

# PENRITH CITY COUNCIL

## MAJOR ASSESSMENT REPORT

<b>Application number:</b>	DA18/0860
<b>Proposed development:</b>	Demolition of Existing Structures & Construction of a Six (6) Storey Residential Flat Building including 17 Apartments & Two (2) Levels of Basement Car Parking
<b>Property address:</b>	1 Station Lane, PENRITH NSW 2750
<b>Property description:</b>	Lot 2B DP 161921
<b>Date received:</b>	27 August 2018
<b>Assessing officer</b>	Lauren Van Etten
<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

Council is in receipt of a development application for the Demolition of Existing Structures & Construction of Six (6) Storey Residential Flat Building including 17 Apartments & Two (2) Levels of Basement Car Parking at Lot 2B DP 161921, No. 1 Station Lane, Penrith.

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

This application is to be determined by the Penrith Local Planning Panel who are the consent authority for the development application (as directed by the Minister for Planning under Section 9.1 of the Act), as the development is a development type to which State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development applies, and is 4 or more storeys in height.

Key issues identified for the proposed development and site include:

- Reliance on access over the adjoining Lot 18 DP 122079, Station Lane, owned by Penrith City Council. No owner's consent for the use of this land or inclusion in this application has been provided and no agreement has been reached for purchase of the land or granting of an easement or right of carriageway to permit vehicular access.
- Inconsistency with State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development.
- Inconsistency with key objectives and the design criteria of the Apartment Design Guide (ADG) in relation to building bulk and scale, landscape design and residential amenity.
- Non compliance with Penrith Local Environmental Plan 2010 (PLEP) including the aims of objectives of the Plan, the objectives of the R4 High Density Residential zone and the objectives of the minimum lot size and height of buildings clauses.
- Non compliance with Penrith Development Control Plan 2014 (PDCP), including setbacks, waste management, landscaping, context and character, and amenity.
- Overbearing, built form presentation, visual and amenity impacts related to bulk and scale.
- Insufficient information related to waste management, manoeuvring, Water Sensitive Urban Design (WSUD) and flooding.
- No access to the site and no legal arrangements being in place.

These key issues were raised with the applicant and in correspondence dated 16 October 2018 it was requested

that the development application be withdrawn as without the acquisition of Council's land, the site's size and width cannot provide sufficient separation and setbacks between built forms to achieve the objectives and design criteria within the State Environmental Planning Policy 65 Design Quality of Residential Apartment Development, Apartment Design Guide and Penrith Local Environmental Plan 2010 and mitigate adverse impacts. The applicant was requested to present a revised proposal to Council's Urban Design Review Panel upon satisfactorily addressing all points raised within previous UDRP18/0006 correspondence. These points included discussions with Council's Property Division and the acquisition of Station Lane and the incorporation of this area into the landscape/open space design. It is considered premature to consider the application or re-lodgement of a new development application until all previously identified issues, in particular the adequacy of the lot size has been resolved.

Subsequently, the application was not withdrawn and amended plans were submitted on 9 November 2018. A review was undertaken of the amended plans, which form the basis of this assessment, however the fundamental issues remain unresolved. As part of the amended information, the applicant indicated that a request had been made to Penrith City Council to purchase the land. While so, this is a lengthy process separate to this Development Application and has a high level of uncertainty at this early stage. Further, this application has not been formally amended on the application form to include the additional land, nor has owner's consent been provided. It would be appropriate for a new Development Application to be made correctly if the land purchase is agreed to and the application can be dealt with in the appropriate manner with respect to transparency.

The application has been notified to adjoining properties and was exhibited and advertised between 14 September 2018 to 28 September 2018 in accordance with the applicable legislation. Eleven (11) submissions were received from the adjoining owners (including two separate submissions from the one person during this period). Matters raised related to traffic and access impacts, flooding, overdevelopment, character, overshadowing impacts, privacy loss and impacts during and post construction including damage to adjoining buildings.

The development application was also referred to the Nepean Local Area Command (LAC) of the NSW Police, however no response was received.

An assessment under Section 4.15 of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for refusal. The constraints of the subject site do not make it currently suitable for a residential flat building. Without the acquisition of Station Lane, the site's size and width cannot provide sufficient separation and setbacks between built forms to achieve the objectives and design criteria within the State Environmental Planning Policy 65 Design Quality of Residential Apartment Development, Apartment Design Guide and Penrith Local Environmental Plan 2010. Matters related to bulk and scale, building separation, waste management, site isolation, parking, landscaping, common open space and amenity have not been adequately addressed by the amended design. Information related to flooding, water sensitive urban design and solar access has also not been provided.

## Site & Surrounds

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The subject site is located at the southern end of Station Lane approximately 80m south of Union Road, Penrith. The site comprises one allotment containing a single storey dwelling house with ancillary structures. The site has a total area of 663m<sup>2</sup>.

Development in the immediate vicinity of the site is dominated by 3 to 4 storey residential flat buildings. The wider area is populated by a mixture of single dwelling houses and multi dwelling housing ranging in height from 1 to 2 storeys. The site shares its eastern boundary with part of Station Lane which is technically a private lot that is Council owned. The western boundary is shared with one allotment with frontage to the cul-de-sac off Union Road known as 28A Union Road which contains a 4 storey residential flat building. A residential flat building also exists immediately to the north of the site at 20 Station Lane and east of Station Lane at 115 Station Lane.

Ripples Leisure Centre is located directly to the south-west with the Penrith Paceway further to the south-west. Penrith City Centre is to the north of the site. Penrith Railway Station is located approximately 450m to the north.

Station Lane is a narrow lane servicing other residential flat buildings in the locality. Council's Local Traffic Committee has recently endorsed a proposal to implement "No Parking" restrictions along the western side of the Lane. Several street trees are located within the site and no pedestrian pavement is currently provided along the lane.

The southern end of Station Lane is an individually titled lot known as Lot 18 DP 1220719 and is currently utilised for access to the subject site and Council's stormwater channel to the south and is highly constrained by existing services. There are no formal legal access rights over this land in favour of the subject site and as such the subject site is historically landlocked with no legal access.

## Proposal

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### Background

The applicant attended a pre-lodgement meeting (PL18/0012). The discussion of the design was deferred to the UDRP however other key matters raised as issues included:

- Undersized site resulting in a non-compliance with Clause 4.1A of PLEP 2010..
- If the purchase of the part closed Station St is agreed by Council, the land is required to be incorporated into the overall site area to satisfy PLEP 2010 lot size requirements.
- Noted that Station Lane is highly constrained by services and required for access to Council's stormwater channel to south.
- Height limit is exceeded and should have appropriate regard to surrounding context and lower built form.
- SEPP 65 Compliance.
- General planning issues including contamination, noise, waste, water quality, stormwater, flooding, traffic, earthworks and Building Code of Australia compliance.

The applicant attended a UDRP meeting (UDRP18/0006) where advice was provided which expanded on the pre-lodgement concerns, with the key issues being:

- Proposal does not suitably respond to the constraints of the site or sufficiently demonstrate compliance with key requirements of planning controls.
- Variation to minimum lot size not supported.
- Acquisition of laneway is necessary and incorporation into the development design as usable space to contribute to the built form and landscape design.
- Insufficient basement boundary setbacks.
- No identifiable entry into the development, common open space at ground level, suitable waste collection arrangements or landscape treatments.
- Changes required for ADG compliance in particular solar access and setbacks / separation.
- Green space separation, visual breaks between built form and landscape solution including deep soil and canopy tree plantings required.
- Reduction in setbacks to the southern and northern boundaries may be reasonable due to the existing

- setback of the northern RFB development (greater than 12m) and the drainage infrastructure to the south.
- A variation to building height is not suitable given the surrounding established lower built form and the battle axe / constrained nature of this site.
- Proposal does not meet floor to ceiling and floor to floor requirements.
- The proposal requires stepping of the built form at level 5 and 6 to both the western and eastern boundaries to address these requirements noting the adjacent development to the east is only 4 storey's in height and to the west is indicated to be 3 storey's in height. The scale of the proposal must suitably transition and respond to the existing built form that surrounds it.
- Revised plans should show how the surrounding built form character has informed the proposed development in terms of setback, separation and building height.
- The landscape design will be critical in considering any variations or departures from the ADG or SEPP provisions.
- The solution to waste management should not be at the expense of good urban design outcomes with respect to ground floor design treatments and landscaping outcomes.
- The acquisition of the closed laneway and the resulting incorporation of this land into the development must be meaningful and ensure that a suitable development outcome is achieved on the site. This is necessary to ensure that the objectives of the zone and the lot size restrictions within the LEP have been met. The closed laneway and the existing easements that restrict development potential in the laneway must be carefully considered, integrated into the design of the development and ensure that any access or maintenance requirements to Council's drainage infrastructure are integrated into the landscape design of the space.
- A further urban design review panel meeting is required once a revised design is prepared, which addresses the above comments and satisfies the requirements outlined within the pre-lodgement meeting.

