

# PENRITH CITY COUNCIL

## MAJOR ASSESSMENT REPORT

<b>Application number:</b>	DA16/0521
<b>Proposed development:</b>	Demolition of Existing Structures & Construction of Six (6) Storey Residential Flat Building containing 43 Apartments & Basement Car Parking
<b>Property address:</b>	32 Lethbridge Street, PENRITH NSW 2750 36 Lethbridge Street, PENRITH NSW 2750 34 Lethbridge Street, PENRITH NSW 2750
<b>Property description:</b>	Lot 5 DP 27391 Lot 4 DP 27391 Lot 3 DP 27391
<b>Date received:</b>	3 June 2016
<b>Assessing officer</b>	Kathryn Saunders
<b>Zoning:</b>	Zone R4 High Density Residential - LEP 2010
<b>Class of building:</b>	Class 2 , Class 7a
<b>Recommendations:</b>	Refuse

### Executive Summary

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Council is in receipt of a development application for the demolition of all structures on the site and the construction of a residential flat building containing 43 units with basement car parking for 53 cars and 11 bicycles at 32-36 Lethbridge 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 High Density Residential zone, with Council consent.

Key issues identified for the proposed development and site include:

- Site isolation of No. 30 Lethbridge Street by way of the subject development and an approved residential flat development (2 x 6 storey flat buildings) under DA15/1175 at 20-28 Lethbridge Street;
- Non compliance with SEPP 65 Principles;
- Waste management;
- Height non-compliance;
- Negative environmental impacts related to bulk and scale;
- Insufficient building separation, setbacks, solar access, natural cross flow ventilation;
- Basement design;
- Landscaping and deep soil.

The application was notified to adjoining properties, placed on public exhibition and advertised between 20 June and 4 July 2016. One objection was received and raised matters related to site isolation.

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 under delegation.

## Site & Surrounds

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The subject site comprises three residential allotments located on the southern side of Lethbridge Street known as 32, 34 and 36 Lethbridge Street. Each lots contains a single dwelling house and ancillary structures.

The site has a combined frontage of 45.72 metres with an overall area of approximately 1811 sqm. The lots are orientated in a north-south alignment. The site generally falls from north-east to south-west. The site is low lying and subject to overland flow.

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 Penrith LEP which allowed for an increase in housing density 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, multi dwelling housing and dual occupancies located within the immediate area.

The subject site is bound by single storey, low density housing on all sides however, residential apartment developments have been approved to the west at 18-22 Colless Street; to the south-east at 25-31 Hope Street and to the east at 22-28 Lethbridge Street. It is noted that the site to the immediate east known as 30 Lethbridge Street contains an isolated single dwelling.

Penrith High is located nearby at the intersection of Colless and Lethbridge Streets and Nepean Hospital is located 260 metres to the east.

## Proposal

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The development involves the demolition of all structures on the site and the erection of a 6 storey residential flat building containing 43 units, comprising the following:

- 2 x 1 bedroom units (4.65%)
- 39 x 2 bedroom units (90.70%)
- 2 x 3 bedroom units (4.65%)
- Central atrium, ground floor common open space, landscaping, fencing and ancillary stormwater works.

The proposal also provides basement parking over two levels, as follows:

- 44 x Resident car parking spaces (including four accessible spaces)
- 9 x Visitor car parking spaces
- 1 x Service vehicle space
- 1 x Car wash
- 11 x bicycle parking spaces

## Plans that apply

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

## Planning Assessment

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### • Section 79C - Evaluation

The proposal 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 55—Remediation of Land**

As assessment has been undertaken of the proposal against relevant criteria with State Environmental Planning Policy No 55—Remediation of Land and the application is satisfactory subject to recommended conditions of consent.

