

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA19/0314
Proposed development:	Demolition of Existing Structure and Construction of a Three (3) Storey Boarding House containing 12 Boarding Rooms with At Grade Car Parking
Property address:	77 Lethbridge Street, PENRITH NSW 2750
Property description:	Lot 15B DP 344265
Date received:	9 May 2019
Assessing officer	Kathryn Saunders
Zoning:	Zone R4 High Density Residential - LEP 2010
Class of building:	Class 3
Recommendations:	Refuse

Executive Summary

Council is in receipt of a development application for the demolition of existing structures and construction of a three storey boarding house containing 12 boarding rooms at 77 Lethbridge Street, Penrith.

The proposal is defined as a boarding house under Penrith Local Environmental Plan 2010 (PLEP) and is a permissible form of development within the R4 High Density Residential zone, with consent. The proposal is also permissible within the zone under Division 3 Boarding houses of State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH).

Key issues identified for the proposed development and site include:

- Non-compliance with character, solar access, accommodation size and landscaped area controls as required under SEPP ARH.
- Non-compliance with PLEP zone objectives.
- Non-compliance with built form, character and amenity controls under Penrith Development Control Plan (DCP) 2014.
- Bulk, scale and density of the development does not adequately address the character of the area in the vicinity of the site, specifically the front setback and landscape treatment of the site and hardstand visible from the street.
- Visual and acoustic amenity impacts.
- Inappropriate onsite parking, waste collection arrangements and excessive site coverage
- Site constraints and isolation of adjoining site.
- Poor presentation to Lethbridge Street.
- Minimal side boundary setbacks.
- Issues related to room size.
- The proposed length of stay of boarders is inconsistent with the PLEP definition for boarding house.

The application was notified to adjoining and nearby properties and advertised and exhibited between 24 May 2019 to 7 June 2019, in accordance with the relevant legislation. Ten (10) submissions were received in response including a petition raising issues related to boarding house operations, management, monitoring, community safety, traffic and parking, site context and local character, the design of the building and impacts on neighbouring properties including privacy and amenity. As these submissions are considered 'unique', the application is referred for determination by the Local Planning Panel.

An assessment under Section 4.15 of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for refusal.

Site & Surrounds

The subject site is legally described as Lot 15B, DP 344265 and is known as 77 Lethbridge Street. The subject site is located on the northern side of Lethbridge Street, Penrith and is a shallow rectangular allotment. The site is currently occupied by a single storey older style dwelling with ancillary structures and has a site area of 557sqm's. The site has vehicular access from Lethbridge Street and is sloped downward towards the south and west with a fall of approximately 0.5m from the rear eastern corner of the site to the south-eastern corner of the site. The site also has a fall of approximately 1.40m along the Lethbridge frontage from east down to west.

Directly adjoining the site to the west is a two storey townhouse development and to the east is a part 1, part 2 storey attached dual occupancy. The rear of the subject site is shared with the rear yard of a single dwelling fronting Doonmore Street.

The greater local area is under transition with instances of residential flat building development. The block bounded by Lethbridge street to the south, Doonmore Street to the east and Fulton Street and Fulton Lane to the north and west of which the subject site is situated on, has not been development for higher densities as yet. Several residential flat buildings were approved in 2017 at sites with frontage to Fulton Street (on this block) although construction for these developments has not yet begun.

The site is in close proximity to the Penrith CBD with the eastern end of High Street located 200m's to the north. Penrith Railway Station is located 1km to the north-west and Penrith High School is approximately 50m to the east on the corner of Doonmore and Lethbridge Streets.

Proposal

The proposed development comprises:

- Demolition of existing dwelling, ancillary structures and removal of all vegetation;
- Construction of a 12 room boarding house over three storeys;
- Undercroft surface car parking for 6 vehicles and 3 motorcycles with access from Lethbridge St; and
- Ancillary landscaping and stormwater works.

Each boarding room is proposed to be provided with their own private kitchen and bathroom facilities. Plans indicate 7 single occupancy rooms and 5 double occupancy rooms.

A community room (4.2m x 2.7m) is proposed and a common open space is provided at ground floor level which faces north and adjoins a common outdoor area with a barbeque. The main pedestrian entry is proposed via a pathway from Lethbridge Street.

Bulky waste and a garbage area are located along the frontage of the site adjacent to the foyer. Access to the waste area from the foyer is also proposed. The materials and finishes comprise facebrick with cladding and metal roof. The colours comprise a brown palette with accent lighter shades.

On-site detention is proposed under the driveway and car park entry from Lethbridge Street.

Below is a chronology of the application.

9/5/2019	DA lodged.
29/5/2019	Letter from Council raising issues regarding compliance with State Environmental Planning Policy (Affordable Rental Housing) 2009 with regard to landscaped area, solar access, accommodation size and character of the area; compliance with the objectives of Penrith Local Environmental Plan 2010; Acoustic impacts; Site Isolation; and the plans in general. The applicant was invited to withdraw the DA within 7 days of this correspondence until the 5 June, 2019.
5/7/2019	Extension of time granted for response up to 17 June 2019.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Affordable Rental Housing) 2009
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

• Section 4.15 - Evaluation

The proposal has been assessed in accordance with the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, and having regard to those matters, the following issues have been identified for further consideration:

Section 79C(1)(a)(i) The provisions of any environmental planning instrument

State Environmental Planning Policy (Affordable Rental Housing) 2009

An assessment of the development application has been undertaken with regard to the relevant provisions of SEPP ARH and the proposal is found to be non-compliant, as detailed in the table below:

<i>State Environmental Planning Policy (Affordable Rental Housing) 2009</i> <i>Division 3 Boarding Houses</i>		
3Boarding Houses		
<i>Requirement</i>	<i>Comment</i>	<i>Compliance</i>
<i>Clause 25 – Definition</i>	Definition given for a 'communal living room'. The room marked 'common Rm' is proposed as the communal living room.	No. The dimensions of this room are inadequate (4.2m x 2.7m or 11.34sqm's) and will not allow for adequate placement of furnishings or area sufficient to accommodate the use of the room or its availability for all lodgers. The position of the common room is also not considered functional in relation to the overall development.
<i>Clause 26 – Land to which Division applies</i>	This Division applies to land within any of the specified zones (or equivalent); including: (c) Zone R4 High Density Residential	Yes.
<i>Clause 28 – Development may be carried out with consent</i>	Development to which this Division applies may be carried out with consent.	Noted.
<i>Clause 29 – Standards that cannot be used to refuse consent</i>	(1) A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than: (a) the existing maximum floor space ration for any form of residential accommodation permitted on the land.	(a) N/A, as there is no FSR requirement, as per PLEP, for the subject site or area.

(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:

(a) building height – if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land.

(b) landscaped area – if the landscape treatment of the front setback is compatible with the streetscape in which the building is located.

(c) solar access – where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter.

(d) private open space – if at least the following private open space areas are provided (other than the front setback area): (i) one area of at least 20sqm with a minimum dimension of 3 metres is provided for the use of the lodgers.

