

SWCPP Ref. No.:	PPSSWC-121
DA No.:	DA20/0824
PROPOSED DEVELOPMENT:	Demolition of Existing Structures, Tree Removal & Construction of Two (2) Residential Flat Buildings (5 Storey Building & 6 Storey Building) comprising of 128 Apartments, above Two (2) Basement Levels - Lot 46 DP 1269780 46 Evan Street, PENRITH NSW 2750 44 Evan Street, PENRITH NSW 2750 42 Evan Street, PENRITH NSW 2750 96 Lethbridge Street, PENRITH NSW 2750 98 Lethbridge Street, PENRITH NSW 2750 46 Evan Street, PENRITH NSW 2750
Property address:	46 Evan Street, PENRITH NSW 2750 44 Evan Street, PENRITH NSW 2750 42 Evan Street, PENRITH NSW 2750 96 Lethbridge Street, PENRITH NSW 2750 98 Lethbridge Street, PENRITH NSW 2750 46 Evan Street, PENRITH NSW 2750
Property description:	Lot 46 DP 1269780
Date received:	7 December 2020
Assessing officer	Robert Walker
Zoning:	Zone R4 High Density Residential - LEP 2010
Class of building:	Class 2 , Class 7a
Recommendations:	Refuse
APPLICANT:	Devcon Partners Pty Ltd
REPORT BY:	Robert Walker, Senior Development Assessment Officer, Penrith City Council

Assessment Report

Executive Summary

Council is in receipt of Development Application No. 20/0824, which seeks Development Consent for the construction of 2 residential flat buildings (a 5 storey building and a 6 storey building), comprising of a total of 128 apartments, above two (2) levels of shared basement parking, at the subject site. The site has frontages to both Evan and Lethbridge Streets, is known as No. 46 Evan Street, Penrith and comprises of a single allotment which was registered in February 2021, following the consolidation of 8 lots.

The site is located close to the Penrith City Centre, approximately 1.2km (walking distance) to the south east of the Penrith Railway Station, and is zoned 'R4 – High Density Residential' pursuant to the Penrith Local Environmental Plan 2010. The proposed development is defined as a 'Residential Flat Building', which is a form of 'Residential Accommodation', which is permissible in the 'R4 – High Density Residential' zone.

The site has an overall area of approximately 6,860sqm, and contains areas of native vegetation, which includes elements of Cumberland Plain Woodland. The site is dissected by a drainage channel / easement, which flows in

a westerly direction, and is flood affected.

The proposal was subject to a pre-lodgement review by Council's Urban Design Review Panel, with advice issued on 30 March 2020 and supplementary advice provided on 1 September 2020. The subject Development Application was then lodged on 7 December 2020 and the application presented again to Council's Urban Design Review Panel for advice. It is noted that the application as lodged, comprised of a total of 133 apartments. Subsequently two detailed letters were issued to the Applicant, to which the Applicant provided responses, including submission of amended plans and additional information. A further review was undertaken by Council's Urban Design Review Panel.

The application was exhibited, advertised and notified in accordance with the Penrith City Council Community Engagement Strategy, and four submissions were received. There are several matters raised within the submissions, which the application has failed to adequately address.

Key issues that have been identified as a result of the assessment and which remain unresolved, include:

- That the application has failed to demonstrate that the development would not result in a significant impact on Cumberland Plain Woodland.
- It is unclear if the proposal exceeds the biodiversity offsets scheme threshold, pursuant to the provisions of Part 7 of Biodiversity Conservation Act 2016.
- The proposed height of 20.93m, contravenes the maximum building height of 18m, pursuant to Clause 4.3 of the Penrith Local Environmental Plan 2010 and the applicant's written request to vary the development standard is not supported.
- The proposal does not include sufficient tree plantings that are in keeping with the scale of the proposed development.
- Elements of the development require further design resolution owing to level changes and narrow deep pathways (i.e. narrow access pathways, insufficient circulation spaces and associated foyer entry points, interfaces between private and common areas are not designed to address amenity and likely privacy impacts).
- The proposal does not adequately respond to the adjoining locally listed Heritage Item.
- The application fails to address and determine the impact of the proposal on flood behaviour / characteristics as a result of future climate change, and it is unclear whether the proposal satisfies the provisions of Clause 5.21 of the Penrith Local Environmental Plan 2010.
- The proposal includes works within the alignment of the Council's Trunk Drainage System (drainage channel / easement) and the impact of the works upon such is unclear.
- The application fails to demonstrate that the layout is adequate from an operational waste management and collection perspective.
- The proposal does not comply with and fails to demonstrate compliance with Part C1 (Site Planning and Design Principles), Part C2 (Vegetation Management), Part C3 (Water Management), Part C5 (Waste Management), Part C6 (Landscape Design) and Part D2.5 (Residential Flat Buildings) of the Penrith Development Control Plan 2014.

The Capital Investment Value of the proposed development has been estimated as being \$41,798,012, accordingly (as such is more than \$30 million is) pursuant to Section 2.19 and Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021, the proposal is declared to be 'Regionally Significant Development'. Therefore pursuant to Clause 4.5 (b) of the Environmental Planning and Assessment Act 1979, the Sydney Western City Planning Panel is the 'Consent Authority'.

The application has been assessed in accordance with the matters for consideration under Section 4.15 of the Environmental Planning & Assessment Act 1979, and it is recommended that the application be determined (in accordance with Section 4.16), by way of refusing consent.

Site & Surrounds

The subject site is known as No. 46 Evan Street, Penrith, and comprises of a single allotment, legally described as Lot 46 in DP 1269780. The site is located adjacent to the Penrith City Centre, approximately 1.2km (walking distance) to the south east of the Penrith Railway Station. The allotment was registered in February 2021, following the consolidation of 8 lots, is irregular in shape, and has frontages to both Evan and Lethbridge Streets.

The site has an overall area of approximately 6,860sqm, is relatively flat (between RL34.2m and RL37.26m) and contains areas of native vegetation, which includes elements of Cumberland Plain Woodland. The site is dissected by a drainage channel / easement, which flows in a westerly direction.

The street block bounded by Evan Street, Lethbridge Street, Doonmore Street and Derby Street, currently contains older low and medium density residential developments. The land immediately to the south east contains a multi dwelling housing development, and the land immediately to the south west (at No. 163 Derby Street) contains a 'Victorian Cottage' which is listed as a Heritage Item (Item No. 698, within Part 1 of Schedule 5 of the Penrith Local Environmental Plan 2010) that is used as a health services facility (a dental clinic). Other adjacent development includes residential flat building development, dwelling houses and community facilities.

Proposal

The Development Application proposes the construction of 2 residential flat buildings (a 5 storey building and a 6 storey building), comprising of a total of 128 apartments, above two (2) basement levels.

Specific details of the proposed development are as follows:

Building A - addressing Evan Street

Lower Level Basement

- Containing 62 car parking spaces (51 resident spaces, 7 accessible resident spaces and 4 service spaces).
- Individual residential storage compartments.
- 2 waste / bin rooms, which are connected to bin chutes.
- 2 plant rooms.

