles and height; and
- Generally well-kept front yards with small, medium and large trees and shrubs.



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Locality Map



**Adjoining multi dwelling housing development**

Emerging trend for improvement with older dwellings being replaced with multi dwelling housing and other forms of development, including larger dwellings and dual occupancies.



**Nearby multi dwelling housing development**

Multi dwelling housing development.



**Subject site**

Existing dwelling to be demolished. clad

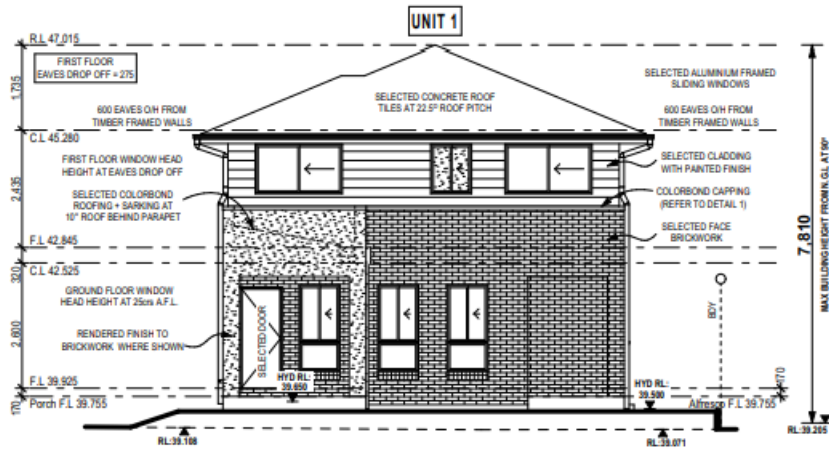


**Streetscape**

One and two storey dwellings with interspersed dual occupancy and multi dwelling housing development.

# 3.0 THE PROPOSAL

The proposal is to demolish the existing dwelling with associated structures and construct a multi dwelling housing development comprising five (5) units with at grade parking and Strata Title subdivision.



Front Elevation

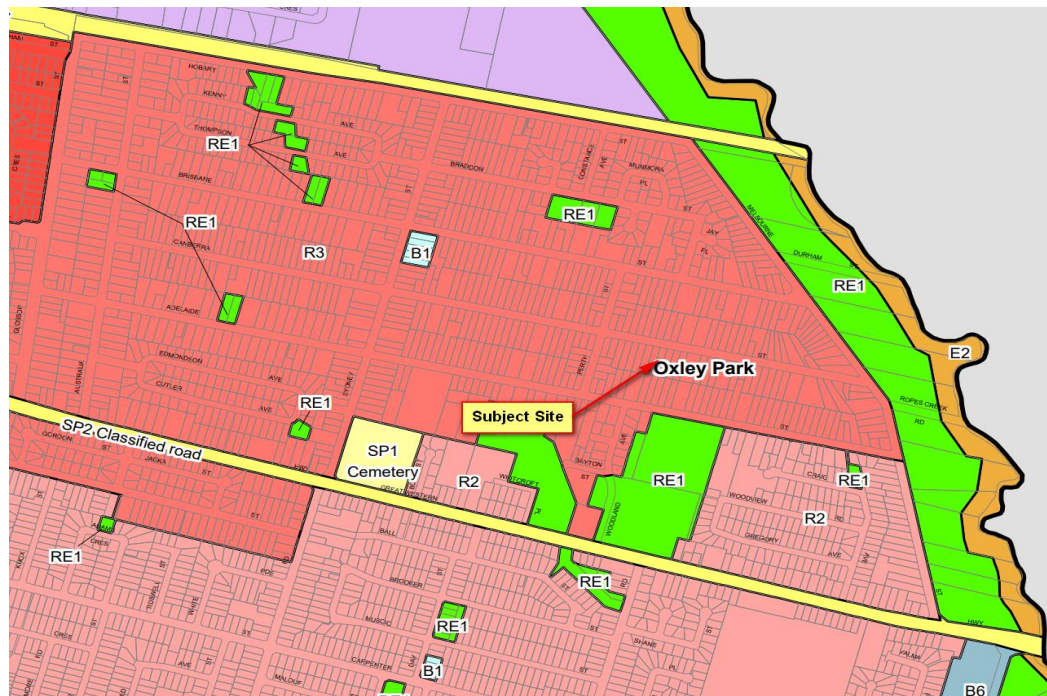


# 4.0 RELEVANT PLANNING CONTROLS

## 4.1 Penrith Local Environmental Plan 2010 (LEP)

The subject site is within Zone R3 – Medium Density Residential under Penrith Local Environmental Plan 2010 (LEP). The proposed development falls within the definition of 'multi dwelling housing' development and is permissible with the consent of Council, viz:

*multi dwelling housing means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.*



### Zoning Map

The objectives of the zone are:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide for a concentration of housing with access to services and facilities.
- To enhance the essential character and identity of established residential areas.
- To ensure that a high level of residential amenity is achieved and maintained.
- To ensure that development reflects the desired future character and dwelling densities of the area.

