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## PLANNING REPORT

PENRITH CITY COUNCIL ATS ADAM HUGHES PTY LTD  
32-36 LETHBRIDGE STREET, PENRITH – LAND AND ENVIRONMENT COURT  
PROCEEDINGS 210327 OF 2017

### REVISED CLAUSE 4.6 VARIATION: EXCEPTIONS TO DEVELOPMENT STANDARDS (HEIGHT OF BUILDING) – 24 May 2018

#### 1. Height of Building Variation

This request has been prepared to provide written justification for the proposed variation to Councils Height of Building (HOB) development standard stipulated by Clause 4.3. The maximum height of building proposed is 20.76 metres, which represents a maximum height variation of 2.76 metres to the 18m height control stipulated by Clause 4.3 of the PLEP2010 (a 15% variation). This planning report has been prepared having due consideration to the Joint Experts Report, dated 30 April 2018 and to the Expert's meeting held on 23 May 2018.

Area of non-compliance	Proposed RL	Proposed building height	Exceedance of building height	% of variation
Roof parapet (south-western corner)	RL62.815	19.905m	1.905m	10.5%
Roof level slab	RL62.74	19.78m	1.78m	10%
Atrium height	RL62.39	20.23m	2.23m	12%
Lift overrun	RL64.04	20.76m	2.76m	15%
Northern clerestory window (level 5) above unit no. 502	RL63.44	20.48m	2.48m	14%
Northern clerestory window (level 5) above unit no. 503	RL63.44	20.07m	2.07m	11.5%
Southern clerestory window (level 4) above unit nos. 402 & 403	RL61.262	18.462m	462mm	2.5%

The latest architectural plans (version Issue C, dated 24/5/18) have been substantially amended in terms of the articulation and modulation of key edges and facades and the building presentation across the three frontages, ranging from 5-6 storeys. The building, when viewed from Lethbridge Street has been substantially amended in accordance with discussions held at the joint Experts meeting held on the 23 May 2018. The Lethbridge Street frontage on level 5 has been further treated with the reduction in balcony length and height of the balustrades with a direct result being an improved built form when viewed from the public road. The revised

proposal is considered to be consistent with the streetscape and character of the area that has been developed in this particular precinct which is dominated by residential apartment buildings. Other projects in this immediate locality have exceeded the 18m height limitation and have received Council's approval notwithstanding the breach in the LEP standard for height control. All building height above the 18m is significantly recessed off the building edges reducing bulk and scale and overshadowing implications to the adjoining premises. The land has a natural slope from Lethbridge Street to the rear and the required ground RL level has been set to comply with Council's flooding requirements. The slope of the land from the front to the rear effectively reduces the impact of the height of the lift overrun as the building camouflages the 3m height variation to approximately a 1m impact.

As a result of various discussions with Council's consultant town planner and urban designer it is evident that Council is concerned regarding the breach of height particularly at the rear of the premises. As a result of the issues that have been raised by Council on this specific matter two apartments (being units 5.01 and 5.02 as part of the S34 drawings DA08) have been deleted with a direct result being a reduction in height at the rear of the development to a substantial degree.

A variation to the strict application of the Height of Building control is considered appropriate for the subject site as:

- The objectives of the PLEP2010 Height of Building controls are achieved notwithstanding the technical non-compliance.
- The objectives of the PLEP2010 R4 High Density Residential Zone are achieved notwithstanding the technical non-compliance.
- There are sufficient environmental planning grounds to support the proposed variation.
- The public benefit of maintaining the development standard is not eroded by the proposal given the minor variation and the benefits associated including high quality residential units adjoining existing construction sites for high density residential uses.

The variation to the 18-metre height control occurs primarily within the central portion of the site (to accommodate lift overrun and part of the roof structure for residential apartments 5.01, 5.02, 5.03 and 5.04 as shown on drawing Level 5 DA08A). A northern elevation and east/west section plan are shown on the following pages to highlight the appropriateness of the proposed scale when viewed in conjunction with the surroundings (approved DA's) under construction. There is also a minor breach to height which accommodates the highlight windows in the living area in apartments 5.02 and 5.03. These breaches are considered minor and the projecting structures are provided by way of an architectural feature and result in an improved design from aesthetic view point. Accordingly, we note the following max RL's for adjoining sites:

**DA15/1108:** 18-20 Colless Street: RL 65.79 (1.75m higher than the proposal now before Court)

**26-28 Lethbridge Street:** RL: 63.30m (roof aligns with roof proposed at 32-36 Lethbridge Street (Subject Site

### North Elevation: Showing Contextual Scale – Drawing dated 21 May 2018



### North Elevation: Showing Contextual Scale – Drawing dated 24 May 2018



**Comment:** The revised elevation when viewed from Lethbridge Street demonstrates that a concerted effort has been made by the project architect to recess levels 5 & 6 from the eastern and western boundaries. This results in a building of lesser bulk and scale with modulated built form. The front elevation of the proposed building has been substantially amended in accordance with comments made by Council's Urban Designer at the Joint Expert's meetings. The above elevation demonstrates how the building fits within the existing streetscape having regard to the development to the west.

