

JRPP Number	2015SYW134
DA number	DA15/0730
Capital Investment Value	\$38,000,000
Assessing Officer	Jonathon Wood – Consultant Planner
Local Government	Penrith City Council
Proposed Development	Demolition of Existing Structures & Construction of 5 Storey to 8 Storey Mixed Use Development including 5 Ground Floor Commercial/Retail Tenancies, 191 Residential Apartments & Associated Basement Car Parking, Landscaping & Drainage Works
Property Description	Lots 1-3 DP 403405 & Lots 311-312 DP 14333
Property Address	48-56 Derby Street, Kingswood
Date Received	14 July 2015
Type of Development	Advertised Development
Recommendation	Approval

Assessment Report

Executive Summary

On 14 July 2015 Council received a Development Application proposing the construction of a 5-8 storey mixed use development at 48-56 Derby Street, Kingswood. The proposal, as amended, incorporates:

- 5 x Commercial/Retail Suites with 1018m² of commercial space;
- 191 Residential Units with the following dwelling mix:
 - 24 x studio units;
 - 24 x 1 bedroom units;
 - 147 x 2 bedroom units;
 - 16 x 3 bedroom units;
- 284 parking spaces within 2 basement levels.

The proposal is to be undertaken in 2 distinct stages, with Stage 1 being the eastern portion of the development and Stage 2 being the western portion of the development.

The subject site is located within the Penrith Health and Education Precinct and is zoned B4 Mixed Use under Penrith Local Environmental Plan 2010. The proposed development is defined as a 'residential flat building' and 'commercial premises', which are both permissible forms of development in the B4 Mixed Use zone.

The proposal has undergone revision throughout a detailed Pre-DA and Urban Design Review process and has also undergone revision to respond to concerns regarding the extent of commercial floor space on the site, and to provide additional detail regarding the building height departure and overshadowing impacts to adjoining properties.

The proposed development has a 'capital investment value' (CIV) of \$38,000,000. Given that the CIV is in excess of \$20 million, the proposed development is to be determined by the Joint Regional Planning Panel (JRPP) – Sydney West pursuant to Section 23G and Schedule 4A(3) of the Environmental Planning and Assessment Act 1979 (EP&A Act).

The subject application was placed on public exhibition and notified to adjoining property owners from 3 August to 18 August 2015. Three (3) submissions were received during the exhibition period.

An assessment under Section 23G and Section 79C of the Environmental Planning and Assessment Act 1979 (as amended) has been undertaken. After detailed consideration of all matters, the report recommends the JRPP grant consent to the proposal subject to the imposition of certain conditions.

There are eight appendices to this report, as detailed below.

- Appendix No. 1 – Location Plan
- Appendix No. 2 – Aerial View of Site & Zoning Map Extract
- Appendix No. 3 – Architectural Plans & 3D Images
- Appendix No. 4 – Landscape Plans
- Appendix No. 5 – SEPP 65 & Apartment Design Guide Checklist
- Appendix No. 6 – Clause 4.6 Variation Request
- Appendix No. 7 – Envelope & Solar Access Diagrams
- Appendix No. 8 – Recommended Conditions of Consent

Background

Prior to the submission of the Development Application, a number of meetings were held with the applicant and Council staff to discuss the proposed development.

- Initial Meeting held in July 2014;
- Urban Design Review Panel Meeting held on 17 September 2014;
- Urban Design Review Panel Meeting carried out on 12 December 2014;
- Pre-lodgement Meeting held on 3 March 2015.

The current proposal has been prepared with regard to the matters raised during the assessment process and by the UDRP. The key issues identified during these initial design meetings related to the urban design merit of the proposal, extent of commercial floor space, the need to achieve compliance with SEPP 65, and the building height of the development.

These have remained key issues through the assessment of the development application, noting that the overall density of the development has been reduced from 214 units to the 191 residential units currently proposed and there has been an increase in the size of the commercial floor space.

Site and Surrounds

The subject site is known as 48-56 Derby Street, Kingswood. The site is situated on the southern side of Derby Street, approximately 80m west of the intersection of Derby Street and Somerset Street, Kingswood. The site is located opposite the Nepean Hospital, in proximity to the recently constructed multi-deck carpark and mental health facility.

The site is comprised of a total of five (5) land parcels with a frontage of approximately 85m to Derby Street and a total site area of 6,722m². The allotment currently contains five (5) single storey dwelling houses, with a small number of trees located in the middle and rear central portion of the site.

The locality has a mixed character with development on the northern side of Derby Street accommodating the Nepean Hospital which contains a variety of buildings and structures. As mentioned above the site is in proximity to the recently constructed mental health facility and multi-deck carpark serving the hospital.

Development on the southern side of Derby Street contains a variety of land uses, including:

- A large number of single storey dwellings on large land parcels;
- A number of 2 storey townhouse developments; and
- A specialist medical facility of 2-3 stories and a Clinical Training School associated with the University of Sydney of 2-3 stories.

The existing context is expected to undergo a significant transition when having regard to the recent gazettal of Penrith LEP 2010 Amendment No.4, which rezoned the locality B4 with maximum height limits of up to 21.6m.

Refer to Appendix No. 1 and Appendix No. 2 for a location plan and aerial view of the site as well as an extract of the zoning plan applying to the locality.

Proposed Development

The proposal involves the construction of a 5-8 storey mixed use development at 48-56 Derby Street, Kingswood. Architectural and landscape plans are provided at Appendix No. 3 and Appendix No. 4.

The proposal, as amended, incorporates the following elements.

Building Forms

The proposal incorporates four (4) distinct building pads, with the ground floor of the front two (2) pads incorporating the retail and commercial spaces and the ground floor of the rear two (2) pads incorporating residential units.