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

The proposed development is considered to be inconsistent with the aims and objectives of SEPP 65 in that the proposal does not achieve an acceptable level on internal amenity specifically related to solar access and natural cross flow ventilation. Further, a review of the design was undertaken by Council's Urban Design Review Panel who raised the following with regard to SEPP 65:

### **Design Quality Principles**

Council has engaged an independent urban design expert to review development applications made under SEPP 65. In response to the subject development application the following comments were provided prior to the development application being lodged. It is noted that these recommendations or comments have not been adequately incorporated into the design of the proposed development, as lodged:

- The atrium treatment is resulting in reduced side and rear setbacks. Deletion of this element would allow greater open space and landscaping opportunities to side and rear boundaries. A "T" shaped building or compressed building configuration is recommended to achieve improved side and rear setbacks and landscaping.
- A street entry point from the centre of the building should be provided. The current side entry is too deep within the site and this combined with the first storey covering this area will result in safety and security issues.
- The elevated rear terraces at the ground floor are 1.4m above ground level; >1m requires a 6m setback or a terraced solution. The current arrangement will result in overlooking and ground level interface issues.

It is not considered that the design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

An assessment has been undertaken of the proposed development in relation to the Apartment Design Guidelines (ADG). The following matters are raised:

#### *3F Separation between windows and balconies*

The proposed development is primarily setback 5.3m - 6m from the rear boundary for the first 4 storeys. This represents a minor variation to the 6m requirement for buildings below 12m.

Additionally the 5th storey (level 4 on plans) is setback 6m from the rear and side boundaries and 4.5m from the front boundary. This storey is required to be setback 9m from the boundary to provide a 18m shared building separation.

Sixth storey (level 5 on plans) is setback 9m from the side boundaries in compliance with the ADG however has a reduced front setback of 5.3m, inconsistent with the requirements of the PDGP and development within the vicinity.

The non-compliances are unacceptable due to the related impacts on streetscape, neighbourhood character, solar access, overbearing and reduced privacy and outlook.

The objective for the building separation section of the ADG outlines that: *"Adequate building separation distances are shared equitably between neighbouring sites"*, this control requires shared separation distances be provided 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*

25% of apartments receive no direct sunlight at midwinter, this far exceeds the maximum limit of 15%.

#### *4B Natural cross flow ventilation*

The proposed does not comply with the ADG recommendation for 60% of units to be provided with natural cross flow ventilation in that 21 units of the 48 units or 43.75% proposed are designed to achieve natural cross flow ventilation. Units relying on the atrium for ventilation are not considered to be provided with adequate cross flow ventilation in that the atrium is narrow in dimensions and is closed at the roof top and enclosed with glazing at ground floor.

## 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	Does not comply - See discussion
Clause 2.3 Permissibility	Complies
Clause 2.3 Zone objectives	Does not comply - See discussion
Clause 2.7 Demolition requires development consent	Complies
Clause 4.1A Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings	Complies - See discussion
Clause 4.3 Height of buildings	Does not comply - See discussion
Clause 4.6 Exceptions to development standards	Does not comply - See discussion
Clause 5.9 Preservation of trees or vegetation	Complies
Clause 7.1 Earthworks	Complies
Clause 7.2 Flood planning	Complies
Clause 7.4 Sustainable development	Does not comply - See discussion
Clause 7.6 Salinity	Complies
Clause 7.7 Servicing	Complies

#### Clause 1.2 Aims of the plan

The first aim of the Penrith Local Environmental Plan (LEP) 2010 is: *"to provide the mechanism and planning framework for the management, orderly and economic development, and conservation of land in Penrith,"*

The proposed development is not considered to be consistent with this aim of the LEP given that the proposal will isolate an allotment from being developed for high density residential land uses consistent with its zone. In addition the proposed development will result in unacceptable level of amenity impacts on any development of the isolated site which will prohibit it from land uses such as multi-dwelling housing, boarding houses, child care facilities and the like.

#### Clause 2.3 Zone objectives

The proposed development is inconsistent with the following objectives of the R4 High Density Residential 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 ensure that a high level of residential amenity is achieved and maintained.
- To ensure that development reflects the desired future character and dwelling densities of the area.