### Current Proposal

The development proposal was amended during the assessment of the application. The final proposal upon which the assessment has been based comprises of the following:

- Demolition of all structures on the site and construction of a 6 storey residential flat building containing 17 Apartments (8 x 1 bed, 8 x 2 bed & 1 x 3 bed);
- Two levels of basement car parking containing 14 car parking spaces, a Hercules turning table to allow vehicles to enter and leave in a forward direction and single car lift to upper floors and to ground level providing for access to and from Station Lane.
- Vehicular and pedestrian access to the site and basement from Station Lane and Lot 18, DP 1220719 via either the purchase of Lot 18 or creation of a right of carriageway (not yet agreed by Council's Property Section).
- Provision of a waste collection bay within the ground floor of the building with access via Station Lane and Lot 18, DP 1220719. Orientation of the proposed building to the east, towards Station Lane and Lot 18 DP 1220719, with a zero boundary setback.
- Ancillary pavement, landscaping, fencing, utility services and retaining walls. Provision of an embellished area of common open space and detention basin along the western side of the building.
- Tree removal.
- Materials comprise a mixture of face brick, render, metallic copper, within a complimentary colour palette of orange, brown and grey.
- A maximum height of RL 46.4m AHD or 19m.
- Consolidation of the two parcels of land and creation of appropriate easements and rights-of-access over the land to accommodate services and access to Council's drainage channel at the southern end of Station Lane, subject to agreement being breached with Council's Property Section. (A request only has been made at this stage and Lot 18, DP 1220719 was not included in the application).

### **Plans that apply**

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

### • Section 4.15 - Evaluation

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

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

##### **State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 aims ensure consistency in the implementation of the BASIX scheme throughout the States and achieves its aim by overriding provisions of other environmental planning instruments and development control plans that would otherwise add to, subtract from or modify any obligations arising under the BASIX scheme.

The Policy requires certain kinds of residential development to be accompanied by a list of commitments to be carried out. This application is subject to these requirements as it involves the construction of a residential flat building. A BASIX Certificate was submitted with the development application demonstrating compliance with set sustainability targets for water and energy efficiency and thermal comfort. Information submitted with the development application and accompanying BASIX certificate are assessed to satisfy the provisions of the Policy. However, the application is recommended for refusal based on other matters detailed elsewhere within this report.

##### **State Environmental Planning Policy No 55—Remediation of Land**

The proposal has been assessed against the applicable provisions of the State Environmental Planning Policy No 55 - Remediation of Land and is found to be acceptable. The development application and the accompanying additional information was referred to Council's environmental management team and no objections were raised.

The applicant has submitted a *Preliminary Site Investigation: 1 Station Lane, Penrith NSW*, prepared by Benviron Group dated July 2018. This report generally followed the methodology required by the guidelines, and gave consideration to historic aerial photographs, records and included preliminary sampling at two locations. The investigation concluded that the risks to human health and the environment are low, and that the site is suitable for the proposed development subject to waste classification and asbestos clearance post demolition.

It is noted that the Preliminary Site Investigation was referred to Council's Environmental Management Section who have advised that the proposal is considered compliant with the provisions of SEPP55.

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

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

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

The development application as lodged, was submitted with a design verification statement (DVS) which addressed the principles and ADG. However, it is considered that the proposed development has not demonstrated that adequate regard has been given to all of the design quality principles of the Policy.

An assessment against Schedule 1 Design quality principles, of the Policy has been undertaken and is

included in **Table 1** and an assessment against the accompanying Apartment Design Guide is also provided in **Table 2** below.

Table 1: Assessment Against Schedule 1 - Design Quality Principles	Officer Discussion
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Principle 1: Context and neighbourhood character

Good design responds and contributes to its context.

Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character.

Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.

Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

The DVS indicates the area is under transition and that the development includes articulation and modulation.

The design is not considered to appropriately respond to the context of the site, the constraints of the site or positively contribute to the identity of this area or its context.

The development as proposed does not have sufficient regard to the smaller scale development in the vicinity, which is 3-4 storeys comprising residential flat buildings and multi-unit housing. These are unlikely to be redeveloped in the immediate future and as such the adjoining area is not under transition from low to medium or high scale residential development that would substantiate the form of development proposed.

The site is located along Station Lane with no direct street frontage, however the proposed 6 storey building will be highly visible from the south and will extend 2 or more storeys above the existing adjacent built form.

The zero setback to the eastern boundary is uncommon in the area and is not considered desirable.

The current proposal, without permission from Council to use Lot 18, DP 1220719 or an agreement reached for purchasing, is not considered to achieve an appropriate design solution with its surrounds.

In considering and designing with respect to local context, the building should be lower in height and the access and ownership issues resolved prior to design being finalised to allow for a cohesive development with its surrounds.

<p>Principle 2: Built form and scale</p>	<p>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</p> <p>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook</p>	<p>As detailed above the development does not adequately respond to the site's context, that being an infill development on a small and narrow site, irregular in shape at the northern and southern boundaries and without legal access.</p> <p>It is considered that the proposed development does not incorporate high quality facades with balanced composition of varied building elements. The solid, flat wall to the east, hard on the boundary has no visual interest or relief or opportunity for landscaping.</p> <p>The building exceeds the maximum 18m height control by up to 1m, which appears to be a response to the small site, but in doing so, the scale is not appropriate with respect to the 3-4 storeys surrounding and is not a desirable outcome for this area. Even without a street frontage, the 6 storey building will be visible from the public domain above the existing buildings and from the south.</p> <p>The built form and scale is not suitable for the subject site and not reflective of the desired future character of the area.</p>
<p>Principle 3: Density</p>	<p>Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</p> <p>Appropriate densities are consistent with the area's existing or projected population.</p> <p>Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</p>	<p>The DVS indicates that the density and yield is appropriate for the site and its location.</p> <p>The development is considered to be excessive in bulk and scale and does not provide for acceptable internal or external amenity for residents.</p> <p>The density of the development is considered to result in poor unit amenity and insufficient setback to balconies from the boundaries as well as insufficient landscaping surrounding the building.</p>



Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes.

Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs.

Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.

The DVS indicates that cross ventilation and solar access requirements are satisfied and that good size balconies, shading devices and insulation are proposed, in addition to BASIX requirements. Therefore, there is no issue with this principle.

<p>Principle 5: Landscape</p>	<p>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity.</p> <p>A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.</p> <p>Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.</p> <p>Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.</p>	<p>Deep soil on the calculations drawing was identified along the western boundary. However, the submitted hydraulic plans indicate this area will include a bioretention basin with limited shrubs in part and the majority ground covers. As such, deep soil planting and the associated screening and softening benefits from landscaping are not being achieved for a large part of the deep soil area. Minimal deep soil is provided for substantial or sustainable canopy tree planting.</p> <p>Inadequate landscaping is provided to the frontage as a zero setback is proposed to the east. The plans indicate indicative landscaping on Council's land (Lot 18) however this land is not part of this application. Further, the detailed landscape plan does not cover this area.</p> <p>Landscaping primarily has only been provided for the western side with the common open space and drainage basin. This results in a hard appearance to the other three sides.</p> <p>It is considered necessary for the built form to be softened and integrated into the existing lower scale environment and layered landscaping around the building is necessary but not provided.</p> <p>The site streetscape or public domain is not considered to be enhanced or complemented by the development.</p>
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<p>Principle 6: Amenity</p>	<p>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.</p> <p>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.</p>	<p>The amenity of the lower scale (2-4 storey) development to the adjoining sites has not been adequately addressed by the scale, density, landscaping or massing of the development.</p> <p>Given these comprise many owners it is unlikely these buildings will be re-developed in the near future and as such it can reasonably be assumed that the existing form will remain.</p> <p>The DVS indicates the balconies are an extension of the living areas, a high level of privacy is provided by use of louvres, 2 hours of sunlight is achieved and the unit sizes comply.</p> <p>The balcony siting up to the boundaries raises concern with respect to potential amenity impacts in terms of overlooking, noise and amenity for the occupants. The siting of the building hard on the eastern boundary without having resolved the ownership of Lot 18 has the potential for future amenity issues for the occupants in this area of the building, as well as a conflict with the need for Council's vehicles to access the stormwater drainage to the south.</p>
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<p>Principle 7: Safety</p>	<p>Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.</p> <p>A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.</p>	<p>The DVS indicates the proposal is well lit along pedestrian access points into the building and basement and that one clear entry point is provided and the basement is secure.</p> <p>The unresolved issue of Lot 18 ownership, along with a zero side setback of the building to the east results in this lot not being included in the overall design to provide clear pedestrian pathways into the development, in conjunction with a landscape design and necessary vehicle access for Council vehicles to the south and other vehicles such as garbage trucks. As such, this area to the east of the building is considered unsafe and due to the multiple conflicting uses to be provided does not clearly identify what is public and private land.</p> <p>The entryway to the site via the side is not improved by the inactivity of this area, a recessed entry or the location of the lift entry doors that face away from the ground floor lobby entry.</p> <p>Poor CPTED outcomes are foreseeable due to the above unresolved ownership issue and lack of design of the eastern side of the development.</p>
<p>Principle 8: Housing Diversity and Social Interaction</p>	<p>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</p> <p>Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.</p>	<p>The mix of units in the development is acceptable and a central lobby is proposed.</p>

<p>Principle 9: Aesthetics</p>	<p>Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.</p> <p>The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</p>	<p>The DVS indicates that the proposed design is contemporary in style and materials and makes a positive contribution to the streetscape.</p> <p>The review against the principles has concluded that the large amount of hard form, with lack of landscaping, breaks or articulation or reduction in massing results in a development that is assessed to be excessive in bulk and scale.</p> <p>As detailed elsewhere in this table and in the assessment of the development against the Apartment Design Guide (ADG) below, the development is contrary to the design criteria and design guidance statements of the ADG.</p> <p>The design of the building does not respond adequately to the constraints of the site, the site dimensions, adjoining development or the needs of the future residents.</p> <p>The lack of design along the eastern portion of the site in both built form, connectivity for pedestrians and vehicles and landscaping has resulted in an unbalances development.</p> <p>The development will detract from the streetscape, being highly visible above the existing built form and does not provide for adequate landscaping, deep soil or canopy tree planting around the edges of the site.</p>
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<b>Table 2: Assessment Against the Apartment Design Guide (ADG)</b>			
Part 3	Required	Discussion	Complies
3A-1	Each element in the Site Analysis Checklist should be assessed.	<p>A Site Analysis plan was submitted with the application and identifies applicable elements as required within the Checklist.</p> <p>A written description of the proposal and subject site are also included in the submitted Statement of Environmental Effects and accompanying plans and reports.</p>	Yes.