### South Elevation: Showing Contextual Scale – Drawing dated 21 May 2018



### South Elevation: Showing Contextual Scale – Drawing dated 24 May 2018



Architectural elevation drawing of the Lethbridge Student Residence. The drawing shows a multi-story building with a mix of brick, dark grey, and white panels. To the left is a smaller white building. The drawing includes labels for various levels and features:

- Labels on the left side of the main building: 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200.
- Labels on the right side of the main building: 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300.
- Labels on the left side of the smaller building: 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400.
- Labels on the right side of the smaller building: 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500.

**West Elevation: Showing Contextual Scale – Drawing dated 21 May 2018**



**West Elevation: Showing Contextual Scale – Drawing dated 24 May 2018**



**Comment:** It is evident from the above elevation that with the deletion of units 5.01 and 5.02 this permits a greater separation to the adjoining premises, reduces bulk and scale and permits increased solar access to adjoining premises and reduces any adverse impacts.

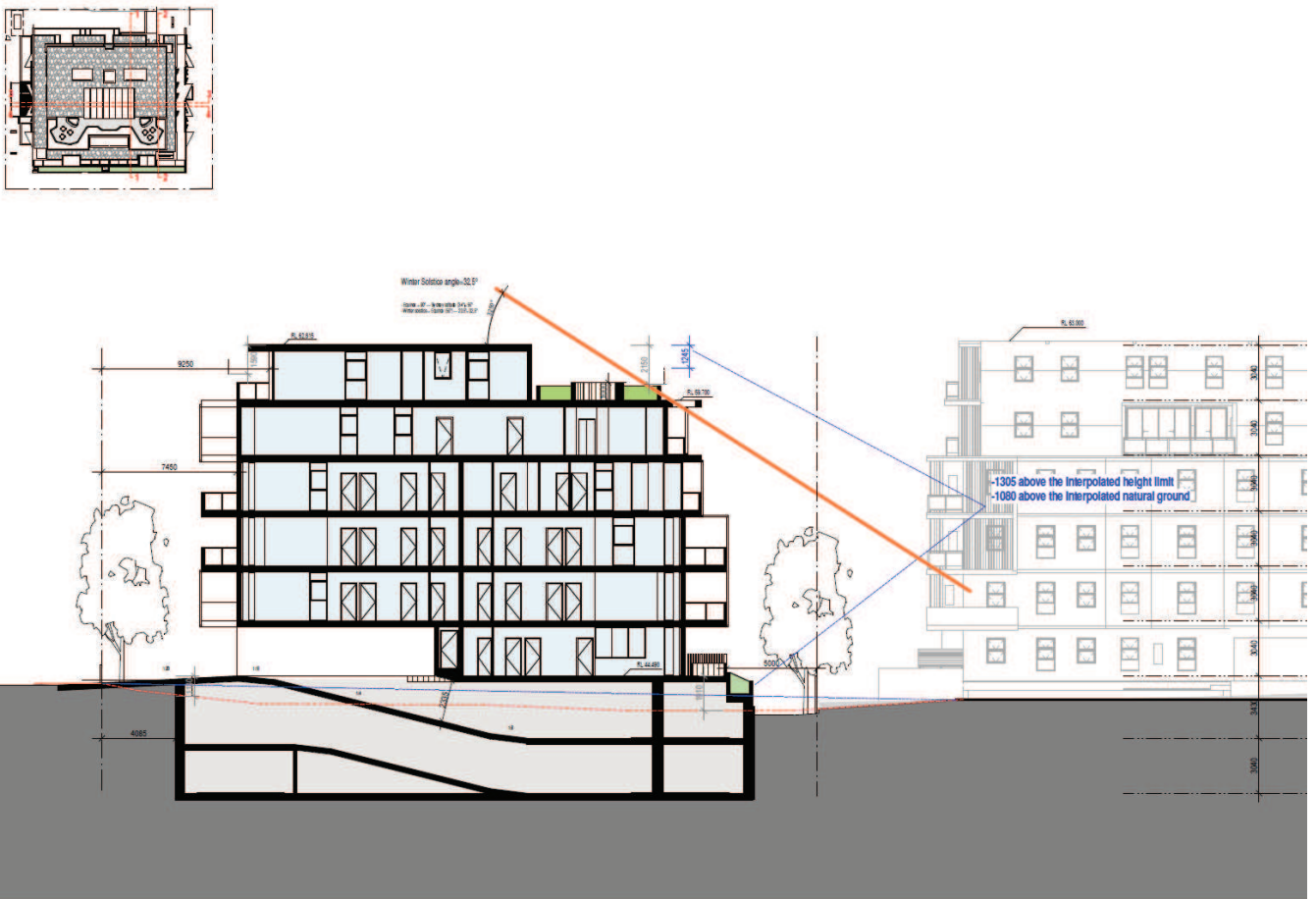
## Streetscape Analysis (showing contextual scale of adjoining sites)



