

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA18/0488
Proposed development:	Demolition of Existing Structures & Construction of Six (6) Storey Residential Flat Building containing 41 Apartments with Communal Roof Top Terrace & Two (2) Levels of Basement Car Parking
Property address:	28 Hope Street, PENRITH NSW 2750 30 Hope Street, PENRITH NSW 2750 26 Hope Street, PENRITH NSW 2750
Property description:	Lot 35 DP 31239 Lot 36 DP 31239 Lot 34 DP 31239
Date received:	14 May 2018
Assessing officer	Gemma Bennett
Zoning:	Zone R4 High Density Residential - LEP 2010
Class of building:	Class 2 , Class 7a
Recommendations:	Refuse

Executive Summary

Council is in receipt of a development application from Mark Makhoul, Building Design & Technology Pty Ltd, proposing the demolition of existing structures and construction of a six (6) storey residential flat building containing forty one (41) apartments and two (2) levels of basement car parking at 26-30 Hope Street, Penrith.

The subject site is zoned R4 High Density Residential under Penrith Local Environmental Plan 2010 (PLEP 2010). Development for the purposes of a residential flat building is permissible within the R4 High Density Residential zone.

The Minister for Planning has given directions under Section 9.1 of the Environmental Planning and Assessment Act 1979 on the development applications that are to be determined on behalf of Council by a Local Planning Panel. These directions, dated 23 February 2018, outline development within the Penrith Local Government Area that is for a residential flat building under the provisions of State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development require determination by a Local Planning Panel.

The proposed development was advertised in the local newspaper and notified to the owners and occupiers of adjoining and nearby properties. The initial public exhibition period for the proposal was from between the 1 June 2018 and 15 June 2018. During this period, no submissions were received. Following significant redesigns, the proposal was re-notified to adjoining and nearby residences between 19 November 2018 and 3 December 2018. During this period, no submissions were received.

The application was originally reported to the Local Planning Panel on 24 April, 2019. The Panel determined to defer determination of the application to allow the applicant a final opportunity to resolve all the matters raised by the Panel and by Council in the original assessment report. The Panel requested that the application be reported back for determination by 12 June, 2019.

Subsequent to this meeting a number of amended plans and documentation was received by council for consideration.

Key issues identified for the proposed development as amended include:

Non compliance with maximum height requirements

The application proposes a numerical non compliance to the maximum 18m building height with an exceedance above the maximum building height of 20% to the lift overrun and 4% to the uppermost habitable floor area. In this regard, the application has been accompanied with an amended Clause 4.6 variation request prepared by Think Planners requesting a variation to the development standard.

Excavation

Penrith Development Control Plan 2014 clause D2.5.7 specifies that cut and fill is to be limited to 500mm in order to minimise disturbance to existing topography and natural soil profiles. The proposal includes a maximum 1.8m cut to the south east corner of the building.

Non compliance with ADG requirements

The built form is considered to provide for appropriate articulation to the Hope Street frontage with the proposal maintaining an articulated ground floor base presentation, well proportioned balcony layout and window openings to the upper levels and architectural features serving to diminish scale and bulk for the built form and provide depth to each façade. It is noted that the proposal is compliant with building separation requirements as provided by the Apartment Design Guide (ADG). However, non-compliances with the ADG have been identified in a number of areas, including solar access, cross ventilation and units per floor plate.

An assessment under Section 4.15 of the EP&A Act 1979 has been undertaken of the amended plans and Clause 4.6 variation request and, on balance, the application is recommended for refusal.

Site & Surrounds

The subject site is known as 26 - 30 Hope Street, Penrith and is legally known as Lots 34, 35 and 36, DP 31239. The allotment is rectangular in shape with a frontage onto Hope Street of 47m and a depth of 40m resulting in an overall site area of 1,880m². Each lot is currently provided with a single storey residential dwelling and associated structures. The subject site falls from the rear to the front with a fall of 2m across the depth of the site towards Hope Street.

This section of Hope Street is currently in a state of transition from traditional detached dwellings to higher density development with a number of approvals recently granted for the construction of residential flat buildings. In this regard, to the west of the subject site (No. 38-40 Hope Street) is a constructed 5 storey residential flat building containing 24 apartments with basement car parking (approved under DA15/0683) while to the north of the subject site along the opposite side of Hope Street (25-31 Hope Street) are two 6 storey residential flat buildings containing 61 apartments with basement car parking currently under construction under DA15/1185.

To the east of the subject site at No. 12 - 14 Hope Street is a five storey residential flat building containing 27 apartments and basement car parking approved under DA16/0123 currently under construction. Council is also currently in receipt of a development application at 16-24 Hope Street (2 x 6 storey residential apartment developments including 76 apartments and 2 levels of basement car parking under DA18/0792) which is currently under assessment and is yet to be determined.

It is noted that a development application at No. 32 - 36 Hope Street (6 storey residential flat building containing 45 apartments and 2 levels of basement car parking under DA18/0488) was provided to the Local Planning Panel who determined to refuse the proposal on 12 March, 2019 as the applicant's clause 4.6 request to vary a development standard relating to a building height was not considered to be well founded for the following reasons:

- A development with a height of 22.45 metres would not be compatible with the height, bulk and scale of the desired future character of the locality;
- It will not provide a high quality urban form; and
- It will not be consistent with the objectives of the R4 zone because it will not achieve a high level of residential amenity, and does not reflect the desired future character of the area.

Proposal

The development as amended subsequent to the original reporting of the application to the Local Planning Panel proposes the demolition of existing structures and construction of a six-storey residential flat building containing 41 apartments and two levels of basement car parking. Specifically, the proposed development includes the following key aspects;

Lower Basement

- The provision of a total of thirty seven residential car parking spaces including one accessible space,
- Bicycle parking containing eight spaces,
- Thirty residential storage spaces,
- Ramp access for vehicles to upper level, and
- One lift, two fire stairs and plant room.

Upper Basement

- The provision of a total of twenty five car parking spaces including fourteen residential spaces, four accessible spaces, ten visitor spaces and one loading space,
- Bicycle parking containing eight spaces,
- Eighteen residential storage spaces,
- Ramp access for vehicles to ground level, and
- One lift, two fire stairs and mechanical plant room.

Ground Floor Level

- Vehicular access to the basement level from Hope Street,
- Provision of a garbage truck / loading bay including 10.5m turntable, garbage room, bulky waste room and bin lift. The garbage truck / loading bay area is provided with a separate access way for service vehicles along the western boundary of the subject site to and from Hope Street,
- Pedestrian access to the proposed residential flat building and associated site landscaping,
- Provision of 1 x 3 bedroom unit, 1 x 2 bedroom unit and 2 x 1 bedroom units, each provided with a separate courtyard area, and
- Foyer entry area and circulation core providing for lift and fire stairs.

Level 1

- The provision of 5 x 2 bedroom units and 2 x 1 bedroom units each with an associated balcony, and
- Lobby area with circulation core providing for lift, fire stairs, waste chutes, 4 storage areas and service cupboard.

Level 2-3

- The provision of 1 x 3 bedroom unit, 5 x 2 bedroom units, and 3 x 1 bedroom units each with an associated balcony, and
- Lobby area with circulation core providing for lift, fire stairs, waste chutes and service cupboard.

Level 4

- The provision of 2 x 3 bedroom units, 2 x 2 bedroom units, 1 x 1 bedroom units, and 1 x 1 bedroom unit with study each with an associated balcony, and
- Lobby area with circulation core providing for lift, fire stairs, waste chutes and service cupboard.

Level 5

- The provision of 1 x 3 bedroom unit, 3 x 2 bedroom units, 1 x 1 bedroom units, and 1 x 1 bedroom unit with study each with an associated balcony, and
- Lobby area with circulation core providing for lift, fire stairs, waste chutes and service cupboard.

Rooftop Level

- The provision of a communal open space area consisting of planter walls, tables and chairs, BBQ area and toilet, and
- Circulation core providing for lift and fire stairs.

The proposed apartment mix is provided by the following table below;

Unit Type	No of units
1 bedroom unit	14
2 bedroom unit	21
3 bedroom unit	6

Background

The application was subject to a pre-lodgement meeting held with relevant Council staff members on the 10 October 2017. In addition, the application has been subject to an Urban Design Review Panel Meeting (UDRP) held with Council on the 24 January 2018. The application was also subject to a further UDRP meeting since the receipt of the application and the matters raised during the panel meetings have been addressed in the proposed design.

The application was originally reported to the Local Planning Panel for determination on 24 April 2019. At the meeting, the applicant requested a deferral to provide amended documentation addressing matters raised in the assessment report. The panel considerations and reason for the decision were as follows:

The Panel generally agreed with the assessment by Council staff although added some additional reasons for refusal.

The Panel considered the matter and agreed to defer the determination to allow the applicant a final opportunity to resolve all the matters raised by the Panel in relation to the adequacy of the Clause 4.6 Variation and by Council in the assessment report. The Panel requests the application to be reported back for determination by 12 June 2019.

