

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA15/0407
Proposed development:	Demolition of Existing Structures & Construction of Six (6) Storey Residential Flat Building containing 45 Apartments & Basement Car Parking
Property address:	43 Barber Avenue, PENRITH NSW 2750 41 Barber Avenue, PENRITH NSW 2750
Property description:	Lot 31 DP 2296 Lot 30 DP 2296
Date received:	29 April 2015
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 development application for the demolition of all structures and the construction of a 6 storey residential flat building containing 45 apartments at 41 and 43 Barber Avenue, Penrith. The subject site is zoned R4 High Density Residential under the Penrith Local Environmental Plan 2010 and the proposal is a permissible land use in the zone with the consent of Council.

Key issues identified for the proposed development and site include:

- Non compliance with key aims, objectives and controls of the Residential Flat Design Code in particular those related to design, amenity, safety and security, landscaping and context;
- Impacts related to bulk and scale;
- Non compliance with Council's LEP with regard to height and amenity;
- Non compliance with Council's DCP with regard to waste management, car parking, landscaping, context and character, amenity and streetscape presentation.

The proposal exceeds the maximum permissible height of 18m under the Penrith Local Environmental Plan 2010 and was submitted with a request to vary the height control under Clause 4.6.

The application has been notified to adjoining properties and advertised between 18 May 2016 and 1 June 2015 in accordance with relevant legislation. Two submissions were received raising matters related to the proposed height variation, open space provision, overshadowing and heritage impacts and the number of car parking spaces proposed.

An assessment under Section 79C of the *Environmental Planning and Assessment Act 1979* has been undertaken and the application is recommended for refusal for the reasons stated within this report. This application is to be determined under delegated authority by Council.

Site & Surrounds

The subject site is located on the northern side of Barber Avenue between Colless Street to the west and Parker Street to the east. The site comprises two allotments each containing a single storey dwelling house with ancillary structures and has a total area of 1686.2sqm's.

Development in the vicinity of the site is predominantly low to medium density residential uses with instances of multi dwelling housing, attached dual occupancies and single dwellings located along Barber Avenue and nearby Colless, Lethbridge and Hope Streets. The site shares its eastern boundary with No 39 Barber Avenue which contains a single storey dwelling house. The western boundary is shared with three allotments with frontage to Colless Street known as Nos 2 and 4 Colless Street.

Astina Serviced Apartments is under construction at the intersection of Lethbridge and Parker Street which is located 200 metres to the south-east. Penrith High School is located 75m to the west and Nepean Hospital is located 260 metres to the east of the site.

Barber Avenue is a local two lane Avenue with marked on-street parking bays. Two street trees and a power pole are located within the verge fronting the site, no pedestrian pavement is provided on the northern side of Barber Avenue.

Proposal

The development application originally sought approval for demolition of all structures on the site and the construction of a residential flat building containing 53 units.

In response to design and amenity matters raised by Council, the development application was amended and now seeks approval for the demolition of all structures and the construction of a residential flat building as follows:

- 6 Storey Residential Flat Building;
- 45 Apartments (17 x 3 bed, 23 x 2 bed & 5 x 1 bed);
- 2 below grade basement levels with 56 spaces (inc. 2 x accessible and 2 x service);
- Ancillary landscaping, fencing and retaining walls;
- Tree removal.

The submitted Statement of Environmental Effects includes a written request to vary the height development standard of 18m under Clause 4.6 of the Penrith Local Environmental Plan 2010 and proposes a maximum height of 19.34m.

Plans that apply

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

Planning Assessment

• Section 79C - Evaluation

The development has been assessed in accordance with the matters for consideration under 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 79C(1)(a)(i) The provisions of any environmental planning instrument

State Environmental Planning Policy No 55—Remediation of Land

The proposal has been assessed against the applicable provisions of the State Environmental Planning Policy No 55 - Remediation of Land and is found to be acceptable. Notwithstanding the above, the development application is recommended for refusal with regard to other matters as detailed within this report.

