



Planning Report

Review of Determination pursuant to S82A of the EP&A Act 1979

115-119 Derby Street, Penrith

July 2016

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1 Introduction

1.1 Overview

Stimson and Baker Planning has been engaged by Elcon Pty Ltd to prepare a planning report to support an application to review a determination pursuant to Section 82A of the Environmental Planning and Assessment Act 1979. Development Application 16/0137 was refused by Council under delegated authority on 11 May 2016. Subsequent meetings have been held with Council officers in relation to appropriate responses to the reasons for refusal, leading to this application to review that original decision.

The application was originally refused based on a number of design matters as well as the lack of an appropriate easement for stormwater disposal through the adjoining land that is owned by NSW Land and Housing Corporation. Various design changes have been made and owners consent for an easement has now been obtained from the adjoining landowner.

One major design change has been required to the basement in order for a waste truck to be able to enter and leave the site in a forward direction. In this regard, waste will be collected from the basement level, the collection truck will turn on a turntable and then leave the site in a forward direction. The impacts of accommodating this vehicle and its required clearances requires an increased floor to ceiling height for the basement. The consequence of this is a minor breach in overall building height (also exacerbated by the topography of the site) thus requiring an application to vary the height of building development standard in the LEP in accordance with Clause 4.6 of the LEP. At meetings with Council staff the consensus has been that providing basement access for waste vehicles results in an overall improved environmental planning situation supporting and justifying the request under Clause 4.6.

1.2 History of the Application

DA16/0137 was lodged with Penrith Council on 11 February 2016. A request for additional information was sent to the proponent from Council on 29 March 2016 and repeat requests were subsequently sent. The application was refused on 11 May 2016.

2 The Site and Surrounds

2.1 Regional Context

The site is located within the Penrith Local Government Area approximately 50km west of Sydney and 30km west of Parramatta.

The Metropolitan Strategy, A Plan for Growing Sydney was released December 2014. Goals of the Plan is to create a city of housing choice with homes that meets needs and lifestyles of its community and it be a great place to live. It also anticipated that this will create communities that are strong, healthy and well connected. The plan recognises the need to accelerate housing supply and local housing choices, particularly, in and around centres that are close to jobs and are serviced by public transport services that are frequent and capable of moving large numbers of people.

Strategically, Penrith has recently increased the densities around the Penrith City Centre through recent LEP amendments, contributing to choice with homes that are of varying types and mix and that are affordable and within well connected communities.

The proposal makes a significant contribution to the expected increase in density for this area. This aligns with Council's Strategic direction for this area.

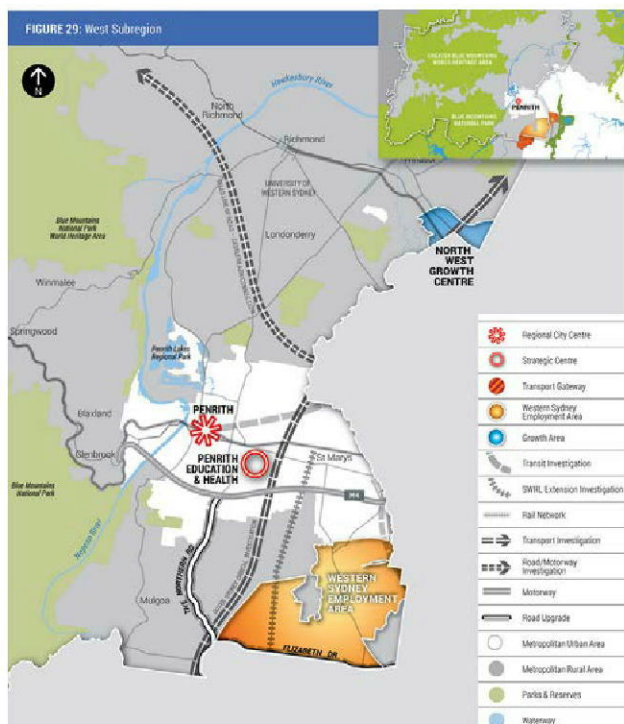


Figure 1: A Plan for Growing Sydney (<http://www.strategy.planning.nsw.gov.au/sydney/the-plan/>)

2.2 Local Context

The subject site is located in the suburb of Penrith and is accessible by walking and cycling to public transport, both rail and bus, the Penrith City Centre, recreation and employment areas.

The subject site is within 600m walking distance of the top of High Street mixed use area, 500m to Penrith Health and Education Precinct, and 300m Penrith High School. There is a bus stop 20m from the property on Derby St providing services to Penrith station and the surrounding region. Spence Park is within 150m walking distance from the site.



Figure 2: Local Context (Source: SIX Maps/Stimson & Baker Planning)

2.3 The Subject Site

The development site comprises three (3) residential lots, with three properties located on the northern side of Derby Street. The development site comprises:

- No. 115 Derby Street - single storey fibro dwelling with metal roof and separate awning.
- No. 117 Derby Street - single storey fibro dwelling with metal roof, separate single fibro garage and metal garden shed.
- No. 119 Derby Street - single storey clad dwelling with tiled roof and timber deck and metal shed.

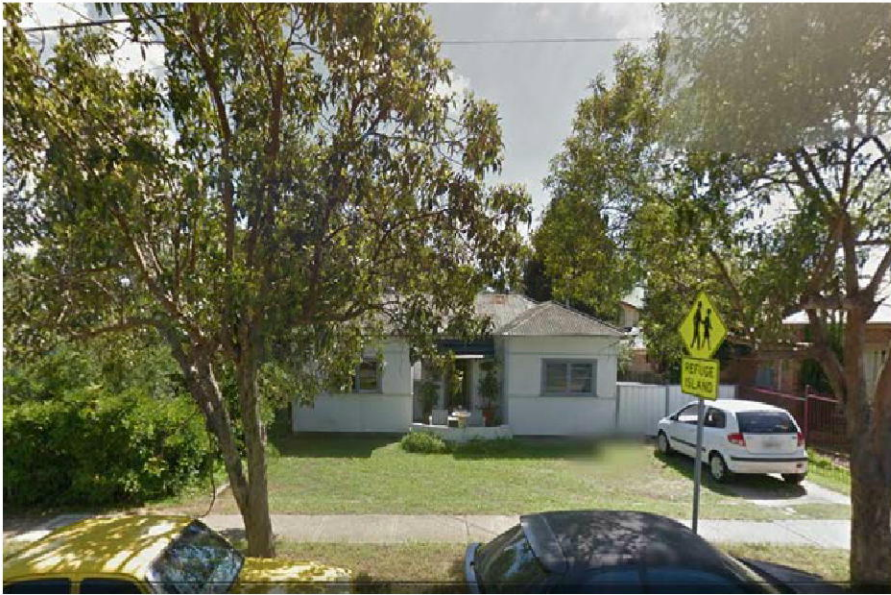


Figure 3: 115 Derby Street Penrith



Figure 4: 117 Derby Street Penrith



Figure 5: 119 Derby Street Penrith

The development site has a combined frontage of 45.72m fronting Derby Street. The site is known as 115-119 Derby Street, Penrith and is legally described as Lots 5.6 & 7 DP24603, respectively. The properties are orientated generally in a north south alignment and the development site creates a regular shape with a combined area of approximately 2090m².