3B-1	Buildings to address street frontages.	<p>The proposed access to the lobby at ground floor is not supported as no landscaped buffer is provided to the east.</p> <p>No deep soil areas capable of accommodating substantial planting such as canopy trees are provided within the front setback or along the entryway or adjacent the lobby. No clear delineation of pedestrian and vehicular access or public or private domain is provided noting the nil building setback proposed along the eastern elevation fronting Station Lane.</p> <p>The eastern elevation to Station Lane (Lot 18) functions as the main entry, service area, basement entry and access for Council to the stormwater drain. As the building is hard on this boundary, there is no street frontage. As the ownership or permission to use Lot 18 has not been resolved, improvements on this land cannot be considered as part of this application, but must be considered in the overall design.</p>	No.
3B-2	Living areas, Private Open Space (POS) and Communal Open Space (COS) to received compliant levels of solar access.	Refer discussion under Part 3D and 4A.	N/A.
	Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%	<p>Submitted shadow diagrams do not adequately demonstrate that additional overshadowing attributed to the subject development will not reduce the amount of solar access available for the private open spaces and living zones of the adjacent properties. It is noted that the 3pm shadow diagrams are cut off and do not detail the full extent of the impact for existing buildings adjoining to the east of the subject site. Further, adjoining buildings have not been plotted on the shadow diagrams to ensure the review can be accurately undertaken.</p> <p>The shadow diagrams provided are considered inadequate in nature to allow for a full and proper analysis of the proposed impact to adjoining built forms with only basic 9am, 12pm and 3pm shadow casting shown rather than a more analytical assessment of the impacts.</p>	No.
	If the proposal will significantly reduce the solar access of neighbours, building separation should be increased.	As discussed above, inadequate information has been submitted with the development application to enable an accurate assessment.	No.
3C-1	Terraces, balconies and courtyard apartments should have direct street entry, where appropriate.	No units in this development has street frontage.	N/A

	Changes in level between private terraces, front gardens and dwelling entries above the street level provide surveillance and improve visual privacy for ground level dwellings.	The flood planning level difference required between the natural ground level and the finished floor height of the ground floor apartments results in 1m high concrete walls along the side boundary.	No
	Upper level balconies and windows to overlook the street.	No units in this development has street frontage.	N/A
	Length of solid walls should be limited along street frontages.	No street frontage.	N/A
	Opportunity for concealment to be minimised.	Due to the design fronting the laneway (Lot 18) and central location of the indented lobby, areas of concealment and crime are provided at several locations along the main ground floor lobby entry.  The design does not provide for a direct sightline of the lifts from the main entry but will rather require persons to follow an irregular internal corridor to access them.  The lift also faces internally and away from the lobby entry doors which is not an acceptable design solution.	No.
	Opportunities should be provided for casual interaction between residents and the public domain.  Design solutions may include seating at building entries, near letter boxes and in private courtyards adjacent to streets.	No seating near the building entry is provided.  This is considered a consequence of the nil building setback for the eastern façade fronting Station Lane which restricts any opportunity for any design features to encourage casual interaction from the development to the public domain.	No.
3C-2	Mail boxes should be located in lobbies, perpendicular to the street alignment or integrated into front fences where individual street entries are provided.	Mail box locations are nominated on plans.	Yes

	Substations, pump rooms, garbage storage areas and other service requirements should be located in basement car parks or out of view.	<p>Electrical substation is unknown if required.</p> <p>Garbage storage rooms are integrated into the building and roller door entries are proposed to be aligned with the building. While so, the location of these roller doors are considered prominent on the round floor next to the main entry, fronting the east. Landscaping is inadequate and will not mitigate against negative visual impacts.</p> <p>The location of the fire hydrant booster set is not known at this stage as a position has not been identified.</p> <p>There is a potential for services not indicated on the plans to be necessary and located on Lot 18 (if agreement reached on purchasing). These services and the need for pedestrian pathways and landscaping may conflict with the need for vehicular access to the garage area and the stormwater drain.</p>	No.
3D-1	Communal Open Space (COS) to have minimum area of 25% of site.	<p>165m<sup>2</sup> of COS is required under the ADG (25% of total site area). 165m<sup>2</sup> is indicated on the plan, however this includes a bio-retention basin with accompanying retaining walls which is not considered suitable to be included in the calculations. The area of COS is provided centrally along the western boundary of the site.</p> <p>Notwithstanding the above, the reduced area of COS is not supported. The reduced proposed COS area is not assessed to be a high amenity or usable space for residents and positioned to create overlooking from the proposed building as well as it surrounds.</p>	No.
	Achieve a minimum of 50% direct sunlight to the principle usable part of the communal open space.	Yes, but insufficient overall size.	No.
	COS to be consolidated into a well-designed, usable area.	Yes, but insufficient overall size.	No.
	COS to be co-located with deep soil.	Yes, but insufficient overall size.	No.
3D-2	COS is to be provided with facilities such as barbeque areas and seating.	Adequate seating or barbeque areas are provided within the COS area.	Yes
	COS is to be well lit and readily visible from habitable rooms.	Views down to the COS area are available.	Yes
3D-4	Boundaries should be clearly defined between public open space and private areas.	Boundaries between public and private space are unclear as the ownership issue with Lot 18 is unresolved.	No.



3E-1	Deep soil is to be provided at a rate 15% with a minimum dimension of 6m.	<p>Deep soil is calculated as being 36% and is provided in a 6m wide strip along the west side of the site. However, a stormwater basin is proposed in this area with limited opportunity for deep soil planting so this full area is not achieved.</p> <p>No other opportunities exist for deep soil planting along the other three boundaries, which is not an acceptable design solution.</p>	No.
3F-1	<p>Minimum required shared separation distances between habitable rooms and balconies are to be as follows:</p> <p>1-4 Storeys – 12m 5-8 storeys – 18m</p>	<p>The plans include details of the separation between habitable rooms and balconies and indicate compliance.</p> <p>However, the northern boundary has the balconies up to the boundary, with no room for landscaping for screening. This requires all privacy measures to be accommodated within the adjoining site in the existing setback, which is unreasonable to the existing residents and future occupants of this development.</p> <p>Further the eastern boundary is not stepped along the 5th and 6th floors as UDRP had required. The proposal is a zero setback and 6m if Station Lane were to be included. The proposal does not propose a greater setback as is required for storeys 5-8.</p> <p>The reduced setbacks on site are reflective of the small size of the site, inappropriate for this form of development which indicates an overdevelopment of the site.</p>	No.
3F-2	Communal open space, common areas and access paths to be separated from private open space and windows to apartments.	<p>Privacy to the ground floor rooms of the unit adjacent to the shared lobby access is not addressed by the design.</p> <p>Landscaping and deep soil is not provided such that it can assist in providing amenity or screening.</p> <p>Proposed landscaping along the entryway cannot be accommodated in this location as the building extends up to the boundary.</p>	No.
	Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.	Yes.	Yes
	Balconies, and private terraces should be located in front of living rooms to increase internal privacy.	Balconies are generally provided adjacent living rooms.	Yes.

	Windows should be offset from the windows of adjacent buildings.	The application is considered to be void of appropriate plans/documentation to allow for proper assessment.	No.
3G-1	Building entries to be clearly identifiable.	The entryway is inadequately articulated with landscaping and the zero setback allows for no opportunity for articulation or clear definition.  The design of the entry is not clear from the street with no design features provided to clearly identify the main building entry.	No.
3G-2	Building access ways and lift lobbies to be clearly visible from the public domain and communal spaces.	The main pedestrian entry is not visible from the street.  The lift faces away from the lobby entry and proposed COS area.	No.
3H-1	Carpark access should be integrated with the building's overall façade.	The entry to the basement carpark is not adequately integrated into the building nor are the service rooms.  The zero boundary setback and location of the driveway access limits the ability of the development to provide a landscaped buffer, forward of the building.  The location of the ground floor car lift adjoining the building entry is also considered to create potential safety concerns for pedestrians accessing the building.	No.
	Clear sight lines to be provided for drivers and pedestrians.	The single way entry and turning system is considered to cause safety issues for users of the basement, in particular visitors.	No.
	Garbage collection, loading and servicing areas are screened.	The bulky waste and garbage areas are incorporated into the building but not screened from the street by landscaping due to the zero lot line along the eastern boundary.	No.
3J-1	The site is located within 800m of a railway station and is required to comply with the car parking rates in the ADG.	The site is within 800m of the railway and as such the reduced car parking rates apply. A total of 14 spaces are proposed which exceeds the minimum requirements.	Yes.
3J-2	Secure undercover bicycle parking should be provided for motorbikes and scooters.	8 secure bicycle parking spaces are provided at ground level.	Yes.
3J-3	Carpark design and access is safe and secure - A clearly defined and visible lobby area or waiting area should be provided to lifts and stairs.	Lift lobby areas within Basement 1 and 2 are clearly defined and appropriately located and well lit and secured.	Yes.

