



PATCH

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PEOPLE, POLICY
AND PLACE.

Clause 4.6 Variation Request
2a Bringelly Road & 31-33
Santley Cr, Kingswood

On behalf of WHOS
Penrith

August 2025



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POLICY AND PLACE.

PROJECT

2A Bringelly Road & 31-33 Santley Crescent, Kingswood

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1. INTRODUCTION

This Clause 4.6 variation request has been prepared by Patch Planning (Patch) on behalf of our client *We Help Ourselves Penrith* (WHOS) in support of a Development Application (DA) at 2A Bringelly Road and 31-33 Santley Crescent, Kingswood. The DA seeks development consent for the construction of a transitional group home.

Clause 4.6 of the Penrith Local Environmental Plan 2010 (PLEP 2010) enables the consent authority to grant consent for development that contravenes development standards imposed by the PLEP 2010 or any other environmental planning instrument.

The proposed development seeks a variation to Clause 7.8 contained under PLEP 2010, which relates to active street frontages within the MU1 Mixed Use Zone.

The proposed variation to the development standards demonstrates that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient planning grounds to justify this variation. In summary, these circumstances can be summarised as follows:

- **Promotion of social and economic welfare.** The proposed development will provide supported accommodation for individuals transitioning and reintegrating back into society, enabling residents to access education, employment and services while ensuring proper and sensitive use of the site in line with the applicable planning controls.
- **Increase in diversity of housing options.** The transitional group home fits within this context by contributing to the broader mix of residential typologies in the area. A diversity in housing forms and typologies is encouraged by PLEP 2010 and PDCP 2014. This ensures that a range of residential options is available in reasonable proximity to transport links, healthcare, and other essential services, which aligns with the broader goals of the precinct.
- **Promotion of good design and amenity of the built environment.** The proposed design contributes to the creation of a vibrant, pedestrian friendly environment that enhances the public domain. By maintaining a human-scale design, the development creates a more comfortable and inviting space for pedestrians and cyclists, helping to improve the overall feel and liveability of the broader Penrith Health and Education precinct.

The following sections of the report include:

- **Section 2:** Description of the site and its local and regional context, including key features relevant to the proposed variation; and brief overview.
- **Section 3:** Identification of the development standard, which is proposed to be varied, including the extent of contravention.
- **Section 4:** Detailed assessment and justification of the proposed variation in accordance with the relevant guidelines and relevant planning principles and judgements issued by the Land and Environment Court.
- **Section 5:** Summary and conclusion.

This Request should be read in conjunction with the Statement of Environmental Effects prepared by Patch Planning (Patch) and dated December 2024 which the request supports. This Request has been prepared in accordance with the Guide to Varying Development Standards prepared by Department of Planning and Environment dated November 2023.



2. SITE AND PROPOSED DEVELOPMENT

2.1. SITE DESCRIPTION

The site is located at 2A Bringelly Road and 31-33 Santley Crescent, Kingswood and is legal described as Lots 3, 4 and 5 in DP 215200. The site is bounded by Santley Crescent to the south and Bringelly Road to the west.

An approved *medical centre* and associated car parking is located at the intersection of Bringelly Road and Santley Crescent. The *medical centre* was approved pursuant to DA 47/87 (as modified). It is a single storey building consisting of a main entrance, reception and a series of consulting rooms.

The remainder of the site is largely vacant, with the exception of a series of trees and landscaping. The buildings previously located in Lot 3 and Lot 5 have been demolished pursuant to DA 21/0788.

The table below provides a summary of the site description and key attributes.

Table 1. Site Description	
Legal Description	Lot 3 DP215200 Lot 4 DP215200 Lot 5 DP215200
Total Area	2,127.7sqm
Street Frontage	36.57 metres to Santley Crescent Road and 47.23 meters to Bringelly Road
Site Description	The site is slightly irregular in shape with frontage to Santley Crescent (south) and Bringelly Road (west).
Existing Use	Medical Centre

Figure 1 below shows an aerial of the subject site.



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Figure 1. Site Aerial. The site is outlined orange.
Source: MetroMap modified by Patch

Figure 2 and **Figure 3** below provide street context of the site and surrounds.



Figure 2. View to Site from the corner of Bringelly Road and Santley Crescent
Source: Google Maps, 2025



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Figure 3. View from Bringelly Road
Source: Google Maps, 2025

2.2. SITE CONTEXT

The Site is in the Local Government Area (LGA) of Penrith within the “Health & Education Precinct”. Kingswood Railway Station is located approximately 120m to the north. Western Sydney University, Kingswood Public School, and Chapman Gardens Oval are located to the east, and Nepean Hospital to the west.