In terms of considering community views, the Panel noted there were non submissions received from the public exhibition of the DA.

During May, Council was in receipt of a number of amended architectural plans, a revised Clause 4.6 Variation request in relation to building height and updated Apartment Design Guide documentation by the applicant which forms the basis of this reassessment of the development application.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy No 65—Design Quality of Residential Flat Development
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

• Section 4.15 - Evaluation

The development 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 (Building Sustainability Index: BASIX) 2004

This Policy ensures the implementation of the BASIX scheme that encourages sustainable residential development. It requires certain kinds of residential development to be accompanied by a list of commitments to be carried out by applicants.

This application is subject to these requirements as it involves BASIX affected development.

BASIX Certificate No. 919932M_02 was submitted with the Development Application and following initial modifications demonstrating compliance with set sustainability targets for water and energy efficiency and thermal comfort.

Following final amendments to the design, a further modified BASIX Certificate has not been submitted to Council reflecting those changes.

State Environmental Planning Policy No 55—Remediation of Land

Clause 7 of State Environmental Planning Policy No. 55 (SEPP 55) outlines the following requirements that a consent authority must consider prior to the issue of a consent for any development:

A consent authority must not consent to the carrying out of any development on land unless:

- (a) it has considered whether the land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

There is no record that the subject site is contaminated. The proponent has outlined that the site has been historically used for residential purposes while the surrounding area is also used for residential purposes. In this regard, given the residential use of the subject site and surrounding properties, it is not considered that further analysis is required as the proposal is not a change of land use being residential to residential. While so, should any 'unexpected findings' occur during excavation and earthworks, work is to cease immediately and Penrith City Council is to be notified. This may be addressed by way of recommended conditions of consent should the application be approved.

State Environmental Planning Policy No 65—Design Quality of Residential Flat Development

An assessment has been undertaken of the development proposal against the aims and objectives and specific provisions of State Environmental Planning Policy No. 65—Design Quality of Residential Apartment Development. In particular, the development proposal has been assessed against Clause 30 of the Policy which states that:

"Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to the design quality principles, and the objectives specified in the Apartment Design Guide for the relevant design criteria"

Clause 50 (1A)(1AB) of the Environmental Planning and Assessment Regulation 2000 specifies:

50(1A) If a development application that relates to residential apartment development is made on or after the commencement of the Environmental Planning and Assessment Amendment (Residential Apartment Development) Regulation 2015, the application must be accompanied by a statement by a qualified designer.

50 (1AB) The statement by the qualified designer must:

- (a) verify that he or she designed, or directed the design, of the development, and*
- (b) provide an explanation that verifies how the development:*
 - (i) addresses how the design quality principles are achieved, and*
 - (ii) demonstrates, in terms of the Apartment Design Guide, how the objectives in Parts 3 and 4 of that guide have been achieved.*

The development application as amended has been submitted with a design verification statement.

An assessment against Schedule 1 'Design Quality Principles', of the Policy has been undertaken and is included in **Table 1** and an assessment against the accompanying Apartment Design Guide is also provided in **Table 2** below.

Table 1: Assessment Against Schedule 1 - Design Quality Principles Assessment Against Schedule 1 - Design Quality Principles	Officer Discussion
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<p>Principle 1: Context and neighbourhood character</p>	<p>Good design responds and contributes to its context.</p> <p>Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.</p> <p>Responding to context involves identifying the desirable elements of an area's existing or future character.</p> <p>Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</p> <p>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</p>	<p>The design is not considered to respond to the context of the site.</p> <p>While the development as proposed does have regard to the recommended building separation distances and is considered to respond adequately to the approved and constructed development in the streetscape, the proposal is not viewed as having proper consideration to the existing natural contours of the subject site. This has resulted in a significant amount of subterranean area being provided to ground floor units especially along the eastern elevation which is not a desirable design solution. While the current design has provided for the removal of the south eastern unit to the ground floor, the original amenity concerns for the remaining eastern facing units on the ground floor are considered to have been retained noting the sunken floor levels in relation to the existing natural ground level.</p>
<p>Principle 2: Built form and scale</p>	<p>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</p> <p>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook</p>	<p>The development does adequately respond to the site's context and is considered to be sympathetic with the bulk and scale of surrounding approved residential flat buildings. The visual presentation of the built form is also considered an acceptable addition to a streetscape which is currently in transition from older low scale residential dwellings to larger residential flat buildings.</p>
<p>Principle 3: Density</p>	<p>Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</p> <p>Appropriate densities are consistent with the area's existing or projected population.</p> <p>Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</p>	<p>The development is not considered to be of an appropriate density noting the impact to the amenity created to future residents as discussed within this report.</p>

<p>Principle 4: Sustainability</p>	<p>Good design combines positive environmental, social and economic outcomes.</p> <p>Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs.</p> <p>Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.</p>	<p>The application is not considered to adequately identify that solar access and natural ventilation is provided in accordance with the Apartment Design Guide rates.</p>
<p>Principle 5: Landscape</p>	<p>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity.</p> <p>A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.</p> <p>Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.</p> <p>Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.</p>	<p>Deep soil has been co-located with private open space areas for ground floor apartments.</p> <p>Landscaping provided to the street frontage is considered to enhance the built form while boundary landscaping is also considered to improve the presentation of the proposed built form to direct adjoining neighbours. In addition, landscaping to the communal roof area is considered to offer areas of relief for future residents using this area.</p> <p>However, functionality of the private open spaces on the ground floor primarily along the sites eastern boundary is limited by the splitting of the paved and terraced levels. Future occupants will be required to access the upper levels by a flight of stairs, which is likely to inhibit maintenance and usability.</p>

<p>Principle 6: Amenity</p>	<p>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.</p> <p>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.</p>	<p>The proposal is considered to provide for an appropriate level of amenity for the majority of future occupants in accordance with the requirements of the Apartment Design Guide in regard to room dimensions and privacy.</p> <p>However, solar access and ventilation are not considered to have been adequately addressed, particularly the amenity for the occupants of Units 3 and 4. It is considered that these occupants will be unacceptably impacted by the location of the unit below the natural ground level. Access to sunlight, natural ventilation and outlook will be poor, especially for unit 4 noting the location of the private courtyard is accessed by 11 steps above the paved patio areas limiting its functionality and making it inaccessible for occupants with mobility challenges.</p>
<p>Principle 7: Safety</p>	<p>Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.</p> <p>A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.</p>	<p>The application is considered to have appropriate regard to the principles of Crime Prevention through Environmental Design. The proposal will present to Hope Street with casual surveillance achieved via the location of balconies and windows to all elevations.</p> <p>The building design is not considered to create areas of concealment with clear lines provided in separating public and private areas.</p>
<p>Principle 8: Housing Diversity and Social Interaction</p>	<p>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</p> <p>Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.</p>	<p>The mix of units in the development as amended is acceptable.</p>

<p>Principle 9: Aesthetics</p>	<p>Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.</p> <p>The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</p>	<p>The development is assessed to be appropriate in bulk and scale.</p> <p>As detailed elsewhere in this table and in the assessment of the development against the Apartment Design Guide (ADG) below, the development is considered to be generally consistent with the design criteria and design guidance statements of the ADG, however, non-compliances in relation to solar access, cross-ventilation and units per floor plate have been identified.</p> <p>In terms of the streetscape, the development is considered an acceptable addition to the streetscape providing for adequate landscaping, deep soil and canopy tree planting along the frontage of the site.</p> <p>While so, it is not considered that the amended architectural plans have clearly identified the treatment of the south eastern corner of the ground floor following the deletion of a unit. While sectional plans identify an external wall provided to the buildings perimeter, this is not reflected in ground floor plans and does not clarify how this area relates to the adjoining unit with only an outline of the first floor level above identified.</p>
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Table 2: Assessment Against the Apartment Design Guide (ADG)			
Assessment Against the Apartment Design Guide (ADG)			
Part 3	Required	Discussion	Complies
3A-1	Each element in the Site Analysis Checklist should be assessed.	A Site Analysis plan was included in the original package of documents and modified ADG compliance table included on the amended plans to identify applicable elements as required within the Checklist.	Yes.
3B-1	Buildings to address street frontages.	The building frontage onto Hope Street is naturally orientated to north and allows for direct access from the street.	Yes.
3B-2	Living areas, Private Open Space (POS) and Communal Open Space (COS) to received compliant levels of solar access.	Refer discussion under Part 3D and 4A.	N/A.

