

Statement of Environmental Effects

MODIFICATION TO APPROVED PLANS FOR THE ADDITION OF A FIFTH STOREY AT,
1 GARNER STREET, ST MARYS



Prepared by: Think Planners
Document Date: 27 April 2018
Consent Authority: Penrith City Council

QUALITY ASSURANCE

PROJECT: Statement of Environmental Effects– S.4.55(2) to Amend Approved Plans

ADDRESS: Lot 3 in DP 508698: 1 Garner Street, St Marys

COUNCIL: Penrith City Council

AUTHOR: Think Planners Pty Ltd

ARCHITECT: Baini Design

Date	Purpose of Issue	Rev	Reviewed	Authorised
April 2018	S4.55 Lodgement Issue	Final	SK/JW	JW

<i>Integrated Development (under S91 of the EP&A Act). Does the development require approvals under any of the following legislation?</i>	
<i>Fisheries Management Act 1994</i>	<i>No</i>
<i>Heritage Act 1977</i>	<i>No</i>
<i>Mine Subsidence Act 1992</i>	<i>No</i>
<i>Mining Act 1992</i>	<i>No</i>
<i>National Parks and Wildlife Act 1974</i>	<i>No</i>
<i>Petroleum (Onshore) Act 1991</i>	<i>No</i>
<i>Protection of the Environment Operations Act 1997</i>	<i>No</i>
<i>Roads Act 1993</i>	<i>No</i>
<i>Rural Fires Act 1997</i>	<i>No</i>
<i>Water Management Act 2000</i>	<i>No</i>
<i>Concurrence</i>	
<i>SEPP 1- Development Standards</i>	<i>No</i>
<i>SEPP 64- Advertising and Signage</i>	<i>No</i>
<i>SEPP 71 – Coastal Protection</i>	<i>No</i>
<i>SEPP (Infrastructure) 2007</i>	<i>No</i>
<i>SEPP (Major Development) 2005</i>	<i>No</i>
<i>SREP (Sydney Harbour Catchment) 2005</i>	<i>No</i>



Table of Contents

Executive Summary	3
Site and Locality.....	4
Description of Amended Proposal.....	9
Planning Controls.....	10
S.4.55 Environmental Planning and Assessment Act 1979	10
Environmental Planning Instruments	13
State Environmental Planning Policy BASIX 2004.....	13
State Environmental Planning Policy No.55- Remediation of Land.....	13
State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development & Apartment Design Guide	13
Penrith Local Environmental Plan 2010	23
Penrith Development Control Plan 2014	27
Conclusion.....	35

List of Figures

FIGURE 1: BUS ROUTE MAP (SOURCE: GOOGLE MAP)	18
FIGURE 1: LEP ZONING MAP EXTRACT (PENRITH LEP 2010).....	23

Executive Summary

This Statement of Environmental Effects has been prepared in support of a Section 4.55 (2) modification application for amendments to the approved plans associated with DA16/0621.

Penrith City Council approved DA16/061 which granted consent for the demolition of existing structures and the construction of a four (4) storey '*Residential Flat Building*'. The approved flat building contained a total of 12 residential units and 11 car parking spaces at 1 Garner Street, St Marys.

The modification aims to undertake amendments to an approved four (4) storey flat building, which will comprise of the addition of a 5th floor which will include 1 x 1 bedroom unit.

The site is located in close proximity to Queen Street, St Marys and the St Marys town centre and has a single street frontage to Garner Street. The site is located on the western side of Garner Street and has an east-west orientation. The site sits some 200m west of Mamre Road. St Marys train station is approximately 1.5kms to the north. The site is afforded access to supermarkets, restaurants, neighbourhood centres, parks and a post office which are all within walking distance from the development site. Furthermore, bus stops with regular services to Kingswood, Mt Druitt and Penrith are situated within a 100m radius of the subject site.

The site is a regular shaped land parcel and is bound by a residential flat building development to the south with an older style 2 storey townhouse development to the north. The development site has a 16.73m frontage to Garner Street and a depth of 40.235m, resulting in a site area of 663.9m². The site gently slopes from Garner Street to the rear approximately 1.5m.

The site is zoned R4 High Density under Penrith Local Environmental Plan 2010 and a '*Residential Flat Building*' is permissible with consent within the R4 Zone. The development proposal has been designed to align with the LEP controls and the provisions of Penrith DCP 2014, noting the proposal meets the building height control in the LEP and aligns with key DCP provisions. The proposed development also provides affordable housing in line with State Environmental Planning Policy (Affordable Rental Housing) 2009 and consideration is given to the relevant planning controls of this policy.

Having regard to the benefits of the proposal and taking into account the absence of adverse environmental, social or economic impacts, and that the proposal represents an appropriate use of well-located land; the application is submitted to Council for assessment. Think Planners Pty Ltd recommends the approval of the application, subject to necessary, relevant and appropriate conditions of consent.

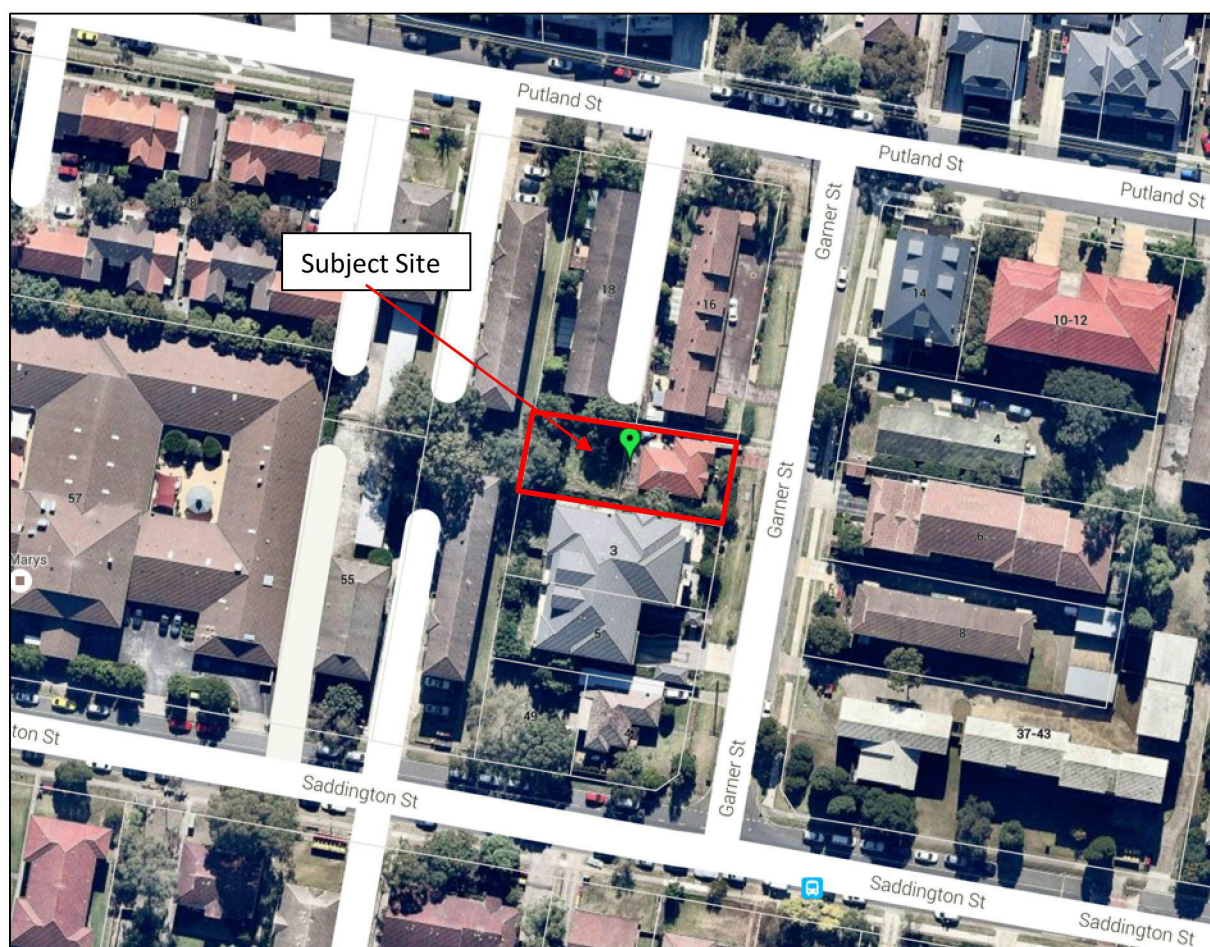
Site and Locality

The subject site is legally described as Lot 3 DP 508698 known as 1 Garner Street, St Marys. The site is a regular shaped land parcel with an east west orientation and is surrounded by a residential flat building development and an older style townhouse development. The locality contains an eclectic mix of older style cottages, townhouse developments and more recent high-density developments. The development site has a 16.73m frontage to Garner Street and a depth of 40.235m resulting in a total site area of 663.9m². The site has a fall from Garner Street to the rear of approximately 1.5m.