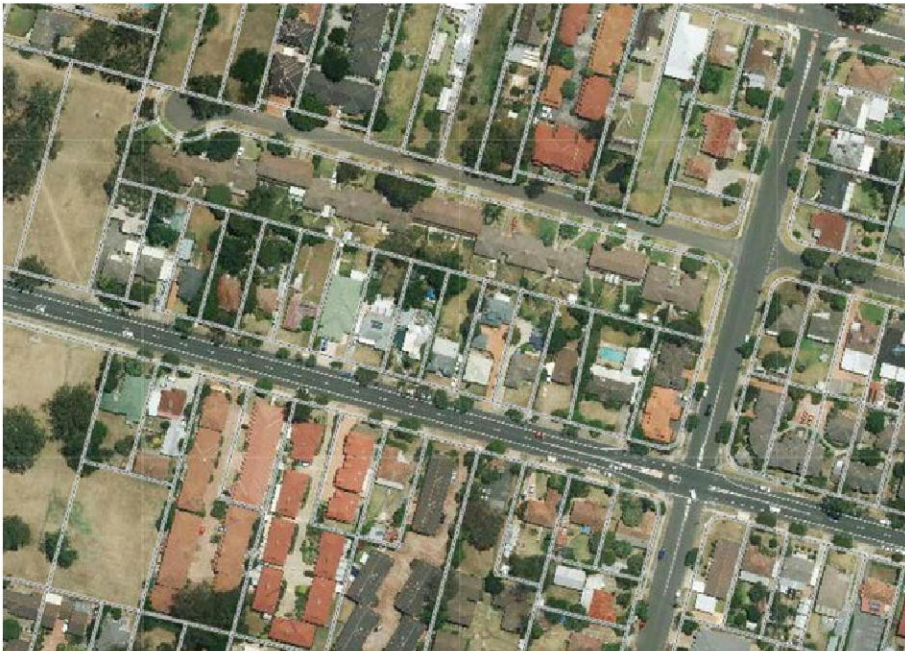


Figure 6: Subject site and surrounds (Source: SIX Maps)

Topography

The site falls generally in a south east to north west direction of approximately 3m diagonally across the site. There are no other prominent topographical features.

Vehicular Access

There is currently direct vehicular access to the residential lots from Derby Street via standard residential concrete driveways to each individual property.

Pedestrian Access and Public Transport

There is a pedestrian concrete pathway across the frontage of the site on Derby Street.

There is a bus stop within 20m walking distance from the site on Derby Street providing services to Penrith station and the wider area including Western Sydney University and Nepean Hospital. Bus services include Route 774, 775, 776 and 789 offering services between Penrith and Mount Druitt. Penrith City Centre is within walking distance from the site (600m).

Utilities and Services

There is existing reticulated sewer, water and electricity services to the site.

Vegetation

There is typical residential landscaping on the site with a small number of trees of quality and size on the development site. An accompanying arborist report addresses matters relating to tree removal and management.

2.4 Surrounding Development

The surrounding locality is characterised by older medium density town house development, however the character of this area is evolving with the recent changes to the LEP to an increase in higher densities in the area due to its close proximity to Penrith City Centre and the Penrith Health and Education Precinct (Nepean Hospital). There are some smaller residential flat buildings and town houses in the area.

Located to the north of the site is a large parcel of land at 88 Hope Street which is owned by the Department of Housing (NSW Land and Housing Corporation) and contains townhouses that extend the length of the property (250m), to the east is dual occupancy development, to the south is townhouses and the west is also a dual occupancy development with each dual occupancy being under strata plans. There is a wide range of housing types and land uses in the vicinity.

There are a number of residential flat buildings that are currently being assessed by Council in the vicinity of the site.



Derby Street townhouse development to the south



Derby Street townhouse development to the south



Department of Housing development to the north on Hope Street



Derby Street dual occupancy development to the east

Figure 7: Surrounding Development (Source: Google Maps)

3 Council's Determination

The development application was refused on 11 May 2016 and that Notice of Determination is appended to this report along with the officer's assessment report.

Various reasons for refusal were cited in the Notice of Determination, however the assessment report conveniently summarises the issues of concern to the following three key *issues*:

- *Owners consent for the required new easement*
- *Waste Collection*
- *Height of Building*
- *Numerous minor variations to planning controls such as building separation, unit sizes room depth etc*

At the time of determination, discussions had been underway between this firm and the assessment officer regarding the issues of merit listed above. Prior to determination a revised set of plans had been prepared and were provided to the Council. However, owners consent had still not been received from NSW Land and Housing Corporation for the stormwater disposal. The application was subsequently refused.

A meeting was held with Council officers on 23 June 2016 where the amendments to the plans were discussed. The procedure of applying for a Section 82A Review of Determination was also agreed as the most appropriate way forward.

The general consensus at the meeting was that the amended plans had responded to the concerns raised and there was an acknowledgement that providing waste collection in the basement of the building was an appropriate environmental planning ground to justify the minor height breach requiring a variation under Clause 4.6 of the LEP.

4 Statutory Context

4.1 Overview

Section 82A(1) of the Act states the following.

82A Review of determination

(1) *If the consent authority is a council, an applicant may request the council to review a determination of the applicant's application, other than:*

- (a) *a determination to issue or refuse to issue a complying development certificate, or*
- (b) *a determination in respect of designated development, or*
- (c) *a determination in respect of integrated development, or*
- (d) *a determination made by the council under Division 4 in respect of an application by the Crown.*

Sub clause 3A allows the proponent to make amendments to the proposed development as part of the review of determination, on the basis that the development can be considered 'substantially the same' as that which was originally considered. In this regard the same number of residential units are proposed – the amendments relate more to the detailed design and functional aspects of the development. Council can therefore accept the amendments and consider the application.

Sub clause 4 requires the Council to notify the application and we would expect Council to carry this function out as soon as possible.

4.2 The Proposed Amendments

The following amendments have been made in response to the Notice of Determination.

Unit Sizes

Unit sizes are now compliant with the Apartment Design Guidelines. Two bedroom units exceed 70sqm with bedrooms achieving the minimum 3m dimension. Living areas achieve the minimum 4m width.

Building Setbacks

The proposed setbacks are considered to be compliant with the Apartment Design Guidelines and, as Council agreed, on merit are considered to be satisfactory with no impacts arising. Council's Urban Design Review Panel also raised no objection to the

setbacks proposed and resultant design and floor plan layout. Additional screening can be provided should Council consider it necessary.

Lift Access

An additional lift has been provided to the building. There is a maximum of 11 units dedicated to a level equating to 5.5 units per core.

Snorkel Windows

It was agreed at the recent meeting with Council staff that the design as proposed results in superior internal amenity to dwellings. The design of the balconies and doors gives residents an opportunity to modulate the amount of sun and air flow into the main bedrooms.