The adjoining and surrounding development pattern is characterised by a series of mixed use and residential development. More specifically:

- The Great Western Highway is located approximately 50 metres from the northernmost boundary of the development site and is zoned SP2 Classified Road.
- The land to the north comprises zone MU1 Mixed Use. A takeaway food and drink premises is located at the intersection of Bringelly Road and the Great Western Highway.
- The land to the south, on the opposite side of Santley Crescent is zoned MU1 Mixed Use and consists of multi-dwelling housing developments.
- Immediately to the east is a 3-storey residential flat building which is zoned R4 High Density Residential.
- The land to the west is zoned MU1 Mixed Use and consists of a series of neighbourhood shops. A pub is further to the north-west at the corner of Bringelly Road and the Great Western Highway.



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Figure 4. Surrounding Development Pattern
Source: ePlanning Spatial Viewer (as modified by Patch)



The key elements of the proposed development are summarised below. Reference should be made to the accompanying architectural plans and supporting documentation for further detail.

Specifically the proposed development includes:

- The proposed works are depicted within the Architectural Drawings provided in **Attachment 4** and Floor Plans in Figure 5 and Figure 6 below.





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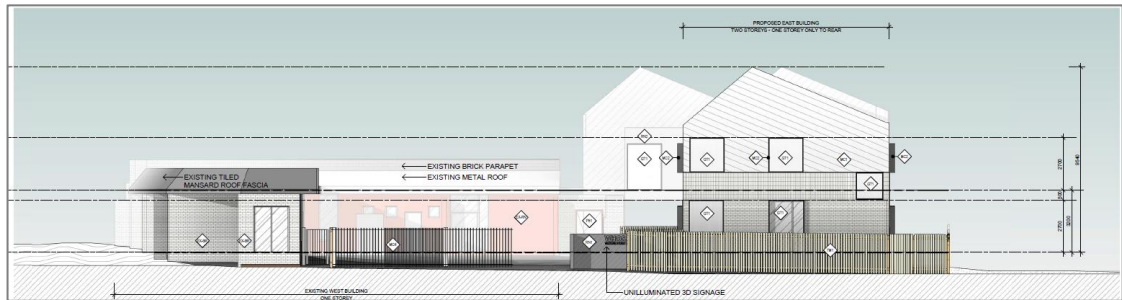


Figure 6. Proposed South Elevation (Santley Crescent)

Source: PTID



Figure 7: Proposed west elevation (Bringelly Road)

Source: PTID



3. PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION

3.1. WHAT IS THE ENVIRONMENTAL PLANNING INSTRUMENT/S YOU ARE SEEKING TO VARY?

This Clause 4.6 variation request seeks to vary the *Penrith Local Environmental Plan 2010* (PLEP 2010).

3.2. WHAT IS THE SITE'S ZONING?

The site is zoned MUI Mixed Use under the PLEP 2010 (refer Figure 4). Development for the purposes of residential accommodation is permitted with consent in the MUI Mixed Use zone under the Land Use Table in PLEP 2010.

The objectives of the MUI Mixed Use zone are:

- *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To allow for residential development in accessible locations to maximise public transport patronage and encourage walking and cycling.*

The proposed development is generally consistent with the zone objectives as follows:

- In consideration of the first stated objective, the proposed development represents the establishment and expansion of an existing business within the Penrith LGA that will provide ongoing employment opportunities.
- The proposal is not adverse to the second stated objective which relates to providing diverse and active street frontages.
- In consideration of the third stated objective, there are no elements of the proposed development that are likely to result in land use conflicts with other uses in this zone or land uses within adjoining zones. Additionally, the use must be a compatible use because it is permitted in the zone (*Nessdee Pty Limited v Orange City Council* [2017] NSWLEC 158).
- The proposal is not adverse to the fourth stated objective as the non-residential elements of the transitional group home are undertaken on the ground floor of the development.
- In consideration of the fifth stated objective, the subject land is located in an established area with access to public transport.



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3.3. IDENTIFY THE DEVELOPMENT STANDARD TO BE VARIED

This Clause 4.6 variation request seeks to vary Clause 7.8 contained PLEP 2010, which relates to active street frontages within the MU1 Mixed Use Zone. Specifically, the control applies to the western boundary of 33 Santley Crescent and 2A Bringelly Road.

3.4. IDENTIFY THE TYPE OF DEVELOPMENT STANDARD

The active street frontages provision under Clause 7.8 is a non-numerical development standard that is capable of being varied under Clause 4.6(2). The requested variation is not excluded from the operation of Clause 4.6(2) for the reason that it does not comprise any of the matters listed in Clause 4.6(6) or Clause 4.6(8).

