

Penrith Local Environmental Plan 2010

Variation Clause 4.6 – Exceptions to Development Standards – Height of Buildings

1. Introduction

This is an application to vary a development standard under Clause 4.6 – Exceptions to Development Standards, of the Penrith Local Environmental Plan 2010 (“LEP 2010”). The development standard for which the variation is sought is Clause 4.3 Height of Buildings.

The variation relates to a proposed seniors housing development within the Panthers Penrith Precinct, 123-135 Mulgoa Road, Penrith. A revised design, addressing issues raised by the Urban Design Review Panel and Council, was submitted on 11 September 2015. This Clause 4.6 Variation has been updated to reflect the changes made to the building design.

The proposed development comprises a six (6) storey seniors housing development (Nepean Seniors Living Village @ Panthers) and includes:

- Independent living units (ILU): 151 apartments (a reduction from 157 apartments);
- Residential aged care facility: 128 beds and including aged support services;
- Ancillary retail services including shared medical suites (GP, chiropractor, physiotherapist) hairdresser, chemist, café and small convenience store;
- Underground car parking for 169 car spaces (a reduction from 173 spaces);
- Ground level central landscaped courtyard (2,104sqm), terrace garden (dementia) (Level 2), rooftop outdoor spaces (Level 3) and perimeter landscaping;
- Provision of vehicle access and associated infrastructure works; and
- Relocation of on-site stormwater infrastructure.

This application has been prepared in accordance with the NSW Department of Planning and Infrastructure guideline Varying Development Standards: A Guide, August 2011.

2. Description of the planning instrument, development standard and proposed variation

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

The Penrith Local Environmental Plan 2010 (Penrith LEP 2010).

2.2 What is the zoning of the land?

The land is zoned SP3 Tourist under the Penrith LEP 2010.

2.3 What are the Objectives of the zone?

The objectives of the SP3 Tourist zone are:

- *To provide for a variety of tourist-oriented development and related uses.*
- *To provide for diverse tourist and visitor accommodation and activities that are compatible with the promotion of tourism in Penrith.*
- *To create an appropriate scale that maintains important views to and from the Nepean River as well as to the Blue Mountains escarpment, while also improving important connections to the Penrith City Centre and the Nepean River.*

2.4 What is the development standard being varied?

The development standard being varied is the building height development standard. The Penrith LEP 2010 defines building height as:

“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.”

2.5 Is the development standard a performance based control?

The development standard is not a performance based control, the building height development standard is a numerical control.

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

The development standard is listed under clause 4.3 Height of Buildings of the Penrith LEP 2010.

2.7 What are the objectives of the development standard?

The objectives of clause 4.3 Height of Buildings 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.*

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

Clause 4.3 of the Penrith LEP 2010 establishes the height control of 20 metres for the site of the proposed development as shown on the extract of the Height of Buildings Map included in Figure 1 below.

