

JRPP No.	2015SYW045
DA No.	DA15/0198
Proposed Development	Construction of a Staged Residential Flat Building Development Comprising 49 x Units (Stage 1 and Stage 2) with Associated Basement Car Parking, Landscaping and Drainage Works under the Provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009
Applicant	Stimson & Baker Planning
Owner:	NSW Land and Housing Corporation
Property Description	Lot 16 DP 36191 & Lot 17 DP 36191 & Lot 18 DP 36191
Property Address	11 Phillip Street St Marys
Date Received	4 March 2015
Report by	Donna Clarke, Consultant Planner (Penrith City Council)
Recommendation	Approval

Executive Summary

Council is in receipt of a development application which proposes a Staged Residential Flat Building Development Comprising 49 x Units (Stage 1 and Stage 2) with Associated Basement Car Parking, Landscaping and Drainage Works under the Provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009.

The subject site is zoned R4 High Density Residential under Penrith Local Environmental Plan 2010. The proposed development is permissible as *residential accommodation*.

The application is also made under State Environmental Planning Policy (Affordable Rental Housing) 2009, as affordable housing and has a capital investment value in excess of \$5 million. As such, the Sydney West Region Joint Planning Panel has the function of determining the application in accordance with Section 23G of the Environmental Planning and Assessment Act 1979.

The proposed development was advertised in the local newspaper and notified to the owners and occupiers of adjoining and nearby properties. A total of 25 property owners and occupiers were notified in the surrounding area. The public exhibition period for the proposal was from 16 March 2015 to 30 March 2015. One (1) public submission was received in relation to the proposal, primarily relating to a perceived issue of isolation of the adjoining property.

An assessment of the proposed development under the *Environmental Planning and Assessment Act 1979* has been undertaken and the proposal has been found to be satisfactory.

The proposed development is in accordance with the relevant provisions of the environmental planning instruments pertaining to the land. A minor variation is sought with respect to the height of the eastern building, which on balance is considered acceptable. The proposed development is unlikely to have a negative impact on the surrounding environment. The site is suitable for the proposed development and the proposal is in the public interest. The proposal is therefore worthy of support.

This report recommends that the application be approved subject to recommended conditions of consent.

Background

The proponent for this development proposal is Wentworth Community Housing, which is one of Australia's ten largest community housing providers, with over 2,000 properties managed in outer western Sydney and the Blue Mountains. Wentworth will own and manage all dwellings as affordable housing in perpetuity and are the recipient of 24 Government (Federal and State) funded National Rental Affordability Scheme (NRAS) incentives. NRAS funding applies to each applicable dwelling for a period of ten years with the primary objective being to assist in the provision of affordable housing. For this project, the NRAS funded dwellings are in Stage 1 of the project (24 units in total) and need to be delivered for occupation by June 2016.

The applicant attended pre-lodgement meetings with Council, as well as the Urban Design Review Panel and incorporated the comments within the final design.

Site and Surrounds

The site is identified as Lot 16 DP 36191, Lot 17 DP 36191 and Lot 18 DP 36191, No. 11 Phillip Street, St Marys and is situated on the northern side of Phillip Street. The site has an area of 2074m² and has a north-south orientation. The site slopes from the east to the west with a crossfall of approximately 3.5m and is within close proximity to St Marys town centre and the Dunheved and St Marys Employment / Industrial areas. The site is currently vacant, with little vegetation.

Proposed Development

The development proposes the construction of a residential flat building under the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009.

Specifically, the proposed development includes the following key aspects:

- Forty-nine (49) units in two stages, with a mixture of 20 x 1 and 29 x 2 bedrooms and includes 4 adaptable units;
- Stage 1 includes 24 units within the western 4 storey building;
- Stage 2 includes 25 units within the eastern 5 storey building;
- Each building is serviced by an individual lift and is connected by a smaller central portion up to level 4;
- Of the proposed units, 15 will be social housing units;
- Twenty-six (26) car parking spaces and 8 bicycle spaces within a common basement are proposed which is accessed from the western end of the site from Phillip St and enclosed by a roller door;
- Landscaping around the perimeter of the site;
- Drainage works comprising on-site detention;
- Area of common open space for the residents at the rear of the site;
- Accommodation of waste storage, hydrant and electrical substation within the front setback; and
- Modern appearance including a mix of face brick, cladding and render. The colour palette is light brown and grey with highlights of colour being two shades of grey and two shades of green/yellow.