The development adopts a 'U' configuration as a means of maximising solar access and opportunities for natural ventilation and achieving a central entry point to the development.

The building design has adopted a split height, with the front portion of the building adopting an 8 storey form, and the rear portion of the building adopting a 5 storey form. This is in order to provide for an appropriate transition to surrounding development to the south which is identified for four (4) storey mixed use development, and also to provide for a reduced overshadowing impact to the existing townhouses to the south and any future mixed use development that may occur on the adjoining land to the south.

Residential Units & Associated Amenities

The proposal incorporates a total of 191 Residential Units with the following dwelling mix:

- 4 x studio units;
- 24 x 1 bedroom units;
- 147 x 2 bedroom units;
- 16 x 3 bedroom units.

Of the above there are a total of 19 adaptable units which equates to 10% of the total yield. There is a diversity of apartment typologies including corner apartments, cross-through units, and a number of single aspect units, noting that there are limited south facing single aspect units.

There are a total of four (4) residential lift cores proposed with a series of separate residential lobby areas, noting that the lift cores continue to the basement levels also.

The development incorporates a defined security entry point at a depth of approximately 18m into the site that is integrated into letter box areas. The commercial lobbies are located forward of this area (i.e. closer to the street frontage) so that access to the residential portion and associated lobby areas is limited to residents and their visitors.

The proposal provides for a central 'community space' at the ground floor level and a communal room at the ground floor in the central southern portion of the site. There is a large common area provided at the rooftop level that provides for a series of barbeque areas, a toilet and planter boxes to provide for communal activities for residents.

Commercial Floor Space

The proposal incorporates a total of 5 ground floor commercial suites focused on the front portion of the site, with a total area of 1018m² of commercial floor space provided. The commercial space is designed to align with the level of the existing footpath areas (being +/- 150mm) to provide for a level entry to the retail suites fronting Derby Street. The commercial floor space is distributed as follows:

- Retail Suite 1: 156m² with direct address to Derby Street;

- Retail Suite 2: 102m² with direct address to Derby Street;
- Retail Suite 3: 153m² with direct address to Derby Street;
- Commercial Suite (west): 428m² with access from the commercial lobby;
- Commercial Suite: (east): 179m² with access from the commercial lobby.

All of the suites have a small kitchenette area and there is a common toilet in each wing of the building.

Vehicular Access and Carparking

The proposal provides for a vehicular access point at the north-eastern corner of the site. This access also functions as a loading zone entry point for waste collection vehicles that will utilise the garbage loading zone via a turntable with a diameter of 14m to enable garbage vehicles to enter and leave in a forward direction.

The vehicular access provides access to two (2) basement levels that incorporate a total of 284 spaces as follows:

- Basement Level 2:
 - o Resident Spaces: 161
- Basement Level 1:
 - o Commercial Spaces: 29
 - o Loading/Service Spaces: 5
 - o Carwash Bays: 4
 - o Resident Spaces: 46
 - o Visitor Spaces: 39

The basement levels also incorporate four (4) separate garbage bin holding areas with associated chute systems (4 chute systems in total), service areas, bulk waste storage areas, and residential storage areas.

Staging

The proposal is to be undertaken in 2 distinct stages, with Stage 1 being the eastern portion of the development and Stage 2 being the western portion of the development. The proposal has been designed to provide the requisite up front facilities to enable this to occur, including vehicular access points, waste collection areas, and associated ramps through the basement levels.

Other Aspects

It is noted that a separate Development Application will be required for the following works associated with the proposal:

- Advertising and Signage;
- Fitout and use of the commercial/retail suites.

Plans and Documents

The following plans and documents have accompanied the subject application:

- Survey Plan – H. Ramsay and Co Surveyors
- Architectural Plans – Robertson + Marks Architects
- SEPP 65 Design Verification Statement – Robertson + Marks Architects

- Landscape Plan and Statement – RFA Landscape Architects
- Solar Access and Natural Ventilation Reports – Windtech
- Arboricultural Report and Tree Management Plan – Redgum Horticultural
- Geotechnical Report – SMEC Testing Services Pty Ltd
- Traffic and Parking Impact Report – Varga Traffic Planning Pty Ltd
- Accessibility Report – PSE Access Consulting
- BASIX Certificate – Building Sustainability Assessments
- Waste Management Plan – Elephants Foot
- Stormwater Drainage Plan – J & M Group
- Construction Waste Management Plan – Robertson + Marks Architects
- Acoustic Impact Assessment – Rodney Stevens Acoustics
- Statement of Environmental Effects and Clause 4.6 Variation Request – Sutherland and Associates Planning

Planning Assessment

The proposal has been assessed in accordance with Section 23G and Section 79C of the Environmental Planning and Assessment Act 1979, with due regard to relevant legislation and planning instruments as cited:

- State Environmental Planning Policy No. 55 – Remediation of Land;
- State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development & Associated Apartment Design Guide;
- Sydney Regional Environmental Plan No. 20 – Hawkesbury / Nepean River Catchment;
- Penrith Local Environmental Plan 2010;
- Penrith Development Control Plan 2014.

Having regard to the above legislation, planning instruments and policy, the following key issues have been identified for discussion.

1. Section 23G – Joint Regional Planning Panels

A regional panel is taken to be the Council whose functions in particular circumstances are conferred on a regional panel. In this case, the Sydney West Joint Regional Planning Panel is the consent authority as conferred on it under Section 23G and Schedule 4A(3) of the EP&A Act given that the Capital Investment Value of the proposal exceeds \$20 million.

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

State Environmental Planning Policy No. 55 – Remediation of Land

The proponent has outlined that the site has been historically used for residential purposes and is unlikely to contain contaminants. Council's Environmental Health Officer has reviewed the proposal in detail and commented as follows:

The Statement of Environmental Effects addresses SEPP 55-Remediation of Land, stating that a "desktop survey reveals that the subject site has historically always been used for low density residential development and is highly unlikely to contain contaminants" and that "sites immediately adjacent to the subject site are also residential and also unlikely to contain contaminants".