4A-1	Living rooms and private open spaces of at least 70% of apartments to receive 2 hours direct sunlight between 9am and 3pm mid-winter.	The applicant has confirmed that greater than 70% has been achieved and shading devices have been incorporated into the development.	Yes.
4A-2	Courtyards, skylights and high level windows (with sills of 1,500mm or greater) are used only as a secondary light source in habitable rooms.	Complies.	Yes.
4A-3	Sun shading devices are to be utilised.	Sun shading devices are provided.	Yes.
4B-3	60% of apartments are naturally ventilated and overall depth of cross-through apartments 18m maximum glass-to-glass line.	The submitted plans indicate that more than 60% of apartments can achieve natural cross ventilation.	Yes.
4C-1	Finished floor to finished ceiling levels are to be 2.7m for habitable rooms, 2.4m for non-habitable rooms.	The proposal will provide for 2.8m finished floor to underside of ceiling, which is compliant with the ADG.	Yes.
4D-1	Apartments are to have the following min. internal floor areas: 1 bed – 50sqm 2 bed – 70sqm 3 bed – 90sqm  Additional bathroom areas increase minimum area by 5sqm.	All proposed apartment sizes comply with the ADG requirements.	Yes.
4D-2	In open plan layouts the maximum habitable room depth is 8m from a window.	All units comply with this requirement.	Yes.
4D-3	Master bedrooms to be 10sqm's and other rooms 9sqm's.	All units comply.	Yes.
	Bedrooms to have a minimum dimension of 3m.	All units comply.	Yes.
	Living rooms to have minimum width of 3.6m for a 1 bedroom unit and 4m for 2 & 3 bedrooms.	All units comply.	Yes.
4E-1	All units to have the following primary balcony areas: 1 bed – 8sqm (2m deep) 2 bed – 10sqm (2m deep) 3 bed – 12sqm (2.4m deep)	All units comply.	Yes.

4E-3	Air-conditioning units should be located on roofs, in basements, or fully integrated into the building design.	Air conditioning units have not been nominated on plans.	No.
4F-1	Daylight and natural ventilation to be provided to all common circulation spaces.  Maximum 8 units off single core corridor.	Satisfactory.	Yes.
4F-1	Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed.  Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.	All units comply.	Yes.
4G-1	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is to be provided: 1 bed – 4m <sup>3</sup> 2 bed – 6m <sup>3</sup> 3 bed – 10m <sup>3</sup> With 50% of the above to be provided within the Units.	Submitted plans indicate that storage cages are provided with the basement carpark. Adequate area for internal storage accommodated within apartments.	Yes.
4K-1	Flexible apartment configurations are provided to support diverse household types.	The development proposes a range of unit sizes, configurations and number of bedrooms to accommodate change over time and cater for differing households. Unit mix is as follows: 8 x 1 bedroom apartments 8 x 2 bedroom apartments 1 x 3 bedroom units	Yes.
4L-1	Direct street access should be provided to ground floor apartments.	No direct street access is provided for ground floor apartments which is considered a consequence of the irregular lot shape. It is noted that one studio apartment will front onto the laneway but while so, the design has not provided any consideration for a separate unit entry.	No.

4M-1	Building facades to be well resolved with an appropriate scale and proportion to the streetscape and human scale.	<p>The proposal was subject to a review by Council's Urban Design Review Panel and was not supported. It was requested in the minutes from the meeting that the Panel review the amended design once the ownership of Lot 18 be resolved and prior to lodgement of the application. This did not occur. In this regard, the latest set of plans are not considered to address the concerns raised by the panel.</p> <p>The facades are considered to be inadequately articulated and setbacks are insufficient to provide adequate separation or landscaping to moderate impacts of bulk, scale or privacy and overbearing to the public domain or adjoining properties.</p> <p>Noting the above, the scale and size of the building does not adequately address the street or neighbouring sites.</p> <p>Proposed materials do not adequately provide relief from sheer wall heights which are punctuated with self imposed horizontally proportioned window openings, provided to mitigate privacy impacts owing to minimal building separation distances.</p> <p>No varying ground, mid and upper level materials are proposed to assist in the break up of bulk or to provide elements of contrast. The eastern side is of particular concern with a zero setback and minimal articulation or breaks.</p>	No.
4O-1	Landscape design to be sustainable and enhance environmental performance.	<p>The submitted landscape plan indicates a selection of trees, shrubs and ground covers for the site. However, all landscaping is limited essentially to one side of the building only. The detention basin within the communal open space will also limit planting opportunities in the deep soil zone and hence restrict the ability for landscaping to assist with privacy in that area.</p> <p>Noting the above, the proposed landscaping is not considered to enhance the environmental performance of the structure.</p>	No.
4Q-2	Adaptable housing is to be provided in accordance with the relevant Council Policy.	A total of 2 adaptable units is proposed which is acceptable.	Yes.
4U-1	Adequate natural light is provided to habitable rooms.	Apartment depths and open floor plan arrangements allow light into kitchens, dining and living areas.	Yes.

4V-2	Water sensitive urban design systems to be designed by suitably qualified professional.	The development application was referred to Council's internal Environmental Waterways Unit and was acceptable when considered with respect to the subject site in isolation. However, it was noted that Lot 18 may form part of the site and therefore needs to be included within the calculations and as such the details and calculations provided are not suitable for both lots. It is deemed that this development relies on lot 18 and it should form part of the overall site (subject to agreement from Council's Property Section) and as such the WSUD is inadequate.	No.
4W-1	A Waste Management Plan is to be provided.	A Waste Management Plan was submitted, however there are design issues with respect to the waste arrangements proposed following comments received from Council's Waste Services.	No.
	Circulation design allows bins to be easily manoeuvred between storage and collection points.	Waste areas and manoeuvring does not comply with Council's DCP which requires waste to be collected within the subject site.  The proposed waste collection bay is located within the building but is reliant on Lot 18 and is not supported and detracts from the streetscape. Inadequate information has been provided with regard to swept paths for service vehicles to determine if appropriate garbage services can be provided for.	No.

### **Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River**

An assessment has been undertaken of the application against the relevant criteria within Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997) and although the proposal may not impact regionally upon the scenic and landscape values of the area or the health and conservation of the Hawkesbury-Nepean River, the application is found to be unsatisfactory with regard to bulk, scale and streetscape presentation and is not sympathetic to the local context and is recommended for refusal for the reasons stated at the end of this report.

## 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	Does not comply - See discussion
Clause 4.3 Height of buildings	Does not comply - See discussion
Clause 4.4 Floor Space Ratio	N/A
Clause 4.6 Exceptions to development standards	Does not comply - See discussion
Clause 5.9 Preservation of trees or vegetation	Complies - See discussion
Clause 5.10 Heritage conservation	N/A
Clause 7.1 Earthworks	Complies
Clause 7.2 Flood planning	Does not comply - See discussion
Clause 7.4 Sustainable development	Does not comply - See discussion
Clause 7.6 Salinity	Complies
Clause 7.7 Servicing	Does not comply - See discussion

### Clause 1.2 Aims of the plan

The proposal is inconsistent with the aims of the plan (Clause 1.2) in particular, those relating to Council's commitment to the provision of healthy, safe communities and environmental protection and enhancement. The application fails to demonstrate how the design meets the current and emerging needs of Penrith's communities and safeguards residential amenity.

### Clause 2.3 Zone objectives

The site is zoned R4 High Density Residential under Penrith LEP 2010. The objectives of the zone 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 assessed to be contrary to the objectives of the R4 High Density Residential zone, in that the proposal does not demonstrate that:

- (a) a high level of residential amenity is achieved and can be maintained; and
- (b) the development reflects the desired future character and dwelling densities of the area.

As detailed within the discussion under SEPP 65 of this report, the development proposal does not provide for a high level of residential amenity for the future occupants of the development due to the design and overdevelopment of the site by way of proposing a 6 storey building on an undersized allotment. The development proposal does not provide for acceptable levels of landscaping, privacy, building separation and open space.

The privacy and overbearing impacts of a building which exceeds the height limit by up to 1m and is considerably larger than the established 3-4 storey height limit of existing residential flat buildings adjoining the site, have not been appropriately moderated by landscaping or other design attributes.

Further, the development does not comply with the requirements of the ADG and as such, does not represent the desired future character or dwelling densities for the area.