The proposed residential development satisfies the zone objectives in that:

- ❖ The existing streetscape amenity and traditional suburban residential character will be preserved;
- ❖ High quality residential development is being provided on land set aside for the purpose of consolidating population and housing densities;
- ❖ The proposed development will enhance the amenity of the residential area by the provision of new medium density housing stock and landscaping;
- ❖ The development will add to the range of housing in the zone; and
- ❖ The amount of traffic generated by the proposed development will have a negligible impact on the servicing of intersections in the locality.

### Minimum subdivision lot size (Clause 4.1)

The clause stipulates the following:

- (4) *This clause does not apply in relation to the subdivision of any land:*
- (a) *by the registration of a strata plan or strata plan of subdivision under the [Strata Schemes Development Act 2015](#), or*
  - (b) *by any kind of subdivision under the [Community Land Development Act 1989](#)*

The clause stipulates that Strata Title subdivision is possible in relation to a multi dwelling housing development and the areas stipulated on the Lot Size Map do not apply to Strata subdivision.

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

Development consent may be granted to development on a lot in a zone shown in Column 2 of the Table to this clause for a purpose shown in Column 1 of the Table opposite that zone, if the area of the lot is equal to or greater than the area specified for that purpose and shown in Column 3 of the Table.

Column 1	Column 2	Column 3
Dual occupancy (attached)	Zone R2 Low Density Residential	650 square metres
Dual occupancy (attached)	Zone R3 Medium Density Residential	550 square metres for a standard lot
Dual occupancy (attached)	Zone R3 Medium Density Residential	600 square metres for a battle-axe lot
Dual occupancy (detached)	Zone R2 Low Density Residential	750 square metres
Dual occupancy (detached)	Zone R3 Medium Density Residential	650 square metres for a standard lot
Dual occupancy (detached)	Zone R3 Medium Density Residential	700 square metres for a battle-axe lot
<b>Multi dwelling housing</b>	<b>Zone R3 Medium Density Residential; Zone R4 High Density Residential</b>	<b>1200 square metres</b>
Residential flat building	Zone R4 High Density Residential	800 square metres for a standard lot
Residential flat building	Zone R4 High Density Residential	900 square metres for a battle-axe lot

The subject site is within Zone R3 Medium Density and comprises an area of **1077.8m<sup>2</sup>** which falls short, however, the site is isolated, located between two existing multi dwelling housing developments. The short fall does not undermine the objectives behind the development standard. A Formal Clause 4.6 Variation Request accompanies the application [**see Attachment 1 – Variation Request (Site Area)**].

### **Height of Buildings (Clause 4.3)**

The Height of Building Map categorises the site within the maximum 8.5m building height limit. The proposed two storey development has a maximum height of **7.81m** which satisfies the requirements of the clause.

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

Consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. In this regard, a Variation Request is sought in relation to the Site Area requirement [**see Attachment 1 – Variation Request (Site Area)**].

### **Heritage Conservation (Clause 5.10)**

The subject site is not listed as a heritage item or located in the immediate vicinity of any heritage-listed items.

### **Earthworks (Clause 7.1)**

The proposed site works are ancillary to the overall development for which development consent is being sought. Specific conditions of consent will address the relevant objectives and considerations of this clause.

### **Flood Planning (Clause 7.2)**

The subject site is not identified as “*flood planning land*” on the Clause Application Map.

### **Sustainable Development (Clause 7.4)**

Consideration has been given to achieving ESD objectives at the design and development stages viz:

- A Waste Management Plan is provided with this application;
- The proposed development has been designed to achieve a satisfactory energy efficiency rating through orientation and the use of building materials with thermal properties. The nominated BASIX commitments demonstrate that the design is satisfactory in terms of this consideration;
- Public transport is within walking distance (Bus links to St Marys and Mount Druitt Railway Stations);
- Soft soil areas will be available to establish native landscaping; and
- Stormwater will be collected and disposed of in a manner that complies with Council’s requirements.

## **4.2 Penrith DCP 2014 – (Residential-Multi Dwelling Housing)**

All relevant numeric DCP requirements have been tabulated and are provided as ***Attachment 2 - Compliance Table***.

### **Part C – City Wide Controls**

#### **Site Planning & Design Principles**

**Site Analysis** - a site analysis has been carried out and an appraisal of how the design of the development has regard to the site analysis forms part of the Architectural Plans.

#### **Design Principles**

**Built Form, Energy Efficiency and Conservation** - internal living areas and private open space areas will receive adequate solar access and the accompanying BASIX Certificate demonstrates that the proposed units will achieve a reasonable level of comfort and efficiency.

In terms of bulk and scale the proposed two storey building form is of a comparable bulk and scale to existing development in the surrounding locality, as such, the existing streetscape amenity will generally be enhanced by the proposed development.

