

83 Mulgoa Road, Penrith

Western Sydney Conference and Community Centre

Statement of Support for Section 4.55(1A) Modification Application to
DA No.18/0340



December 2018 | Final

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Executive Summary

This Statement of Support (SoS) has been prepared in support of a Section 4.55(1A) Modification Application, made to Penrith City Council ("the Council") under Part 4 of the *Environmental Planning and Assessment (EP&A) Act 1979*.

This Section 4.55(1A) Application seeks to modify Development Consent No. 18/0340 relating to the construction of a mixed use development on the at-grade car park located at the Panthers Precinct, 83 Mulgoa Road, Penrith ('the site').

The proposed changes comprise a variation to the approved concept building envelopes to accommodate:

- Increase in floor to ceiling heights (Building A (Hotel only));
- Lift and stair overruns;
- Services; and
- Acoustic and visual screening.

The s4.55(1A) and this SoS have been prepared in accordance with the *EP&A Act 1979*, and the Environmental Planning and Assessment (EP&A) Regulation 2000.

This SoS addresses the relevant heads of consideration listed under Section 4.15(1) of the *EP&A Act 1979* and provides an assessment of the proposed development against the relevant Environmental Planning Instruments (EPIs) and other planning controls applicable to the site and to the proposal.

The key planning controls are included within:

- Penrith Local Environmental Plan (PLEP) 2010; and
- Penrith Development Control Plan (PDCP) 2014.

The development is consistent with the broad objectives of PLEP 2010. Each of the approved land uses are permissible within the SP3 Tourist zone or by way of Schedule 1 Additional Permitted Uses, and are consistent with the objectives of the zone.

The development seeks a variation to the maximum building height limit of 24m. No increase is sought to the maximum permitted FSR prescribed by PLEP 2010 for the subject site.

The modifications proposed are appropriate for the locality, result in a development that is substantially the same as the approved development and will not have adverse impact on the streetscape or surrounding properties.

A detailed DA has been prepared for Stage 2 (hotel and retail premises) and Stage 3 (exhibition space and serviced apartments) in accordance with the approved Concept Proposal under Development Consent No. 18/0340. Both applications for Stage 2 and Stage 3 will be lodged concurrently with this S4.55(1A) application.

Based on the assessment undertaken, approval of the s4.55(1A) Modification Application is sought.

1.0 Introduction

1.1 Overview

This SoS has been prepared in support of a s4.55(1A) Modification Application to undertake modifications to Development Consent No. 18/0340 for variations to the approved concept building envelopes to accommodate floor to ceiling heights, lift overrun, services, acoustic and visual screening.

Development Consent DA 18/0340 was issued on 6 September 2018 and granted consent for:

“Concept Proposal for a function centre, hotel, retail premises and serviced apartments, and approval for the Stage 1 proposal for a function centre (Western Sydney Community and Conference Centre), basement and surface car parking, public domain works and associated stormwater drainage, utility and landscaping works.”

A copy of the consent is provided in Attachment 3.

This application seeks Council's approval for a modification under the provisions of s4.55(1A) of the *EP&A Act 1979* to the approved concept building envelopes to accommodate:

- Increase in floor to ceiling heights (Hotel only);
- Lift and stair overruns;
- Services; and
- Acoustic and visual screening.

A detailed description of amendments sought as part of this application is contained in Section 3.2 of this Statement. The modification to the apartments are documented on the submitted amended architectural drawings prepared by Turner Architects included at Attachment 2.

The proposed modifications result in an encroachment above the 24m height control applying to the site.

1.2 Scope and Format of the Statement of Support

This statement has been prepared in accordance with the requirements of Schedule 1, Part 1 of the *EP&A Regulation 2000*, and provides an assessment consistent with the heads of consideration under Section 4.15 of the *EP&A Act 1979*, which are relevant to the consent authority's assessment of the application.

Accordingly, the SEE is structured into sections as follows:

- Section 1 - provides an overview of the project and of this SoS;
- Section 2 - describes the site, locality and surrounding development;
- Section 3 - describes the proposed modifications;
- Section 4 - provides an evaluation of the proposed development against Section 4.55 of the *EP&A Act 1979*;
- Section 5 - identifies the applicable statutory controls and policies, and provides an evaluation of the proposed development against the relevant controls;

- Section 6 - provides as assessment of the proposal and its likely impacts on the environment, and in particular the potential impacts on adjoining properties and the surrounding area; and
- Section 7 - provides a conclusion on the proposal.

1.3 Supporting Plans and Documentation

This statement has been prepared with input from a number of technical and design documents which have been prepared to accompany this s4.55(1A) Modification Application. These documents are included as Attachments to this statement and are identified in Table 1 below.

Document name	Prepared by
Site Survey Plan	Matthew Freeburn Surveyors
Architectural Drawing Package	Turner Architects

Table 1: Plans and Documents prepared to accompany this statement

A 3D digital model has been prepared and is submitted with the s4.55(1A) application under separate cover.

2.0 Site Description and Context

2.1 Site Context and Locality

The site is located within the Penrith Panthers Precinct, Mulgoa Road, Penrith, which is situated approximately 1.5km south west of the Penrith City Centre.

The Panthers Penrith Precinct is approximately 68.1ha in area and is bounded by Mulgoa Road to the east, aged care accommodation and residential to the north east, Council's Carpenter's site to the north, residential lots and Nepean River to the west and Jamison Road to the south.

The proposed development is located towards the eastern boundary of the Panthers Penrith Precinct, generally bound by Mulgoa Road to the east, Ransley Street/Retreat Drive to the north, Panthers Link to the west and Panthers Place to the south.

The location of the site, in this context, is shown in Figure 1.



Figure 1: Location plan (Source: Google Maps)

The land uses currently within the Panthers Penrith Precinct include:

- Panthers Penrith Club and associated facilities;
- Hotel;
- Maintenance buildings;
- Fast food outlets and restaurants;

- iFly Indoor Skydiving Centre;
- Aquagolf driving range;
- NRL Academy and playing fields;
- Panthers Lake; and
- Extensive areas of open space and on-grade car parking.

The existing buildings within the Panthers Penrith Precinct are predominantly located on the eastern portion of the site. The northern boundary of the precinct is formed by Showground Creek. Most of the precinct is flat with the western half occupied by Panthers Lake and vacant grassed areas beneath the overhead transmission easement and Peach Tree Creek. The highest point of the precinct is at the location of the Panthers Penrith Club building. The lake and open space areas dominate the view west from the eastern part of the site, with distant views to the Blue Mountains escarpment.

The following land uses surround the Panthers Penrith Precinct:

- Vacant Council land known as the Carpenters site (situated immediately to the north);
- A retirement village and higher density residential is located north-east and abutting the site;
- The Penrith Showground and Stadium is situated directly to the east of the precinct across Mulgoa Road;
- Ski lakes and Cables Wake Park to the southwest; and
- Low density residential to the south across Jamison Road.

2.2 Site Description

2.2.1 General Description

The site forms part of 83 Mulgoa Road, Penrith, legally described as Lot 2 in DP 1216321.

The site is bound by Mulgoa Road to the east, Ransley Street/Retreat Drive to the north, Panthers Link to the west and Panthers Place to the south.

The site has a total area of 18,463m². The site is approximately 227m in length north to south along Mulgoa Road and approximately 63m (north minimum) to 88m (south maximum) in depth between Mulgoa Road and Panthers Link.

A Survey Plan prepared by Matthew Freeburn Surveys is included in the DA package.

The topography of the site relatively flat, however there is an increase in height along Panthers Link, where the levels change from RL of approximately 27.00 within the on-grade car park to RL 29.00 along Panthers Link.

Site access is currently serviced by Panthers Link and Panthers Place. Retreat Drive and Panthers Place provide access to Mulgoa Road, with these key intersections providing access to the Panthers Penrith Precinct. Mulgoa Road is a State classified road and the major north/south artery linking Penrith to and from the M4 motorway to the Penrith CBD and northern suburbs of the Penrith LGA. The portion of Retreat Drive to the north is a public road. Panthers Link and the western half of Panthers Place are private roads. The remaining road infrastructure bounding the site is in public ownership, including Mulgoa Road, Retreat Drive and the eastern half of Panthers Link.

The location of the site is shown in Figure 2.