Waste Management

Waste management and collection from the site has been designed around Council's desire for collection trucks to enter and leave the site in a forward direction. For the revised scheme, the truck will enter the site and proceed to the basement level to be loaded. The truck will then utilise a turntable to be able to manoeuvre back off the site. With only a small number of movements required each week this solution is considered to have the least impact on the on street road network and residents. Council officers agree that this solution is the most appropriate for the proposed development.

WSUD

Revised engineering plans accompany this submission demonstrating compliance with Council's requirements. It is noted that owners consent has been obtained from the adjoining property (see Appendix B) that allows for an easement to benefit the subject site.

Solar Access

The subject site is configured such that the wide southern elevations promote the inclusion of a number of south facing units. These have been minimised where possible and at the recent meeting, Council's staff recognised the need for these in the design. It is considered that the current design amendments provide the highest level of internal amenity for the maximum number of units.

For completeness, the proposed development has been considered against the LEP noting there is a minor breach in the height limit.

4.3 Penrith Local Environmental Plan 2010

The LEP is the primary environmental planning instrument relating to the proposed development. The objectives of the LEP are as follows:

- a) *to provide the mechanism and planning framework for the management, orderly and economic development, and conservation of land in Penrith,*

- 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,*
- d) *to foster viable employment, transport, education, agricultural production and future investment opportunities and recreational activities that are suitable for the needs and skills of residents, the workforce and visitors, allowing Penrith to fulfil its role as a regional city in the Sydney Metropolitan Region,*
- e) *to reinforce Penrith's urban growth limits by allowing rural living opportunities where they will promote the intrinsic rural values and functions of Penrith's rural lands and the social well-being of its rural communities,*
- f) *to protect and enhance the environmental values and heritage of Penrith, including places of historical, aesthetic, architectural, natural, cultural, visual and Aboriginal significance,*
- g) *to minimise the risk to the community in areas subject to environmental hazards, particularly flooding and bushfire, by managing development in sensitive areas,*
- 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.*

It is submitted that the proposed development is not inconsistent with these objectives.

The subject site is zoned *R4 High Density Residential*. The objectives of the R4 zone listed in the LEP are:

- *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 proposed development is consistent with the objectives in that:

- The proposed residential apartment building provides for the community's housing needs in an emerging high density residential environment.
- The proposal provides for a mix of bedroom and apartment styles and arrangements.

- A high level of residential amenity is provided for in the design of the proposal through the provision of high architectural design, private courtyards, terraces and balconies and common open space area in a landscaped setting and with high amenity.
- The proposed apartment mix provides affordable housing options within the building.
- The proposal provides for a residential apartment building which is the type of development emerging in the area as a result of recent zone changes on the area to permit this type of development.

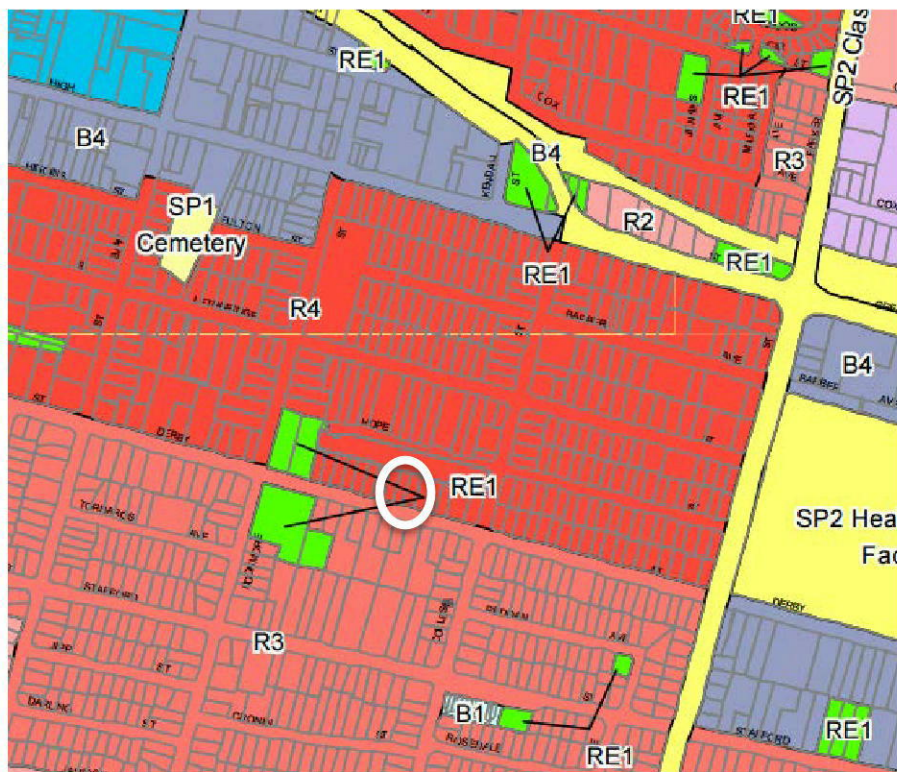


Figure 8: Land Zoning Map Penrith Local Environmental Plan 2010

The Land Use Table of the LEP nominates *Residential Flat Building* as a permissible form of development in the zone. The Dictionary definition of *residential flat building* is:

Residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.

The following relevant clauses have also been considered in respect of this development proposal.

Part 4 Principal Development Standards	
Provision	Comment
4.1A Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings	The development site comprises three development lots where combined exceeds the minimum 800sqm required for a Residential Apartment Building.
4.3 Height of buildings	The proposal exceeds the maximum height of 18m for a portion of the building. A request to vary the development standard under Clause 4.6 follows this assessment table.
4.4 Floor space ratio	There is no FSR applicable to the site.
4.6 Exceptions to development standards	Refer to discussion below.
Part 7 Additional Local Provisions	
Provision	Comment
7.1 Earthworks	Earthworks are required for the basement. The proposal will not have a detrimental effect on neighbouring property or the environment as this is appropriately setback and contained from the property boundaries. Appropriate measures will be put in place to avoid, minimise or mitigate any impacts that may arise.
7.2 Flood Planning	The site is not affected by the 1 in 100 year mainstream flood level.
7.4 Sustainable Development	The proposal has given consideration to the sustainable development principles referred to in this clause. A BASIX Assessment accompanies the application. Onsite Detention is proposed as well as treatment of stormwater which is accompanying the application. There are significant deep soil zones to contribute to substantial tree planting.
7.6 Salinity	The proposal is unlikely to have an impact on the salinity processes or salinity likely to impact the development. There is no known salinity on the site.
7.7 Servicing	The proposal will retain all the servicing that occurs on the site and connection to water, sewer and electricity. Upgrades may be required to accommodate the use and this will be confirmed with the relevant agencies prior to construction. Existing infrastructure within the area is considered sufficient to service the proposal in addition to contributions payable for local open space and district facilities.

The proposal complies with the provisions of the LEP.