The proposed development is inconsistent with the first two objectives given it will reduce the available density of development for the locality by way of site isolation of the adjoining allotment.

The proposed development is inconsistent with the third objective given that the form of the development will completely remove any solar access for No 30 Lethbridge when the effects of the previously approved development at 20-28 Lethbridge Street (DA15/1175) is taken into account. Additionally the proposal would result in a allotment being left between two 6 storey residential flat buildings which would result in significant impacts for the visual privacy of the allotment.

The proposed development is inconsistent with fourth objective given that it will prohibit development of 30 Lethbridge Street for high density residential development which is considered to be the desired future character and intended dwelling density for the locality.

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

Although it is noted that that the proposed development site complies with the minimum lot size for residential flat buildings (800 sqm), the isolated site No. 30 Lethbridge Street would fall short of this requirement given its total size of 600 sqm.

#### **Clause 4.3 Height of buildings**

The maximum permissible height expressed for the site in Council's LEP map is 18 metres. The proposal is for a maximum of 20.2m and as such, does not comply. The encroachment is a maximum of approximately 2.2m or 12%. The application was submitted with a written request to vary the development standard under Clause 4.6 of the LEP which is discussed further within this report (refer discussion under Clause 4.6 below).

The proposal has been assessed against the objectives of Clause 4.3 Height of Buildings and is not considered to be compatible with the desired future character or built form of the area in that; the proposal does not comply with the applicable primary built form controls of the LEP and DCO such as height, front setback, solar access and local character and does not comply with the desired building separation distances outlined in the Apartment Design Guide.

The density of units proposed, combined with their reliance on a centrally located and enclosed atrium, will result in low amenity and impractical unit layouts with most units unable to provide for acceptable levels of solar access or natural cross flow ventilation.

#### **Clause 4.6 Exceptions to development standards**

The development application was submitted with a written request with regard to varying the height development standard as required under Clause 4.6 Exceptions to development standards of the LEP.

It is not demonstrated by the application that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case with no acceptable site specific environmental planning grounds provided. Given that the proposed development fails to comply with key development controls applicable under the LEP, ADG and relevant clauses of the DCP and that the proposed development will result in the isolation of 30 Lethbridge Street, the request to vary the height control is not supported.

The proposal does not satisfy the objectives of the clause, in that it is not demonstrated that the proposal achieves a better environmental outcome owing to the height variation sought. In particular submitted shadow diagrams indicate that additional overshadowing is attributed to the non-compliant height and overall bulk of the proposal is directly related to the non-compliance with applicable solar access controls, beyond that which is considered acceptable.

#### **Clause 7.4 Sustainable development**

In deciding whether to grant development consent for development, Council must have regard to the following principles of sustainable development as they relate to a "whole of building" approach by considering each of the following:

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

The proposal is considered to be contrary to the above, in particular building design and orientation, passive solar design and day lighting, natural ventilation and energy conservation in that the bulk and scale of the building combined with the closed central atrium is likely to result in poor internal amenity and air circulation. Further, the proposal does not comply with the minimum requirements under the ADG for solar access and natural cross flow ventilation and the proposed height, bulk and scale is resulting in poor solar access for adjoining residential allotments.

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

There are no draft Environmental Planning Instruments that have been placed on public exhibition, that apply to the proposal.

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

### Development Control Plan 2014

Provision	Compliance
DCP Principles	Does not comply - see Appendix - Development Control Plan Compliance
C1 Site Planning and Design Principles	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)(iiia) The provisions of any planning agreement

There are no planning agreements applying to this application.

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



### **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 may be imposed should consent be granted 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, may be imposed as conditions of consent where applicable should consent be granted.

### **Advertising and Notification**

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

### **Section 92 - Additional Matters**

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

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

### **Built Form**

The proposed non-compliances with the applicable height, front setback, solar access and building separation controls are directly resulting the inability of the development to achieve an acceptable level of compatibility with local character and existing approved developments in the vicinity. The inclusion of a centrally located enclosed atrium is not considered to add amenity or contribute to acoustic or visual privacy, solar access or natural cross flow ventilation and is resulting in a density of units incompatible with the constraints of the site.