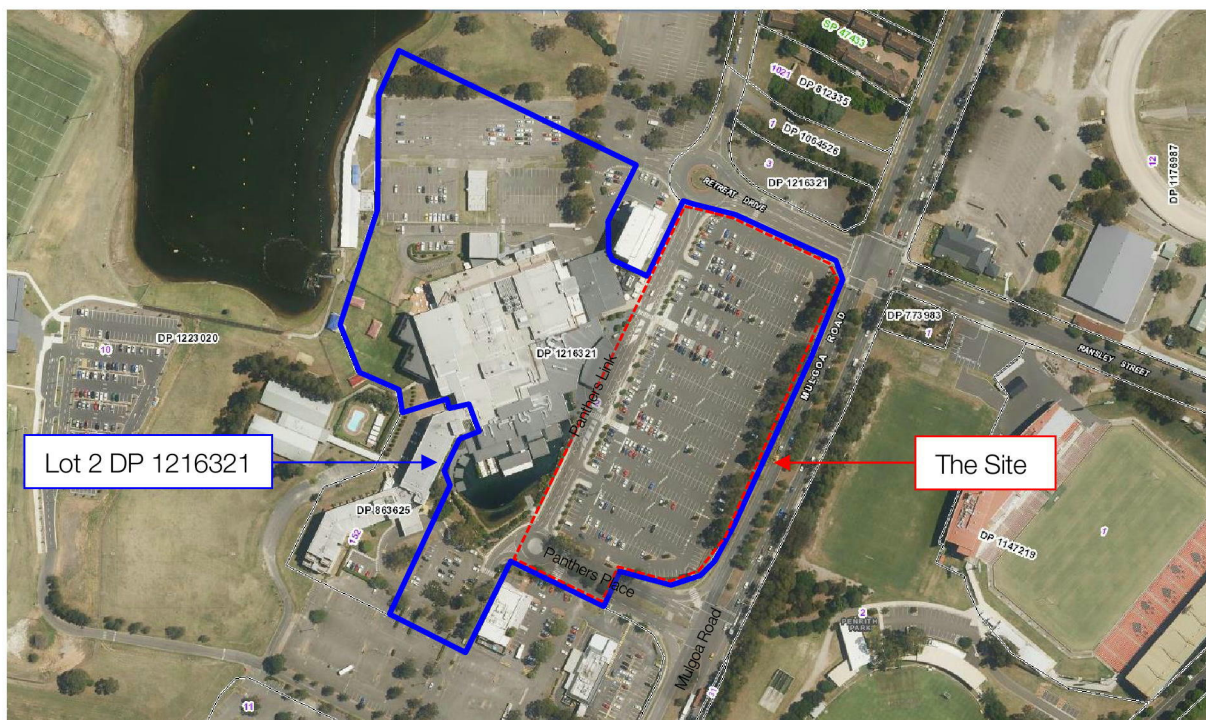


Figure 2: Aerial view of site and locality (Source: SIX Maps)

2.3 Existing Development on the Site

Existing development across the site comprises of an at-grade car park for approximately 680 vehicles. The car park is owned and operated by Panthers Group used primarily for club customer parking. Vegetation across the site is minimal and generally comprises perimeter tree plantings around the existing at-grade car park.

Images of the site and existing structures are shown in Figures 3, 4 and 5.



Figure 3: View looking south west showing existing on grade car park and Panthers Club and iFly centre to the west of the site (Source: Google Maps)



Figure 4: View of the subject site looking north (Source: Google Maps)

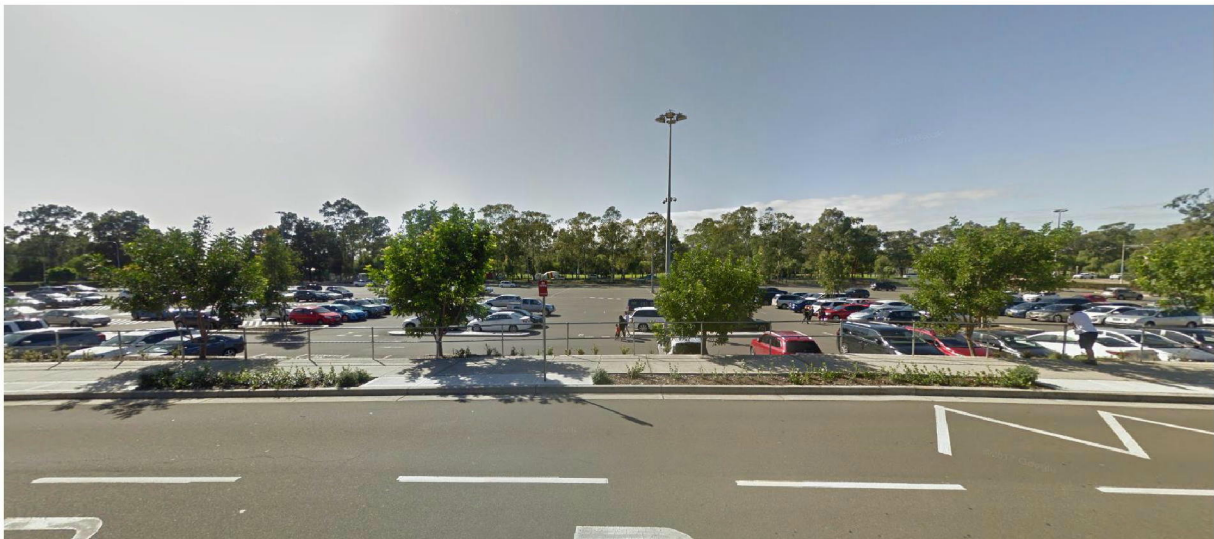


Figure 5: View of the subject site looking east (Source: Google Maps)

2.4 Surrounding Development and Land Uses

The land uses and development adjoining and surrounding the site are described below.

2.4.1 North

Immediately north of the site is an on-grade car park (Lot 3 DP in 1216321) providing vehicular parking for approximately 64 vehicles.

Lot 3 in DP 1216321, along with adjoining Lot 1 in DP 1064526 and Lot 1021 in DP 812335 has been recently approved (DA 17/0766) for a residential flat building development, accommodating 152 apartments, basement car parking, landscaping and associated public domain works. Note that use of the car park in this location (refer to Figures 6 and 7) has been discontinued.



Figure 6: View of car park looking north west from intersection of Retreat Drive and Mulgoa Road

2.4.2 East

Mulgoa Road, Penrith Stadium and adjacent playing fields.



Figure 7: View showing Mulgoa Road located to the east of the site (Source: Google Maps)



Figure 8: View showing Panthers stadium and adjacent playing fields located east of the site (Source: Google Maps)

2.4.3 West

iFly Downunder indoor skydiving centre, Panthers club and DA approved multi-deck car park and serviced apartment building (DA14/1111).

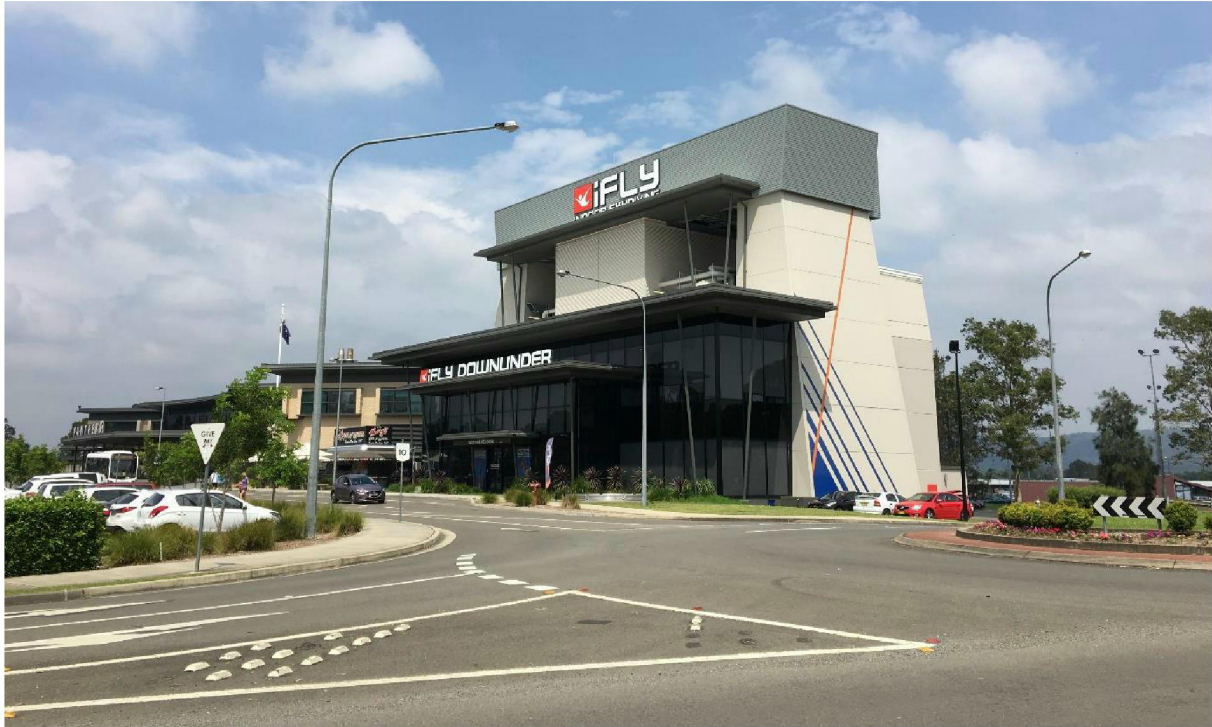


Figure 9: View looking west of the site across Retreat Drive showing iFly indoor skydiving centre and Panthers Leagues club beyond

2.4.4 South

Food and drink premises, including McDonalds, Krispy Kreme, restaurants and associated car parking.