A review of Nearmaps confirms this statement and Council holds no environmental reports for any of the five properties subject to this application, nor any information regarding contamination (or potential contamination) of the lots.

Accordingly, no further assessment is required in regard to potential contamination or SEPP 55 considerations for the property. Due to the extensive excavation that is proposed, I attach a recommended condition of consent regarding "unexpected finds" which will address any potential contamination or findings during this phase of the development, should consent be granted.

Having regard for the above, it is considered the site is suitable for the proposed development and therefore a preliminary SEPP 55 is not considered necessary in this circumstance. The unexpected finds protocol condition is included in the recommended conditions of consent.

Sydney Regional Environmental Plan No. 20 – Hawkesbury/Nepean River Catchment

SREP 20 aims to protect the environment of the Hawkesbury-Nepean River by ensuring that the impacts of future land uses are considered in a regional context. Of most

relevance to this proposal is the requirement to assess the development in terms of the impact of the development on water quality, particularly as that relates to the water cycle and flora and fauna.

The proposal seeks to discharge stormwater from the development to the existing stormwater system in Derby Street and includes stormwater quality control mechanisms such as stormwater cartridge filters.

Subject to appropriate conditions relating to stormwater control, and sediment and erosion control during construction, the proposal will be consistent with the policy, particularly in relation to total catchment management and water quality in the metropolitan area.

This is confirmed through the receipt of referral comments from Council's Senior Water Management Officer that the proposal is consistent with Council's Water Sensitive Urban Design Policy in terms of the WSUD measures proposed.

State Environmental Planning Policy (Infrastructure) 2007

Clause 104 of the abovementioned SEPP does not require Council to consult with the Roads and Maritime Services as the size of the proposed development does not trigger any of the criteria in Schedule 3 (191 units is less than the 300 units trigger) and as the site is not on a classified road and has no connection to a classified road within 90m of the site. Therefore no referral to the RMS was required.

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development and Apartment Design Guide

The Development Application is accompanied by a design verification statement prepared by Brian Mann (Registered Architect), verifying that he has directed and designed the proposal, and that the design quality principles set out in Part 2 of the SEPP are achieved for the residential flat development and that it meets the objectives of Part 3 and Part 4 of the Apartment Design Guide.

A detailed assessment against the SEPP 65 Design Quality Principles and the relevant provisions of the Apartment Design Guide are provided at Appendix No. 5.

Penrith Local Environmental Plan 2010

Permissibility

The subject site is zoned B4 Mixed Use under Penrith Local Environmental Plan 2010. The proposed development is defined as a '*commercial premises*' and a '*residential flat building*', both of which are permitted with consent in the B4 Mixed Use zone.

LEP and Zones Objectives

The proposed development is consistent with the aims and objectives of both the LEP and the zone themselves, which for the B4 zone are specified as:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To minimise conflict between land uses within the zone and land uses within adjoining zones.*
- *To create opportunities to improve public amenity.*
- *To provide a wide range of retail, business, office, residential, community and other suitable land uses.*

This is based on the following assessment:

- The extent of commercial space equates to 1012m² and provides for half of the ground floor area of the site as commercial space, with the commercial suites suitable for a range of retail, commercial, and office uses as well as potential medical related land uses;
- The site is well located relative to existing infrastructure and services as well as public transport which encourages public transport patronage as well as walking and cycling;
- The proposal provides for an active street frontage with a strong interface to Derby Street and will contribute to the desired future character of the Penrith Health and Education Precinct (HEP).

In addition the proponent has outlined that the extent of commercial floor space satisfies the zone objectives and desired future character based on the following:

The proposed mixed use development is considered to be compatible with the emerging character of Derby Street. The proposed retail component of the development has been designed to provide an active street edge to Derby Street and presents flush to the street. The proposed commercial component has been extended to the south to create meaningful, functional spaces capable of accommodating health related commercial activities. The uses have been suitably integrated and conflict with residential uses minimized by maintaining separate pedestrian access, parking, vertical transportation and waste storage.

Further the proposal has been designed with higher floor to ceiling heights for the ground and first floors, as well as the necessary adaptability to be capable of supporting additional health related commercial activities in the future.

The retail component and commercial lobbies about a suitably designed public open space at the proposal's principal address to improve amenity and integration with the public domain.

The proposal is considered to satisfy the zone objectives when having regard to the commercial floor space provided as part of the development.

Other Relevant Instrument Provisions

The proposed development satisfies the remaining provisions of the LEP, with detailed discussion provided against those provisions of most relevance to the proposal, notably the departure to the building height standard and the provisions of Clause 7.11 Penrith Health and Education Precinct.

Clause 4.3 - Height of Buildings & Clause 7.11-Penrith Health and Education Precinct

Clause 4.3 of Penrith Local Environmental Plan 2010 relates to building heights and states the following:

(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 conservation areas and heritage items,*

- (d) *to nominate heights that will provide a transition in built form and land use intensity.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).*

The Height of Buildings Map identifies a maximum height of 18m applying to the site, however as detailed further in this report the proposal benefits from a LEP height bonus of 20% pursuant to Clause 7.11 of the LEP.

