

# STATEMENT OF ENVIRONMENTAL EFFECTS

DEMOLITION OF EXISTING DWELLINGS AND PROPOSED CONSTRUCTION OF RESIDENTIAL FLAT BUILDING

44-48 RODLEY AVE, PENRITH



## STATEMENT OF ENVIRONMENTAL EFFECTS

Prepared by

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### Client and Land Details

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Client: Inglow Investments  
Subject Site: Lots 62, 63 and 64 DP 33490, 44-48 Rodley Ave, Penrith  
Proposal: Proposed Demolition of Existing Dwellings and Construction of Residential Flat Building



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Warwick Stimson RPIA  
Director



This report dated January 2021 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

## 1.1 PROJECT OVERVIEW

Stimson Urban & Regional Planning has been engaged by Inglow Investments Pty Ltd to prepare a Statement of Environmental Effects in relation to a proposed residential flat building on the properties known as 44-48 Rodley Ave, Penrith.

The proposed development includes the demolition of three (3) existing dwellings and associated outbuildings and the construction of a new residential flat building comprising 29 units, basement car parking for 38 cars, associated landscaping and common open space area.

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 Act. The 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 Act.



Figure 1 Development perspectives

## 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: Project Description – provides a detailed description of the proposed development and its characteristics.

- Section 4: Statutory Considerations – provides for an assessment of the proposal against the specific planning instruments and policies that are applicable.
- Section 5: Key Planning Issues – provides an assessment of the key issues identified in the preparation of the application.
- Section 6: Section 4.15 Assessment – provides an assessment against section 4.15 of the EPA Act.
- Section 7: Conclusion and Recommendation – summarises the report and presents a recommendation.

### 1.3 HISTORY OF THE APPLICATION

#### 1.3.1 *Urban Design Review Panel Meeting*

An Urban Design Review Panel Meeting was held on 19 August 2020. A range of design issues were discussed with the Panel and the accompanying plans reflect the input from that meeting.

#### 1.3.2 *Pre-Lodgement Meeting*

The proposal was discussed at a pre-lodgement meeting held with the relevant officers at Penrith City Council on 18 August 2020 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:

### 1.4 SUPPORTING DOCUMENTATION

The proposed is accompanied by the following documentation:

Documentation	Prepared by
Survey	John Lowe & Assoc Pty Ltd
Architectural Drawings	Morson Group
Hydraulic Report/Stormwater Plans	SGC Consulting Engineers
Erosion and Sediment Control Plan	SGC Consulting Engineers
Landscape Plan	Paul Scrivener Landscapes
Arborists Report	Naturally Trees
Access Report	Vista Access Architects
BASIX/NatHERs	Partners Energy Management
Noise Impact Assessment	Rodney Stevens Acoustics
Traffic Impact Assessment	Stanbury Traffic Planning
Waste Management Plan	Morson Group

## **1.5 LEGISLATION, ENVIRONMENTAL PLANNING INSTRUMENTS AND POLICIES TO BE CONSIDERED**

- *State Environmental Planning Policy No. 55 – Remediation of Land*
- *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development*
- *Sydney Regional Environmental Plan No. 20 – Hawkesbury/Nepean River (No. 2 - 1997)*
- *Penrith Local Environmental Plan 2010*
- *Penrith Development Control Plan 2014*

## **1.6 CONSENT AUTHORITY**

The consent authority for this application is Penrith City Council.

## 2 THE SITE AND SURROUNDS

The subject site and its surrounds have the following characteristics.

Site Address	44-48 Rodley Ave, Penrith
Lot/DP	Lots 62, 63 and 64 DP 33490
Site Area	1672sqm approx..
Local Government Area	Penrith City Council
Zoning	R4 High Density Residential
Current Land Use	Residential
Proposed Land Use	Residential
Surrounding Land Uses	High density residential to the north, west and east, recreation to the South.
Topography	Generally flat
Terrestrial Biodiversity	Not mapped in LEP
Heritage	Not mapped in LEP
Flooding/Overland Flow	Addressed in the accompanying documentation
Bushfire	Not mapped



