

Penrith Local Planning Panel

Determination and Statement of Reasons

APPLICATION DETAILS	DA18/0890.01 – 36 – 38 Rodley Avenue Penrith
DATE OF DETERMINATION	Wednesday 13 November 2019
PANEL MEMBERS	Deborah Dearing (Chair) Mary-Lynne Taylor (Expert) Virginia Barrios (Community Representative)
APOLOGY	Nil
DECLARATIONS OF INTEREST	No conflicts of interest were declared
LISTED SPEAKER(S)	Clark Stone – Resident June Taylor – Resident Peter Morson – Architect (Morson Group) Cody Masterfield – Project Manager Doug Green - Developer

Public Meeting held at Penrith City Council on Wednesday 13 November 2019, opened at 4:00pm

Matter Determined pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979

Development Application DA18/0890.01 at Lot 58 & 59 DP 33490, No.36 Rodley Avenue Penrith – Review of Determination - Proposed Construction of a Five (5) Storey Residential Flat Building with Basement Car Parking.

Panel Considerations

The Panel had regard to the Assessment Report prepared by Council Officers, submissions received, site observations, and the following plans;

- 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

Key concerns raised by the Panel included:

- Non compliance with maximum height requirements
- Non compliance with SEPP 65 and the Apartment Design Guide, including building separations
- Servicing of the site in relation to stormwater and waste
- Unacceptable impacts of open driveway access to basement and
- Impacts on visual privacy and solar access to adjacent developments.

In terms of considering community views, the Panel noted there was one (1) submission received from the public notification of the Development Application. Key concerns raised related to privacy (people standing on balcony looking into neighbouring backyard), solar/sunlight access and heat and additional traffic.

Panel Decision

The Panel refuses this application and generally supports Council Officers' reasons for refusal as stated within the Assessment Report.

1. The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* ("the Act") as the proposal is inconsistent with the provisions of Penrith Local Environmental Plan 2010 as follows:
 - (i) Clause 2.3 Zone Objectives The proposal is inconsistent with the objectives of the R4 High Density Residential zone, particularly (d) The design of the proposed development does not ensure that a high level of residential amenity is achieved and maintained, and (f) to ensure that development reflects the desired future character and dwelling density of the area.
 - (ii) Clause 4.6 The application fails to satisfy the development standard for building height and the request for a variation to the development standard is not supported because the proposed development will not be in the public interest as it will not ensure a high level of residential amenity, nor provide a high quality urban form or reflect the desired future character of the area, these being the objectives of the zone and height standard.
 - (iv) Clause 7.2 The proposal does not comply with Council's Policy in relation to overland flow management on the site.
 - (v) Clause 7.7 The proposal does not meet the requirements for waste and stormwater servicing.
2. The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the Act as the proposal is inconsistent with the provisions of State Environmental Planning Policy No 65 Design Quality of Residential Flat Development and the accompanying Apartment Design Guide as follows:
 - (i) Clause 30(2)(a) compliance with the design quality principles specified in the Apartment Design Guide:
 - Principle 1: Context and Neighbourhood Character
 - Principle 2: Built form and scale
 - Principle 3: Density
 - Principle 4: Sustainability
 - Principle 5: Landscape
 - Principle 6: Amenity
 - (ii) Clause 30(2)(b) compliance with the objectives specified in the Apartment Design Guide:
 - 3B Orientation
 - 3C Public domain interface
 - 3D Communal and public open space
 - 3F Visual privacy
 - 3G Building entry
 - 3H Carpark access
 - 3J Undercover parking
 - 4A Solar and Daylight Access
 - 4H Acoustic privacy
 - 4L Direct street access
 - 4O Landscape design
 - 4W Waste management
3. The development application is not satisfactory for the purpose of Section 4.15(1)(a)(iii) of the Act, as the proposal is inconsistent with the following provisions of Penrith Development Control Plan 2014:
 - (i) The application has not satisfied Council with respect to the requirements under Part B 'DCP Principles', specifically:
 - The proposal has not been designed with consideration for the health, recreational and social needs of residents, and the proposal does not minimise its ecological footprint nor promote sustainable production and consumption.

- (ii) The application has not satisfied Council with respect to the requirements under Section C1 'Site Planning and Design Principles', specifically:
 - The built form and scale of the proposal does not adequately respond to the context of the site.
 - (iii) The application has not satisfied Council with respect to the requirements under Section C5 'Waste Management', specifically:
 - The proposal provides for a noncompliant basement waste management design.
 - (iv) The application has not satisfied Council with respect to the requirements under Section C6 'Landscape Design', specifically:
 - The proposal does not include landscaping to the site that responds to the context of the site, nor complements the built form nor minimises the impacts of the scale of the development.
 - Unsatisfactory streetscape presentation
 - (v) The application has not satisfied Council with respect to the requirements under Section C10 'Transport, Access and Parking', specifically:
 - The noncompliant oneway access ramp is not supported.
 - (vi) The application has not satisfied Council with respect to the requirements under Section C13 'Infrastructure and Services', specifically:
 - The proposal does not meet the requirements for engineering works in relation to the stormwater easement.
 - (vii) The application has not satisfied Council with respect to the requirements under Section D2 'Residential Development', specifically:
 - Clause D2.5.5 The landscaped area does not meet the minimum 35% required for the site. The landscaping provided is compromised by servicing requirements.
 - Clause D2.5.8 The proposal does not achieve a high level of visual or acoustic privacy for future occupants or adjoining neighbours.
 - Clause D2.5.9 The proposal results in overshadowing of the private open space of adjoining development.
- 4 The application is not satisfactory for the purpose of Section 4.15(1)(a)(iv) of the Act as the proposal was not accompanied by all information required under Schedule 1 Forms of the Regulations or as required for proper consideration of the proposal, as follows:
- Clause 50 (1A)(1AB) of the *Environmental Planning and Assessment Regulation 2000* requires a statement from a qualified designer to be submitted.
 - An updated BASIX Certificate.

- 5 The development application is not satisfactory for the purpose of Section 4.15(1)(b) of the Act in terms of the likely impacts of that development including those related to:
 - (i) Streetscape and character,
 - (ii) Context and landscaping,
 - (iii) Bulk and scale,
 - (iv) Solar access and privacy impacts,
 - (v) Amenity, safety and security impacts related to the ground floor layout,
 - (vi) Communal open space,
 - (vii) Access, traffic and parking,
 - (viii) Energy efficiency,
 - (ix) Waste management impacts.

- 6 The application is not satisfactory for the purpose of Section 4.15(1)(c) of the Act as the site is not suitable for the scale of the proposed development.



- 7 Based on the above deficiencies and submissions received, approval of the proposed development would not be in the public interest pursuant to Section 4.15(1)(d) of the Act.

Votes

The decision was unanimous.

The panel comments as follows:

While the Panel supports refusal of the review, it notes that the site meets the minimum lot size required under PLEP 2010 but is unable to achieve a compliant development due to the Council’s (on-site) Waste Collection Policy. The Panel recommends that the site should be allowed to be developed in accordance with the DCP with an alternate (on-street) waste collection solution, as this is likely to bring about a better design solution for the site and with the context of this streetscape.

Deborah Dearing – Chair Person 	Mary-Lynne Taylor – Expert 
Virginia Barrios – Community Representative 