	Solar access to living rooms, balconies and private spaces of neighbours should be considered.	The submitted shadow diagrams have identified that the adjoining properties to the south, east and west of the subject site will be impacted by additional overshadowing but while so, noting the compliant setbacks provided to all boundaries as well as to the upper levels, the proposal is not considered to create an inappropriate relationship with surrounding lots and is considered to allow for the opportunity for these adjoining properties to be appropriately developed in accordance with the requirements of the ADG.	Yes.
	If the proposal will significantly reduce the solar access of neighbours, building separation should be increased.	As discussed above, adequate information has been submitted with the development application to enable an accurate assessment in this regard. It is also noted that the proposed building has been orientated at 90 degrees to the boundary with neighbouring properties to minimise overshadowing created, also noting the compliant building separations provided to each boundary.	Yes.
3C-1	Terraces, balconies and courtyard apartments should have direct street entry, where appropriate.	One of the three ground floor apartments with street frontage to Hope Street is provided with direct access to the street, while the remaining two have external access via the main pedestrian entry to the building.	Yes.
	Changes in level between private terraces, front gardens and dwelling entries above the street level provide surveillance and improve visual privacy for ground level dwellings.	Limited level difference (up to 250mm) is provided between the pavement height and the finished floor height of the ground floor apartments fronting Hope Street.	Yes.
	Upper level balconies and windows to overlook the street.	All apartments along the street frontage overlook Hope Street.	Yes.
	Length of solid walls should be limited along street frontages.	The presentation of the northern elevation fronting Hope Street is provided with acceptable openings, including slat fencing, which has minimised the presentation of any solid walls.	Yes.

	<p>Opportunity for concealment to be minimised.</p>	<p>Due to the central location of the lobby, areas of concealment and crime are not considered to be provided along the main ground floor lobby entry. The entry from Hope Street is considered to be distinguished and linear in nature maintaining a straight line to the ground floor lobby area so as to minimise and areas of concealment.</p> <p>The lift also faces internally and is located in sight of the front entry door.</p>	Yes.
	<p>Opportunities should be provided for casual interaction between residents and the public domain.</p> <p>Design solutions may include seating at building entries, near letter boxes and in private courtyards adjacent to streets.</p>	<p>No seat is provided near the building entry. The ground floor lobby contains planter boxes rather than seating, and no seating is provided on other levels.</p>	No.
3C-2	<p>Mail boxes should be located in lobbies, perpendicular to the street alignment or integrated into front fences where individual street entries are provided.</p>	<p>The mail box location is nominated on plans perpendicular to the front boundary which is considered an appropriate design solution.</p>	Yes.
	<p>Substations, pump rooms, garbage storage areas and other service requirements should be located in basement carparks or out of view.</p>	<p>A hydrant location has been indicated on the north east corner of the site. Garbage storage rooms are adequately integrated into the building with the entry proposed along the western elevation and not in view from the street. This location is considered appropriate and is not considered to create a negative streetscape or visual impacts.</p> <p>A potential location for an electrical substation has not been identified and there is limited opportunity in the front setback to include a substation without substantially impacting on landscaping treatment.</p>	Partial non compliance.
3D-1	<p>Communal Open Space (COS) to have minimum area of 25% of site.</p>	<p>473.6m² of COS is required under the ADG (25% of total site area). Submitted plans state that 478m² of the site is provided as COS. The area of COS is provided to the roof top level.</p> <p>The proposed COS area is assessed to be of an acceptable amenity and usable space for residents with equitable access to this area provided from all levels via a lift core.</p>	Yes.

	Achieve a minimum of 50% direct sunlight to the principle usable part of the communal open space.	As the communal open space is proposed to the roof area adequate solar access is maintained throughout the day.	Yes.
	COS to be consolidated into a well-designed, usable area.	Refer to discussion above.	Yes.
	COS to be co-located with deep soil.	As the communal open space is located to the roof level, co-existence with deep soil area is not provided for. While so, it is considered that a range of vegetation features has been provided for to the roof top area within planter box areas (provided with a depth of up to 1.2m) to allow for some form of natural relief for users.	No, but acceptable in this instance.
3D-2	COS is to be provided with facilities such as barbeque areas and seating.	Seating and barbeque areas are provided within the COS area.	Yes.
	COS is to be well lit and readily visible from habitable rooms.	The location of the communal open space to the roof level does not provide for visibility from habitable rooms, but while so, this area is not considered to provide for any areas of entrapment, is allowed equitable access via the proposed lift service with the location on the roof considered to allow for a greater area of use as compared to a confined location along a side boundary or a rear corner of the subject site.	No, but acceptable in this instance.
3D-4	Boundaries should be clearly defined between public open space and private areas.	Boundaries between public and private space are clear noting the continuation of front courtyard fencing and low sandstone wall along the street frontage. In addition, it is also considered that appropriate fencing has been provided between private open space areas on the ground floor and areas accessible from Hope Street to minimise inappropriate movement of persons.	Yes.

3E-1	Deep soil is to be provided at a rate 15% with a minimum dimension of 6m.	<p>132.6m² of deep soil is required under the ADG (15% of total site area).</p> <p>Submitted plans state that 161m² of the site is provided as deep soil and is provided in a 6m wide strip primarily along the rear of the site.</p> <p>Small pockets of deep soil are provided within the front and eastern side setback which will allow for landscaping to be provided to assist in screening courtyard areas fronting Hope Street.</p>	Yes.
3F-1	<p>Minimum required shared separation distances between habitable rooms and balconies are to be as follows:</p> <p>1-4 Storeys – 12m</p> <p>5-8 storeys – 18m</p>	<p>Building separation is as follows (measured from the face of the balcony/building to the side boundary):</p> <p><u>South Separation</u></p> <p>A setback of 6m is provided to the ground to the third levels. A setback of 9m is provided for level 4 upwards.</p> <p><u>Western Separation</u></p> <p>A setback of 7.9m is provided to the ground, and 6m setback the first, second and third levels. A setback of 9m is provided for level 4 upwards.</p> <p><u>East Separation</u></p> <p>A setback of 6m is provided to the ground to the third levels. A setback of 9m is provided for level 4 upwards.</p>	Yes.
3F-2	Communal open space, common areas and access paths to be separated from private open space and windows to apartments.	The proposal is provided with landscaping and fencing to allow for appropriate separation.	Yes.
	Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.	An acceptable separation has been provided between habitable rooms and circulation spaces.	Yes.
	Balconies, and private terraces should be located in front of living rooms to increase internal privacy.	Balconies are generally provided adjacent living rooms.	Yes.
	Windows should be offset from the windows of adjacent buildings.	An acceptable separation is provided between proposed windows and openings on adjoining properties, particularly in consideration of likely redevelopment of sites to the east and west of the site.	Yes.

3G-1	Building entries to be clearly identifiable.	The entryway is adequately articulated with landscaping and the sandstone wall at the rear of the letterboxes provides a feature that allows it be clearly identifiable from Hope Street.	Yes.
3G-2	Building access ways and lift lobbies to be clearly visible from the public domain and communal spaces.	The main pedestrian entry is visible from the street. The lift faces into the lobby entry and is visible from the front door.	Yes.
3H-1	Carpark access should be integrated with the building's overall façade.	The entry to the basement carpark is adequately integrated into the building with access directly off Hope Street. The location of the driveway has also allowed for the provision of a splayed landscaped buffer along the northern boundary fronting Hope Street which will serve to minimise the visual impact of the basement entry.	Yes.
	Clear sight lines to be provided for drivers and pedestrians.	Adequate sight lines are provided for pedestrians or drivers exiting the basement.	Yes.
	Garbage collection, loading and servicing areas are screened.	The bulky waste and garbage areas are screened from the street.	Yes.
3J-1	The site is not located within 800m of a railway station and is required to comply with the car parking rates as stipulated within the Penrith DCP 2014.	Refer discussion under Penrith DCP 2014.	N/A
3J-2	Secure undercover bicycle parking should be provided for motorbikes and scooters.	16 secure bicycle parking spaces are provided within the basement levels.	Yes.
3J-3	Carpark design and access is safe and secure - A clearly defined and visible lobby area or waiting area should be provided to lifts and stairs.	Lift lobby areas within Basement 1 and 2 are clearly defined and appropriately located.	Yes.

4A-1	Living rooms and private open spaces of at least 70% of apartments to receive 2 hours direct sunlight between 9am and 3pm mid-winter.	<p>Submitted amended plans are not considered to demonstrate that compliance with this design criteria is met in that 26 of the proposed 41 units (63%) will receive adequate solar access.</p> <p>A review of the submitted Solar Access Plan (Dwg. No. A1.13A, dated 09/05/19) and Sun Views (Dwg. No. A1.13B and A1.13C, dated 25/10/18) has been undertaken and it considered that the diagrams have not appropriately indicated solar access to living zones and open spaces, in particular the ground floor unit 4 will receive obstructed solar access due to its location below the natural ground level. East facing units on floors 1-5 (numbers 9, 10, 16, 17, 25, 26, 33 and 39) are not considered to achieve the full 2 hours of solar access due to oblique window angles and windows being inset by balconies.</p>	No.
	A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid winter.	Submitted plans are considered to demonstrate that a total of 6 units (15%).	Yes.
4A-2	Courtyards, skylights and high level windows (with sills of 1,500mm or greater) are used only as a secondary light source in habitable rooms.	<p>The application is provided with a skylight to Unit 40.</p> <p>Units 7, 14, 23 and 31 from the level 1 to level 4 respectively are provided with a 'snorkel bedroom' with the window to the bedroom setback 3.9-4.6m from the buildings northern façade. The setback of these windows to the façade is considered to provide a limited degree of amenity within the bedrooms, however it is noted that only 4 of the overall proposed 76 bedrooms (5.2%) are provided in a snorkel manner which is considered an acceptable design outcome. As these bedrooms are also provided with a northern aspect, the amenity of these rooms is considered appropriate in terms of solar access.</p>	Yes.
4A-3	Sun shading devices are to be utilised.	Shading devices are provided to the level 5 north facing units and on the rooftop communal open space.	Yes.