Figure 2 Subject Site - Aerial



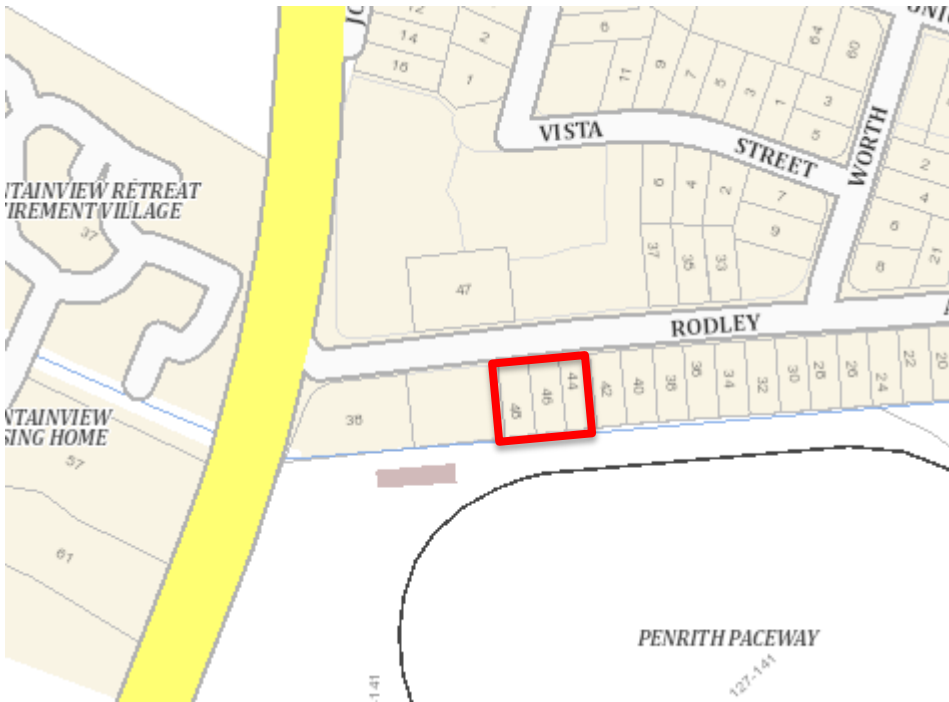


Figure 3 Subject Site - Cadastre

## 2.1 SURROUNDING CONTEXT

The subject site is located within an area that was zoned R4 High Density Residential in the LEP. Accordingly, the locality has experienced significant growth in development such as that proposed. There are a number of similarly sized developments within the immediate locality. To the south is located the Penrith Paceway, and that is currently zoned for recreational purposes.

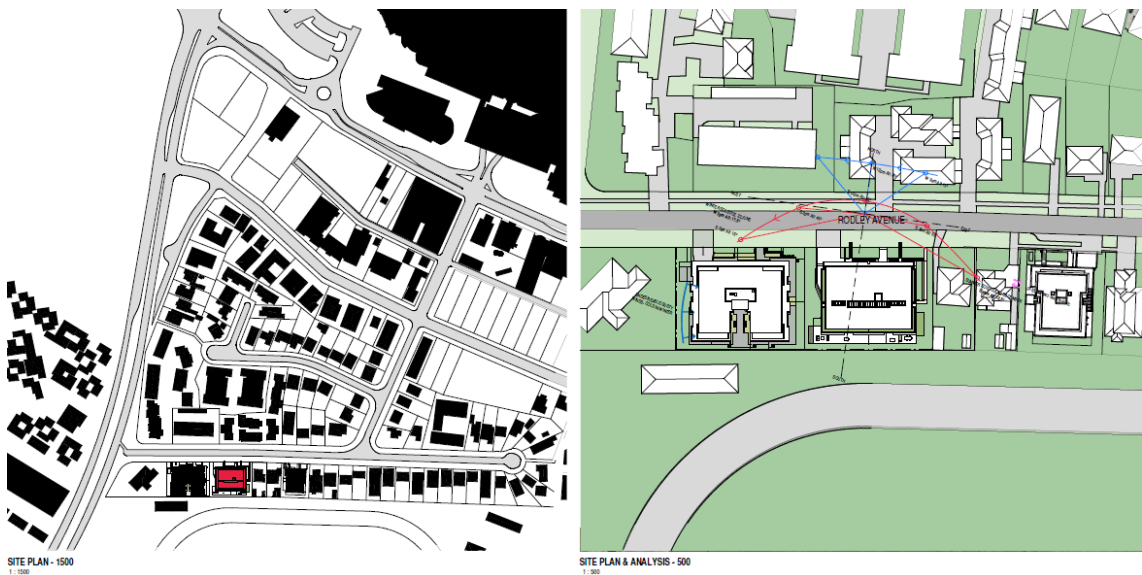


Figure 4 Site Analysis

### 3 PROJECT DESCRIPTION

#### 3.1 OVERVIEW

The subject application seeks Council's approval to demolish the existing dwellings and for the construction of a residential flat building development comprising a total of 29 dwellings, made up of the following:

- 26 two-bedroom dwellings (including one adaptable); and
- 3 three-bedroom dwellings (including two adaptable).

The dwellings are proposed to be contained within a five-storey building located centrally on the site.

The development is to be serviced two levels of basement parking accommodating 38 passenger vehicle spaces. Access between this parking area and Rodley Avenue is proposed via combined ingress / egress driveway located within the north - western corner of the site.

Pedestrian connectivity is proposed between the development and the southern Rodley Avenue footway to the east and separate from the abovementioned vehicular access driveway.