(e) parking if: (iia) - in the case of development not carried out by or on behalf of a social housing provider – at least 0.5 parking spaces are provided for each boarding room.

(f) accommodation size – if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:

(i) 12 square metres in the case of a boarding

(a) Yes, the ridgeline of the roofline is no higher than 18m, which is the maximum height of buildings listed for the site in the Height of Building Map under PLEP.

(b) No

The development proposal is not designed such that the landscape treatment of the front setback area is compatible with the streetscape in which the building is located.

Setbacks are inadequate and non-compliant with the requirements for boarding houses under PDCCP 2014. The landscaping proposed does not respond to the streetscape context.

The 5.5m front setback indicated on architectural plans does not correlate with the submitted landscape plans and areas of hardstand within the front setback limit landscape opportunities which is dominated by hedging and small trees rather than allowing opportunity for a mixture of trees and shrubs including the incorporation of mature tree planting.

(c) No. Additional information was requested to demonstrate that the minimum solar access requirements of the Policy are achieved for the sole communal living room. Solar access to this room is not addressed.

(d)(i) Yes, the minimum private open space requirement has been provided in the north-east corner.

(e)(iia) Yes, the proposed car parking for the site includes 6 x car parking spaces (including 1 x accessible parking space) and 3 motorcycle spaces.

(f)(i)&(ii) No. Insufficient documentation has been provided to allow an assessment of the size of

room intended to be used by a single lodger,
or

(ii) 16 square metres in any other case.

each room. Floor plans were requested which detail the area used to calculate room size. The size of the rooms is to exclude any area used for the purposes of private kitchen or bathroom facilities (an area generally of 1m along the kitchen cabinet/bench fronts is to be excluded from the size calculations). No room is to be greater than 25sqm's and as rooms are proposed to be single rooms, their size shall be no less than 12sqm's and no greater than 16sqm's. Boarding rooms with an area of 16sqm's or greater are assessed as double rooms.

It is unclear if all rooms comply with the minimum area requirements of the SEPP. In addition, rooms with a floor area of 15.56sqm's and 15.92sqm's are considered to be double rooms and are therefore non compliant separate to the additional requirement of removing further area associated with kitchen areas for instance.

*Clause 30 –
Standards for
boarding houses*

(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:

(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided.

(b) no boarding room will have a gross floor area (excluding any area use for the purposes of private kitchen or bathroom facilities) of more than 25 square metres.

(c) no boarding room will be occupied by more than 2 adult lodgers.

(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger.

(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on-site dwelling will be provided for a boarding house manager.

(f) (Repealed).

(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use.

(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.

(a) No. A room titled 'Common Rm' is noted on plans although it is considered to be a hallway as its area is insufficient to accommodate its use as a communal room for the number of lodgers proposed. Further there is no internal door to the lobby hall.

(b) Complies. Each room is no more than 25m² in gross floor area.

(c) Complies. No room is proposed to be occupied by more than 2 lodgers.

(d) Complies. Each boarding room is provided with its own bathroom and kitchen facilities.

(e) N/A.

(g) N/A

(h) Complies.

<p>30A – Character of local area</p>	<p>A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.</p>	<p>No.</p> <p>The character of the local area is defined by deep landscaped front yards with remnant canopy tree planting. The area is expected to undergo a gradual shift to higher densities permissible within the R4 High Density Residential zone which includes multi dwelling housing. Existing trees are not proposed to be retained on site to maintain local character and the excessive hard stand areas, undercroft parking and bulky built form does not allow for an open and well landscaped frontage. The design of the development (inclusive of materials, finishes, setbacks, design, bulk and landscaping) is not comparable or compatible with the character of the local area in the vicinity of the site.</p> <p>The built form does not complement existing built form qualities that are considered to define the character of the local area. The development proposal does not include adequate articulating elements along its side boundaries and the building's length and design are considered to add bulk to the structure. Little opportunity is provided for substantial landscaping around the development given the hard stand areas and facilities such as drainage and waste, which is considered to exacerbate the built forms bulk and scale.</p> <p>The density of the development is directly related to the inability of the design to adequately respond to the future desired character of the area in that the bulk, scale and building design as well as the treatment of the front setback area is not compliant with the boarding house controls under Part D5 Other Land Uses, clause 5.11 Boarding Houses of the DCP, which requires the development to be consistent with the comparative built form controls.</p>
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State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A BASIX Certificate (No. 1008977M) was submitted in support of the proposal which states that the proposal is will meet the NSW Government's requirements for sustainability.

State Environmental Planning Policy No 55—Remediation of Land

An assessment has been undertaken of the development proposal against the relevant criteria within State Environmental Planning Policy No 55—Remediation of Land and the application is considered satisfactory. Given the prior residential use for the subject location and continued use of the land for residential purposes (which is not considered a potentially contaminating activity) as stated in the supporting documentation with the application, the site is considered suitable for the proposed use in regards to contamination. Conditions of consent may be applied with regard to contamination procedures, should unexpected finds be uncovered during construction as well as standard conditions related to asbestos removal. As the development application is recommended for refusal, the above mentioned conditions are not recommended to be included.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the proposed development against the relevant criteria within Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997) and although the development proposal is not in conflict with the Policy, the development application is recommended for refusal based on other matters.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Does not comply - See discussion
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Does not comply - See discussion
Clause 2.7 Demolition requires development consent	Complies
Clause 4.1A Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings	Does not comply - See discussion
Clause 4.3 Height of buildings	Complies - See discussion
Clause 4.4 Floor Space Ratio	N/A
Clause 7.1 Earthworks	Complies
Clause 7.2 Flood planning	Complies
Clause 7.4 Sustainable development	Does not comply - See discussion
Clause 7.6 Salinity	Complies
Clause 7.7 Servicing	Complies

Clause 1.2 Aims of the plan

The proposed development does not achieve the aims of the plans expressed under Clause 1.2(2) of the LEP. In particular, the proposal is contrary to Clause 1.2(2)(b) and (c) in that the proposal will not promote development that is consistent with Council's vision for Penrith, including the promotion of harmony of urban development and environmental protection and enhancement. The proposal does not safeguard residential amenity by way of its density, bulk, scale and contribution to streetscape and local character.

Clause 2.3 Permissibility

Development for the purposes of a boarding house is permissible within the R4 High Density Residential zone under PLEP and is also permissible within the R4 zone under State Environmental Planning Policy (Affordable Rental Housing) 2009.

Under the LEP, a boarding house is defined as:

"boarding house means a building that:

*(a) is wholly or partly let in lodgings, and
(b) provides lodgers with a principal place of residence for 3 months or more, and
(c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and
(d) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,
but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment."*

The Management Plan states that the minimum length of tenancy will be 1 month. The Penrith LEP 2010 states that a boarding house "provides lodgers with a principal place of residence for 3 months or more". Accordingly, the Management Plan is inconsistent with the above definition.