### **Site Isolation**

The proposed development and the previously approved development of 20-28 Lethbridge Street, Penrith (DA15/1175) will leave 30 Lethbridge, Penrith undeveloped. Number 30 Lethbridge Street is 600 sqm in area and therefore below the minimum lot size for residential flat building development under the LEP. Accordingly the proposed development will 'isolate' 30 Lethbridge Street and will prevent its redevelopment for high density residential housing.

The NSW Land and Environment Court (LEC) has issued a number of planning principles in relation the issue of site isolation. A planning principle is a statement of a desirable outcome from a chain of reasoning aimed at reaching, or a list of appropriate matters to be considered in making, a planning decision. While planning principles are stated in general terms, they may be applied to particular cases to promote consistency.

These principles are found in the following Land & Environment Court Cases:

- *Cornerstone Property Group Pty Ltd v Warringah Council* [2004] NSWLEC 189 at 31-34
- *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251 at 17-19
- *Melissa Grech v Auburn Council* [2004] NSWLEC 40

In determining whether or not an amalgamation of the sites is feasible, the principles set out by Brown C in *Melissa Grech v Auburn Council* [2004] NSWLEC 40 are relevant and are discussed below:

- Firstly, where a property will be isolated by a proposed development and that property cannot satisfy the minimum lot requirements then negotiations between the owners of the properties should commence at an early stage and prior to the lodgement of the development application.

Comment: Negotiation was commenced prior to the application being lodged.

- Secondly, and where no satisfactory result is achieved from the negotiations, the development application should include details of the negotiations between the owners of the properties. These details should include offers to the owner of the isolated property. A reasonable offer, for the purposes of determining the development application and addressing the planning implications of an isolated lot, is to be based on at least one recent independent valuation and may include other reasonable expenses likely to be incurred by the owner of the isolated property in the sale of the property.

Comment: Details of the negotiation were submitted with the application in the form of email correspondence between the two real estate agents acting on behalf of the applicant and the isolated site. Additionally the offers made were supported by a valuation from KDW Valuations in relation to the isolated site which arrived at the figure by way of comparison to comparable properties. However, these offers may not be considered to be reasonable, given that these properties selected for comparison were fundamentally different from the isolated site by virtue of their zones being R3 Medium Density Residential rather than the subject site's R4 High Density Residential Zoning.

- Thirdly, the level of negotiation and any offers made for the isolated site are matters that can be given weight in the consideration of the development application. The amount of weight will depend on the level of negotiation, whether any offers are deemed reasonable or unreasonable, any relevant planning requirements and the provisions of s 79C of the Environmental Planning and Assessment Act 1979.

Comment: The level of negotiation and the offers made have been given weight in the consideration of the development application. The level of negotiation is not considered to be exhaustive given it consisted of an offer which was increased. This was followed by a request from the isolated party that the offer should be increased further. These emails all took place in the course of 6 days in May 2016.

Additionally, the offers made could be considered as unreasonable given the valuations direct comparison to properties of a lower density zone. The isolated site has also submitted a robust valuation from Luney, Watt & Associates which arrived the higher value on the basis of alternative block plans prepared by Ms Susan Teng, Director of h3 Architects Sydney.

In determining whether orderly and economic use and development of the separate sites can be achieved if amalgamation is not feasible, the principles set out in *Cornerstone Property Group Pty Ltd v Warringah Council* [2004] NSWLEC 189 are relevant. These are set out below:

- The key principle is whether both sites can achieve a development that is consistent with the planning controls. If variations to the planning controls would be required, such as, non compliance with a minimum allotment size, will both sites be able to achieve a development of appropriate urban form and with acceptable level of amenity.