Upper Level Basement

- Containing 57 car parking spaces (36 resident spaces, 4 accessible resident spaces, 14 visitor spaces, 1 accessible visitor space and 2 combined car wash or visitor spaces).
- 4 motorbike spaces.
- Bicycle racks.
- Individual residential storage compartments.
- 4 plant rooms.

This equates to a total of 119 car parking spaces, comprising of 87 resident spaces, 11 accessible resident spaces, 14 visitor spaces, 1 accessible visitor space, 2 combined car wash or visitor spaces and 4 service spaces.

It is noted that the basement is accessed via a two-way driveway from Evan Street and is connected at the Lower Basement Level to the basement of 'Building B' by a 2m wide tunnel.

Ground Floor / Level

- 2 foyer areas, each servicing a lift and the 2 respective cores.
- A common lounge / multi-purpose room
- 15 residential apartments, 5 x 1 bedroom apartments, 8 x 2 bedroom apartments and 2 x 3 bedroom apartments.
- Provision for a substation.
- Adjacent alfresco areas.
- Playground areas.
- Ball court.
- Site landscaping.

First, Second and Third Floors

- Each contains 16 residential apartments, 3 x 1 bedroom apartments 10 x 2 bedroom apartments and 3 x 3 bedroom apartments.

Fourth Floor

- Contains 13 residential apartments, 2 x 1 bedroom apartments, 9 x 2 bedroom apartments and 2 x 3 bedroom apartments.
- An open communal open space area approximately 205sqm in area, including associated landscaping.

Fifth Floor

- Contains 7 residential apartments, 6 x 2 bedroom apartments and 1 x 3 bedroom apartment.
- 2 x open communal open space areas, an area approximately 313sqm in area and an area approximately 163sqm in area, including alfresco areas and associated landscaping.

This equates to 83 residential apartments, 16 x 1 bedroom apartments, 53 x 2 bedroom apartments and 14 x 3 bedroom apartments. It is noted that 21 of the apartments are 'livable' and 11 are also 'adaptable apartments'. The layout includes the provision of 2 lifts, which provides access to all of the aforementioned levels, and is in 2 cores (which are separated at all levels apart from at the Fifth Floor).

Building B - addressing Lethbridge Street

Lower Level Basement

- Containing 30 car parking spaces (30 resident spaces).
- Bicycle racks.
- Individual residential storage compartments.
- 2 waste / bin rooms, which are connected to bin chutes.
- Bin storage room.
- Bulky waste items storage room.
- Truck turntable.

Upper Level Basement

- Containing 30 car parking spaces (20 resident spaces, 1 accessible resident space, 7 visitor spaces, 1 accessible visitor space and 1 combined car wash or visitor spaces).
- 2 motorbike spaces.
- Individual residential storage compartments.

This equates to a total of 60 car parking spaces, comprising of 50 resident spaces, 1 accessible resident space, 7 visitor spaces, 1 accessible visitor space and 1 combined car wash or visitor spaces.

It is noted that the basement is accessed via a two-way driveway from Lethbridge Street and is connected at the Lower Basement Level to the basement of 'Building A' by a 2m wide tunnel.

Ground Floor / Level

- 2 foyer areas, each servicing a lift and the 2 respective cores.
- 9 residential apartments, 8 x 2 bedroom apartments and 1 x 3 bedroom apartment.
- Provision for a fire booster / hydrant.
- Adjacent alfresco areas.
- Site landscaping.

First, Second and Third Floors

- Each contains 10 residential apartments, 7 x 2 bedroom apartments and 3 x 3 bedroom apartments.

Fourth Floor

- Contains 6 residential apartments, 5 x 2 bedroom apartments and 1 x 3 bedroom apartment.
- An open communal open space area approximately 214sqm in area, including associated landscaping.

This equates to 45 residential apartments, 34 x 2 bedroom apartments and 11 x 3 bedroom apartments. It is noted that 4 of the apartments are 'livable' and 1 is also an 'adaptable apartment'. The layout includes the provision of 2 lifts, which provides access to all of the aforementioned levels, and is in 2 cores (which are separated at all levels).

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Precincts—Western Parkland City) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy No 65—Design Quality of Residential Flat Development

Planning Assessment

- **Section 1.7 - Application of Part 7 of Biodiversity Conservation Act 2016**

The site has been identified as containing tree species and groundcover vegetation that are characteristic of Cumberland Plain Woodland, which is a threatened ecological community.

Pursuant to Section 1.7 of the Environmental Planning & Assessment Act 1979, consideration is to be given to the provisions of Part 7 of Biodiversity Conservation Act 2016.

In accordance with Section 7.2, development is likely to significantly affect threatened species, if:

it is likely to significantly affect threatened species or ecological communities, or

their habitats, according to the test in section 7.3, or the development exceeds the biodiversity offsets scheme threshold if the biodiversity offsets scheme applies to the impacts of the development on biodiversity values, or

it is carried out in a declared area of outstanding biodiversity value.

The application has been accompanied by a Flora & Fauna Assessment Report, included a (Five Part) Test of Significance (prepared by an Ecological Consultant). Assessment of such by Council's Senior Biodiversity Officer, found that the Test of Significance, was not prepared in accordance with the Threatened Species Test of Significance Guidelines (prepared by the NSW Office of Environment and Heritage).

Deficiencies included, that such has not considered, or defined what and where is the local occurrence of Cumberland Plain Woodland, noting that the Cumberland Plain Woodland within the development site forms part of the local occurrence. In accordance with the Threatened Species Test of Significance Guidelines, local occurrence should be interpreted as, *the ecological community that occurs within the study area. However, the local occurrence may include adjacent areas if the ecological community on the study area forms part of a larger contiguous area of that ecological community and the movement of individuals and exchange of genetic material across the boundary of the study area can be clearly demonstrated.* The Test of Significance, does not discuss whether the entire occurrence of Cumberland Plain Woodland on the subject site is to be removed or what will be retained. Accordingly, it is considered that the application fails to demonstrate that the development would not result in a significant impact on Cumberland Plain Woodland.

In addition to the Flora & Fauna Assessment Report, further supplementary information was provided in relation to the extent of native vegetation to be affected. It is noted that neither accurately identify the impact to Cumberland Plain Woodland and other native vegetation, and therefore it is unclear whether the development triggers the area clearing threshold (of 0.25 hectare for the site). Regard has not been given to a row of *Ehretia acuminata* (Koda) or a *Melia azedarach* tree, and therefore it is unclear if the proposal exceeds the biodiversity offsets scheme threshold (pursuant to Sections 7.4 & 7.7).

- **Section 2.12 – Sydney Western City Planning Panel (SWCPP)**
- **Section 4.15 - Evaluation**

The proposed development has been assessed in accordance with the matters for consideration under Section 4.15 of the Environmental Planning & Assessment Act 1979, and having regard to such, the following have been identified for consideration.

Section 4.15(1)(a)(i) The provisions of any environmental planning instrument

State Environmental Planning Policy (Biodiversity and Conservation) 2021

An assessment has been undertaken of the proposal against the relevant criteria within Chapter 9 (Hawkesbury - Nepean River), which found the proposal to be satisfactory in this regard.