This development site is located within walking distance of the St Marys town centre and commercial strip along Queen Street. The site benefits from being close to recreational facilities, the swimming centre, sports grounds, St Marys village shopping centre, numerous primary schools, St Marys Senior High School and many other features that are found within the town centre. The site is approximately 1.5km from St Marys train station which has express services into the Sydney CBD. There are also bus services along Mamre Road with access to the train station as well as Penrith and Mt Druitt town centres. The site is within walking distance of supermarkets, restaurants, gyms, a neighbourhood centre, parks, schools and a post office.

The subject site currently accommodates a single storey residential dwelling. The dwelling is in a reasonable condition; however, the existing land use is significantly underutilising the sites full development potential given the R4 High Density Housing Zone which permits residential flat buildings with a height of 15m. There is no relevant maximum floor space ratio control for this site.

The aerial photo on the following page provides context to the development site.

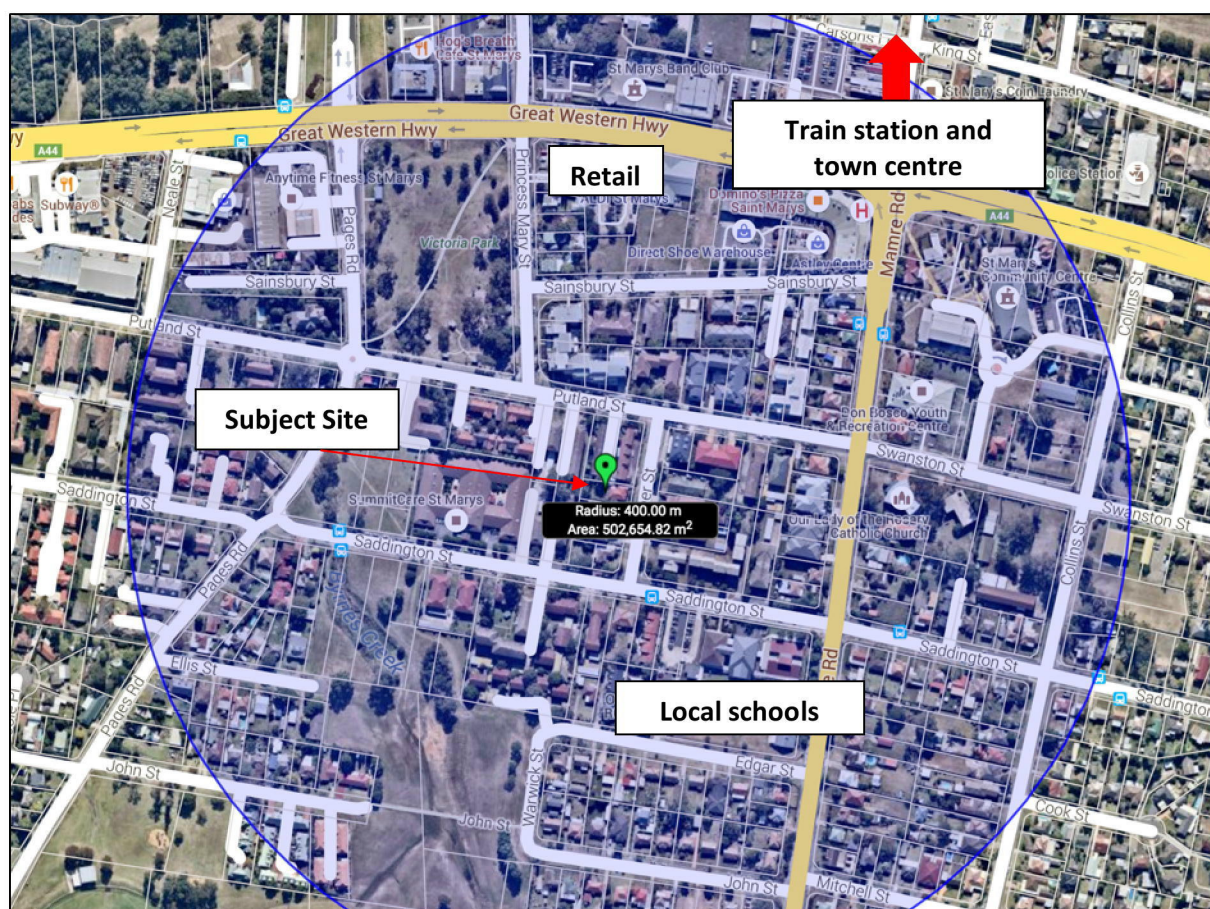


The site is zoned R4 High Density Residential under Penrith Local Environmental Plan 2010 which permits residential flat buildings with a maximum height of 15m.

With the wider locality zoned for high density residential development by Penrith LEP 2010, it is expected that over the next 5-10 years the subject area will continue undertake a transformation of its housing stock from low/medium density to higher densities.

A Plan for Growing Sydney supports higher residential developments in strategic locations to accommodate future population growth. The subject area is ideal for future urban intensification as it is located within close proximity to essential services, recreational opportunities, shops, local schools and public transportation.

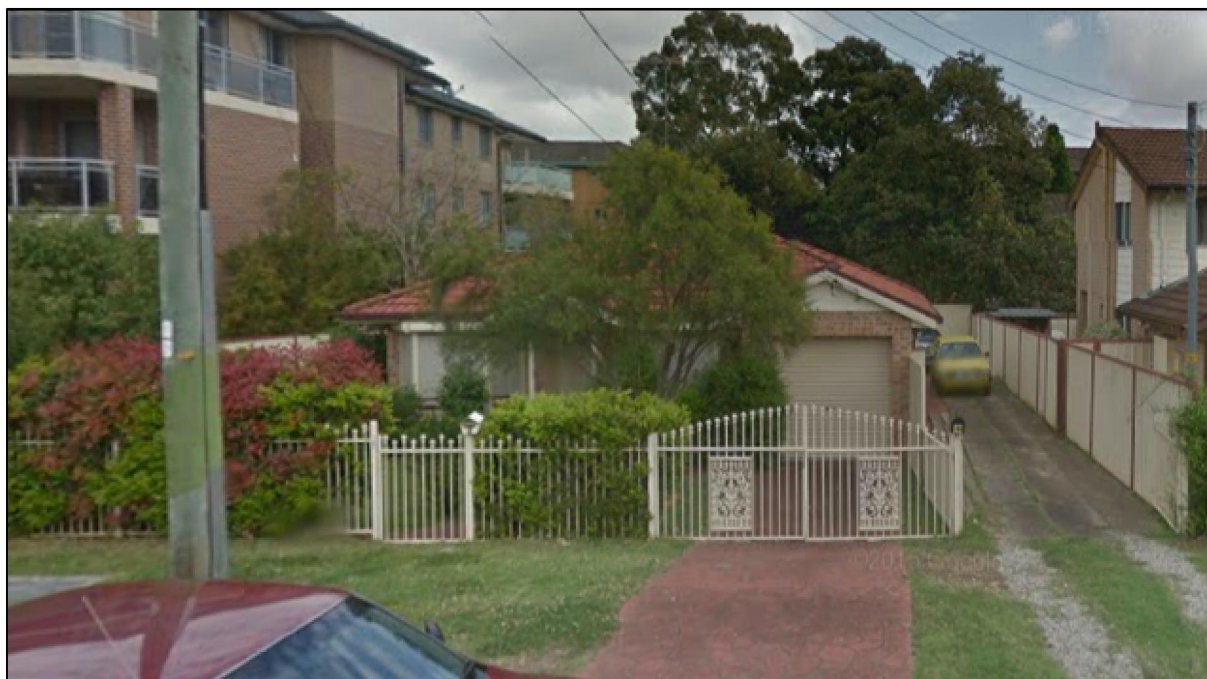
The development site is also located near key arterial roads such as the Great Western Highway and Mamre Road. An aerial photograph that demonstrates the sites location within the wider locality is provided on the following page:



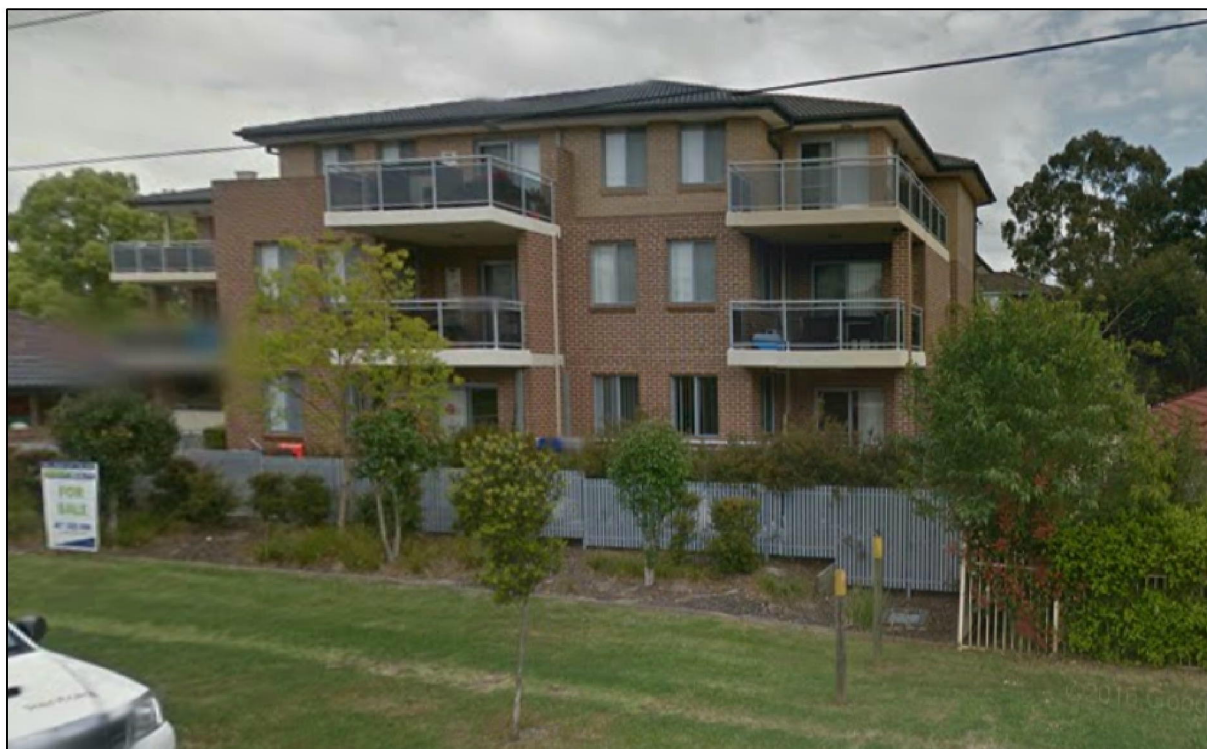
Photographs are provided below that give context to the locality and also the relationship of the development site with adjoining developments.

S4.55(2) - DA16/0621: 1 Garner Street, St Marys

Photograph 1: Shows the site as viewed from Garner Street.



Photograph 2: Shows the neighbouring development to the south.



S4.55(2) - DA16/0621: 1 Garner Street, St Marys

Photo 3: Older style multi dwelling housing development to the north.

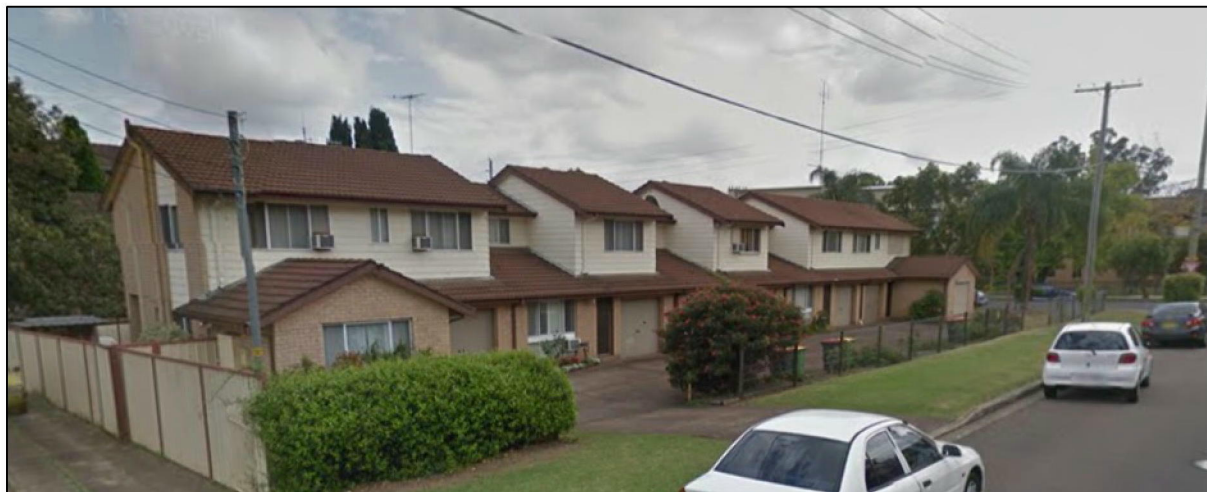
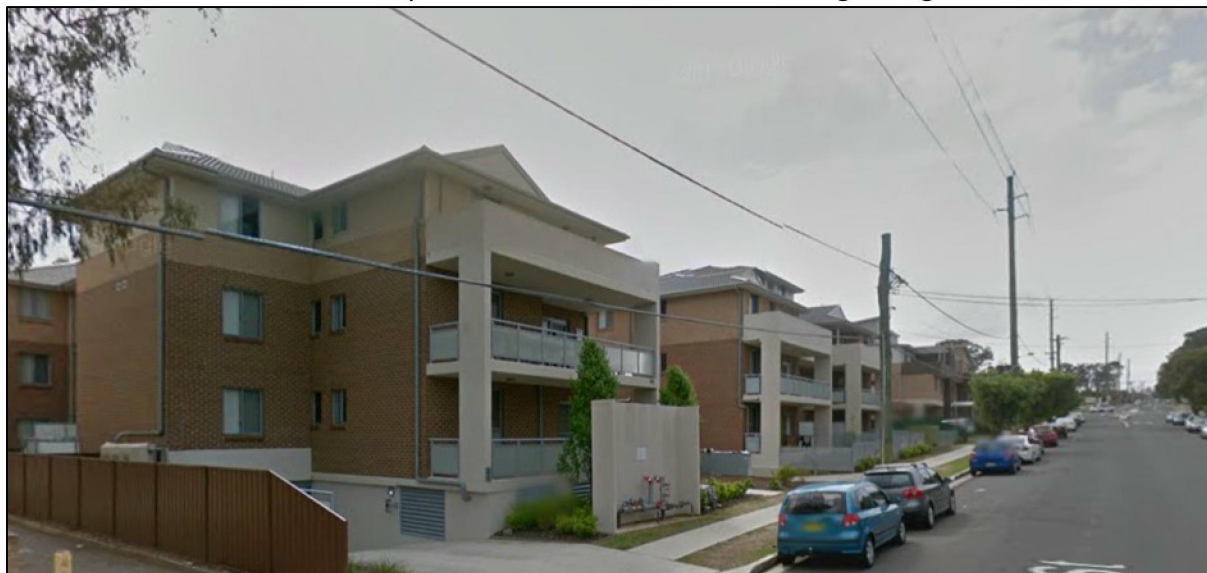


Photo 4: Shows the more recently constructed residential flat buildings along Putland Street.