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

The subject site is provided with a total area of 663m<sup>2</sup> which does not comply with LEP 2010 being an allotment significantly less than 800m<sup>2</sup> in site area required for a residential flat building within the R4 zoning.

As part of the amended information, a request to vary the development standard has been provided under Clause 4.6 of the LEP which as to be discussed, is not considered supportable.

The applicant indicated that a request had been made to Penrith City Council to purchase the land adjoining (owned by Council) however this is a lengthy process which is separate to this Development Application and has a high level of uncertainty at this early stage. Further, this application has not been formally amended on the application form to include the additional land, nor has owner's consent been provided. In this regard, any reliance on the adjoining parcel of land cannot be given consideration noting its acquisition would also provide for an alternate design as compared to the current proposal. It would be appropriate for a new Development Application to be made correctly if the land purchase is agreed to and the application can be dealt with in the appropriate manner with respect to transparency.

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

The proposed development encroaches within the height limit of 18m for the features located on the roof including the terrace, lift overrun and balustrades, with a variation ranging between 0.5-1m above the height limit. A request to vary the development standard has been provided under Clause 4.6 of the LEP and is addressed later in the report.

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

The applicant has submitted a Clause 4.6 variation request with regard to the minimum lot size and maximum height limit. Both variations are connected and are directly related to the small lot size.



The reasons provided by the applicant for each variation is discussed below and a commentary provided. The two issues are closely related and the commentary addresses both together for completeness.

### **(a) Minimum Lot Size**

The applicant submitted a request to vary the development standard under Clause 4.6 with respect to the minimum lot size, providing the following justification for the variation (full variation summarised):

- *The development standard requires an area of 800m<sup>2</sup>. This represents a departure of 17% from the standard. Council's attention is drawn to previous discussions in relation to the purchase/acquisition of the adjoining Council owned land to the south east known as Lot 18 in DP1220719 which has an area of 198.3m<sup>2</sup>. Council's attention is also drawn to the fact that the closure of Council's laneway and the creation of Lot 18 has caused my clients land to not have public road frontage.*
- *It is intended to formalise purchase negotiations with Penrith City Council for the consolidation of the two parcels of land and creation of appropriate easements and rights-of access over the land to accommodate services and access to Council's drainage channel at the southern end of Station Lane. The consolidation of the two allotments would give a total land area of 862.8m<sup>2</sup> which would result in the proposed development meeting the requirements of Clause 4.1A.*
- *In this instance, the site is generally level and is located at the rear of Station Lane with the existing medium density three and four storey flat buildings to the west, north and east. There is no residential development to the south as the site overlooks Councils War Memorial Swimming Pool complex. The existing dwelling will be demolished and the new six (6) storey residential flat building constructed with generous setbacks to the west with the existing laneway (to be purchased from Council) along the north eastern boundary providing separation to the adjoining developments. The bulk of the proposed structure will be hidden from street view by the existing four storey building façade at #20 Station Lane located at the entry to the laneway. From the west as viewed near #115 Station Street, the proposed building is hidden from view by the existing four storey brick flat building and large trees adjacent to the drainage reserve and Penrith War Memorial Swimming Pool.*
- *It is considered that the design (with the small height variation and variation to the minimum lot size) ensures that the building height represents a reasonable transition between the existing three and four storey built form which dates from the 1970's and 1980's to the current five storey outcomes anticipated in the Penrith Local Environmental Plan 2010 (ie: 18m = 6 storeys @ 3m per level). In fact, the proposed residential building represents a considerable improvement to the dated architectural quality of the current streetscape.*
- *Further, the variation to the minimum lot size will not have any significant additional visual impact on the adjoining property to the west, north and east nor create any significant additional loss in privacy due to its positioning at the end of the laneway with generous setbacks from the west and existing separation from the laneway frontage as shown on the amended architectural plans. The variation will have no significant impact on the areas of private open space within the development.*
- *The lot size variation is considered to be reasonable when considered within the context of the overall streetscape with its primary frontage to Station Lane (see Figure 4) and the intent of the Penrith Local Environmental Plan 2010. It is also considered reasonable on the basis that an application is being made under Council's Unsolicited Requests to Purchase Council Owned Land Policy.*
- *The variation to the Minimum Lot Size requirement will not hinder the promotion and co-ordination of the orderly and economic use and the development of the land. In fact, the proposal ensures the highest and best use of the subject site by formalizing the trend to higher quality residential flat buildings utilising the natural features of the land and activating the street frontages (ie: Station Lane).*
- *It is the applicants view that strict compliance with the Minimum Lot Size development standard is considered to be unreasonable in this particular case as the proposed variation simply seeks to optimise the site outcomes and improve the residential standard of the site and the surrounding precinct and respond to the density and height standards in the Penrith LEP 2010 with the knowledge that an application is being made under Council's Unsolicited Requests to Purchase Council Owned Land Policy to acquire the adjoining Lot 18 in DP1220719 which would result in a consolidated allotment having an area greater than the required 800m<sup>2</sup>.*
- *It also proposes a high quality residential interface with the Station Lane frontage in line with the Penrith Local Environmental Plan 2010. It will ensure a more viable development and higher standard of residential yield compared to that which would otherwise be provided should strict adherence to the LEP standard be applied.*

- *It is considered that the proposed residential flat development will deliver a better planning outcome than one that strictly complies with the current minimum lot size for the following reasons:-*
  - (i) the acquisition of the adjoining Lot 18 in DP1220719 is on foot and will be subject to an application made under Council's Unsolicited Requests to Purchase Council Owned Land Policy to acquire the Council land which would result in a consolidated allotment having an area greater than the required 800m<sup>2</sup>;*
  - (ii) strict compliance would not be responsive to the intent of the Penrith Local Environmental Plan 2010 which anticipates a six (6) storey built form;*
  - (iii) strict compliance would not be responsive to the intent of the Penrith Development Control Plan;*
  - (iv) strict compliance would restrict building height and subsequent floor space outcomes to the extent that the alternative would be an underutilization of the site in an area within the Penrith residential precinct that seeks residential development outcomes; and*
  - (v) strict compliance would not meet the desired future character of the precinct.*

**(b) Minimum Height**

- *The height plane shown in red and the area in exceedance shown white (ie: degree of exceedance 500mm to 1000mm).*
- *The departure from the standard is considered to be only minor and will not adversely impact on the adjoining residence to the north and east.*
- *The proposal seeks a variation to the building height of: (i) 250mm above the height plane to the parapet of the upper level; and (ii) 1000mm above the height plane to the top of the lift overrun.*
- *The existing dwelling will be demolished and the new six (6) storey residential flat building constructed with generous setbacks to the west with the existing laneway along the northern and eastern boundary providing separation to the adjoining developments. The bulk of the proposed structure will be hidden from street view by the existing four storey building façade at #20 Station Lane located at the entry to the laneway. From the west as viewed near #115 Station Street, the proposed building is hidden from view by the existing four storey brick flat building and large trees adjacent to the drainage reserve and Penrith War Memorial Swimming Pool.*
- *It is considered that the design (with the small height variation) ensures that the building height represents a reasonable transition between the existing three and four storey built form which dates from the 1970's and 1980's to the current five storey outcomes anticipated in the Penrith Local Environmental Plan 2010 (ie: 18m = 6 storeys @ 3m per level). In fact, the proposed residential building represents a considerable improvement to the dated architectural quality of the current streetscape.*
- *Further, the height variation will not have any significant additional visual impact on the adjoining property to the west, north and east nor create any significant additional loss in privacy due to its positioning at the end of the laneway with generous setbacks from the west and existing separation from the laneway frontage. The variation will have no significant impact on the areas of private open space within the development.*
- *The height variation is considered to be reasonable when considered within the context of the overall streetscape with its primary frontage to Station Lane and the intent of the Penrith Local Environmental Plan 2010.*
- *strict compliance with the Height of Buildings development standard is considered to be unreasonable in this particular case as the proposed variation simply seeks to optimise the site outcomes and improve the residential standard of the site and the surrounding precinct and respond to the density and height standards in the Penrith LEP 2010.*
- *It also proposes a high quality residential interface with the Station Lane frontage in line with the Penrith Local Environmental Plan 2010. It will ensure a more viable development and higher standard of residential yield compared to that which would otherwise be provided should strict adherence to the LEP standard be applied. The proposal is an efficient use of the land which delivers social, economic and environmental benefits to the local community.*
- *It should be noted that the subject site has particular circumstances in relation to the location of the site which has triggered the specific design response. The site is landlocked at the end of Station Lane and surrounded by three and four storey older style residential flats. By accommodating the height variation results in a more efficient and orderly use of the land and will produce a better outcome than would otherwise be the case if strict adherence to the standard were observed. In relation to this clause, it is considered that the objection to the Height of Buildings standard is well founded.*
- *It is considered that the proposal satisfies the public interest test as it is consistent with both the*

- objectives of the standard and for development within the zone.*
- *It is considered that the proposed residential flat development will deliver a better planning outcome than one that strictly complies with the current 18 metre height limit for the following reasons:-*
    - (i) strict compliance would not be responsive to the intent of the Penrith Local Environmental Plan 2010 which anticipates a six (6) storey built form;*
    - (ii) strict compliance would not be responsive to the intent of the Penrith Development Control Plan;*
    - (iii) strict compliance would restrict building height and subsequent floor space outcomes to the extent that the alternative would be an underutilization of the site*
    - in an area within the Penrith residential precinct that seeks residential development outcomes; and*
    - (iv) strict compliance would not meet the desired future character of the precinct.*

It has been determined that 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 provides no unacceptable impact and compliant with the standards objective.