The following table provides a breakdown of the units:

Unit	Level	Bedrooms	Size
1	1	1 - adaptable	58.37m ²
2	1	1	50.67m ²
3	1	1	62.91m ²
4	1	1	50.9m ²
5	1	2	70.3m ²
6	1	2	70.29m ²
7	2	2 – adaptable	82.38m ²
8	2	1	50.67m ²
9	2	2	73.62m ²
10	2	1	50.8m ²
11	2	2	70.3m ²
12	2	2	70.29m ²
13	3	2 - adaptable	82.38m ²
14	3	1	50.67m ²
15	3	2	73.62m ²
16	3	1	50.8m ²
17	3	2	70.3m ²
18	3	2	70.29m ²
19	4	2 - adaptable	80.44m ²
20	4	1	50.67m ²
21	4	2	73.62m ²
22	4	1	50.8m ²
23	4	2	70.3m ²
24	4	2	70.29m ²
25	1	1	51.06m ²
26	1	2	73.63m ²
27	1	1	50.46m ²
28	1	2	70.3m ²
29	1	2	70.3m ²
30	1	1	51.06m ²
31	2	2	73.63m ²
32	2	1	50.57m ²
33	2	2	70.3m ²
34	2	2	71.23m ²
35	3	1	51.06m ²
36	3	2	73.63m ²
37	3	1	50.57m ²
38	3	2	70.3m ²
39	3	2	71.23m ²
40	4	1	51.06m ²
41	4	2	73.63m ²
42	4	1	50.57m ²
43	4	2	70.3m ²
44	4	2	71.23m ²
45	5	1	51.06m ²
46	5	2	73.63m ²
47	5	1	59.57m ²
48	5	2	70.3m ²
49	5	2	71.23m ²

Planning Assessment

The proposed development has been assessed against the relevant heads of consideration contained in Section 23G and Section 79C and Section 89 of the Environmental Planning and Assessment Act 1979, and based on this assessment; the following issues have been identified for further consideration.

The proposal has been assessed with due regard to relevant legislation and planning instruments cited as follows: -

- Section 79C of the Environmental Planning and Assessment Act 1979;
- Sydney Regional Environmental Plan No.20 – Hawkesbury/Nepean River;
- State Environmental Planning Policy No.55 - Remediation of Land;
- State Environmental Planning Policy (Affordable Rental Housing) 2009;
- State Environmental Planning Policy No.65 - Design Quality of Residential Flat Development;
- Residential Flat Design Code;
- Penrith Local Environmental Plan 2010; and
- Penrith Development Control Plan 2014.

The proposal has been assessed in accordance with the above provisions and having regard to those matters, the following key issues have been identified for discussion:

1. Section 79C(1)(a)(i) – Any Environmental Planning Instrument

Sydney Regional Environmental Plan (SREP) No.20 – Hawkesbury/Nepean River

SREP No. 20 applies to the subject land and stipulates that the consent authority shall not grant consent to an application unless it is of the opinion that the carrying out of the development is consistent with any relevant, general and specific aim of SREP 20. The general aims and objectives of the plan are directed towards improving the amenity of the river and protecting the lands within the river valley, including scenic quality.

The proposal will have minimal impacts and is considered to not compromise the water or scenic qualities of the river environment and proposed erosion and sediment control measures to be employed during construction.

State Environmental Planning Policy No.55 – Remediation of Land

State Environmental Planning Policy No.55 – Remediation of Land (SEPP 55) provide aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.

Under Clause 7 of SEPP 55, it must be considered as to whether the land is contaminated, and if so, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

The site has been in the ownership of the Department of Housing for a large number of years and has been used for residential purposes. The nature of the use will not be altered and continues for residential purposes as a result the proposal is considered satisfactory under the provisions of State Environmental Planning Policy No.55 – Remediation of Land.

A site inspection undertaken as part of the assessment identified a minor stockpile of soil material in the south-east corner of the allotment. A review of historic aerial photography confirms that this stockpile has existed prior to 2009. While a review of site history has not identified any evidence of use beyond that of residential development, it is considered appropriate that a condition of consent be imposed which requires the submission of a Validation Certificate following sampling of this stockpile to confirm that the fill is suitable for

the proposed development. This is also considered an appropriate outcome given the location of the minor stockpile is proposed to be occupied by an electrical substation rather than residential units or associated open space. This approach has been discussed with Council's Environmental Health Officers and is considered to be an appropriate approach to ensure compliance with SEPP 55.

State Environmental Planning Policy (Affordable Rental Housing) 2009

The proposed development is made under the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 as affordable housing and will be managed by a community housing provider. Wentworth Community Housing will own and manage all dwellings as affordable housing in perpetuity and are the recipient of 24 Government funded National Rental Affordability Scheme (NRAS) incentives. NRAS funding applies to each applicable dwelling for a period of ten years with the primary objective being to assist in the provision of affordable housing. For this project, the NRAS funded dwellings are in Stage 1 of the project (24 units in total) and need to be delivered for occupation by June 2016.