It is noted that whilst State Environmental Planning Policy (Affordable Rental Housing) 2009 does not contain a specific definition for a boarding house, the LEP definition is consistent with the LEP standard template definition. It is noted that a condition of consent could be applied to require that the minimum length of stay be increased to be 3 months, although as the proposal is recommended for refusal based on other matters, a condition regarding minimum length of stay is not required.

Clause 2.3 Zone objectives

The subject site is located within the R4 High Density Residential zone under the LEP. Objectives of the zone include:

- To provide for the housing needs of the community within a high density residential environment.
- To provide a variety of housing types within a high density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that a high level of residential amenity is achieved and maintained.
- To encourage the provision of affordable housing.
- To ensure that development reflects the desired future character and dwelling densities of the area.

The design will result in the isolation of the allotment to the immediate east (being No. 33 Doonmore Street) which through its corner position, site area and attributes will be unable to be developed to its full potential if not amalgamated with the subject site. The applicant has not provided satisfactory details in accordance with the NSW Land and Environment Court Planning Principle on 'Isolation of site by redevelopment of adjacent site(s)' and in this regard, the design is not considered to allow for an appropriate housing need and desired future character of housing densities within the R4 zone.

The development's negative impacts on local character are further detailed under the SEPP ARH section of this report. The front setback is inadequate and in conjunction with the large hard stand areas, provides little opportunity for high quality and effective landscaping.

Negative and unacceptable impacts on amenity can be directly linked to the density of rooms proposed and the inability of the site to accommodate the needs and minimal requirements of the development. Minimal landscaped setbacks are resulting from the site coverage, basement extend and minimal rear and side setbacks proposed. The proposal does not include sufficient articulation elements along elevations to both the ground and first floor. The length and bulk of the building is not considered to represent, nor complement, residential development within the local area. Landscaped elements are ineffective in ameliorating negative impacts on, or providing amenity to residents or neighbours of the development or on streetscape presentation.

The development overall does not comply with key development controls of the Penrith DCP and as such, is not representative of the desired future character of the area.

Noting the above, the first floor layout does not step in plan resulting in bulk and overbearing impacts, and architectural elements along the side elevations such as the double height walls do not ameliorate bulk and scale or provide relief from the overall height of the building. The built form is considered to provide for an irregular and disproportionate looking building which is not considered an appropriate inclusion to the streetscape.

Additionally, the development does not reflect the desired future character and dwelling densities of the area, in that the proposal is in conflict with the objectives and controls of Section D5, Clause 5.11 (Boarding houses) of the DCP. It is noted that these controls relate to solar access, car parking, landscaping and character as required by SEPP ARH.

Details of compliance with individual objectives and controls is discussed under the DCP and SEPP ARH sections of this report.

The proposal does not comply with the objectives of the R4 High Density Residential zone which relate to ensuring that a high level of residential amenity is achieved and maintained, and which relate to ensuring that the development reflects the desired future character and dwelling densities of the area.

Clause 4.1A Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings

It is considered that the adjacent site to the east (No. 33 Doonmore Street) will be isolated by the development of the subject site, in that its site area is below the minimum required for a residential flat building under Penrith LEP 2010. The Land and Environment Court has established Planning Principles with regard to redevelopment which addresses the issue of site isolation. No evidence of a genuine offer to the owner of the land was provided.

Clause 4.3 Height of buildings

The proposed development is three storeys in height and complies with the maximum height limit of 18m. Notwithstanding the numerical compliance with the control, the proposal is not considered to be supportive of the objectives of the development standard particularly those which relate to; ensuring that the buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality and, minimising the visual impact, loss of privacy to existing development.

Clause 7.4 Sustainable development

Clause 7.4 of the LEP requires the consent authority to have regard to the principles of sustainable development as they relate to the development based on a 'whole of building' approach by considering each of the following:

- (a) conserving energy and reducing carbon dioxide emissions.*
- (b) embodied energy in materials and building processes.*
- (c) building design and orientation.*
- (d) passive solar design and day lighting.*
- (e) natural ventilation.*
- (f) energy efficiency and conservation.*
- (g) water conservation and water reuse.*
- (h) waste minimisation and recycling.*
- (i) reduction of vehicle dependence.*
- (j) potential for adaptive reuse.*

Adequate regard has not been given to the provision of natural cross flow ventilation and to the impacts of heat from the western sun.

The west facing elevation will be unshaded and no significant landscaping is provided to reduce the reliance on air conditioning. The location of proposed individual air conditioning units is not shown on plans and the related visual and acoustic impacts of these units cannot be ascertained with the current design.

Minimal natural light is afforded to the internal lobby, hallway areas and solar access to the room marked 'Common Rm' are not compliant with the requirements for solar access under the SEPP ARH.

The proposal has not adequately demonstrated how the proposal has had regard to the above matters by its design.

The above aspects display that the proposed development is not designed in such a way that takes into consideration the principles of sustainable design, particularly in relation to (b), (c), (d), (e) and (g) of clause 7.4 of PLEP.

Section 79C(1)(a)(ii) The provisions of any draft environmental planning instrument

Draft State Environmental Planning Policy No. 55 - Remediation of Land

The application has been assessed against the provisions of Draft State Environmental Planning Policy No. 55 - Remediation of Land and is considered to be acceptable.

Draft Environmental SEPP

The application has been assessed against the applicable provisions of the Draft Environmental SEPP. The Draft Policy is a consolidated plan which will incorporate aspects of current and separate existing environmental policies related to conservation of bushland and waterways, protected areas, canal estates and catchment and heritage areas. The heads of consideration identified within the associated Explanation of Intended Effect include:

- Water quality and flows within watercourses,
- Native plants, animals, habitats and ecosystems, and
- Recreational, scenic and environmental amenity.

The proposal is acceptable having regard to the heads of consideration and the intended effects of this Draft plan.

Section 79C(1)(a)(iii) The provisions of any development control plan

Development Control Plan 2014

Provision	Compliance
DCP Principles	Does not comply - see Appendix - Development Control Plan Compliance
C1 Site Planning and Design Principles	Does not comply - see Appendix - Development Control Plan Compliance
C2 Vegetation Management	Does not comply - see Appendix - Development Control Plan Compliance
C3 Water Management	Complies
C4 Land Management	Complies
C5 Waste Management	Does not comply - see Appendix - Development Control Plan Compliance
C6 Landscape Design	Does not comply - see Appendix - Development Control Plan Compliance
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Complies - see Appendix - Development Control Plan Compliance
C11 Subdivision	N/A
C12 Noise and Vibration	Does not comply - see Appendix - Development Control Plan Compliance
C13 Infrastructure and Services	Complies
D2.1 Single Dwellings	N/A
D2.2. Dual Occupancies	N/A
D2.3 Secondary Dwellings	N/A
D2.4 Multi Dwelling Housing	Does not comply - see Appendix - Development Control Plan Compliance
D2.5 Residential Flat Buildings	N/A
D2.6 Non Residential Developments	N/A
D5.1. Application of Certification System	N/A
D5.2. Child Care Centres	N/A
D5.3. Health Consulting Rooms	N/A
D5.4. Educational Establishments	N/A
D5.5 Parent Friendly Amenities	N/A
D5.6. Places of Public Worship	N/A
D5.7. Vehicle Repair Stations	N/A
D5.8. Cemeteries, Crematoria and Funeral Homes	N/A
D5.9. Extractive Industries	N/A
D5.10 Telecommunication Facilities	N/A
D5.11 Boarding Houses	Does not comply - see Appendix - Development Control Plan Compliance

Section 79C(1)(a)(iii) The provisions of any planning agreement

There are no planning agreements in place applying to this development proposal.