Description of Amended Proposal

The original consent was approved for tree removal, demolition of existing structures and the construction of a 4 storey '*Residential Flat Building*'. The proposal incorporates a total of 12 residential units and 11 car parking spaces within a basement car parking arrangement, at 1 Garner Street, St Marys.

The modification proposes the addition of a fifth storey, which will contain a single bedroom dwelling, increasing the total units from 12 to 13. The proposal will provide an additional 4.55.19m² of Gross Floor Area.

The original unit mix was composed of;

- 4 x single bedroom units; and
- 8 x two bedroom units.

The proposed unit mix will contain the following unit mix;

- 5 x single bedroom units; and
- 8 x two bedroom units.

Building Height

The section 4.55 modification proposes the addition of a fifth storey, which will increase the building height to 16.13m (15.55m excluding lift overrun) which slightly exceeds the maximum building height limit of 15m. This is further discussed in the LEP compliance table.

Planning Controls

S.4.55 Environmental Planning and Assessment Act 1979

Pursuant to S.4.55(2) of the Act, Council may consider an application to amend a development consent provided that, inter alia:

(2) Other modifications

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

(c) it has notified the application in accordance with:

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1) and (1A) do not apply to such a modification.

The application is substantially the same as the approved development, with the development concept remaining physically the same as that granted consent with changes to the approved plans noting minor increase in the overall footprint and height of the approved storey building (minor projection at roof edges).

Land and Environment Court Judgements

The question as to whether a modified proposal is ‘*substantially the same*’ as that originally approved has been an ongoing issue dealt with in the Land and Environment Court.

It is also important to note that the Court has consistently described the section 4.55 modification provision (now 4.55) of the Act as “beneficial and facultative”.

It is designed to assist the modification process rather than to act as an impediment to it; “It is to be construed and applied in a way that is favourable to those who seek to benefit from the provision” (see *North Sydney Council v Michael Standley & Associates Pty Limited [1998]*).

As demonstrated below the change to an approval can be substantial without the amended proposal failing the ‘substantially the same’ test. By way of example, and relevant to the current proposal, the following cases were considered in the Court and found to be substantially the same development, with this extract contained in a Gadens Publication dated 17 June 2012:

Bassett and Jones Architects Pty Limited v Waverley Council (No 2)[2005]: The modification application sought an additional storey to the approved front building of a mixed commercial and residential development, which would alter the building from three- storeys to four- storeys; and the provision of a zero side setback for a part of the external side walls at all three levels. This resulted in an increase in floor space of 112 square metres, **being a 20 per cent increase in floor space, and a 28 per cent increase in height (both of which exceeded the applicable council controls)**. The Court found that the test was satisfied albeit only on “a very fine balance”. The Court noted however that the modified design might give rise to privacy impacts that may warrant refusal of the application when the merits of the change are assessed. The application was later refused on its merits, but not before passing the “substantially the same” threshold test.

Davi Developments Pty Ltd v Leichhardt Council [2007]: A modification application sought to change a consent for a seven storey residential flat building with two levels of basement parking. There was to be a reduction of one floor, but an increase in main parapet height by 900mm, and the substantial reconfiguration of the unit mix such that the numbers reduced from 42 to 30, with a rearrangement of the car park plan such that it was “entirely different”. The Court nevertheless considered that the fundamental characteristics and essence of the building would remain essentially the same.

Bathla Investments Pty Limited v Blacktown City Council [2008]: The original approval was for eight townhouses presenting as four, single-storey buildings. Some of the townhouses were attached. The modification application sought to change some of the townhouses to two storeys, and also sought to separate the dwellings and made changes to the garage designs and parking layout. The Court noted that there were “numerous differences” between the schemes, however, the townhouse development presented as materially and essentially the same development.

Marana Developments Pty Limited v Botany City Council [2011]: The original approval was for the construction of five residential flat buildings (with basement car parking) comprising a total of 76 units. **The modification application sought ‘significant changes to the external appearance and layout of the buildings’ including an increase in unit numbers from 76 up to 102, and an additional level of basement car parking.** This also involved a changed unit mix. Despite significant internal changes, the minimal change to the external floorplates and layout was of great significance and the test was satisfied.

Boyd v Bega Valley Council [2007]: It was proposed to add a second storey to a single storey dual occupancy development. Although the application was unsuccessful on merit grounds reasons (visual impact from the waterway caused by poor architectural design), the Court was satisfied that the increase from a single storey to a two storey dwelling satisfied “substantially the same” test.

As can be seen above, particularly in *Marana Developments* and *Bassett and Jones Architects*, a substantial number of changes to a development does not take away from the fact that it is substantially the same development and can pass the required test under Section 4.55.

The application is substantially the same as the approved development, with the design development being minor changes to the approved building footprint and internal building separation with the modification concentrated predominantly within the building itself. Therefore, the proposal is considered to be substantially the same development as that originally approved when considered in the context of the cases referred to above dealt with by the Land and Environment Court.

It is anticipated that the development application will be notified to adjoining property owners and a discussion against the relevant planning controls is provided further in this statement.

Environmental Planning Instruments

Given the proposal is for amendments to the approved plans only those planning instruments and controls relevant to the proposal are addressed in detail below.

State Environmental Planning Policy BASIX 2004

An updated BASIX certificate has been prepared for the development.

State Environmental Planning Policy No.55- Remediation of Land

Has been addressed via DA16/0621.

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development & Apartment Design Guide

A revised Design Verification Statement has been prepared and a discussion against the ADG provisions provided below, noting a number of the provisions are unchanged as compared to the original DA.

ADG Element	Requirement	Proposed
3A Site Analysis required	Appendix 1 of the ADG	Site Analysis has been provided via previous DA.
3B Orientation	Building to define the street, by facing it and incorporating direct access from the street	S.4.55(2) amendment will have no impact on the orientation of the approved flat building, noting the development will continue to Garner Street whilst also continuing to provide direct access to the approved building.
3C Public Domain Interface	<p>Terraces, balconies should have direct street entry, where appropriate.</p> <p>Mail boxes should be located in lobbies, perpendicular to the street alignment or integrated into front fences where individual street entries are provided</p> <p>Substations, pump rooms, garbage storage rooms and</p>	<p>The proposed modification will have no impact on the approved access arrangements to and from the site via the ground floor.</p> <p>As per approved DA: no changes.</p>

	other service rooms should be located in the basement carpark or out of view	As per approved DA: no changes.
3D Communal and Public Open Space	Communal open space has a minimum area equal to 25% of the site 50% of the principal COS should receive 2 hours of sunlight between 9am and 3pm Minimum dimension of 3m	No changes to existing communal open space.
3E Deep Soil Zones	A deep soil zone equivalent to 7% of the site area must be provided If the site is between 650m ² to 1,500m ² then the DSZ must have minimum dimensions of 3m	The section 4.55 modification will not make any changes to the existing Deep soil, and will continue to provide 7% of the site area as DSZ.
3F Visual Privacy Building Separation Up to 4 storeys (up to 12m) 5-8 Storeys (up to 25m)	12m between habitable rooms (6m) 6m to non-habitable to non-habitable. 18m between habitable rooms (9m) 9m non-habitable to non-habitable.	No changes are proposed to the existing Ground Floor to third storey. <u>Western Boundary (Rear Setback)</u> The proposed 4 th floor will provide a setback of 12.6m to its western boundary and is compliant. <u>Eastern Boundary (Front Setback)</u> The development provides a front setback of 7.26m which is compliant with that required by the DCP, and is therefore compliant. <u>Southern Boundary (Side Setback)</u> The southern setback proposes a setback of 4.5m. However, blank walls are provided and therefore separation is not required by the ADG.