Figure 5 Street perspective

#### 3.2 DETAILED ELEMENTS OF THE DEVELOPMENT

This application comprises the following detailed elements:

- Basement car parking over 2 levels accommodating
  - 38 car spaces

- Storage cages
- Bicycle parking
- Waste storage and collection facilities
- Lobby access to the building
- Ground level providing:
  - 2 x 2 Bed apartments
  - 1 x 2 bed adaptable apartment
  - 1 x 3 bed adaptable apartment
  - Entry lobby
  - A mix of private and common open space
  - Perimeter landscaping.
- Levels 1 to 3 providing on each level:
  - 5 x 2 bed apartments
  - 2 x 2 bed adaptable apartments
- Level 4 providing:
  - 2 x 2 bed apartments
  - 2 x 3 bed apartments

In conjunction with the on-site works, the proposal involves the following public domain works:

- The removal of three redundant driveway connections to Rodley Avenue, servicing the existing three dwellings situated within the site.
- The construction of the proposed single access driveway connecting with Rodley Avenue in the north - western corner of the site.
- A reconfiguration of the existing potential kerb - side parallel parking areas adjoining the southern Rodley Avenue kerb alignment, associated with the abovementioned removal of redundant driveways and the construction of a new access driveway.
- The implementation of parking restrictions along the southern side of Rodley Avenue, in order to ensure refuse collection vehicles are able to access / vacate the proposed new site access driveway (see Section 3.4 of this report), resulting in the potential removal of three on - street parking spaces adjacent to the site.

### **3.3 LANDSCAPING AND OPEN SPACE**

A Landscape Plan accompanies the application and demonstrates high quality landscaping outcomes. This includes dense perimeter planting and vegetation to provide separation between public and private dwelling spaces.

### **3.4 STORMWATER DRAINAGE**

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

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

### **3.5 UTILITIES**

The site can 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 prior to the issue of any Construction Certificate.

### **3.6 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.

## 4 STATUTORY CONSIDERATIONS

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The applicable statutory planning instruments and relevant guidelines have been considered below.

### 4.1 STATE ENVIRONMENTAL PLANNING POLICY NO 55 – REMEDIATION OF LAND

Under Clause 7(1)(A) the consent authority must not consent to a development application unless consideration has been given to whether the land is contaminated.

The site is not identified on the EPA website as a contaminated site, nor has the land been used for anything other than residential uses. The likelihood of contamination is very low and so Council can support the application on that basis.

### 4.2 STATE ENVIRONMENTAL PLANNING POLICY NO.65 – DESIGN QUALITY OF APARTMENT BUILDINGS

The accompanying plans have demonstrated compliance with SEPP 65, with the exception of the provision of communal open space. Whilst numerically there is a minor shortfall in area, the quality of the communal open space is considered to be high, encouraging congregation and social interaction. We submit that this design outcome justifies the minor variation.

Plan No. DA05 details the architect's response to the Design Quality Principles of SEPP 65.

### 4.3 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.

### 4.4 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 principals 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 proposed residential apartment building provides for the community's housing needs in an emerging high density residential environment. The site location maximises public transport usage and encourages walking and cycling, particularly to the Penrith City Centre and wider recreational uses
- The proposal provides for a mix of bedroom and apartment styles and arrangements. This mix of housing would suit a range of household types living in close proximity to services and facilities, Penrith City Centre and wider recreation uses.
- A high level of residential amenity is provided for in the design of the proposal through the provision of high architectural design, private courtyards, terraces and balconies and common open space area in a landscaped setting.
- The proposed apartment mix provides affordable housing options within the building.
- The proposal provides for a residential apartment building which is the type of development emerging in the area as a result of recent zone changes on the area to permit this type of development.