Comment: The isolated site would require a variation to the 800 sqm minimum lot size for residential flat buildings given the isolated site's total area of 600 sqm. Accordingly the applicant addressed this fourth principle as follows:

*"Residential Flat Buildings are not the only development that is permissible on the site. It is therefore considered that given the site allows a wide range of land uses such as Boarding houses; Child care centres; Community facilities; Emergency services facilities; Home-based child care; Home businesses; Information and education facilities; Neighbourhood shops; Places of public worship; Recreation areas; Recreation facilities (indoor); Respite day care centres; Shop top housing that is not limited by site size and dimensions that the site can be developed in an orderly and economic manner. It is important to note that the site has limitations in its own right that may limit future development opportunities."*

This approach is similar to the approach of the applicant which was rejected in the judgement for *Melissa Grech v Auburn Council* [2004] NSWLEC 40. In this case, the Commissioner stated *"While this is technically correct, based on the permissible uses within the zone, it is an unlikely scenario. The form of development most likely to occupy the adjoining site (and putting aside the site area requirements) would be a residential flat development. This is recognised in the zone description and is specifically referred to in the relevant zone objective. It is also consistent with the general form of development in area."*

Accordingly, the highest and best land use for the isolated site and the use that is consistent with the zone objectives, zone description and Council's strategic planning documents is a residential flat building. The proposed development would prohibit a residential flat building on the isolated site from complying with the minimum lot sizes of the LEP as well as a result in unacceptable impacts on the amenity of this site should it be developed for any alternate residential or amenity based land uses.

- To assist in this assessment, an envelope for the isolated site may be prepared which indicates height, setbacks, resultant site coverage (both building and basement). This should be schematic but of sufficient detail to understand the relationship between the subject application and the isolated site and the likely impacts the developments will have on each other, particularly solar access and privacy impacts for residential development and the traffic impacts of separate driveways if the development is on a main road.

Comment: This principle was not initially addressed by the applicant, however following consultation between the applicant and Council an indicative built form was put forward for the isolated site. The built

form comprised a 5 storey residential flat building with single storey basement. The submitted concept presented significant non-compliances with applicable planning controls and design guidance and objectives under the PLEP, PDCP, SEPP 65 and the accompanying ADG, including although not limited to solar access, site coverage, landscaping, common open space, car parking, waste management and local character. Further, the site is constrained by the location of a centrally located stormwater easement.

The isolated site's objection and valuation also contained indicative envelopes for both townhouse and residential flat building development. The envelopes indicate that residential flat buildings would be unable to comply with the provisions of the ADG (setting aside the minimum lot size requirement) and that townhouse development would be unable to comply with the minimum solar access requirements of Council's DCP.

- The subject application may need to be amended, such as by a further setback than the minimum in the planning controls, or the development potential of both sites reduced to enable reasonable development of the isolated site to occur while maintaining the amenity of both developments.

Comment: This principle was not addressed by the applicant.

Additionally the development proposes building setbacks less than the minimum requirements of the ADG, which further reduces the development potential of the isolated site. (See the SEPP 65 section of this report for details).

Ultimately it is not considered that amalgamation of the two sites is unfeasible given the insufficiency of the negotiations held and the uncertainty regarding whether the offer made could be considered to be reasonable. Furthermore it is not considered that orderly and economic development of the isolated site can be achieved even if amalgamation of the sites was considered to be unfeasible. It is also noted that the applicant's response to these planning principles was incomplete given that the 5th and 6th principles were not addressed.

### ***Amenity***

Unacceptable negative environmental impacts related to solar access, bulk and scale, amenity, privacy and local character are directly related to non-compliances with the applicable built form and siting controls and objectives in the PLEP, PDCP, SEPP 65 and the accompanying ADG and in this respect the proposal is not supported.

### ***Social and Economic Impacts***

The proposal is unlikely to result in 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 as proposed, for the following reasons:

- The proposal to construct a residential flat building over three allotments will result in the isolation of number 30 Lethbridge Street.
- The design of the building is not consistent with the existing or desired future character of the area in which the selected subject site is situated particularly in that the development does not achieve an acceptable level of compliance with Council's DCP controls for residential flat buildings or SEPP 65 and the accompanying ADG.
- The application has not demonstrated that an acceptable waste management solution is achievable for the site.