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

A BASIX Certificate (No. 1158135M) has been provided for the proposal and relevant commitments made on the accompanying Architectural Plans.

It is therefore considered that the proposal is acceptable in regard to State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.

State Environmental Planning Policy (Planning Systems) 2021

The Capital Investment Value of the proposed development has been estimated as being \$41,798,012, accordingly (as such is more than \$30 million is) pursuant to Section 2.19 and Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021, the proposal is declared to be 'Regionally Significant Development'. Therefore pursuant to Clause 4.5 (b) of the Environmental Planning and Assessment Act 1979, the Sydney Western City Planning Panel is the 'Consent Authority'.

State Environmental Planning Policy (Precincts—Western Parkland City) 2021

The site is located within the 'Obstacle Limitation Surface' area. It is noted that the proposal does not penetrate the identified prescribed air space and accordingly no further assessment is required pursuant to Clause 4.22.

Accordingly the proposal is considered to satisfy the provisions of State Environmental Planning Policy (Precincts-Western Parkland City) 2021.

State Environmental Planning Policy (Resilience and Hazards) 2021

A review of Council records indicates that the current and long-time use of the site has been limited to residential purposes. Therefore the proposal does not involve a 'change of use'. Additionally it is noted that the site is not located within an investigation area. Accordingly, it is considered that the proposal satisfies the provisions of State Environmental Planning Policy (Resilience and Hazards) 2021. Notwithstanding this, it is noted that should Development Consent be issued, it is considered that it would be necessary for relevant associated conditions to be imposed, in relation to safe working practices and protocols, for handling, disposal and in the event of unexpected finds.

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

State Environmental Planning Policy No. 65 applies to 'residential flat building' developments, that involve the construction of a new building, which is at least 3 storeys and contains 4 or more dwellings.

Pursuant to Clause 28 (2) (b) of State Environmental Planning Policy No. 65, consideration must be given to the design quality of the development, by evaluating such against a number of 'Design Quality Principles'. The following provides responses to the 'Design Quality Principles'.

Principle 1: Context and Neighbourhood Character

It is considered that the proposal does not provide an acceptable design response at the ground level. The design of the front setback to Lethbridge Street includes excessive ramping with balustrades and does not setback a full 5.5m from the boundary. Accessible entry from Evan Street is not equitable and is poor in amenity and not DDA compliant. The finished levels to main lobby areas are not adequately addressed or responded to with stairs provided at the highest point along the frontages, narrow pathways and lobby entry

points. Lobby entry points are hidden from direct view to the street. Direct access to the street to main lobby areas or individual apartment is not provided.

Principle 2: Built Form and Scale

The overall built form of the development is considered acceptable noting that the ground floor layout out and response to levels needs further resolution. The development provides an acceptable level of internal amenity to the majority of apartments in that natural cross-flow ventilation and solar access are prevalent in the majority of apartments. Notwithstanding this aspect, the development need resolution in particular the relationship of balcony areas to communal open spaces and common areas to ensure visual and acoustic privacy is addressed and protected.

The built form has had regard to the development potential of neighbouring sites.

Principle 3: Density

While the proposal exceeds the 'maximum building height' Development Standard, of the Penrith Local Environmental Plan 2010, it is noted that the proposal satisfies other key density related provisions, such as the applicable minimum separation distance requirements (of Objective 3F-1 (1) of the 'Apartment Design Guide'), street building setback requirements and the minimum landscaped area requirements of the Penrith Development Control Plan 2014.

Principle 4: Sustainability

The development is considered to have been designed to provide natural ventilation and solar access to an acceptable minimum standard. The communal open space proposed on the upper levels and at ground floor will allow opportunity for solar access providing an attractive recreation area for the residents, noting that interface issues of privacy and noise need further resolution.

Furthermore, the proposal utilises a variety of building materials, including materials with low embodied energy and materials of low reflectivity.

Principle 5: Landscape

While the overall layout provides substantial deep soil type areas, substantial overall landscaped areas and includes upper level gardens, the following related issues have been identified:

- The proposed palette of trees do not compliment the scale of the development.
- Proposed trees could be better aligned when having regard to existing street trees.
- Elements of the overall landscaping scheme are unlikely to thrive.
- Ramping and levels in the front setback and through out the ground floor are not sufficiently responded to through landscaping treatments, and wide open paths of travel and interface treatments between private courtyards and balconies are fully reliant on landscaping as the only buffer, which will not be effective in responding to noise and privacy impacts.

Principle 6: Amenity

It is considered that the amenity provided to the majority of apartments is of an acceptable standard, given the apartment sizes and layouts, the level of cross-ventilation, northern aspect and general outlook. Furthermore, the provision of substantial upper level communal open space areas provide attractive recreation areas for residents. Notwithstanding this, the following amenity related issues have been identified and are not sufficiently addressed:

- The front core of 'Building A' is not provided with an access path for people with a disability at the

Ground Floor / Level.

- The indirect nature of the accessible pathway to the rear core of 'Building B'.
- The circulation spaces and associated entry points to the foyer areas, include narrow corridors and approaches.
- The insufficient width of the suspended walkway areas are likely to provide difficulties for 2 way movement.
- Missed opportunity by not providing a usable common area (i.e. a suspended deck type area) within the area which links the 2 buildings.
- Concern is raised in relation to the edge treatment of Ground Floor Level terraces which have common pathways located immediately alongside such, given associated / potential privacy impacts.
- Potential privacy impacts, with the side of balconies facing other balconies, in the absence of definitive details of means of separation

Principle 7: Safety

The ground floor of the development is not designed to address safety and security. Blind corners, hidden lobby entry ways and narrow long and deeply recessed pathways populate the ground floor layout. The response to accessible entry from Evan Street is poor and unacceptable.

Principle 8: Housing Diversity and Social Interaction

The proposal provides a mix of apartment types and sizes, including adaptable apartments, which encourages diversity. The overall layout includes several areas of formal and informal meeting spaces thereby providing for social interaction.

Principle 9: Aesthetics

It is considered that the building composition of built form, modulations, materials and finishes is generally acceptable, however, further resolution of the ground floor plate, architectural and landscape response to finished and natural ground levels and further resolution of interfaces between communal and private spaces and streetscape address is required. The design being considered cannot be supported without these amendments.

It is noted that in accordance with the requirements of Clause 50 of the Environmental Planning and Assessment Regulation 2000, a Design Verification Statement has been prepared by a qualified Architect, Ziad Boumelhem (Registration No. 8008), verifying that the design achieves compliance with the 'Design Quality Principles'.

Pursuant to Clause 28 (2) (c) of State Environmental Planning Policy No. 65, consideration is to be given to the 'Apartment Design Guide'. The following details the assessment of the proposal in accordance with the relevant 'design criteria' requirements of the 'Apartment Design Guide'.

Objective 3D-1 (1) – Communal and Public Open Space

Communal open space is to have a minimum area equal to 25% of the site.