Clause 7.11 provides as follows:

- (1) *The objectives of this clause are as follows:*
 - (a) *to encourage a built form that is suitable for both residential and health services facilities,*
 - (b) *to encourage adaptive reuse of residential buildings for health services facilities in the Penrith Health and Education Precinct where the residential use within the building ceases in the future.*
- (2) *This clause applies to land identified as “Penrith Health and Education Precinct” on the [Clause Application Map](#).*
- (3) *Despite clause 4.3, development consent may be granted to development on land that exceeds the maximum height shown for that land on the [Height of Buildings Map](#) by up to 20% if the floor to ceiling height of both the ground and first floors are equal to or greater than 3.5 metres.*

The proposal benefits from Clause 7.11 in that it provides 3.5m floor to ceiling heights for the ground floor and first floor of the development. This then provides for a maximum permitted building height of 21.6m on the site.

The proposal has a maximum building height of 25.27m relative to natural ground level which equates to a 16.9% departure to the 21.6m maximum (bonus) height applying to the site.

Consideration of Clause 4.6 Variation Request

The applicant has prepared a Clause 4.6 variation request, noting that the full request can be found at Appendix No 6 (also refer to Appendix No 7 for the applicant’s envelope modelling and solar access diagrams relevant to the arguments outlined below). The proposal has a maximum building height of 25.27m relative to natural ground level which equates to a 16.9% departure to the 21.6m maximum (bonus) height applying to the site, which the proponent outlines as the maximum permitted building height.

The Clause 4.6 variation is prepared and responds to the recent case of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 as well as the ‘five part test’ established in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

Consideration of the relevant matters contained in Clause 4.6 is provided below.

Clause 4.6(2) of the LEP provides that development consent may be granted for development even though the development would contravene a development standard imposed by the LEP, or any other environmental planning instrument.

However, Clause 4.6(3) states that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstance of the case, and
- (b) there are sufficient environmental planning grounds to justify contravening the development standard.

In accordance with Clause 4.6(3) the applicant requests that the height of buildings development standard be varied. The applicant has put forward the following key points in relation to demonstrating that compliance with the development standard is unreasonable and unnecessary, and the basis for which there are sufficient environmental planning grounds, particular to the circumstances of the proposed development (per Four2Five Pty Ltd v Ashfied) to justify contravening the development standard:

- *The proposed development results in a considerably lower density with a FSR of 2.75:1 when compared to the permissible density of 3.5:1 for the site.*
- *The proposed variation to the height control at the front of the site adjacent to Derby Street allows for a significant reduction in height at the rear of the site. In fact, the proposed height variation at the front of the site is only 3.67 metres or 16.9%, whilst the building is actually 6.85 metres or 31.7% under the height control at the rear of the site.*
- *The distribution of scale across the site decreases from north to south to provide a transition to the lower 12 metre height control which applies to the sites immediately to the south. The introduction of significant modulation in scale of the building in response to its interface to the north and the south achieves optimal environmental performance, and when combined with the variation in architectural language for the building, will provide a fine grain for the development which will reduce the apparent mass of the development.*
- *A contextual analysis prepared by Robertson + Marks Architects accompanies the subject application and illustrates the relationship of the proposed building within the context of Derby Street which illustrates that the scale of the development is compatible with the emerging scale of development in Derby Street and will properly integrate with the desired future character for the precinct.*
- *The offset of height from the southern end of the site to the northern end of the site results in a reduced shadow impact to the southern adjacent sites as illustrated in the architectural 'comparison' package submitted with the DA.*
- *The non-compliance with the height control ultimately improves the overall residential amenity within the site and the southern adjacent sites and will achieve a better outcome than a complying development.*

The proponent also outlines the following key environmental planning grounds particular to the proposed development and site context:

The recently amended planning controls for the "Penrith Health and Education Precinct" under the PLEP 2010 provide an in built transition in scale from south to north with a 12 metre height control on the southern site (capable of being increased to 14.4 metres under Clause 7.11 of the PLEP 2010) and an 18 metre height control on the subject site (capable of being increased to 21.6 metres under Clause 7.11 of the PLEP 2010). This transition in scale is appropriate and will achieve a high quality built form and appropriate relationship between developments once the future desired character for the area is realised.

However, in the intervening period until this future desired character is realised, there will inevitably be a disparity in scale between the existing, or former,

character of the area and the new development which represents the future desired character of the area.

Whilst it is recognised that a compliant height scheme on the subject site is possible, Council staff have in this instance suggested an alternative approach towards height for the site in an effort to achieve a more sensitive outcome having regard to the existing character of the 2 storey townhouse development to the south of the site. The principle behind the alternative approach to height suggested by Council is to reduce the visual impact of the development when viewed from the existing southern adjacent sites by providing a transition in scale from a permissible 7 storeys on the subject site to the existing 2 storey townhouses on the southern site. The suggested reduction in height at the rear was also intended to reduce overshadowing to the southern adjacent sites when compared to a compliant scheme.

The proposal has been amended to provide a rear form which is actually 6.85 metres or 31.7% under the height control at the rear of the site, with the mass which has been removed from the rear of the site relocated to the front of the site. It is noted that the development is below the 21.6 metre height control at the rear by twice the distance that the development is above the 21.6 metre height control at the front of the site.

The architectural package which accompanies this correspondence includes a shadow analysis which illustrates that the reduction in height at the rear is not necessary to achieve 70% solar access to a future residential apartment development on the southern adjacent site because a compliant height on the subject site would still allow for 79% solar access on the rear site. However, in relation to the existing southern adjacent development the proposed reduction in height to the rear in exchange for the variation to the height control at the front of the site does in fact result in a significant and meaningful reduction in relation to overshadowing of the existing southern adjacent sites.

The increased scale to the front of the development is also demonstrated in the contextual analysis prepared by Robertson + Marks Architects to achieve an appropriate response to the emerging scale evident within Derby Street and will properly integrate with the desired future character for the precinct.

Strict compliance with the development standard could be achieved by relocating height from the front of the development to the rear, however, this approach is less desirable because it compromises the capacity to achieve a more sensitive response to the existing character of the southern adjacent sites in the intervening period until these sites are redeveloped in accordance with the uplifted scale and density recently provided by Council.