Figure 10: View looking south showing restaurants and associated car parking (Source: Google Maps)

3.0 Proposed Modifications

3.1 Description of Modification

This Section 4.55(1A) Modification Application seeks to modify Development Consent No. DA18/0340, granted by Sydney West Planning Panel on 27 August 2018, for:

“Concept Proposal for a function centre, hotel, retail premises and serviced apartments, and approval for the Stage 1 proposal for a function centre (Western Sydney Community and Conference Centre), basement and surface car parking, public domain works and associated stormwater drainage, utility and landscaping works.”

A copy of the DA consent is provided at Attachment 3.

This application seeks to modify the approved development as set out in Section 3.2. These modifications to the approved scheme will require amendments to Condition 1. Condition 1 of Development Consent DA18/0340 states:

“General

- 1 The development must be implemented substantially in accordance with the following stamped plans:

Concept Architectural Plans			
Drawing Number	Plan Description	Date	Revision
DA-110-008	Concept Proposal Basement	27.07.18	D
DA-110-009	Concept Proposal Ground level	27.07.18	D
DA-110-010	Concept Proposal Level 01	27.07.18	D
DA-110-020	Concept Proposal Level 02	27.07.18	D
DA-110-030	Concept Proposal Level 03 to Level 06	27.07.18	D
DA-110-070	Concept Proposal Roof Plant	27.07.18	D
DA-200-001	Concept Proposal Site Elevations 01	27.06.18	C
DA-200-002	Concept Proposal Site Elevations 02	27.06.18	C
DA-300-001	Concept Proposal Longitudinal Section	27.06.18	C

Table 2: Extract of DA18/0340 – Condition of Consent No. 1

3.2 Proposed Modifications

This application seeks Council's approval for a modification under the provisions of s4.55(1A) of the *EP&A Act 1979*. The proposed modifications include additional building envelope at roof level to accommodate areas for roof plant, lift and stair overrun, as well as visual and acoustic screening. The location and scale of additional envelope to both buildings are shown in Figures 11 to 14.