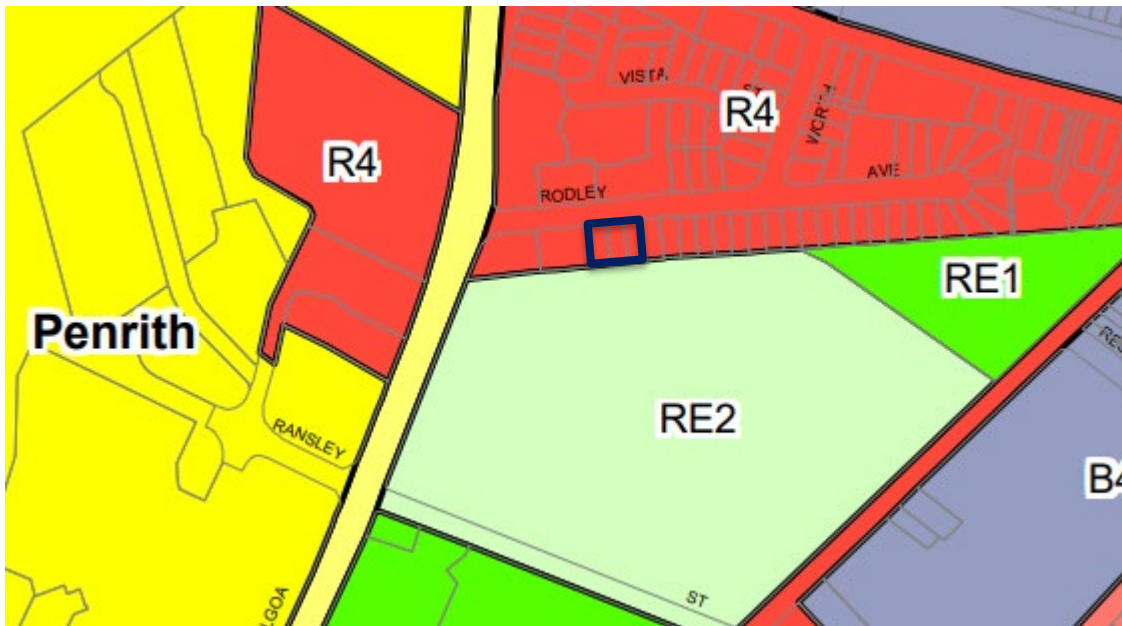


Figure 6 Land use zoning map

The Land Use Table of the LEP nominates *Residential Flat Building* as a permissible form of development in the zone. 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
4.3 Height of Buildings:	18.0m	<18.0m	The main building is within the 18m height limit. However, there is a minor height breach caused by the lift overrun. This structure is located centrally within the building footprint and will not result in any impacts. A Clause 4.6 Request to Vary a Development Standard has been appended to this report.

**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

5.6	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
5.16	Subdivision of, or dwellings on, land in certain rural, residential or environment protection zones	N/A
5.17	Artificial waterbodies in environmentally sensitive areas in areas of operation of irrigation corporations	N/A
5.18	Intensive livestock agriculture	N/A
5.19	Pond-based, tank-based and oyster aquaculture	N/A

#### Part 7 Additional Local Provisions

Provision	Comment	
7.1	Earthworks	N/A
7.2	Flood planning	Overland flow has been addressed by the stormwater consultant. The development is considered acceptable.
7.3	Development on natural resources sensitive land	N/A
7.4	Sustainable development	The proposed development includes energy efficient initiatives that will contribute to the long-term sustainability of the building. This includes the necessary BASIX responses.
7.5	Protection of scenic character and landscape values	N/A
7.6	Salinity	N/A
7.7	Servicing	Any required upgrades of servicing can be identified and detailed prior to the issue of any Construction Certificate.
7.8	Active street frontages	N/A
7.9	Development of land in the flight paths of the site reserved for the 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	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
7.26	Serviced apartments	N/A

The proposed development is consistent with the provisions of the LEP.

## 4.5 PENRITH DEVELOPMENT CONTROL PLAN 2014

The following assessment has been made in respect of the industrial development controls within the DCP.

### Penrith Development Control Plan

#### C1 Site Planning and Design Principles

A site analysis was undertaken by the architect prior to commencing the design process. This process ensures the appropriate siting of the building, as well as placement of infrastructure and site access requirements. The proposed development is consistent with other residential flat buildings in the

#### C4 Land Management

Appropriate measures will be installed to minimise any potential sedimentation runoff from the site. Additionally, it is submitted that the historical use of the site would suggest potential contamination is highly unlikely.

#### C5 Waste Management

Waste management storage and collection infrastructure, consistent with the Penrith DCP requirements and the discussions at the pre-DA meeting, have been included in this proposal. The proposed waste solution for the development is considered to be consistent with other residential flat buildings in the locality.

#### C6 Landscape Design

A Landscape Plan demonstrating compliance with the principles of the DCP accompanies this application.

#### C7 Cultural and Heritage

There are no heritage issues relating to the subject site or any nearby properties or buildings.

#### C10 Transport, Access and Parking

##### 10.5 Parking, Access and Driveways

The following parking rates apply to the proposal.

Residential Flat Buildings	<p><u>On-site resident parking for each dwelling:</u></p> <p>1 space per 1 or 2 bedrooms</p> <p>2 spaces per 3 or more bedrooms</p> <p>1 space per 40 units for service vehicles</p> <p>In addition, visitor parking is to be provided for developments that have 5 or more dwellings: 1 space per every 5 dwellings, or part thereof.</p> <p>1 space for car washing for every 50 units, up to a maximum of 4</p>
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An accompanying Traffic Impact Statement details how the proposal responds to the DCP and is acceptable in this instance.