Of the proposed units, 15 will be social housing units and the remaining 34 will be key worker units, which are provided to people within certain professions, including teachers, nurses and labourers, with an income below a certain threshold.

The SEPP aims to facilitate the effective delivery of new affordable rental housing.

The table below outlines the applicable controls under the SEPP with respect to the proposed development.

REQUIREMENT	COMMENT	COMPLIES
Clause 10 – Development to which Division applies	The development in the form of a residential flat building is allowed as it is a permissible use under LEP 2010 and the site is within an accessible area, being within 800m of St Marys Railway Station.	Yes
Clause 13 – Floor Space Ratios	There are no floor space controls applicable to the site.	Yes
Clause 14 – Standards that cannot be used to refuse consent	<p><i>Site Area</i> – the site is in excess of 450m².</p> <p><i>Landscaped Area</i> – the development has approximately 35% of the site as landscaped area. As the site is developed by a social housing provider, 35m² per unit is required but cannot be accommodated in this instance. There are two standards within the SEPP and usually the rate for social housing providers is less onerous than for other developers. However, when the controls were developed it is unlikely that social housing as envisaged at this size and scale and the 35m² per unit requirement is excessive when applied to 49 units. The site however has ample landscaping, exceeding the 30% requirement applicable to other developments, as well as providing balconies for the units above ground level. Whilst the numerical landscaping control is not satisfied, the aims of the SEPP to facilitate flexibility when affordable housing is proposed by social housing providers are satisfied.</p> <p><i>Deep Soil</i> – The landscaping includes 759m² of</p>	Yes – except landscaped area, which cannot be used to refuse consent.

REQUIREMENT	COMMENT	COMPLIES
	<p>deep soil with a minimum dimension of 3m, which well exceeds the requirements of this control.</p> <p><i>Solar Access</i> – 82% of units receive solar access requirements, exceeding the minimum of 70% of units.</p> <p><i>Parking</i> – 22.5 car parking spaces are required and 26 are provided.</p> <p><i>Dwelling Size</i> – all 1 and 2 bedroom units are greater than 50m² and 70m² respectively.</p>	
<p>Clause 15 - Design Requirements</p>	<p>The subject application has been designed accordance with the <i>Seniors Living Policy: Urban Design Guidelines for Infill Development</i>, as follows:</p> <ul style="list-style-type: none"> ▪ The proposal has considered the street hierarchy, block patterns, built environment, trees and Council Planning Instruments through compiling a site analysis. ▪ Site planning has been considered throughout the proposal with regard to built form and landscaping. The built form is generally consistent with the zoning of the street and ensures that the proposal will reflect the desired future character of the locality. Front setback areas and landscaping ensure that the existing residential amenity of the area will be enhanced and embellished, in balance with the need for services such as bin bays and substations to be provided. ▪ Impacts upon the streetscape have been mitigated through the use of appropriate tree and shrub species, which will further enhance the natural and built environment. The proposed bin bays have been setback to allow room for landscaping to soften their appearance. Private and public domains will be clearly delineated and will be attractive places ensuring safety and security to all users. Car parking and hard paved surfaces will be softened with extensive landscaping imposed throughout the development site. ▪ Visual and acoustic impacts will be mitigated through the extensive landscaping on the site, combined with building treatment, articulation, and use of finishes. ▪ 82% of units have direct solar access. Extensive landscaping ensures the softening of hard paved surfaces and provides clear identification of public and private places 	<p>Yes</p>

REQUIREMENT	COMMENT	COMPLIES
	<p>through visual screening and embellishment of the residential streetscape.</p> <ul style="list-style-type: none"> Wheelchair access is provided throughout the site by way of pathways and a ramp to the common open space at the rear. 	
Clause 16 – SEPP 65	SEPP 65 has been applied to the proposal and compliance is detailed below.	Yes
Clause 16A – Character of the Area	The area is zoned for high density residential housing and the development has responded to the zoning and future desired character of the area, which is in the early stages of transition.	Yes
Clause 17 – Must be used for affordable housing for 10 years	Appropriate conditions have been applied to ensure the development is used for affordable housing for 10 years from the issue of the occupation certificate.	Yes

The development complies with State Environmental Planning Policy (Affordable Rental Housing) 2009, with the exception of landscaped area as addressed above.

State Environmental Planning Policy No.65 - Design Quality of Residential Flat Development

State Environmental Planning Policy No.65 - Design Quality of Residential Flat Development (SEPP 65) aims to improve the design quality of residential flat development.