Section 79C(1)(a)(iv) The provisions of the regulations

The application was referred to Council's Building Surveyor for assessment, with no objections raised, subject to recommended conditions.

The development application has been notified, exhibited and advertised in accordance with the requirements of the Regulations. Notwithstanding, the development proposal is recommended for refusal having regard to others as outlined within the Report.

Section 79C(1)(b) The likely impacts of the development

Likely impacts of the proposed development are discussed below:

Site isolation

The proposed development will result in the isolation of the neighbouring corner allotment to the east in regard to minimum lot area for a residential flat building as discussed previously within this report.

Streetscape and Local Character

The proposal is considered to provide for a negative impact on the existing streetscape and character of the local area. The development proposal is inconsistent with controls of Penrith Development Control Plan 2014 (PDCP) in particular, those that relate to boarding house development, bulk, scale, design, and those that are related to local character, landscaping and solar access. The design is also in contrast to comparable built form controls of the DCP, in that the bulk and scale of the development is not adequately mitigated by landscaping or articulating design elements along its elevations. The design of the boarding house does not enhance the essential character and identity of established residential areas, in part due to the need to accommodate parking on the ground level rather than via a basement level, turning and waste storage which limits landscaping opportunities.

The proposal to construct a three storey, 12 room boarding house of the scale and design proposed will result in negative impacts on the existing streetscape and character of the local area. The design is in contrast to comparable built form controls of the DCP, in that the bulk and scale of the development is not adequately mitigated by landscaping or articulating design elements along its elevations or through its roof form. The design of the boarding house does not enhance the essential character and identity of the established residential area via its irregular presentation, failure to appropriately provide for well thought out window forms and large extents of blank wall presentation.

The submitted Schedule of Materials and Finishes is not adequate to enable Council to undertake an assessment of the proposed materials, colours and finishes proposed. The proposal for Alucobond panel cladding spanning two storeys is not supported in that it does not complement the residential character of the site's context and adds to the scale and bulk of the building. It is unclear from the Schedule of External Finishes whether dark shades are proposed for the external surfaces. To incorporate principles from the Cooling the City Strategy 2016, light coloured materials are encouraged. The increased solar reflectance of lighter shades will contribute to reducing the urban heat island effect experienced locally but is not provided in this instance.

Elevations do not include fencing and retaining wall locations, materials or heights and do not indicate the adjacent development.

It is also noted that finished floor levels are not nominated on architectural plans indicating further potential concerns with the design.

Noise and Privacy Impacts

The development proposal does not adequately demonstrate a package of measures to mitigate against negative privacy and amenity impacts. Side setbacks are minimal and inadequate area is provided for landscape screening or buffer separation. The length of the building and the extent of the upper level will result in negative overbearing and overlooking impacts on neighbouring sites also noting the incoherent architectural style provided to the building. The proposal does not adequately demonstrate measures to mitigate against negative privacy and amenity impacts as an acoustic report was not submitted with the

application.

The location of air conditioning units is to be nominated on all plans and elevations. While so, an acoustic assessment (prepared by a suitably qualified acoustic consultant), is required to be submitted as a part of the development application to demonstrate that the proposed boarding house will not have any impact on nearby sensitive receivers. This report should consider;

- The 'Noise Policy for Industry' in terms of assessing the noise impacts associated with development, including noise from the indoor and outdoor communal spaces on surrounding properties (including their outdoor spaces), the car parking spaces, as well as any mechanical plant.
- The 'Interim Construction Noise Guideline' in assessing the impacts associated with the construction phase of the development.

Should mitigation measures be necessary, recommendations should be included to this effect. This however is unknown as the requested report was not submitted.

Impacts related to demolition, dust, erosion, excavation, site preparation and construction could be adequately managed via recommended conditions of consent, however, the development application is recommended for refusal based on other matters.

Traffic, Access and Manoeuvring

The development complies with the minimum number of parking spaces required by the State Environmental Planning Policy (Affordable Rental Housing) 2009 for motor vehicles and motor bikes, however impacts related to site coverage, landscaping, local character and overbearing are resulting from the requirement to provide 0.5 car spaces per room remain unresolved. It is noted that the development provides for one accessible room and one accessible car parking space.

Driveway access is provided from Lethbridge St via a central, two way driveway and manoeuvring appears satisfactory. All vehicles must enter and leave the site in a forward direction. Vehicles can enter/leave in a forward direction. However, this results in a large amount of hardstand to accommodate the parking area in the front setback.

Sustainable Design

The design of the proposed boarding house does not sufficiently respond to the site analysis. The two storey shear and predominantly unarticulated and unshaded walls, are likely to retain significant thermal load in the summer season. The building design and landscape concept do not respond to the site's orientation in this regard, and insufficient shading is provided for the site as a result of the minimal width of landscaped areas proposed.

Adequate area is to be nominated within the rear setback for the drying of washing, but while so, it is not considered that an appropriate area has been identified on the architectural plans.

Solar Access

The submitted shadow diagrams are inadequate to make a full and proper assessment of the impacts of the development on solar access and overshadowing. Shadow diagrams must consider and indicate the shadow thrown from neighbouring structures and developments, and for the purposes of satisfying the requirements of clause 29(c) of SEPP ARH are to include details as to how the communal living room receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter. Hourly shadow diagrams as well as elevational shadow diagrams have not been submitted to assist in a proper analysis of the proposal. Further, shadow diagrams do not provide detail of the location of dwellings and windows or private open spaces attributed to the surrounding adjacent sites.

Air pollution/odour

Air quality impacts during the demolition and construction phase can be managed through conditions of consent. It is not expected there will be any ongoing air quality or odour issues associated with the proposed use.

Waste Management

The submitted Waste Management Plan does not adequately detail how the ongoing waste management will be undertaken at the site. The proposal for the bin room floor waste to be connected to the stormwater

is not supported. Poor internal amenity, hygiene and odour impacts will result from the connection of the communal bin room to the boarding room lobby, which is not supported.

It is also raised that the existing dwelling on the site contains Asbestos and in this respect its demolition must be undertaken in strict compliance with AS 2601:2001, SafeWork NSW Guidelines and relevant Codes of Practice pertaining to the safe handling of asbestos containing materials and recommendations provided within a Hazardous Materials Assessment which is required to be provided in support of the proposal.