Strict compliance with the development standard would therefore result in an inflexible application of the control that would not deliver any additional benefits to the owners or occupants of the surrounding properties or the general public and there are sufficient environmental planning grounds in this particular circumstance to warrant the proposed variation to the 21.6m height control in this instance.

The environmental planning grounds put forward are supported and it is considered that as per the Clause 4.6 variation request submitted that compliance with the building height standard would be unreasonable and unnecessary in this instance.

The proposal results in a preferable outcome on the site as compared to a strictly compliant scheme, noting that the overall yield remains comparable (less units are achieved on the current scheme compared to the original concept with a compliant height) and improves the availability of solar access to the adjoining townhouse development and future mixed use development of up to four (4) storeys. The redistribution of the building height also reduces privacy impacts relative to the existing and future development to the south of the site by reducing the number of units facing the rear of the site.

Further, the proposal provides for the delivery of meaningful upfront commercial floor space, noting that the LEP and DCP do not specifically require this in order to obtain the building height bonus.

The delivery of 1,012m² of floor space as part of the delivery of the development is a preferred environmental planning outcome than simply providing the required increased floor to ceiling heights. This enables streetscape activation and contribution to the desired future character of the precinct in a key location adjacent to Nepean Hospital.

Clause 4.4 - Floor Space Ratio

Clause 4.4 of Penrith Local Environmental Plan 2010 relates to maximum floor space ratios for particular parts of the local government area. The site is identified as having a maximum FSR of 3.5:1. The current proposal adopts a floor space ratio of 2.75:1 which is 21% less than the maximum permitted FSR applying to the site.

3. Section 79C(1)(a)(ii) – Any Draft Environmental Planning Instruments

There are no draft environmental planning instruments applying to the site.

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

Penrith Development Control Plan 2014

Penrith Development Control Plan 2014 applies to the land. The proposal has been assessed having regard to the provisions of Part C – Controls applying to all land uses, the relevant elements of Part D2 Residential Development and Part E, Section E12 – Part A, Hospital Precinct as detailed below.

C2 - Vegetation Management

A tree management report has been provided detailing the removal of 19 trees in association with the proposed development, noting retention of 20 trees across the site and adjoining sites. The proposal also provides for suitable replacement plantings by way of additional landscaping around the side and rear of the site.

The proposed level of planting is considered sufficient to replace the trees to be removed.

C3 - Water Management

The applicant has submitted a Soil and Water Management Plan including associated stormwater and Water Sensitive Urban Design measures that will ensure appropriate water management measures are implemented. Council's Senior Water Management Office has reviewed the proposal and found that the proposal is satisfactory and provides for appropriate Water Sensitive Urban Design measures.

C5 - Waste Management

The key objective of this section is to ensure that the volume of waste generated is minimised and waste is re-used or recycled. A suitable waste management plan has been submitted with the application, and the proposal incorporates the following waste management measures:

- 4 x individual chute systems, with a chute provided to each residential core that connects to a collection area in the basement;
- Bulky waste storage area in the basement;
- Holding area for collection day at the ground floor level which will be serviced by Council's waste vehicles. The use of a truck turning table will enable vehicles to enter and leave the site in a forward direction.

Some minor issues associated with the waste storage areas and location of the bulky waste storage area have been raised by Council's Waste Management Officer, however conditions of consent are recommended to resolve these issues. Recommended conditions of consent will require that the waste management plan is implemented.

C10 - Transport, Access and Parking

The proposal requires the following levels of on-site parking:

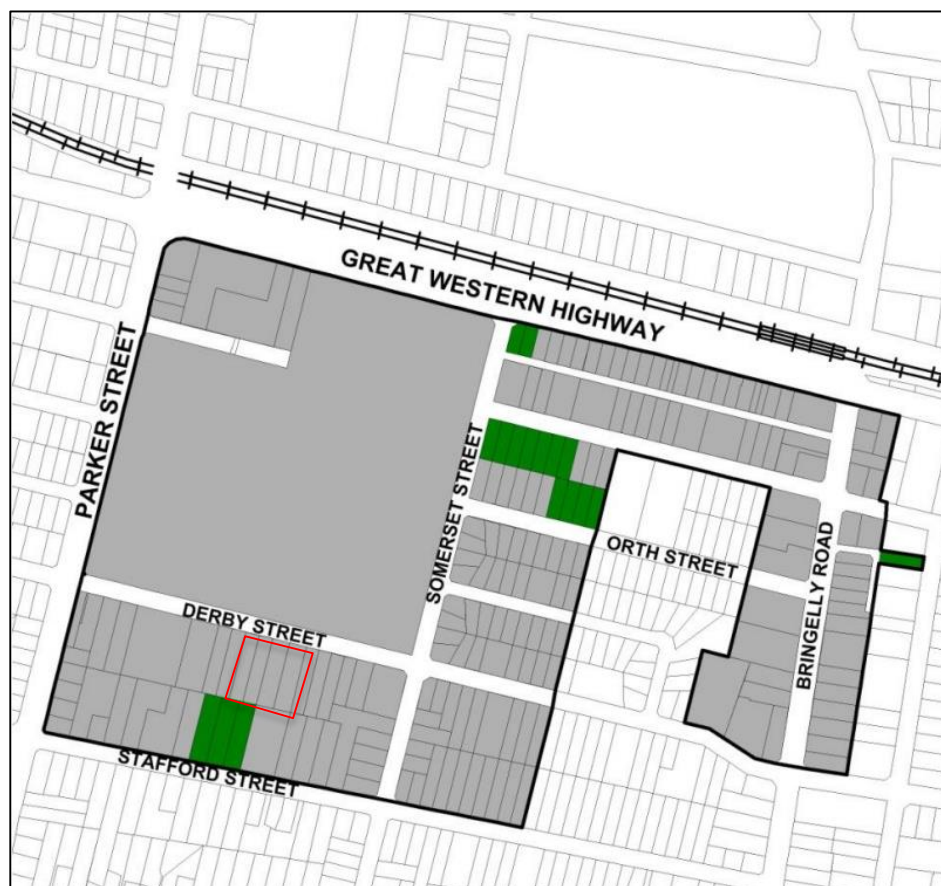
<i>Land Use Element</i>	<i>Rate</i>	<i>Required</i>	<i>Provided</i>
Residential	1/2 bed: 1 space 3 bed: 2 spaces	28 x 1 bed/studio: 28 147 x 2 bed: 147 16 x 3 bed: 32 Resident: 207	206
Residential Visitor	1 space per 5 units	191/5: 38.2	39
Commercial	Retail: 1 space per 30m ² Business/Office: 1 space per 40m ²	411/30: 13.7 607/40: 15.18 Commercial: 28.88	29
Total		274.08	274