Proposal: A total of approximately 3,850sqm of communal open space is provided, which equates to approximately 56% of the site area.

Objective 3D-1 (2) – Communal and Public Open Space

Developments are to achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (mid-winter).

Proposal: In excess of 50% of the principal communal open space area shall receive at least 2 hours of direct sunlight between 9am and 3pm on 21 June (mid-winter).

Objective 3E-1 (1) – Deep Soil Zones

For a site greater than 1,500sqm in area, a minimum 7% of site area is to be a deep soil zone, with minimum dimensions of 6m.

Proposal: Approximately 3,020sqm of deep soil zone is provided, which equates to approximately 44% of the site area.

Objective 3F-1 (1) – Visual Privacy

Separation between windows and balconies is to be provided to ensure visual privacy is achieved. For building heights up to 12m (4 storeys) minimum separation distances from buildings (to the side and rear boundaries) of 6m for habitable rooms and balconies, and of 3m for non-habitable rooms, are to be provided. While for building heights up to 25m (5-8 storeys) minimum separation distances from buildings (to the side and rear boundaries) of 9m for habitable rooms and balconies, and of 4.5m for non-habitable rooms, are to be provided.

While separation distances between buildings on the same site should combine required building separations.

Proposal: The layout provides compliance with the applicable minimum separation distances, including between the 2 proposed buildings (being located on the same site).

Objective 3J-1 – Bicycle and Car Parking

For development on sites that are within 400m of land zoned 'B4 - Mixed Use', the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. Note: the car parking needs for a development must be provided off street.

Proposal: The site is located approximately 170m from land zoned 'B4 - Mixed Use' and accordingly consideration must be given to the minimum requirements for residents and visitors set out in both, the Guide to Traffic Generating Developments and the Penrith Development Control Plan 2014.

The Roads & Traffic Authority's Guide to Traffic Generating Developments requires the provision of 116 spaces (72 spaces for Building A and 44 spaces for Building B), while Council's car parking provisions (as detailed within the Penrith Development Control Plan 2014) requires the provision of 185 spaces (118 spaces for Building A and 67 spaces for Building B). This therefore equates to a requirement to provide 116 spaces.

The layout provides an overall total of 179 spaces (119 spaces within Building A and 60 spaces within Building B).

Objective 4A-1 (1) – Solar and Daylight Access

Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.

Proposal: 71% of apartments (or 91 of the 128 apartments) are to receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter.

Objective 4A-1 (3) – Solar and Daylight Access

A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.

Proposal: 11% of apartments (or 14 of the 128 apartments) are to receive no direct sunlight between 9am and 3pm at mid-winter.

Objective 4B-3 (1) – Natural Ventilation

At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.

Proposal: 61% of apartments (or 78 of the 128 apartments) are naturally cross ventilated.

Objective 4B-3 (2) – Natural Ventilation

Overall depth of a cross-over or cross through apartment does not exceed 18m, measured glass line to glass line.

Proposal: The maximum depth of the cross-through apartments is approximately 16m.

Objective 4C-1 – Ceiling Heights

Minimum 2.7m ceiling height for habitable rooms (measured from finished floor level to finished ceiling level) for apartment and mixed use buildings heights.

Proposal: Each level has a ceiling height of 2.7m provided to all areas.

Objective 4D-1 (1) – Apartment Size and Layout

Apartments are required to have the following minimum internal areas:

- Studio - 35sqm
- 1 bedroom - 50sqm
- 2 bedroom - 70sqm
- 3 bedroom - 90sqm

The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each.

A fourth bedroom and further additional bedrooms increase the minimum internal area by 12sqm each.

Proposal: All apartments exceed the respective minimum floor area requirements, including those apartments which include a second bathroom (ensuite) and regard is given to the additional 5sqm requirement.

Objective 4D-1 (2) – Apartment Size and Layout

Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.

Proposal: Each habitable room includes a window with a total minimum glass area of not less than 10% of the floor area of the respective room.

Objective 4D-2 (1) – Apartment Size and Layout

Proposal: Not applicable to the proposal as all apartments are open plan layouts.

Objective 4D-2 (2) – Apartment Size and Layout

In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.

Proposal: All open plan layouts units have a maximum combined room depth of 8m.

Objective 4D-3 (1) – Apartment Size and Layout

Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobe space).

Proposal: All master bedrooms have a room area exceeding 10sqm, while all other bedrooms have a room area exceeding 9sqm.

Objective 4-3 (2) – Apartment Size and Layout

Bedrooms have a minimum dimension of 3m (excluding wardrobe space).

Proposal: All bedrooms have minimum room dimensions of 3m.

Objective 4D-3 (3) – Apartment Size and Layout

Living rooms or combined living / dining rooms have a minimum width of 3.6m for studio and 1 bedroom apartments, and 4m for 2 and 3 bedroom apartments.

Proposal: All living rooms are a minimum width of 4m.

Objective 4D-3 (4) – Apartment Size and Layout

The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.

Proposal: All cross-through apartments are a minimum width of 4m.

Objective 4E-1 (1) – Apartment Size and Layout

All apartments are required to have primary balconies with a minimum area and depth:

- Studio apartments – 4sqm (no minimum depth),
- 1 bedroom apartments – 8sqm and 2m,
- 2 bedroom apartments – 10sqm and 2m, and
- 3+ bedroom apartments – 12sqm and 2.4m.

Proposal: All units are serviced by a primary balcony which exceed the respective area and depth requirements.

Design Guidance at 4E-3

It is not clear that the design of the development adequately integrates air conditioning units, and that downpipes and balcony drainage is integrated into the design of the facades. It is not clear if a pad-mounted substation is required and what the impact of this will be. i.e. if a blast wall will be required.

Objective 4E-4

Changes in ground level are not minimised. Ramps with balustrades dominate the frontage to Lethbridge Street and lobby entries are located at the highest point along the site's frontage. Equitable and dignified accessible entry is not provided.

Objective 4F-1 (1) – Common Circulation and Spaces

The maximum number of apartments off a circulation core on a single level is eight.

Proposal: The maximum number of apartments provided off a circulation core on a respective level is 4.

Natural light to lobby areas is not maximised as entry points are narrow and direct views to the street frontages are not provided. It is not demonstrated that primary living room or bedroom windows that open to common circulation spaces are provided with adequate measures to protect visual and acoustic privacy this in of particular concern for upper level apartments which share an interface with upper level communal open space and for courtyards with a shared interface with lobby entry points at all levels.

Objective 4F-2

Direct and legible access is not provide throughout the site. long narrow pathways to hidden lobby entries are proposed. It is unclear what the levels are between the pathways and the adjacent open spaces are or as to why access ways are not wider open deck spaces. Wayfinding for rear residential apartments is not clear.

Objective: 4G-1 – Storage

In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:

- Studio apartments – 4m3
- 1 bedroom – apartments 6m3
- 2 bedroom –apartments 8m3
- 3+ bedroom apartments – 10m3

At least 50% of the required storage is to be located within the apartment.

Proposal: All units are serviced by storage compartments which exceed the respective volume requirements, with at least 50% of the required storage located within the respective apartment.