SEPP 65 does not contain numerical standards, but refers to “*Residential Flat Design Code*” (the code). The code provides additional detail and guidance for applying the design quality principles outlined in SEPP 65.

Under the provisions of SEPP No.65 – Design Quality of Residential Flat Development (SEPP 65), the proposal is defined as a Residential Flat Building as it comprises of a building of 3 or more storeys that includes 4 or more self-contained dwellings.

In accordance with Clause (1A) and (5)(a) of the Development Applications controls under Part 4 of SEPP 65, a Design Verification Statement which verifies that the design quality principles set out under Part 2 of the SEPP has been submitted by the applicant.

An assessment of the Building 1 has been undertaken in accordance with the Design Quality Principles of Part 2 of SEPP 65 and is briefly discussed as follows:

(i) Design Quality Principle 1: Context

The site is located within an area zoned for high density residential and is a vacant site with minimal constraints. St Marys as a whole is undergoing transition to multi-unit housing. The site is located in close proximity to St Marys Railway Station and town centre. This development is the first within land zoned for higher density development. The development has responded to the slope of the land to the west and is free of significant trees within its vicinity.

The existing area consists of a mix of older style residential dwellings. The building responds to the desired future character of the area rather than the bulk and scale of the existing single or two storey dwellings. The proposed development provides for outdoor communal areas at

the rear of the development and has had regard to the amenity of the adjoining properties, providing a suitable setback to the side and rear boundaries.

(ii) Design Quality Principle 2: Scale

The proposed buildings would have a maximum height of four (4) and five (5) storeys which are considered to be in keeping with the height controls and future likely development in the area. The design separates the development into two towers with a narrow central section which joins the buildings. This reduces the bulk of the development and provides articulation and an interesting element to the design. The proposal includes balconies, fixed screens, awnings and a range of materials to create depth and shade to the façade. Accordingly, it is considered that the proposal would be of a scale that is in keeping with the future development of the surrounding built environment and provides a gradual transition of building height to surrounding development.

(iii) Design Quality Principle 3: Built Form

The proposed buildings have been designed to reduce the overall bulk and scale of the development and provide a continual progression of the built form. It is acknowledged that the overall size of the buildings is larger than the adjoining single and two storey dwellings, however suitable side and rear setbacks, landscaping and building articulation all assist in integrating the proposed built form into the existing locality and desired future character for this immediate area.

The proposed setbacks are sufficient to allow outlook of the internal open spaces to encourage passive surveillance and safety whilst allowing for visual privacy to the proposed buildings.

The proposed building achieves an appropriate built form for its location, use and context. The rear common courtyard for the residents enhances the internal amenity of the development. The building masses are articulated and massing within the prescribed envelope aims to reduce the building bulk. A mix of building materials and colour further enhances the presentation of the building.

The design in two towers with a central link allows the development to present as two buildings rather than one single mass, as well as improved solar access and ventilation and therefore complies with the built form design quality principle.

(iv) Design Quality Principle 4: Density

The proposed accommodation seeks to cater for future demand and desired future densities identified by the zoning of the site. The density responds to the site opportunities and constraints and provides a range of floor space yields and apartment mixes. The site is appropriate for higher densities given its location.

(v) Design Quality Principle 5: Resources, Energy and Water Efficiency

The code recommends that 70% of apartments in a development should receive a minimum of three hours direct sunlight between 9am and 3pm mid winter into the living rooms and private open space. The layout of the proposed units has ensured maximum solar access with only 9 out of 45 units having a southern aspect only, which equates to 82% of the units receiving the required solar access consistent with the code.

Passive solar design principles have been incorporated through a high level of solar access and natural ventilation of units as well as effective thermal massing. The design responds to environmental concerns by focusing on natural ventilation, and light.

Appropriate water efficiency and energy saving measures have been incorporated into the development.

(vi) Design Quality Principle 6: Landscape

The proposed communal open space faces north and provides excellent solar access. The landscape strategy includes a communal area which is paved and grassed areas which are accessed via ramp and stairs. Deep planting which provides effective amenity both internally and to the public domain is also proposed within all setbacks. The landscaped open space provides connectivity between the buildings and provides an adequate buffer to ensure maximum amenity is offered to the occupants of the units.

A landscape concept plan was prepared and the landscape design strikes an effective balance between visual privacy and safety and security. The design was amended during the assessment to provide opportunity for landscaping in front of the proposed bin bays.

