

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA16/0621.03
Proposed development:	Addition of Fifth Storey & One (1) Apartment to Approved Four (4) Storey Residential Flat Building
Property address:	1 Garner Street, ST MARYS NSW 2760
Property description:	Lot 3 DP 508698
Date received:	31 July 2018
Assessing officer	Kathryn Saunders
Zoning:	Zone R4 High Density Residential - LEP 2010
Class of building:	Class 2 , Class 7a
Recommendations:	Refuse

Executive Summary

Council is in receipt of a modification application for the alteration of an approved, yet to be constructed, 4 storey residential flat building comprising 12 apartments at 1 Garner Street in St Marys. The alteration includes the addition of a fifth storey comprising 1 additional unit .

The proposal is defined as residential flat building under the Penrith Local Environmental Plan (PLEP 2010) and is a permissible land use within the R4 High Density Residential zone, with the consent of Council.

The application has also been lodged under the State Environmental Planning Policy (Affordable Rental Housing) 2009, in that one apartment is approved as a affordable rental housing.

Key issues identified for the proposed development and site include:

- Non-compliance with Height of Buildings development standard under PLEP 2010;
- Negative impacts on amenity including visual, acoustic, solar access and streetscape;
- Insufficient landscaped area and deep soil; and
- Insufficient area to accommodate waste infrastructure.

The application has been notified to adjoining properties, advertised and exhibited between 17 August and 31 August 2018, in accordance with relevant legislation. One submission was received stating that no objections to the development are raised. The development application is to be determined under delegated authority.

An assessment under Section 4.15 and Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* has been undertaken and the application is recommended for refusal.

Site & Surrounds

The subject site is a single allotment legally described as Lot 3 in DP 508698 and is known as 1 Garner Street, St Marys. The site has an area of 663.9sqms and is rectangular in shape with a 16.73m frontage to the western side of Garner Street.

The site is gently sloped toward the rear (west) with a fall of approximately 1.53m. The allotment currently contains a single brick clad dwelling house with tile roof. Two trees are located within the rear yard and one tree is located within the front setback of the site.

The subject site shares its southern side boundary with a 3 storey residential flat building with basement car parking and shares its northern side boundary with a 2 storey multi dwelling housing development.

Development in the immediate vicinity comprises a mixture of older style single dwellings, two storey multi dwelling housing development and 3 and 4 storey residential flat buildings with basement car parking.

Garner Street is a two way local road with on-street parking spanning north/south between Putland Street to the north and Saddington Street to the south. Our Lady of the Rosary Primary School is located 112 metres to the south-east of the site. Local shops including a medical centre, pharmacy, IGA Express and take away pizza shop are located 360 metres walking distance toward the north-west.

Proposal

The proposed development involves the addition of a fifth storey comprising one additional one bedroom unit to an approved four storey residential flat building, alterations to unit mix and car parking layout. The proposal is for a total of 13 units (5 x 1 bed and 8 x 2 bed) and basement car parking for 12 vehicles.

DA16/0621 approved the demolition of all structures on the site, construction of a four storey residential flat building with 12 units (4 x one bedroom and 8 x two bedroom), including one unit for affordable rental housing, basement car parking for 12 vehicles and ancillary landscaping and services.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Affordable Rental Housing) 2009
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy No 65—Design Quality of Residential Flat Development
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

• Section 79C - Evaluation

The proposal has been assessed in accordance with the matters for consideration under Section 4.15 (formerly Section 79C) of the *Environmental Planning and Assessment Act 1979*, and having regard to those matters, the following issues have been identified for further consideration:

• Section 96(2) - Other modifications

Under Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*, 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 4.8) 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.*

With regard to the above, the following is noted:

(a) The following test of '*substantially the same development*' is noted:

In *Vacik Pty Ltd v Penrith City Council* (unreported 1992) the question of substantially the same development was considered by Stein J and in particular the meaning of the word '*substantially*'. In his opinion, '*substantially*' is taken in the context to mean '*essentially or materially or having the same essence*'. In *North Sydney Council v Michael Standley & Associates Pty Ltd* (1998) the NSWCA recognised that a modified development must be different in some respect to the approved development and used the formulation that '*modify*' meant '*to alter without radical transformation*'.