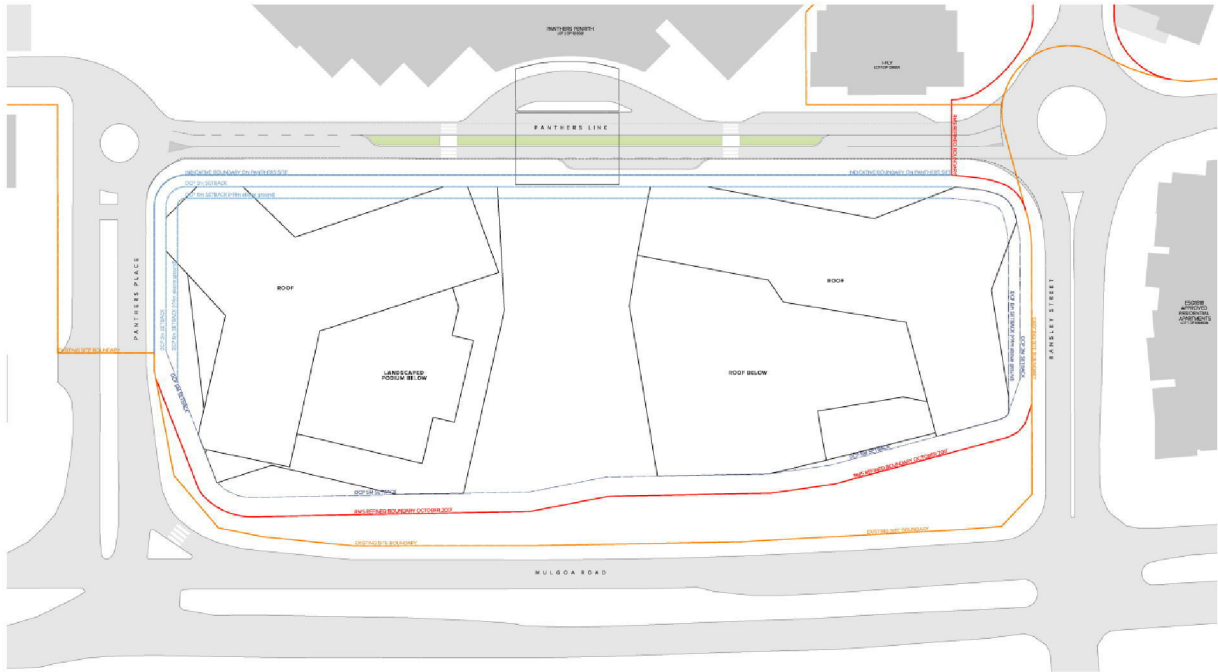


Figure 11: Approved building envelope (DA18/0340) – roof plan

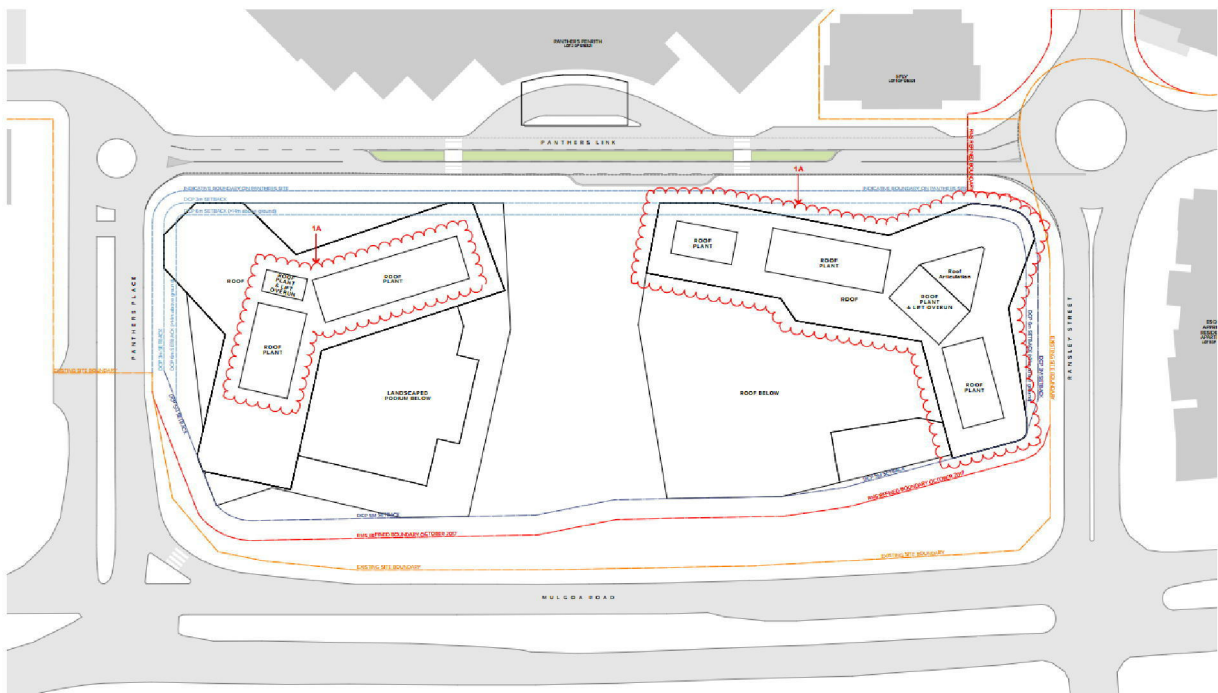


Figure 12: Amended building envelope – roof plan



Figure 13: Approved building envelope (DA18/0340) – site elevations

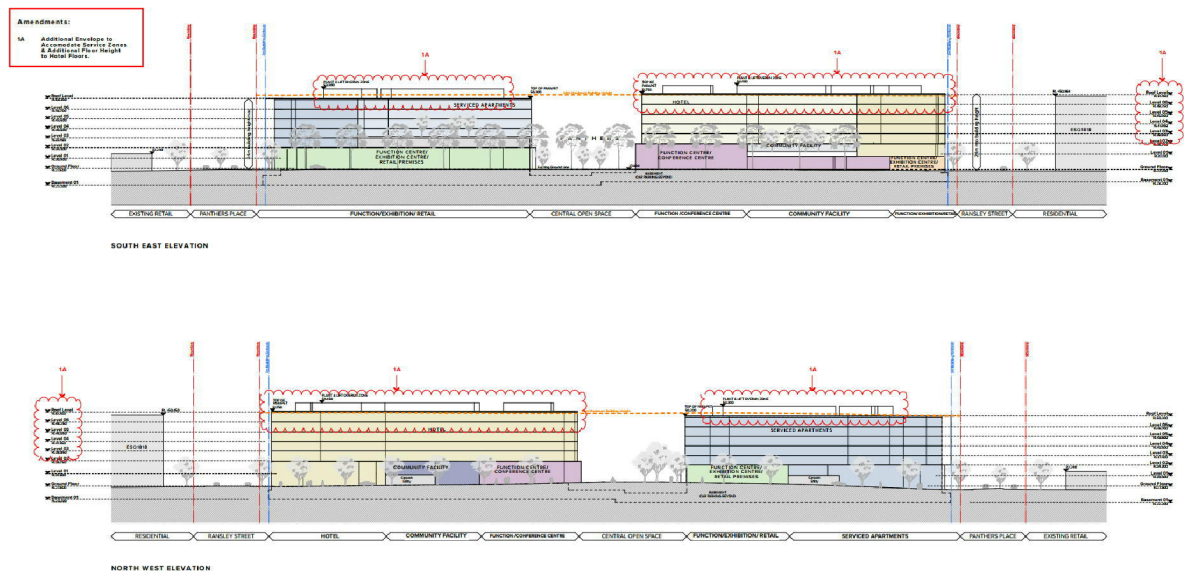


Figure 14: Amended building envelope – site elevations

3.2.1 Modifications to the Conditions of Consent

The schedule provided in Condition 1 will need to be modified to incorporate amended drawings detailed in Table 3 and provided at Attachment 2.

Concept Architectural Plans			
Drawing Number	Plan Description	Date	Revision
DA-110-070	Concept Proposal Roof Plan	26.11.18	G
DA-200-001	Concept Proposal Site Elevations 01	26.11.18	G
DA-200-002	Concept Proposal Site Elevations 02	26.11.18	G
DA-300-001	Concept Proposal Longitudinal Section	26.11.18	G

Table 3: Amended Concept Proposal Architectural Plans

4.0 Section 4.55 Assessment

4.1 Section 4.55(1A) of the EP&A Act 1979 – Modifications

Section 4.55(1A) of the *Environmental Planning and Assessment Act (EP&A Act) 1979* states:

“(1A) Modifications involving minimal environmental impact

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1), (2) and (5) do not apply to such a modification.”

In relation to subclause (a), the proposed will not give rise to any adverse environmental impacts in terms of view loss, overshadowing, or loss of privacy. While minor amendments are proposed to the concept envelope that will result in, and this will encroach above the 24m height control, the amendments will not result in additional gross floor area (GFA) or the approved footprints of the envelopes.

In relation to subclause (b), the proposed modification will result in development that is substantially the same as the development originally approved for the following reasons:

- The description of the development remains unchanged;
- The proposal does not involve any change to the approved land uses;
- The gross FSR across the Panthers Precinct remains unchanged;
- No change in building footprint with only minor changes to the building envelope at roof level to facilitate service zones; and
- The external changes are minor and will not significantly alter the overall appearance of the buildings.

In relation to subclauses (c) and (d), Clause 119(3) of the EP&A Regulation 2000 requires that the application be notified or advertised in accordance with the relevant development control plan. The consent authority is required to consider any submissions made in accordance with that notification.

Council can be satisfied that the modifications will result in minimal environmental impact and is a development that is substantially the same as the approved development and can therefore be considered under Section 4.55(1A).

4.2 Section 4.55(3)

In accordance with Section 4.55(3) of the *EP&A Act 1979*, when determining an application to modify a consent, Council “*must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application*”.

An assessment of the proposed modifications with regard to relevant matters referred to in Section 4.15 is outlined in Section 5 of this document.

Section 4.55(3) requires that the consent authority must also take into consideration the reasons given by the consent authority (Sydney West Planning Panel (SWPP)) for the grant of consent that is sought to be modified. The SWPP at its meeting of 27 August 2018 determined unanimously to approve development application No. 18/0340. The reasons for the decision is reiterated below:

- “1. *The proposed development will provide a major function centre with associated serviced accommodation and hotel facilities complementing and consistent with Penrith’s role as a Strategic Centre within the Sydney Western City District.*
2. *The proposed development adequately satisfies the relevant State Environmental Planning Policies including SEPP 55 (Remediation of Land), SEPP (Infrastructure) 2007 and State Regional Environmental Plan No. 20- Hawkesbury Nepean River.*
3. *The proposal adequately satisfies the requirements and provisions of Penrith LEP 2010 (Amendment 4) and Penrith Development Control Plan 2014.*
4. *The Panel particularly notes that the proposal, subject to the imposition of certain conditions, has been assessed as being compliant with the objectives and controls of Part B Section E13 Riverlink Precinct and the DCP and compliant with the indicative distribution of land uses within the Panthers Precinct Concept plan element of the Riverlink component of the DCP.*
5. *The proposed development subject to the conditions imposed will have no unacceptable adverse impacts on the natural or built environments including the amenity of existing or proposed nearby residential premises, the significance of nearby local heritage items, local flood patterns or the operation of the local road system.*
6. *In regard to the impact on Mulgoa Road, which is a classified road, The Panel notes that the proposed development does not intrude on land intended for road widening and improvements, and that a Voluntary Planning Agreement has been offered by the landowner which will addresses required road upgrades to Mulgoa Road and relevant intersections at nominated trigger points during the development of the Panthers precinct. The conditions of this consent require that VPA to be executed prior to the issue of a construction certificate for the development subject of this application.*
7. *The proposal development is considered to demonstrate sound design qualities in its presentation to Mulgoa Road, at a key entry location to the Penrith Regional CBD centre. In this regard, the Panel was advised of the position taken by Penrith’s Design Review Panel and notes that the proposal has been amended to reflect this advice.*
8. *In consideration of conclusions 1-7 above the Panel considers the proposed development is a suitable use of the site and approval of the proposal is in the public interest.”*

5.0 Statutory Assessment

5.1 Section 4.15

Section 4.15 of the *EP&A Act 1979* sets out the statutory matters for consideration against which the proposed development is to be evaluated. The matters for consideration under Section 4.15 are as follows:

“(1) Matters for consideration—general In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

- (i) any environmental planning instrument, and*
- (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
- (iii) any development control plan, and*
- (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- (v) (Repealed)*

that apply to the land to which the development application relates,

- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) the suitability of the site for the development,*
- (d) any submissions made in accordance with this Act or the regulations,*
- (e) the public interest.”*

The matters for consideration identified in S4.15(1)(a) of the *EP&A Act 1979* are addressed in the following section. Subsections (b) to (e) of S4.15(1) of the *EP&A Act 1979* are addressed in Section 6 of this SEE.

5.2 Overview of Statutory and Policy Controls

An assessment of the development as modified against the relevant provisions of Environmental Planning Instruments, DCPs and the matters listed under Section 4.15 of the *Environmental Planning and Assessment Act 1979* is provided below to assist Council in its consideration of the proposed modification.

The following Environmental Planning Instruments were relevant to the approved development:

- State Environmental Planning Policy – State and Regional Development (SRD SEPP) 2011;
- State Environmental Planning Policy No.55 – Site Remediation (SEPP 55);
- State Environmental Planning Policy (Infrastructure) (ISEPP) (2007);

- Sydney Regional Environmental Plan 20 – Hawkesbury-Nepean River (SREP 20);
- Draft Remediation of Land State Environmental Planning Policy (Draft Remediation SEPP); and
- Penrith Local Environmental Plan (PLEP) 2010.