Legal advice has been prepared by Holding Redlich which confirms that Clause 7.8 of the PLEP 2010 is a development standard. As such, it is amenable to variation under Clause 4.6 of the PLEP 2010.

Specifically, the legal advice points to *T & R Property Development (Gordon) Pty Ltd v Bayside Council* [2021] NSWLEC 1299 (*T&R Property*), in which the Land and Environment Court considered a development subject to clause 6.15 of the now-repealed *Botany Bay Local Environmental Plan 2013* (BBLEP).

Clause 6.15(3) was in identical terms to clause 7.8 of PLEP 2010, requiring that the consent authority be satisfied the building would have an active street frontage after its erection or change of use.

The Court noted the relevant background, acknowledging that the site was identified on BBLEP's active street frontage map under clause 6.15, that the proposal did not provide an active street frontage, and that the application was supported by a clause 4.6 written request seeking consent despite the non-compliance. The Court also observed that no other development standards under applicable environmental planning instruments were varied.

In its decision, the Court recorded that the clause 4.6 request was well-founded and that the discretionary powers under clause 4.6 of BBLEP should be exercised. The Court was satisfied that the written request demonstrated compliance with the development standard was both unreasonable and unnecessary in the circumstances, in line with the first "Wehbe way" from *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827. The request successfully showed that the proposal otherwise achieved the objectives of clause 6.15 of BBLEP.

Ultimately, the Court concluded that the requirements of clause 4.6 were met, granting development consent notwithstanding the breach of the active street frontage control. The Court upheld the clause 4.6 variation request in relation to clause 6.15 of BBLEP. In doing so, it confirmed it had the legal jurisdiction and power to grant consent subject to the clause 4.6 request, noting that the parties' decision was one the Court could have made in the proper exercise of its functions under section 34(3) of the *Land and Environment Court Act 1979*.

3.5. WHAT IS THE NUMERIC VALUE OF THE DEVELOPMENT STANDARD IN THE ENVIRONMENTAL PLANNING INSTRUMENT?

Not applicable – 7.8 is a non-numerical development standard.



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3.6. WHAT IS THE DIFFERENCE BETWEEN THE EXISTING AND PROPOSED NUMERIC VALUES? WHAT IS THE PERCENTAGE VARIATION (BETWEEN THE PROPOSAL AND THE ENVIRONMENTAL PLANNING INSTRUMENT)?

Not applicable – Clause 7.8 is a non-numerical development standard.





4. JUSTIFICATION OF THE PROPOSED VARIATION

4.1. HOW IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE PARTICULAR CASE?

The decision of Justice Preston in *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Webbe) established the 'five part test' or 'Wehbe test', to determine whether compliance with a development standard is unreasonable or unnecessary. As summarised in the judgement of *Initial Action Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (Initial Action) at [89-90], the five part test can be summarised as follows:

'Compliance with the development standard is unreasonable or unnecessary if the:

- 1. objectives of the development standard are achieved notwithstanding the non-compliance*
- 2. underlying objectives or purpose is not relevant to the development*
- 3. underlying objective or purpose would be defeated or thwarted if compliance was required*
- 4. development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard*
- 5. zoning of the land on which the development is proposed was unreasonable or inappropriate.'*

It is noted that an applicant need only to satisfy one part of the Wehbe test, not all five parts. The five part test is considered in section 4.1.1 below.

4.1.1. ARE THE OBJECTIVES OF THE DEVELOPMENT STANDARD ACHIEVED NOTWITHSTANDING THE NON-COMPLIANCE?

The objective of Clause 7.8 is "*promote uses that attract pedestrian traffic along certain ground floor street frontages in Zone E1 Local Centre, Zone E2 Commercial Centre and Zone MUI Mixed Use*"

The proposed development will feature two entrances along the western boundary, contributing to an active street frontage. The ground floor will be used exclusively for the purpose of the WHOS day program, comprising offices and associated common areas.

Glazing and landscaping along the western frontage will further enhance activation of Bringelly Road, positively contributing to the streetscape and creating an improved visual experience for passing pedestrians.

4.1.2. ARE THE UNDERLYING OBJECTIVES OR PURPOSE OF THE DEVELOPMENT STANDARD NOT RELEVANT TO THE DEVELOPMENT?

Not relied upon.

4.1.3. WOULD THE UNDERLYING OBJECTIVES OR PURPOSE BE DEFEATED OR THWARTED IF COMPLIANCE WAS REQUIRED?

Not relied upon.



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4.1.4. HAS THE DEVELOPMENT STANDARD BEEN VIRTUALLY ABANDONED OR DESTROYED BY THE COUNCIL'S OWN ACTIONS IN GRANTING CONSENT DEPARTING FROM THE STANDARD?

Not relied upon.