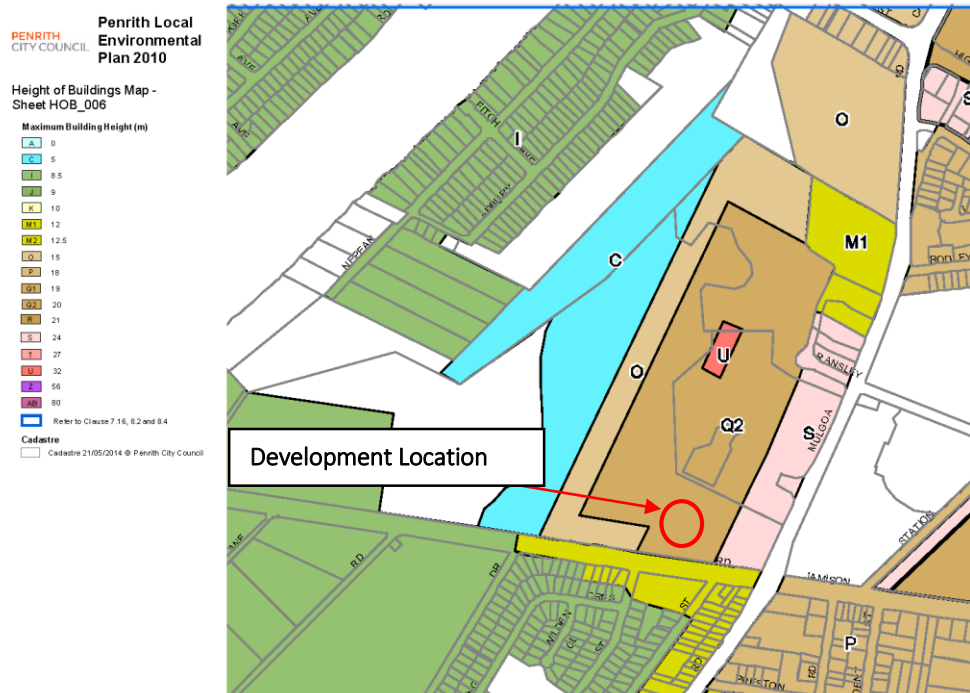


Figure 1: Extract from Height of Building Map – Penrith LEP 2010

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

The revised Roof Plan (Drawing No.PEN1 DA07 dated 09 September 2015) and North/South and East/West Sections (Drawing No.PEN1 DA09 dated 09 September 2015) prepared by Tulich Project Management, included in the revised Architectural Drawing Package, and the extracts in Figures 2-3 below illustrate the proposed non-compliances with the building height control of 20.0m. The 20m height limit equates to a height of RL46.0, where the existing ground level is RL26.0. The non-compliances are described below:

- The roof of the northern building (residential aged care facility), and the southern, eastern and western buildings (independent living units) exceed the 20m height control by 0.5m, with an RL46.50 over the roof (refer to Figure 2).
- The three (3) lift overruns on the residential aged care facility roof (northern building) breach the maximum building height by 0.85m and 1.55m (measured at RL46.85 and RL47.55). Flues identified in the Roof Drawing No.PEN1 DA07 are not included in the definition of building height (as noted above).

The lift overruns on the southern building, which contains the independent living units, have a maximum height of 21.35m (RL47.35) and as such encroaches above the 20m height limit by 1.35m. The lift overruns are located towards the centre of the building and as a result will not be visible from street level (refer to Figure 3).