#### D2 Residential Development

##### 2.5 Residential Flat Buildings

2.5.1	Character	The proposed building is reflective of contemporary residential flat building design and is consistent with nearby and adjoining development of a similar scale. The proposal will result in a positive contribution to the locality.
2.5.5	Landscaped Area	Landscaped areas are generally consistent with the provisions of SEPP 65 and the ADG's.
2.5.6	Front and Rear Setbacks	Building setbacks are proposed in accordance with the provisions of SEPP 65 and the ADG's. Appropriate separation between buildings will be provided in the final built outcome.
2.5.7	Side Setbacks	
2.5.9	Solar Planning	Appropriate solar access is available to the proposed dwellings. Main living areas benefit from maximum solar penetration ensuring a high level of amenity for units.
2.5.13	Energy Efficiency	The necessary BASIX assessments accompany this submission showing compliance has been achieved.
2.5.20	Accessibility and Adaptability	An acceptable number of adaptable units are proposed within this development.

It is submitted that the proposed development generally satisfies the provisions of the DCP.

## 5 KEY PLANNING ISSUES

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Whilst most aspects of the proposed development have been satisfactorily addressed in the accompanying consultant reports, the following impacts have been considered in the preparation of this development proposal.

### 5.1 STORMWATER AND FLOODING

A Stormwater Concept Design by S&G Consultants Pty Ltd 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. The strategy looks at the principles, objectives, and targets for WSUD, the opportunities and constraints to the implementation of WSUD, as well as the proposed WSUD measures to be implemented as part of the proposed works. The submitted report demonstrates the WSUD targets set by Penrith City Council will be met.

A Flood Level Enquiry was also obtained from Council. The building has been designed to account for the levels and the requirements of Council's Policy.

### 5.2 TRAFFIC GENERATION AND PARKING

A Traffic and Parking Impact Assessment accompanies the application supporting the proposed design. The report concludes as follows:

- The proposed site access arrangements are projected to result in motorists being capable of entering and exiting the subject site in a safe and efficient manner;
- The proposed off-street vehicular parking provision is considered to be satisfactory, given the requirements of DCP 2014;
- The internal passenger vehicle circulation arrangements are capable of providing for safe and efficient internal manoeuvring;
- The proposed site access arrangements are projected to result in a nett reduction in surrounding on-street parking supply of three spaces;
- Recent observations have indicated that there is capacity to accommodate the abovementioned reduction in on-street parking supply without unreasonable impacts on surrounding residential amenity;
- The internal passenger vehicle circulation arrangements are capable of providing for safe and efficient internal manoeuvring;
- The proposed dedicated refuse collection area within the upper basement parking level is projected to safely and efficiently accommodate refuse servicing of the site being governed by an internal traffic signal system;
- The surrounding road network operates with a satisfactory level of service during peak periods;
- The subject development has been projected to generate up to 12 additional peak hour vehicle trips to and from the subject site over and above that capable of being generated by the existing site dwellings; and
- It is considered that the adjoining road network is capable of accommodating the traffic projected to be generated by the subject development.

The proposed development is acceptable in a traffic and parking context.

### 5.3 VISUAL IMPACT

The proposed development is designed with a high level of architectural merit that exceeds that of nearby and adjoining properties. Its visual impact will be consistent with the character sought by the controls within the LEP.

Whilst there is a breach of the building height limit proposed, that non-compliance will not result in any unacceptable impacts on the visual presentation of the building.

The development is considered to satisfy the Design Quality Principles detailed in SEPP 65 and these are provided on sheet DA05 of the accompanying plans.

### 5.4 SOCIAL AND ECONOMIC

The additional housing opportunities arising from the proposed development are considered positive in both an economic and social perspective.

There are no negative impacts considered relevant to the proposal.

### 5.5 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.

### *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 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.

## **6 SECTION 4.15 ASSESSMENT**

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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.

### **6.1 SECTION 4.15(1)(A)(I) – ANY ENVIRONMENTAL PLANNING INSTRUMENTS**

The relevant environmental planning instruments have been considered earlier in this report. These include the following:

- *State Environmental Planning Policy No. 55 – Remediation of Land*
- *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *Sydney Regional Environmental Plan No. 20 – Hawkesbury/Nepean River (No. 2 - 1997)*
- *Penrith Local Environmental Plan 2010*
- *Penrith Development Control Plan 2014*

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

### **6.2 SECTION 4.15(1)(A)(II) – ANY PROPOSED INSTRUMENT THAT IS OR HAS BEEN THE SUBJECT OF PUBLIC CONSULTATION UNDER THIS ACT AND THAT HAS BEEN NOTIFIED TO THE CONSENT AUTHORITY**

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

### **6.3 SECTION 4.15(1)(A)(III) – ANY DEVELOPMENT CONTROL PLAN**

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

### **6.4 SECTION 4.15(1)(A)(IIIA) – ANY PLANNING AGREEMENT OR DRAFT PLANNING AGREEMENT ENTERED INTO UNDER SECTION 7.4**

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

### **6.5 SECTION 4.15(1)(A)(IV) – THE REGULATIONS**

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

## **6.6 SECTION 4.15(1)(A)(V) – ANY COASTAL ZONE MANAGEMENT PLAN**

Not relevant to the proposed development.