(vii) Design Quality Principle 7: Amenity

Main living spaces in each of the proposed units are open plan and located directly adjacent to their main private open space. This is intended to promote an extension of the living space. The balconies are functional and promote indoor/outdoor living. The proposal provides a high level of amenity for all of the units including layout, natural ventilation, solar access and private open space. Room sizes are generous throughout as are ceiling heights, maximising fresh air and light and a mix of units is proposed.

Each unit has been prepared to provide control by the occupant by way of ventilation and movable screens for solar access and privacy control.

There are communal recreation facilities for the development at the rear of the site. These facilities have a garden aspect, easily reached by all residents via pedestrian walkways and ramps.

There is ample car parking provision on the site itself, which minimises any potential impact of the development on local traffic conditions. The site is served by public transport with St Marys Train Station nearby.

Four units have been designed as adaptable in its design and a lift has been provided to all units.

(viii) Design Quality Principle 8: Safety and Security Assessment

The proposed units are oriented to allow windows for passive surveillance of the communal open spaces and the main entrance. All entrances are highly visible, are in highly trafficked areas and have good sight lines across the site. Safety and security measures incorporate unobscured public domain spaces, all lobbies are wide and brightly lit, with units adjacent to facilitate safety and passive overlooking and all landscaped spaces within the site will be well lit, and designed to maximize personal security. There are no entrapment zones identified within the development.

(ix) Design Quality Principle 9: Social Dimensions

The proposal responds to the need for affordable housing and incorporates a range of bedroom numbers and floor sizes, as well as providing four adaptable units.

(x) Design Quality Principle 10: Aesthetics

The architectural style is contemporary and is sympathetic to its surroundings. The design reduces building bulk and the landscaped setting will ensure they are integrated into their

surroundings. The proposal uses a combination of face brick, cladding and render, punctuating framed window and balcony elements and highlight colours and textures to achieve a modern finish and visual appeal.

The proposal is designed to appear lightweight with defined entry points. Balconies are common external areas that create active edges for the proposed buildings both functionally and aesthetically.

In consideration of the detailed information above it is considered that the subject proposal can reasonably satisfy the design quality principles of SEPP 65 and the guidelines contained within the associated 'Residential Flat Design Code'.

Penrith Local Environmental Plan 2010

The subject site is zoned R4 – High Density Residential under the provisions of the Penrith Local Environmental Plan 2010 (LEP). The proposed development is defined as “residential accommodation” which is permissible within the zone, only with development consent and defined as:

“residential accommodation means a building or place used predominantly as a place of residence, and includes any of the following:

- (a) attached dwellings,*
- (b) boarding houses,*
- (c) dual occupancies,*
- (d) dwelling houses,*
- (e) group homes,*
- (f) hostels,*
- (g) multi dwelling housing,*
- (h) residential flat buildings,*
- (i) rural workers' dwellings,*
- (j) secondary dwellings,*
- (k) semi-detached dwellings,*
- (l) seniors housing,*
- (m) shop top housing,*

but does not include tourist and visitor accommodation or caravan parks.”

More specifically, the proposal is defined as a “residential flat building”, as follows:

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

Note. Residential flat buildings are a type of residential accommodation— see the definition of that term in this Dictionary.”

The objectives of the R4 – High Density Residential zone is as follows:

- *“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 for the purposes of affordable housing which responds to a need within the community for low cost accommodation. Within the development, there are a variety of unit sizes and bedroom mixtures.

The development has been designed to ensure a high level of amenity is provided for the future occupants, whilst also having regard to the existing residents and the future character of the area.

The site is within walking distance of a railway station. It is considered that the proposal is consistent with the objectives of the R4 zone.

The following clauses within the LEP are applicable to the proposal:

Clause 4.3 – Height

The LEP restricts the height of the development to 15m. The proposal contains two towers, with the western tower well below the maximum limit. The building exceeds the height limit by 450mm to the ridge and 600mm to the top of the lift overrun in the northern portion of the eastern tower only.

The building component that exceeds the height limit is roof cavity and lift overrun and on balance the height has been shared across the site and the portion of the roof which exceeds the controls does not result in amenity impacts.

In the context of the whole site, the height averages below the height limit as the western tower is well below the maximum control.

A request for variation of the height limit control for part of the development is requested under Clause 4.6 of the LEP (see discussion below).

The objectives of Clause 4.3 are:

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

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas, including parks, streets and lanes,

(c) to minimise the adverse impact of development on heritage items, heritage conservation areas and areas of scenic or visual importance,

(d) to nominate heights that will provide a high quality urban form for all buildings and a transition in built form and land use intensity.”

The proposed development is in keeping with the desired future character of the area, being high density development.