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

An assessment has been undertaken of the proposal against relevant criteria under the State Environmental Planning Policy No 65—Design Quality of Residential Flat Development and the application is found to be unsatisfactory. The development does not achieve compliance with the 9 design quality principles as detailed within Schedule 1 of the Policy and is found to be contrary to the principal objectives, rules of thumb and better design practices as detailed with in the Residential Flat Design Code. Compliance with particular provisions of the RFDC is provided within the table below:

Part 1	Required	Discussion	Complies
Building Depth	Whether there is a building envelope or not, the maximum internal plan depth of a building should be 18m from glass line to glass line.	The proposed building depth is 38.79m glass line to glass line.	No
	Developments that propose wider than 18m must demonstrate how satisfactory daylight and natural ventilation are to be achieved.	The submitted solar access plan (18/21 revision B) does not demonstrate how the development achieves compliance with the minimum requirements for ventilation and solar access requirements as per the RFDC (living rooms and POS to receive minimum 3 hours direct sunlight between 9am and 3pm mid-winter).	No
Building Separation	-12m shared for levels Ground to Fourth Floor (habitable rooms and balconies to habitable rooms and balconies) - 18m shared for fifth to eighth floor (habitable rooms and balconies to habitable rooms and balconies)	The proposal is for: - 5m floors 1-4; - 5m fifth level; - 7m sixth floor. Minimal screening and landscaping is proposed to mitigate against negative privacy and overbearing impacts resulting from the non-compliance setbacks proposed.	No
Part 2	Required	Discussion	Complies
Site Configuration Deep Soil Zone	A minimum of 25% of the open space area of the site should be a deep soil zone; more is desirable.	Submitted plans indicate that 703.73sqms of open space is provided. 25% of this area (175.93sqms) is to be provided as deep soil. The development is assessed to comply with this requirement and provides a total of 475sqm's of deep soil. Notwithstanding the above, deep soil zones located in the front and rear setbacks are inadequately landscaped and dominated by hard stand areas.	Yes. Refer discussion.

Site Configuration Open Space	Communal space should be between 25% and 30% of the site area.	The site area is 1686.2sqms and as such the development is required to provide 421.55sqms of communal space. The proposal is for approximately 124.4sqm's and as such does not comply. Communal open space is located at the rear of the site and is not readily accessible from the communal internal areas of the building.	No
	Minimum area of private open space for units at ground floor is 25sqm with a min. dimension of 4m	Minimum private open space for ground floor apartments complies with the requirement.	Yes
Site Amenity	Carry out a crime risk assessment for all residential developments of more than 20 new dwellings	The development application was not submitted with a crime risk assessment. The proposal is considered to be contrary to the Better Design Practice notes of the RFDG, in that no internal lobby area is provided at the entry to the building or to the lift entry or central circulation areas. An external covered patio is proposed within the front setback. Mail box locations are not noted. Areas are provided for concealment along the eastern boundary and to the rear of the development and include recessed fire exists and narrow communal open space areas.	No
Visual Privacy	Building separation to be provided as per 'Building Separation' section above.	As discussed above, the proposal does not comply with the building separation requirements of the RFDG. Adequate screening or landscaping techniques are not employed sufficient to mitigate against negative or detrimental impacts on the privacy of adjacent development.	No
Building Entry	To contribute positively to the streetscape and building façade design.	The development will present poorly to the street. The entry is raised with excessive ramping and hard stand areas proposed. No internal entry lobby is provided for residents. No individual access is provided for the occupants of ground floor street front units. The entry and internal communal spaces are not provided with adequate natural light or circulation space to facilitate the movement of furniture between public and private spaces and no lift or entry lobby is provided for occupants.	No
Part 3	Required	Discussion	Complies
Apartment Layout	Avoid locating kitchen as part of main circulation spaces of an apartment, such as hallway or entry spaces.	Unit Nos 0.4, 1.4, 2.4, 3.4, 4.4 and Unit 4.3 each have the kitchen located within the entry hallway.	No
	Ensure apartment layouts and dimensions facilitate furniture removal and placement.	It is not demonstrated that the circulation spaces provided within the development can facilitate the movement of furniture into apartments at each level.	No