As seen above the total parking provided complies, however the proposal is short by 1 resident parking space. It is proposed to impose a condition that a further parking space be provided, with a carwash space to be reallocated as a resident space.

Council's Traffic Engineer and Development Engineer are satisfied with the parking related aspects of the proposal subject to recommended conditions of consent.

E12, Part A – Penrith Health and Education Precinct

The site is located within the Penrith Health and Education Precinct (HEP), with the location of the site reflected on the HEP map below.



The site is also within the Medical Mixed Use Character area which calls for a number of key requirements as outlined in the table below, with an assessment of the proposal provided.

Requirement	Proposal	Compliance
<i>Provision of flexible floor areas and layouts to the ground and first floor to accommodate a range of commercial uses;</i> <i>3.5m floor to ceiling heights on the ground and first floor with 2.7m above;</i>	The proposal provides for the required 3.5m floor to ceiling heights at the ground floor and first floor and sufficiently flexible floor areas to accommodate a range of uses.	Yes
<i>A 75% commercial frontage is required and an 'active frontage' is required as well as a continuous awning with a depth of 2.8m;</i>	The proposal provides for >75% commercial frontage and is activated. An appropriate awning is also provided.	Yes

<i>A minimum site width of 24m is required;</i>	85.5m	Yes
<i>Individual commercial and residential entries;</i>	Provided with separate entries and cores and residential areas beyond secured access point to site.	Yes
<i>4m front setback to the street; 2-4 storey podium;</i>	4m provided. 2 storey podium provided.	Yes
<i>6m side and rear setbacks, noting that the ADG now prevails over the DCP control;</i>	6m-9m provided.	Yes
<i>Ground and first floors of mixed use developments should provide for commercial frontage, with 'variation being considered to this control in order to provide adaptable housing'; which is to be provided through the increased floor to ceiling heights;</i>	Ground floor provides for commercial active frontage.	Yes – See discussion.
<i>75% site coverage and 10% deep soil.</i>	55% site coverage and 12.8% deep soil.	Yes

The only exception to consistency with the controls is the requirement for first floor commercial floor space. The quantum and extent of commercial floor space has been discussed previously in this report. The proposal is considered to provide a suitable response on this site noting that the proposal satisfies the DCP in that the increased floor to ceiling heights is provided to enable 'adaptable housing', i.e. future adaptability for commercial purposes. A commercial adaptability plan is provided which satisfies the DCP and therefore the lack of up front commercial at the first floor is reasonable given the extent of commercial space provided at the ground floor and given the DCP only calls for adaptability.

Section 79C(1)(a)(iia) – The provisions of any Planning Agreement

There is no VPA that applies to the land.

Section 79C(1)(a)(iv) – The Regulations

Subject to the imposition of conditions of consent, Council's Building Surveyor has raised no objection to the proposed development regarding fire safety considerations as prescribed under the *Environmental Planning and Assessment Regulation 2000*.

Prescribed Conditions

The relevant prescribed conditions of the Regulations, such as the requirement for compliance with the BCA, can be imposed as conditions of consent where applicable.

Advertising and Notification

Advertising and neighbour notification were carried in accordance with the requirements of the Regulations.

Schedule 1 Matters

The relevant matters contained in Schedule 1 are satisfied, including those matters relating to SEPP 65 and required documentation.

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

Urban Design

The proposal has undergone a number of design revisions to a point where the building now presents a suitable urban design outcome on the site when having regard to the site context. The building adopts a defined middle, base and top and the streetscape interface has been raised to ensure that the commercial space is situated at the same level as the street level removing the previously 'sunken' commercial spaces. This has significantly improved the streetscape interface.

As addressed previously the height departure is considered to have merit given that it enables improved solar access to the townhouse development at the rear and any future redevelopment of this site.

Overshadowing

The proposed development form and associated height has been partly generated by a desire to limit the extent of overshadowing to the adjoining townhouse developments to the south, as well as any future residential development given the B4 zoning and 12m height limit (4 storeys) applying to that land. The shadow modelling indicates the following. In this regard.

Future Development Scenario

The proposal enables the adjoining sites to the south to achieve 70% solar access to a future residential development when taking into account the extent of shadow cast by the building, required setbacks and the like. The proposal would impact on the very rear unit of each likely building at the ground and first floor level, but based on the ADG requirement for 70% of units to receive 2 hours, the anticipated future development form would achieve solar access to 79% of units and meet the ADG.

Existing Development Scenario

The existing townhouse developments are constructed with a setback to the southern boundary of the site of between 1m and approximately 6m. The shadow cast by the development will impact on the rear most townhouse on each of the adjoining sites, with three (3) townhouses having solar access reduced to less than 3 hours on June 21, noting the reduced height at the rear lessens the extent of impact. In terms of the proportion of townhouses impacted, there are a total of 26 townhouses, and to reduce solar access to less than 3 hours to only 11.5% of the townhouses is considered to be an acceptable level

of overshadowing.