The additional height in the northern portion of the eastern tower only will not be discernible when viewed from adjoining properties and the marginally additional shadow created from the height will fall to the south, over Phillip Street. Given that the portion which exceeds the height control is roof cavity and lift overrun, there will be no resulting adverse amenity impacts in terms of privacy or views.

There are no heritage items in the immediate vicinity of the site.

The overall height of the building will remain consistent with the future buildings on the surrounding land and will not appear larger in size or scale.

Clause 4.6 – Exceptions to Development Standards

The applicant has advised that the height of the building breaches the 15m height limit by a small 450mm to the ridge and 600mm to the top of the lift overrun and has provided the following justification as to why strict compliance with the height control is unreasonable in this instance:

- The exceedance comprises one small section of the roof, and not across the entire roof.
- The section of roof that does not comply is situated at the rear of the building and does not impact on streetscape.
- The orientation does not result in additional overshadowing impacts.
- The variation results in maximum amenity to future residents of the building.
- The variation allows increased numbers of adaptable dwellings, providing significant diversity in residential accommodation in the area.
- The development represents the provision of much needed affordable housing in the locality.
- The bulk and scale is acceptable despite the non-compliance, with the height breach being virtually imperceptible.
- The slope in the land and well designed layout achieves maximum efficiency of the site, despite the small non-compliance.
- No impacts arise on adjoining properties as a result of the non-compliance.
- The objectives of the LEP and zone continue to be achieved despite the minor variation.

The applicant's argument is well founded and the LEP zone objectives remain satisfied notwithstanding the minor numerical variation to the height control.

Clause 4.6 allows Council to grant consent for development where it does not satisfy a development standard.

The objectives of Clause 4.6 are as follows:

“(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.”

The proposed variation to the height control on the northern portion of the site provides for an improved planning outcome with respect to the overall development meeting the above objectives.

Clause 7.1 – Earthworks

The development requires earthworks to accommodate the basement car park. Appropriate conditions of consent have been recommended to ensure the earthworks occur with no damage to adjoining properties.

Clause 7.7 – Servicing

The site is already serviced and will be utilised for the proposed development. Appropriate conditions of consent have been included in the recommendation with respect to servicing of the site.

2. Section 79C(1)(a)(iii) – Any Development Control Plan

Penrith Development Control Plan 2014

The proposed development has been assessed in accordance with the requirements of the DCP and a summary of the key issues are demonstrated in the following table:

REQUIREMENT	COMMENT	COMPLIES
Part C		
Site Planning & Design Principles	The design is considered appropriate for the site and has had regard to the constraints and the adjoining properties in the design. Adjoining sites are capable of consolidating to develop together.	Yes
Vegetation Management	The site is generally cleared, however does contain some vegetation near the boundaries. An Arborist Report has been prepared for the site and no objection is raised to the proposed tree removal. A landscape plan has been prepared which details replacement planting with the front, side and rear setbacks. Street trees will also be required by condition of consent.	Yes
Water Management	The site is proposed to be drained by way of on-site detention and WSUD measures have also been incorporated. Further, BASIX commitments have been made with respect to provision of water saving devices and water tanks.	Yes
Land Management	The site has a slope from the east to west and the basement has been designed to be primarily below natural ground level, however is not possible at all points due to the slope. Conditions of consent are recommended regarding the disposal of fill and implementation of erosion and sedimentation control measures.	Yes
Waste Management	A waste management plan has been prepared in support of the subject proposal and addresses space, access, amenity, construction and management. Bin storage bays are proposed at the front of the site. Council's Waste Officer has reviewed the proposal and raises no objection, subject to amendments in red to the plan to extend the eastern bin bay marginally. This bay is cut into the hill and will be less visually prominent. This will require proposed trees to be relocated, however can still be accommodated in the	Yes