	Single aspect apartments should be limited to 8m from a window.	North and west facing single aspect units do not comply.	No
	The back of the kitchen should be no more than 8m from a window.	A total of 11 units do not comply with this requirement.	No
	Unit size to be as follows: 1 bed - 50sqm's 2 bed - 70sqm's 3 bed - 95sqm's	A total of 11 units do not comply with the minimum unit size requirement. In addition, it is not accepted that rooms marked 'open study' will not be used as bedrooms as their location, size and position within the applicable units will facilitate this use. In this regard, a further 10 units do not comply with the minimal area requirements for 3 bedroom apartments.	No
Balconies	Provide primary balconies with a min. dimension of 2m.	A 2m wide balcony is provided to all units. It is unclear how the balcony associated with unit No 4.1 will be furnished as the usable area adjacent the living room door is <1m wide.	Yes, however refer to discussion.
Ceiling Heights	A minimum of 2.7m for habitable floor levels of RFB's	Submitted plans indicate that the ceiling heights are proposed to be 2.7m with 250mm thick floor slabs.	Yes
Storage	In addition to kitchen cupboards and bedroom wardrobes provide accessible storage facilities at the following rates: 1 bed = 6m ³ 2 bed = 8m ³ 3 bed = 10m ³ with 50% provided in the unit.	It is not demonstrated that the proposal can achieve compliance with the applicable storage rates for the internal component, as required by the RFDC.	No
Daylight Access	Living rooms and private open spaces for at least 70% of apartments in a development should receive a minimum of 3hours direct sunlight between 9am and 3pm mid winter.	It is not demonstrated on submitted plans how the proposal achieves compliance with the control. Specifically it is not demonstrated that the centrally located north facing units located on ground floor and on levels first to fifth, can achieve compliance as the glazing is obscured by the level over and is recessed.	No
Natural Ventilation	Building depths which support natural ventilation typically range from 10 to 18m	The proposal is for a 37.79m wide building.	No
	60% of residential units should be naturally cross ventilated.	22 units (49%) are provided with natural cross flow ventilation.	No

Waste Management	Provide every dwelling with a waste cupboard or temporary storage area of sufficient size to hold a single day's waste and to enable source separation.	No waste cupboards or chutes are proposed on each level.	No
------------------	---	--	----

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

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

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 4.1A Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings	Complies
Clause 4.3 Height of buildings	Does not comply - See discussion
Clause 4.6 Exceptions to development standards	Does not comply - See discussion
Clause 5.9 Preservation of trees or vegetation	Complies - See discussion
Clause 7.1 Earthworks	Complies
Clause 7.7 Servicing	Complies

Clause 1.2 Aims of the plan

The proposal is inconsistent with the aims of the Penrith Local Environmental Plan 2010 in particular those related to the provision of healthy and safe communities, safeguarding residential amenity and ensuring that development incorporates the principles of sustainable development specifically in that the density, design and layout of proposed apartments does not promote high amenity, light filled or practically arranged apartments capable of providing for the needs of the community in a sustainable manner.

Clause 2.3 Zone objectives

The proposed development is assessed to be contrary to the objectives of the R4 High Density Residential zone in that the proposal does not demonstrate that:

- (a) The layout and arrangement of apartments can practically accommodate housing needs of the community;
- (b) A high level of residential amenity is achieved and can be maintained; and
- (c) the development reflects the desired future character and dwelling densities of the area.

Apartment sizes and the percentage of unit provided with natural cross flow ventilation do not comply with the minimum standards expressed in the Residential Flat Design Code (RFDC) and the arrangement of internal spaces is considered to be poor and not conducive to practical everyday use and in some instances it is not demonstrated that rooms can accommodate the range of furnishings or circulation spaces required for the intended use of the room.

Further, the development does not comply with the maximum permissible height under the LEP, and does not comply with applicable shared separation distances (setbacks), communal open space requirements or the recommended building depth expressed within the RFDC and as such, does not represent the desired future character or dwelling densities for the area.

Clause 4.3 Height of buildings

The maximum permissible height expressed for the site in Council's LEP map is 18 metres. The proposal is for a maximum of 19.34m and as such, does not comply. The application was submitted with a written request to vary the development standard under Clause 4.6 of the LEP which is discussed further within this report (refer discussion under Clause 4.6 below).