An assessment of the modified development against PLEP 2010 is provided in Section 5.3 below.

5.2.1 Relevant Development Control Plans

- Penrith Development Control Plan 2014 (PDCP 2014)

5.2.2 Policies

- Nil

5.2.3 Planning Agreements

- Planning Agreement Road Works

5.3 Assessment of Environmental Planning Instruments

5.3.1 State Environmental Planning Policy – State and Regional Development (SRD SEPP) 2011

The provisions of the SRD SEPP were considered in the assessment and determination of the original Development Application. Accordingly, the specified consent authority functions for DA18/0340, including the determination of this application, were exercised by the Sydney West Planning Panel (SWPP), not Penrith City Council.

5.3.2 State Environmental Planning State Environmental Planning Policy No.55 – Site Remediation (SEPP 55)

The provisions of SEPP 55 were considered in the assessment and determination of the original DA. The proposed modifications do not have implications for the approved development with respect to the assessment of SEPP 55.

5.3.3 State Environmental Planning Policy (Infrastructure) (ISEPP) 2007

The provisions of the ISEPP were considered in the assessment and determination of the original DA. The proposed modifications do not have implications for the approved development with respect to the assessment of the ISEPP.

5.3.4 Sydney Regional Environmental Plan 20 – Hawkesbury-Nepean River (SREP 20)

The provisions of SREP 20 were considered in the assessment and determination of the original DA. The proposed modifications do not have implications for the approved development with respect to the assessment of SREP 20.

5.4 Draft Remediation of Land State Environmental Planning Policy (Draft Remediation SEPP)

The Draft Remediation SEPP does not have any implications for the modified DA above what is required by SEPP 55.

5.5 Draft State Environmental Planning Policy (Environment) (Draft Environment SEPP)

The NSW government has been working towards developing a new SEPP for the protection and management of the natural environment. This is a consolidated SEPP that replaces relevant provisions contained in seven (7) different SEPPs, listed below:

- State Environmental Planning Policy No. 19 - Bushland in Urban Areas (SEPP 19);
- State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011;
- State Environmental Planning Policy No. 50 - Canal Estate Development (SEPP 50);
- Greater Metropolitan Regional Environmental Plan No. 2 - Georges River Catchment (GMREP 2);
- Sydney Regional Environmental Plan No. 20 - Hawkesbury-Nepean River (No.2-1997) (SREP 20);
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) (SREP (Sydney Harbour)) 2005; and
- Willandra Lakes Regional Environmental Plan No. 1 - World Heritage Property (WLREP 1)

The SEPP proposes to deliver consolidated heads of consideration for assessment of DAs that will continue to protect Sydney Harbour Catchment, Hawkesbury-Nepean River Catchment, and Georges River Catchment.

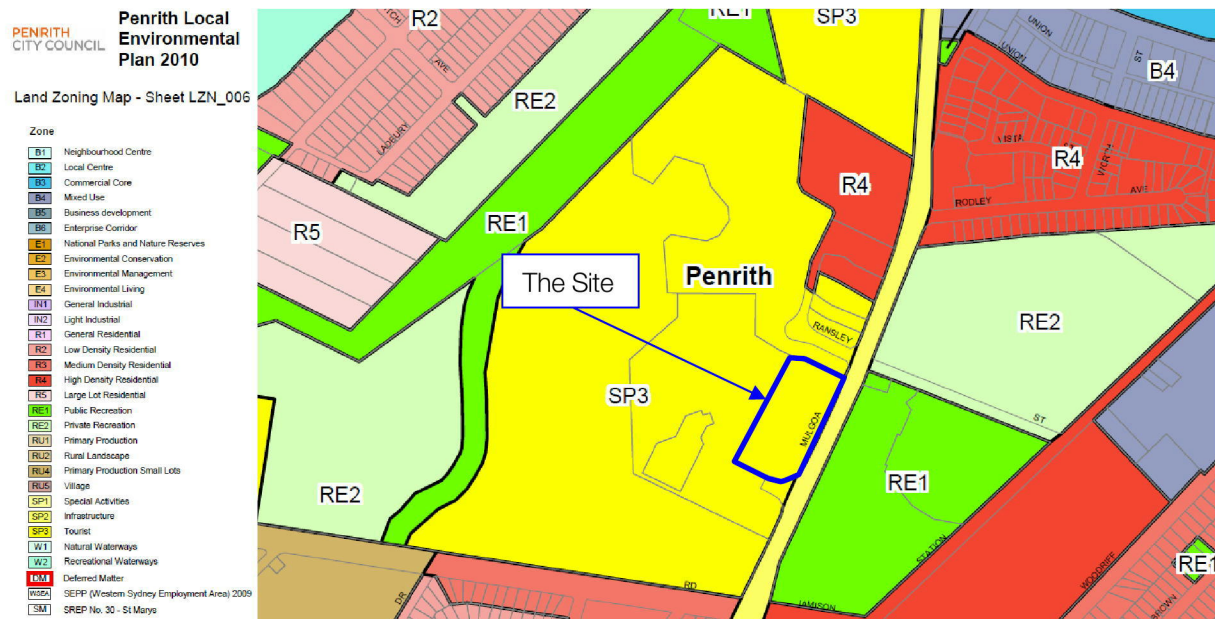
There is also some duplication between SREP 20 and the Standard Instrument local environmental plans, Ministerial Directions, and other SEPPs which now apply in the catchments. Provisions in SREP 20 that are now satisfactorily addressed in other legislation or planning instruments can be repealed without impacting on the protections of the catchment. Provisions to be repealed include Clause 11 (4) - Remediation of contaminated land.

It is not anticipated that any further considerations would arise from the draft SEPP (Environment) further to what has already been considered under the existing relevant state environmental planning policies as part of this application.

5.6 Penrith Local Environmental Plan 2010

5.6.1 Land Use and Permissibility

The subject site is zoned SP3 Tourist under the PLEP 2010 (refer to Figure 15).



The proposed modifications and amendment to Condition 1 will not alter the land use permissibility of the development. The proposal remains consistent with the objectives and land use permissibility's of the SP3 Tourist zone and Clause 2.4 Additional Permitted Uses.

5.6.2 Height of Buildings (Clause 4.3)

Clause 4.3 of PLEP 2010 establishes a 24m maximum building height for the site, as illustrated in the extract of the Height of Buildings Map included in Figure 16. The height of the proposed development is detailed in Table 4 and the architectural plans provided at Attachment 2.

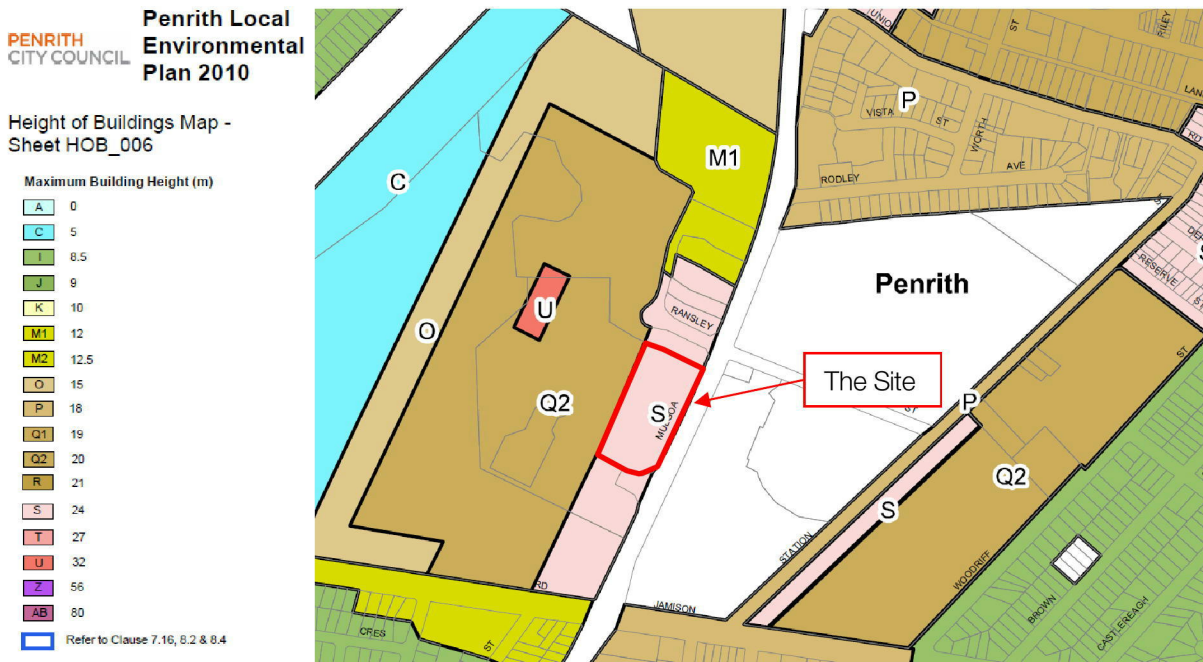


Figure 16: Extract of PLEP 2010 Height of Buildings Map

The approved concept proposal remains largely consistent with the maximum building height of 24m for the site. Minor variations to the height control are sought across both buildings where the envelope is modified to account for the presence of future stair and lift overruns, plant as well as acoustic and visual screening. These structures will exceed the 24m height limit established by both PLEP 2010.