In particular, given the adjoining sites are zoned B4 Mixed Use with a height of up to 12m and an FSR of 1:1, it is expected that at some point in the future redevelopment may occur for a mixed use development or residential flat building development on the land.

Given the high density nature of the site and the high density zoning applying to the site to the south, it is considered that the proposal provides for sufficient solar access to the townhouses and the proposal satisfies the planning principle in *Parsonage v Ku-ring-gai* [2004] NSWLEC 347 which outlined:

- *The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*
- *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*
- *Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.*
- *In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.*

Therefore the expectation of maintaining solar access in a high density environment is substantially different to a lower density environment. Further given the maximum permitted building heights and orientation of allotments in this part of the Health and Education Precinct, maintaining full solar access to all existing lower density residential development is not achievable.

The final point of the planning principle is considered of key importance in this situation as the likely future built forms to the south are anticipated to accommodate mixed use or residential development of up to 4 storeys. Whilst this may not occur in the short term given difficulties in negotiating strata corporations, the longer term desired future character is for a much greater density on the allotments to the south. As the proposal has demonstrated that a future development form to the south could achieve the level of sunlight required under the ADG after taking into account the impact of the proposal development, the extent of overshadowing is considered acceptable.

Noise Impacts

The proposal was accompanied by an Acoustic Report prepared by RSA Acoustics detailing the impact of the development on the nearest residential receivers and adjoining properties and from associated plant, traffic and loading vehicle noise. This report concludes that the impact on the apartments will meet the required noise criteria and that the proposal can satisfy the relevant criteria for Construction Noise.

The Acoustic Report was reviewed by Council's Environmental Management Unit and was found to be satisfactory with the impacts of the development considered to satisfy the EPA Industrial Noise Policy and SEPP (Infrastructure) 2007.

Community Safety

The application was accompanied by a Statement of Environmental Effects prepared by Architectus which considered the Crime Prevention through Environmental Design

(CPTED) principles of the proposed development.

Consideration of the information provided was undertaken by Council's Community Safety Coordinator who confirmed that the proposal is satisfactory in terms of CPTED matters subject to conditions.

Stormwater Management

The proposal was accompanied by a detailed stormwater plan with associated on-site detention and Water Sensitive Urban Design (WSUD) elements. These were reviewed by Council's Development Engineer and Waterways Officer and found to comply with Council's requirements.

Accessibility

The Access Report accompanying the Development Application, prepared by PSE Access Consulting, concludes that the proposal provides equitable access for people with disabilities so as to comply with the accessibility requirements of the Building Code of Australia, Australian Standard 1428 and the primary objectives of the Commonwealth *Disability Discrimination Act 1992*.

The detailed design recommendations of the Access Report will need to be incorporated into the Construction Certificate plans and the works certified accordingly prior to the occupation of the building.

Traffic Impacts

A traffic report accompanied the Development Application providing detail on traffic generation. The proposal is identified as creating a net traffic increase of 61 vehicle trips per hour.

The traffic report outlines the following in relation to the operation of the Derby Street and Parker Street intersection:

- *the intersection currently operates at a Level of Service "C" under the existing traffic demands in the AM peak period with total average vehicle delays in the order of 29 seconds/vehicle;*
- *the intersection currently operates at a Level of Service "D" under the existing traffic demands in the PM peak period with total average vehicle delays in the order of 52 seconds/vehicle;*
- *under the projected future traffic demands expected to be generated by the development proposal, the intersection will continue to operate at Level of Service "C", with increases in average vehicle delays in the order of 6 seconds/vehicle;*
- *under the projected future traffic demands expected to be generated by the development proposal, the intersection will continue to operate at Level of Service "D", with increases in average vehicle delays of in the order of 4 seconds/vehicle.*

The traffic report also provides the following in relation to the intersection of Derby Street and Somerset Street:

- *the intersection currently operates at a Level of Service "A" under the existing traffic demands with total average vehicle delays in the order of 6 seconds/vehicle;*
- *under the projected future traffic demands expected to be generated by the development proposal, the intersection will continue to operate at Level of Service "A", with no noticeable increases in average vehicle delays.*

In the circumstances, it is clear that the proposed development will not have any unacceptable traffic implications in terms of road network capacity, and that no

improvement works or intersection upgrades will be required on the adjacent road network as a consequence of the development proposal.

Council's Traffic Engineer and Development Engineer are satisfied with the traffic related aspects of the proposal subject to recommended conditions of consent.

Social and Economic Impacts

The proposal represents a significant development within the Penrith HEP and will generate substantial economic benefits to the locality and broader Penrith area through the construction and operational phases of the development. The proposal will also increase housing supply and the extent of commercial floor space in proximity to a major employment hub and key public and road transport corridors. This aligns with Council's vision for the area. The social and economic impacts have been considered and are assessed as satisfactory.

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

The site attributes are conducive to the proposed development. The parcel size is approximately 6700m² which has enabled a holistic urban design exercise to occur in terms of arriving at the most appropriate building form on the site.

The proposal has addressed the site constraints, most notably the interface with development to the south that currently features 2 storey residential development with the desired future character to the south to adopt a 4 storey mixed use character. The transition in height mitigates overshadowing to a greater degree than a fully compliant height at the rear (south) of the site.

Overall, the subject site is deemed suitable for the development for the following reasons:

- The use is permissible with consent and consistent with the zone objectives.
- The use is compatible with surrounding/adjoining land uses with the design responsive to the transition in height anticipated to the rear.
- Stormwater from the site is able to drain to Council's satisfaction.
- The site is adequately serviced by transport, water and sewer infrastructure which has the capacity to cope with any increase in demand associated with the proposed development.
- The proposal aligns with the desired future character of the Penrith Health and Education Precinct.