The objective of Clause 4.1A is:

- (1) The objective of this clause is to achieve planned residential density in certain zones.*

The objectives of Clause 4.3 are:

- (1) The objectives of this clause are as follows:*

*(a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*

*(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas, including parks, streets and lanes,*

*(c) to minimise the adverse impact of development on heritage items, heritage conservation areas and areas of scenic or visual importance,*

*(d) to nominate heights that will provide a high quality urban form for all buildings and a transition in built form and land use intensity.*

The objective of Clause 4.1A could still be met by consolidation of the subject site with the adjoining land, however this has not occurred and it is premature to allow a variation without this occurring. Given the surrounding development and age of those buildings and form, it is unlikely that the full potential of an R4 zone will be achieved in this immediate area and as such the objective may not be easily achievable in this instance.

The objectives of Clause 4.3 are closely tied with SEPP 65 principles and the ADG, which are not being met by this proposal. The form of the building is not compatible with the existing and desired character of the immediate locality and amenity impacts such as privacy and visual impact cannot be avoided by the introduction of a 6 storey building adjoining 3-4 storey buildings, notwithstanding the additional impacts from the extra height from the variation to the height limit. The urban design of the building has also been considered to be inappropriate, with no transition to the existing buildings and limited opportunity to utilise landscaping to assist.

Having regard to the existing surrounding building sizes being 3-4 storeys, the provision of a much larger building being 6 storeys will be a stark contrast and as such should comply fully with the height controls to minimize amenity and visual impacts. Further, the size of the lot has resulted in a tight development in terms of the basement design, minimal room for landscaping or setbacks to all boundaries, no clear pathway network throughout the site for the residents and limited urban design of the building, essentially due to lot size and width being inadequate. The interface to adjoining buildings with a zero setback, need for amalgamation, in conjunction with the amenity impacts such as overlooking and overshadowing, does not warrant the variation of the minimum lot size or height control in this instance. The immediate area is unlikely to be redeveloped to 6 storeys given that the surrounding residential buildings comprise numerous owners. As such, the desired future character in the foreseeable future is likely to remain in its current

form. This further reiterates that the proposed 6 storey built form is not in keeping with the current or likely future character.

As indicated at the pre-lodgement stage, the discussions and negotiations regarding the inclusion of the closed road portion (Lot 18) need to occur before building design and owner's consent provided to allow the development to occur over both lots. In doing so, it is considered that the issue of minimum lot size and width inadequacy would be removed and the design can be carefully and holistically considered which is likely to result in a development which is also compliant in terms of height. It is not considered that a constrained site is a sufficient enough reason to vary the key planning controls such as minimum site area for this form of development and the height limit.

The application cannot be supported because the development standard for minimum lot size and maximum building height is not satisfied. The request to vary the Development standard under Clause 4.6 of the Penrith LEP does not demonstrate that compliance with the development standards is unreasonable or unnecessary, and the proposed development is not in the public interest

#### **Clause 5.9 Preservation of trees or vegetation**

An arborist report was submitted as part of the application and determined the 13 trees have low retention values and recommends all trees be removed. Council's Tree Management Officer reviewed the proposal and does not object to the proposed removal, subject to adequate compensatory planting.

#### **Clause 7.2 Flood planning**

The flood level to be adopted for the site is RL 27.5m AHD. This flood level has been considered against the flood level previously adopted by Council, the submitted flood report and photographic evidence of inundation of the site. However, the architectural plans show a finished floor level of RL 27.6m and yet a minimum RL 28.0m AHD is required, with basement entry levels at RL 27.8m AHD. The access points to the entrance, bin rooms and stairs will be required to be elevated 0.5m above the natural ground levels to achieve the required flood planning level.

Subsequently, the architectural plans would need to be amended and yet the raised floor level cannot be supported on planning grounds as it will further affect the proposed height variation which is not supported due to overbearing and amenity impacts.

Further, the entire site is also affected by an overland flow path and no filling is permitted within such a flow path which will result in potential adverse or offsite impacts. This means that the achievement of a suitable flood planning level is likely at odds with the implications and restrictions relating to the maintenance and preservation of existing overland flows.

As such the objectives of the flood planning clause are not currently considered to have been satisfied, more specifically 7.2(1) (e) as the existing flow conveyance capacity will be compromised.

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

Clause 7.4 of the PLEP 2010 requires the consent authority to have regard to the principles of sustainable development as they relate to the development based on a "whole of building" approach and requires the consent authority to consider each of the following:

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

The development proposal is not considered to comply with the clause having regard to the substantial amount of built form on the site and limited opportunity for landscaping surrounding the building. As the development is seeking to rely on an additional parcel for access (lot 18), a holistic review of both allotments as part of the overall design is likely to result in additional opportunities for improved landscaping, water measures and pedestrian connectivity. However, the application in its current form is not considered to satisfy this clause.

#### **Clause 7.7 Servicing**

The site is currently serviced and proposed development is capable of being serviced by way of extension of services. However, further investigations and negotiations are considered necessary by the applicant in order to resolve all servicing and access requirements in order to fully understand the constraints and design a building around these requirements. The proposal in its current form relies on vehicular access to the basement, waste collection truck movements and turning and pedestrian access to the main entry all occurring over Lot 18, without owner's consent being provided or the site incorporated into the development site, which is unacceptable.

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

### Development Control Plan 2014

Provision	Compliance
C1 Site Planning and Design Principles	Does not comply - see Appendix - Development Control Plan Compliance
C2 Vegetation Management	Complies
C3 Water Management	Does not comply - see Appendix - Development Control Plan Compliance
C4 Land Management	Complies
C5 Waste Management	Does not comply - see Appendix - Development Control Plan Compliance
C6 Landscape Design	Does not comply - see Appendix - Development Control Plan Compliance
C7 Culture and Heritage	Complies
C8 Public Domain	Does not comply - see Appendix - Development Control Plan Compliance
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Does not comply - see Appendix - Development Control Plan Compliance
C11 Subdivision	N/A
C12 Noise and Vibration	N/A
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

### *Part 8, Division 2, Clause 143*

In accordance with Clause 143 of the Regulations, an assessment of the fire protection and structural capacity of the proposed building is necessary. The application was referred to Council's Building Surveyors for assessment with no objections raised and it is assessed that the development as proposed may be capable of complying with the applicable provisions of the Building Code of Australia, subject to standard conditions of consent.

As the development application is recommended for refusal with regard to other matters, no such conditions are recommended.

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

Likely impacts of the proposed development as identified throughout the assessment process include the following:

### ***Groundwater Impacts***

The applicant was requested to provide a geotechnical report if the proposal was pursued however it was not submitted. As such, it has not been demonstrated that the proposal will be impacted upon by the water table or that the proposal will not have an adverse impact on the same.

### ***Streetscape Impacts and Landscaping***

The proposal has been assessed to be unacceptable with regard to streetscape impacts. Whilst there is no direct street frontage, the site and the proposed 6 storey building is highly visible from Station Lane (public portion) and further from Union Road and the public area to the south. The proposal does not adequately address the street frontage as it utilises a zero setback to the eastern boundary and is not considered to be sympathetic to the existing or future desired character of the area. The building is also considered to be inadequately landscaped. The location of service areas and basement entry on the ground floor is also highly visible which will detract from the proposed buildings presentation.

### ***Traffic and Car Parking***

The proposal is considered to have a negative and unacceptable impact on the availability of on-street car parking, in that the development does not allow for Council's waste trucks to enter and leave the site in a forward direction for the purposes of waste collection. There is also likely to be a reliance on on-street car parking spaces which are already in high demand. Refer to the appendix of this report for further discussion.

### ***Character, Bulk and Scale & Privacy Impacts***

The proposal will result in negative and unacceptable impacts related to bulk and scale. The proposed flat building will have negative overbearing, over shadowing and privacy impacts on neighbouring sites. The height being 6 storeys and insufficient levels of landscaping will also contribute to the prominence of the building in relation to its surrounds.

### ***Tree Management***

The arborist has determined that the trees on the subject site have low retention values and recommends all trees be removed. However, it is considered that the proposed replacement trees are inadequate and have a potential to reach only 7 to 8 metres and will be dwarfed by the 19m Building. It is considered more appropriate that any landscape plan include some taller growing species that should not be located near the boundary. This further reinforces the need for further areas of planting around the building on all sides and the deficiencies with the current scheme.

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

The site is not suitable for the following reasons:

- Although the development for the purposes of residential flat buildings is permissible within the R4 High Density Residential zone, the scale of the proposed development design is not compatible with or sympathetic to the context of the site.
- It is not demonstrated that the development is representative of the future desired character of the area;
- It is not demonstrated by the submitted plans that the site can adequately manage waste storage or collection in an acceptable or compliant manner;
- It is not demonstrated that the development has suitable or legal access arrangements in place to the site for vehicles or pedestrians; and
- The selected site is unable to accommodate the development as proposed within an acceptable building envelope or as envisaged by the applicable controls for the site.
- The subject lot does not meet the minimum lot requirements for a residential flat building and the proposed built form is not considered and appropriate design solution.