**Safety and Security (CPTED)** - design guidelines outlined in the Crime Prevention through Environmental Design (CPTED) were considered and incorporated as follows:

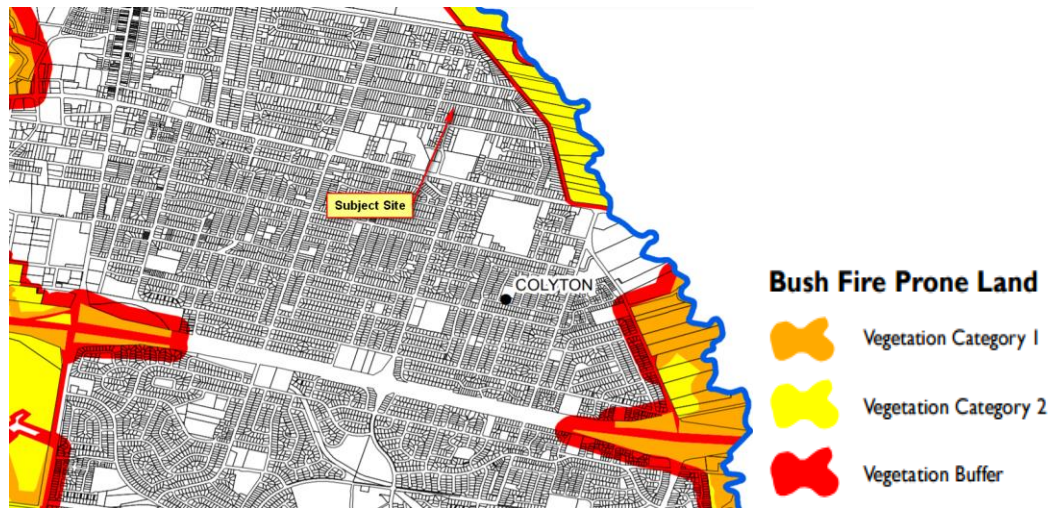
- Well defined entry points;
- Passive surveillance treatment has been provided through the provision of habitable room windows with outlook towards the street and the internal driveway;
- Internal access from garages;
- Suitable fencing and landscaping will produce a defensible open space at the front of the site resulting in some interaction with the public domain beyond; and
- Fencing/gates will prevent intruders from accessing the private open spaces areas.

#### **Vegetation Management**

**Preservation of trees and vegetation** – the proposal does not involve the removal of any significant trees.

Formalised landscaping will be planted, as indicated on the Landscape Plan, which will enhance the future amenity of the site and locality in general.

**Bushfire Management** - the subject site is not identified as being in a bushfire prone area (see Map below).



## **Bushfire Prone Land Map**

### **Water Management**

Council's goal is to develop long term improvements to the health of waterways, which in turn enhances the ecological integrity of the system, whilst balancing the need to manage flooding, waste water and stormwater. To achieve this goal the proposed development provides the following:

- A Stormwater Management Plan which demonstrates that stormwater will be collected, stored and discharged to the street system in a controlled manner;
- On-site stormwater detention compensates for any additional runoff resulting from the development. The storage capacity of the detention system caters for the required storm event which ensures that there will be no additional impact on natural watercourses; and
- Soft soil areas within the site also assist in reducing runoff from the site.

### **Land Management**

**Site Stability and Earthworks** – being a relatively level site, minimal site works are required to establish the building platforms at the required levels. The proposed development does not involve extensive excavation that would affect the structural viability of the buildings due to the existing soil conditions and is well within acceptable limits. Slab on ground construction ensures that the sub-floor height of the proposed buildings is not excessive.

The proposed development will not have any significant detrimental effect on adjoining properties and will be in accordance with the “*Australian Standards*” and Council's Policy.