4.3.1 Clause 4.6 Exception to Development Standards

Clause 4.6 provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case be unreasonable or unnecessary. The proposal exceeds the development standard for building height in this regard.

The height encroachment over the 18m is minor and limited to one portion of the roof structure. This is difficult to express as a numerical percentage, but is clearly depicted in the elevation drawings presented with the application.

This variation has been prepared in accordance with *Varying Development Standards: A Guide (August 2011)* prepared by the then *Department of Planning and*

Infrastructure. It is assumed Council has delegated authority in relation to the variation for this proposal.

The following can be regarded as being a written application to provide grounds for variation to development standards as per the requirements of the EP&A Regulation 2000.

Written application to provide grounds for variation to development standards to be submitted together with the development application (refer to EP&A Regulation 2000 Schedule 1 Forms).

1. What is the name of the environmental planning instrument that applies to the land?

Penrith Local Environmental Plan 2010

2. What is the zoning of that land?

The subject site is zoned *R4 High Density Residential*

3. What are the objectives of the zone?

- *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 proposed development is consistent with the objectives in that:

- The proposed residential apartment building provides for the community's housing needs in an emerging high density residential environment.
- The proposal provides for a mix of bedroom and apartment styles and arrangements.
- A high level of residential amenity is provided for in the design of the proposal through the provision of high architectural design, private courtyards, terraces and balconies and common open space area in a landscaped setting.
- The proposed apartment mix provides affordable housing options within the building.

- The proposal provides for a residential apartment building which is the type of development emerging in the area as a result of recent zone changes on the area to permit this type of development.

4. What is the development standard being varied? e.g. FSR, height, lot size

Building height

5. Under what clause is the development standard listed in the environmental planning instrument?

Clause 4.3 Height of Building

6. What are the objectives of the development standard?

Clause 4.3 Height of building objectives include:

- (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.*

The proposal complies with the objectives:

- The proposal is consistent with the height, bulk and scale of the emerging and desired future character of the locality. The bulk of the building is primarily under the height limit with some sections having a slight encroachment as shown in the attached elevations. The building still maintains a six storey height appearance and complies generally with the building separation requirements under the Apartment Design Guidelines that underpins SEPP No.65.
- The proposal does not impact on the visual amenity, reduces views or minimises loss of privacy or solar access as the height variation is imperceptible given it is only minor. The proposal presents as a six storey building which is the intent of the 18m height limit.
- There are no heritage items adjoining the property.
- The proposal provides a high quality urban form and provides a building that can contribute to a varying skyline given the recent increase in height limit in this area.

7. What is the numeric value of the development standard in the environmental planning instrument?

The maximum building height is 18m.

8. What is proposed numeric value of the development standard in your development application?

The majority of the proposal complies with the 18m height limit with the exception of the north west corner of the building. The height encroachment accommodates the slope of the land in this portion of the site. The encroachment will be imperceptible when viewed from the surrounding area, particularly from the south (Derby Street).

9. What is the percentage variation (between your proposal and the environmental planning instrument)?

The proposal exceedance of the height limit is difficult to express as a percentage. It is better expressed in the accompanying elevations that follow in this document. It is clear that the encroachment is insignificant.



Figure 9 Building heights and breach – North Elevation

10. How is strict compliance with the development standard unreasonable or unnecessary in this particular case

The proposal meets the general intent of clause 4.6 in that it does not affect the overall bulk and scale of the development. The proposal is still presenting as a six (6) storey development which is the intent of the 18m height limit. As shown in the elevation, the encroachment into the building height from the actual building is only very minor and is considered to be imperceptible. The other component exceeding the main building height limit is the lift over run which will not be visible from the public domain.

The elevations demonstrate that the majority of the building is below the 18m height limit.



Figure 10 Building heights and breach – West Elevation

The variation sought as part of this development application is quite minor in relation to the proposed development in the context of the area and the resultant design and amenity outcomes. The proposed development meets the objectives of the zone and the height of building clause and it is considered that strict compliance with the standard in this instance is both unreasonable and unnecessary.

11. How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act.

Section 5(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979* provide:

The objects of this Act are:

(a) *to encourage:*

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,*
- (iii) the protection, provision and co-ordination of communication and utility services,*
- (iv) the provision of land for public purposes,*
- (v) the provision and co-ordination of community services and facilities, and*
- (vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and*
- (vii) ecologically sustainable development, and*
- (viii) the provision and maintenance of affordable housing, and*

(b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and

(c) to provide increased opportunity for public involvement and participation in environmental planning and assessment.

It is submitted that the minor height encroachment still maintains an appropriate bulk and scale and also maintains the objectives of the clauses within the LEP that relate to the zone and the height of building. The objects of the Act are not hindered through the proposed variation being supported.

Complying with the height will not improve or alter the outcome in relation to visual bulk and scale which is considered to provide a good planning outcome. Given the minor encroachment, it is against the objects of the Act and not in the public interest to lose an entire storey to comply with the 18m height limit as this would not be orderly and economic use of the land and reduce the opportunity for housing in close proximity to service and facilities.



Figure 11 Building height plane - showing the height breach in white

12. Is the development standard a performance based control? Give details.

No it is prescriptive.

13. Would strict compliance with the standard, in your particular case, would be unreasonable or unnecessary? Why?

Strict compliance with the standard in this particular case is unreasonable and unnecessary as the variation sought as part of this development application is quite minor in relation to the proposed development in the context of the area. The proposed development meets the objectives of the zone, and it is considered that the objectives of the Act would not be undermined by supporting the variation.

The majority of the building is under the height limit and to comply with the height limit would not make a noticeable difference. The height variation is a result of the ground slope on the north western portion of the site. Item 10 above outlines why strict compliance with the standard is unreasonable in this regard and in summary is outlined below:

- The proposal complies with the R4 zone objectives and Clause 4.3 objectives as it relates to Height of Buildings

- It is consistent with the height, bulk and scale of the emerging and desired future character of the locality. A context plan accompanies the application. The bulk of the building is primarily under the height limit with some sections having a slight encroachment that is imperceptible.
- The building still maintains a six storey height appearance which is the intent of the 18m height limit and complies with the building separation requirements under the Apartment Design Guidelines that underpins SEPP No.65.
- The proposal does not impact on the visual amenity, reduces views or minimises loss of privacy or solar access as the height variation is imperceptible given it is only minor.
- The proposal provides a high quality urban form and provides a building that can contribute to a varying skyline given the recent increase in height limit in this area.
- The architectural merit of the proposal reduces the overall bulk and scale and renders the height variation imperceptible.

14. Are there sufficient environmental planning grounds to justify contravening the development standard? Give details.

The prime reason for the breach in height occurring is the need to increase the headroom within the first level of the basement in order to accommodate the waste collection vehicle. This increased clearance, combined with the topography of the land, creates the minor breach clearly indicated in Figure 11 above. More widely, Penrith Council has recently advocated for waste collection to occur with vehicles entering and leaving the site in a forward direction. For this particular project, the turntable has been placed in the most appropriate location and Council staff agree that the proposed method of collection is the most appropriate.