**Comment:** The above drawing is a valuable tool in evaluating the character of the area and the consistency that the proposal does have with Council's desired future character of the locality. The proposal is consistent desired future character of the locality which adopts a 6 storey building form. The proposal is also consistent with Section 2.5.12 Building Design for the DCP in that the concept incorporates a variety of architectural features to minimise the apparent scale and bulk of the building proposed.



Drawing: DA14A – Issue C – 24 May 2018



Drawing: DA14B – Issue C – 14 May 2018

## 2. Clause 4.6 Considerations

As this proposal involves a departure from the Height of Building (control of the PLEP2010, a formal variation to this standard is required under *Clause 4.6- Exceptions to Development Standards*. This provision allows consent to be granted for a development even though it would contravene a development standard imposed by this or any other planning instrument.

The provisions of Clause 4.6 which the consent authority must have regard to in determining whether a development that contravenes a development standard should be supported are summarised as follows:

- *That compliance with the development standard is unreasonable and unnecessary in the circumstances of the case; Cl 4.6 (3)(a)*
- *That there is sufficient environmental planning grounds to justify contravening the development standard; Cl 4.6 (3) (b)*
- *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: Cl 4.6 (4)(a)(ii)*
- *The public benefit of maintaining the development standard, and Cl 4.6 (5)(b)*
- *Any other matters required to be taken into considered by the Director-General before granting concurrence Cl 4.6 (5)(c)*

In preparing the Clause 4.6 Variation due consideration has been given to the recent NSW Land and Environment Court decisions, as follows:

1. *Moskovich v Waverly Council [2016] NSWLEC 1015 – 20 January 2016*
2. *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 – 19 February 2016*
3. *Chidiac v Mosman Council [2015] NSWLEC 1044*
4. *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009*
5. *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 (S56A)*
6. *Wehbe v Pittwater Council [2007] NSWLEC 827 at [44] – [48]*
7. *Veloshin v Randwick Council [2007] NSWLEC 428*

It is evident from the more recent court cases referred to above that it is necessary to demonstrate compliance with a number of tests, which include the following:

- compliance with a development standard must be unreasonable or unnecessary in the circumstances of the case
- there are sufficient environmental planning grounds to justify contravening the development standard
- the proposed development is in the public interest and consistent with the objectives of the particular standard and objectives for development within the zone
- the development standard has been virtually abandoned or destroyed by Council's own actions in departing from the standard

In the preparation of this report due consideration has been given to the Respondent's Amended Statement of Facts and Contentions dated 20 April 2018. In this document Council defined a number of matters they considered required further amendment, one being the question of variation of height and the justification that had been submitted to support the variation. The project architect, in consultation with Tomasy Planning, has made a concerted effort to reduce the height of the building at the rear and to also recess certain components of the eastern and western side of the front elevation to reduce any adverse visual impacts and also the bulk and scale of the building. The drawings that form part of this report clearly demonstrate the efforts that have been made to justify the variation in height and to ensure that the amended proposal does not have adverse impacts by way of amenity upon adjoining premises and having due regard for Council's future desired character of this locality.

An assessment of the proposed height of building variation based on the architectural drawings, dated 21 May, 2018 is provided below.

### 1. The Proposed Variation

This Clause 4.6 variation seeks to vary the height of building standard stipulated by *Clause 4.3- Height of Buildings* of the PLEP2010.

Clause 4.3 (2) states:

*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.*

For the purposes of calculating height of building, the PLEP2010 provides the following definitions.

**building height (or height of building)** means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

It is proposed to provide a maximum height of building on the site of 20.76 metres. As specified in the architectural plans, this is specifically sectioned to the top half of level 6 and the rooftop lift overrun. The maximum height to the top of the roof parapet is 19.9m. The proposed built form has been modulated/recessed across the site for the purpose of providing internal amenity and maintained solar access and privacy for adjoining sites. A key component of the design refinement for the site was to ensure privacy/solar and visual impacts of the proposed built form remained minimal.

From the exterior, given the modulation and upper level setbacks, the proposed development presents as a five-storey building to the street and surrounding context. The proposal is also compliant where possible with the relevant Apartment Design Guideline controls, Councils DCP and representing a suitable built form in comparison to the surrounding built form (a number of which are under construction) as detailed in the sections provided within this report.