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

### **Community Consultation**

In accordance with Clause 4.4 of Appendix F4 of Penrith Development Control Plan 2010, the proposed development was notified to nearby and adjoining residents and exhibited and advertised between 14 September 2018 and 28 September 2018. Council has received eleven (11) submissions from the adjoining owners (including two separate submissions from the one person), in response.

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

Issue Raised	Comment
Parking problems already and insufficient parking proposed. No visitor parking proposed. Limited on-street parking already being utilised.	Car parking is provided in excess of the requirements and includes visitor parking.
Station Lane very tight and already congested (mainly after 6pm). Two cars cannot pass. Access problems. Will impact on existing residents already using Station Lane and it is their only entry/exit. Union Rd experiences heavy traffic. Development close to intersection with additional traffic will make it harder for existing residents to enter / exit.	The Local Traffic Committee is reviewing these concerns separately to this DA. Access to the site is via Station Lane and any future development will continue the same. However, the current proposal is considered excessive in size and will contribute to the congestion beyond a reasonably expected timeframe.
Waste truck won't be able to turn around.	This issue has been identified as part of the assessment and the application is recommended for refusal.
No room for deliveries to the site e.g. removalist, fast food, taxi.	This issue has been identified as part of the assessment and the application is recommended for refusal.
What will be given back to the community if the developer acquires this land (Lot 18).	The negotiations for purchase of the land occur separately to the DA process and it is considered they should be finalised before lodgement. In doing so, Council's Property Section undertakes valuations and the appropriate price for the land determined. Consequently, Council then has the opportunity to allocate funds for projects.
Developer should fix Station Lane which is falling apart as part of this development, including kerb and gutter.	Should the application be recommended for approval, works would likely be required within Station Lane. However, the application is recommended for refusal.
Construction traffic, noise and dust issues.	Should the application be recommended for approval, restrictions would have been imposed regarding construction activities. However, the application is recommended for refusal.
Bioretention basin is in Common Open Space.	This issue has been identified as part of the assessment and the application is recommended for refusal.
Overdevelopment, too many units. Out of character.	This issue has been identified as part of the assessment and the application is recommended for refusal.
Loss of natural daylight to units at 28A Union Rd and 30 Union Rd.	The full impact of solar access impacts are not certain as complete shadow diagrams were not provided.
Overshadowing.	This issue has been identified as part of the assessment and the application is recommended for refusal.
Lack of infrastructure for extra people.	This issue has been identified as part of the assessment and the application is recommended for refusal.
Safety issues from extra cars.	The proposal cannot accommodate all required parking within the basement due to maneuverability issues.
Recent tree removal by Council makes this proposal visible. Wants replacement tree.	This issue is separate to the DA assessment. However the assessment did identify the need for additional landscaping around the building to assist with screening for adjoining properties.
Height not in keeping with 3-4 storeys surrounding. 6 storeys too imposing.	This issue has been identified as part of the assessment and the application is recommended for refusal.
Overlooking, privacy and light loss.	This issue has been identified as part of the assessment and the application is recommended for refusal.



Ramifications from earthworks for basement and vibrations, including damage to existing buildings. Some buildings already undergone treatment and risk to their structural integrity. Will the developer's insurance cover this damage? Damage to stormwater channel.	Should the application be recommended for approval, conditions would likely be required regarding dilapidation reports and geotechnical reports associated with the excavation. However, the application is recommended for refusal.
Notification should have included residents of 28A Union Rd.	Council records indicate that 28A Union Rd was notified.
Site unsuitable for basement parking due to flooding. Channel overflows many times into existing units.	Council's Engineer has requested minimum floor levels of habitable areas in order to address flooding issues.
Land too small to support a building of this size and on a battle-axe.	The request to vary the minimum lot size and height limit is not being supported by Council in the assessment of the DA.
No Parking restrictions along western side of lane in unnecessary.	This issue is to be dealt with by the Local Traffic Committee, separately to this DA.

## Referrals

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

Referral Body	Comments Received
Building Surveyor	No objections - subject to conditions
Development Engineer	Not supported
Landscape Architect	Not supported
Environmental - Environmental management	No objections - subject to conditions
Environmental - Waterways	Not supported, however conditions provided
Waste Services	Not supported
Traffic Engineer	Not supported
Community Safety Officer	No objections - subject to conditions
Tree Management Officer	Not supported, however conditions provided

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

The proposed development has been assessed to be contrary to the primary aims, objectives and controls of the applicable planning instruments and will result in negative and unacceptable impacts in the locality and as such, support of the proposal would not be in the public interest.

## Section 94 - Developer Contributions Plans

The following development contributions plans apply to the development proposal:

- Cultural Facilities Section 94 Development Contributions Plan, adopted 5 May 2003;
- Penrith City District Open Space Facilities Development Contributions Plan, adopted 17 December 2007; and
- Penrith City Local Open Space Section 94 Development Contribution Plan, adopted 25 June 2007.

As the development application is recommended for refusal, a condition related to development contributions payable, is not recommended or provided.

## **Conclusion**

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The development application has been assessed against the relevant environmental planning policies including State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development, Penrith Local Environmental Plan 2010 and Penrith Development Control Plan 2014. The development proposal does not satisfy the primary aims, objectives and provisions of these policies and is found to be contrary to the primary design criteria and design guidance statement of the Apartment Design Guide.

The proposal will have a negative impact on the surrounding character of the area owing to the proposed bulk and scale, limited opportunities for landscaping around the building and unresolved issues relating to legal access to the site and purchase of the adjoining parcel of land. The accompanying 4.6 variation in relation to minimum lot size and building height are not considered to be well founded and are not supported in this instance.

It is for the above reasoning that support of the development application would not be in the public interest and would set an undesirable precedent given the level of non-compliance and related impacts. The application is recommended for refusal for the attached reasons.

## **Recommendation**

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1. That DA18/0860 for the demolition of all structures, tree removal and construction of a Demolition of Existing Structures & Construction of Six (6) Storey Residential Flat Building including 17 Apartments & Two (2) Levels of Basement Car Parkin at 1 Station Lane, Penrith be Refused for the following reasons; and
2. That those making submissions are notified of the determination.

## Refusal

### 1 X Special 01 (Refusal under 4.15(1)(a)(i) of EPA Act 1979)

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

1. The proposal is inconsistent with the aims of the plan (Clause 1.2) in particular, those relating to Council's commitment to the provision of healthy, safe communities, environmental protection and enhancement. The application fails to demonstrate how the design meets the current and emerging needs of Penrith's communities and safeguards residential amenity.
2. The proposal is inconsistent with the zone objectives for the R4 High Density Residential zone, specifically:
  - (a) the proposal does not ensure that a high level of residential amenity is achieved and maintained; and
  - (b) the proposal does not represent or reflect the desire future character and dwelling densities of the area.
3. Clause 4.1A Minimum Lot Size is not satisfied.
4. Clause 4.3 Maximum Height of Buildings is not satisfied.
5. Clause 4.6 Exceptions to Development Standards is not satisfied.
6. Clause 7.2 Flood Planning is not satisfied.
7. Clause 7.4 Sustainable Development is not satisfied.
8. Clause 7.7 Servicing is not satisfied.

### 2 X Special 02 (Refusal under Section 4.15(1)(a)(i) of EP&A Act 1979)

The application cannot be supported because the development standard for minimum lot size is not satisfied. The request to vary the Development standard under Clause 4.6 of the Penrith LEP does not demonstrate that compliance with the development standards is unreasonable or unnecessary, and the proposed development is not in the public interest.

### 3 X Special 03 (Refusal under Section 4.15(1)(a)(i) of EPA Act 1979)

The application cannot be supported because the development standard for maximum building height is not satisfied. The request to vary the development standard under Clause 4.6 of the Penrith LEP does not demonstrate that compliance with the development standard is unreasonable or unnecessary, and the proposed development is not in the public interest.

4 [X Special 04 \(Refusal under Section 4.15\(1\)\(a\)\(i\) of EPA Act 1979\)](#)

The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with the following provisions of the State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development and the accompanying Apartment Design Guide in that:

(i) the proposal fails to demonstrate that the design is representative of the following Design Quality Principles listed under Schedule 1:

- (a) Principle 1: Context and Neighbourhood Character
- (b) Principle 2: Built Form and Scale
- (c) Principle 3: Density
- (d) Principle 5: Landscape
- (e) Principle 6: Amenity
- (f) Principle 7: Safety

(ii) the proposal does not comply with the applicable provisions of the Apartment Design Guide including the objectives and design guidance statements in particular those related to:

- (a) Communal open space provision
- (b) Public Domain Interface (as they relate to CPTED)
- (c) Deep soil zones
- (d) Visual Privacy- Separation Distances
- (e) Solar access
- (f) Landscape design
- (g) Facades
- (h) Waste management.