4B-3	60% of apartments are naturally ventilated and overall depth of cross-through apartments 18m maximum glass-to-glass line.	The submitted plans indicate that 26 (63%) of apartments can achieve natural cross ventilation. However, the Ventilation Plan (Dwg. No. A1.13, dated 09/05/19) indicates that units 7, 14, 23, 31 and 37 rely on windows within 'snorkel' areas which is considered a poor design solution and are unlikely to provide for sufficient cross ventilation. This results in only 21 units (51%) being naturally cross ventilated.	No.
4C-1	Finished floor to finished ceiling levels are to be 2.7m for habitable rooms, 2.4m for non-habitable rooms.	The proposal is for 3.1m measured from finished floor to finished floor level resulting in a 2.8m finished floor to underside of ceiling, which is compliant with the ADG.	Yes.
4D-1	Apartments are to have the following min. internal floor areas: 1 bed – 50sqm 2 bed – 70sqm 3 bed – 90sqm Additional bathroom areas increase minimum area by 5sqm.	Proposed apartment sizes comply with the ADG requirements.	Yes.
4D-2	In open plan layouts the maximum habitable room depth is 8m from a window.	Proposed apartment depths comply with the ADG requirements. It is noted that the plans generally indicate unit depth as measured from the window to the kitchen bench, rather than window to wall.	Yes.
4D-3	Master bedrooms to be 10sqm's and other rooms 9sqm's.	All units comply with this requirement.	Yes.
	Bedrooms to have a minimum dimension of 3m.	All units comply with this requirement.	Yes.
	Living rooms to have minimum width of 3.6m for a 1 bedroom unit and 4m for 2 & 3 bedrooms.	All units comply with this requirement.	Yes.
4E-1	All units to have the following primary balcony areas: 1 bed – 8sqm (2m deep) 2 bed – 10sqm (2m deep) 3 bed – 12sqm (2.4m deep) Ground level units should be provided with 15m ² of private open space with a minimum depth of 3m	All units comply with the balcony size and area requirements.	Yes.
4E-3	Air-conditioning units should be located on roofs, in basements, or fully integrated into the building design.	No air conditioning is indicated on the plans.	No.

4F-1	<p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>Where a development is unable to achieve the design criteria, a higher level of amenity for common lobbies, corridors and apartments should be demonstrated.</p>	<p>The application provides for a maximum of 9 units to levels 2 and 3 which is non compliant.</p> <p>No additional measures are proposed to achieve a higher level of amenity within the lobbies, corridors or apartments.</p>	No.
4F-1	<p>Daylight and natural ventilation to be provided to all common circulation spaces.</p>	<p>As the ground floor lobby area is provided with a northern facing entry onto Hope Street it is considered that an adequate amount of solar access is provided to this area.</p> <p>On levels 1-5, no natural light or ventilation is provided to common circulation spaces.</p>	Yes.
4F-1	<p>Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed.</p> <p>Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.</p>	<p>All primary bedroom and living room windows do not directly front onto common circulation spaces. In this regard, visual and acoustic privacy is considered to be maintained.</p>	Yes.
4G-1	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is to be provided:</p> <p>1 bed – 4m³ 2 bed – 6m³ 3 bed – 10m³</p> <p>With 50% of the above to be provided within the Units.</p>	<p>Submitted plans indicate that storage cages are provided with the basement carpark.</p> <p>Adequate area for internal storage could be accommodated within apartments.</p>	Yes.
4H-1	<p>Noise transfer is minimised through the siting of buildings and building layout.</p>	<p>The layout of units is considered to provide adequate acoustic amenity.</p>	Yes.
4K-1	<p>Flexible apartment configurations are provided to support diverse household types.</p>	<p>The development proposes a range of unit sizes, configurations and number of bedrooms to accommodate change over time and cater for differing households. Unit mix is calculated as follows:</p> <p>14 x 1 bedroom apartments 21 x 2 bedroom apartments 6 x 3 bedroom units</p>	Yes.
4L-1	<p>Direct street access should be provided to ground floor apartments.</p>	<p>Direct street access is provided for ground floor unit 3, and external entry from the main pedestrian building entry is provided to units 1 and 2.</p>	Yes.

4M-1	Building facades to be well resolved with an appropriate scale and proportion to the streetscape and human scale.	<p>The proposed street elevation is considered to provide for an acceptable form and presence with the building design incorporating varied building elements to provide visual interest along the street. The façade is provided with both horizontal and vertical elements with stacked balconies creating clearly identifiable vertical lines while horizontal division is provided via dominant storey levels.</p> <p>The proposed building is also provided with a solid base, defined middle element forms and topped with recessed upper 2 levels.</p> <p>The materials proposed provide for a mixture of brick, render and cladding which are considered to be appropriately coloured to allow for a favourable addition to the existing streetscape.</p>	Yes.
4O-1	Landscape design to be sustainable and enhance environmental performance.	<p>The proposed landscaping design will allow for small sized trees (ranging in height from 3m to 5m when mature) to be incorporated within deep soil areas with planter boxes provided to the rooftop level.</p> <p>The nature of the landscaping proposed is considered to allow for subtle screening of apartments from adjoining premises in association with boundary fencing while also providing for an appropriate streetscape relationship along the sites northern façade. In this regard, the proposed landscaping is considered will enhance the environmental performance of the structure.</p> <p>In addition, sections are provided through upper level planting proposed via planter boxes which has identified that planting will be sustainable and practical with the depth of planter boxes equalling 1.2m.</p>	Yes.
4Q-2	Adaptable housing is to be provided in accordance with the relevant Council Policy.	A total of 5 adaptable units are proposed. With a total of 41 units identified, to meet Council's Policy in relation to adaptable units 4.1 units are required, which when rounded up equates to 5 units. In this regards, the proposal is compliant.	Yes.

4U-1	Adequate natural light is provided to habitable rooms.	The application is not considered to identify that habitable rooms will receive adequate natural light.	No.
4V-2	Water sensitive urban design systems to be designed by suitably qualified professional.	The development application was referred to Council's internal Environmental Waterways Unit and was supported subject to the provision of appropriate conditions with and development consent granted.	Yes.
4W-1	A Waste Management Plan is to be provided.	A Waste Management Plan is generally acceptable subject to conditions.	Yes.
	Circulation design allows bins to be easily manoeuvred between storage and collection points.	Waste areas and manoeuvring is compliant with Council's DCP. Garbage collection will be provided onsite within a proposed garbage truck loading bay.	Yes.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the application against relevant criteria with Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997). This Policy aims *“to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context”*. The Policy requires Council to assess development applications with regard to general and specific considerations, policies and strategies.

The proposal is not found to be contrary to these general and specific aims, planning considerations, planning policies and recommended strategies of the plan. The site is not located within a scenic corridor of local or regional significance and it is considered that the proposed development will not significantly impact on the environment of the Hawkesbury-Nepean River either in a local or regional context.

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
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	Complies - See discussion
Clause 4.3 Height of buildings	Does not comply - See discussion
Clause 4.4 Floor Space Ratio	N/A
Clause 4.6 Exceptions to development standards	Does not comply - See discussion
Clause 5.10 Heritage conservation	N/A
Clause 7.2 Flood planning	Complies
Clause 7.4 Sustainable development	Does not comply - See discussion
Clause 7.6 Salinity	Complies - See discussion
Clause 7.7 Servicing	Complies - See discussion

Clause 1.2 Aims of the plan

The proposal is not considered to comply with the following aims of the LEP:

(b) to promote development that is consistent with the Council's vision for Penrith, namely, one of a sustainable and prosperous region with harmony of urban and rural qualities and with a strong commitment to healthy and safe communities and environmental protection and enhancement

(c) to accommodate and support Penrith's future population growth by providing a diversity of housing types, in areas well located with regard to services, facilities and transport, that meet the current and emerging needs of Penrith's communities and safeguard residential amenity

(h) to ensure that development incorporates the principles of sustainable development through the delivery of balanced social, economic and environmental outcomes, and that development is designed in a way that assists in reducing and adapting to the likely impacts of climate change

The adverse amenity impacts on future occupants, in regards to the inadequate solar access and natural ventilation opportunities, is not aligned with Council's vision for development in Penrith.

The proposal does not incorporate the principles of sustainable development into the design in that the existing landform is not retained and site disturbance is considered excessive.

Clause 2.3 Zone objectives

The subject site is located within the R4 High Density Residential zone. The 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 of the proposed development does not ensure that a high level of residential amenity is achieved and maintained in that the application has not demonstrated that solar access and cross-ventilation standards have been satisfactorily achieved in accordance with the Apartment Design Guide. Additionally, the location of the ground floor units below existing ground level and the terraced nature of the private open space as provided by the amended architectural plans will limit amenity to those units and inhibit functionality of those spaces.