		<p><u>Northern Boundary (Side Setback)</u></p> <p>The fourth floor proposes a setback of 4.9m, which is under the required separation by the Apartment Design Guide. However, the building provides privacy screens to the sides of the balcony fronting Garner Street, and the design proposes 2 high sill windows to the living room to mitigate privacy impacts and the southern wall is blank to create a non-habitable condition and avoid privacy impacts to offset the reduced separation.</p> <p>The site is 16.73m in total width and therefore full compliance with this requirement of the ADG would literally render the site undevelopable. The subject proposal is a permitted form of development on a site that would otherwise be left isolated resulting from constructed buildings on either side.</p> <p>Therefore, the proposal has been designed with a proposed variation but with the objectives of this section of the ADG still being met.</p>
3G Pedestrian Access and Entries	Building entries should be clearly identifiable and communal entries should be clearly distinguished from private areas	No change.
3H Vehicle Access		No change.

4A Solar Access	<p>70% of Units to receive 2 Hours Solar Access between 9am and 3pm Mid-Winter</p> <p>A maximum of 15% of apartments receive no direct sunlight between 9am and 3pm Mid-Winter</p>	<p>The proposed level will include 1 unit, which contains several north facing windows, the unit receives more than 3hrs of solar access, with 100% of units receiving >3hrs of solar access the development is compliant.</p> <p>All units will receive >3hrs of solar access.</p>
4B Natural Ventilation	60% of Units are cross ventilated in a building up to 9 storeys	Development will continue to comply with natural ventilation requirements under the ADG, noting the new unit will be cross ventilated, 100% of units will be cross ventilated.
4C Ceiling Height	2.7m for habitable; and 2.4m for non-habitable	The proposed level will have a floor to ceiling height of 2.8m and is therefore compliant.
<p>4D Unit Sizes</p> <p>1 bed 2 beds 3 beds + 5m² for each unit with more than 1 bathroom.</p> <p>Bedroom sizes Master Other</p>	<p>50m² 70m² 90m²</p> <p>10m² 9m²</p>	The new level will contain a 1-bedroom unit with an area of 83m ² and is therefore compliant.
4E Private Open Space Balcony Sizes	<p>1 bed: 8m² & 2m depth</p> <p>Ground Floor Units: 15m² & 3m depth</p>	The proposed unit has a POS of 17m ² , which exceeds the 8m ² required and is therefore compliant.

4F Common Circulation and Spaces Common Circulation Units per Plate	8 -12 Unit per Plate	The lift core will serve no more than 3 units per level.
4G Storage Min 50% of required storage is within the apartment but not in kitchens, bathrooms and bedrooms.	1 bed: 6m ³ 2 beds: 8m ³	Modification has been designed to ensure all units comply with minimum storage requirements under the ADG.
4K Apartment Mix	A variety of apartment types is provided	The modification results in a minor change to the unit mix, however the approved development continues to provide a healthy mix of one and two bedroom units.
4O Landscape Design		No changes to the landscape design are proposed.
4Q Universal Design 20% of the total apartments	Achieve Liveable House Guidelines silver level universal design features	The building proposes 2 accessible units, with more than 20% of the total unit mix providing a universal design.

State Environmental Planning Policy (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 was introduced in July 2009 as a response to the ongoing issue of housing affordability within NSW. This section of the Statement addresses the relevant provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009.

Part 2 New Affordable Rental Housing: Division 1 In-Fill Affordable Housing

Clause 10- Development to which Division Applies

The SEPP applies as 'residential flat buildings' are permitted with consent under the Penrith Local Environmental Plan 2010. Bus services within the vicinity of this site provide for greater than an hourly level of service which aligns with the provisions of Clause 10 and as shown on the image over the page the site is 300m walking distance from local bus stops and is therefore an 'accessible area'. It should also be noted the bus services are more regular than 1 per hour between 6am and 9pm Monday to Friday and between 8am and 6pm Saturday and Sunday.

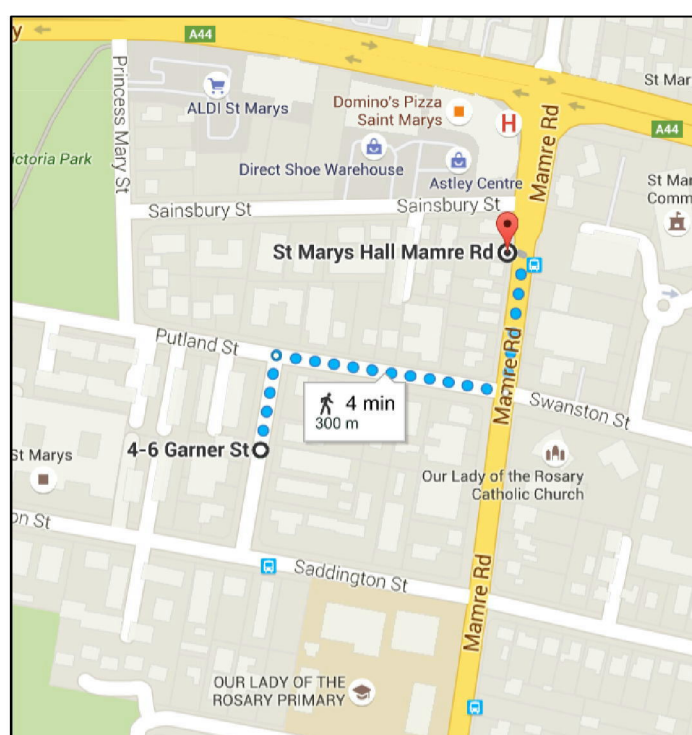


Figure 1: Bus Route Map (Source: Google Map)

Clause 14- Standards that cannot be used to refuse consent

The SEPP prescribes a number of standards that cannot be used to refuse consent, however the wording of the provisions specifically nominate that a consent authority can grant consent regardless of compliance with the below standards:

(3) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).

The key grounds are summarised within the table below:

Control	Numerical Requirement	Proposed Development	Complies
Site Area	450m ²	663.9m ²	Yes
Landscaped Area	30% of site area	19.5% or 129.5m ² . However, the area shown on the ground floor plan nominated as "green pergola" which is effectively green landscaping, can also be considered as landscaped area. If this area is included then the proposal provides 30% of the site as landscape area.	As approved.
Deep Soil Zones	15% of site area	7% with the deep soil areas evenly distributed throughout the site to ensure the proposal predominantly complies with the prescribed requirement of the ADG.	Yes
Solar Access	3 hours to 70% of dwellings between 9am and 3pm at mid-winter	11 units = 100%	Yes
Parking	1 Bed: 0.5 spaces (2.5) 2 Bed: 1 spaces (8) 10 required in total.	11 residential car parking spaces are provided which complies.	Yes
Dwelling Size	1 Bed: 50m ² 2 Bed: 70m ²	1 Bed: >50m ² 2 Bed: >70m ²	Yes

Clause 15- Design Requirements & Clause 16- Continued Application of SEPP 65

The proposal involves a residential flat building and therefore the reference to the Seniors Living Policy: Urban Design Guidelines for Infill Development is not relevant to the current proposal. As noted by Clause 16 the provisions of SEPP 65 continue to apply to the development and the provisions of SEPP 65 are addressed previously in this statement and the accompanying Design Verification Statement prepared by Vitale Design.