5 [X Special 05 \(Refusal under Section 4.15\(1\)\(a\)\(iii\) of EPA Act 1979\)](#)

The application is not satisfactory for the purpose of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with the following provisions of Penrith Development Control Plan 2014:

(i) The proposal is not satisfactory having regard to the objectives and controls under Section D2 Residential Development - Residential Flat Buildings, specifically:

- (a) Part D2.5 - Residential Flat Buildings,
- (b) Part C1 Site Planning and Design Principles in particular context, amenity and streetscape character,
- (c) Part C3 Water Management,
- (d) Part C5 Waste Management,
- (e) Part C6 Landscape Design,
- (f) Part C8 Public Domain, and
- (g) Part C10 Transport, Access and Parking in particular, service vehicle parking provision.

6 [X Special 06 \(Refusal under Section 4.15\(1\)\(a\)\(iv\) of EPA Act 1979\)](#)

The application is not satisfactory for the purpose of Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act as the proposed development was not accompanied by all of the information as required under Schedule 1 Forms of the Regulations including:

- Inadequate owner's consent has been provided relating to Lot 2B DP161921 and Lot 18 DP 1220719.

7 [X Special 07 \(Refusal under Section 4.15\(1\)\(b\) of EPA Act 1979\)](#)

The application is not satisfactory for the purpose of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 due to the negative impacts likely to result from the proposed development related to:

- (i) streetscape and local character,
- (ii) limited landscaping and deep soil zones,
- (iii) traffic, access and car parking,
- (iv) bulk, scale and overbearing,
- (v) solar access and privacy,
- (vi) waste management ,
- (vii) amenity, safety and security, and
- (viii) communal open space.

8 [X Special 08 \(Refusal under Section 4.15\(c\) of EPA Act 1979\)](#)

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

9 [X Special 09 \(Refusal under Section 4.15\(1\)\(d\) of EPA Act 1979\)](#)

The application is not satisfactory for the purpose of Section 4.15(1)(d) of the Environmental Planning and Assessment Act 1979 due to matters raised in received submissions which include traffic and access impacts, flooding, overdevelopment, character, overshadowing impacts, privacy loss and impacts during and post construction including damage to adjoining buildings.

10 [X Special 10 \(Refusal under Section 4.15\(1\)\(e\) of EPA Act 1979\)](#)

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

# Appendix - Development Control Plan Compliance

## Development Control Plan 2014

### Part C - City-wide Controls

#### C1 Site Planning and Design Principles

In addition to the proposal being assessed as being not consistent with the height, general scale of adjacent buildings of a similar type and use, the presentation of the development to the street, including the zero front setback to the east and inability of the design to provide a meaningful and sustainable area for landscaping is not supported and is contrary to this Section of the DCP.

Section C1 of the DCP states that the building façade treatment shall promote a high architectural quality and adopt a façade treatment which defines, activates and enhances the public domain and street character. The DCP also states that façade design shall express important corners by giving visual prominence to parts of the façade and should add to articulation. It is acknowledged that the site has no street frontage, but due to the size and scale of the proposed building, it will be visible from the road and the public domain. In addition, the proposed façade treatments and materials and finishes do not assist to break up bulk or substantially add to the articulation of the building.

Submitted shadow diagrams do not take into consideration existing development around the site and in this respect a thorough assessment of the suitability of the bulk and scale of the development cannot be undertaken.

Clause 1.2.5 relates to the principles of Crime Prevention Through Environmental Design (CPTED). The proposal is not acceptable having regard to this section of the DCP with areas for concealment provided especially to the ground floor lobby area. The entry is concealed within the building due to the zero setback and the lift doors do not face the lobby at the ground floor which will create safety concerns.

#### C3 Water Management

Inadequate information has been submitted with the development application to allow a proper assessment of the proposal with respect to compliance with the requirements of Council's WSUD Policy with respect to the inclusion of Lot 18, which is necessary for access to the site.

#### C5 Waste Management.

The development proposal does not comply with the requirements of the DCP in terms of waste management. It is also noted that the proposed waste storage facility relies on access over Lot 18, which is not part of this application noting also that no owner's consent has been provided.

#### C6 Landscape Design

The development proposal is inconsistent with the provisions of this section of the DCP in that:

- (a) Landscaping along the frontage (eastern side) of the site is limited and is not representative of the desired future character of the area. Landscaping design does not enhance the amenity of the site or streetscape and is not adequately co-located with deep soil. Insufficient areas around the perimeter of the site or within the deep soil area are provided for canopy tree planting.
- (b) Proposed landscaping does not assist in moderating the bulk or scale of the development and does not positively contribute to the amenity of the site or mitigate against the negative impacts of overlooking or overbearing.
- (c) The proposed landscaping does not assist in screening utility / waste areas.
- (d) Deep soil shown on the architects plans does not take into consideration the location of the drainage basin and the planting achieved in that area being predominantly groundcovers.

#### C8 Public Domain

The proposal will be highly visible from the public domain to the south and as discussed within this report is not considered to provide for a built form presentation.

#### C10 Transport, Access and Parking

The ADG requires a reduced parking rate as the site is within 800m of a railway station. 10 resident spaces and 3 visitor spaces are required, and 14 spaces in total are provided, including 2 accessible spaces satisfying the requirement. However, the shared zone between the 2 accessible spaces is proposed to also be used as a turning bay which does not comply with Australian Standard 289.6.

Although the shared zone has been proposed, the AS2890.6 2009 does define 'shared area' as *an area adjacent to a dedicated space provided for access or egress to or from a parked vehicle and which may be shared with any other purpose that does not involve other than transitory obstruction of the area, e.g. a walkway, a vehicular aisle, dual use with another adjacent dedicated space*. It is not considered that the shared area can be located within the circulation space of the trafficable aisle due to resulting safety implications. A separate turning bay is therefore required and has not been provided with the current design.

In addition, as the basements are accessed via a car lift, this is not likely to be attractive to visitors and they will likely choose to park elsewhere along the existing road network. There is limited opportunity given that the site does not have direct road frontage and there area already a large number of units utilising Station Lane and experiencing parking issues. Council's Development Engineer's have requested that the lane be widened to 2 way traffic and the Local Traffic Committee has recently endorsed a proposal to implement "No Parking" restrictions along the western side of the Lane. The basement levels are accessed via a car lift to manufacturers details and associated traffic signal system and a 'waiting bay' is provided on each basement level. However, access is not available for waste collection vehicles.

A separate turning bay is required but has not been provided with the current design as the proposed Hercules Turn table is not supported in its current form due to the following: –

- The applicant has not demonstrated how the turntable is to be operated in the event of a power outage/blackout;
- The Traffic Management and use/operation of the turntable has not been demonstrated;
- Swept path analysis for vehicles entering and exiting the lift has not been provided, considering the queuing areas;

Swept paths are provided in the traffic report demonstrating that B85 vehicles have tight but acceptable manoeuvring in the basement, provided another vehicle is not occupying the 'waiting bay'. This is not considered a practical solution with the possibility that this may occur.

The development does not provide for a service space for the benefit of future occupants which is not supported given the circumstances of the site and constraints.

## **D2 Residential Development**

The proposal has been assessed against the applicable provisions of the chapter and is found to be unacceptable. Particular clauses are discussed below:

#### *Landscaped Area*

The proposal is contrary to the controls of the clause in that the proposal does not provide effective landscape screening between the subject building and neighbouring dwellings and does not incorporate a high quality landscaped to all setbacks, in particular to the east, north or south. The building and setbacks are not contextually sympathetic and is dominated by hardstand areas, basement and waste infrastructure access and insufficient deep soil is provided to allow for canopy tree planting due to the detention basin.

#### *Front and Rear Setbacks*

Whilst there is no clear front setback, there is a front elevation of the building, which has utilised a zero setback which is not usual for the surrounding development. The DCP states that setbacks are to reflect the character of established garden suburbs and provide for development of flora and fauna corridors. The proposal does not comply with the DCP requirement with the resulting effect along the eastern edge and onto the adjoining Lot 18 (if incorporated) being predominantly hardstand with no landscape design. Little area is provided for substantial landscaping which may contribute to streetscape amenity.

#### *Visual and Acoustic Privacy*

The development does not demonstrate that negative privacy and overbearing impacts will not result, related to the built form and balconies up to boundaries. It is not demonstrated that the design responds appropriately to the small site size.

#### *Building Design*

The development does not incorporate sufficient architectural articulation or façade variation to adequately address the bulk and scale of the building. The building design results in overbearing and privacy impacts for existing adjoining buildings. The building is not affectively landscaped. Common open space and deep soil planting is restricted due to the detention basin.

The entry is located deep into the site and is via the eastern side boundary, with the issue of vehicular and pedestrian access over Lot 18 still unresolved and this area not adequately designed due to this uncertainty. The entry way is narrow and limited opportunity is provided for social interaction. Safety and security impacts related to its design are also discussed elsewhere in this report.

#### *Garden Design*

The setbacks do not include sufficient landscaping to soften the building or contribute to streetscape or amenity. The proposal does not comply with this Clause in that the development does not contribute to a canopy of interlocking trees and shrubs and does not provide gardens appropriate for the established neighbourhood character.

#### *Paving Design*

The proposed streetscape presentation does not provide for an attractive 'address' or minimise widths of driveway and hardstands along the frontage of the site, or in this instance through Lot 18.