As detailed in the Architectural plans, the proposed built form has been skilfully designed and articulated to address all site edges whilst maintaining the amenity of the internal atrium and individual apartments. The proposal includes the addition of clerestory windows on the rooftop of the residential flat development which will enhance the internal amenity of the occupants within the building by providing an additional solar access and daylight within the private living areas of the residential units nos. 402, 403, 502 and 503. The north-facing clerestory roof form also provides an architectural roof element to the existing roof plane and enhances the urban design qualities of the building.

### **3. Objectives of the Zone and the Standard**

Clause 4.6 (4)(a)(ii) states that a request for exemption from a development standard must establish that the proposed variation is consistent with both the objectives of the zone and standard.

#### **Objectives of the R4 High Density Residential 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 proposal provides a mixture of varied residential units with quality finishes and varied orientation, alignment, layout and size which provides diversity to the Penrith housing market. It represents a high density residential land use, of high quality and that provides suitable internal amenity. The proposal is entirely consistent with the desired future character and dwelling densities envisaged for this precinct.

The character of the area is undergoing transition as a result of the rezoning of low density areas to R4 High Density and to increasing height limits up to 18m in this specific precinct. A number of development consents have been issued for high density development located in immediate proximity to the site and they include the following:

- a. 18-22 Colless Street: DA 15/1108 – Approval for a 6 storey residential flat building containing 51 units and a 56 place child care centre.
- b. 20-28 Lethbridge Street: DA 15/1175 – Approval for a 6 storey residential flat building containing 81 units;
- c. 25-31 Hope Street: DA 15/1185: Approval for a 6 storey residential flat building containing 61 units.

The number of approvals that have been granted by Council in this immediate locality proves that the locality is undergoing a major transitional change to higher density housing and the subject development meets the objectives of the R4 High Density Residential Zone.

#### **Objectives of the Height of Building Standard (Clause 4.3)**

While the proposal seeks a variation to the numerical height of building development standard, it is considered to be consistent with the relevant objectives of the control as detailed below:

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

- a) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*

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

Given the precedent set by Council in approving several DA's within proximity of the site with maximum heights (RL's) above that proposed by this application, the proposed built form, which is modulated, varied and recessed appropriately from boundaries represents a compatible scale for the site. The area has recently been rezoned to R4 High Density Residential and accordingly the provision of high quality architectural residential flat developments should be encouraged on the site. The development will result in minimal visual impact and does not result in the disruption of views from adjoining premises to any item of significance. The development does not result in loss of solar access to a public park or place such as a school.

The proposed heights (which vary across the site in respect of adjoining building interfaces) given the slope of the site have been strategically formulated to reduce associated impacts (views, privacy, solar). This includes stepped down forms, edge landscaping and building orientation to reduce privacy/solar impacts on surrounding properties. It is also important to understand that the finished ground floor levels of the site have been raised above the existing natural ground level to meet the flooding requirements for the site (1 in 100 + 500ml freeboard). This essentially raises the site and represents the predominant variation to the height control, however a suitable and responsive environmental design approach which is far superior to a lower height with risk to property for lower levels within the floodplain.