Objective 4H Acoustic Privacy

Acoustic privacy is not suitably addressed between opposing curves in balcony areas, between ground floor units and common property areas or between the balconies and windows of upper level units and their interface with upper level communal open spaces. It is not demonstrated that ground floor units are sufficiently buffered from the basement garage entry and roller door and waste vehicle noise.

Objective 4H-2 Noise

Noise impacts resulting from interface boundaries to common open spaces and noise sources are not suitably addressed.

Objective 4K Apartment Mix

The mix of apartments is acceptable.

Objective 4L-1

The design is not supportable having regard to the design of the ground floor. Direct access to the street is not provided from individual units, from lobby entry points and equitable and dignified accessible access is not provided.

Objective 4M - Facades

The design of facades is generally acceptable with the exception of the ground floor to each street frontage. As detailed above, no direct access to the street frontages is provided. Lobby entries are deep, narrow, from the side of the building and are provided with stairs and poorly located. Equitable accessible entry is not provided to the Evan Street block. Awnings and other articulating features are not provided over lobby entry points.

Objective 4M-2

The proposal cannot be supported when assessed against this objective and the Design Guidance statements. Building entries are not clearly defined and are not visible from the street.

Objective 4O / 4O-2- Landscape design

As detailed elsewhere in this report the landscape design does not adequately respond to level changes and is not detailed sufficiently to understand how the streetscape and entry points are complemented by landscaped elements.

Objective 4P-3

Upper level communal/private boundary interface issues are not adequately responded to through the landscape design.

Objectives 4Q-1, 2 and 3

These objectives are not supported by the design of accessible entry from the street.

Objective 4T-1

The design of communal areas and lobby entries does not include awnings and weather protection. Equitable access is not provided for persons with a disability. It is not clear if gutters and down pipes are integrated into the design of the development and a lighting plan for communal areas is not provided.

Objective 4T-2

Wayfinding throughout the site is not resolved. Lobby entry points are not direct from the street and as these are also not visible from the street it is unclear how visitors to the site will see the building name or street number, or how access for deliveries and mail is legible.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Does not comply - See discussion
Clause 2.7 Demolition requires development consent	Complies
Clause 4.1A Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings	Complies - See discussion
Clause 4.3 Height of buildings	Does not comply - See discussion
Clause 4.4 Floor Space Ratio	N/A
Clause 4.6 Exceptions to development standards	Does not comply - See discussion
Clause 7.1 Earthworks	Complies
Clause 7.4 Sustainable development	Complies
Clause 7.6 Salinity	Complies
Clause 7.7 Servicing	Complies

Clause 2.3 Permissibility

The site is zoned 'R4 – High Density Residential' pursuant to the Penrith Local Environmental Plan 2010. The proposed development is defined as a 'Residential Flat Building', which is a form of 'Residential Accommodation', which is permissible in the 'R4 – High Density Residential' zone.

Clause 2.3 Zone objectives

Elements of the overall layout should be embellished to ensure that a high level of residential amenity is achieved. While sufficient tree plantings that are in keeping with the scale of the proposed development should be provided. Accordingly, it is considered that the proposal does not meet Objectives for the 'R4 – High Density Residential' zone.

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

Development Consent may be granted for a 'residential flat building' in the 'R4 - High Density Residential' zone, if the area of the lot is equal to or greater than 800sqm. The area of the subject site / lot is approximately 6,860sqm.

Clause 4.3 Height of buildings

The proposal has an overall maximum building height of approximately 20.93m, which exceeds the maximum building height of 18m that applies to the site. The application has been accompanied by a 'Written Request' (pursuant to Clause 4.6) seeking to justify the contravention of the Development Standard (see following discussion).

Clause 4.6 Exceptions to development standards

As previously noted, the proposed height of 20.93m, exceeds the maximum building height Development Standard of 18m, pursuant to Clause 4.3, equating to a variation of 16.3%. Accordingly, the application has been accompanied by a 'Written Request' (pursuant to Clause 4.6), seeking to justify the contravention.

It is noted that the maximum building height Development Standard (pursuant to Clause 4.3), is not a Development Standard excluded by Clause 4.6 (6) or (8).

The objectives of Clause 4.3 are:

- (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 'Written Request' includes the following items of justification, in relation to the contravention of the Development Standard:

The development does not provide a total building volume, bulk or scale beyond that contemplated by the development standard and planning framework.

Overshadowing as a result of the height breach is negligible when compared to the shadows generated from the lower levels.

The proposed building will be setback from the adjoining boundary to the adjacent heritage item by 6m for the first four levels and a minimum of 20.13m for levels above.

The 18m height limit could be reasonably be expected to deliver 5-6 storey developments and the proposed development does not exceed this expected building scale.

The development generally achieves the building height, other than sections of upper floor of Building A and the lift towers and ventilation stacks of Buildings A and B. These features are located centrally within

the building and as such do not contribute do not contribute to distinguishable bulk, scale, volume or density of the building as viewed from the surrounding area and public domain.

The upper floor area of Building A is also setback and recessed from the lower levels which reduces its visibility and perceivable bulk.

The development is not located immediately adjacent to different zoned lands or lands that have a lower building height standard, therefore the minor non-compliance will not cause any disruption to any planned transition in height and density.

The site is flood prone which has necessitated the raising of the ground level of the apartments to the Flood Planning Level. This has resulted in increases in building height of up to 1.6m.

An otherwise compliant development model has been prepared with a complying building height and complying SEPP 65 / Apartment Design Guide setbacks. This development model demonstrates that a compliant built form actually results in a much larger footprint which results in more significantly adverse impacts upon the adjacent heritage item, the removal of a greater number of existing trees on site and a smaller allocation of deep soil landscape and communal open space areas.

While overall, it is considered, given the aforementioned items of justification, that the proposed variation is unlikely to provide any amenity impacts given the configuration of the buildings, and that such has the potential to be supported, pursuant to Sub-clause 4.6 (4) (a) (ii)

Development Consent must not be granted for development that contravenes a Development Standard, unless the the consent authority is satisfied that, the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The proposal does not include sufficient tree plantings that are in keeping with the scale of the proposed development, in order to assist with minimising the visual impact of the overall development, including on the adjacent heritage items. Furthermore, the application has failed to demonstrate that the proposal will be in the public interest, for the reasons outlined within this report, and it considered that the proposal does not meet Objectives for the 'R4 – High Density Residential' zone.

Section 4.15(1)(a)(ii) The provisions of any draft environmental planning instrument

Draft State Environmental Planning Policy (Environment)

Draft State Environmental Planning Policy (Environment), proposes to simplify the planning rules, in relation to a number of water catchments, waterways, urban bushland, and the Willandra Lakes World Heritage Property, and consolidate the following State Environmental Planning Policies:

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

It is considered that the proposal is not inconsistent with the Explanation of Intended Effect for the Draft State Environmental Planning Policy (Environment).