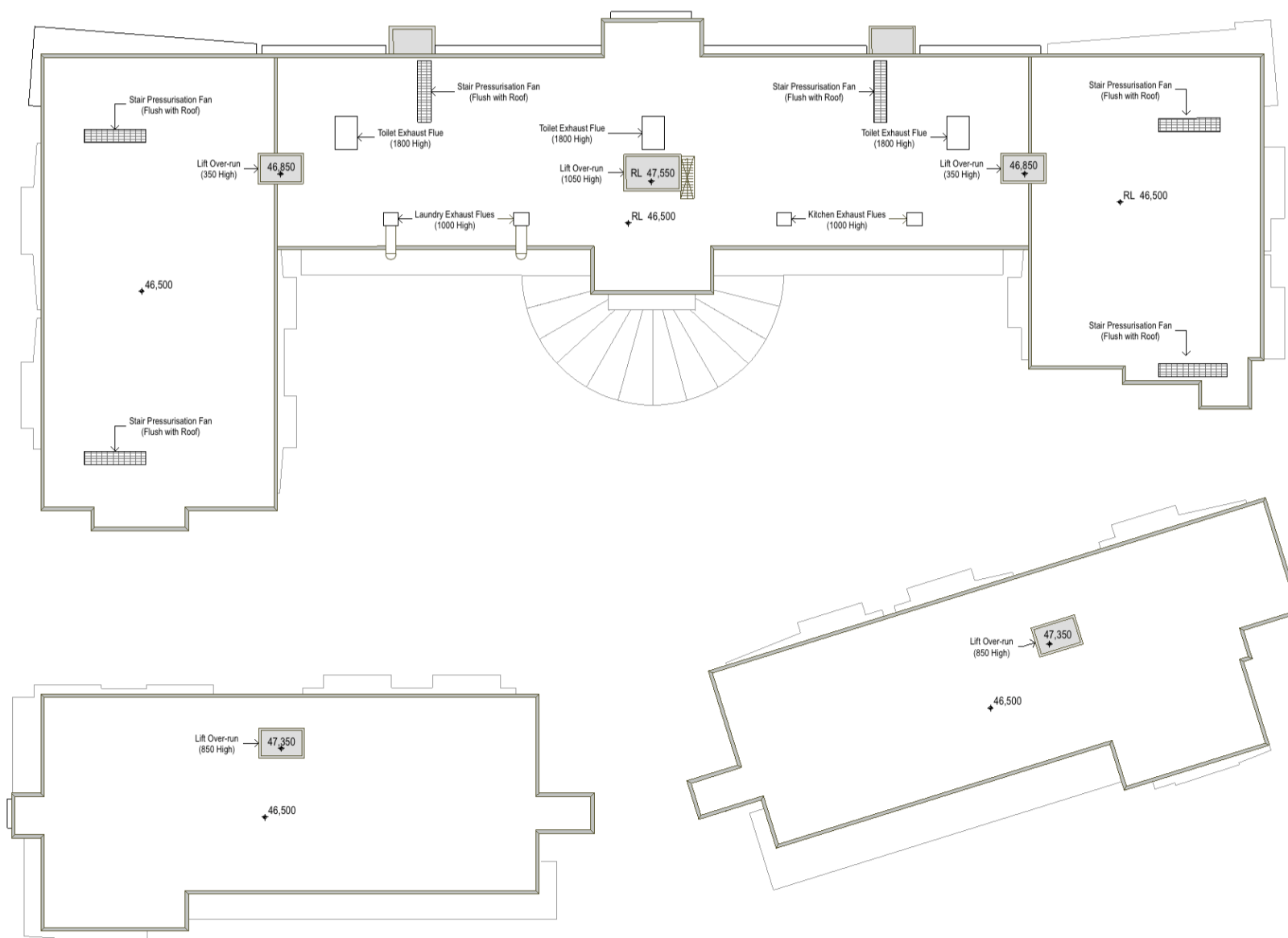
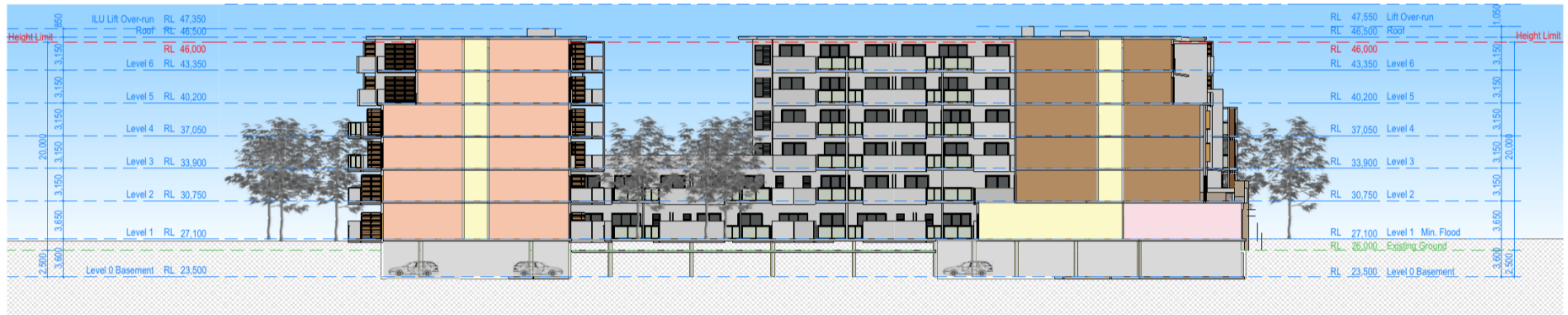


Figure 2: Non-compliance with 20m height limit on northern (residential care facility) building (extract from Revised Architectural Drawing Package, Drawing No PEN1 DA07, Roof Plan dated 09 September 2015)



North/South Section BB



East/West Section AA

Figure 3: Non-compliance with 20m height limit (extract from Revised Architectural Drawing Package, Drawing No PEN1 DA09, Sections AA/BB, N Elevation dated 09 September 2015)

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

The percentage of the variation in relation to the maximum building height limit of 20m is as follows:

- Northern Building – Residential Aged Care Facility: The residential aged care facility has a maximum height of 21.55m (RL47.55) for the central lift over run and exceeds the 20.0m height control by 1.55m. This equates to a maximum variation of 7.75%.
The northern building also exceeds the 20m building height by 0.5m over the entire roof with an RL46.50. This equates to a maximum variation for the roof of 2.5%.
- Southern Building – Independent Living Units: The two lift overruns have a maximum height of 21.35m (RL47.35) and exceed the 20.0m height limit by 1.35m (refer to Figure 2). This equates to a maximum variation of 6.75% for the two lift overruns.
- Southern, Eastern and Western buildings – Independent Living Units. The roof of the southern, eastern and western buildings (independent living units) has a height of 20.5m (RL46.5) consistent with the roof levels of the northern building (residential aged care facility). This is a change in the design from the original submitted drawings and is a consequence of raising the levels in the southern, eastern and western buildings to correspond to the levels in the northern (residential aged care facility) building. The original design included ramping between the buildings to account for the level change between the residential aged care building (with the higher ground level entrance area) and the independent living units, however this ramping within the buildings was not supported by Council's Access Committee. The revised design has removed the need for ramping by introducing consistent levels throughout the building. Therefore, consistent with the northern building, the 20.0m Maximum Building Height is exceeded by 0.5m over the entire roof with an RL46.50. This equates to a maximum variation for the roof of 2.5%.

3. Assessment of the Proposed Variation

3.1 Overview

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under the Penrith LEP 2010.

Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

4.6(3)(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

In addition the 4.6(4)(i) requires that development consent must not be granted for a development that contravenes a development standard unless the:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

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

An assessment of the building height variation is provided below in accordance the requirements of Clause 4.6 of the Penrith LEP 2010.

3.2 How is strict compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

In the circumstances of this case, the provision of strict numerical compliance would be unreasonable due to the following:

SP3 Tourist Zone Objectives: The proposal remains consistent with the objectives of the SP3 Tourist Zone, despite the non-compliance with the height control as demonstrated in the assessment of the objectives below:

(a) To provide for a variety of tourist-oriented development and related uses.

The proposed seniors housing development will provide a land use that permitted through the additional permitted uses clause (cl.2.5 of Penrith LEP 2010) and will provide seniors housing that can take advantage of the existing and future services, facilities and open space areas within the SP3 Tourist zoned land.

(b) To provide for diverse tourist and visitor accommodation and activities that are compatible with the promotion of tourism in Penrith.

Refer above.

(c) To create an appropriate scale that maintains important views to and from the Nepean River as well as to the Blue Mountains escarpment, while also improving important connections to the Penrith City Centre and the Nepean River.

The variation to the maximum building height will not impact on the scale of the proposed development nor on views to the Nepean River and Blue Mountains. The design of the development will allow for views to the Blue Mountains escarpment for both residents and future neighbouring sites (through the retention of the east/west aligned roadways).

Building Height Objectives: The proposal remains consistent with the objectives of the building height standard outlined in subclause 4.3(1) despite the non-compliance as demonstrated below:

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

The proposed height provides an appropriate building scale that responds to the transitional nature of the site being located within a SP3 Tourist zone that is characterised by a variety of building forms to the north and east and adjoined by residential zoned land to the south. The proposal is consistent with the desired future character of the Panthers Penrith Precinct as described in the Penrith DCP 2010 – Panthers Penrith Precinct and the Panthers Penrith Master Plan.

(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,

The proposed height variation does not impact on the amenity of the adjoining residential development to the south or the neighbourhood in terms of loss of privacy, overshadowing, view loss or visual impacts. This is attributed to the site's physical separation from the residential streetscape to the south, with the buildings opposite (south of Jamison Road) being approximately 45m from the site.

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

The site is not a heritage item or within the vicinity of heritage item or conservation area. The proposed development will not impact on an area of scenic or visual importance identified on the Scenic and Landscape Values Map.

(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 height of the proposed development is overall considered a minor breach in the maximum building height of 20m. The variations in height will be largely indiscernible and will not impact on neighbouring development in terms of overshadowing, view loss or privacy. In addition, the proposal maintains a transition between the higher scale development to the north and the lower scale residential development to the south.

Given the circumstances of the case, the provision of a strict numerical compliance would be unreasonable on the basis that the proposed development achieves compliance with the objectives of the standard, and is compatible and will have no impact on adjoining development. In addition, the revised design has improved accessibility throughout the building by removing the need for ramping between the northern building and the independent living units.

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

The objects set down in Section 5(a)(i) and (ii) are as follows:

“to encourage:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural area, forest, mineral, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.*
- (ii) the promotion and co-ordination of the orderly and economic use and development of land...”*

Compliance with the standard would not hinder the attainment of the Objects of section 5(a)(i) and (ii) of the Act, which are to encourage development that promotes the social and economic welfare of the community and a better environment, and to promote and coordinate orderly and economic use and development of land.