In applying the ordinary meaning of the words '*substantially the same development*' informed by the above cases, the modified development is of the same essence and therefore is considered to be substantially the same as the original approved development.

(b) Consultation with the Minister, public authority or other approval body is not required to be undertaken in respect to a condition imposed as a requirement of a concurrence or in accordance with general terms of an approval.

The modification application was notified in accordance with Appendix F4 of the Penrith Development Control Plan 2014, to adjoining and nearby properties between 17 August and 31 August 2018. One submission was received from an adjoining land owner stating that no objections were raised to the proposal.

In addition to the above, as per Section 4.55(2) of the Environmental Planning and Assessment Act the following is noted:

Section 4.55(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

Section 4.15 (1) of the *Environmental Planning and Assessment Act 1979*, has been taken into consideration and is discussed within this report.

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

State Environmental Planning Policy (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009

(a) Clause 14 Standards that cannot be used to refuse consent

The original consent under DA16/0621 assessed the development against the standards listed under Clause 14. Variances to deep soil zones and landscaped area were assessed as acceptable owing to the site constraints including its orientation, scale and location as a infill site able to provide a transition in built form from the residential flat building to the south and two lots containing multiple two storey town houses to the north. The acceptance of the deviation from the standards listed under Clause 14 was also subject to conditions that required the following amendments:

- (a) planter boxes along the southern elevation to be provided with irrigation and to be a minimum soil depth of 800mm;
- (b) provision of planter boxes along the northern and southern boundary to Unit GF.01 and the southern boundary of Unit GF.02 with minimum soil depths of 800mm;
- (c) a tree is to be provided within the front setback of the lot adjacent to the entry to Unit GF03, having a minimum mature height of 6m and a planting pot size of 45L; and
- (d) that a minimum 1.5m wide pavement and a street tree be provided along the frontage of the site.

The above amendments were considered to ameliorate the effects of the proposal's deviation from the ADG rates for landscaping and deep soil provision and were considered incorporation with the overall density of dwellings, and consideration was also given to the need for affordable housing within the local government area and the aims of the SEPP ARH.

Plans submitted as part of this amendment application do not facilitate compliance with these above mentioned conditions and notwithstanding other non-compliant attributes (detailed elsewhere within this report), further intensification of the site is not supported. In addition, deep soil provision approved under consent DA16/0621 is further reduced by the proposed amendments, owing to the amended location of the On-Site Detention (OSD) tank within the site's frontage, adjacent the northern boundary.

With regard to car parking, the Policy sets out under Clause 14, that a consent authority must not refuse consent to development to which the Division applies on any the following grounds if - at least 0.5 parking spaces are provided for each dwelling containing 1 bedroom, at least 1 parking space is provided for each dwelling containing 2 bedrooms, and at least 1.5 parking spaces are provided for each dwelling containing 3 or more bedrooms.

The proposed additional level (fifth floor) comprises one 83sqm unit containing one bedroom with ensuite, separate bathroom and study. It is considered, due to the layout and scale of the unit, that the study should be calculated as a bedroom. In this respect, the car parking rate for this unit shall be as for a two bedroom unit. Car parking requirements under the SEPP are thus, calculated as follows:

Unit mix

4 x 1 bed - $0.5 \times 4 = 2$ spaces, and

9 x 2 bed = 9 spaces.

Total parking spaces required as per the SEPP ARH is 11 spaces. A total of 12 spaces are proposed which complies.

(b) Clause 16a of the SEPP ARH states that a consent authority must not consent to development to which this Division applies, unless it has taken into consideration whether the design of the development is compatible with the character of the local area.

The design of the modified building is not considered to be compatible with the character of the area and does not reflect the desired future character of the area as provided within Council's strategic plans and policies. The development does not comply with the applicable height for the site expressed within the PLEP 2010 or the built form controls of the ADG.

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

This Policy ensures the implementation of the BASIX scheme that encourages sustainable residential development. It requires certain kinds of residential development to be accompanied by a list of commitments to be carried out by applicants. The proposal is subject to these requirements as it involves the substantial alteration of an approved residential flat building.