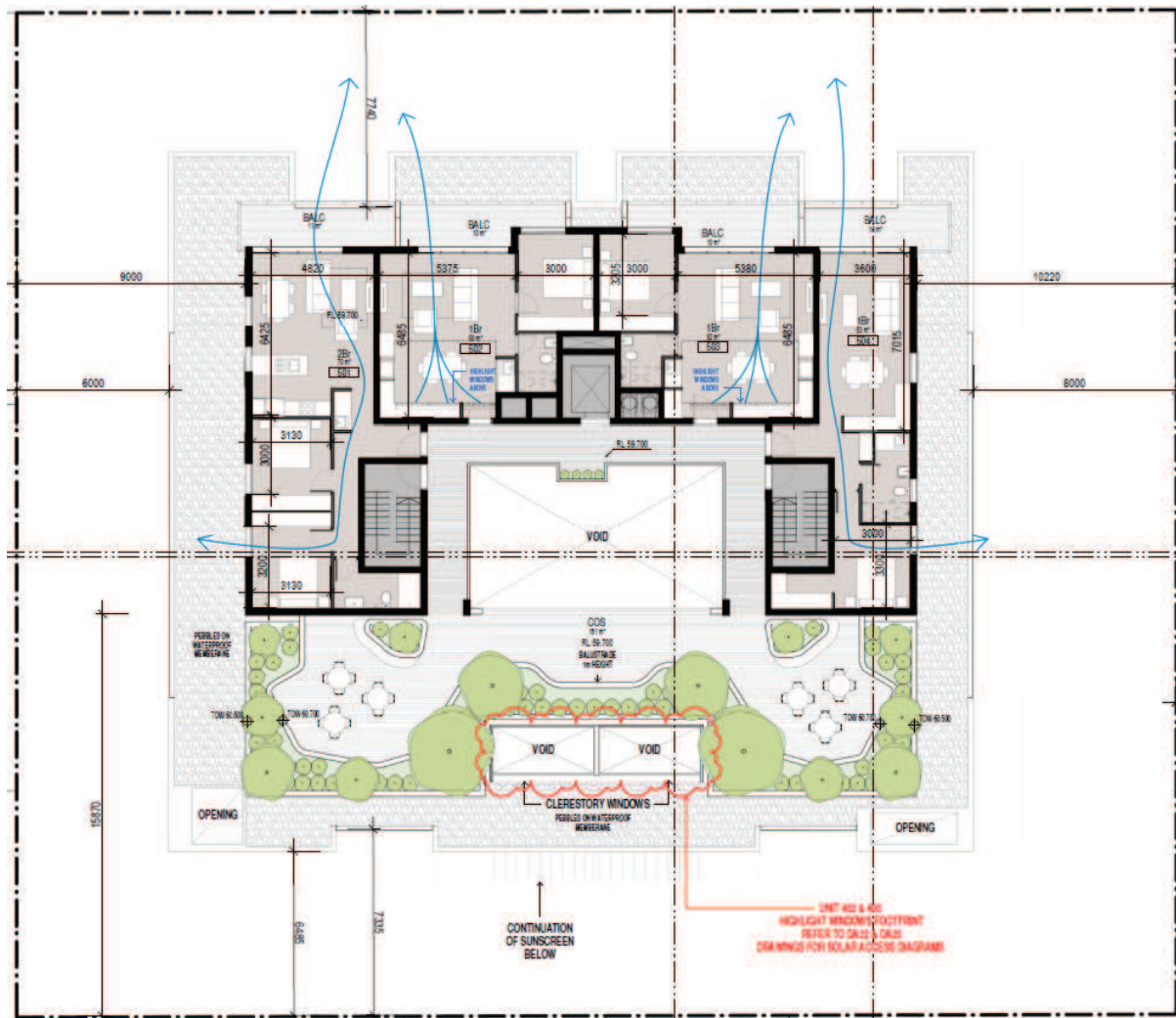
In terms of bulk of scale, there is no FSR control which applies to the site, however the building has been formulated to respond to key footprint controls (as identified in the Apartment Design Guidelines). The proposal generally meets the separation requirements of these controls and accordingly is considered to be appropriate for the site in terms of bulk and scale in an infill environment (given the surrounding land uses).

The deletion of units 5.01 and 5.02 at the rear of the development has substantially improved the southern neighbouring development and minimises any adverse overshadowing impacts. The deletion of units 5.01 and 5.02 is consistent with recommendations that have been made by Council both in discussion and in correspondence.

The proposed variation to the height control (15%) will not impact upon the fundamental detail of the building's design which proposes a high-quality development in a key growth area of Penrith. The proposal meets the objectives of Clause 4.3 of the PLEP2010 and has negligible impacts above that permissible within the height control (refer to solar analysis below). Given the majority of the built form along the southern elevation maintains compliance with Councils height controls, the development does not relay excessive bulk and scale when viewed from the adjoining neighbour.

The deletion of units 5.01 and 5.02 has also provided the opportunity to create a substantial passive recreational space on the roof top level for the occupants of the building. The amended level 5 drawing DA08 demonstrates how the project architect has introduced a communal open space area on the rooftop area which is a direct benefit to the occupants of the building and provides an improved environmental and aesthetic landscape feature as opposed to a bland roof structure. The landscaped communal area has been integrated with

the atrium and designed to provide two distinct areas for private recreation purposes which are connected to ensure integration the two communal facilities. The communal area has been designed so that two separate groups could occupy the groups at any one time or the facility could be used y one larger occupant group.



Drawing DA08 – Issue B – 24 May 2018

## Overshadowing Analysis:

The Site:



## 4. Consistency with the Aims of Clause 4.6

Given the proposal involves a departure from the height of building control of the PLEP2010, a formal variation to the standard is sought under Clause 4.6- Exceptions to Development Standards. Consent, may, subject to Cause 4.6, be granted for development even though development would contravene a development standard imposed by this or any other environmental planning instrument.

The following considerations are addressed below in respect of this request to vary the strict application of Clause 4.3 of the PLEP2010.

*“That compliance with the development standard is unreasonable and unnecessary in the circumstances of the case;*

*That there is sufficient environmental planning grounds to justify contravening the development standard;*

*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;*

*The public benefit of maintaining the development standard; and*

*Any other matters required to be taken into consideration by the Director-General before granting concurrence."*

It is submitted that strict compliance with the height of building control is not necessary in the circumstances for the following reasons.