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

(i) Internal and External Referrals

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

<i>Referral Body</i>	<i>Comments Received</i>
<i>Building Surveyor</i>	Supported, subject to conditions.
<i>Environmental Health – Environmental Management</i>	Supported, subject to conditions.
<i>Environmental Health - Waterways</i>	Supported, subject to conditions.
<i>Community Safety Officer</i>	Supported, subject to conditions.

<i>Waste Management Office</i>	Concerns raised over bin storage design. Issues have been conditioned.
<i>Traffic Engineer</i>	Supported, subject to conditions.
<i>Development Engineer</i>	Supported, subject to conditions.

(ii) Community Consultation

In accordance with Penrith Development Control Plan 2014, the proposed development was advertised in the local newspaper and notified from 3 August to 18 August 2015 to adjoining property owners and occupiers. Three (3) submissions were received in response to the notification process which raised the following concerns that are addressed in the table below.

<i>Issue</i>	<i>Response</i>
<i>Subsidence to adjoining property at 58 Derby Street.</i>	<p>A geotechnical report accompanied the DA and provides recommendations for excavation, supports and associated shoring to ensure limited impact to adjoining properties.</p> <p>Further, a condition of consent is recommended requiring a dilapidation report associated with adjoining residential properties and that any damage caused is to be rectified at the cost of the developer.</p>
<i>Additional traffic generation and congestion with concerns raised regarding the existing road infrastructure and impacts of future development on the road network.</i>	<p>The traffic assessment outlines the existing levels of service to existing intersections and roads will not be unacceptable with the same 'level of service' maintained. Further, the proposal complies with the overall parking requirements for the development.</p> <p>In terms of the traffic impacts of future development, these will be considered on their own merits in terms of traffic impacts.</p> <p>Council's Traffic Engineer has considered the proposal and found the proposal to be satisfactory.</p>
<i>Adequacy of on-site parking and impacts on bin collection from Derby Street.</i>	<p>The proposal complies with the required levels of on-site parking and the area on Derby Street is now linemarked for allocated parking spaces.</p>
<i>Concerns that the hospital helicopter flight path may need to shift given the height of the building and noise impacts to adjoining properties.</i>	<p>No objections were received from Nepean Hospital in terms of impacts on flight paths for emergency helicopters.</p> <p>The consideration of noise impacts from helicopters is beyond the scope of this application, noting that Nepean Hospital and CASA regulate helicopter flight paths and associated noise impacts, noting it is understood emergency helicopter flights are exempt from a number of CASA requirements.</p>

<i>Concerns surrounding privacy and overlooking from balconies and windows, and a request the developer plant trees along boundaries.</i>	The proposal complies with the ADG separation requirements to adjoining properties and the landscape plan provides for screen plantings to a height of 8m (Blue Berry Ash) as well as bottlebrush that will grow to a height of 5m and will provide effective screen plantings.
<i>Concerns that screen plantings will drop leaves and cause fire hazards and block drains.</i>	The proposed plantings are evergreen and will not drop their leaves. The dropping of leaves on occasion will occur however the benefits of the screening outweigh the impacts of leaf matter occasionally dropping into adjoining properties.
<i>Concerns regarding height and setbacks to the eastern property and loss of sunlight.</i>	The property to the east is a medical centre and therefore overshadowing impacts are acceptable noting that the proposal complies with the required setbacks to the side boundary (9m provided).

Based on the above discussion, the submissions are adequately addressed by the proposal and through recommended consent conditions.

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

The site is suitable for the proposed development, the proposed development is permissible with consent and the proposal meets the aims and objectives of the relevant environmental planning instruments applying to the development. The proposal is one of the first large scale redevelopments in the Penrith Health and Education Precinct, will provide for a significant increase in the extent of commercial floor space available in the precinct and will provide for a significant boost to housing supply in an area marked for high density development by the recent gazettal of Penrith LEP 2010 Amendment No 4. For these reasons the proposal is in the public interest.

Section 94 Contributions

The following Section 94 Contributions are applicable to the subject development, noting that there is a credit for five (5) existing dwellings.

- Cultural Facilities - \$63,406
- District Open Space - \$675,094
- Local Open Space - \$244,089
- Kingswood Neighbourhood Centre - \$64,293

Total Contributions - \$1,046,882

Recommended conditions of will require the payment of contributions prior to the issue of a Construction Certificate.

Conclusion

The proposed development represents the first significant redevelopment in the Penrith Health and Education Precinct that was rezoned by Council in February 2015 pursuant to Penrith LEP 2010 Amendment No. 4.

The proposal has been designed to be consistent with the planning controls applying to development of this form, noting that the departure to the building height control has merit in the context of this site.

The proposed development has been assessed against the relevant heads of consideration contained in Section 23G and Section 79C of the Environmental Planning and Assessment Act 1979 and has been found to be satisfactory. The site is suitable for the proposed development and the proposal is in the public interest. The proposal is therefore worthy of the Joint Regional Planning Panel's support.

Recommendation

That:

1. The submitted height standard variation under Clause 4.6 of Penrith Local Environmental Plan 2010 be supported.
2. Development Application No. DA15/0730 for Demolition of Existing Structures & Construction of 5 Storey to 8 Storey Mixed Use Development including 5 Ground Floor Commercial/Retail Tenancies, 191 Residential Apartments & Associated Basement Car Parking, Landscaping & Drainage Works at 48-56 Derby Street, Kingswood be approved subject to the recommended conditions outlined at Appendix No. 8.
3. The individuals who made submissions be notified of the determination.