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

Once the three dwelling lots are consolidated, compliance with the minimum lot size of 800 square metres required by the LEP is achieved. Once consolidated, the total site area will be 1,884 square metres. Suitable conditions are recommended to require the lot consolidation to be created and registered on title prior to any Occupation Certificate should the application be approved.

Clause 4.3 Height of buildings

The subject site is provided with a maximum building height of 18m under the LEP. The application is provided with a flat roof (RL63.82) which also incorporates a pergola for part of the roof area used for communal open space purposes which provides for a non compliance on the subject site of between 3.3m (overall height of 21.3m or 18.3% above the maximum height required) to the lift overrun and 1.2m (overall height of 19.2m or 6.6% above the maximum height required) to the uppermost habitable floor area (for units 37 and 42 on Level 5). It is noted that the height of the building has not been modified by the provision of amended architectural plans following the original Local Planning Panel meeting.

In this regard, the application was accompanied with an amended '4.6 Exception to development standard' document which has discussed the nature of the height non compliance. Discussion in regard to the non compliance is provided for under a separate title within this report.

Clause 4.6 Exceptions to development standards

The application as amended is non compliant with the height of buildings development standard under Clause 4.3 of the Penrith Local Environmental Plan 2010. The application is provided with a flat roof (RL63.82) which also incorporates a pergola for part of the roof area used for communal open space purposes which provides for a non compliance on the subject site of between 3.3m (overall height of 21.3m

or 18.3% above the maximum height required) to the lift overrun and 1.2m (overall height of 19.2m or 6.6% above the maximum height required) to the uppermost habitable floor area (for units 37 and 42 on Level 5).

Clause 4.6 of the Penrith Local Environmental Plan 2010 provides that development consent may be granted for development even though the development would contravene a development standard. This is provided that the relevant provisions of the clause are addressed, in particular subclause 3-5 which provide:

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

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

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

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

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

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

(b) the concurrence of the Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

The application has been accompanied by a revised Clause 4.6 Variation Request prepared by Think Planners dated 11 April, 2019 in relation to the building height non-compliance. In this regard, the request has provided for the following evaluation as to the identified variation in relation to Clause 4.3 of the LEP;

The current development proposal is predominantly consistent with the building height except for a portion of level 6 however, the proposal remains consistent with the objectives based on the following:

- Given the locality is in a state of transition from existing low density development to high density development the broad reference to compatibility with the existing character of the locality is not considered relevant in an R4 context with an 18m height limit (but would be relevant in an R2 or R3 context where an 8.5m height limit applies).*
- The key requirement for development in the R4 zone is the desired future character of the locality. The building is compatible with the height, bulk and scale of the desired future character when having regard to the forms of development approved in the locality, and the approved building heights of those developments that are comparable in numerical terms to this proposal. This clearly shows the desired future character for the precinct being 6 storey residential flat buildings, with the majority of these buildings exceeding the 18m height limit to habitable areas (i.e. top most residential floor) as well as to the rooftop common areas and associated lift over-run and fire stairs. The numerical comparison provided on page 5 of this request demonstrates consistency and compatibility with those developments that are reflective of the desired future character of the locality on the basis that they have been granted development consent under the same set of planning controls.*
- Providing for the rooftop communal open space area on top of the building that necessitates the*

provision of the lift over-run (for accessibility reasons) and the fire stair (fire safety and fire egress reasons). The provision of the rooftop common area enables the provision of a quality common open space area that achieves solar access for residents which is a response to the north-south orientation of the site- meaning any common open space at the ground level would be on the southern side of the building and would not receive adequate solar access. The provision of the rooftop common area is consistent with the desired future character of the locality when observing the other approved development in the locality that also feature rooftop common areas and comparable overall building heights. This aligns with the objective a) and d).

- The overall height of the development presents as a compatible form of development to the anticipated high density residential development that are emerging in the locality, noting that the emerging character is for 6 storey residential flat buildings in the locality and 6 storeys is the prevailing form of development being carried in the R4/18m height limit area. The 5th and 6th storey of the proposal is recessed behind the main building alignment to downplay visual dominance as viewed from the public domain and adjoining residential properties- this step in the façade provides for visual relief to the street as it presents a 4 storey street wall.
- The proposed buildings will present an appropriate bulk and scale on the site with 3 balanced vertical components/proportions that are consistent with other approved and already constructed 6 storey residential flat building developments in Hope Street and surrounding area. Further the building height proposed provides for a high quality urban form consistent with objective (d) and the height departure to the habitable areas or the rooftop areas does not take away the fact the proposal presents a high quality urban form.
- The additional height to the habitable areas or the rooftop areas does not generate any additional amenity impacts given the location of the site and the surrounding site context with regard to overshadowing, visual privacy or acoustic privacy. The recessed nature of the top floor mitigates additional overshadowing and the centrally located rooftop structures means that the visual, privacy and shadow impacts are also mitigated.
- Given the scale of the proposal, and the extent of the variation is not perceptible at street level given the upper level of the building is setback behind the lower levels which means the additional height will not be seen from a pedestrian level when standing in the public domain and this offsets the additional height of the top most floor and the recessed nature of the roof structures also means they are not visible from the public domain which means the additional height continues to minimise visual impact to existing development and to public areas.
- The proposal, and specifically the additional building height, has been carefully designed to ensure that privacy impacts are minimised and the proposal will not obstruct existing view corridors noting that no significant view corridors are identified for the site.
- The proposal, and specifically the additional building height, does not result in any discernible increased shadow impact given the orientation of the site and setbacks that fully comply with the requirements of the Apartment Design Guide and the recessed upper levels relative to the levels below mean that the shadow cast is reduced. The centrally located rooftop elements are designed to be pulled away from the building edges to avoid generating additional overshadowing impacts.
- The non-compliance to the height control has no impact on the setting of any items of environmental heritage or view corridors.
- The proposal does not adjoin any low-density areas or sensitive interfaces and will integrate with future development to the north, east, south and west which will accommodate developments of comparable building height- and likely also breach the numerical height limit to the residential floor area at the upper level and to rooftop common areas.

As outlined above the proposal remains consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable.

The accompanying Variation request has also provided the following discussion in relation to Clause 4.6(4) and 4.6(5) of the Penrith Local environmental Plan 2010;

In accordance with the provisions of Clause 4.6(4)(a)(i) Council can be satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) for the reasons set out previously.

In relation to the provisions of Clause 4.5(4)(a)(ii) the consent authority can be satisfied that the development, including the numerical building height departure, is in the public interest given that:

- *The proposed development remains consistent with the objectives of the building height control.*
- *The proposal is consistent with the objectives of the R4 zone, being:*
 - *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 proposal will provide a high quality residential development in a strategic location within close proximity to the Penrith train station and CBD, bus interchange to maximise public transport patronage and to encourage walking and cycling. The scale of the development will help to revitalise the area with delivery of an activated ground floor and an attractive overall development.*
- *The development provides for the delivery of a variety of housing types in a high density residential environment. The development also provides for a high level of residential amenity, provides for additional housing to contribute to housing supply and affordability and reflects the desired future character and dwelling densities of the area.*
- *The building height departure facilitates a better design response for the development with regard to waste collection, overland flow and finished floor levels, floor to ceiling heights and also in providing for high levels of residential amenity that is facilitated by the height departure in providing for the rooftop common open space. The rooftop common open space enables the achievement of high levels of residential amenity for residents owing to the northsouth lot orientation and the absence of the rooftop common open space, if strict compliance with the height limit was maintained, would reduce the level of amenity afforded to residents.*
- *The development proposal, including the building height departure, is consistent with the desired future character of the locality as established by approved development in the locality.*

On the basis of the above points the development is clearly in the public interest because it is consistent with the objectives of the building height standard, and the objectives of the R4 zone and the numerical departure from the building height control facilitates a better design outcome on the site

Clause 4.6(5)

As addressed, it is understood the concurrence of the Director-General may be assumed in this circumstance, however the following points are made in relation to this clause:

- a) *The contravention of the building height control does not raise any matter of significance for State or regional environmental planning given the nature of the development proposal; and*
- b) *There is no public benefit in maintaining the development standard as it relates to the current proposal. The departure from the building height control is acceptable in the circumstances given the underlying objectives are achieved and it will not set an undesirable precedent for future development within the locality based on the observed building forms in the locality and the nature and height of approved developments in the locality.*

Discussion in regard to building height non-compliance

Clause 4.6 (4)(ii) prohibits the granting of consent to a development that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone.

The objectives for clause 4.3 height of buildings are as follows:

- (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas, including parks, streets and lanes,*
- (c) to minimise the adverse impact of development on heritage items, heritage conservation areas and areas of scenic or visual importance,*
- (d) to nominate heights that will provide a high quality urban form for all buildings and a transition in built form and land use intensity.*

It is considered that the commentary provided by the accompanying Clause 4.6 Variation request in relation to the non compliant height has addressed why compliance with the objectives of the development standard is achieved by the proposed development.