## **Section 79C(1)(d) Any Submissions**

### **Community Consultation**

In accordance with the Penrith DCP 2014 the proposal was notified, exhibited to nearby and adjoining residents and advertised for a period of 14 days. Council received one submission in response.

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

<b>Issue Raised</b>	<b>Comments</b>
The development will isolate 30 Lethbridge Street despite the owners of this site being willing to sell, in order to facilitate a combined development site across all 4 lots.	The DA is recommended to be refused - The applicant will be required to enter into more robust negotiations as well as submit a more comprehensive response to the planning principles of the land and environment court.

## Referrals

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

<b>Referral Body</b>	<b>Comments Received</b>
Building Surveyor	No objections - subject to conditions
Development Engineer	No objections - subject to conditions
Landscape Architect	Not supported
Environmental - Waterways	Not supported
Waste Services	Not supported
Traffic Engineer	Not supported
Community Safety Officer	No objections - subject to conditions

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

The proposal is considered to be contrary to the public interest in that:

- (a) The development will result in unacceptable negative and detrimental impacts on the solar access available to adjacent residential uses;
- (b) It is not demonstrated by the submitted Clause 4.6 objection related to the height of buildings development standard, that the proposed height does not result in negative environmental impacts and adequate planning grounds for the non-compliance have not been provided;
- (c) The proposal does not comply with key building envelope controls as set out in the Penrith DCP in particular, the development proposes a reduced front setback and fails to demonstrate adequate compatibility with local neighbourhood character;
- (d) The proposal does not demonstrate a reasonable level of compliance with key objectives and design criteria as stipulated within the Apartment Design Guide including those related to internal amenity, natural cross flow ventilation, solar access and building separation;
- (e) The proposal has not provided an acceptable solution with regard to waste collection and management.
- (f) Support for the proposal will result in the isolation of 30 Lethbridge Street.

## 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 3 x dwellings and construction of a 43 unit residential flat building

#### Open Space

No. of units	x	Rate	-	Credit for existing dwelling/s	Contribution rate
43	x	2	-	9.3	76.7

#### City Wide

No. of units	x	Rate	-	Credit for existing dwelling/s	Contribution rate
43	x	2.4	-	9.0	94.2

### AMOUNT

S.94 Contribution Plan	Contribution Rate x Calculation Rate	Total
District Open Space	76.7 x \$1860.00	\$142,662.00
Local Open Space	76.7 x \$673.00	\$51,619.00
Cultural facilities	94.2 x \$148.00	\$13,942.00
	<b>NET TOTAL</b>	<b>\$208,223.00</b>

As the development application is recommended for refusal, a condition of consent is not recommended to be imposed requiring the payment of the above development contributions.

## Conclusion

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In assessing the development application against the relevant legislation including the State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP 65) the Penrith Local Environmental Plan (LEP) 2010 and the Penrith Development Control Plan (DCP) 2014, the proposal is not found to 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 of the relevant Environmental Planning Instruments including the LEP and SEPP 65 including those related to height of buildings, context and neighbourhood character, density, sustainability, landscape and amenity.

The site is unsuitable for the proposed development in that it is not demonstrated that the site can accommodate an acceptable waste management solution and can accommodate the density of units proposed, given the impacts of overshadowing, height, bulk and scale on adjoining allotments.

It is for the above reasoning, that support for the proposal would be contrary to the public interest. Therefore, the application is recommended for refusal.

## Recommendation

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That DA16/0521 for a residential flat building at 32-36 Lethbridge Street, Penrith be refused for the attached 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 1979 as the proposal is inconsistent with Clause 28(2)(b) and 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 design quality of the development when evaluated in accordance with the design quality principles and the provisions of the Apartment Design Guide.