Strict compliance with the development standard would not result in discernible benefits to the amenity of adjoining sites or public space. Further, the proposal satisfies objectives of both the zone and development standard. The development as proposed is consistent with the provisions of orderly and economic development and will provide for an seniors housing development which includes a variety of housing (independent living units, nursing home suites and assisted living units), within a landscaped setting and with access to services and facilities on-site, within the Panthers Penrith Precinct and in proximity to the Penrith City Centre. Strict compliance with the standard is not required in order to achieve compliance with the objectives.

3.4 Is a development which complies with the standard unreasonable or unnecessary in the circumstances of the case?

A development that strictly complies with the 20m height standard is unreasonable or unnecessary in this circumstance for the following reasons:

- The non-compliance with the height limit is the consequence of the requirement for the ground floor level to take account of both the flood planning level and levels required for stormwater infrastructure. These issues, which impact of the level of the ground floor are detailed in the Flood Impact Statement and Concept Stormwater & WSUD Strategy in Attachment 13 and 14 of the SEE and require a ground floor level of RL27.1 which is 1.1m above existing ground level (RL26.0).

This has impacted on the northern building (residential aged care facility) which provides a higher floor to ceiling height (3.0m) for the ground level building entrance, retail/medical floor space and community facilities (dining area and community room). As noted above, the revised drawings have raised the floor levels of the eastern, southern and western buildings to be consistent with the northern building, removing the requirement of ramping between the buildings and raising the roof level to 46.5m. The ramping was not supported by Council's Access Committee. Removing the non-compliances would not alter the perceived height of the building as viewed from the public domain or surrounding development.

- There is no discernible difference in the impacts between a building that strictly complies with height limits development including:
 - Visual and acoustic privacy impacts: The breach in the maximum building height of 0.5m over the roof (RL46.5) and the breaches resulting from the lift overruns (ranging from RL46.85 to RL47.55) are non-habitable spaces which do not generate any privacy impacts; or in the case of the residential aged care facility have views either to the north of the site (to within the Panthers Penrith Precinct) or south within the development. There will be no visual or privacy impacts on adjoining properties as a consequence of the breach in the height limit;
 - Visual impacts: there is a very nominal difference in visual impacts between the proposed building and complying building; and
 - Overshadowing impacts: There is minimal difference in the shadow impacts of a compliant building and the proposed building. It is noted that the proposed development has no overshadowing impacts on neighbouring properties.

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

Yes. In the circumstances of the case, there are sufficient planning grounds to justify contravening the development standard being:

- The proposal satisfies the objectives of the SP3 Tourist zone and the objectives of the building height standards as described in Section 3.2 above;
- The non-compliance with the standard does not contribute to adverse environmental impacts in terms of overshadowing, visual impacts or view loss;
- The proposed non-compliances with the height controls do not contribute to a discernible increase in the overall bulk and height of the proposed building. In the case of the lift overruns, these structures are well-setback from the edge of the building and will not be visible;
- The non-compliance with the standard does not result in a scale of building that is out of character with the surrounding development;
- The proposed development complies with the controls, or the intent of the controls, contained in the Penrith Development Control Plan 2014; and
- The development as proposed is consistent with the provisions of orderly and economic development and will provide for a range of seniors housing accommodation (independent living units, nursing home suites and assisted living units) within a landscaped setting, with services and facilities located on site and within the Panthers Penrith Precinct.

3.6 Is the variation well founded?

Yes. For reasons outlined in the preceding sections of this submission, the variation to the height control is well founded as compliance with the standard is unreasonable as the development does not contravene the objects specified within 5(a)(i) and (ii) of the Act and SP3 Tourist zone.

A development that strictly complies with the standard is unnecessary in this circumstance as no appreciable benefits would result by restricting the building to the height limits.

4. Conclusion

The building height is considered appropriate to the context and circumstances of the site, and does not result in a scale of development that is inconsistent with that envisioned in the Panthers Penrith Master Plan, Penrith LEP 2010 and Penrith DCP 2014.

A development strictly complying with the numerical standard would not discernibly alter the scale of the building or improve the amenity of surrounding development or the public domain.

This submission satisfies the provisions of 4.6(3)(a), 4.6(3)(b) and 4.6(4)(a)(i) and (ii) of the Penrith LEP 2010 as it has been demonstrated that compliance with the height development standard is both unnecessary and unreasonable in the circumstances of this case and there is sufficient planning grounds to justify contravening the standard.