BASIX Certificate No. 720107M_02 was submitted with the development application and demonstrates compliance with set sustainability targets for water and energy efficiency and thermal comfort and in this respect, the proposal is compliant with the Policy. Notwithstanding the above, the modification application is recommended for refusal based on other matters.

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

The original application under DA16/0621 was accompanied by a written statement from the architect detailing how the design quality principles of State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Design (SEPP 65) were addressed in the design, however the modification applicant was not and an assessment of the proposal against SEPP 65 was included as part of the Statement of Environmental Effects prepared by Think Planners, dated 27 April 2018.

As per the requirements of Clause 115 of the Environmental Planning and Assessment Regulation 2000, the modification application is required to be accompanied by a statement by a qualified designer and the statement must:

- (a) *verify that he or she designed, or directed the design of, the modification of the development and, if applicable, the development for which the development consent was granted, and*
- (b) *provide an explanation of how:*
 - (i) *the design quality principles are addressed in the development, and*
 - (ii) *in terms of the Apartment Design Guide, the objectives of that guide have been achieved in the development, and*
- (c) *verify that the modifications do not diminish or detract from the design quality, or compromise the design intent, of the development for which the development consent was granted.*

The Regulations state '*If the qualified designer who gives the design verification for an application for the modification of development consent does not verify that he or she also designed, or directed the design of, the development for which the consent was granted, the consent authority must refer the application to the relevant design review panel (if any) for advice as to whether the modifications diminish or detract from the design quality, or compromise the design intent, of the development for which the consent was granted*'.

As the modification application is being recommended for refusal based on other matters also, the modification application was not presented to Council's Urban Design Review Panel. Notwithstanding this, a detailed assessment of the proposed modification against the provisions of the accompanying Apartment Design Guide (ADG) is provided in the table below:

Assessment Against the Apartment Design Guide (ADG)			
Part 3	Required	Discussion	Complies
3A-1	Each element in the Site Analysis Checklist should be assessed.	A Site Analysis plan was submitted with the application and identifies applicable elements as required within the Checklist. A written description of the proposal and subject site are also included in the submitted Statement of Environmental Effects and accompanying plans and reports.	Yes.
3B-1	Buildings to address street frontages.	The modifications proposed do not alter the building such that its address to the street is changed. Quality of the streetscape presentation is discussed elsewhere.	N/A

3B-2	Living areas, Private Open Space (POS) and Communal Open Space (COS) to receive compliant levels of solar access.	Refer discussion under Parts 3D and 4A.	N/A.
	Solar access to living spaces and POS of neighbours to be considered.	<p>Acceptable levels of solar access were assessed to be maintained to the open spaces and living zones of neighbouring properties under DA16/0621.</p> <p>It was noted in the assessment of DA16/0621, that additional over shadowing would occur to the south between 9am and 3pm effecting the eastern and western corner units of the residential flat building to the south.</p> <p>The eastern corner unit was assessed to receive solar access between 8am and 11am during mid-winter and the western corner unit between 1pm and 4pm.</p> <p>It is not adequately demonstrated by the submitted plans and documents that the building as modified, (addition of fifth level) will achieve the minimal levels of solar access as detailed above.</p>	No.
	If the proposal will significantly reduce the solar access of neighbours, building separation should be increased.	As detailed above, plans do not adequately demonstrate that an increase in building separation is not required, or that minimal levels of solar access are achievable.	No.
3D-1	Communal Open Space (COS) to have minimum area of 25% of site.	<p>165.96sqm's of COS is required under the ADG (25% of total site area).</p> <p>The approved design does not include provision of communal open space for residents of the development.</p> <p>The submitted Statement of Environmental Effects under DA16/0621 sought justification for the variation and provided the following justification:</p> <ol style="list-style-type: none"> <i>Within a 400m radius, the site has access to South Creek Park, Victoria Park, Wilson Oval and Cook Park. The site is highly accessible to a number of generous areas of public open space.</i> <i>The development is small in scale, providing only 12 units...the area of open space is better utilised as private open space.</i> <i>Creating rooftop common open space is not feasible for the scale of the proposal and would add to the bulk of the building.</i> <p>The proposed non-compliance was considered</p>	No.