REQUIREMENT	COMMENT	COMPLIES
	front setback.	
Landscape Design	A landscape plan has been prepared for the site, which provides a high level of landscaping within the front, rear and side setbacks. The deep soil zone exceeds the SEPP requirements.	Yes
Public Domain	The development has been designed to provide an acceptable interface with the public domain. Clear entries are provided to the development, as well as high quality landscaping along the front setback to screen the requires services such as bin bays and electrical substation.	Yes
Transport, Access & Parking	The existing road network can withstand the additional traffic generation. The car parking rates for residential flat buildings under the DCP vary from the SEPP, which overrides in the event of an inconsistency. Car parking has been provided in accordance with the SEPP.	Yes
Noise & Vibration	The site is not located within immediate proximity of the station or railway lines and as such noise and vibration from those services is not applicable. There is no other source of noise in the immediate vicinity. There will be an increase in noise as a result of 49 new units on the site. However, the area is appropriate for this form of development and noise restrictions under the Protection of the Environment Operations Act apply.	Yes
Infrastructure & Services	The site is already serviced and no new infrastructure is required to facilitate the development.	Yes
<i>Part D – 2.5 Residential Flat Buildings</i>		
Residential Character & Urban Form	The area is commencing transition from single and two storey dwellings to residential flat buildings. Already there is a mix of housing forms and styles and as such there is no consistent design to incorporate. The proposed urban form of the building is acceptable.	Yes
Landscaped Area	The SEPP overrides the DCP. The proposed development will have sufficient open space and landscaped areas surrounding the residential and communal facilities.	Yes
Front & Rear Setbacks	The building is setback 5.7-12.1m from the front boundary. Given the area is changing and this is the first development, a varying setback as proposed is deemed suitable and exceeds the minimum 5.5m control. A 6m (and increasing) rear setback has been incorporated.	Yes
Side Setbacks	The side setbacks meet the DCP requirements. Cut and fill is proposed to 800mm in part, which exceeds the 500mm control. However, this is acceptable due to the sloping terrain and does not result in an elevated development.	Yes
Visual & Acoustic Privacy	The accommodation of 49 units within 4 and 5 storey buildings on the site will result in some loss of privacy for adjoining properties. However, the area has been	Yes

REQUIREMENT	COMMENT	COMPLIES
	identified as being suitable for re-development for high density housing. The design has included good setbacks which will be landscaped, and privacy screens to balconies, all aiding to reduce amenity impacts.	
Solar Planning	The SEPP contains solar access requirements which are satisfied by the proposed development.	Yes
Building Design	A variety of materials and architectural features have been incorporated into the development. The basement does not extend more than 1.5m out of the ground, in accordance with the DCP.	Yes
Energy Efficiency	A BASIX Certificate has been lodged which includes energy efficiency measures to be incorporated into the development.	Yes
Design of Dwellings & Courtyards	Balconies have been provided to each unit, in excess of 10m ² in size.	Yes

The proposal has generally satisfied the provisions of the Penrith Development Control Plan 2006.

3. Section 79C(1)(b) – The Likely Impacts of the Development

Building Design

The subject site sits within an area comprising a mix of housing forms and is generally older style housing. The area has been identified as being suitable for high density development.

The scale and layout of the buildings is considered to be appropriate in relation to the future massing and size likely to occur in the area. The buildings have been designed such that sufficient solar access is available to the rooms, and the location of one building does not impact the solar access of another.

The proposal ensures that principles of Crime Prevention Through Environmental Design (CPTED) is incorporated into the design with living zones facing the street, driveway and common open space to provide passive surveillance, building articulation to inhibit hiding or enclosed spaces and landscaping to provide an attractive streetscape without compromising safety and security.

Environmental Sustainability

The proposed development will incorporate a number of sustainability initiatives for reduced water and energy consumption. These include passive solar design and orientation of all buildings and primary living spaces to minimise heating requirements in winter and cooling requirements in summer. The proposal incorporates rainwater retention and re-use system for stormwater collection.

The proposal will generate an increase in traffic volume, however this has been considered in the rezoning of the area and the local road network has capacity to cater for the development. Off-street parking spaces are provided in excess of the SEPP requirements and this arrangement will reduce the incidence of off-street parking. Sight distances of the proposed driveway would be clear when in view from the street and vehicles can enter and leave in a forward direction.

Social

The provision of quality affordable rental housing managed by a reputable local community housing provider, close to the St Marys town Centre, is supported from a social planning perspective.

4. Section 79C(1)(c) – The Suitability of the Site for the Development

The proposed development is considered to be compatible with the future desired character of the surrounding area and the R4 zoning for high density housing. The site is generally cleared of vegetation and does not contain constraints which preclude development.

5. Section 79C(1)(d) – Any Submissions made in relation to the Development

The application was referred to the following key stakeholders and their comments have formed part of the assessment:

Internal Referrals

<i>Referral Body</i>	<i>Comments Received</i>
<i>Building Surveyor</i>	No objection, subject to conditions of consent.
<i>Development Engineer</i>	No objection, subject to conditions of consent.
<i>Traffic Engineers</i>	No objection, subject to conditions of consent.
<i>Waste Management</i>	No objection, subject to amendments in red to the approved plans.
<i>Waterways</i>	No objection, subject to conditions of consent.
<i>Social Planning (Community Services)</i>	No objection.
<i>Community Safety</i>	No objection, subject to conditions of consent.