The modified building envelopes will exceed the approved permissible building height of 24m. This exceedance is created due to the presence of service zones located at roof level, as described in Table 4.

Proposed Building	Control	Approved Concept Proposal Height	Proposed Height (RL)	Proposed Height (m above ground)	Variation	Compliance
Building A Hotel	24m	RL 50.980 (24m)	RL 51.750 (top of parapet)	24.61 – 24.65m (top of parapet)	0.61–0.65m (2.5%-2.7%)	No
			RL 54.450 (top of services)	27.16 – 27.45m (top of services)	3.16–3.45m 13.2%-14.4%	No

Proposed Building	Control	Approved Concept Proposal Height	Proposed Height (RL)	Proposed Height (m above ground)	Variation	Compliance
Building B Serviced Apartments	24m	RL 50.200 (23.2 – 23.8m)	RL 50.200 (top of parapet)	23.2 – 23.8m (top of parapet)	N/A	Yes
			RL 54.300 (top of services)	26.3 – 26.9m (top of services)	2.3–2.9m (9.6%-12.1%)	No

Table 4: Height of proposed buildings for Concept Proposal

It is evident from Table 4 that the development proposal seeks to vary the existing height controls of PLEP 2010.

Architectural plans prepared by Turner Architects (refer to Attachment 2), demonstrate the degree of non-compliance with the relevant height control, which at the same time, identify the degree that the proposal is below the height controls for other portions of the building.

A detailed DA has been prepared for Stages 2 and 3 in accordance with the Concept Proposal approved under Development Consent No. 18/0340. Given the reliance of Stage 2 and Stage 3 on revised envelopes pursued under this modification application, the detailed applications for Stages 2 and 3 have been lodged so Council may assess them concurrently.

Building A – Hotel and WSCCC

The footprint of the non-complying portion of the concept envelope for Building A is approximately 3,012m² which equates to:

- 100% of the total roof area of the hotel tower being 3,012m²; and
- 26% of the total building envelope footprint being 11,711m².

The increase in parapet height is consider minor, ranging between 0.61m and 0.65m. The function of this amendment is to allow for an increase in floor-to-ceiling heights. Given the minor nature of this height increase, the amended parapet height is not expected to result in a change to the perceived volume and scale of the envelope. The building will continue to read as a six (6) storey building in line with the height control.

The bulk of additional height will be located towards the centre of the building with a setback ranging between 3.63m and 10.42m from the edge of the building. The portion of additional height above the new parapet is approximately 1,050m², which equates to 34.8% of the total hotel roof area being 3,012m².

Building B – Serviced Apartments and Exhibition Centre

The proposal complies with the existing 24m height controls, with the exception of the concept envelope above roof level. The footprint of the non-complying portion of the concept envelope for Building B is approximately 765m², which equates to:

- 25% of the total roof area being 3,045m², and
- 6% of the total building envelope footprint being 5,455m².

These additions to the concept envelope are located towards the centre of the building with a setback ranging between 5.87m and 25m from the edge of the building.

In terms of the proposed variations to the height controls, the proposal is consistent with the objectives of the height standard outlined in Subclause 4.3(1), as detailed in Table 5.

Objective	Comment
(a) <i>To ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality.</i>	<p>The site is within the Panthers Penrith Precinct and is an appropriate location for increased height.</p> <p>The proposal is compatible with the emerging character and scale of the Panthers Precinct.</p>
(b) <i>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.</i>	<p>The areas of increased height have been sited to respect the public domain and views to blue mountains and across the site to Panthers Stadium, as well as maintaining adequate daylight to key areas of public domain.</p> <p>The minor exceedance of the height controls does not result in any direct impacts to adjoining properties.</p>
(c) <i>To minimise the adverse impact of development on heritage items, heritage conservation areas and areas of scenic or visual importance.</i>	<p>The areas of increased height are minor and are sited within the centre of proposed building envelopes, eliminating their impact on established view corridors through the site and beyond.</p>
(d) <i>To nominate heights that will provide a high quality urban form for all buildings and a transition in built form and land use intensity.</i>	<p>The proposal responds to the desired character of the precinct and substantially complies with the height standards.</p> <p>The proposal provides a transition in scale from surrounding development, having regard to a range of existing and proposed buildings at varying heights.</p>

Table 5: Clause 4.3 Height of Buildings Objectives assessment table

The resultant heights are based on:

- A distribution of height across the site to allow for increased opportunities for land use mix across the site;
- Heights of buildings more compatible with the emerging character and scale of the Panthers Precinct;
- A density of development that will support the proposed and existing land use offerings within the Panthers Precinct and contribute to the vibrancy of the wider Penrith city area;
- Achieving a balance between respecting and maintaining the visual prominence of the Blue Mountains and the framing of those views;
- Enable the site to deliver an activated ground plane and strong urban planning outcomes; and
- Road widening constraints.

Having regard to the above, a variation to the height control is sought. Compliance with the height standard is considered unreasonable and unnecessary in the circumstances for the following reasons:

- The proposal remains consistent with the objectives of the SP3 Tourist zone, despite the non-compliance with the height control;
- The proposal remains consistent with the objectives of the height standard, despite the non-compliance;

- The proposal does not give rise to impacts associated with increased height, including overshadowing, view loss or loss of privacy;
- The proposed non-compliances with the height controls are minor and do not contribute to a discernible increase in the overall bulk and scale of the proposed building envelopes;
- The proposed concept envelope substantially complies with the controls contained in PLEP 2010 and PDCP 2014 and satisfies the intent of these controls;
- The proposed concept envelope will increase heights in areas sited towards the centre of the Panthers Precinct, to match the existing height strategy for the Precinct;
- Proposed heights will assist in establishing a density of development that will align with the mixed-use offerings approved under the Concept Proposal and of the wider Panthers Precinct and Penrith City Centre; and
- The proposal will enable strong urban planning outcomes. The proposed non-compliances allow a sixth storey (inclusive of ground floor) to be achieved across the site creating uniformity in scale for each building whilst also facilitating variations in building heights and articulation in building envelopes across the Panthers Penrith Precinct.

5.6.3 Floor Space Ratio (Clause 4.4)

Clause 4.4 of SLEP 2012 specifies a maximum floor space ratio of 1:1 as being applicable to the site, as illustrated in the extract of the Floor Space Ratio Map included in Figure 17.