		<p>acceptable as the development provided an acceptable level of amenity for the occupants of the units in an accessible and suitable location.</p> <p>Ground floor units were provided with generous private courtyards and the site is located in walkable proximity to a number of local parks and public open spaces.</p> <p>Further, the proposal complied with the ADG requirement for developments unable to achieve compliant levels of COS, in that larger balconies are provided both at ground and upper levels and the site is located within 200 metres walking distance of two local parks (Victoria Park and a reserve near the intersection of Saddington Street and Pages Road).</p> <p>Notwithstanding the above, to increase the amenity of the east facing balconies and provide shade and amenity at the street level, a condition of consent was recommended to require the planting of one street tree along the frontage of the site.</p> <p>It is not accepted that the upper level addition does not add bulk to the building envelope and that compliance with the ADG building separation requirements will not result in negative and detrimental amenity impacts in the locality.</p> <p>As the site does not provide for any communal open space and does not comply with the SEPP ARH rates for landscaped area and deep soil provision (which is being further reduced as a result of the amended location of the OSD tank), the proposal to further increase density at the site, is not supported.</p>	
3E-1	Deep soil is to be provided at a rate of 7% of site area with a min. dimension of 3m.	<p>Submitted documentation states that 7% (46.5sqm's) of the site is provided as deep soil.</p> <p>It is not agreed that the calculated area of 46.5sqm's of deep soil (as defined within the ADG) is provided by the development. Further, deep soil is reduced as part of this proposal, owing to the location of the OSD tank, within the front setback.</p> <p>Conditions of consent recommended under DA16/0621 which requires planters along the southern main residential entryway to have a minimum depth of 800mm to allow for substantial and sustainable growth of trees and shrubs is not accommodated by the amended design.</p>	No.

3F-1	<p>Minimum required separation distances from the building to side and rear boundaries is to be achieved as follows:</p> <p>1-4 storeys – 6m/3m 5-8 storeys – 9m/4.5m</p>	<p>The original assessment of the application approved under DA16/0621 noted that a 3m side setback was proposed between the side boundary and habitable rooms and balconies, and in this respect the development as approved did not comply with the ADG separation distances for each level of the building (as 6m side setback is required to be provided to habitable rooms along the northern and southern side boundaries) for a development up to four storeys in height.</p> <p>The non-compliance was assessed to be acceptable as a variety of design responses were incorporated to avoid negative acoustic and visual privacy impacts on neighbouring sites.</p> <p>The proposal included the installation of privacy screens, louveres and splayed window openings with trafficable floor area, oriented to the east and west.</p> <p>The modification application which includes the addition of a fifth storey does not comply with the applicable minimum shared separation distance of 9m (habitable room to habitable room) and is not supported due to amenity impacts including overbearing, overlooking, noise and overshadowing.</p>	No.
3H-1	Garbage collection, loading and servicing areas are to be screened	<p>The approved communal waste area located within the front setback, is adequately screened with a landscaped strip provided along the Garner Street boundary. However no additional space is available to accommodate the additional bins required to service the additional storey and as such the additional of the fifth storey is not supported.</p> <p>No waste chutes are incorporated as part of the proposal.</p>	No.
4A-1	Living rooms and private open spaces of at least 70% of apartments to receive 2 hours direct sunlight between 9am and 3pm mid-winter.	Submitted documentation (Drawing No. 18, revision D, Solar Angle and Cross Ventilation) confirms adequate solar access is provided.	Yes.
4B-3	60% of apartments are naturally ventilated and overall depth of cross-through apartments 18m maximum glass-to-glass line.	Submitted documentation (Drawing No. 18, revision D, Solar Angle and Cross Ventilation) confirms that compliant natural cross ventilation levels are achieved.	Yes.