The objectives of the R4 zone are as follows:

- *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 application via the provision of amended plans has failed to demonstrate that the development will ensure a high level of residential amenity will be achieved and maintained. It is considered that the proposal has not demonstrated that solar access and cross ventilation standards have been achieved, concern is raised in regard to the treatment of the south east corner of the building to the ground floor, while the location of units below the existing ground level and terraced private open space will limit amenity to those units and inhibit functionality of those spaces.

Noting the above, a departure from the height development standard is therefore considered unacceptable in this instance. The applicant's written request relating to height non compliance is considered to have provided insufficient environmental planning grounds to justify contravening the development standard as the proposal is inconsistent with the objectives of the R4 zone.

Clause 7.4 Sustainable development

Clause 7.4 of the PLEP 2010 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 and requires the consent authority to consider 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.*

The application is considered to not have been accompanied with information sufficient to demonstrate that solar access and the opportunity for natural ventilation is achieved. Adaptive reuse of a number of units is provided for. An updated BASIX Certificate has not been submitted to confirm that the amended design will meet the NSW Government's requirements for sustainability, if built in accordance with the identified commitments.

Clause 7.6 Salinity

The subject site is affected by moderate salinity. While so, it is not considered necessary in this instance to include any specific condition(s) in relation to construction noting the nature of the proposed works.

Clause 7.7 Servicing

The proposed works provide connections to new and existing servicing infrastructure to facilitate adequate servicing for the proposal.

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

Draft Environment State Environmental Planning Policy

The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018. This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property.

Changes proposed include consolidating a total of seven existing SEPPs being:

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

It is noted that the proposed changes to State Environmental Planning Policy No 19 – Bushland in Urban Areas (SEPP 19) are not considered to impact the proposed development. In addition, the amendments to Sydney Regional Environmental Plan No 20 – Hawkesbury – Nepean River (No. 2 – 1997) do not impact the proposed development. In this regard, the proposal is not inconsistent with the provisions of this Draft Instrument.

Draft Remediation of Land SEPP

The Department of Planning and Environment has announced a Draft Remediation of Land SEPP, which will repeal and replace the current State Environmental Planning Policy No 55—Remediation of Land.

The proposed new land remediation SEPP will:

- provide a state-wide planning framework for the remediation of land,
- maintain the objectives and reinforce those aspects of the existing framework that have worked well,
- require planning authorities to consider the potential for land to be contaminated when determining development applications and rezoning land,
- clearly list the remediation works that require development consent, and
- introduce certification and operational requirements for remediation works that can be undertaken without development consent.

It is also proposed that it will transfer the requirements to consider contamination when rezoning land to a direction under Section 9.1 of the Environmental Planning and Assessment Act 1979.

Whilst the proposed SEPP will retain the key operational framework of SEPP 55, it will adopt a more modern approach to the management of contaminated land. Noting the above, the Draft SEPP will not alter or affect the findings in respect to contamination of the site.

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	Complies
C3 Water Management	Complies
C4 Land Management	Does not comply - see Appendix - Development Control Plan Compliance
C5 Waste Management	Complies
C6 Landscape Design	Complies
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Complies
C11 Subdivision	N/A
C12 Noise and Vibration	Complies
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	N/A
D2.5 Residential Flat Buildings	Does not comply - see Appendix - Development Control Plan Compliance
D2.6 Non Residential Developments	N/A

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

There are no planning agreements applying to this application.

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

The relevant prescribed conditions of the Regulations, such as the requirement for compliance with the Building Code of Australia and fire safety requirements, could be imposed as conditions of consent where applicable. Subject to the recommended conditions of consent, the proposed development complies with the requirements of the *Environmental Planning and Assessment Regulation 2000*.

As previously indicated, Clause 50 (1A)(1AB) of the Environmental Planning and Assessment Regulation 2000 specifies:

50(1A) If a development application that relates to residential apartment development is made on or after the commencement of the Environmental Planning and Assessment Amendment (Residential Apartment Development) Regulation 2015, the application must be accompanied by a statement by a qualified designer.

The development application as amended was submitted with a design verification statement.

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

Context and Setting

It is noted that the subject site and its surrounds is currently in a state of transition from a previously lower density zone to its current high density zoning, with Hope Street providing for a number of land parcels which are currently subject to or have been granted approval for the construction of residential flat buildings. This is evident in the provision of a new residential flat building directly opposite the subject site to the north and further construction works to the east and west of the subject site also providing for multi level apartment buildings. In this regard, the proposal is considered in keeping with the desired future character of the area allowing for an upgrade in structures from existing detached dwelling houses to large compact residential flat buildings.

The application is provided with compliant setbacks to each side and the rear boundary in accordance with the Apartment Design Guide. These setbacks have also incorporated greater setbacks to the fourth and fifth storeys to provide for a reduction in the visual impact of the building when viewed from both adjoining properties and surrounding public areas. The 6m building setback to the ground floor fronting Hope Street is also considered an appropriate separation to allow for landscaping to within the front setback area. This landscaping in the form of hedges, shrubs and trees to each front courtyard area is considered to minimise the visual impact of the building and allow for an improved integration with the existing streetscape.

Solar Access

The application has been accompanied by architectural plans which are considered to identify that 26 of the proposed 41 units (a total of 63%) will achieve a minimum 2 hours solar access between 9 am and 3 pm at mid-winter and is therefore non-compliant with the solar and daylight access requirements as provided by the Apartment Design Guide. It is also noted that the ground floor unit 4 on the south east corner of the building is located below the existing ground level and will receive restricted solar access in this regard. It is also noted that this concern for unit 4 has been maintained from previous revised architectural plans.

Excavation and Terraces

The proposed development includes a maximum cut of 1.8m on the rear south eastern corner of the building in order to maintain a consistent ground floor level and not exacerbate the overall building height which as proposed, exceeds the maximum height of buildings standard applicable to the site. It is considered that the degree of site disturbance proposed is excessive and therefore the design is unresponsive to the existing topography of the site. Terracing to the rear provides private open space to the ground floor units with split level design. However the functionality of and ability to maintain these spaces is impaired by the necessary flight of stairs to access the upper levels.

Overlooking

The application is provided with a number of fixed timber louvre screens to each elevation along in part the front of balcony areas to minimise the potential for overlooking onto adjoining properties. In this regard and noting the compliant separations provided to the side and rear boundary in accordance with the requirements of the Apartment Design Guide, it is considered that appropriate measures have been incorporated into the design to minimise direct overlooking concerns.

While so, it is considered that persons accessing the elevated private open space areas for unit 3 and 4 will potentially impact on the use of balconies for units 9 and 10 which overlook this area. This is considered a consequence of the provided subterranean ground floor levels and access to higher placed associated private open space areas which create an inappropriate relationship to units on level 1.

Landscaping

The application has been accompanied with a landscape plan which has identified the provision of landscaping throughout the subject site in association with the proposal. In this regard, landscaping has identified bushes and trees to the front setback area which is considered to compliment the visual impact of any lightweight fencing and low sandstone walls proposed to ground floor unit courtyard areas fronting Hope Street. In addition to the mix of trees, shrubs and grasses provided to each of these courtyard areas, the nature of landscaping proposed to the northern elevation is considered to allow for an appropriate integration with the building design to minimise the impact of architectural features.

The proposal will provide for varied landscaping features to the eastern side setback in association with ground floor courtyard areas which will allow for mature tree planting to deep soil zones. This landscaping is considered to serve as a buffer between the adjoining neighbour while also providing for amenity for future occupants.

The south western corner of the ground floor adjoining the garbage rooms and garbage truck loading bay are maintained as deep soil areas. While not a communal landscape area, plans have identified access to this part of the site to allow for vegetation maintenance.

The communal open space to the roof level is considered to have been appropriately treated with landscaping features for the use of future occupants. These planter boxes are 1.2m in depth and are considered to allow for an appropriate mix of plant and tree species to assist in softening the presentation of this common area.

Access, Traffic and Parking

The proposal will generate an increase in traffic volume, but while so, it is considered that the application has adequately demonstrated that the local road network has capacity to cater for the development. Off-street parking spaces are provided in accordance with the DCP requirements and this arrangement will reduce the incidence of off-street parking. Sight distances of the proposed driveway would be clear when in view from the street and vehicles can enter and leave in a forward direction.

Noise

The application has satisfactorily addressed the potential noise impacts from the development through provision of an Acoustic Report which was reviewed by Council's Environmental Management Team and considered acceptable.

Accessibility

The application was accompanied by an Accessibility Certificate of Design Compliance. This certificate confirms that the adaptable units provided can comply with the spatial requirements of Australian Standard 4299 for Adaptable Housing. Five accessible units are required to be provided in accordance with Council's controls and the proposal is compliant in this regard.

In addition to the above, it is noted that a total of five accessible car parking spaces have been provided, while appropriate access may be provided to the communal roof area via the use of lifts within the building.