**Erosion and Sediment Control** - erosion and sedimentation control measures will be implemented during construction.

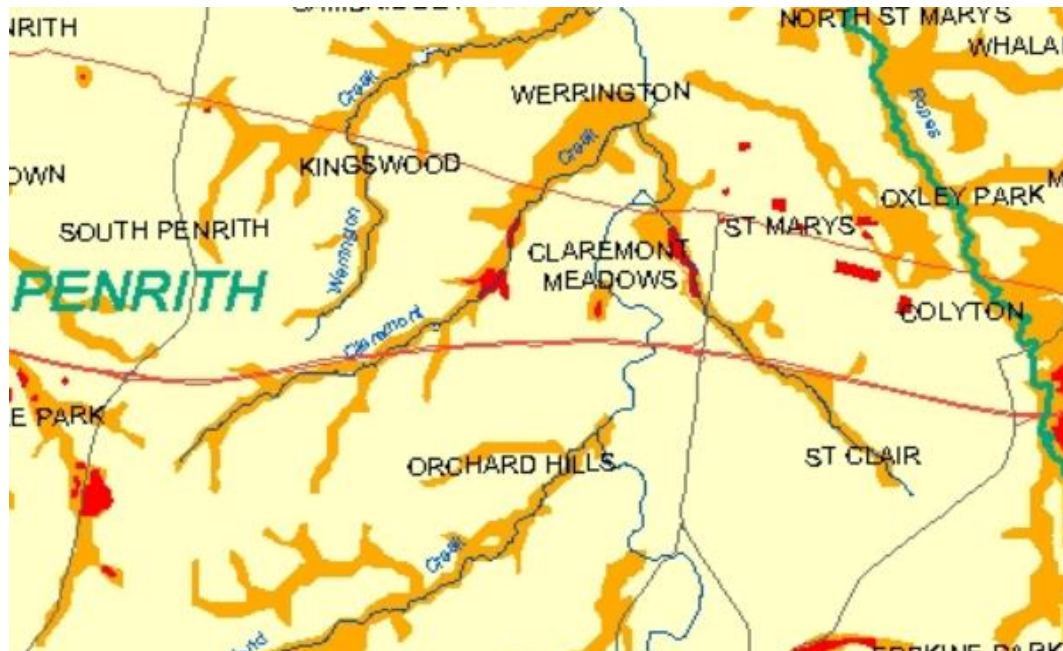
**Contaminated Lands** - it is unlikely that the subject land is contaminated as it is in a residential setting and has not been used for purposes likely to contaminate the site.

**Salinity** - the subject site is identified as being of 'moderate' salinity potential on the 'Western Sydney Salinity Potential Map' put out by The Department of Infrastructure, Planning and Natural Resources. These areas cover the remainder of the map wherever Wianamatta Group shales (Ashfield or Bringelly shales) and tertiary alluvial terraces are found. Scattered areas of scalding and salinity indicator plants have been noted but no concentrations have been mapped. Saline areas that have not yet been identified may occur in this zone. Saline areas may also occur in this zone if new risk factors arise.

Specific conditions can be included to ensure the construction method with the Construction Certificate application.

The proposed development does not involve extensive excavation that would affect the structural viability of the buildings due to the existing soil conditions.

Minor surface excavation of this nature is unlikely to affect the water table.



**Salinity Potential in Western Sydney 2002**

## **Waste Management**

A Waste Management Plan accompanies this application. The plan adopts the principles of *Avoid Reuse Recycle and Dispose* to minimise landfill waste.

## **Landscape Design**

The proposal does not involve the removal of any significant trees. Formalised landscaping will be planted, as indicated on the Landscape Plan which will enhance the future amenity of the site and locality in general.

## **Transport, Access and Parking**

The required number of car parking spaces for a development must comply with **Table C10.2** of the DCP. In this regard, residential development requirements are broken up below:

### **Generation rates**

Required -

1 bedroom - 1 space per unit x 0	= 0 spaces
2 bedroom – 1.5 spaces per unit x 0	= 0 spaces
3 bedroom – 2 spaces per unit x 5	= 10 spaces
<u>Visitors - 1 space per 5 units</u>	<u>= 1 space</u>
<b>Total</b>	<b>= 11 spaces</b>

Provided -

Residential	= 10 spaces
<u>Visitors</u>	<u>= 1 space</u>
<b>Total</b>	<b>= 11 spaces</b>

**Traffic** - based on the Traffic Authority Guidelines, the following points are provided for Council's consideration:

- The development is a low trip generator in the AM and PM peak hours.
- The additional development trips can be accommodated in the nearby intersection without significantly affecting the performance or creating any additional delays or queues.
- There is no reason why development consent for development at 54 Canberra Street, Oxley Park should not be issued.

## **Part D - Land Use Controls**

### **Residential Development**

#### **Multi Dwelling Housing**

- **Residential Character**

The surrounding neighbourhood is characterised by a mixture of single and 2-storey dwellings of various building materials and architectural styles with interspersed dual occupancies and multi dwelling housing developments.



**Photo – Streetscape (Note: the streetscape and built form comprises both single and two-storey building structures and there is an obvious trend for improvement)**

The proposed development will complement the existing character of the locality, with a site-specific design that respects the bulk and scale of adjoining buildings. When viewed from the street the development will have the appearance of a contemporary two storey development with excellent presentation. The design also has regard to passive surveillance opportunities of the public domain from habitable room windows.

All performance criteria items outlined in the DCP have been achieved with the proposed development. The size and shape of the subject site easily accommodates the building form with adequate land for landscaping, access and parking, outdoor recreation and clothes drying.