4M-1	Building facades are to be well resolved with an appropriate scale and proportion to the streetscape and human scale.	<p>The original proposal was subject to a review by Council's Urban Design Review Panel and was supported subject to amendments with regard to landscape improvements, and changing externally fixed louvres to fixed and angled windows with trafficable floor area along the side elevations.</p> <p>Amended plans were received which were considered to address the matters raised by the panel.</p> <p>The scale of the building (as approved) was assessed to adequately address the street with varying ground, mid and upper level elements provided to break up bulk and provide elements of contrast.</p> <p>Landscaping was assessed to be improved by the recommended conditions of consent requiring deep soil planters to be provided along side elevations, and trees to be planted along the street frontage, including one street tree.</p> <p>As discussed elsewhere within this report, minimal levels of deep soil are further reduced as a result of the proposed amendments, and conditions of consent related to landscaping and tree planting are not accommodated by the design.</p> <p>The proposed modified design deviates from the Panel's original comments related to the scale and proportion of the design.</p>	No.
4O-1	Landscape design to be sustainable and enhance environmental performance.	<p>The submitted landscape plan prepared by RFA Landscape Architects does not indicate that the conditions of the consent DA16/0621 are accommodated by the modified design.</p> <p>Deep soil is further reduced by the submitted modified design and is not supported.</p>	No.
4W-1	Waste management	The waste management solution is not supported as capacity for additional waste generation is not accommodated by the design.	No.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment of the proposal has been undertaken against the relevant criteria within Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997). Although the proposal is found to be satisfactory having regard to this Policy, the modification application is recommended for refusal for other reasons as discussed elsewhere within this report.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Does not comply - See discussion
Clause 2.3 Permissibility	Complies
Clause 2.3 Zone objectives	Does not comply - See discussion
Clause 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	N/A
Clause 7.2 Flood planning	N/A
Clause 7.4 Sustainable development	Complies
Clause 7.6 Salinity	N/A
Clause 7.7 Servicing	Complies

Clause 1.2 Aims of the plan

The proposal to increase the height of the approved building by the addition of a fifth storey comprising of one additional unit is considered to be contrary to the aims of the Penrith Local Environmental Plan 2010 in that, the development does not safeguard residential amenity, and does not protect and enhance the environmental values and heritage of Penrith.

Clause 2.3 Zone objectives

The development as modified, does not comply with the objectives of the R4 High Density Residential zone in that the proposal does not ensure that a high level of residential amenity is achieved and maintained or ensure that development reflects the desired future character and dwelling densities of the area.

The proposal for a height of 16.13m does not comply with the maximum height expressed for the site under the Penrith Local Environmental Plan 2010 and does not achieve an acceptable built form having regard to the applicable strategic plans and policies which assist to deliver the desired future character and dwelling densities of the area.

Clause 4.3 Height of buildings

The proposal for a height of 16.13m does not comply with the maximum height expressed for the site under Penrith Local Environmental Plan 2010 of 15m. This represents a variation of 7.7% to the development standard, and does not achieve an acceptable built form having regard to the applicable strategic plans and policies, which assist to deliver the desired future character and dwelling densities of the area, as detailed below:

- The design does not adequately respond to the site's context and local character in that comparable built forms in the vicinity are limited to 2 and 3 storeys and are provided with deep landscaped front setbacks. Further, the proposed 5 storey built form does not contextually relate to the immediate neighbouring sites and will overbear. The residential flat buildings to the south and west are 3 storeys in height and the multi dwelling housing development to the immediate north is 2 storeys.
- Minimal deep soil and landscaping provision do not mitigate the bulk and scale of the development, which has a limited frontage to Garner Street, and no opportunity is provided to increase building separation, common open space provision or landscaping.
- The number of bins required to accommodate additional waste generated by the proposal cannot be accommodated within the sites frontage, further detracting from local character and streetscape presence.

The development proposal is contrary to the objectives of Clause 4.3 Height of Buildings of Penrith Local Environmental Plan 2010 in that the modified development does not:

- (a) ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality;
- (b) adequately demonstrate that the development minimises visual impact, loss of privacy and loss of solar access to existing development; and
- (c) result in a high quality urban form or provide for a transition in built form and land use intensity as intended by the maximum height control expressed for the site under the LEP.

As detailed above.

Clause 4.6 Exceptions to development standards

The submitted Statement of Environmental Effects does not address Clause 4.6 Exceptions to development standards under PLEP 2010 and no written request to vary the Height of Buildings development standard has been considered with regard to the consent.