4.1.5. IS THE ZONING OF THE LAND UNREASONABLE OR INAPPROPRIATE SO THAT THE DEVELOPMENT STANDARD IS ALSO UNREASONABLE OR UNNECESSARY?

Not relied upon.

4.1. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

Sufficient environmental planning grounds exist to justify the contravention of the development standard.

In the *Initial Action* judgement, Justice Preston provides guidance at [23] on the adequacy of demonstrating sufficient environmental planning grounds to justify contravention of a development standard, as follows:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

The environmental planning grounds to justify variation to the development standard are detailed as follows:

- **Promotion of social and economic welfare.** The proposed development will provide supported accommodation for individuals transitioning and reintegrating back into society, enabling residents to access education, employment and services while ensuring proper and sensitive use of the site in line with the applicable planning controls.
- **Increase in diversity of housing options.** The transitional group home fits within this context by contributing to the broader mix of residential typologies in the area. A diversity in housing forms and typologies is encouraged by PLEP 2010 and PDCP 2014. This ensures that a range of residential options is available in reasonable proximity to transport links, healthcare, and other essential services, which aligns with the broader goals of the precinct.
- **Promotion of good design and amenity of the built environment.** The proposed design contributes to the creation of a vibrant, pedestrian friendly environment that enhances the public domain. By maintaining a human-scale design, the development creates a more comfortable and inviting space for pedestrians and cyclists, helping to improve the overall feel and liveability of the broader Penrith Health and Education precinct.

For the reasons detailed in this request, the variation to 7.8 contained under PLEP 2010, which relates to active street frontages within the MU1 Mixed Use zone, is well-founded and justified and there are sufficient environmental planning grounds to warrant contravention.



5. CONCLUSION

This Request has been prepared by Patch on behalf of our client WHOS in support of a DA at 2A Bringelly Road and 31-33 Santley Crescent, Kingswood. The DA seeks development consent for the construction of a transitional group home.

Clause 4.6 of the PLEP 2010 enables the consent authority to grant consent for development that contravenes development standards imposed by the PLEP 2010 or any other environmental planning instrument.

The proposed development seeks a variation to the Clause 7.8 contained under PLEP 2010, which relates to active street frontages within the MU1 Mixed Use zone.

The proposed variation to the development standards demonstrates that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient planning grounds to justify this variation.

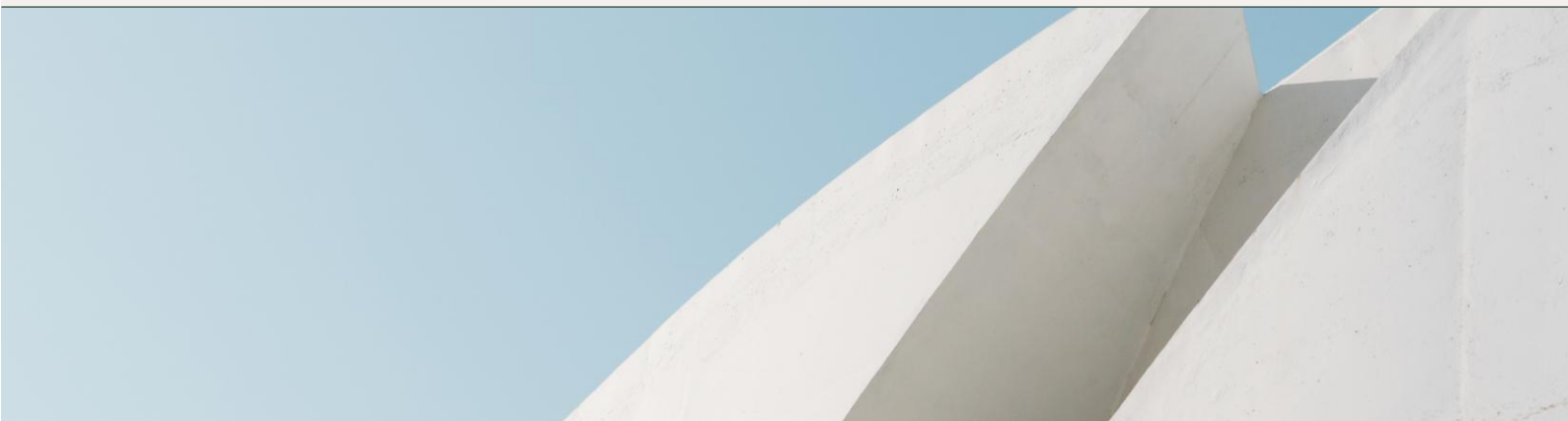
The proposed non-compliance is considered acceptable for reasons contained within this Request. In the circumstances of this case, flexibility should be applied.





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