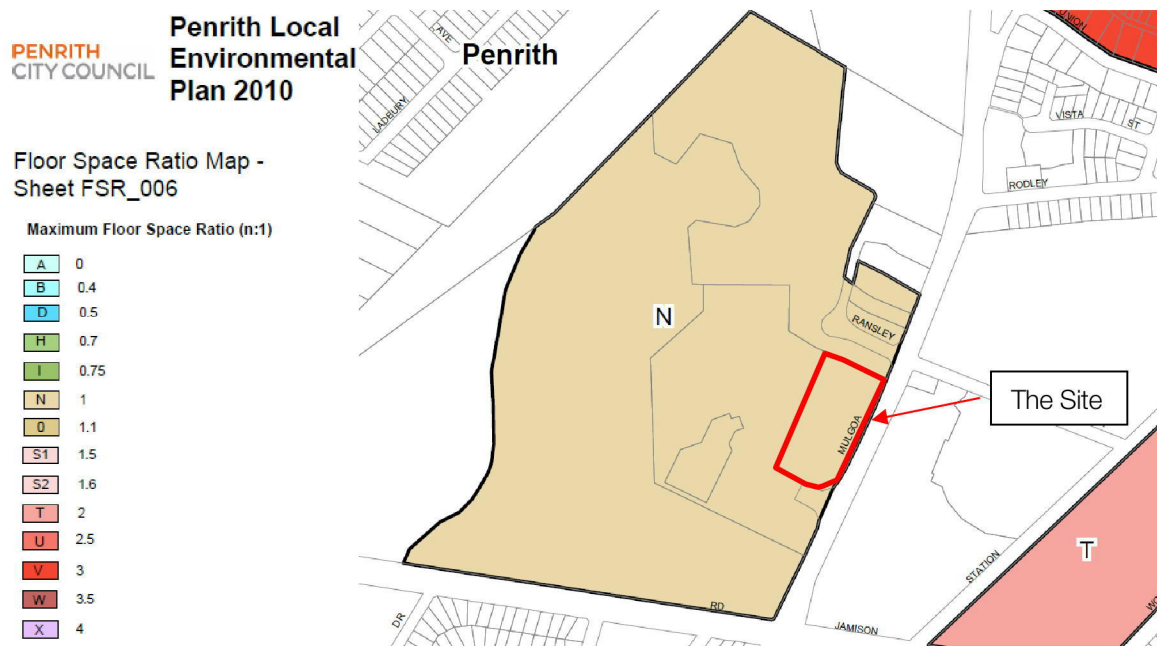


Figure 17: Extract of PLEP 2010 FSR Map

The proposed modifications to the building envelopes will not facilitate additional GFA. The resultant FSR remains unchanged to that approved.

5.6.4 Exceptions to development standards (Clause 4.6)

It is noted that caselaw demonstrates that for a Section 4.55 application, a Clause 4.6 Exceptions to Development Standards is not required. The relevant judgements (originating with *North Sydney Council v Michael Standley & Associates Pty Ltd [1998] NSWSC 163*), states that a Section 4.55 is a 'free standing provision', meaning that "a modification application may be approved notwithstanding the development

would be in breach of an applicable development standard where it the subject of an original development application”.

A Section 4.55 modification authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is a broad power to approve, subject to its own stand-alone tests (such as “substantially the same” test, and a requirement to consider all relevant s4.15 matters). Section 4.55 does not rely upon having any SEPP 1 objection or Clause 4.6 variation in order to enliven that power to approve.

The Courts have stated that SEPP 1 cannot be used at Section 4.55 stage, as SEPP 1 expressly only applies ‘where a development application is made’, not when a modification application is made. The same would apply to Clause 4.6 variations, which expressly only operates to prevent the granting of ‘development consent’, as distinct from the modification of development consent.

On this basis, it is determined that a Clause 4.6 variation has no such application to Section 4.55 modifications.

5.6.5 Preservation of trees or vegetation (Clause 5.9 and Clause 5.9AA)

The proposed modifications will not alter the concept proposal over that approved with respect to the preservation of trees or vegetation.

5.6.6 Earthworks (Clause 6.2)

The proposed modification will not alter the concept proposal over that approved with respect to the extent of earthworks proposed, including cut and fill.

5.6.7 Flood Planning (Clause 7.2)

The proposed modifications will not alter the approved concept proposal over that approved with respect to the Flood Planning provision.

5.6.8 Sustainable Development (Clause 7.4)

The proposed modifications will allow future DA’s for latter stages to incorporate sustainable practices through building design and operation. The modification will allow the concept proposal to continue to demonstrate greater efficiencies of the land in accommodating commercial and recreational densities close to jobs, transport, services and facilities. Concept building envelopes and landscape design will continue to demonstrate opportunities for sustainable methods for energy and water consumption and management.

5.6.9 Salinity (Clause 7.6)

The proposed modifications will not alter the approved concept proposal over that approved with respect to the salinity provision.

5.6.10 Servicing (Clause 7.7)

The proposed modifications will not alter the concept proposal with regards to provision of servicing for the site, approved Stage 1 WSCCC scheme and subsequent staged developments proposals.

5.6.11 Part 9 Panthers Penrith site (Clauses 9.1 – 9.6)

This Part applies to land identified as “Panthers” on the Clause Application Map (refer to Figure 18). Clause 9.3 establishes a range of site specific controls for the Panthers site relating to retail premises. Clause 9.6

requires the consideration of Penrith DCP 2014, specifically Part B Panthers Penrith Precinct of Part E13 Riverlink Precinct.

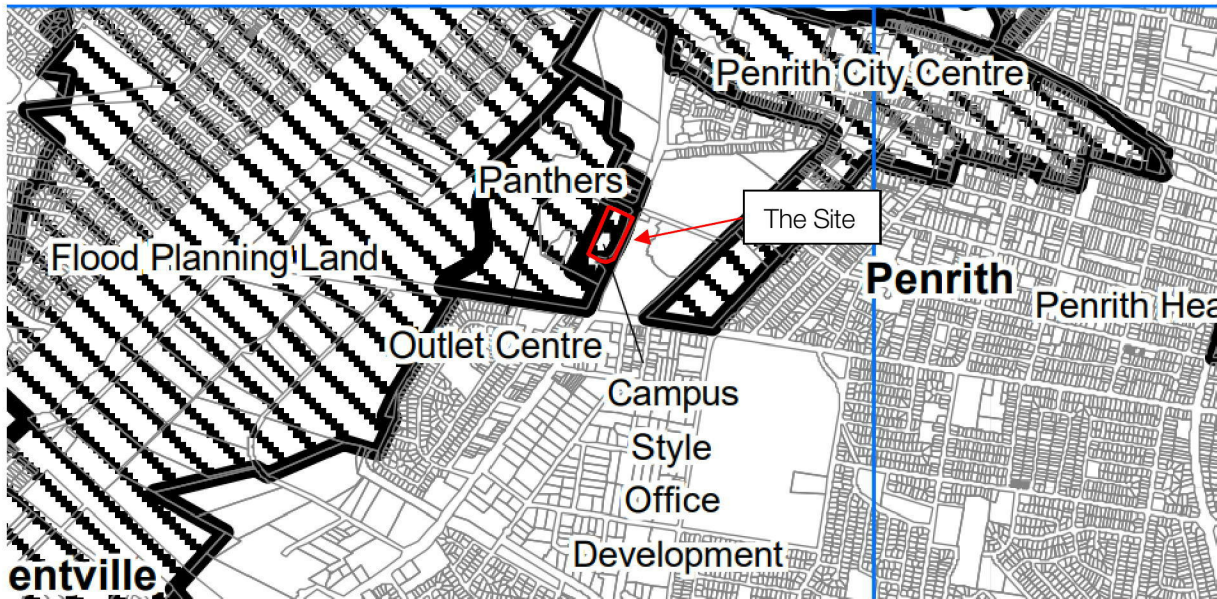


Figure 18: Clause Application Map extract from PLEP 2010

The proposed modifications will not alter the approved concept proposal over that approved with respect Part 9 of PLEP 2010.

5.7 Penrith Development Control Plan (PDCP) 2014

The PDCP 2014 is the primary development control plan applicable to development within the Penrith Local Government Area. The PDCP 2014 provides more detailed provisions to guide future development. The provisions of the DCP principally relate to the design of buildings and development.

Only an assessment of those DCP provisions that are relevant to the proposed modifications is provided below. Where the modification does not alter the approved DA with respect to DCP provisions, these provisions have not been assessed.

5.7.1 Part B – Panthers Penrith Precinct

Panthers Penrith Precinct Vision (Section 13.6)

Section 13.6 of PDCP 2014 contains objectives and provisions relating to development within the Panthers Penrith Precinct. The below assessment addresses provisions relating specifically to the Panthers Penrith Precinct.

Penrith Precinct Vision (13.6.1)

Proposed building envelopes continue to be generally consistent with the Concept Proposal shown as Lot 4.

The proposed Concept Proposal continues to meet the objectives of the precinct.

Urban Framework (Section 13.7)

Structure Plan (13.7.1)

The proposed modifications to the approved envelopes will continue to respond and demonstrate consistency with the Structure Plan and Figure E13.13 by:

- Acknowledging Mulgoa Road as a regional roadway, allowing for future provision of high quality architectural and landscape design;
- Providing built form that responds to existing view corridors down Ransley Street to the lake front and Blue Mountains as well as across the site between the existing club and Panthers Stadium;
- Providing for a mix of uses that attract and sustain a vibrant and active day and night time economy;
- Providing public domain created around development blocks and site edges;
- Retaining active edges and associated land uses at ground floor level along the street edge and adjacent proposed open space.