Waste Management

The application was supported by a Waste Management Plan which has detailed the way in which all waste and materials resulting from the excavation, construction and on-going use of the building on the site are to be dealt with.

The application has indicated the provision of on-site collection by Council waste contractors and will incorporate waste collection/storage rooms and a bulky goods area to the ground floor plan. This waste area is serviced by a garbage truck loading bay area incorporating a turntable accessed by a driveway along the western boundary for the movement of service vehicles. In this regard, the application has been accompanied by swept path diagrams which have identified that a service vehicle may safely enter and exit the subject site in a forward direction with the assistance of the turntable within the loading bay. It is also noted that this area will serve as a loading bay for other trucks or vehicles (eg removalist trucks or vans) who may be required to visit the subject site with a ramp from this area allowing for access to the ground floor lobby area and lifts.

The application is provided with a dual chute system for normal waste and recycling waste from each upper level to the ground floor with Council's Waste Services Section confirming that there is sufficient area to accommodate the required number of bins and allow for adequate manoeuvring.

In addition to the above, the proposed arrangements were reviewed by Council's Waste Officer and Traffic

Engineer who have raised no objection to the proposal subject to appropriate conditions.

Environmental Sustainability

Notwithstanding the solar access non-compliances as discussed above, inadequate cross ventilation is provided to the proposed development. The submitted plans indicate that 63% of apartments can achieve natural cross ventilation. However, the Ventilation Plan indicates that units 7, 14, 23, 31 and 37 rely on windows within 'snorkel' areas and are unlikely to provide for sufficient cross ventilation. This results in only 21 units, or a total of 51% being naturally cross ventilated.

Cumulatively, these aspects of the building design contribute to a development that does not adequately respond to the principles of sustainable development, and it is considered likely that future occupants will be over-reliant on artificial heating, cooling and lighting.

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

The site is considered to be unsuitable for the proposed development for the following reasons:

- The proposal does not respond to the site constraints in terms of grade and excavation required to accommodate a development of the scale proposed.
- The orientation of the building on the site does not provide for sufficient solar access to units or natural ventilation opportunities.

Section 79C(1)(d) Any Submissions

Community Consultation

The development application was originally advertised in the local newspaper and notified to owners and occupiers of adjoining and nearby properties pursuant to the recommendations of the Regulations and in accordance with Council's Development Control Plan. Affected property owners and occupiers were notified in the surrounding area and invited to make a submission on the proposal during the exhibition period from 1 June 2018 to 15 June 2018. During this period, no submissions were received.

Following amendments to the proposal, the development application was re-notified to owners and occupiers of adjoining and nearby properties from 19 November 2018 to 3 December 2018. During this period, no submissions were received.

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
Development Engineer	Not supported
Landscape Architect	Not supported
Environmental - Environmental management	No objections - subject to conditions
Environmental - Waterways	No objections - subject to conditions
Waste Services	No objections - subject to conditions
Traffic Engineer	No objection subject to conditions
Community Safety Officer	Not supported, however conditions provided
Tree Management Officer	No objections - subject to conditions

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

The public interest is best served by the orderly and economic use of land for purposes permissible under the relevant planning regime and in accordance with the prevailing planning controls. In this regard, the proposed works are inconsistent with the relevant planning provisions related to the development of residential flat buildings and on balance, it is considered that the application is unsupportable due to the impacts on the topography of the site, lack of consideration for the principles of sustainable development, and adverse impacts on residential amenity for future occupants of the proposed development.

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 proposed development as amended has been assessed in accordance with the relevant provisions of the environmental planning instruments and Development Control Plan pertaining to the land. The provision of a residential flat building is a permissible use under the site's R4 High Density Residential zoning. As the development application is for a residential flat building under the provisions of State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development, the application is provided for determination to the Penrith Local Planning Panel.

The bulk, scale and presentation of the building is considered an appropriate inclusion to Hope Street, maintaining an acceptable relationship to adjoining properties while providing for a positive inclusion alongside the existing streetscape, surrounding buildings and public places. The proposal is considered to be compliant with the Apartment Design Guide requirements in relation to setbacks, building separation, deep soil zones, communal open space and apartment size.

Notwithstanding these positive attributes, the proposal is deficient in that it does not meet the objective of the R4 zone to ensure a high level of residential amenity is achieved and maintained. The application has not adequately demonstrated that an acceptable level of amenity will be provided to future occupants in relation to solar access, and natural ventilation. The excessive excavation at the south eastern corner of the site and terraced nature of the private open space will provide little amenity for occupants of the ground floor units. In addition, it is unclear how the ground floor south eastern corner is to be treated following the removal of a unit previously in this location.

The proposal has provided for a height of building non compliance with the respective development standard under Clause 4.3 of the LEP, and it is considered that the application has not been accompanied by an acceptable 'Exception to Development Standards' variation request as required under Clause 4.6 of the Penrith LEP. It is also noted that were the design to be amended to reflect the existing topography of the site, the potential may exist for a higher set building form and further non-compliance with the desired building height control.

Noting the above, the proposed development has been assessed against the relevant heads of consideration contained in Section 4.15 of the *Environmental Planning and Assessment Act, 1979* and on balance, has been found to be unsatisfactory. The amended application and supporting documentation is not considered to have provided an appropriate response to the deferral of determination by the Local Planning Panel as provided on 24 April, 2019. The site is unsuitable for the proposed development and the proposal in its current form is not considered to be in the public interest. The proposal is therefore recommended for refusal.

Recommendation

That DA17/1341 providing for the demolition of existing structures and construction of a six (6) storey residential flat building containing forty one (41) apartments and two (2) levels of basement car parking be refused subject to the attached reasons.

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 to promotion of development consistent with Council's vision for Penrith, to meet the emerging needs of Penrith's communities while safeguarding residential amenity and ensuring that the development incorporates the principles of sustainable development.

(ii) Clause 2.3 Zone objectives - The proposal is inconsistent with the objectives of the R4 High Density Residential zone, particularly (a) The design of the proposed development does not ensure that a high level of residential amenity is achieved and maintained.

(iii) Clause 4.3 Height of buildings - The proposal exceeds the maximum building height standard for the subject site.

(iv) Clause 4.6 Exceptions to development standards - The proposal fails to satisfy the development standard for building height and the request for a variation to the development standard is not supported because the proposed development will not be in the public interest as it will not ensure a high level of residential amenity is achieved and maintained in accordance with the zone objectives.

(v) Clause 7.4 Sustainable development - The proposal does not demonstrate that the principles of sustainable development have been appropriately incorporated into the design.

2 X Special 03 (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 State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development as follows:

(i) Clause 30(2)(a) - compliance with the design quality principles specified in the Apartment Design Guide:

- Principle 1: Context and Neighbourhood Character
- Principle 3: Density
- Principle 4: Sustainability
- Principle 5: Landscape
- Principle 6: Amenity
- Principle 9: Aesthetics

(ii) Clause 30(2)(b) - compliance with the objectives specified in the Apartment Design Guide:

- 3C Public domain interface
- 4A Solar and daylight access
- 4B Natural ventilation
- 4E Private open space and balconies
- 4F Common circulation and spaces
- 4U Energy efficiency

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:

(i) The application has not satisfied Council with respect to the requirements under Part B - 'DCP Principles', specifically:

- The proposal does not recognise and protect the intrinsic value of natural systems, and the proposal does not minimise its ecological footprint or promote sustainable production and consumption.

(ii) The application has not satisfied Council with respect to the requirements under Section C1 'Site Planning and Design Principles', specifically:

- The proposal does not adequately respond to the natural topography of the site or attempted to minimise site disturbance.

(iii) The application has not satisfied Council with respect to the requirements under Section C4 'Land Management', specifically:

- Excavation of the site exceeds 1m from the natural ground level and extensive retaining walls are proposed to manage the cut.

(iv) The application has not satisfied Council with respect to the requirements under Section D2 'Residential Development', specifically:

- Clause D2.5.8 The building design does not ensure that overlooking problems are minimised for the eastern elevation between ground and first floor units.

- Clause D2.5.13 The building design does not promote cross-ventilation standards.

- Clause D2.5.14 The design of ground floor courtyards includes terraces higher than 1.5m above ground level.

- Clause D2.5.18 Retaining walls are greater than 500mm.

- Clause D2.5.19 The design does not ensure that the safety and security of occupants is able to be maintained.

4 **X Special 06 (Refusal under Section 79C(1)(a)(iv) of EPA Act 1979)**

The application is not satisfactory for the purpose of Section 4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the regulations as follows:

(i) Schedule 1 Forms of the *Environmental Planning and Assessment Regulation 2000* requires a BASIX Certificate to be submitted that reflects the amended proposal.

5 **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) Solar access,

(ii) Excavation and terraces,

(iii) Environmental sustainability, and

(iv) Overlooking from elevated private open space areas to first floor units.

6 **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 grade and orientation of the site is not suitable for the proposed development.

7 **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.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part B - DCP Principles

The proposal is contrary to the principles, commitments and objectives of the DCP, specifically as follows:

Principle 3: Recognise the intrinsic value of biodiversity and natural ecosystems, and protect and restore them.