Specifically the proposal does not comply with the following provisions of the Apartment Design Guidelines:

- 3F - Visual Privacy.
- 4A - Solar and Daylight Access.
- 4B-3 - Natural Cross Flow Ventilation.

### 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 1979 as the proposal is inconsistent with the following provisions of the Penrith Local Environmental Plan (LEP) 2010:

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

Specifically it is not considered that the submitted written request with regard to Clause 4.6 of the LEP has justified that there are sufficient environmental planning grounds to justify contravening the development standard, particularly in relation to overshadowing impacts on adjoining allotments.

### 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 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;
- Site isolation of 30 Lethbridge Street.

### 5 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 will result in the isolation of no 30 Lethbridge Street.
- The design of the development is not consistent with the existing or desired future character of the area.

### 6 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.

### 7 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 B - DCP Principles**

The proposal is not considered to comply with the DCP Principles in that the development is not consistent with Council's vision for a sustainable, innovative and high amenity neighbourhood complementary of existing and desired future character of the Penrith local government area.

### **Part C - City-wide Controls**

#### **C5 Waste Management**

The proposal includes a porte cochere within the front setback giving access to a waste collection area accessed via a roller door located on the Lethbridge Street frontage.

The proposed waste collection fails to comply with Council's requirements that waste be collected on the site and the collection vehicle be provided with infrastructure or space to ensure that access and egress to the development is in a forward direction. It is noted that alternatives may be proposed in discussion with Council, and that alternative concept sketches were provided.

Submitted sketches were reviewed and not considered to be appropriate. The waste collection porte cochere is not supported due to impacts on deep soil, safety, streetscape amenity, local character and non-compliance with Council's DCP.

### **D2 Residential Development**



## **D2.5 Residential Flat Buildings**

### *Front Setback*

The DCP requires residential flat buildings to be setback from the front boundary of the site by either the average of the setbacks of the immediate neighbours or 5.5m minimum whichever is the greater. Permissible encroachments within the front setback include verandahs and pergolas only which are 4.5m minimum setback to the face of the verandah or pergola; and for a maximum of 50% of the elevation.

The proposal includes balconies with a reduced front setback to a minimum of 4.5m from more than 50% of the front elevation resulting in bulk, scale and overbearing impacts on streetscape character.

### *Solar Access*

The DCP requires that the development allow 4 hours sunlight between 9:00am and 3:00pm to living zones of each dwelling and the living zones of any adjoining dwellings. Submitted shadow diagrams indicate that residential dwelling located to the south of the site will receive less than the DCP rate of 4 hours between 9:00am and 3:00pm and in particular 33 Hope Street will receive less than 1 hour of solar access during these primary daylight hours.

The proposed development will overshadow the private open space of the eastern adjoining neighbour at 30 Lethbridge Street from 1:00pm onward, at the winter solstice. The approved development at 20-28 Lethbridge Street (DA15/1175) will overshadow the rear portion of the eastern adjoining neighbour up until 10:00am at the winter solstice, therefore the dwelling and private open space areas will only receive 2 hours of sunlight between 10:30am and 12:30pm at the winter solstice.

The proposal does not comply with the DCP requirement for a minimum of 4 hours of solar access to living zones of units and to adjacent development.

### *Landscaped Area*

The proposal is for 507sqm's of landscaped area which equates to 28% of the site. The minimum requirement in the R4 High Density Residential zone is 35%.

### *Basement Encroachment*

The proposed basement is 1.91 m above natural ground level at the rear of the development. Council's DCP outlines that basement's should be a maximum of 1.5 m above natural ground level.

The extent of the basement above natural ground level results in a disconnect between the ground floor unit's terrace/living areas and their private open space. Whilst it is noted that individual stairs are provided to the units for access it is not considered to be a desirable outcome especially given that two of the three ground floor rear facing units are the adaptable/accessible units for the development.

Additionally the extent of the basement above natural ground level results in the finished floor level of the ground floor units being above the rear fence line. This has implications for the adjoining development's visual privacy.