The change in waste collection regimes in Penrith have recently been encapsulated within a DCP amendment and it was unfortunate that this occurred throughout the period of the assessment of this application. However, with the amended plans, the DCP (and the requirements to enter and leave the site in a forward direction) can be satisfied and the safe passage of waste vehicles can be maximized, with only the minor height breach arising as a result.

Given this improved outcome, it is submitted that there are sufficient environmental planning grounds to justify the contravention of the development standard and it can therefore be supported by Council.

Summary

The proposed variation is considered unreasonable and unnecessary in the context of this proposal within the R4 zone. In addition to addressing the *Guide*, the proposal also meets the “five part test” established by Lloyd J, in *Winten Property Group Ltd v North Sydney Council* (2001) 130 LGERA 79 at 89, which are:

1. *Is the planning control in question a development standard?*

2. *What is the underlying object or purpose of the standard?*
3. *Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP & A Act?*
- 4(a). *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?*
- 4(b). *Is a development which complies with the development standard unreasonable or unnecessary?*
5. *Is the objection well founded?*

These questions have been addressed above and it is considered that the request to vary the development standard under Clause 4.3 as it relates to the maximum building height is well founded and should be supported.

There are no other LEP clauses relevant to the proposal.

5 Section 79C Assessment

An assessment of the proposal against the DCP was undertaken at the time of the original development application. The proposed amendments respond specifically to the concerns raised in the Council officers report and as a result, a further assessment against the DCP is not required. However, for completeness the following assessment against Section 79C of the EPA Act has been undertaken.

5.1 Section 79C(1)(a)(i) – Any Environmental Planning Instruments

The relevant environmental planning instruments have been considered earlier in this report.

The proposal is permissible with consent and is considered satisfactory when assessed against the relevant requirements.

5.2 Section 79C(1)(a)(ii) – Any Draft Environmental Planning Instrument

There are no known draft Environmental Planning Instruments applicable to the subject site.

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

Compliance against the relevant DCP's has been considered by Council previously. The amended plans specifically respond to that assessment.

5.4 Section 79C(1)(a)(iiia) – Any Planning Agreement or Draft Planning Agreement entered into under Section 93f

There are no known planning agreements that apply to the site or development.

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

There are no sections of the regulations that are relevant to the proposal at this stage.

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

The following impacts have been considered in the preparation of this development proposal.

5.6.1 Context and Setting

The proposed amendments should not alter the original assessment of the application. There are no significant negative impacts expected in this regard.

5.6.2 Flora and Fauna

The proposed amendments should not alter the original assessment of the application. There are no significant negative impacts expected in this regard.

5.6.3 Landscaping and Tree Removal

The proposed amendments should not alter the original assessment of the application. There are no significant negative impacts expected in this regard.

5.6.4 Stormwater Quantity and Quality

The site now has the benefit of owner's consent from the adjoining landowner in order for the required easement to be facilitated. The amended plans update this information.

5.6.5 Erosion and Sediment Control

The proposed amendments should not alter the original assessment of the application. There are no significant negative impacts expected in this regard.

5.6.6 Traffic Generation and Parking

No changes are expected as a result of the amended plans. Access for waste collection vehicles has now been provided and given the low number of movements expected, no unacceptable impacts are considered to arise on the movement of resident and visitor vehicles.

5.6.7 Noise Impacts

The proposed amendments should not alter the original assessment of the application. There are no significant negative impacts expected in this regard.

5.6.8 Waste Management

Compliance with Council's amended Development Control Plan is achieved through this amended proposal in that collection vehicles are able to enter and leave the site in a forward direction.

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

The amended proposal is generally consistent with the planning controls that apply in this zone. Moreover, the objectives of the zone have been satisfied, ensuring that the development would not result in any unacceptable impact on any adjoining landowners or buildings.

For the reasons outlined in this report the site is considered suitable for this development proposal.

5.8 Section 79C(1)(d) – Any Submission Made

Council will undertake a notification process in accordance with its controls and policies. We welcome the opportunity to provide additional information in response to those.

5.9 Section 79C(1)(e) – The Public Interest

Given the type of development, its general compliance with the planning controls, how the objectives are satisfied and the suitability of the site it is considered that the public interest would not be jeopardised as a result of this development.

6 Conclusion and Recommendation

A Review of Determination pursuant to Section 82A of the Environmental Planning and Assessment Act is sought since the matter was recently refused. Amended plans accompany the application demonstrating an appropriate and acceptable response to the matters raised in the assessment officers report, namely:

- Waste collection
- Height of Building
- Minor variations to planning controls

Additionally, owners consent has now been obtained from NSW Land and Housing Corporation in relation to the adjoining land for the purposes of an easement.

In addressing the issue of waste collection, a minor breach of the building height development standard has resulted. In this regard, a request to vary the standard in accordance with clause 4.6 of the LEP is contained within this report. It is submitted there are sufficient environmental planning grounds to justify the minor variation.

Considering the amendment, the site continues to be considered suitable for the development. A brief assessment against Section 79C of the Act in relation to the proposed amendments has also been undertaken and the development is considered suitable as a result.

Accordingly, it is recommended that the review of determination consider the accompanying information and the proposed development now be supported.



Appendix A

Notice of Determination and Assessment Report

PENRITH CITY COUNCIL

NOTICE OF DETERMINATION

DESCRIPTION OF DEVELOPMENT

Application number:	DA16/0137
Description of development:	Demolition of Existing Structures & Construction of Six (6) Storey Residential Flat Building containing 61 Apartments & Two Levels of Basement Car Parking
Classification of development:	Class 2 , Class 7a

DETAILS OF THE LAND TO BE DEVELOPED

Legal description:	Lot 6 DP 24603 Lot 5 DP 24603 Lot 7 DP 24603
Property address:	117 Derby Street, PENRITH NSW 2750 115 Derby Street, PENRITH NSW 2750 119 Derby Street, PENRITH NSW 2750

DETAILS OF THE APPLICANT

Name & Address:	Ck Design Pty Ltd 75 Marion Street HARRIS PARK NSW 2150
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DECISION OF CONSENT AUTHORITY

Penrith Council has determined to refuse to grant consent to the subject development application. In accordance with Section 81(1) (a) of the Environmental Planning and Assessment Act 1979, the reasons for refusal to grant consent are in Attachment 1.

Date of this decision	11 May 2016
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POINT OF CONTACT

If you have any questions regarding this determination you should contact:

Assessing Officer:	Mathew Rawson
Contact telephone number:	+612 4732 7522

NOTES

Reasons

The reasons for refusal in the attached schedule have been imposed in accordance with Section 80A of the Environmental Planning and Assessment Act 1979 as amended.

Reasons for refusal

Your attention is drawn to the attached reasons for refusal in attachment 1.

It is recommended that you read any Advisory Note enclosed with this notice of determination.

Review of determination

The applicant may request Council to review its determination pursuant to Section 82A of the Environmental Planning and Assessment Act 1979 within 6 months of receiving this Notice of Determination.