Draft Remediation of Land State Environmental Planning Policy

Draft Remediation of Land State Environmental Planning Policy, proposes to replace State Environmental Planning Policy No. 55 – Remediation of Land, by:

- Providing a state-wide planning framework for the remediation of land,
- Maintaining the objectives and reinforce those aspects of the existing framework that have worked well,
- Requiring planning authorities to consider the potential for land to be contaminated when determining development applications and rezoning land,
- Clearly listing the remediation works that require development consent, and
- Introducing certification and operational requirements for remediation works that can be undertaken without development consent.

It is considered that the proposal is not inconsistent with the Explanation of Intended Effect for the Draft Remediation of Land State Environmental Planning Policy.

Section 4.15(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	Does not comply - see Appendix - Development Control Plan Compliance
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	Complies
C13 Infrastructure and Services	Complies
D2.1 Single Dwellings	N/A
D2.2. Dual Occupancies	N/A
D2.3 Secondary Dwellings	N/A
D2.4 Multi Dwelling Housing	N/A
D2.5 Residential Flat Buildings	Does not comply - see Appendix - Development Control Plan Compliance
D2.6 Non Residential Developments	N/A

Section 4.15(1)(a)(iiia) The provisions of any planning agreement

There are no planning agreements which apply to the site or the proposed development.

Section 4.15(1)(a)(iv) The provisions of the regulations

Prescribed Conditions

Should Development Consent be issued, relevant prescribed conditions of the Regulations, such as the requirement for compliance with the Building Code of Australia, will need to be imposed.

Advertising and Notification

The application was advertised and notified, in accordance with the requirements of the Regulations and the Penrith City Council Community Engagement Strategy.

Clause 50 - Design Verification

A Design Verification Statement prepared by a Registered Architect, Ziad Boumelhem (Registration No. 8008), verifying that the design achieves compliance with the 'Design Quality Principles' of Schedule 1 of State Environmental Planning Policy No. 65.

Clause 92 - Additional Matters

Should Development Consent be issued conditions requiring demolition works being undertaken in accordance with the provisions of Australian Standard 2601, will need to be imposed.

Clause 97A - Fulfilment of BASIX commitments

Should Development Consent be issued, a condition requiring the fulfilment of the commitments made within the associated BASIX Certificate, will need to be imposed.

Section 4.15(1)(b) The likely impacts of the development

The application has failed to demonstrate that the development would not result in a significant impact on Cumberland Plain Woodland, and to address and / or determine the impact of the proposal on flood behaviour / characteristics as a result of future climate change. While the proposed landscaping scheme does not include sufficient tree plantings that are in keeping with the scale of the proposed development in order to adequately screen such.

Accordingly, there are potential and likely impacts of the proposed development, from a biodiversity, stormwater management, landscape setting, neighbourhood character, streetscape and neighbourhood amenity perspective.

Further, the design of the ground floor plate is unsupportable as equitable accessible paths of travel are not provided to lobby areas in particular to and from Evan Street and the network of narrow walkways leading to deep set and narrow lobby entries does not provide for high amenity, legible or safe resident access and way-finding. Visual and acoustic impacts of the balcony areas located near lobby entry points is not suitably resolved.

Section 4.15(1)(c) The suitability of the site for the development

The application has failed to demonstrate that site is suitable for the proposed development, for the reasons outlined within this report.

Section 4.15(1)(d) Any Submissions**Community Consultation**

The application was advertised in a local newspaper, notified to adjacent property owners and residents, and publicly exhibited from 21 December 2020 until 1 February 2021, in accordance with the Penrith City Council Community Engagement Strategy. Two (2) submissions were received in response to this process, which raised the following matters.

- Concern was raised regarding associated works within the drainage channel / easement, and potential impacts on drainage and flooding.

Response: The clearance between the proposed underground bin tunnel (located at the Lower Level Basement) and infrastructure of Council's Trunk Drainage System (which it crosses) is unclear. Furthermore, the proposal involves the positioning of columns providing support for the loads from the suspended walkway, within the alignment of the Council's Trunk Drainage System (drainage channel / easement) is unclear. Accordingly, the impact of the proposed development upon flood behaviour is unclear and it is considered that this issue is a valid concern.

- Concern was raised regarding potential privacy impacts.

Response: While the overall layout provides compliance with the applicable minimum separation distances (of Objective 3F-1 (1) of the 'Apartment Design Guide'), it is considered that the proposed landscaping scheme does not include sufficient trees which compliment the scale of the development and minimise potential privacy impacts.

- Concern was raised regarding potential overshadowing impacts.

Response: The proposal does not reduce solar access to any adjoining dwellings or associated private open space areas, below a minimum of 3 hours at mid-winter, and is consistent with the associated provisions (including of Part D2.5.9 of the Development Control Plan 2014). Overall the proposal is considered to be satisfactory in this regard.

- Concern was raised regarding the demolition of 'older' dwellings.

Response: None of the dwellings proposed for demolition as part of the overall development are of heritage significance and such is consistent with relevant with objectives for the 'R4 - High Density Residential' zone.

- Concern was raised regarding the insufficient car parking proposed in conjunction with the development.

Response: The proposal provides a total of 179 spaces (119 spaces within Building A and 60 spaces within Building B), which provides for compliance with the applicable requirements (of the Guide to Traffic Generating Developments, which is referenced within the 'Apartment Design Guide').

Referrals

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

Landscape Architect - Not supported

Tree Management Officer - Final comments pending

Building Surveyor - No objections, subject to conditions

Development Engineer - Not supported

Heritage - No objection, subject to fencing and landscaping amendments

Environmental - Environmental management - No objections, subject to conditions

Environmental - Waterways - No objections, subject to conditions

Environmental - Biodiversity - Not supported

Waste Services - Not supported

Traffic Engineer - No objection, subject to conditions

Community Safety Officer - No objection

Roads & Maritime Services - Comments provided for Council's consideration and associated matters have subsequently addressed

Section 4.15(1)(e)The public interest

The application fails to demonstrate that the proposal is in the public interest for the reasons outlined within this report.

Section 94 - Developer Contributions Plans

Development contributions apply and may be levied under Council's Section 7.11 Plans however a condition is not included in relation to payment as the application is recommended for Refusal based on other matters.

Conclusion

The application has been assessed in accordance with the matters for consideration under Section 4.15 of the Environmental Planning & Assessment Act 1979, and it is recommended that the application be determined (in accordance with Section 4.16), by way of refusing consent.

Recommendation

1. That Development Application No. 20/0824 be determined in accordance with Section 4.16 of the Environmental Planning and Assessment Act 1979, by way of refusing consent.
2. That all submitters be notified of the determination.