***The development standard is unreasonable and unnecessary in the circumstances of the case;***

The proposed residential flat development is compatible with the size and scale of the approved residential flat developments within the immediate precinct, all of which exceed the maximum 18 metre height requirement. The northern (front) building edge is fully compliant with the maximum 18 metre building height requirement and a number of design measures have been incorporated to minimise the upper-most level by increasing the front setback from Lethbridge Street and adopting a low-profile skillion roof form which is compatible with the roof elements of the neighbouring buildings (including 18-22 Colless Street; 20-28 Lethbridge Street and 25-31 Hope Street). The upper level is barely visible behind the level 5 parapet height and has been designed to ensure that minimal impacts on views, solar access and privacy arise for the surrounding context.

Regardless of the minor technical non-compliance, the proposal aligns with the LEP objectives and desired future character for the area, particularly given the precedent set via previous approvals (a number of which representing a higher RL than that proposed via this DA). Departure from the standard has negligible impacts, particularly when viewed contextually with the adjoining sites under construction. The proposal provides a compliant building envelope in accordance with the ADG and therefore floorspace has been redistributed to upper levels as opposed to a larger lower level floorplate.

Given the quality of the proposed design and the precedent for built form variations approved by Council within close proximity to the site, the height of building standard for the site is considered unreasonable and unnecessary in the circumstances of the case.

***That there is sufficient environmental planning grounds to justify contravening the development standard;***

The proposed variation has urban design/planning merit through locating increased densities recessed from the building line and ensuring lift overruns are centrally located to minimise visual impact. Units 5.01 and 5.02 have been deleted from level 6 to reduce any adverse impacts on adjoining premises due to the height of the building in this location. The proposal has been designed to respect the desired future character of the area and to provide for the housing needs of the community within a high density residential environment as defined by the objectives of the R4 High Density residential zoning. The benefits of the proposed design far outweigh the negligible impacts associated with the minor variations to height (which have negligible impacts in terms of overshadowing, amenity and privacy).

From a planning perspective, there is sufficient grounds to justify the variation to the height development standard for the following reasons:

- The highest RL of the site aligns with the approved roof level of adjoining sites
- The height variation does not result in significant overshadowing impacts to neighbouring properties.
- The proposal aligns with the precedent for building heights approved and under construction within the adjoining precinct.
- The proposal represents a building footprint which responds to the site context (within a flood plain) without significant impacts.
- The desired future character of the locality is not jeopardised by the proposal and is consistent with Council's objective for this precinct being higher density residential development.
- The visual bulk and scale of the development as a result of the exceedance to the building height will remain compatible with the immediate neighbouring buildings to the west and other buildings that are currently approved or under construction in this immediate locality.
- As a result of the exceedance to the building height provision has been made for a communal rooftop garden which is a direct benefit to future occupants of this development. It provides a very attractive, passive open space as opposed to a bland roof structure that would have been the result of a building with compliant height requirements. The rooftop open space has been interconnected in order to extend recreation potential and to encourage social interaction.
- The area of non-compliance does not give rise to any adverse environmental impacts to the amenity of the neighbouring properties to the south. The area of non-compliance does not contribute to any adverse overshadowing impacts to adjoining developments.
- The setting back of the building a further 1 metre from Lethbridge Street results in an enhancement of the landscaped area and the opportunity for deep soil planting. The setting of the building back a further 1 metre also reduces the visual impact of the building when viewed from Lethbridge Street. Notwithstanding setting the building back a further 1 metre results in a minor noncompliance in the rear setback of the southern component of the building. However, the minor noncompliance outweighs the strict compliance with the prescribed rear setback.