You cannot make this request if the development is Designated Development, Integrated Development or State Significant development or if the application was decided by a Joint Regional Planning Panel.

Appeals in the Land and Environment Court

The applicant can appeal against this decision in the Land and Environment Court within six (6) months of receiving this Notice of Determination.

You cannot appeal if a Commission of Inquiry was held for the subject development application, or if the development is a State Significant Development.

An appeal to the Land and Environment Court is made by lodging an application to the Court in accordance with the Rules of the Court.

Designated development

If the application was for designated development and a written objection was made in respect to the application, the objector can appeal against this decision to the Land and Environment Court within 28 days after the date of this notice. The objector cannot appeal if a Commission of Inquiry was held.

If the applicant appeals against this decision, objector(s) will be given a notice of the appeal and the objector(s) can apply to the Land and Environment Court within 28 days after the date of this appeal notice to attend the appeal and make submissions at that appeal.

Joint Regional Planning Panels

If the application was decided by a Joint Regional Planning Panel, please refer to Section 23H of the Environmental Planning and Assessment Act, 1979 (as amended) for any further regulations.

SIGNATURE

Name:	Mathew Rawson
Signature:	

For the Development Services Manager

ATTACHMENT 1 : REASONS FOR REFUSAL

1. The application is not satisfactory for the purpose of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act as the proposal is inconsistent with Clause 28(2)(c) of the State Environmental Planning Policy No 65 Design Quality of Residential Apartment Development which requires that the consent authority take into account the provisions of the Apartment Design Guidelines. The proposal does not comply with the following provisions of the Apartment Design Guidelines:
 - 3F - Visual Privacy.
 - 4A - Solar and Daylight Access.
 - 4F - Common Circulation and Spaces.
 - 4D - Apartment Size and Layout.
2. The application is not satisfactory for the purpose of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act as the proposal is inconsistent with the following provisions of Penrith Development Control Plan 2014:
 - Part C5 - Waste Management.
 - Part D2.5 - Residential Flat Buildings.
3. The application is not satisfactory for the purpose of Section 79C(1)(b) of the Environmental Planning and Assessment Act in terms of the following likely impacts of that development:
 - Built form, aesthetic and neighbourhood character; and
 - Amenity;
4. The application is not satisfactory for the purpose of Section 79C(1)(c) of the Environmental Planning and Assessment Act as the site is not suitable for the proposed development for the following reasons:
 - The site does not have a legal point of discharge for stormwater generated by the proposed development.
 - The design of the development is not consistent with the existing or desired future character of the area.
5. The application is not satisfactory for the purpose of Section 79C(1)(d) of the Environmental Planning and Assessment Act due to matters raised in submissions.
6. The application is not satisfactory for the purpose of Section 79C(1)(e) of the Environmental Planning and Assessment Act as the proposal is not in the public interest.
7. The application is not satisfactory for the purpose of Section 79C(1)(a)(iv) of the Environmental Planning and Assessment Act as the application failed to provide evidence that the owner of the adjoining land on which development is to be carried out consents to the application as required by Clause 50 of the Regulations.
8. The application is not satisfactory for the purpose of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act as the proposal is inconsistent with the following provisions of the Penrith Local Environmental Plan 2010:
 - 4.3 - Height of Buildings.
 - 4.6 - Exceptions to Development Standards.Specifically it is not considered that the written request has justified that there are sufficient environmental planning grounds to justify contravening the development standard.

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA16/0137
Proposed development:	Demolition of Existing Structures & Construction of Six (6) Storey Residential Flat Building containing 61 Apartments & Two Levels of Basement Car Parking
Property address:	117 Derby Street, PENRITH NSW 2750 115 Derby Street, PENRITH NSW 2750 119 Derby Street, PENRITH NSW 2750
Property description:	Lot 6 DP 24603 Lot 5 DP 24603 Lot 7 DP 24603
Date received:	11 February 2016
Assessing officer	Mathew Rawson
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 for a residential flat building with 61 units at 115-119 Derby Street, Penrith. The subject site is zoned R4 High Density Residential under the Penrith Local Environmental Plan (LEP) 2010. Residential flat buildings are a permissible land use (under the residential accommodation group term) in the R4 zone with Council consent.

Key issues identified for the proposed development and site include:

- Owners consent for new easement.
- Waste Collection.
- Height of Building.
- Numerous minor variations to planning controls such as building separation, unit sizes, room depth etc.

The application has been notified to adjoining properties, advertised in the local newspaper and placed on public exhibition for a period of 14 days. Four objections were received which are dealt with in the body of this Report.

An assessment under Section 79C of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for refusal. The application is to be determined by Council's Senior Officer Review Team due to the recommendation for refusal.

Site & Surrounds

The subject site comprises three residential lots on the northern side of Derby Street known as 115, 117 and 119 Derby Street. Each of the lots contains a single dwelling house.

The site has a combined frontage of 45.72 m with an overall area of approximately 2090 sqm. The lots are orientated in a north south alignment. The site generally falls from south-east to north-west with an overall cross fall of approximately 3 m.

The surrounding locality is characterised by older low density housing stock, however the character of this area is evolving with the recent changes to the LEP to an increase in higher densities in the area due to its close proximity to Penrith City Centre and the Penrith Health and Education Precinct (Nepean Hospital). There are some smaller residential flat buildings and town houses in the area.

The development site is bound by a town house development to the east, scout hall and low density housing to the north, single storey, low density housing to the west and low density housing to the south to which there is known future residential apartment development being designed.

Proposal

The development involves the demolition of all structures on the site and the erection of a residential flat buildings providing 61 units. The unit mix is as follows:

- 14 x one bedroom.
- 43 x 2 bedroom.
- 4 x 3 bedroom.

The proposal provides for 80 on site parking spaces. These spaces are allocated as follows:

- 57 general residential spaces allocated to individual units.
- 8 accessible residential units which are allocated to the adaptable units.
- 12 visitor spaces.
- 2 service car spaces.
- 1 car wash bay.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy No 65—Design Quality of Residential Flat Development
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

• Section 79C - Evaluation

The development has been assessed in accordance with the matters for consideration under Section 79C 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 No 65—Design Quality of Residential Flat Development

The proposed development is consistent with the aims and objectives of SEPP 65. The accompanying SEPP 65 regulations require the involvement of a qualified designer throughout the design, approval and construction stages. In this regard, the application has been accompanied by a design verification statement from a suitably qualified designer.

An assessment has been undertaken of the proposed development in relation to the ten design quality principles and the related Apartment Design Guidelines (ADG). The proposal is for the most part in accordance with the provisions of the SEPP and the ADG, however the following matters represent significant variations to the controls of the ADG and form some of the key reasons for refusal:

3F Separation between windows and balconies

The proposed development is primarily setback 3 m from side boundaries for the first 4 levels and 6 m at the top 2 levels. This represents a 50% variation to the 6 m and 9 m requirements for buildings below 12 m and between 12-25 m respectively.