CONDITIONS

Refusal

- 1 The application fails to demonstrate that the development would not result in a significant impact on Cumberland Plain Woodland and it is unclear if the proposal exceeds the biodiversity offsets scheme threshold, pursuant to the provisions of Part 7 of Biodiversity Conservation Act 2016.
- 2 Elements of the development should be embellished, in order to provide for the satisfying of Design Quality Principle 5: Landscape and Design Quality Principle 6: Amenity, pursuant to Clause 28 of State Environmental Planning Policy No. 65.
- 3 Elements of the overall layout should be embellished to ensure that a high level of residential amenity is achieved. While sufficient tree plantings that are in keeping with the scale of the proposed development should be provided. Accordingly, it is considered that the proposal does not meet Objectives for the 'R4 – High Density Residential' zone.
- 4 The proposal contravenes the maximum building height Development Standard of Clause 4.3 of the Penrith Local Environmental Plan 2010.
- 5 The proposal does not adequately harmonise with the adjoining Heritage Item and therefore does not comply with Clause 5.10 of the Penrith Local Environmental Plan 2010.
- 6 The application fails to address and / or determine the impact of the proposal on flood behaviour / characteristics as a result of future climate change, and it is unclear whether the proposal satisfies the provisions of Clause 5.21 of the Penrith Local Environmental Plan 2010. Furthermore, the proposal includes works within the alignment of the Council's Trunk Drainage System (drainage channel / easement) and the impact of the works upon such is unclear.
- 7 The application fails to demonstrate that the layout is adequate from an operational waste management perspective.
- 8 The proposal does not comply with and / or fails to demonstrate compliance with Part C1 (Site Planning and Design Principles), Part C2 (Vegetation Management), Part C3 (Water Management), Part C5 (Waste Management), Part C6 (Landscape Design) and Part D2.5 (Residential Flat Buildings) of the Penrith Development Control Plan 2014.
- 9 The application has failed to demonstrate that the proposal is satisfactory for the purpose of Section 4.15(1)(b) of the Environmental Planning & Assessment Act 1979, in terms of potential and likely impacts, from a biodiversity, stormwater management, landscape setting, neighbourhood character, streetscape and neighbourhood amenity perspective.
- 10 The application has failed to demonstrate that the site is suitable for the proposed development and if such is satisfactory for the purpose of Section 4.15(1)(c) of the Environmental Planning & Assessment Act 1979.
- 11 The application has failed to demonstrate that the proposed development is in the public interest, for the purpose of Section 4.15(1)(e) of the Environmental Planning & Assessment Act 1979.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

Part C1 Site Planning and Design Principles

While the overall proposal is generally consistent with site applicable planning and design principles, the following concerns have been identified:

- The front core of 'Building A' is not provided with an access path for people with a disability at the Ground Floor / Level.
- Concern is raised regarding the indirect nature of the accessible pathway to the rear core of 'Building B'.
- Concern is raised regarding the common circulation spaces and associated entry points to the foyer areas, which include narrow corridors and approaches.
- The insufficient width of the suspended walkway areas (approximately 1.5m), which are contained and are likely to provide difficulties for 2 way movement.
- Missed opportunity by not providing a usable common area (i.e. a suspended deck type area) within the area which links the 2 buildings.

Part C2 Vegetation Management

As previously outlined in accordance with assessment of the application pursuant to Part 7 of Biodiversity Conservation Act 2016, the site has been identified as containing tree species and groundcover vegetation that are characteristic of Cumberland Plain Woodland, which is a threatened ecological community. The (Five Part) Test of Significance which has been provided by the Applicant, has been found to not have been prepared in accordance with the Threatened Species Test of Significance Guidelines (prepared by the NSW Office of Environment and Heritage). Furthermore, the impact of the development on Cumberland Plain Woodland is unclear.

Accordingly, overall the application has failed to adequately respond to the requirements of Part C2.

Part C3 Water Management

The submitted Flood Study (and other supporting information) has not addressed and / or determined the impact of the proposal on flood behaviour / characteristics as a result of future climate change. Accordingly, the impact of the proposed development to flood behaviour as a result of flood behaviour is unclear. The clearance between the proposed underground bin tunnel (located at the Lower Level Basement), which crosses the alignment of the Council's Trunk Drainage System (drainage channel / easement) is unclear. Furthermore, the proposal involves the positioning of columns providing support for the loads from the suspended walkway, within the alignment of the Council's Trunk Drainage System (drainage channel / easement) is unclear. Accordingly, the impact of the proposed development upon flood behaviour is unclear.

Part C5 Waste Management

In accordance with Part C5.2.2.4 (5), an adequate route of travel (including vehicle manoeuvring areas) to the waste collection point, with sufficient vehicle clearance, is to be provided for Council's Standard Waste Collection Vehicles. It is noted that while a travel height clearance of 4.5m is required (in accordance with Section 3.5 of Council's Industrial, Commercial & Mixed-use Waste Management Guidelines), the design only provides clearances of approximately 3.5m. The tunnel between the basement of 'Building A' and the basement of 'Building B' has a grade of 1:14, exceeds the maximum grade of 1:24 required for use by a bin tug device.

Part C6 Landscape Design

Assessment of the proposed landscaping scheme (including by Council's Landscape Architect and Council's Urban Design Review Panel, has identified the following:

- Supportive of the large areas of deep soil and extensive planting proposed in general.
- The proposed palette of trees do not compliment the scale of the development and subsequently such does not provide for the vision of a 'home among the trees' which connects to Penrith's local character.
- The proposed perimeter planting needs to be punctuated by larger tree species, in line with the scale of the development and take advantage of the generous deep soil zones. In particular the proposed row of canopy trees along the western side of 'Building B' does not present sufficient diversity or height, to moderate the scale of that very long elevation. Moreover in this regard, although the reconfiguration of the basement of 'Building B' has provided a continuous band of deep soil along the western boundary, the landscaping scheme has not responded to the opportunities which are presented by such. Additionally, planting within the south setback area requires larger tree species to screen the building mass from Derby Street.
- Within the Evan Street frontage, 2 additional canopy trees should be accommodated and the 3 proposed trees relocated to align with gaps between existing street trees.
- The position of the kitchen gardens on the southern side of the development is questioned, given the level of shade in this location.
- The turf area to the south of 'Building B' is unlikely to thrive and the area would be better served with garden beds.
- Banksia species generally do not perform well in Penrith.

Accordingly, overall it is considered that the landscape designs does not provide for the adequate screening of the development and to therefore be inconsistent with provisions of Parts 6.1.3 & 6.1.4.

Part C8 Public Domain

The development does not sufficiently address the street and provide a sense of address as is required by controls and objectives under section 8.1 Pedestrian Amenity. The section objectives include that development improve site permeability, ensure that developments address the street and promote passive surveillance and accessibility. Controls of the section require active street frontages particularly at ground floor with entrances that are visible from the street.

The proposal does not align with the Part as the Lethbridge Street frontage includes excessive ramping and balustrading which does not provide a direct entry point to the building. The side lobby entry points are too narrow and cannot be seen from the street frontage. The Evan Street building has no direct access to the street and the side access and lobby is hidden from direct view and is located at the steepest part of the site (along the street elevation) resulting in excessive numbers of stairs. The lobby entry in this location is also narrow and not co-located with the main wider lobby. Inadequate natural lighting is provided to lobby areas.

Further to the above, inequitable accessible access is provided to the Evan Street building. Those using the disability access are required to entry from the side of the services and basement ramp and enter the building from the rear - side, which is not DDA compliant and is inequitable and unacceptable.