- **Urban Form**

The DCP requires the following issues to be considered:

- *Patterns of buildings and private gardens in established neighbourhoods;*
- *Building height plane measured from the boundaries;*
- *Building form must be balanced;*
- *Visual impact of the driveway must be minimised;*
- *Garage structures must not dominate the street frontage; and*
- *Setbacks must match the streetscape.*



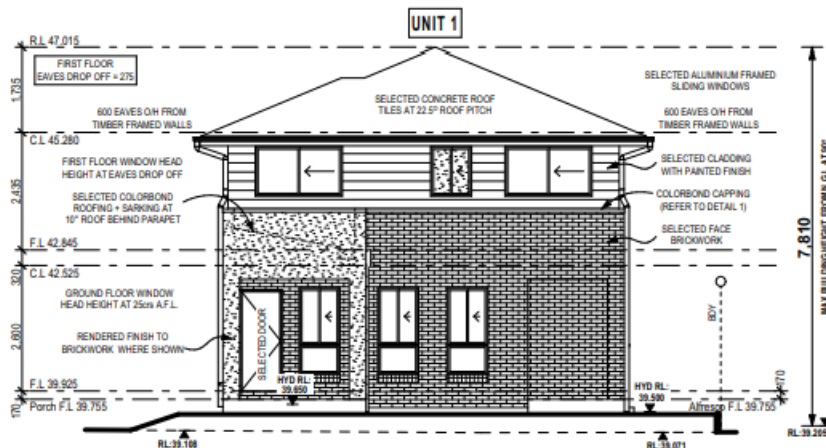
## COMMENTS

The DCP acknowledges that multi dwelling housing style development which incorporates good design principles can be consistent with traditional suburban design, hence the R3 Zoning.

The proposed design appropriately addresses the frontage and length of the site with an aesthetically pleasing presentation to Canberra Street, together with appropriate setbacks from all boundaries, which enables the provision of all residential amenities associated with multi dwelling housing style development.

The urban design qualities of the proposed development incorporate good planning principles, taking into consideration the opportunities and constraints of the site and minimise the impact on adjoining properties, by the following design considerations:

- ❖ Maximised street presence, with a two storey contemporary design (**Note: two storey building forms up to a height of 8.5m is the envisaged bulk and scale for the locality**);
- ❖ The development will be constructed in predominately solid contemporary materials with pitched/hipped rooflines. This is consistent with the already emerging trend for improvement away from the dull, boring architecture of previous eras (i.e., predominately single storey high pitched roof designs and dormer style windows).
- ❖ The proposed contemporary design incorporates the effective use of decorative elements, such as, base elements and a well-defined entry area to each unit; and
- ❖ Adequate landscaping is proposed to achieve specific objectives, such as, beautification and enhancement of the streetscape, minimising the impact of the hard-standing areas within the development and to provide privacy screening between adjoining properties.



## Canberra Street Elevation

- **Front and Rear Setbacks**

The objective behind the requirement is:

*Setbacks are to reflect the character of established garden suburbs, and provide for development of flora and fauna corridors.*

The proposed development provides a front setback of **5.541m** which meets the numeric requirement. Council should take into account:

1. The future character of the locality;
2. Style of development (i.e., it aims to have a modern two storey appearance by maximising street presentation) **Note: traditionally, single dwelling developments have a direct relationship with the street, rather than a large heavily landscaped setback;**
3. Adjoining development comprises street fronting dwellings which also be maximises street presence; and
4. Quality landscaping will beautify the interface of the development with the public domain.

A rear setback **7.527m** is proposed, which complies with the DCP requirement.

A green open space corridor is provided adjacent to the rear boundary which satisfies the objectives behind the consideration.

- **Building Envelope and Side Setbacks**

The proposal complies with the building envelope and side boundary offset requirements (i.e., 2m (min) and there are sufficient breaks between building groups. (**Note: two storey construction with compliant setbacks generally satisfies the intent of the control per-say**).

- **Driveways and Parking**

A relatively level site ensures that there will be no undercarriage scraping and all vehicles are able to enter and leave in a forward direction.

- **Landscaped Area**

The amount of open space available and the selection of planting nominated on the Landscape Plan will achieve the objectives outlined in the DCP as follows:

- Screening between adjoining properties;
- Softening the visual impact of hard surface areas;
- Appropriate species selection for the climate; and
- Enhancement of the streetscape amenity.

All units have adequately sized Private Open Space areas (i.e., more than **25m<sup>2</sup>**) and the available Landscaped area achieves the **40%** requirement.

Indoor and outdoor living areas relate well, with direct access from internal living areas of all units into the private open space area. The proposed landscaping will enhance the future amenity of the subject site and the immediate locality.

- **Solar Planning**

Habitable rooms in the development have been appropriately orientated to receive access to natural sunlight. Courtyards and most living areas will receive sunlight during winter in accordance with the minimum requirements stipulated in the DCP (i.e., 3hrs of sunlight between 9am and 3pm to at least 40% of the private courtyard on 21 June). Given the orientation of the site, each unit in the development receives adequate solar access.

Daylight to living rooms and secluded open spaces in adjacent dwellings will not be significantly reduced by the proposed development, given the offsets from all boundaries.

- **Energy Efficiency**

There are two major components to consider when thinking about energy efficient building design. Firstly, the impacts of the building design on the indoor temperature, natural light levels and ventilation and secondly, the fixtures used in the building and their energy consumption or influence on household efficiency. The BASIX Certificate demonstrates that the energy efficiency and thermal comfort levels within each unit achieve the desired outcome.