## **6.7 SECTION 4.15(1)(B) – THE LIKELY IMPACTS OF THAT DEVELOPMENT**

It is demonstrated through this report that no significant impacts would arise as a result of this development proceeding. The scale, bulk and design of the building is consistent with other similar buildings in the locality. Moreover, the proposal is consistent with both Council's LEP and DCP.

The design of the proposed building has been considered in both Council's Urban Design Review Panel and Pre-DA meetings and the matters raised within those forums have been responded to in this final design. On that basis it is submitted that the proposed development will not create any unacceptable impacts on the locality.

## **6.8 SECTION 4.15(1)(C) – THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT**

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

The site is considered to be suitable for the development for the reasons outlined below:

- The proposal is permissible with consent in the R4 zone.
- The proposal represents an appropriate land use and built form located on an appropriately serviced site that is in an accessible location.
- The proposal represents an increase in housing choices in the Penrith CBD.

## **6.9 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.

## **6.10 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.

## **7 CONCLUSION AND RECOMMENDATION**

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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. It is not expected to 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 be approved.



# APPENDIX A

## CLAUSE 4.6 REQUEST TO VARY DEVELOPMENT STANDARD



# CLAUSE 4.6 REQUEST TO VARY DEVELOPMENT STANDARD

PROPOSED RESIDENTIAL FLAT  
BUILDING

44-48 RODLEY AVE, PENRITH



## CLAUSE 4.6 REQUEST TO VARY DEVELOPMENT

Prepared by:

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Client and Land Details

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Client: Inglow Investments  
Subject Site: Lots 62, 63 and 64 DP 33490, 44-48 Rodley Ave, Penrith  
Proposal: Proposed Residential Flat Building



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Warwick Stimson RPIA  
Director



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# 1 INTRODUCTION

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

Stimson Urban & Regional Planning has been engaged by Inglow Investments Pty Ltd to prepare a request to vary a development standard in respect of its proposed residential flat building at 44-48 Rodley Ave, Penrith. The proposal is to be assessed by Penrith City Council and this request accompanies plans and other documentation, including a Statement of Environmental Effects, submitted to Council. This variation is to be read in conjunction with that material.

The amended plans propose a breach in the *height of building* development standard and this submission aims to address that aspect of the application. The request is considered to be reasonable in the circumstances and argues why compliance with the standard is unnecessary on the grounds that:

- a) there are sufficient environmental planning grounds to justify the contravention of the development standards, namely the provision of additional housing in an accessible location;
- b) the proposed development is in the public interest because the proposed development achieves relevant objects of the *Environmental Planning & Assessment Act 1979* and is consistent with the relevant control objectives and development standards, despite the non-compliance;
- c) the proposed breach in height is considered to be minor, with that breach arising as a result of the extension of the lift overrun only;
- d) the proposed lift tower is located centrally on the rooftop and unable to readily viewed from the public domain; and
- e) this variation request satisfies the tests established by the Land and Environment Court for the justification and assessment of variations to development standards.

It is considered there are sufficient environmental planning grounds to support the variation. These include the proposal complying with the relevant development standards within Council's LEP, satisfying the objectives of the zone and the height of building control, and the enormous public benefit arising out of this development through the provision of additional housing. The relatively minor variation in building height will not negatively impact on nearby or adjoining sites, however it maximises the building envelope, representing the most efficient way to maximise the public benefit of housing stock in this area.

## 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 is unnecessary;
- Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable;
- Has Council by its own actions, abandoned or destroyed the development standard, by granting consents that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable; or

- Is the “zoning of particular land” unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable and unnecessary as it applied to that land. Consequently, compliance with that development standard is unnecessary and unreasonable.

*Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*

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).

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

This most recent case has been considered in detail in Section 3 of this report.

## 2.2 THE PROPOSED DEVELOPMENT

The subject application seeks Council's approval to demolish the existing dwellings and for the construction of a residential flat building development comprising a total of 29 dwellings, made up of the following:

- 26 two-bedroom dwellings (including one adaptable); and
- 3 three-bedroom dwellings (including two adaptable).

The dwellings are proposed to be contained within a five-storey building located centrally on the site.

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

The maximum height of building control on the site is 18.0m. A minor variation of 600mm occurs as a result of the lift overrun. We note the remainder of the building is under the 18m height limit.

## 2.3 WHAT IS THE NAME OF THE ENVIRONMENTAL PLANNING INSTRUMENT THAT APPLIES TO THE LAND?

Penrith Local Environmental Plan 2010.

## 2.4 WHAT IS THE ZONING OF THAT LAND?

The subject site is zoned R4 High Density Residential.

## 2.5 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 proposed residential apartment building provides for the community's housing needs in an emerging high density residential environment. The site location maximizes public transport usage and encourages walking and cycling, particularly to the Penrith City Centre and wider recreational areas including the Nepean River.
- The proposal provides for a mix of bedroom and apartment styles and arrangements. This mix of housing would suit a range of household types in close proximity to the City Centre.