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

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

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

Development Control Plan 2014

Provision	Compliance
DCP Principles	Complies
C1 Site Planning and Design Principles	Does not comply - see Appendix - Development Control Plan Compliance
C2 Vegetation Management	N/A
C3 Water Management	Complies
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	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Complies
C11 Subdivision	N/A
C12 Noise and Vibration	N/A
C13 Infrastructure and Services	Complies
D2.1 Single Dwellings	N/A
D2.2. Dual Occupancies	N/A
D2.3 Secondary Dwellings	N/A
D2.4 Multi Dwelling Housing	N/A
D2.5 Residential Flat Buildings	Does not comply - see Appendix - Development Control Plan Compliance
D2.6 Non Residential Developments	N/A

Section 79C(1)(a)(iiia) The provisions of any planning agreement

There are no planning agreements applying to this proposal.

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

In accordance with Section 143 of the Environmental Planning and Assessment Regulation 2000, an assessment of the fire protection and structural capacity of the proposed building is necessary. The application was referred to Council's Building Surveyor for assessment with no objections raised.

As discussed within this report, the modification application was not submitted with a design verification statement from the qualified designer as per the requirements of Clause 115 of the Environmental Planning and Assessment Regulation 2000. Refer to discussion under SEPP 65.

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

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

Solar Access

It has not been demonstrated that the proposal to increase the height of the development by the addition of a fifth level will not result in detrimental solar access impacts on the residential flat development to the south.

Bulk and Scale

The bulk and scale of the development is not compatible with existing development in the locality and is not representative of the desired future character of the area as facilitated by Council's strategic plans and policies.

Visual and Acoustic Impacts

The development proposal will result in negative overbearing, acoustic and privacy impacts on adjacent residential dwellings and will set an undesirable precedent.

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

The site is not suitable for the development proposed as the design:

- (a) cannot accommodate the waste generated by the increase in density proposed;
- (b) does not adequately respond to the site's context in terms of height, bulk or scale or built height transition;
- (c) does not comply with the objectives or maximum height control of the Height of Buildings development standard under PELP; and
- (d) does not allow adequate building separation to mitigate against privacy or amenity impacts; and
- (c) cannot achieve an acceptable level of landscaping to respond to local character or the requirements of the PDCP or SEPP ARH.

Section 79C(1)(d) Any Submissions

Community Consultation

In accordance with the requirements of the Penrith Development Control Plan 2014, the modification application was notified to adjoining and nearby properties and advertised and exhibited between 17 August and 31 August 2018. One submission was received which simply stated that no objections are raised to the proposal.

Referrals

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

Referral Body	Comments Received
Building Surveyor	No objections
Development Engineer	No objections - subject to conditions
Environmental - Waterways	No objections - subject to conditions
Waste Services	Not supported

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

It is for the above reasoning that the proposed modification application is not considered to be in the public interest.

Section 94 - Developer Contributions Plans

Development contributions apply to the proposal and were applied to consent DA16/0621. As the recommendation is for Refusal, no alterations to the conditions related to development contributions is required.

Conclusion

In assessing this application against the relevant environmental planning policies, in particular the State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development, State Environmental Planning Policy (Affordable Rental Housing) 2009, the Penrith Local Environmental Plan 2010 and the Penrith Development Control Plan 2014, the proposal is considered to be contrary to the primary aims, objectives and provisions of these policies.

As modified, the proposal will have an unacceptable impact on the surrounding character of the area. It has not been demonstrated that the development will not result in negative and unacceptable solar access or overbearing and privacy impacts in the location, and the increase in waste generated by the development is not accommodated by the amended design. Inadequate landscaping and deep soil is provided by the proposal.

The proposed design does not comply with the Height of Buildings development standard under the PLEP 2010 and is not considered to be site responsive. The development as proposed is contrary to the public interest and the modification application is therefore recommended for refusal.

Recommendation

That modification application DA16/0621.03 for alterations and additions to an approved residential flat building, including the addition of a fifth storey, at 1 Garner Street, St Marys, be refused for the reasons attached.

Refusal

1 X Special 02 (Refusal under Section 79C(1)(a)(i) of EPA Act 1979)

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

(a) The proposal is inconsistent with the objectives of the R4 High Density Residential zone, particularly those related to enhancement of the local character and identity of established residential areas, provision of development that reflects the desired future character of the area and achieves and maintains a high level of residential amenity.