Sub Precincts (13.7.3)

The proposed development is nominated in Figure E13.15 Sub-Precincts as being within 'Ransley Street Precinct' and 'Mulgoa Road Precinct'.

As part of this Statement, full consideration is provided for the desired future character of each precinct with regard to Penrith DCP 2014 and the proposed modifications. Compliance with the intended outcomes of each sub precinct is outlined as follows.

General (13.7.3.C.1)

- The proposed design and massing of buildings along Ransley Street will ensure that sightlines are maintained to the lake and Blue Mountains. This view corridor has been a guiding principle in the design and concept of the development scheme.

Mulgoa Road sub precinct (13.7.3.C.2)

- In accordance with the DCP, the proposed uses and proposed building envelopes will address the Mulgoa Road frontage, with built form that reinforces the landscaped setback.
- The proposal as modified will continue to provide for open space between the club and Mulgoa Road to enhance the club's address, defined by strong built edges to the north and south.

Views (13.7.4)

The proposed design and massing of building envelopes will ensure that sightlines are maintained to:

- The lake and Blue Mountains; and
- Between the Club and Mulgoa Road.

These view corridors have been a guiding principle in the design and concept of the development scheme. Compliance with the long-distance view corridor in Figure E13.16 is achieved.

Built Form (Section 13.9)

Street Alignment, Wall Height and Setbacks (13.9.1)

Figure E13.25 – Setbacks

The modified building envelopes will continue to achieve compliance above ground level with the 3m setback to Ransley Street, Panthers Link and Panthers Place in accordance with the setback control established in the Figure E13.25.

Figure E13.26 – 14m Maximum street wall with 3m setback

The modified building envelopes will remain unchanged to that approved with respect to the 14m wall height along Ransley Street, Panther Link and Panthers Link with proposed walls heights up to six (6) level above ground.

Departures to this setback control has been previously assessed and determined to be compliant with the objectives in that the proposed enveloped will:

- Provide consistent building alignments to the street;
- Provide established desired spatial proportions for both Ransley Street, whilst defining the street edge; and
- Ensure the protection of views to the Blue Mountains escarpment.

5.8 Any Submissions made in Accordance with the Act or Regulations

The application will be notified in accordance with Council's notification policy, including notification requirements pertaining to integrated development. Any submissions received will be considered by the consent authority.

5.9 Any Planning Agreement or Draft Planning Agreement

Section 4.15 of the *EP&A Act 1979* requires that a consent authority is to take into consideration "*any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F.*"

A Voluntary Planning Agreement (VPA) for the Panthers Development has been signed by representatives of Roads and Maritime Services (Roads and Maritime), Penrith City Council and Panthers Rugby League Club on the 28th November 2012 which outlines triggers for road upgrades associated with staging developments within the Panthers Penrith Precinct.

The VPA is currently being reviewed and amended to incorporate changes to the land uses within the Panthers Penrith Precinct including Lot 4 that incorporates the Concept Proposal, including WSCCC approved under DA18/0340 and future Stages 2 and 3 to be sought under subsequent DA's.

The VPA that is currently being revised includes an agreed set of traffic modelling parameters including land use trip generation, traffic distribution for the developments within the precinct and land use Gross Floor Areas (GFA), dwelling or mixed uses.

The applicant has previously agreed to enter into an agreement with Council and RMS to fulfil the requirements of the revised VPA as they relate to the approved works. The determination of DA18/0340 responds accordingly to this agreement with corresponding conditions of consent.

The proposed modifications will not alter this arrangement.

6.0 Impacts of the Development

This section of the SoS identifies potential impacts which may occur as a result of the proposed development and are relevant matters for the consideration of the S4.55(1A) under s79C(1)(b) to (e) of the *EP&A Act 1979*.

6.1 Bulk and Scale

Building envelopes will continue to range between two (2) and six (6) storeys in accordance with the approved Concept Proposal. The modifications will occur at roof level and will result in an increase to the height of the approved envelopes by 0.61m – 3.45m (Building A) and 2.3m – 2.9m (Building B). These additions are considered minor and are generally focused to portions of the building located within the centre of each envelope, reflecting their intended use for accommodating building plant and services.

Variation to the roof height of Building A (hotel) envelope will occur due to revised floor to ceiling heights. This height variation is considered minor ranging between 0.61m and 0.65m. The predominant form of the Building A envelope will continue to read as six (6) storeys, generally consistent with the 24m height control that applies to the site.

The proposed envelope of Building B will comply with the 24m height control despite the modifications at roof level to accommodate plant and services. The top of parapet height (RL 50.200 (23.2m – 23.8m)) will remain as approved.

Proposed modifications to the approved envelopes are considered to result in minimal increase to building heights and will not significantly alter the buildings' appearance, or bulk and scale, from the approved DA when viewed from the street or surrounding developments.

The bulk of the buildings, will continue to demonstrate consistency with the scale of the footprints identified in the site-specific provisions under Section 13 Part B of the Penrith DCP 2014. The buildings are proposed within large landscaped surrounds that will ameliorate any perceived concerns in relation to building bulk from the wider area.

The refined envelope will provide a building volume in which future DAs will sit within, including minor plant, lift and stair overrun structures.

6.2 Visual Impacts

View corridors will be maintained by the proposed development, including nominated corridors along Ransley Street and through the centre of the site from the club across Mulgoa Road to Penrith Stadium. The proposal will continue to achieve a balance between respecting and maintaining the visual prominence of the Blue Mountains as a skyline setting, and the framing of those views.

From the public domain, including Mulgoa Road, the modified envelopes will result in buildings of a similar bulk and scale, with a maximum storey height of six (6) storeys. Visual impacts associated with the modifications to the envelope above parapet level will be minimised through appropriate siting and setbacks, as well as detailed design to be undertaken as part of the Stage 2 and Stage 3 DAs.

6.3 Overshadowing

The Shadow Diagrams prepared by Turner Architects included at Attachment 2 illustrate the overshadowing impacts from the proposed modifications to the approved envelopes.

The Shadow Diagrams illustrate that the additional overshadowing created by the modified envelopes will be minimal, with additional shadow generally falling onto the roof within approved envelopes.

6.4 Traffic and Parking

No changes to the approved traffic and parking arrangements, including location and access for servicing. As a result, it is not envisaged that any additional traffic will be generated above the approved development.

6.5 Social Impacts and Economic Impacts

The concept proposal as modified will continue to have a positive economic impact on the Panthers Penrith Precinct and wider Penrith CBD, in the form of:

- Providing opportunities for Penrith City Centre to link to surrounding areas;
- Providing opportunities for Panthers Penrith Precinct to grow and expand;
- Economic viability and enhanced choice and competition;
- Delivering a variety of land uses;
- Increased opportunity for leisure and dining facilities;
- Improved access and connectivity;
- Retail variety; and
- Provide for future employment growth.

The modification will provide the added benefit of additional employment and tourist opportunities with proposed inclusion of hotel accommodation and serviced apartments.

6.6 The Suitability of the Site for the Development

The site has been assessed as suitable for the proposed development by the granting of DA 18/0340. There is no reason why the site is not suitable for the modified development.

6.7 The Public Interest

The development of land in an orderly and economic way is in the public interest. In this regard, approval of the modification does not conflict with the public interest.

7.0 Conclusion

This Section 4.55(1A) application seeks to modify Development Consent No. DA18/0340 which approved a Concept Proposal for a function centre, hotel, retail premises and serviced apartments at 83 Mulgoa Road, Penrith.

The key modification to the approved concept proposal is to accommodate essential building plant and services at roof level.

The modification results in a maximum 14.4% increase in height to the Building A concept envelope (hotel and WSCCC) and 12.1% increase in height to the Building B concept envelope (serviced apartments and exhibition centre). This increase relates only to a small portion of the total building envelope footprint equating to 3,012m² (26%) of Building A (hotel and WSCCC) and 765m² (6%) of Building B (serviced apartments and exhibition centre).

The proposed modification when compared against the approved development scheme results in a development that is substantially the same as originally approved and results in a development that contributes to the evolving fabric of the Panthers Penrith Precinct.

The proposal remains consistent with the statutory and policy framework applying to the site and will not have any significant adverse impacts on the neighbourhood. The proposal satisfies Section 4.55 of the *EP&A Act 1979*.

It is therefore requested that the scope of amendments described in this statement and the attached architectural plans be approved thereby updating the original plans.