The proposal has been assessed against the objectives of Clause 4.3 and is not considered to be compatible with the desired future character or built form of the area in that; the proposal does not comply with the applicable primary built form controls such as setbacks or provision of common open space and the internal arrangements of apartments are not indicative of the RFDC Rules of Thumb or associated Objectives and Better Design Practice directions. The units are not considered to provide high amenity or practical layouts with most units unable to provide for acceptable levels of solar access, ventilation or storage or circulation spaces.

It is also noted that submitted plans do not include details of the lift overrun which is likely to add further height beyond that which has been identified thus far.

Clause 4.6 Exceptions to development standards

The development application was submitted with a written request with regard to varying the height development standard as required under Clause 4.6 Exceptions to development standards of the LEP.

The proposal does not satisfy the objectives of the clause, in that it is not demonstrated that the proposal achieves a better outcome owing to the height variation sought. Further, it is not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case with no acceptable site specific environmental planning grounds provided.

Clause 5.9 Preservation of trees or vegetation

The development application was submitted with an Arboricultural Impact Assessment Report prepared by MacKay Tree Management dated 16 March 2015. The report identifies 23 trees on or adjacent to the site inclusive of 15 trees located on the subject site, 6 trees located on neighbouring sites and 2 street trees within Council's verge along the Barber Street frontage. The report concludes that all 15 trees may be removed to facilitate the development and that street trees and those located on neighbouring sites are able to be protected throughout construction.

Although Council's raises no objection to the findings of the report and the removal of the trees is considered acceptable to facilitate the construction of a building at the site, the proposal is not supported on other grounds and as such standard conditions with regard to replacement tree planting and street tree protection are not required.

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 subject proposal.

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

Development Control Plan 2014

Provision	Compliance
DCP Principles	Does not comply - see Appendix - Development Control Plan Compliance
C1 Site Planning and Design Principles	Does not comply - see Appendix - Development Control Plan Compliance
C2 Vegetation Management	N/A
C3 Water Management	N/A
C4 Land Management	N/A
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	Does not comply - see Appendix - Development Control Plan Compliance
C11 Subdivision	N/A
C12 Noise and Vibration	N/A
C13 Infrastructure and Services	Does not comply - see Appendix - Development Control Plan Compliance
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 in place that apply to this development application.

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

Fire safety and Building Code Compliance

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, however, as the development application is recommended for refusal standard conditions with regard to compliance with applicable building and fire safety standards are not required.

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

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

Streetscape Impacts and Landscaping

The proposal has been assessed to be unacceptable with regard to streetscape impacts. The proposal does not adequately address the street frontage and is not considered to be sympathetic to the existing character of the area. The proposed front setback is dominated by hard stand areas, vehicle and access ramps as well as utility areas and a raised external covered patio entryway with little landscaping provided.

Traffic and Car Parking

The proposal will have a negative and unacceptable impact of the availability of on-street car parking in that the development does not allow for Council's waste trucks to enter and leave the site in a forwards direction for the purposes of waste collection. Reverse manoeuvres or on-street parallel pick up are not supported as these options will result in the loss marked on street parking bays along the frontage of the site, with reversing being a safety issue. Further, the proposal does not comply with the applicable car parking rates under the Penrith DCP 2014 which will result in a reliance on on-street car parking spaces which are already in high demand due to the proximity of the site to local schools and the Nepean Hospital.

Character, Bulk and Scale & Privacy Impacts

The proposal will result in negative and unacceptable impacts related to bulk and scale. The proposed flat building does not comply with the applicable upper level setback requirements under the Residential Flat Design Code (RFDC) and as such will have negative overbearing, over shadowing and privacy impacts on neighbouring sites. Insufficient levels of landscaping will also contribute to the prominence of the building within the streetscape and its inappropriate design particularly with regard to existing local context and character and the future desired built form as expressed through the applicable local controls.