(b) The proposal does not comply with the Height of Buildings development standard, and is contrary to the objectives detailed under Clause 4.3(1) including: to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality; to minimise visual impact, loss of privacy and loss of solar access to existing development; and to nominate heights that will provide a high quality urban form for all buildings and a transition in built form and land use intensity.

(c) A written request under Clause 4.6, seeking to justify the contravention of the Height of Buildings development standard has not been submitted for consideration with regard to the consent.

2 X Special 03 (Refusal under Section 79C(1)(a)(i) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 as follows:

The development application does not comply with Part 2, Division 1, Clause 16A Character of local Area.

3 X Special 04 (Refusal under Section 79C(1)(a)(iii) of EPA Act 1979)

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

- C1 Site Planning and Design Principles;
- C5 Waste Management; and
- C6 Landscape Design.

4 X Special 06 (Refusal under Section 79C(1)(a)(iv) of EPA Act 1979)

The modification application is not satisfactory for the purpose of Section 4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act 1979* and Clause 115 of the *Environmental Planning and Assessment Regulation 2000*, in that the development application was not lodged with a design verification statement.

5 X Special 07 (Refusal under Section 79C(1)(b) of EPA Act 1979)

The development application is not satisfactory for the purpose of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in terms of the likely impacts of that development including those related to:

- streetscape and local character impacts;
- noise and privacy impacts;
- solar access; and
- landscaping.

6 X Special 08 (Refusal under Section 79C(1)(c) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979* as the site is not suitable for the scale or density of the proposed development.

7 [X Special 10 \(Refusal under Section 79C\(1\)\(e\) of EPA Act 1979\)](#)

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

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

C1 Site Planning and Design Principles

The development proposal does not comply with the objectives of this section, in that the development as modified does not adopt a height, massing or scale that accords with the analysis of the site and does not minimise bulk or scale to achieve a compatible or compliant built form.

C5 Waste Management

The original consent under DA16/0621 assessed the waste management solution as acceptable as 4 storeys were proposed and the site area was minimal. The development proposal includes the proposal to increase the number of units at the site and add an additional storey to the building. It has not been adequately demonstrated that the site can accommodate the volume of waste generated by the number of units proposed.

Waste generation is calculated (as set out within Council's Residential Flat Building Waste Management Guidelines document), as being 2 x Units per bin for residual waste and 2 x units per bin for recycling. The total number of 240L bins required is 13. Submitted plans indicate that 10 bins are proposed.

The increase in the number of bins required to cater for the waste generated by the development is unable to be accommodated within the front setback without detrimentally impacting on the development's presentation to the street, or the amenity of Unit GF.03.

C6 Landscape Design

The development proposal does not make any contribution to the streetscape by way of design of any vegetation within the site's front setback or within the verge adjacent Garner Street. Deep soil provision is assessed to be below 7% of site area and no communal open space is proposed. Landscaping is minimal and it is not demonstrated that planting will be sustainable or effective.

D2 Residential Development

2.5.6 The Development Site

Under the DCP a 20m minimum lot frontage is required for residential flat buildings in the R4 High Density Residential zone. The proposal approved under the original application DA16/0621 did not comply with this requirement as the site has a frontage of 16.73 metres to Garner Street. The variation was considered to be acceptable as the design proposed an acceptable density in the location and it was considered that the proposed levels of landscaping and services could be provided to the site without compromising streetscape amenity to the detriment of the area.

The proposal to increase the density of development at the site will result in decreased deep soil and landscaping provision and it is not demonstrated that the number of 240L bins required to service the waste requirements of the density of units proposed can be accommodated in an acceptable manner.

2.5.5 Landscaped Area

Clause 14 of the ARH SEPP applies with regard to the provision of landscaped area.

2.5.6 Front and Rear Setbacks

Refer also to building separation discussion under State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development.

2.5.8 Visual and Acoustic Privacy

Building separation at the fifth floor is minimal and is in conflict with the recommended building separation distances provided by the ADG. The height of the building exceeds the maximum permissible expressed for the site under PLEP. These elements are directly linked to negative amenity impacts on neighbouring sites including overshadowing, overbearing, noise and acoustic impacts.

2.5.9 Solar Planning

Refer to discussion regarding solar access under State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development.