The design of the development is not considered to be site responsive in that a significant excavation is maintained at the eastern side of the building is proposed. The cut creates ground floor units that are largely sited below natural ground level, in effect providing for subterranean levels, limiting solar access, cross-ventilation and providing for undersized and poor functioning private open space areas.

Principle 4: Enable communities to minimise their ecological footprint.

The proposed development does not provide for adequate solar access or cross-ventilation, as described in the SEPP 65 section of this report. This will inhibit the ability of future occupants to naturally regulate temperatures and increase reliance on artificial heating and cooling.

Part C - City-wide Controls

C1 Site Planning

Clause C1.2.4 of the DCP specifies the following:

- a) Applicants must demonstrate how the development responds to the natural topography and landform of the site based on analysis drawings.*
- b) Any built form should be located, oriented and designed to minimise excavation, cut and fill in accordance with the requirements of the Land Management Section of this Plan.*
- c) The built form should respond to the natural topography by:
 - i) Avoiding steep slopes for buildings;*
 - ii) Aligning the built form with the contours; and*
 - iii) Utilising split level design on gentler slopes.**

It is considered that the applicant has not adequately responded to the natural landform or attempted to minimise excavation of the site as the development includes a proposal to excavate up to a maximum of 1.8m alongside unit 4 for instance. The removal of the unit previously located on the ground floor at the south eastern corner of the building will also create a large retaining wall to be provided adjoining the southern side of the patio for unit 4 which is not an acceptable design solution. The built form does not incorporate a split level design to assist in reducing the impact of the cut and to allow for finished levels in line with the existing contours of the subject site.

C4 Land Management

Clause 4.1(B)(4) Limitations on Earthworks includes controls to limit cut and fill on development sites, including:

- a) Earthworks to create a building platform shall not be undertaken where excavation and/or filling would exceed 1m from the existing natural ground level of the site.*
- b) On sloping sites, site disturbance is to be minimised by using split level or pier foundation building designs.*
- c) All retaining walls proposed for the site are to be identified in the development application for the proposed development. Retaining walls are to be kept to a minimum to reduce earthworks. Use of materials that complement the natural environment is encouraged.*
- d) During any earthworks, any topsoil should be preserved on site for re-use and should be stockpiled and covered to avoid dust or loss of topsoil. Refer to the Landscape Design Section of this Plan for controls on stockpiling topsoil on site.*

Notwithstanding the basement construction, the proposed development includes excavation exceeding the 1m maximum cut. No attempt has been made to minimise site disturbance in the building design. Extensive retaining walls are proposed to manage the cut, and these retaining walls incorporate between 7 to 11 stairs for ground floor units to access the proposed upper levels as extended private courtyards. The number of stairs from the proposed ground level private open space to access what will become the upper level private open space, but is in fact the existing ground level, further illustrates the unresponsive nature of the building design.

C10 Transport, Access and Parking

The following on-site car parking rate is required to be provided in relation to the proposed residential flat building development;

Land Use Element	Parking Rate	Required
Residential Flat Buildings	1 space per 1 or 2 bedrooms	35
	2 spaces per 3 or more bedrooms	12
	1 space per 40 units for service vehicles	1
	Visitor parking: 1 space per 5 dwellings	8.2
	1 space for car washing for every 50 units	1
Total Required		57.2 spaces

It is noted that the application is compliant with the required car parking rate, via the provision of a total of 62 parking spaces over two basement levels. These parking spaces have also included a designated car wash bay, service vehicle bay and five accessible car parking spaces associated with the provision of adaptable apartments. In this regard, it is considered that adequate parking facilities are provided to cater for future occupants and visitors of the proposed apartments. It is also noted that the application was referred to Council's Traffic Engineering Section who raised no objection to the application subject to the provision of appropriate conditions with any development consent granted.

D2 Residential Development

The proposal has been assessed against the applicable provisions of this section and is found to be generally acceptable. Particular clauses which have provided for non compliances or relevant discussion points are identified below:

Clause D2.5.5 Landscaped Area

Clause D2.5.5 Landscaped Area of the DCP provides the following development control in relation to landscaped area for a R4 High Density Residential in which the subject site is located;

Zone: R4 High Density Residential

Minimum Landscaped area % of the site: 35%

In addition to the above, landscaped areas are to have a minimum width of 2m, with no basement encroachment, may include terraces and patios located no higher than 0.5m above ground and pedestrian pathways to building and dwelling entrances but does not include substantially-paved areas such as buildings, driveways and covered garages. Noting these controls, an assessment of the provided plans has identified that with a site area of 1,894m², a total of 663m² landscaping area is required. While so, only 594m² (31% of the total site area) landscaping area is considered to have been provided with the proposal and is therefore non

compliant by 69m².

While it is acknowledged that the proposal is non compliant, it is noted that the proposal has provided for a compliant deep soil zone, building separations to the boundaries as well as a compliant communal open space to the rooftop level. In this regard, it is considered that the proposal has provided for a good use of landscaping opportunities and noting that the deep soil and communal open space areas are in accordance with the Apartment Design Guide, the variation of this control in this instance is considered acceptable.

Clause D2.5.6 Front Setback

Clause D2.5.6 Front and Rear Setbacks within the DCP provides the following development control in relation to front setbacks:

Determine an appropriate front setback:

- a) either average the setbacks of the immediate neighbours; or*
- b) 5.5m minimum whichever is the greater dimension.*

The existing setbacks of the adjoining dwellings is 5.5m (32 Hope Street) and 6.7m (24 Hope Street) which provides an average of 6.1m. The development provides a 6m front setback which is considered consistent with the immediate neighbours.

Clause D2.5.8 Visual and Acoustic Privacy and Outlook

Clause D2.5.8 includes the following objective:

- c. To ensure that building design minimises overlooking problems.*

The proposal has provided for subterranean floor levels for units 3 and 4 on the ground level and consequential terraced private open space areas below and in line with the existing natural ground level. Users of these private open space areas are considered to create the potential for amenity loss to units to level 1 above, in particular for units 9 and 10, noting the location of balconies fronting this side, and vice versa for users of the ground floor private open space areas. This design feature creates a scenario where the finished levels for level 1 along the eastern elevation are only 1.3m above the existing natural ground level. The amenity for future occupants to units 3 and 4 on the ground floor as well as units 9 and 10 on the first floor are not considered to have been appropriately maintained.

Clause D2.5.13 Energy Efficiency

Clause D2.5.13 Energy Efficiency includes the following controls:

- 1) Adopt a configuration for dwellings that promotes cross-ventilation:*
 - a) corner apartments with two external walls;*
 - b) apartments that sit between two opposite external walls.*

Minimum cross-ventilation standards specified in the ADG have not been achieved as discussed earlier in this report.

Clause D2.5.14 Design of Dwellings and Private Courtyards

Clause D2.5.14 Design of Dwellings and Private Courtyards includes the following control:

- 2) A reasonable area of private open space should be provided for each dwelling:*
 - a) for dwellings at ground level:*
 - i) a minimum of 20m²;*
 - ii) as courtyards at ground level; and / or*
 - iii) terraces located not higher than 1.5m above ground level; and*

Ground level units as proposed do not comply with the control due to terraces greater than 1.5m above ground level for units 3 and 4.

Clause D2.5.18 Fences and Retaining Walls

Clause D2.5.18 Fences and Retaining Walls in the DCP requires that fences shall be no taller than 1.8m generally and walls of solid construction and taller than 1.2m shall be of see through construction. Retaining walls are identified as being no taller than 500mm.

An assessment of the provided plans has identified the provision of a front fence also serving as the boundary to private open space for ground floor Hope Street facing apartments. This fencing is to be provided as a horizontal colorbond fence with open spacing, measuring to a maximum height of 1.8m in line with the contours of the subject sites frontage. Noting the open nature of this fencing, the design is therefore compliant.

Retaining walls are proposed to the courtyard areas of all ground floor units. While the height is not noted on the plans, they will exceed 500mm based on the degree of cut proposed. The ability to maintain landscaping on the upper terraced levels and the safety of those accessing those parts of the private open space is therefore not considered an appropriate design solution.

Clause D2.5.19 Safety and Security

The objective of this clause is as follows:

Achieve a high level of passive security within and surrounding dwellings.

The landscaped area at the rear of the building is able to be accessed by a set of stairs to the west of the waste bay. This also gives persons access to the eastern elevation, and due to the existing ground levels and relationship to finished floor levels for the ground and level 1 of the building, it is considered that there is a higher risk to safety for future occupants of units 4 and 10 in particular.

Clause D2.5.20 Accessibility and Adaptability

Clause D2.5.20 of the DCP specifies that '*10% of all dwellings or a minimum one dwelling, whichever is greater, must be designed in accordance with the Australian Adaptable Housing Standard (AS4299-1995), to be capable of adaptation for people with a disability or elderly residents*'.

The proposal includes 41 units, including 5 adaptable units. To meet the control a minimum of 5 adaptable units are required.