It is noted that along the facades where the variation is proposed there are no windows or balconies which will result in visual privacy impacts on the adjoining development site. However the objective for the building separation section of the ADG outlines that: "Adequate building separation distances are shared equitably between neighbouring sites," this control then goes beyond just removing windows from the affected facades but also requires that the setback be provided to share separation distances to prevent passive impacts on privacy by perceptions of overbearing. Additionally the separation aids to reduce the perceived bulk and scale of developments by providing for 'breathing room' between the buildings.

4A Solar and Daylight Access

30 % of apartments receive no direct sunlight at midwinter, this far exceeds the maximum limit of 15%.

4F Common Circulation and Spaces

The proposed development has 12 units from the single core of the building on the first 4 levels. The ADG provides for a maximum of 8 units per core.

4D Apartment Size and Layout

The predominant unit type's 73 sqm floor area does not meet the minimum requirement for 2 bed, 2 bathroom units in the ADG. Additionally the 2nd bedroom's minimum dimension of 2.9 m does not meet the 3 m minimum outlined in this section of the ADG. Also the width of the living areas does not meet the 4 m minimum for 2 bedroom apartment's in the ADG.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the application against relevant criteria within Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997) and the application is satisfactory subject to recommended conditions of consent.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Complies
Clause 2.3 Permissibility	Complies
Clause 2.3 Zone objectives	Complies
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
Clause 4.3 Height of buildings	Does not comply - See discussion
Clause 4.6 Exceptions to development standards	Does not comply - See discussion
Clause 7.1 Earthworks	Complies
Clause 7.4 Sustainable development	Complies
Clause 7.6 Salinity	Complies
Clause 7.7 Servicing	Complies

Clause 4.3 Height of buildings

The proposed development encroaches within the height limit of 18 m at the north-western corner of the development site. The encroachment is a maximum of approximately 2 m or 11% of the maximum height. Accordingly a request vary the development standard is required under Clause 4.6.

Clause 4.6 Exceptions to development standards

The applicant submitted a comprehensive request to vary the development standard under Clause 4.6 which adequately showed there will be no impacts as a result of the development, however the request failed to show that there is adequate planning grounds to approve the variation.

Recent case law in the Land and Environment Court (*Four5Two v Ashfield Council*) highlights the need for a development that is varying the standard to show that it not only is of no unacceptable impact and compliant with the standards objective but also that there are specific planning grounds that suggest the proposed variation is beneficial outcome. This information is especially pertinent considering that the development requires significant cut into the site and still cannot provide for a compliant height of building.

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

Development Control Plan 2014

Provision	Compliance
DCP Principles	Complies
C1 Site Planning and Design Principles	Complies
C2 Vegetation Management	Complies
C3 Water Management	Complies
C4 Land Management	Complies
C5 Waste Management	Does not comply - see Appendix - Development Control Plan Compliance
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)(iv) The provisions of the regulations

Fire safety

Under Part 9 of the Environmental Planning and Assessment Regulation 2000 owners of buildings must provide the FRNSW Commissioner with a copy of the Fire Safety Certificate for the building (along with the current Fire Safety Schedule). The Fire Safety Certificate is issued when essential fire safety measures have been assessed by a qualified person as being capable of performing to the standard defined by the Schedule. A condition of consent has been imposed to ensure that this occurs on an annual basis.

Prescribed Conditions

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

Advertising and Notification

Neighbour notification and advertising were carried in accordance with the requirements of the Regulations.

Section 92 - Additional Matters

- Any demolition will be conditioned to be in accordance with the provisions of AS 2601.
- The development is not subject to Government Coastal Policy.
- The development is not situated on land subject to an order made under Schedule 5 of the Act (paper subdivisions).

Schedule 1 - Information to be Included in Development Application

Part 1, Section 1(1)(i) of Schedule 1 of the Regulations requires that a DA be accompanied by; "evidence that the owner of the land on which the development is to be carried out consents to the application, but only if the application is made by a person other than the owner and the owner's consent is required by this Regulation,".

Given that the proposed development requires the provision of new drainage infrastructure and a new easement over the northern adjoining property, this adjoining property must consent to the application. No evidence that the northern adjoining property owner consented to the application has been submitted.

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

Built Form

The proposed development will be wider and closer to the boundary than other development in the area. This inconsistency with the built form is evidenced when the building separation controls are applied to the proposal. Compliance with the separation control is considered to be a key outcome in determining the locality's existing character.

As such the proposal is out of character with the desired built form of the locality given its reduced setbacks to boundary. This inconsistency with the character results in unacceptable impacts on the locality's built form.

Amenity

Given the variations sought to the controls of the DCP and the ADG as well as the proximity to adjoining residential allotments, the potential for significant amenity impacts to arise is anticipated when these adjoining allotments are developed.

Natural Environment

The subject site is connected to reticulated sewer. The proposal involves appropriate management and disposal of waste as well as adequate sediment control measures during construction.

Social and Economic Impacts

The proposal poses no potential adverse social or economic impacts.

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

The subject site is NOT deemed suitable for the development for the following reasons:

- There is no legal point of discharge for stormwater generated by the proposed development.
- The design of the development is not consistent with the existing or desired future character of the area.

Section 79C(1)(d) Any Submissions

Community Consultation

In accordance with DCP 2014 the proposed development was notified to nearby and adjoining residents,

advertised in the local newspaper and placed on public exhibition for a period of 14 days. Council has received four (4) submissions in response.

Submissions

The following issues were raised in the submission received and have formed part of the assessment.

<i>Issue Raised</i>	<i>Comments</i>
6 levels is too many - phone reception and view impacts.	The DA is recommended to be refused - These potential concerns will be address should the application be relodged in a more compliant form.
Density of development is unacceptable given existing character.	The DA is recommended to be refused - These potential concerns will be address should the application be relodged in a more compliant form.
Noise concerns from development.	The DA is recommended to be refused - These potential concerns will be address should the application be relodged in a more compliant form.
Impacts on street parking - garbage collection, visitors to complex.	The DA is recommended to be refused - These potential concerns will be address should the application be relodged in a more compliant form.
Rubbish collection issues for so many units.	The DA is recommended to be refused - These potential concerns will be address should the application be relodged in a more compliant form.
Property devaluation	The DA is recommended to be refused - These potential concerns will be address should the application be relodged in a more compliant form.
Side Fencing	The DA is recommended to be refused - These potential concerns will be address should the application be relodged in a more compliant form.
Balconies overlooking neighbours	The DA is recommended to be refused - These potential concerns will be address should the application be relodged in a more compliant form.
Overshadowing	The DA is recommended to be refused - These potential concerns will be address should the application be relodged in a more compliant form.
Extent of lighting impacts from security lighting	The DA is recommended to be refused - These potential concerns will be address should the application be relodged in a more compliant form.

Traffic Impacts

The DA is recommended to be refused - These potential concerns will be address should the application be relodged in a more compliant form.

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

The proposed development is not in the public interest as it has the potential to set an undesirable precedent for development in the locality and has the potential to negatively impact both the neighbourhood character of the area as well as impact upon the residential amenity.