Design

Section 2.4.4 of the Penrith DCP 2014 requires the urban form of multi-dwelling housing to “show characteristics of traditional suburban development”, including “the upper storey surrounded by a larger ground floor plan”. The proposal’s first floor has a larger footprint in relation ground floor. In addition, the hardstand car parking spaces and turning area visually dominate the setback, as will the bulky waste area.

Since the proposed common room is narrow and serves as a thoroughfare to the communal outdoor area, it has poor useability as a communal living room.

To address principles of Crime Prevention Through Environmental Design, the entrance should provide visibility into the building on approach. The building design and landscaping should support casual surveillance of the street and driveway. Improved opportunities for casual surveillance of the car parking area is encouraged through use of windows from the common/foyer areas. These features are not considered to have been appropriately demonstrated with the current design.

It is unclear from the Schedule of External Finishes whether dark shades are proposed for the external surfaces. To incorporate principles from the Cooling the City Strategy 2016, light coloured materials are encouraged. The increased solar reflectance of lighter shades will contribute to reducing the urban heat island effect experienced locally.

Plan of Management

The Management Plan states that the minimum length of tenancy will be 1 month. The Penrith LEP 2010 states that a boarding house “provides lodgers with a principal place of residence for 3 months or more”. Accordingly, the Management Plan should be amended to state that the minimum length of tenancy will be 3 months. Availability of 6 and 12 month rental terms is required by the Penrith DCP 2014.

Provision of information on local social services is required by the Penrith DCP 2014, which could be noted in the Management Plan.

As required by the Penrith DCP 2014, the Management Plan notes that a complaints register will be kept and provided to Council on request. However, the information provided does not address the proposed procedure for managing any complaints from neighbours, such as the provision of the manager’s contact details on the front of the building. It is suggested that the Management Plan include a process for conflict resolution with both neighbours and residents, to help to ensure negative impacts on residents and neighbours are addressed promptly.

Noting the above, the Plan of Management is not adequate as submitted and as such the management of the boarding house and satisfaction of security and safety and operational measures cannot be known.

Section 79C(1)(c)The suitability of the site for the development

The site is unsuitable for the proposed development for the following reasons:

- The density of the development is resulting in excessive building bulk and site coverage, attributed to the number of rooms proposed and the requirement to comply with the applicable car parking rates as set out under the SEPP ARH.
- The design of the building, its presentation to the street and the proposed landscaping is not considered to be compatible with, nor complementary to, the character of the local area or the future desired character of the area.
- The proposal does not adequately demonstrate that impacts related to minimum side and rear setbacks, local character, streetscape presentation, bulk, scale, privacy, noise and amenity adequately mitigated against nor addressed through the design of the building.
- The development proposal does not adequately demonstrate that impacts related to bulk, scale, privacy, noise and amenity are adequately mitigated against or addressed in the design of the building or landscaping, and
- The proposed operation of the boarding house in terms of length of stay is incompatible with the definition of 'boarding house' under Penrith Local Environmental Plan.

Section 79C(1)(d) Any Submissions

Community Consultation

In accordance with Appendix F4 of Penrith Development Control Plan 2014, the proposed development was notified to nearby and adjoining residents and was exhibited advertised between 24 May 2019 to 7 June 2019. Ten (10) submissions were received.

Matters raised in the submissions have formed part of this assessment. A response to the matters raised is also provided below.

Issue	Comment
<p>Transient residents with no on site manager to control the operations and residents going and going. Living in confined spaces fosters incidents between residents which may escalate and be loud and dangerous.</p>	<p>The size of the boarding house does not require an onsite manager.</p> <p>A detailed Plan of Management was provided which all residents must abide by. Management is available between standard hours and after hours via emergency contact to ensure the site operates in accordance with the Plan, which includes restriction of hours of use of common areas to minimise noise.</p> <p>Boarding houses have historically been an important source of low cost accommodation and this development would increase the availability of this affordable housing type. There is an emerging trend for boarding houses to be targeted at young professionals and students. This type of affordable housing may also appeal to other tenants unable to afford ordinary private market rental rather than be occupied by any one demographic.</p> <p>Council is unable to require that tenants undergo further scrutiny such as background checks. Notwithstanding, the application has been recommended for refusal, based on other matters.</p>
<p>No existing boarding houses in the established residential area. Changes the character of the area. The developer has no concern for the neighbourhood, just profit.</p>	<p>It is agreed that the development in its current form alters the character of the area. It is appropriate in planning terms for boarding houses to be integrated into existing residential areas, rather than isolated, however must be designed to be compatible in terms of size and scale of the character of the area.</p>

<p>Negative impact on existing and future residents in terms of safety, security, traffic, noise and privacy. More traffic means more accidents.</p>	<p>An Acoustic Report was not submitted to allow a full assessment of noise impacts to be reviewed and in this regard the application is not supported.</p> <p>It is agreed that the design, its landscaping and boundary setbacks do not align with the applicable DCP control for boardinghouse developments. The proposal is not acceptable having regard to the local character and is not supported also on this ground.</p> <p>Council's Traffic Officer has reviewed the proposal and advised that the traffic generated by the development could be accommodated within the road network and that the minimum number of car parking spaces required by the SEPP ARH have been provided for.</p> <p>It is noted that residents have raised concerns about the safety of the intersection of Lethbridge Street and Doonmore Street. This matter has been raised with Council's Local Traffic Committee and will be investigated separately.</p>
<p>The proposed boarding house does not provide for an on-site manager</p>	<p>It is noted that under the requirements of the SRH SEPP that if the boarding house has the capacity to accommodate 20 or more lodgers, a boarding room or on-site dwelling is required to be provided for a boarding house manager.</p> <p>As the proposal is considered to provide for a maximum of 17 lodgers (via 5 double and 7 single rooms), an on-site manager is not required in this instance.</p>
<p>Unattractive development, comparative with low security prison with small windows and gates, not residential area.</p> <p>It is ugly.</p>	<p>The current design of the proposed building is not supported and should be reduced and the external appearance of the building and overall development site could be improved to improve its visual appeal.</p> <p>The selected materials and finishes and the buildings overall design were raised as matters of concern with the applicant. Amended plans were not received and it is agreed that contextually, the development proposal does not complement the existing or desired future character of the area.</p>

Referrals

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

Referral Body	Comments Received
Building Surveyor	No objections - subject to conditions
Development Engineer	No objections - subject to conditions
Environmental - Environmental management	Not supported
Environmental - Waterways	No objections
Environmental - Public Health	No objections - subject to conditions
Waste Services	Not supported
Traffic Engineer	No objection subject to conditions
Community Safety Officer	No objections - subject to conditions
Social Planning	Not supported

Section 79C(1)(e)The public interest

The proposed development is considered to be contrary to the aims, and zone objectives, of the LEP as outlined within this report. The proposed development does not comply with key clauses of Division 3 Boarding Houses of SEPP ARH, including those related to compatibility with local character and development standards related to solar access and landscaped area provision.

