

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.
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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					
<i>Open Space</i>					
No. of units	x	Rate	-	Credit for existing dwelling/s	Contribution rate
61	x	2	-	9.3	112.7
<i>City wide</i>					
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.