### **Shadow Analysis:**

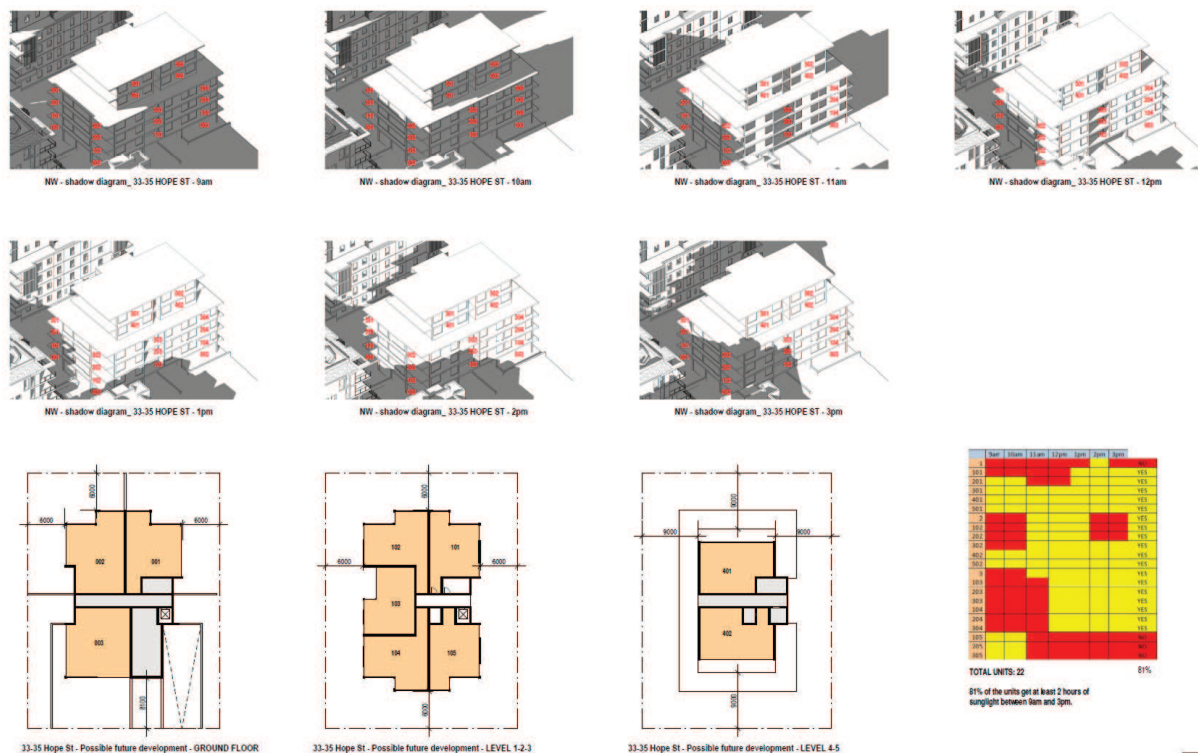
A comprehensive shadow analysis of the proposed development to the adjoining developments (south of the site) has been carried out by the project architect. This includes comparative shadow analysis on both 27-31 Hope Street and 33-35 Hope Street located south of the site (using a compliant building height v proposed building height). The results of this are shown below clearly demonstrating that the proposed building height has minimal additional impacts in regards to overshadowing above that provided via a compliant building envelope. It is important to note that the sites to the south will experience some level of solar impacts regardless and that these buildings should have been designed (knowing future development would take place to the north), therefore focusing on unit alignments with east/west primary orientation for solar, with secondary points to the north.

Refer to drawings DA25 and DA26 (Issue A – 21 May 2018) for shadow diagrams relating to 27-31 Hope Street and 33-35 Hope Street:

## 27-31 Hope Street: (located south of the site):



## 33-35 Hope Street: (located south of the site):



Based on the analysis provided above and having discussions with the project architect it is evident that from a solar analysis/overshadowing perspective the proposed development has sound planning merits warranting approval (in accordance with the revised set of architectural drawings, dated 21 May 2018).

***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.***

The proposal is consistent with the objectives for development within the R4 High Density Residential zoning along with Clause 4.3 (Height of Building) as detailed above. The proposal will provide a number of public benefits in terms of employment (construction + operation), housing and employment opportunities associated with ongoing maintenance, leasing and selling of apartments. It also provides a significantly improved urban form more consistent with the desired future character of the area as a high density residential precinct. The proposal will increase public amenity and provide a benchmark infill residential apartment building. It is noted that when this application was notified by Council there was minimal opposition from the community with only one formal objection which relates to the property immediately to the east. The development will permit the public to have an increased choice in the diversity of housing opportunities as the development comprises a mix of residential unit sizes.

***The Development standard has been virtually abandoned or destroyed by Council's own actions in departing from the standard.***

The site is located within a recently rezoned high density residential environment which currently consists of low density residential dwelling however with a desired future character of high density residential. Since being rezoned, the area has undertaken rapid growth with a number of large residential flat buildings now under construction (a number of which exceed the 18m height control for the site). Given the site (subject of this DA) is an infill development (i.e. not located on the corner), it is important its parapet and roof heights align with adjoining building to maintain a continuous built form (best practice urban design).

A number of adjoining building (including sites under construction) have been approved with a building height greater than that proposed via this DA. Accordingly, the development standard (18m height of building control) has been virtually abandoned by Council (via several DA approvals) to the point where the height control is now driven by streetscape alignment and a continuous built form streetscape presence as opposed to the numeric height control. The proposed design appropriately responds to this and presents a suitable built form which responds to the sites constraints (flooding) and provides quality residential units.

To support this argument it is noted that high density developments located in the immediate proximity to this site include:

- a. 18-22 Colless Street: DA 15/1108 – Approval for a 6 storey residential flat building containing 51 units and a 56 place child care centre.
- b. 20-28 Lethbridge Street: DA 15/1175 – Approval for a 6 storey residential flat building containing 81 units;
- c. 25-31 Hope Street: DA 15/1185: Approval for a 6 storey residential flat building containing 61 units.

A number of the buildings approved or under construction have breached the height standard.