The proposal does not comply with the provisions of section 5.11 Boarding Houses of the DCP, in particular those requiring the design of the development to be compatible with the context of the site and to have regard to the site analysis. Further, the proposed setbacks, character and bulk and scale of the development are not compliant with the applicable built form controls detailed under the section.

It is for the above reasoning that approval of the development application would not be in the public interest and would also set an undesirable precedent in the locality.

Section 94 - Developer Contributions Plans

Development contributions apply to the subject proposal, however as the application is recommended for refusal, a condition of consent requiring their payment prior to the issue of a Construction Certificate is not recommended.

Conclusion

The development application has been assessed against the applicable planning control and policies including State Environmental Planning Policy (Affordable Rental Housing) 2009, Penrith Local Environmental Plan 2010 and Penrith Development Control Plan 2014, and the proposal does not satisfy the aims, objectives and provisions of these policies.

In its current form, the proposal would result in negative and unacceptable impacts on the surrounding character of the area. Specifically the bulk, scale and design of the development is not compatible with local character and is not representative of the future desired character of the area.

The development application was also submitted with insufficient information regarding occupancy, acoustic impacts, waste infrastructure and management details.

Support of this application would set an undesirable precedent in the locality, particularly considering the incompatibility of the design with the boarding house controls from Penrith Development Control Plan 2014. The proposed building design is not site responsive and does not comply with the key development standards which are directly resulting in unacceptable negative impacts in the locality, and is not in the public interest.

As such, considering the above aspects, the subject application is recommended for refusal, with the reasons for refusal provided.

Recommendation

1. That DA19/0314 for the demolition of existing structures and construction of a boarding house at 77 Lethbridge St, Penrith, be refused for the attached reasons; and
2. That those making submissions are notified of the determination.

Refusal

1 X Special 02 (Refusal under Section 79C(1)(a)(i) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the provisions of Penrith Local Environmental Plan 2010 as follows:

(i) Clause 1.2 Aims of the Plan - The proposal is inconsistent with the aims of the plan in relation of promotion of development consistent with Council's vision for Penrith and the safeguarding of residential amenity.

(ii) Clause 2.3 Zone Objectives - The proposal is inconsistent with the objectives of the R4 High Density Residential zone, specifically:

- the proposed boarding house is not considered to ensure that a high level of residential amenity is achieved and maintained;
- the proposed boarding house does not ensure that the development will reflect the desired future character of the area; and
- the proposal is not considered to enhance the essential character and identity of established residential areas.

(iii) Clause 7.4 Sustainable Development - The proposal is inconsistent with the principles of sustainable design, particularly in relation to (b), (c), (d), (e) and (g) of Clause 7.4 of the LEP.

2 X Special 03 (Refusal under Section 79C(1)(a)(ii) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 4.15(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979* as follows; The proposal is inconsistent with the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 as the development application does not comply with Part 2, Division 3, Clause 29 Standards that cannot be used to refuse consent (2)(b) Landscaped area, (c) Solar access and (f) Accommodation size and Clause 30A Character of Local Area.

3 X Special 04 (Refusal under Section 79C(1)(a)(iii) of EPA Act 1979)

The development application is not satisfactory for the purpose of Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, as the proposal is inconsistent with the following provisions of Penrith Development Control Plan 2014 in that the application has not satisfied Council with respect to the requirements under:

- Part B - 'DCP Principles',
- Section C1 'Site Planning and Design Principles',
- Section C2 'Vegetation Management',
- Section C5 'Waste Management',
- Section C6 'Landscape Management',
- Section C12 'Noise and Vibration',
- Section D2.4 'Residential - Multi Dwelling Housing', and
- Section D5.11 'Boarding Houses'.

4 [X Special 07 \(Refusal under Section 79C\(1\)\(b\) of EPA Act 1979\)](#)

The development application is not satisfactory for the purpose of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in terms of the likely impacts of that development including those related to:

- (i) negative streetscape and local character impacts;
- (ii) noise and privacy impacts;
- (iii) waste management;
- (iv) landscaping, setbacks and site coverage
- (v) negative impacts on residential amenity;
- (vi) energy efficiency and sustainability;
- (vii) negative social and economic impacts
- (viii) solar access and overshadowing;
- (ix) site isolation.

5 [X Special 08 \(Refusal under Section 79C\(1\)\(c\) of EPA Act 1979\)](#)

The application is not satisfactory for the purpose of Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979* as the site is not suitable for the scale of the proposed development.

6 [X Special 10 \(Refusal under Section 79C\(1\)\(e\) of EPA Act 1979\)](#)

The application is not satisfactory for the purpose of Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, as the proposal is not in the public interest.

7 [X Special 9 \(Refusal under Section 79C\(1\)\(d\) of EPA Act 1979\)](#)

Based on the above deficiencies and submissions received, approval of the proposed development would not be in the public interest (pursuant to Section 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979*).

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part B - DCP Principles

The proposed development is contrary to the principles, commitments and objectives of the DCP. The proposal does not enable the minimisation of the site's ecological footprint and does not promote sustainable production and consumption through appropriate use of environmentally sound technologies and management.

The development does not sufficiently protect the occupants of the structure from any heat that the site would be subject to, especially in the summer time. No eaves are provided to shade the building elevations. The hard stand, waste storage and drainage limits planting abilities and will have little effect in providing shade. The proposed side setbacks and drainage are unlikely to support any canopy tree planting to allow for effective screening to adjoining neighbours.

It is unclear from the plans submitted that solar access can be provided to the proposed common living room in accordance with the requirements of the SEPP ARH, being 3 hours of direct solar access between 9am and 3pm mid winter. In addition, it is not known if individual air conditioning units are proposed to each room and if so locations of the units are not nominated on submitted plans. No water capture and re-use is proposed.

Part C - City-wide Controls

C1 Site Planning and Design Principles

The following commentary is considered applicable to the current proposal;

1.2.2 Built Form - Energy Efficiency and Conservation

This section of the DCP states that:

"buildings should be designed on passive solar design principals which respond to orientation to maximise the northern aspect and solar access in the cooler periods; reduce overheating in summer and promote solar gain in winter; and ensure there is adequate cross flow of air by utilising natural ventilation, resulting in a reduction in the use of mechanical ventilation and/or air-conditioning systems".

The design of the proposed boarding house facilitates little opportunity for natural cross flow ventilation to some rooms, noting that the building is positioned and orientated in such a way that significant thermal load is likely to occur. This is likely to result in poor thermal comfort for any future occupants. There is also no tree shading or shading devices provided and limited opportunity for large shade trees or proposed. Further, established vegetation on the site is being removed, while the northern elevation has not been maximised with respect to window placement which is considered an inappropriate design solution.

1.2.3 Building Form - Height, Bulk and Scale

The proposed development is not consistent with the height, bulk and scale of adjacent development or likely future adjacent development which is primarily single storey. The proposal does not demonstrate an acceptable level of compliance with the applicable built form controls and boarding house controls under the DCP, nor the objectives of the R4 zone under the LEP.