Clause 16A- Character of Local Area

The design ensures compatibility with the local area as outlined in the planning principle established in *Project Venture Developments Pty Ltd V Pittwater Council*. Of particular relevance to the current proposal is the recent decision in *Moscaritolo v Ryde City Council* where Senior Commissioner Brown outlined, in relation to a proposal under the ARH SEPP, at [18] that:

I accept that any assessment of the proposed development against the character of the local area should include an assessment of existing building forms and also the character envisaged by the forms of development contemplated.

Future character is a significant consideration with Council up zoning the subject block to accommodate higher mixed-use densities and with the current demand for housing within Sydney, the proposal is going to play an important role in setting the tone and scale for future comparable high-density development within St Marys. A detailed discussion against the planning principle is provided below.

In accordance with the Planning Principle set out in *Project Venture Developments v Pittwater Council (2005) NSW LEC 191* the following tests apply in determining whether development is compatible with surrounding development:

24 Where compatibility between a building and its surroundings is desirable, its two major aspects are physical impact and visual impact. In order to test whether a proposal is compatible with its context, two questions should be asked.

- Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*
- Is the proposal's appearance in harmony with the buildings around it and the character of the street?*

These questions will be dealt with in turn however it is important to note that as set out in the planning principle *'Compatibility is... different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve'*. Therefore, it can be seen that it is not necessary that the development adopt the same built form, scale, and appearance as surrounding developments.

In terms of the physical impacts of development the following points are made:

- Detailed shadow analysis demonstrates that adjoining properties achieve adequate solar access to open space and living areas.
- Privacy impacts are mitigated through the provision of appropriate building separation, smart internal apartment layouts, window placement (offset windows) and landscape embellishments works. The majority of living areas of the proposed units are oriented towards the street frontage and rear private open space area to mitigate privacy impacts to adjoining properties as far as practicable.
- Noise impacts arising from the proposal are limited to traffic movements. Given the location and design of the basement entry it is not anticipated that the level of noise generated will substantially impact on adjoining properties.
- The development proposal does not result in the constrained development potential of the adjoining properties or impact on any existing view corridors, noting that the subject site has been designed to present a suitable form of development in the locality.

Therefore, it can be seen that the physical impacts of the proposal are acceptable.

The planning principle establishes that the 3 key elements that define urban character are building height, setbacks, and landscaping. In this regard, the following comments are made:

Height

- The proposal complies with the maximum height control contained in the Penrith LEP 2010 with the exception of a portion of the upper most level.

Setbacks

- The development is compliant with the front setback however some variation is proposed to the side and rear setbacks. The compliant front setback ensures the proposed building will sit comfortably in the streetscape. It is expected that with the current demand for housing along Sydney's rail corridor, key arterial road networks and R4 zoning which has earmarked the subject site and subject block for higher mixed-use densities, the proposal aims to set the tone and scale for comparable developments within this locality.
- The proposal will play an important role in not only setting the future streetscape rhythm but in cognisance of the site's existing context, appropriate setbacks and separation distances are proposed to ensure the proposal will not create any adverse amenity, visual or privacy impacts on adjoining properties.

Landscaping

- The landscape concept provides for deep soil and landscape embellishment works, that are consistent within a high-density zone that will both maintain and enhance the levels of privacy and amenity enjoyed by existing residents of the area and for future residents of the proposal. The proposed landscaping will help to soften the built form of the proposed development and reduce the visual bulk and mass of the building and this will help the proposal to integrate with the site's context.

Based on the foregoing discussion it is considered that the development will exist in harmony with future development in the vicinity of the site and as such is worthy of support by Council as the development is compatible with the desired character of the locality.

Clause 17- Must be used for Affordable Housing for 10 Years

It is anticipated that conditions of consent will reinforce that the proportion of floor area to be used as affordable dwellings are to be used for a period of no less than 10 years as affordable dwellings- this will equate to approximately 200m².

Penrith Local Environmental Plan 2010

The subject site is zoned R4 High Density Residential under the provisions of the Penrith LEP 2010 as indicated on the zoning extract map below.

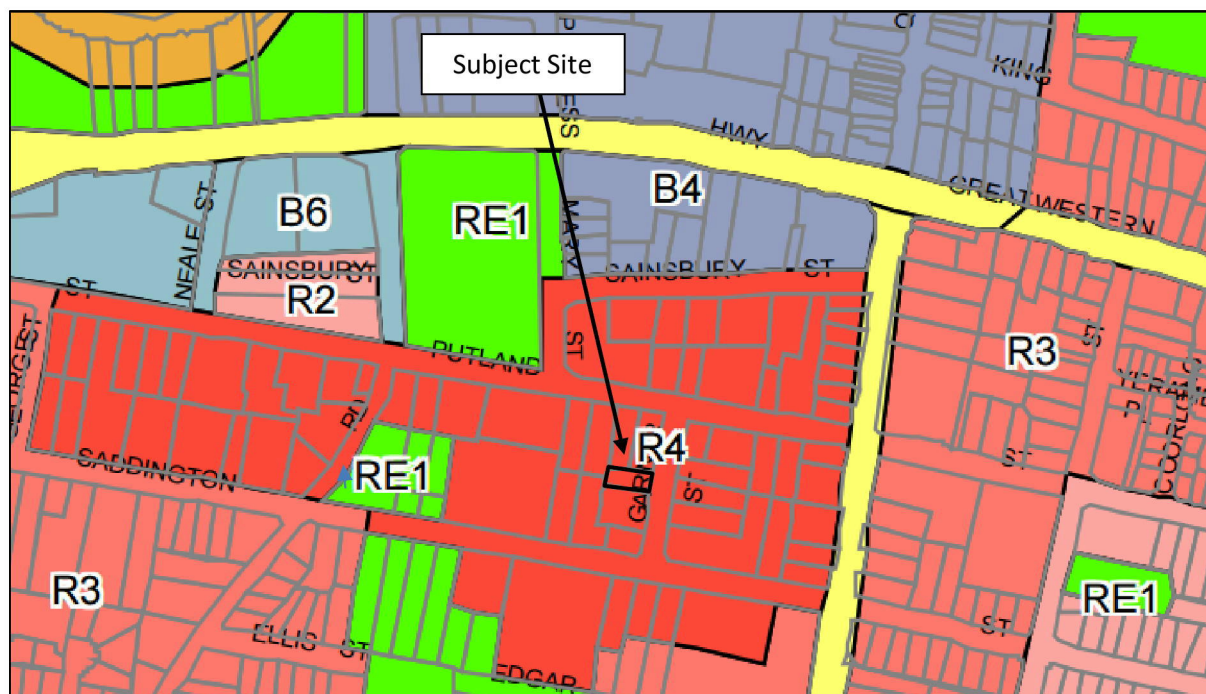


Figure 2: LEP Zoning Map Extract (Penrith LEP 2010)

A Residential Flat Building is permissible with consent and the proposal is consistent with the definition contained within the LEP:

Residential Flat Building means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.

The development proposal is also consistent with the prescribed R4 zone objectives that are stipulated as:

- 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 provides a residential flat building that will provide a variety of housing types and contribute towards increasing the housing stock of Penrith, whilst being consistent with the emerging high-density character of the subject area.

The site is well located and provides access to essential services, public transportation, schools, shops and recreation opportunities.

The residential flat development incorporates a contemporary design that achieves good presentation to both streets. The locality has been zoned for high density development and as such it is expected to transform over the next 5 to 10 years with planning controls permitting greater density in the locality. The proposal aims to provide a strong interface to Garner Street whilst being consistent with the future high-density character of the precinct.

The table below provides detail on the development standards relevant to the current proposal as well as other relevant LEP provisions.