Part C10 Transport, Access and Parking

In accordance with Part C10.5.1 the overall development is required to provide a total of 185 spaces (118 spaces for 'Building A' and 67 spaces for 'Building B').

While the proposal only provides for a total of 179 spaces (119 spaces within Building A and 60 spaces within Building B). Given that the proposal satisfies the minimum car parking requirement set out in the Guide to Traffic Generating Developments, of 116 spaces (72 spaces for Building A and 44 spaces for Building B), which is referenced within the 'Apartment Design Guide', pursuant to State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development, such

requirements prevail.

D2 Residential Development

The following key matters are noted in relation to the proposal:

- The configuration of the overall development provides tree corridors (along and adjacent to site boundaries), the conservation of remnant vegetation and the concealed positioning of parking areas which is consistent with the associated provisions of Part D2.5.2.
- The site has frontages / lot widths of 72.085m to Evan Street and 31.09m to Lethbridge Street, which provides for compliance with the requirements of Part D2.5.3.2.
- All apartments either address (with living rooms and balconies) a street frontage or landscaped side / rear setback areas, which is consistent with the associated provisions of Part D2.5.4.
- The proposal provides in excess of 50% of the site as landscaped area and includes a substantial communal open space area in the central portion of the site which is easily accessible to all apartment which provides for compliance with the requirements of Part D2.5.5.
- The layout provides minimum front / street setbacks of 5.5m to Evan Street and 6.29m to Lethbridge Street, and a minimum of 6m to all other site boundaries, which provides for compliance with the requirements of Parts D2.5.6 & D2.5.7.
- The layout provides for compliance with the respective visual privacy requirements of the Apartment Design Guide.
- Concern is raised in relation to the edge treatment of Ground Floor Level terraces which have common pathway located immediately alongside such, given associated / potential privacy impacts. Similarly concern is raised regarding potential privacy impacts, with the side of balconies facing other balconies, in the absence of definitive associated details.
- As 71% of apartments are to receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter and only 11% of apartments are to receive no direct sunlight between 9am and 3pm at mid-winter the proposal provides for compliance with the solar and daylight access requirements of the Apartment Design Guide.
- The proposal does not reduce solar access to any adjoining dwellings or associated private open space areas, below a minimum of 3 hours at mid-winter, which is consistent with the associated provisions of Part D2.5.9.
- The following comments by the Urban Design Review Panel are noted and comments responding to such made where necessary:
 - The Landscape Plans demonstrate a clear appreciation of local character, and clearly explain design logic in terms of existing trees to be retained, proposed trees, planters, pedestrian pathways, building entrances and outdoor places.
 - Street front plantings contribute to contextual compatibility and, in conjunction with level changes and screens, ensure satisfactory amenity for ground floor apartments.
 - The landscaping scheme is generally satisfactory, but requires detailed amendments and some refinement. Response: Landscaping concerns have been included and are discussed in detail within the landscaping assessment section.
 - Design of the proposed communal open spaces accommodates a diversity of recreation activities, and provides a hierarchy of social settings (i.e. ranging from central spaces that are shared by the entire development to smaller areas that 'relate' to particular buildings or cores).
 - Higher intensity activities that are proposed for common outdoor areas are located over 1m below floor levels of adjacent apartments, and are screened by balcony or perimeter planters.
 - Upper storey communal areas incorporate planters, feature trees and pergolas that protect neighbours privacy as well as contributing to a climatically comfortable setting.
 - The perspective views are highly-informative, but have not been updated to reflect recent amendments to floorplates and building forms. Response: While it is acknowledged that the perspectives do not include all existing to be retained trees or all proposed trees, the Applicant has provided confirmation otherwise that such are accurate.
 - Large scale design sections have not been provided. Response: Subsequent to final review of

the proposal by Council's Urban Design Review Panel, the Applicant provided various detailed design sections.

- Concept plans demonstrate that there is scope for 2 to 4 storey development at Nos. 92 & 94 Lethbridge Street, and on that basis, the four storey wall height of 'Building B' would not be inherently incompatible with desired character.
- Due to upper storey amendments for 'Building A', non-compliant height has been confined to locations which would not be visually prominent. 'Building B' non-compliances relate to lift overruns and a skillion roofed clerestory which would have no tangible impacts.
- Upper storey amendments to both buildings have reduced heights of street front walls and, consequently have appreciably moderated mass and scale, thereby improving the degree of compatibility with existing and desired characters of the surrounding locality.
- Stepping at the eastern end of 'Building A' has reduced streetscape and visual impacts of the former 5 storey outermost wall.
- The combination of streetscape elevations and perspective views confirm that form, height and facades of 'Building A' would not display excessive scale that would be incompatible existing desired characters of the locality (which includes the heritage-listed cottage at the corner of Derby and Evan Streets).
- Concerns were raised regarding the 'lateral scale', and unbroken length of 'Building B' which would be visible from the intersection of Lethbridge and Evan Streets and demands amendments to present an acceptable 'lateral' scale. Response: Subsequent to final review of the proposal by Council's Urban Design Review Panel, amendments were made to the design of 'Building B', which included the provision of additional recessed 'break lines' to both the eastern and western sides of 'Building B', along with the introduction of further tone variations and additional materials.

- As 61% of apartments are naturally cross ventilated, the proposal provides for compliance with the natural ventilation requirements of the Apartment Design Guide.
- All units are serviced by a primary balcony which exceed the respective area and depth requirements of the Apartment Design Guide.
- All parking is provided within basement type areas, which are accessed via driveways which are contained within the built form and are to be softened by adjacent landscaping, which is consistent with the associated provisions of Part D2.5.15.
- While the overall layout, including associated landscaping, provides for a garden setting, which is consistent with associated requirements of Part D2.5.16, concern is raised regarding the insufficient scale of various tree species (given that the proposal related to buildings which are 5 and 6 storeys).
- The alignment of the driveways, and the overall layout and nature of pathways, minimises hard surfaces and generally maximises garden type areas. Accordingly, it is considered that the proposal satisfies the relevant provisions of Part D2.5.17.
- The proposal includes the provision of 1.8m high steel / colorbond fencing along the full alignment of side and rear type boundaries. It is considered that given the setting of the site, including the proximity to a Heritage Item, that the use of timber lapped and capped type fencing, which tapers down to a height of 800mm within the front setback areas, would be suitable and be consistent with the associated provisions of Part D2.5.18.
- The proposal includes (approximately) 1.2m high stone wall / fencing along both street frontages and it is considered that the arrangement is consistent with the associated provisions of Part D2.5.18.
- The overall layout and the general arrangement of the respective apartments, provide for a high level passive security towards public and common areas. Accordingly, it is considered that the proposal satisfies the relevant provisions of Part D2.5.19.
- While the layout is generally satisfactory and compliant with respective accessibility and adaptability provisions, it is noted that the front core of 'Building A' is not provided with an access path for people with a disability at the Ground Floor / Level, while concern is raised regarding the indirect nature of the accessible pathway to the rear core of 'Building B'.
- Storage areas are provided within and in conjunction with each apartment, in accordance with the

respective requirements of the Apartment Design Guide.