- **Visual and Acoustic Privacy**

Privacy concerns are addressed by minimising the number of window openings facing the side boundaries, raised/lowered sills and opaque glazing where required, positioning low impact rooms, such as bedrooms and bathrooms on the first-floor level, together with adequate side and rear boundary setbacks.

- **Storage & Services**

The DCP requires at least 10m<sup>3</sup> of storage space to be provided for each dwelling which each dwelling is capable of accommodating.

### 4.3 Non-Compliance

Apart from the site being an isolated site and not meeting the minimum site area and width requirement (Note: this is discussed in the formal Clause 4.6 Variation Request), the proposal appears to satisfy all other LEP and DCP requirements.

Council's attention is drawn to the EP&A Act 1979, viz:

#### **74BA Purpose and status of development control plans**

(1) *The principal purpose of a development control plan is to provide guidance on the following matters to the persons proposing to carry out development to which this Part applies and to the consent authority for any such development:*

- a. *giving effect to the aims of any environmental planning instrument that applies to the development,*
- b. *facilitating development that is permissible under any such instrument,*
- c. *achieving the objectives of land zones under any such instrument.*
- d. *The provisions of a development control plan made for that purpose are not statutory requirements.*

#### **79C (3A) Development Control Plans**

*If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:*

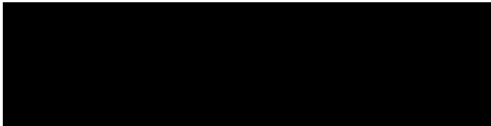
- (a) *if those provisions set standards with respect to an aspect of the development and the development application complies with those standards-is not to require more onerous standards with respect to that aspect of the development, and*
- (b) *if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards-is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and*
- (c) *may consider those provisions only in connection with the assessment of that development application.*

## **5.0 CONCLUSION**

It is considered that the current strategy of Penrith Council to provide a variety of housing choice in the locality is being promoted by the development. Council's DCP requirements and good planning principles have been incorporated in the design of the development which has resulted in a high-quality development that will enhance the locality.

Minor non-compliance issues have been addressed in the Statement and it is considered that the variations from the LEP/DCP, are warranted given that the proposed development integrates well with the existing streetscape without adversely affecting adjoining properties.

Consideration has been given to matters listed in Section 4.15 (previously Section 79C) of the Environmental Planning and Assessment Act 1979, concluding that the proposed development warrants approval.



.....  
David Bobinac  
Town Planner

## REQUEST TO VARY A DEVELOPMENT STANDARD CLAUSE 4.6 OF THE PENRITH LEP 2010

Property:	54 Canberra Street, Oxley Park
Date:	20 <sup>th</sup> December 2021
Planning Instrument:	Penrith Local Environmental Plan 2010
Development Standard:	Minimum Site Area [Clause 4.1A(2)]

### Clause 4.6

Clause 4.6 of Penrith LEP 2010 states:

- (1) The objectives of this clause are as follows:
  - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (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.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
  - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
  - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
  - (c) **Note.** When this Plan was made it did not include Zone RU3 Forestry or Zone RU6 Transition.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
  - (a) a development standard for complying development,
  - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
  - (c) clause 5.4,
  - (ca) clause 6.1, 6.2, 6.6, 6.7, 6.16, 7.7, 7.17, 7.21 or Part 9.

## Development Standard & Extent of Variation

In this particular case, the development standard relates to the minimum site area for multi dwelling housing development within Zone R3 Medium Density Residential under the provisions of Penrith Local Environmental Plan 2010, which states:

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

(2) Development consent may be granted to development on a lot in a zone shown in Column 2 of the Table to this clause for a purpose shown in Column 1 of the Table opposite that zone, if the area of the lot is equal to or greater than the area specified for that purpose and shown in Column 3 of the Table.

Column 1	Column 2	Column 3
Dual occupancy (attached)	Zone R2 Low Density Residential	650 square metres
Dual occupancy (attached)	Zone R3 Medium Density Residential	550 square metres for a standard lot
Dual occupancy (attached)	Zone R3 Medium Density Residential	600 square metres for a battle-axe lot
Dual occupancy (detached)	Zone R2 Low Density Residential	750 square metres
Dual occupancy (detached)	Zone R3 Medium Density Residential	650 square metres for a standard lot
Dual occupancy (detached)	Zone R3 Medium Density Residential	700 square metres for a battle-axe lot
Multi dwelling housing	Zone R3 Medium Density Residential; Zone R4 High Density Residential	1200 square metres
Residential flat building	Zone R4 High Density Residential	800 square metres for a standard lot
Residential flat building	Zone R4 High Density Residential	900 square metres for a battle-axe lot

The EP& A Act defines development standard as follows:

“development standards” means 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:

- the **area**, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,
- the proportion or percentage of the area of a site which a building or work may occupy...
- the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a *building* or work...