Penrith Local Environmental Plan 2010 - Compliance Table			
Relevant Clause	Control	Comment	Complies
Part 2 Permitted or Prohibited Development			
2.3	Zone Objectives and Land Use Table	The approved flat building continues to be consistent with the zone objectives of the R4 High Density in that it provides high density housing within close proximity to schools, public transportation and services.	Yes
2.7	Demolition Requires Consent	No additional demolition works is proposed as part of this Section 4.55(2) modification.	N/A
Part 4 Principal Development Standards			
4.3	Height of Buildings- 15m	<p>The section 4.55 modification proposes the addition of a fifth storey, which will increase the building height to 16.13m (15.55m excluding lift overrun) which slightly exceeds the maximum building height limit of 15m.</p> <p>The lift core which exceeds the height by 1.13m, will be located centrally, and therefore will not be visible from the ground floor, and will not cause excessive overshadowing.</p> <p>The actual building height is only 0.55m over the maximum building height allowed of 15m, which is very minor, varying the control by 3.67%.</p>	Variation

		The minor variation is considered to be reasonable given the upper level is recessed and is not visually dominant. No Clause 4.6 is necessary to consider the modification as per Gann v Sutherland as Clause 4.6 technically does not apply to modification applications.	
4.4	Floor Space Ratio	No FSR control applies to the subject site. Not relevant.	N/A
Part 5 Miscellaneous Provisions			
5.10	Heritage	The site does not contain a heritage item and is not located within proximity to a heritage item or a heritage conservation area.	N/A
Part 7 Additional Local Provisions			
7.1	Earthworks	No additional earthworks proposed as part of this S.4.55(2) modification. Earthworks have been addressed via previous DA.	N/A
7.2	Flood planning	The site is not identified as being flood prone by Council's flood planning land map sheet FLD_019. Not applicable.	N/A
7.3	Development on Natural Resources Sensitivity Land	The site is not identified on the Natural Resources Sensitive Map. Not applicable.	N/A
7.4	Sustainable Development	<p>The proposal satisfies the LEP in that:</p> <p><i>(a) conserving energy and reducing carbon dioxide emissions,</i></p> <p><i>(b) embodied energy in materials and building processes,</i></p> <p>Proposal incorporates a BASIX certificate relating to energy efficiency.</p> <p><i>(c) building design and orientation,</i></p> <p><i>(d) passive solar design and day lighting,</i></p> <p><i>(e) natural ventilation,</i></p> <p>The majority of units receive good solar access and natural ventilation.</p>	Yes

		<p><i>(f) energy efficiency and conservation,</i> <i>(g) water conservation and water reuse,</i></p> <p>Proposal incorporates a BASIX certificate relating to energy/water efficiency.</p> <p><i>(h) waste minimisation and recycling,</i></p> <p>Waste management and recycling is addressed through the attached waste management plan.</p> <p><i>(i) reduction of vehicle dependence,</i></p> <p>Proposal is located within a 50m radius of bus stops with regular services to St Marys, Penrith, Mt Drutt and Kingswood that gives alternative means of transport.</p> <p><i>(j) potential for adaptive reuse.</i> Given the zoning of the site as R4 there is limited adaptive re-use potential on the site.</p>	
7.5	Protection of Scenic Character and Landscape Values	The site is not identified on the Land with Scenic and Landscape Values Map. (SLV_019) Not applicable.	N/A
7.6	Salinity	Due to the nature and location of the site it is not likely to be affected by Saline Soils. Not applicable.	N/A
7.7	Servicing	Addressed via previous DA.	N/A

Penrith Development Control Plan 2014

All relevant Council controls have been identified and considered in the following compliance table.

Penrith Development Control Plan 2014 – Compliance Table			
Clause	Controls	Comment	Complies
C1 Site Planning and Design Principles			
1.1	Site Planning	<u>1.1.1 Site Analysis</u> Site Analysis has been provided via previous DA.	N/A
		<u>1.1.2 Key Areas with Scenic and Landscape Values</u> The subject site is not located within the Scenic and Landscape Values Map under the Penrith LEP 2010.	N/A
1.2	Design Principles	<u>1.2.2 Built Form – Energy Efficiency and Conservation</u> The proposed development continues maximises solar access to units and is designed in a manner that achieves natural ventilation. An updated BASIX certificate is attached to this statement.	Yes
		<u>1.2.3 Building Form – Height, Bulk and Scale</u> It is considered that the development will continue to result in an appropriate outcome on site that responds to the unique characteristics of the site.	Yes
		<u>1.2.4 Responding to the Site's Topography and Landform</u> Has been addressed via previous DA.	N/A
		<u>1.2.5 Safety and Security (Principles of Crime Prevention through Environmental Design)</u> The approved development continues to incorporate active façades that will permit casual surveillance of Garner Street, as well as the common areas of the proposal.	Yes

		<u>1.2.6 Maximising Access and Adaptability</u> No change.	N/A
C2 Vegetation Management			
2.1	Preservation of Trees and Vegetation	Has been addressed via previous DA.	N/A
2.2	Biodiversity Corridors and Areas of Remnant Indigenous Vegetation in Non-Urban Areas	The subject site is not identified as being within a Natural Resource Sensitive Land under Penrith LEP 2010. Not applicable.	N/A
2.3	Bushfire Management	Subject site is not identified as being within a Bushfire Prone Land under Penrith LEP 2010. Not applicable.	N/A
C3 Water Management			
3.1	Water Conservation	Has been addressed via previous DA.	N/A
3.2	Catchment Management and Water Quality	No change to the stormwater arrangement approved via DA16/0621.	Yes
3.3	Watercourses, Wetlands and Riparian Corridors	Subject site is not located within close proximity to a watercourse, wetland or riparian corridor. Not applicable.	N/A
3.4	Groundwater	Has been addressed via previous DA.	N/A
3.5	Flood Planning	The subject site is not identified as being flood prone. Not applicable.	N/A
3.6	Stormwater Management and Drainage	No change to the stormwater arrangement approved via DA16/0621.	Yes
C4 Land Management			
4.1	Site Stability and Earthworks	No additional earthworks are proposed as part of this S.4.55(2) modification, noting Clause 4.1 has been addressed via previous DA.	N/A
4.3	Erosion and Sedimentation	Has been addressed via previous DA.	N/A
4.4	Contaminated Lands	Has been addressed via previous DA.	N/A
4.5	Salinity	Due to the nature and location of the site it is not likely to be affected by Saline Soils. Not relevant.	N/A

C5 Waste Management			
	A bin chute is to be provide to all RFB's over 3 storeys in height.	No changes to waste management approved in previous DA.	Yes
C6 Landscape Design			
		No changes to existing landscaping design proposed.	Yes
C7 Culture and Heritage			
7.1	European Heritage	The site does not contain a heritage item and is not located within proximity to a heritage item or a heritage conservation area. Not relevant.	N/A
7.2	Aboriginal Cultural and Heritage	Not relevant.	N/A
7.3	Significant Trees and Gardens	The subject site does not contain any trees or gardens that is considered to be of cultural, historical, scientific or aesthetic significance. Not relevant.	N/A
C10 Transport, Access and Parking			
10.2	Traffic Management and Safety	No changes to the vehicle access arrangement approved under DA16/0621. The development continues to provide safe and efficient movement of pedestrian and vehicular traffic within the site and both entering and exiting the site.	Yes
10.3	Key Transport Corridors	The subject site is not located with a key transport corridor. Not relevant.	N/A
10.5	Parking, Access and Driveways State Environmental Planning Policy (Affordable Rental Housing) 2009 Parking Rates 0.5 space per 1 br unit (0.5 x 5 = 2.5) 1 space per 2 br unit (1 x 8 = 8)	The section 4.55(2) modification proposes the addition of a 1 bedroom unit, bringing the required car parking spaces from 10 to 10.5. The development provides a total of 11 spaces and is therefore compliant with the State Environmental Planning Policy (Affordable Rental Housing) 2009 controls.	YES – SEPP ARH 2009.