Waste Management

The proposal has failed to demonstrate how waste will be managed at the site. Details regarding collection have not been provided and no waste chutes or cupboards are located on each level. The location of the waste room at ground floor will result in a poor streetscape presentation. Collection vehicles would either be required to load from the avenue or reverse over the public way adjacent to the main entry which will block sight lines and the driveway entry and pose a safety risk to residents and pedestrians.

As detailed within the report, the development as proposed has been assessed to be unacceptable in terms of the likely impacts and is not supported.

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

The site is not suitable for the following reasons:

- Although the development for the purposes of residential flat buildings is permissible within the R4 High Density Residential zone, the proposed development is not site responsive and is not compatible or sympathetic with the context of the site.
- It is not demonstrated that the development is representative of the future desired character of the area;
- It is not demonstrated by the submitted plans that the site can adequately manage waste, waste storage or waste collection in an acceptable or compliant manner; and
- The selected site is unable to accommodate the development as proposed within an acceptable building envelope or as envisaged by the applicable controls for the site.

Section 79C(1)(d) Any Submissions

Community Consultation

Community consultation

In accordance with Clause 4.4 of Appendix F4 of Penrith Development Control Plan 2010, the proposed development was notified to nearby and adjoining residents.

The application was notified to adjoining properties and advertised between 18 May 2016 and 1 June 2015 in accordance with relevant legislation. Two submissions were received raising matters related to the proposed height variation, open space provision, overshadowing, heritage impacts and the number of car parking spaces proposed. A response is provided below with regard to each matter.

Matter Raised	Discussion
<i>Height Variation</i>	<p><i>The development application was submitted with a request to vary the applicable maximum height of 18m for the site. It is not demonstrated that the proposed height variation is acceptable particularly given other non-compliances related to building separation, amenity and landscaping provision are unacceptable and will result in poor amenity outcomes and privacy and overbearing impacts.</i></p> <p><i>Further, it is not demonstrated that the applicable maximum height expressed for the site within the PLEP 2010 is unreasonable or unnecessary in the circumstances with no site specific planning grounds provided in justification for the non-compliance proposed.</i></p>
<i>Open Space Provision</i>	<p><i>It is agreed that the development does not provide adequate areas of open space. the location of communal open space is not supported as it is not readily accessible and is not integrated into the design of the building. open space provided within the front setback will not enhance the presence of the development within the streetscape.</i></p>
<i>Overshadowing</i>	<p><i>It is agreed that the bulk and scale of the proposal, including the non-compliance with the height development standard will result in additional overshadowing attributed to the proposal.</i></p>
<i>Car Parking</i>	<p><i>It is agreed that the amount of car parking proposed is inadequate to cater for the number of apartments proposed. Further, the number of spaces proposed does not comply with number of spaces required under the Penrith DCP and is not supported.</i></p>
<i>Heritage</i>	<p><i>The proposed building is not located within a heritage conservation area and is not a listed heritage item or place. It is noted that a locally listed heritage item is located within the vicinity, with frontage to High Street, however as the application is recommended for refusal a view analysis or similar statement of heritage impact was not requested.</i></p>

Referrals

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

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

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

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

Section 94 - Developer Contributions Plans

The following Section 94 plans apply to the site:

- Section 94 - District Open Space Facilities
- Section 94 - Cultural Facilities
- Section 94 - Penrith City Local Open Space

As the development application is recommended for refusal, a condition of consent with regard to applicable Section 94 contributions is not recommended.

Conclusion

The development application has been assessed against the relevant environmental planning policies including the Penrith Local Environmental Plan 210 and the Penrith Development Control Plan 2014 and does not satisfy the primary aims, objectives and provisions of these policies.

In particular the proposal, in its current form will have a negative impact on the surrounding character of the area owing to non-compliances with height, setbacks, bulk and scale and landscape and streetscape presentation. The proposed design is not site responsive, does not comply with key development standards and is not in the public interest.

Support for this application would set an undesirable precedent given the level of non-compliance and related impacts. Therefore, the application is not worthy of support for the attached reasons and is recommended for refusal.

Recommendation

1. That DA15/0407 for a residential flat building at 41 and 43 Barber Avenue, Penrith, be Refused for attached reasons; and
2. That the submitted variation to a development standard under clause 4.6 of the standard instrument not be supported; and
3. That those making submissions are notified of the determination.