The proposed development provides insufficient and minimal articulation along its elevations. The setbacks and finished floor heights of the proposal are not comparable nor are they complementary to other development within the vicinity of the site. The proposed landscaped elements do not sufficiently mitigate against the negative amenity impacts such as western heat, privacy (visual and acoustic), the overbearing nature of the structure and other impacts to the existing local streetscape character.

C2 Vegetation Management

An objective of this section is to preserve existing trees and vegetation, where possible, during

the design, development and construction process and justify any tree or vegetation removal.

The proposed development includes the removal of existing vegetation, which is not ideal noting its replacement with a large building envelope.

Given the insufficient information provided in this regard, the proposal does not satisfy the requirements of Section C2 of the DCP.

C5 Waste Management

The design of the proposed boarding house is not considered to comply with the design requirements for the waste storage area as detailed in Part C5 of the DCP. It is acknowledged that there is potential for these matters to be rectified through design amendments, but while so, a redesign was not requested and the standard waste conditions are not recommended in this instance.

C6 Landscape Design

6.1.3 Neighbourhood Amenity and Character

The submitted landscape design does not comply with the requirements of this Chapter; as explained below:

- The Landscape Plan does not sufficiently enhance the amenity and visual quality of the site. The bulk and scale of the boarding house structure is not ameliorated through the use of landscaped elements, such as screening or shade along the west side elevation.
- The design of the proposed landscaped areas do not ensure that the development integrates into and enhances the existing landscape character through either setbacks, architectural character or vegetation selection/placement, particularly across the side elevations and within the front and rear setbacks.

6.1.4 Site Amenity

This section states that the *'landscape design should seek to screen development, particularly from the side and rear of an allotment'* and that *'shrubs and small trees should be used to screen service areas and block unwanted views that reduce privacy'*. Additionally, that *'landscaped design should also be responsive to the bulk and scale of the development'*.

The landscape plan essentially proposes groundcovers, low height shrubs with the occasional tree which is not considered an well though out layout. The lack of variety in heights and species will provide limited screening for privacy and is uncharacteristic of traditional residential landscaping.

The proposal does not adequately demonstrate that the above controls have been satisfied. The minimal side setbacks, in comparison to the sheer wall heights of the building, does not allow for canopy spread to provide shading along these elevations. The proposed amount of site coverage from the boarding house structure, hard stand car parking and turning area is excessive and available deep soil zones are minimal in width. As such, planting in these locations would not result in any significant contribution to amenity or local character and do not respond sufficiently to the bulk and scale of the building.

As such, the proposal does not satisfy the requirements of Section C6 of the DCP.

C10 Transport, Access and Parking

The car parking rates for boarding houses are set out under the SEPP ARH, which requires that in the case of development not carried out by or on behalf of a social housing provider, requires at least 0.5 car parking spaces to be provided for each boarding room. The proposal includes 12 x boarding rooms and, as such, 6 parking spaces are required. The proposal includes 6 x parking spaces (including 1 x accessible parking space), satisfying the parking space requirement.

C12 Noise and Vibration

The objective of this section is to ensure that future development that has the potential to generate noise or vibration does not adversely affect the amenity of surrounding land uses.

An acoustic report was not submitted in support of this application. Referral to Council's Environmental Management team identified that an acoustic assessment is required to be submitted as part of the application to demonstrate that the proposed boarding house will not have any impact on nearby sensitive receivers. Such a report would need to be prepared by a suitably qualified acoustic consultant, and consider the following:

- The *'NSW Noise Policy for Industry'* in terms of assessing the noise impacts associated with the development, including noise from the indoor and outdoor communal spaces on surrounding properties (including their outdoor spaces), the use of the basement carpark, as well as any mechanical plant associated with air conditioning for individual units or mechanical ventilation for the development (including basement carpark);
- The AS/NZS 2107:2016 Acoustics – Recommended design sound levels and reverberation times for building interiors in terms of ensuring that internal noise levels can be achieved;
- The Interim Construction Noise Guideline in assessing the impacts associated with the construction phase of the development; and
- The potential impact from road traffic noise resulting from vehicles entering and exiting site, demonstrating compliance with NSW 'Road Noise Policy'.

Should mitigation measures be necessary as a consequence of the development, suitable recommendations would also be required to be included to this effect. Any recommendations and noise mitigation measures must be also shown on all architectural plans.

As such, noting the failure of the application to be accompanied with the necessary acoustic information, the proposal does not satisfy the requirements of Section C12 of the DCP.

D2 Residential Development

An assessment of the built form of the development has been undertaken having regard to comparative built form controls applying to multi dwelling housing development within the R4 High Density Residential zone, as is required by the boarding house objectives and controls of section 5.11 (Boarding Houses) of Section D5 Other Land Uses of the DCP.

The anticipated built form for the area within the vicinity of the site (applicable to boarding houses and multi dwelling housing developments) is detailed within this section of the DCP and includes controls requiring articulation of the built form and the inclusion of deep external side setbacks with an upper storey surrounded by a larger ground floor plan. The development proposal does not include characteristics of traditional suburban development where the building form is stepped with integrated landscaped elements.

2.4.3 Development Site

The subject site is 23.16m wide, which is compliant with the 22 metre lot width control. The site however is only 557m² in size which is small for this form of development or any development other than a low density residential arrangement. The proposal represents an over development of the site in proportion to the site area, with a large building mass and inadequate room for landscaping and deep soil zones and the incapacity to accommodate waste collection.

Further, this development is considered to isolate the adjoining site as discussed previously within this report.

2.4.4 Urban Form

The development proposal is in conflict with controls as it does not provide a variety of roof forms representative or complementary to traditional dwelling designs within the immediate area. No shading devices are provided to the east or west to provide relief from

the heat. Minimal areas for substantial landscape are proposed within the front and rear setback areas.

It is acknowledged that no accessibility report supports this application to address compliance with accessibility standards. Two adaptable rooms are proposed at the ground floor however only one accessible car parking space is proposed.

2.4.5 Front and Rear Setbacks

This section requires that two storey elements are to be setback 6m from the rear boundary.

The front setback is 5.5m. The waste enclosure and parking area encroaches into the front setback, limiting landscaping opportunities, which is not supported in this instance as they contribute to the negative impacts on local character. Therefore the reduced setback, combined with the hard stand and limited landscaping opportunities is unacceptable.

2.4.6 Building Envelope and Side Setbacks

This section states under clause 2.4.6(7)(a) and (b) that a minimum side setback of 2m is permissible, however, for only 50% of any boundary and the proposal complies.

The proposal does not comply with the objectives of the clause under 2.4.6(a) which state that the development shall comply with the building envelope controls, minimise disturbance to existing topography and natural soil profiles and provide for reasonable landscaped separation between neighbouring dwellings. The proposed development has not been identified to comply with key building envelope controls and does not provide reasonable landscape separation. Further, the drainage along the northern boundary limits landscaping opportunities.