- A high level of residential amenity is provided for in the design of the proposal through the provision of high architectural design, private courtyards, terraces and balconies and common open space area in a landscaped setting.
- The proposed apartment mix provides housing options that are in walking distance to service and facilities and employment.
- The proposal provides for a residential apartment building which is the type of development emerging in the area as a result of recent zone changes on the area to permit this type of development.

## **2.6 WHAT IS THE DEVELOPMENT STANDARD BEING VARIED?**

Height of Building.

## **2.7 UNDER WHAT CLAUSE IS THE DEVELOPMENT STANDARD LISTED IN THE ENVIRONMENTAL PLANNING INSTRUMENT?**

Clause 4.3 Height of Building.

## **2.8 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) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

### ***Character of the area***

The proposed development is consistent with the built form anticipated in the locality and is similar to another residential flat development that has been approved by Council nearby. This development is representative of the built form envisaged in the location and the accepted interpretation of the applicable controls.

### ***Overshadowing***

The proposed variation will minimise the potential overshadowing on surrounding properties as demonstrated in the accompanying shadow diagrams.

In summary, the minor height breach, coupled with the generous setbacks, does not create any unacceptable shadowing impacts through mid-winter.

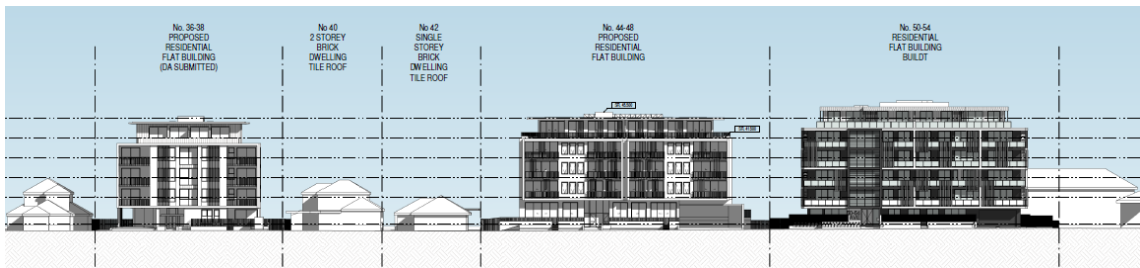


Figure 1 Streetscape including proposed development

***Character and Streetscape Amenity***

The streetscape plan above demonstrates a consistent contribution to the streetscape would be made as a result of this development. Its scale and bulk are consistent with the controls that apply to the zone, and with development that has already been constructed in the locality.

**2.9 WHAT IS THE NUMERIC VALUE OF THE DEVELOPMENT STANDARD IN THE ENVIRONMENTAL PLANNING INSTRUMENT?**

The maximum building height is 18.0m.

**2.10 WHAT IS THE PROPOSED NUMERIC VALUE OF THE DEVELOPMENT STANDARD IN YOUR DEVELOPMENT APPLICATION?**

The proposal exceeds the building height by 600mm, caused by the lift overrun.

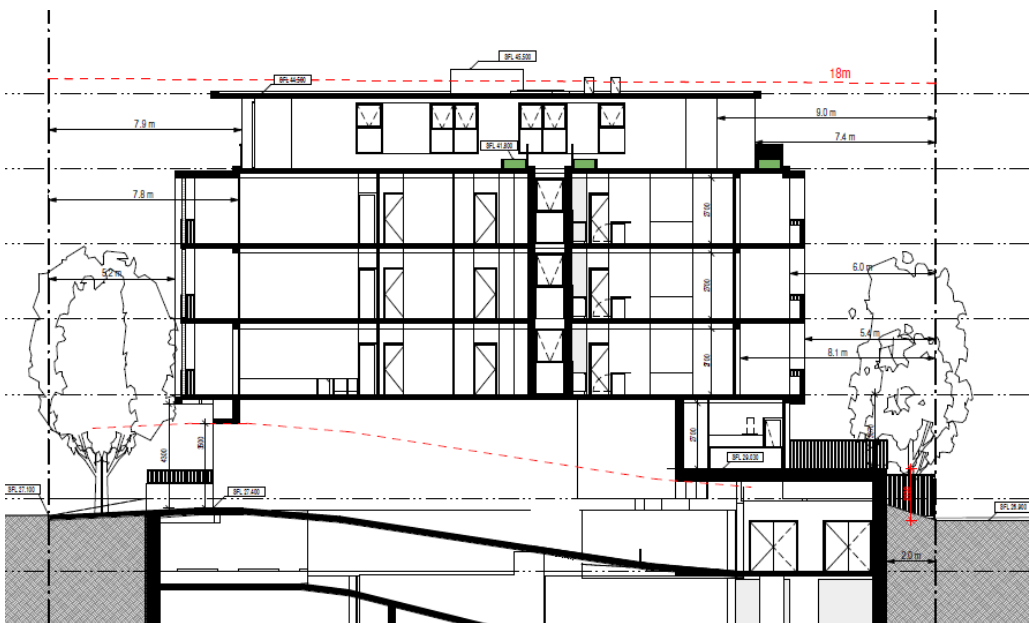


Figure 2 Extent of height breach

## 2.11 WHAT IS THE PERCENTAGE VARIATION?

We estimate the variation sought is approximately 3%.