Council has met with the Joint Regional Panel for Sydney West Region on the 19 March 2015 for the purpose of presenting and briefing the panel on the development application.

Community Consultation

A total of 25 property owners and occupiers were notified in the surrounding area. The public exhibition period for the proposal was from 16 March 2015 to 30 March 2015. One (1) public submission was received in relation to the proposal and the issues raised are discussed below:

Issue	Comment
No. 17 Phillip St is isolated as No. 19 Phillip Street is also in the ownership of the NSW Land & Housing Corporation and no efforts were made to consolidate or incorporate into the development.	<p>No. 17 Phillip St is not isolated and there are no planning controls which require No. 17 to be incorporated into the development site. The applicant has been encouraged to discuss this issue with the owners of No. 17 and open communication lines with the NSW Land & Housing Corporation to facilitate future development. Council's understanding is that this discussion is occurring.</p> <p>No. 17 is capable of undertaking a development with No. 19 Phillip St, regardless of ownership.</p>
Proposal does not meet the LEP objectives of the R4 zoning if residents are locked out of any potential of being part of high density residential development. It also does not reflect the desired future character of the R4 zoning.	No. 17 is not prevented from developing in the future and the proposed development is the form of development anticipated by the R4 zoning.
No visual or acoustic privacy consideration for 17 Phillip St (located on the low side) and properties facing Chesham St.	When an area transitions from single dwellings to residential flat buildings, some degree of overlooking and loss of privacy cannot be avoided. There is a strong need for affordable housing and the proposed built form is considered suitable from an urban design viewpoint and required side and rear setbacks have been achieved. The development minimised visual and acoustic privacy loss through design, including window locations, privacy screens and landscaping.
No shading analysis has been shown in the submission as there are shading impacts on neighbouring properties.	Shadow diagrams formed part of the architectural plans lodged with the application. No. 17 to the west will experience overshadowing at 9am in midwinter, which is completely cleared by 12pm. No. 9 to the east will experience overshadowing by 3pm, mid-winter. The majority of solar impact will fall onto Phillip Street.
The desired character and density objectives of R4 zoning is not achieved for locked in sites where a single residential house is adjacent to a 5 storey development with balconies looking into the backyard of surrounding neighbours, namely No. 17 Phillip St.	The desired character of the area is for high density development, similar in size, scale and form to that proposed as reflected with the zoning of the land as R4.

6. Section 79C(1)(e) – The Public Interest

The proposed development is in keeping with the desired built environment and is consistent with the relevant planning instruments and future plans applicable to the site. The proposal is therefore considered to be in the general interest of the public, and will not conflict with the character or amenity of the surrounding region.

The proposal involves the construction of affordable residential units, which would contribute to the local demands for housing. The area consists of a variety of housing types and the proposed development would provide opportunity for more choice of housing in the market, in a much needed area of low cost housing.

In view of the above, it is considered that development of the site as proposed would create public benefit.

Section 94 Contributions

Section 94 development contributions are applicable to the proposed development. The applicant has requested waiving of payment of Development Contributions given that the development is for affordable rental housing. Any waiving of contributions however will require a resolution of Council.

At the time of writing, the proposed development would be subject to contributions of \$237,752 under the following s94 Plans:

- District Open Space - \$163,474
- Local Open Space- \$59,074
- Cultural Facilities - \$15,204

There are no legislative provisions which preclude Council from levying contributions for the proposed development under S.94 development contributions plans.

As this matter requires detailed review against the infrastructure deliverables with the Contribution Plan and the implications across the city resulting from an exemption, contributions in accordance with the adopted Contribution Plan is recommended to be imposed as conditions of consent. It is noted however that payment is deferred until the occupation certificate stage with capability written into the condition for exemption where resolved by Council to be supported. This enables separate review and decision making which will not hold up determination and commencement of works.

Conclusion

The proposed development has been assessed against the relevant heads of consideration contained in Section 79C of the Environmental Planning and Assessment Act 1979 and Regulations 2000 and has been found to be satisfactory. The likely impacts have been considered and found to be satisfactory and the site is suitable for the proposed development and the proposal is in the public interest. The proposal is therefore worthy of support.

Recommendation

That:

1. That DA15/0198 Residential-New Multi Unit - Construction of a Staged Residential Flat Building Development Comprising 49 x Units (Stage 1 and Stage 2) with Associated Basement Car Parking, Landscaping and Drainage Works under the Provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 at 11-15 Phillip Street ST MARYS NSW 2760, be approved subject to the conditions contained in Appendix A.

Appendix A – Proposed conditions of Development Consent

Appendix B – Site Elevations Car parking plans

Appendix C – Internal Plans

Appendix D – External Plans