	Total Required = 10.5 (11) Residential spaces.		
C11 Subdivision			
		No subdivision is proposed as part of this development and as such the controls contained under C11 Subdivision do not apply to the current development.	N/A
D2 Residential Development			
2.5	Residential Flat Buildings New residential flat building development should adopt key features of established suburban design. Within the relevant zones, established development provides parking areas which are concealed from the street and consequently avoids the appearance of "garage architecture"	<u>2.4.2 Preferred Configuration for Residential Flat Buildings</u> The development continues to provide courtyards and private open space areas that front the street, with the proposed unit on the fourth floor containing a balcony fronting Garner Street Addressed via previous DA.	Yes N/A
2.5.3	Development Site Minimum lot width of 20m in the R4 High Density Residential zone.	The proposal has a site frontage of 16.73m to Garner Street and as such does not comply with Council's minimum lot width requirements for Residential Flat Buildings within the R4 Zone. The site is able to achieve a development that provides adequate car parking, landscaping and a good level of amenity for future residents in terms of privacy. It is considered that this variation can be supported as largely the proposal achieves compliance with key planning controls with a reduced site width.	Yes
2.5.4	Urban Form 1.For dwellings fronting the street, adopt a traditional orientation: a) living rooms, verandahs and the paths to entrances face the street rather than neighbouring properties; and	Has been addressed via previous DA.	N/A

	<p>b) private gardens fill the front setback area; and c) garages are concealed behind dwellings.</p> <p>2.Dwellings behind the street frontage should adopt similar principles: a) living rooms and entrances face the street, and / or the landscaped rear boundary setback; and b) private gardens fill the rear setback area.</p> <p>3. Avoid "gun-barrel" style developments with long rows of attached dwellings, long straight driveways and rows of uniform width side setback:</p> <p>a) step the alignment of all facades – generally one corner and a substantial indentation for every 10m run of wall;</p> <p>b) divide buildings into separate wings – a deep indentation located centrally in the longest walls; or a central garden courtyard;</p> <p>c) vary the width of side setbacks – a combination of garden courtyards and access ways; and</p> <p>d) lined by an “avenue” of shady overhanging trees;</p> <p>e) cap the stepped floor plan with a variety of pitched roof forms;</p> <p>f) Windows should be inserted into every elevation.</p>	<p>Has been addressed via previous DA.</p> <p>Has been addressed via previous DA.</p> <p>Has been addressed via previous DA, and the additional level has been designed in correspondence with the approved building.</p> <p>Has been addressed via previous DA.</p> <p>Has been addressed via previous DA, noting the approved development continues to be articulated through shadow casting features and stepping external walls.</p> <p>Has been addressed via previous DA.</p> <p>The development proposes a varying height of flat roof forms, providing articulation within the building design, and preventing the elevation design from looking blank.</p> <p>Windows are provided along all elevations.</p>	<p>N/A</p> <p>N/A</p> <p>Yes</p> <p>N/A</p> <p>Yes</p> <p>N/A</p> <p>Yes</p> <p>Yes</p>
--	---	---	---

2.5.5	Landscaped Area	No changes to approved landscaping are proposed.	N/A
2.5.6	<p>Front and Rear Setbacks</p> <p>Rear Setback: 6m</p> <p>Front Setback: Average of neighbouring development or 5.5m minimum.</p> <p>Balconies can have a 4.5m setback provided less than 50% of the elevation</p> <p>Garages and parking space are not to be located within the front setback.</p>	<p>The proposed additional level is compliant with the front and rear setback controls, providing a rear setback of greater than 6m, and a front setback of 7.62m that is consistent with the existing streetscape and is greater than 5.5m.</p>	<p>N/A</p> <p>N/A</p> <p>N/A</p> <p>Yes</p>
2.5.7	<p>Building Envelope and Side Setbacks</p> <p>Cut and fill and maximum ground floor heights: a) on sloping sites provide stepping building platforms in line with existing topography with floors no higher than 1m above natural ground level; b) restrict cut-and-fill to a maximum of 500mm;</p> <p>Pitches for main roofs are not to be in excess of 25 degrees in order to reduce the visual scale.</p> <p>Zero setbacks are not permitted</p>	<p>Has been addressed via previous DA.</p> <p>No additional cut and fill is proposed as part of this modification. Not applicable.</p> <p>The roof pitch is <25 degrees.</p> <p>Zero metre setbacks are not proposed.</p>	<p>N/A</p> <p>N/A</p> <p>Yes</p> <p>Yes</p>
2.5.8	Visual and Acoustic Privacy and Outlook	Has been addressed via previous DA. The proposed floor will continue to provide an appropriate outcome on site that will provide a high level of residential amenity for future residents and will not adversely impact upon residential amenity currently enjoyed by adjoining properties.	Yes

2.5.9	Solar Planning		
	<p>A minimum of 4 hours sunlight between 9am and 3pm on 21 June, to living zones (i.e. areas other than bedrooms, bathrooms, kitchen and laundry) of each dwelling, and the living zones of any adjoining dwellings;</p> <p>A minimum of 3 hours sunlight between 9am and 3pm on 21 June, to 40% of the main private open spaces of the dwelling and main private open spaces of any adjoining dwellings</p>	<p>100% of dwellings receive a minimum of 2 hours sunlight between 9am and 3pm.</p> <p>Has been addressed via previous DA.</p>	<p>Yes</p> <p>N/A</p>
2.5.10	Significant Townscapes & Landscapes	The site is not within an area of townscape or landscape significance.	N/A
2.5.11	Corner Sites and Park Frontages	Not applicable.	N/A
2.5.12	Building Design	1. The development continues to adopt a variety of architectural features designed to minimise the apparent scale and bulk of the proposed RFB	Yes
2.5.13	Energy Efficiency	<p>The application has been provided with an updated BASIX certificate.</p> <p>100% of units will achieve more than 2 hours solar access at mid-winter (ADG prevails) and the building depth and apartment design ensures 75.9 of units are naturally cross-ventilated.</p>	Yes
2.5.14	Design of Dwelling and Private Courtyards		
	<p>Corridors at least 1.2m wide and stairs with landings at least 1.2m deep.</p> <p>Ground floor courtyards minimum 20m²</p>	<p>Continues to be compliant.</p> <p>No changes to ground floor.</p>	<p>Yes</p> <p>Yes – ADG</p>

	Upper courtyards 10m ² and 2.5m x 2.5m and incorporate an outdoor drying area that is screened to 1.5m above floor level.	The proposed unit on the fourth floor will have balcony with a size of 17m ² , that is compliant with the DCP.	Yes – ADG
2.5.15	<p>Garage Design</p> <p>Basements should have a low appearance, rising no higher than 1.5m above ground;</p> <p>Vehicle entrances designed to complement the architecture and landscaping of each building:</p> <p>individual up and down ramps;</p> <p>undercover storage:</p>	<p>No change.</p> <p>No change</p> <p>No change.</p> <p>Continue to comply.</p>	<p>N/A</p> <p>N/A</p> <p>N/A</p> <p>Yes</p>
2.5.16	Garden Design	No changes.	N/A
2.5.17	Paving Design	Where appropriate, hard paved surfaces are minimised to maximise landscaping and gardens.	Yes
2.5.18	Fencing and Retaining Walls	No change.	Yes
2.5.19	Safety and Security	The approved development continues to incorporate active façades that will permit casual surveillance of Garner Street, as well as the common areas of the proposal.	YES
2.5.20	<p>Accessibility and Adaptability</p> <p>10% of dwellings must be adaptable</p>	2 adaptable units (15.4%) are provided.	Yes
2.4.22	<p>Storage and Services</p> <p>10m³ of storage per unit</p>	The proposal provides 8m ³ of storage through a combination of basement storage areas and areas in accordance with ADG.	Yes

Conclusion

Following a review of the relevant planning controls, it is concluded that the proposed modification application is of a very minor scale and results in an appropriate outcome on the site whilst remaining consistent with the design intent of the original proposal.

Having regard to the benefits of the proposal and taking into account the absence of adverse environmental, social or economic impacts, the modification application is submitted to Council for assessment and granting of consent. Think Planners Pty Ltd recommends the approval of the modification application including the amendment of relevant conditions.