## 2.12 HOW IS STRICT COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THIS PARTICULAR CASE?

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.
- The proposal does not impact on the visual amenity, or minimise loss of privacy or solar access.
- There is no heritage item on the site.
- The proposal provides a high-quality urban form and results in a building that will contribute to a varying skyline given the uniform height limit in this locality.
- 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 significantly reduce views, privacy or solar access.
- 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 LGA in locations that are 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.

## 2.13 HOW WOULD STRICT COMPLIANCE HINDER THE ATTAINMENT OF THE OBJECTS SPECIFIED IN SECTION 5(A)(I) AND (II) OF THE ACT?

Section 1.3 of the *Environmental Planning and Assessment Act 1979* details its objectives:

*The objects of this Act are as follows:*

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community 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 clauses 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 18.0m height limit as the resultant development would not represent the orderly and economic use of the land and it would limit the provision of housing in close proximity to services and facilities. The height encroachment is considered to be imperceptible in the context of the overall development and surrounding locality.

## **2.14 IS THE DEVELOPMENT STANDARD A PERFORMANCE-BASED CONTROL?**

No, it is prescriptive.

## **2.15 WOULD STRICT COMPLIANCE WITH THE STANDARD, IN YOUR PARTICULAR CASE, WOULD BE UNREASONABLE OR UNNECESSARY?**

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 Penrith CBD, 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:

- Building Alignment to existing context.
- Extensive landscaping throughout .
- Minimal shadow impacts.
- Positioning of that part of the building above the height limit centrally within the floor plate.

## **2.16 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, including:

- The proposed variation of the height standard allows for the provision of additional housing stock (in perpetuity) over and above that of a strictly compliant development.
- The height variation allows for optimisation of the site's development potential as a transport-accessible site and provision of much needed housing in the Penrith Local Government Area which in turn would assist in Council achieving the goals of its housing strategy and the NSW Government's *A Plan for Growing Sydney, Future Directions for Social Housing* and the *Metropolitan Strategy*.
- The proposal represents the orderly and economic development of the land, and provides for housing, both two objectives of the Environmental Planning and Assessment Act 1979.
- The proposed height variation makes for efficient, economic and optimal use of the subject site, taking advantage of the local topography, and surrounding context.
- The non-compliant height will not give rise to any material streetscape or amenity impacts compared to a compliant development, by virtue of the proposed siting, massing, setbacks, design of the building, and site characteristics. The proposed development reflects a built form that is consistent with the controls and development that has been already constructed in the locality.
- The proposed development satisfies the objectives of the height control and zone objectives, despite the non-compliance.
- Compliance is achieved with all other development standards that apply to the development.

- Design excellence has been demonstrated through the general satisfaction of the ADG controls and SEPP 65 design principles.

The environmental planning grounds cited above are considered to be sufficient.

### 3 SPECIFIC CONSIDERATION OF CL 4.6 OF PENRITH LEP 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 LEP 2010**

(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*

Subclause (3) requires the following to be demonstrated for the purposes of this consideration:

- (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.*

In respect of the height of building variation, the reasons why compliance is unreasonable or unnecessary are provided in Section 2.

We also note that the objectives of the standards have been achieved notwithstanding the non-compliance with those standards (*Wehbe v Pittwater Council*) as follows:

Height of Building

- 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 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 building height development standard.

Height of Building

The position we submit has been (we believe) adequately presented earlier in this 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 building's roof, and there being no perceptible impacts arising as a result. 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

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Compliance with the building height development standard is considered to be unreasonable and unnecessary in the circumstances of the case, and it is considered that there are sufficient environmental planning grounds to vary the standards in this case.

The request to vary the development standards is considered to be well-founded on the grounds that the non-compliance with the building height development standard, *inter alia*:

- enables provision for additional housing stock in a transport-accessible location;
- allows for the efficient and economic development of a site that is capable of accommodating, and suitable for, the additional height proposed;
- enables a development that reflects the changing character of the locality without significant impact on the use and enjoyment of adjoining land;
- does not fetter consistency of the development with the objectives of the building height and FSR development standards, or the objectives of the zone;
- achieves relevant objects of the *Environmental Planning & Assessment Act 1979*, in particular, the provision of housing, in the public interest; and
- does not raise any issues of State or regional planning significance.

This variation request addresses the matters required to be considered in Clause 4.6 of Penrith LEP 2010. Council is requested to exercise its discretion to vary the development standards by granting consent to the proposed development despite its non-compliance with the building height standard.