**Note: it is clear from the above definition that the minimum site area for the multi dwelling housing development requirement of Penrith LEP 2010 is a ‘development standard’.**

The proposed development involves the construction of a multi dwelling housing development comprising five (5) dwellings on an allotment comprising an area of **1077.8m<sup>2</sup>** which equates to a **10%** variation.

## Compliance with Development Standard is Unreasonable and Unnecessary

**Clause 4.6(3)(a)** – requires that the request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

A decision in the Land and Environment Court **Wehbe v Pittwater Council** outlines a number of ways to establish that compliance with a development standard would be 'unreasonable' or 'unnecessary.' These include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

In this instance, the **first** and **fourth** means are relied upon in establishing that compliance with the standard is unreasonable or unnecessary– that being, the purpose behind the **1200m<sup>2</sup>** requirement has been achieved.

In dealing with minimum lot sizes and various forms of development, the LEP stipulates the underlying purpose of the minimum site area standard as:

(1) *The objective of this clause is to achieve **planned residential density** in certain zones.*

In summary, the purpose or intent is:

To ensure that sufficient land area is available to establish a reasonable level of residential amenity by the provision of private open space, landscaping, drying areas, driveways etc. and in particular, accommodate the number of occupants expected in the R3 Medium Density Residential zone.

The proposed development satisfies the above objective as follows:

- ❖ Firstly, the allotment is an isolated site with multi dwelling housing development on either side;
- ❖ Based on the size and configuration of the subject site and what has been achieved on adjoining and nearby allotments, it can be assumed that the subject site can easily accommodate the proposed density (i.e., five (5) units), this being the highest and best use of the site.
- ❖ The shortfall in site area of **122m<sup>2</sup>** or 24m<sup>2</sup> per dwelling will have no bearing on the level of amenity, as indicated on the accompanying Plans, which clearly demonstrate that all residential amenities can be provided to each dwelling (i.e., access, car parking, landscaping, private open space, drying areas and privacy);



- ❖ Overall, it is considered that the proposed development will complement adjoining and nearby development and integrate well with the established medium density characteristics of the locality;
- ❖ For all intents and purposes the variation will not be interpreted as a non-compliance given that the proposed development will be of similar configuration and appearance to other development in the street and locality in general; and
- ❖ All other LEP requirements have been met, ensuring that the proposed development achieves a reasonable level of amenity and is within the environmental capacity of the zone.

Justice Preston in the decision of Wehbe v Pittwater Council [2007] NSWLEC 827 at 43 stated:

*“...development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”*

In my opinion, strict compliance with Clause 4.1A of PLEP 2010 would be unreasonable and unnecessary when adopting the abovementioned test of Justice Preston. Earlier in this Variation Request, it was demonstrated that the purpose behind the clause is satisfied, notwithstanding the numerical non-compliance with respect to the site area (i.e., the siting and skillful design provides all amenities for each dwelling and multi dwelling housing is the envisaged development form for the R3 Medium Density Residential zone), strict compliance with the standard would be unnecessary (i.e., it is achieved anyway) and unreasonable (no purpose would be served).

## Environmental Planning Grounds

**Clause 4.6(3)(b)** – requires demonstration that there are sufficient environmental planning grounds to justify contravening the development standard. The specific circumstances with this particular site and features that contravene the development standard are:

1. The environmental planning grounds would be to provide residential accommodation that is of a type and scale normally allowed in the R3 Medium Density Residential Zone.
2. The subject site is ideally located close to recreation facilities and services (i.e., Whalen Reserve, Federation Forest, Ridge Park, Nepean River, Yellomundee Regional Park, Penrith Lakes, Sydney International Regatta Centre, Bus links to Penrith City Centre and Penrith Panthers Football Club as well as neighbourhood shops, cafes and restaurants) and a shortfall to the site area requirement should not prevent increased opportunity for residents to utilise those facilities.
3. From an urban design viewpoint, the development (in its current form) is consistent with the building character in the locality and will generally enhance the amenity of the streetscape, thus satisfying the planning principles established in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191.
4. Multi dwelling housing development is generally encouraged in the R3 zone and has occurred extensively in the immediate locality, even on allotments that do not meet the minimum allotment size requirement of 1200m<sup>2</sup>. As such, it could be argued that the standard has already been abandoned by Council's own action in approving multi dwelling housing development on lots less than 1200m<sup>2</sup> (**Note: an aerial analysis will reveal the commonality of multi dwelling housing development on lots of a similar size and configuration**).
5. The broader planning initiatives of the State and Federal Government should also be considered (i.e., population growth and the provision of a variety of housing options to accommodate the anticipated influx).

## Public Interest

The construction of a relatively low scale multi dwelling housing development within the context of a medium density residential area with all associated amenities, represents an orderly and economic use of the land, which promotes the objectives of the EP&A Act.

The proposed development will be in the public interest because it is consistent with the objectives of the R3 Medium Density Residential zone (i.e., the objectives of the zone encourage “medium” density residential development).