Section 94 - Developer Contributions Plans

The following Section 94 plans apply to the site:

- Section 94 - District Open Space Facilities
- Section 94 - Cultural Facilities
- Section 94 - Penrith City Local Open Space

The following Section 94 calculations apply to the proposed development.

Calculation for demolition of a dwelling and construction of 61 unit residential flat building

Open Space

No. of units	x	Rate	-	Credit for existing dwelling/s	Contribution rate
61	x	2	-	9.3	112.7

City wide

No. of units	x	Rate	-	Credit for existing dwelling/s	Contribution rate
61	x	2.4	-	9.3	137.1

AMOUNT

S.94 Contribution Plan	Contribution Rate x Calculation rate	Total
District Open Space	112.7 x \$1864.00	\$210 072.80
Local Open Space	112.7 x \$674.00	\$75 959.80
Cultural facilities	137.1 x \$147.00	\$20 153.70
	NET TOTAL	\$306 186.30

Conclusion

In assessing this application against the relevant legislation and Development Control Plan, the proposal does not satisfy the aims, objectives and provisions of these policies.

In its current form, the proposal will have a negative impact on the surrounding character of the area and support for this application would set an undesirable precedent. The proposed design does not comply with key development standards and the Regulations. The site is unsuitable for the proposed development, the proposal is not in the public interest, and there is likely to be negative impacts arising from the proposed development.

Therefore, the application is not worthy of support for the attached reasons.

Recommendation

1. That DA16/0137 for a residential flat building at 115-119 Derby Street, Penrith be refused for the following reasons;

Refusal

1 [X Special 2 \(Refusal under Section 79C\(1\)\(a\)\(i\) of EPA Act 1979\)](#)

The application is not satisfactory for the purpose of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act as the proposal is inconsistent with Clause 28(2)(c) of the State Environmental Planning Policy No 65 Design Quality of Residential Apartment Development which requires that the consent authority take into account the provisions of the Apartment Design Guidelines. The proposal does not comply with the following provisions of the Apartment Design Guidelines:

- 3F - Visual Privacy.
- 4A - Solar and Daylight Access.
- 4F - Common Circulation and Spaces.
- 4D - Apartment Size and Layout.

2 [X Special 3 \(Refusal under Section 79C\(1\)\(a\)\(i\) of EPA Act 1979\)](#)

The application is not satisfactory for the purpose of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act as the proposal is inconsistent with the following provisions of the Penrith Local Environmental Plan 2010:

- 4.3 - Height of Buildings.
- 4.6 - Exceptions to Development Standards.

Specifically it is not considered that the written request has justified that there are sufficient environmental planning grounds to justify contravening the development standard.

3 [X Special 4 \(Refusal under Section 79C\(1\)\(a\)\(iii\) of EPA Act 1979\)](#)

The application is not satisfactory for the purpose of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act as the proposal is inconsistent with the following provisions of Penrith Development Control Plan 2014:

- Part C5 - Waste Management.
- Part D2.5 - Residential Flat Buildings.

4 [X Special 5 \(Regulations\)](#)

The application is not satisfactory for the purpose of Section 79C(1)(a)(iv) of the Environmental Planning and Assessment Act as the application failed to provide evidence that the owner of the adjoining land on which development is to be carried out consents to the application as required by Clause 50 of the Regulations.

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

The application is not satisfactory for the purpose of Section 79C(1)(b) of the Environmental Planning and Assessment Act in terms of the following likely impacts of that development:

- Built form, aesthetic and neighbourhood character; and
- Amenity;

6 [X Special 8 \(Refusal under Section 79C\(1\)\(c\) of EPA Act 1979\)](#)

The application is not satisfactory for the purpose of Section 79C(1)(c) of the Environmental Planning and Assessment Act as the site is not suitable for the proposed development for the following reasons:

- The site does not have a legal point of discharge for stormwater generated by the proposed development.
- The design of the development is not consistent with the existing or desired future character of the area.

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

The application is not satisfactory for the purpose of Section 79C(1)(d) of the Environmental Planning and Assessment Act due to matters raised in submissions.

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

The application is not satisfactory for the purpose of Section 79C(1)(e) of the Environmental Planning and Assessment Act as the proposal is not in the public interest.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

C5 Waste Management

The proposed development provides a reverse in waste collection bay and basement garbage room with a single chute above serving all levels of the development.

The proposed waste collection fails to comply with Council's requirements that access and egress to the development be in a forward direction as well as the lack of a second chute for recycling materials. Additionally the number of 240 L bins is not sufficient to cater for the development. 1100L bins should be utilised for the economy of scale they provide. Finally no bulky waste storage is provided for in proximity to the collection point.

D2 Residential Development

D2.5 Residential Flat Buildings

2.5.18 Fences and Retaining Walls

This section outlines that retaining walls should be no higher than 500 mm. The proposed development requires retaining walls 1.4 m in height at the south-western corner of the site to cut into the site and provide for a completely flat development pad. The cutting still does not go far to address the slope of the land which results in ground floor units at the north-western corner being elevated off ground level and requiring a variation to the 18 m height limit measured from the existing ground level.



Appendix B

Owners Consent – NSW Land and Housing Corporation



Attention: Charbel Ayoub
Macquarie Lawyers
PO Box 52
PARRAMATTA NSW 2150

20 June 2016
Ref: HOA/260427

Dear Charbel

Application for Drainage Easement over 60 – 68 Hope Street Penrith (Lot 100/ DP 791049)

I wish to advise that Land & Housing Corporation (LAHC) have "Approved in Principle" your request to;

- a) Connect into existing drainage easement at **60-68 Hope Street Penrith**, located adjacent to 121 Derby Street Penrith.
- b) Create new easement from rear of Lot 7 / DP 24603 to connect in to above existing easement.

Pending the receipt of the following information and agreement to conditions;

a) Connection to existing Easement

1. Applicant to provide hydraulic report proving that the existing stormwater line is of adequate size to cope with additional storm water flow from new development at **115-119 Derby Street Penrith** and won't have adverse effect on **Lot 100/ DP 791049**
2. Should existing stormwater line need to be increase in size, LAHC would require detailed information on how these works will be carried without causing damage to LAHC property (further conditions may apply)
3. No open grated pits to be installed in LAHC property.

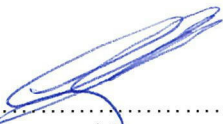
b) Creation of new easement

1. No open grated pits to be installed in LAHC property.
2. Applicant to provide the following details for proposed easement
 - o Actual length & width of easement within the LAHC land
 - o Diameter of pipeline to be laid within the easement

On receipt of the above information LAHC will review information provided and if satisfied that there will be no adverse effect to our property, your application will then be forwarded to our Project Delivery team who will manage your application through to completion. Please note that should the information provided not be acceptable to LAHC the application to connect to existing easement may be declined.

Please contact me on 9354-1252 or by email at graeme.yeo@facs.nsw.gov.au should you have any queries in this matter.

Yours sincerely,



.....
Graeme Yeo
Senior Project Officer