The density of the subject development and the requirement under the State Policy to provide 0.5 car parking spaces per boarding room is also considered to result in the large amount of hardstand area relative to a small site area

2.4.8 Landscaped Area

The submitted amended plans do not adequately demonstrate that the proposal meets the minimum landscaped area required by clause 2.4.8 in Part D2 of the DCP, which is 40% of the Site area or 222m² for the Site. The plans submitted indicate that 36.5% of the site is landscaped, which is below the minimum requirement. Further, many areas of landscaping paved or are less than 2m in width and would therefore not satisfy the DCP definition of calculable landscaped area.

The insufficient landscaped area and building, car parking, drainage and waste design limit the opportunity for deep soil planting or screening vegetation. This reduces the development proposal's ability to contribute to the canopy coverage and green networks in the vicinity. The development does not contribute to the contextual fit of, or enhance the landscape quality of the area in the vicinity of the site.

The landscape plan does not provide for screening along boundaries. The amenity of the adjoining neighbours has not been considered in the landscape design, nor that of the future occupants with shade trees necessary.

2.4.12 Building Design

The development proposal is contrary to the controls of the clause, in that the design does not effectively mitigate against bulk through the use of a variety of materials, articulating elements such as stepped walls and roof forms, and the number (and appropriate design) of window openings.

2.4.13 Energy Efficiency

The development proposal does not adequately employ design techniques to reduce thermal loads, increase natural cross flow ventilation and allow for effective solar shading. No shading is provided to the western elevation and no shading devices are proposed to the side elevations.

2.4.19 Visual and Acoustic Privacy and Outlook

The development proposal has not adequately demonstrated measures to prevent issues impacting on privacy (both visual and acoustic) or minimise overlooking opportunities. Minimal landscaping is provided to the side setbacks to provide a buffer to adjoining properties. An acoustic report was not submitted to support the application.

D5 Other Land Uses

Section 5.11 Boarding Houses

At its Policy Review Committee meeting on 10 December 2018, Council resolved to adopt amendments to Penrith Development Control Plan 2014. The amendments, which have been titled Amendment No. 5, include revised controls relating to Multi Dwelling Housing and new controls for Boarding Houses. Amendment No. 5 came into effect on 21 December 2018. No savings provisions apply to these amendments but while so, it is noted that the application was received after the amendment came into effect. The proposal has been assessed against the provisions of Section 5.11 of Penrith Development Control Plan 2014, as follows:

Clause 5.11 - B. Objectives

The proposal does not comply with the following objectives listed under the clause which include:

- (a) To ensure that boarding houses fit the local character or desired future local character of the area.*
- (b) To minimise negative impacts on neighbourhood amenity.*
- (d) To respond to increasing neighbourhood densities resulting from boarding house development.*
- (e) To ensure that boarding houses operate in a manner which maintains a high level of amenity, health and safety for residents.*

The bulk and scale of the development does not adequately respond to the existing or desired future character of the area in the vicinity of the site, as discussed within this report (refer to the local character discussion under the SEPP ARH). The building design and landscaping concept does not respond sufficiently in regard to site analysis. The proposed setbacks and landscaping do not ameliorate the negative and unacceptable impacts on residential amenity due to the scale and overall height of the east building, their potential for thermal load in the summer months and the inability for landscaping to provide relief in this regard.

The bulk and scale of the design coupled with the minimal setbacks proposed will result in over bearing and amenity impacts (both visual and acoustic) on neighbouring low density residential properties.

Clause 5.11 - C. Controls

The proposed development does not comply with clause 5.11(C)(2)(b) of this section which states that '*boarding houses shall be designed to have a sympathetic relationship with adjoining development*', as discussed above and under the SEPP ARH section of this report. Further, due to the bulk and scale and the reduced side setbacks proposed on the western and eastern boundaries, the proposal does not comply with clause 5.11(C)(2)(d) which requires proposals to demonstrate that neighbourhood amenity will not be adversely impacted with regard to visual and acoustic privacy.

The proposal also does not comply with clause 5.11(C)(2)(f) which states that a boarding house proposal of a scale similar to a multi dwelling housing development should comply with the controls and objectives for multi dwelling housing within the DCP, where they are not in conflict with the requirements of the State Policy and the objectives of the zone. The design of the boarding house is not compliant with the controls for multi dwelling housing as detailed under

Section D2 Residential Development of this report.

The proposal does not comply with the following controls of clause 5.11(C)(3) Tenant Amenity, Safety and Privacy:

- Clause (c) which requires cross ventilation to be achieved to reduce reliance on air conditioning.
- Clause (d) requires fly screens on all windows. It is unclear if this is proposed.

The proposal does not comply with the following controls of clause 5.11(C)(4) Visual and Acoustic Amenity Impacts:

- Clause (d) which requires screen fencing, plantings and acoustic barriers in appropriate locations. No screen planting is provided to the side setback areas, and no acoustic report has been submitted to demonstrate that sufficient acoustic measures have been implemented/achieved.

The application is not satisfactory having regard to the following controls under clause 5.11(1)-(6):

(i) A detailed site analysis was not submitted to assist in the determination of local character,

(ii) A neighbourhood analysis was not submitted,

(iii) The submitted shadow diagrams do not adequately describe the impacts of the proposed development on existing neighbouring sites and in this regard, Council is unable to determine if compliance with 5.11(2)(b) is achieved.

(iv) The proposal does not comply with 5.11(2)(c), (d) and (g) of the DCP in that the design, setbacks, landscaping, bulk, scale and massing do not demonstrate that the development will have a sympathetic relationship with adjoining development, impacts of noise and privacy are not addressed by the design, setbacks or density of the development and, the development does not demonstrate an acceptable level of compliance with the applicable built form controls for the zone, being that of residential flat buildings as required under 5.11(2)(g).

(v) The proposal does not demonstrate that a high level of residential safety and amenity will be provided to future boarders as required under 5.11(3)(a)-(e). The sliding door to the communal bin room will result in poor and unacceptable odour and potential vermin infestation. All areas of the development are not accessible for all lodgers and an accessible car parking space is not provided for each of the adaptable boarding room. Opportunities for natural cross flow ventilation are not achieved for the single aspect boarding rooms. Crime Prevention Through Environmental Design (CPTED) is not adequately addressed by the location of boarding room doors in close proximity to each other and by the layout of rooms, communal areas and by enclosed nature of the communal lobby areas at the upper levels with no access to natural light.

(vi) No cleaners sink, mop sink or communal cleaning storage area is provided.

(vii) A separated and comprehensive Boarding House Plan and Management has not been submitted as required by 5.11(6) of the DCP. It is not sufficient to control noise and amenity impacts related to the use of communal areas and rooms via House Rules, a Plan of Management or Lease conditions and the expectation that residents will be responsible for cleaning communal areas is unreasonable and will be ineffectual.