The objectives of the R3 Medium Density Residential zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a **medium** density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a concentration of housing with access to services and facilities.*
- *To enhance the essential character and identity of established residential areas.*
- *To ensure that a high level of residential amenity is achieved and maintained.*
- *To ensure that development reflects the desired future character and dwelling densities of the area.*

The proposed development satisfies the above objectives as follows:

- A permissible form of development is being provided on an allotment of land that almost achieves the minimum allotment size for that category of development (i.e., **the alternative would be a very large, dual occupancy development with similar if not greater environmental impacts, and if carried out as a complying development under the SEPP (Exempt & Complying Development Codes) 2008, would not be required to meet any of the DCP requirements**);
- Consideration has been given to the existing amenity and character of the area and it is considered that the proposed development is sympathetic and harmonious with adjoining development and will complement the existing medium density character of the locality;
- The proposed development will enhance the amenity of the medium density residential area by the provision of new housing stock and landscaping;
- The development will add to the range of housing in the zone through the provision of average sized dwellings; and
- Approval of development on a slightly deficient allotment size, less than that specified by the clause, will in this particular case not raise any matter of significance for **state or regional** environmental planning, and the **public benefit** of maintaining the standard is not undermined in the circumstances of this case, being a relatively low scale multi dwelling housing development on a large allotment that can easily accommodate the proposed dwellings (**Note: the provision of more affordable housing is in the public interest**).

Given the above, it is considered that the proposed development is within the environmental capacity of the R3 – Medium Density Residential zone and the variation will not undermine the standard, **hence it is in the public interest and satisfies Clause 4.6(4)(a)(ii).**

**Note:** In considering the question of consistency, the adopted approach of the former Chief Judge, Justice Pearlman in *Schaffer Corporation v Hawkesbury City Council (1992) 77 LGRA 21* where, Her Honour expresses the following opinion at [27] “*The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, nor even that it is compatible.*”

## CONCLUSION

This Variation Request satisfies the requirements of Clause 4.6 of Penrith LEP 2010 as follows:

- It identifies the development standard to be varied - **Clause 4.1A(2) relating to the minimum lot size for multi dwelling housing development.**
- Discusses the extent of the variation sought – **the variation to the standards is approximately 10%.**
- Establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case – **Clause 4.6(3)(a) (Method 1 and 4 of *Wehbe v Pittwater Council*).**
- Demonstrates there are sufficient environmental planning grounds to justify the contravention (***Note: the focus being on the contravention NOT the development as a whole***) – **Clause 4.6(3)(b) – although the site area is less than the prescribed requirement, it has been demonstrated that the non-compliant elements (i.e., minor short fall in the site area) does not frustrate the objectives behind the standard, which notwithstanding have been achieved. Site constraints and opportunities were also taken into account with the design, in particular the length of the site, orientation and separation between adjoining buildings.**

**Finally, affordable housing in the form of ‘average size dwellings’ is being provided in a growing area of the Sydney Basin, which is much needed for the accommodation of key workers, such as police officers, ambulance officers, and teachers, which are being pushed out of Sydney to face long daily commutes.**

- Demonstrates that the proposed variation is in the public interest, being consistent with the objectives of the particular standard, and the objectives of the relevant zone in which the development is proposed - **hence satisfying Clause 4.6(4)(a)(ii).**



David Bobinac  
Town Planner

## ATTACHMENT 2

### COMPLIANCE TABLE MULTI DWELLING HOUSING

Control	LEP/DCP Requirement	Development Proposal	Complies
Site Area	1200m <sup>2</sup> (min)	1077.8m <sup>2</sup>	No
Width	Generally - 22m (min) Isolated Site – Merit	15.24m Isolated Site	Merit
Landscaped Area Communal Open Space	40% (min) 10% of Landscaped Area	40% N/A	Yes N/A
Floor Space Ratio	N/A	N/A	N/A
Building Height	8.5m	7.81m	Yes
Building Length	20m (max)	< 20m	Yes
Space Between Buildings	4m (min)	8.5m	Yes
<b>Setbacks</b> Front Side Rear	Average of adjoining OR 5.5m (min)  2m for 50% of any boundary Building Envelope compliance (6.5m at boundary & 45°)  Single storey – 4m Two-storey - 6m	5.541m  2m for 56% no encroachments  7.527m	Yes No Yes Yes
Private Open Space Outdoor Siting	25m <sup>2</sup> (min) 4m x 5m (min)	➤ 25m <sup>2</sup> each unit provided	Yes Yes
Parking	2 bed – 1.5 spaces 3 bed - 2 spaces Visitor – 1 per 5 units	0 x 1.5 = 0 spaces 5 x 2 = 10 spaces 5 ÷ 5 = 1 space <b>Required – 11 spaces</b> <b>Provided – 11 spaces</b>	Yes Yes Yes Yes
Storage Area	10m <sup>3</sup> per unit	10m <sup>3</sup> per unit	Yes
Roof Pitch	25° (max)	22.5°	Yes