***North view (showing surrounding footprints): 32-36 Lethbridge Street (red façade)***



***The Public Interest***

Under Clause 4.6 (5a) of the PLEP2010, the consent authority must consider if there is public benefit associated with maintaining the development standard.

The public benefits of the broader development far outweigh the negligible impact associated with the minor variation to the height. A number of key public benefits are listed below

- Improved urban design/public domain (landscaping upgrades + varied and visually appealing modulated façade).
- Recessed upper levels with negligible impacts in terms of overshadowing/privacy and solar impacts.
- Deletion of apartments 5.01 and 5.02 to enable the opportunity of a roof top garden and to substantially reduce any overshadowing impacts on development sites to the south.
- High quality residential apartments suitable for local residents and employees.
- Employment opportunities associated with both the construction and operation of the proposed site. Includes ongoing work opportunities associated with building maintenance, leasing/selling which will provide direct local jobs in Penrith.
- A built form compatible with the surrounding context (as under construction) and as envisaged under the R4 High Density Residential zoning.

- The development will result in the provision of diverse range of housing needs of the community within a high density residential environment.
- The development is strategically located to the Nepean Hospital and other health services, and in walking distance to public transport and the Penrith CBD.

### ***Any other matters***

Under Clause 4.6(5c) of the PLEP2010 (the consent authority) must consider if the proposal raises any other matters for consideration. Given the nature of the proposed variation and its use, no matters are raised by this proposal.

For the reasons outlined above, the proposed minor variation to the PLEP2010 Height of Building standard should be supported by Penrith Council.

## **5. Summary and Conclusion**

Strict application of Council's Height of Building development standards is considered unnecessary and unreasonable in considering local site context and the desired future character of the area. The variation to height is isolated and recessed from the primary building height. The extent of the variation to the height of building control is shown below:

Area of non-compliance	Proposed RL	Proposed building height	Exceedance of building height	% of variation
Roof parapet (south-western corner)	RL62.815	19.905m	1.905m	10.5%
Roof level slab	RL62.74	19.78m	1.78m	10%
Atrium height	RL62.39	20.23m	2.23m	12%
Lift overrun	RL64.04	20.76m	2.76m	15%
Northern clerestory window (level 5) above unit no. 502	RL63.44	20.48m	2.48m	14%
Northern clerestory window (level 5) above unit no. 503	RL63.44	20.07m	2.07m	11.5%
Southern clerestory window (level 4) above unit nos. 402 & 403	RL61.262	18.462m	462mm	2.5%

It is important to understand that when viewed from the surrounding context, the roof parapet height is the prominent view plane (representing a mere 10.5% variation) to the height of building standard. The variation to the height control is the consequence of a design and site response (given the flooding implications) for the site.

From a planning perspective, there is sufficient grounds to justify the variation to the height development standard for the following reasons:

- The highest RL of the site aligns with the approved roof level of adjoining sites.
- The height variation does not result in significant overshadowing impacts to neighbouring properties.

- The proposal aligns with the precedent for building heights approved and under construction within the adjoining precinct.
- The proposal represents a building footprint which responds to the site context (within a flood plain) without significant impacts.
- The desired future character of the locality is not jeopardised by the proposal and is consistent with Council's objective for this precinct being higher density residential development.
- The visual bulk and scale of the development as a result of the exceedance to the building height will remain compatible with the immediate neighbouring buildings to the west and other buildings that are currently approved or under construction in this immediate locality.
- As a result of the exceedance to the building height provision has been made for a communal rooftop garden which is a direct benefit to future occupants of this development. It provides a very attractive, passive open space as opposed to a bland roof structure that would have been the result of a building with compliant height requirements. The rooftop open space has been interconnected in order to extend recreation potential and to encourage social interaction.
- The area of non-compliance does not give rise to any adverse environmental impacts to the amenity of the neighbouring properties to the south. The area of non-compliance does not contribute to any adverse overshadowing impacts to adjoining developments.
- The setting back of the building a further 1 metre from Lethbridge Street results in an enhancement of the landscaped area and the opportunity for deep soil planting. The setting of the building back a further 1 metre also reduces the visual impact of the building when viewed from Lethbridge Street. Notwithstanding setting the building back a further 1 metre results in a minor noncompliance in the rear setback of the southern component of the building. However, the minor noncompliance outweighs the strict compliance with the prescribed rear setback.

In addition to the above justification, the proposal is considered to meet the intent of Council's controls relating to height of building, the R4 High Density zoning objectives and the desired future character of this precinct (to accommodate infill high density apartment developments) given the proximity to the employment hub of the hospital and the services/transport hub of the Penrith CBD. It is therefore considered that in accordance with Clause 4.6 of the PLEP2010, the proposal demonstrates that in this case, the development standard is unreasonable and unnecessary, given the associated benefits of the proposed design as detailed above.