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 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with the following provisions of Penrith Local Environmental Plan 2010 in that:

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

(ii) The proposal is inconsistent with the zone objectives for the R4 High Density Residential zone, specifically:

- (a) the proposal does not ensure that a high level of residential amenity is achieved and maintained; and
- (b) the proposal does not represent or reflect the desire future character and dwelling densities of the area.

(iii) the proposal does not comply with the maximum permissible height applicable to the site under Clause 4.3 - Height of Buildings.

(iv) it has not been demonstrated that sufficient environmental planning grounds exist to justify contravening the development standard under Clause 4.6 - Exceptions to Development Standards.

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 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with the following provisions of the State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development and the accompanying Residential Flat Design Code in that:

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

(ii) the proposal does not comply with the applicable provisions of the Residential Flat Design Code including the Better Design Practice statements in particular;

- (a) Communal open space provision
- (b) Principles of Crime Prevention Through Environmental Design
- (c) Unit sizes
- (d) Depth of single aspect apartments
- (e) Depth of apartments
- (f) Apartment layout and internal circulation
- (g) Storage requirements
- (h) Building Depth
- (i) Natural ventilation
- (j) Kitchen ventilation
- (k) Building separation
- (l) Solar access
- (m) Servicing and waste management provisions.

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

The application is not satisfactory for the purpose of Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the following provisions of Penrith Development Control Plan 2014:

(i) The application has not satisfied Council with respect to the requirements under Section D2 Residential Development - Residential Flat Buildings, specifically:

- (a) Part D2.5 - Residential Flat Buildings;
- (b) Part C1 Site Planning and Design Principles in particular context, amenity and streetscape character;
- (c) Part C5 Waste Management;
- (d) Part C6 Landscape Design; and
- (e) Part C10 Transport, Access and Parking in particular, car parking provision.

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

The application is not satisfactory for the purpose of Section 79C(1)(b) of the *Environmental Planning and Assessment Act 1979* as the likely negative impacts of the proposed development related to:

- (i) streetscape and landscaping;
- (ii) traffic and car parking;
- (iii) local character, bulk, scale and privacy;
- (iv) waste management;
- (v) internal layout and unit design; and
- (vi) compliant adaptable unit design and circulation.

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

The application is not satisfactory for the purpose of Section 79C(1)(c) of the *Environmental Planning and Assessment Act 1979* as the site is not suitable for the scale of the proposed development.

6 **X Special 09A (Refusal under Section 79C(1)(e) of EPA Act 1979)**

The application is not satisfactory for the purpose of Section 79C(1)(e) of the *Environmental Planning and Assessment Act 1979* as the proposal is not in the public interest.

7 **X Special 9 (Refusal under Section 79C(1)(d) of EPA Act 1979)**

The application is not satisfactory for the purpose of Section 79C(1)(d) of the *Environmental Planning and Assessment Act 1979* due to matters raised in received submissions which include: Non-compliance with applicable car parking rates and non-compliance with the applicable height development standard.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part B - DCP Principles

The proposal has been assessed against the overarching principles of the Penrith Development Control Plan 2014 and is found to be unacceptable, particularly with regard to Principle 2: Achieving long term economic and social security; in that the proposal does not provide areas for positive social interaction or promote positive community interaction; and does not demonstrate that the principles of 'Crime Prevention Through Environmental Design' have been adopted by the design.

Part C - City-wide Controls

The proposal has been assessed against Part C - City-wide Controls of the Penrith Development Control Plan 2014 and is found to be non-compliant. Specific controls are discussed below:

C1 Site Planning and Design Principles

The applicant has not demonstrated how the proposed building is contextually appropriate in the location. It is not demonstrated that the proposal represents the desired future built form or character of the zone particularly given non-compliances related to height, bulk and setbacks are directly resulting in unacceptable negative amenity impacts on streetscape presentation and landscaping.

The design is not considered to be site responsive and will have negative overbearing and privacy impacts on neighbouring sites. The façade treatments and composition are not considered to be responsive or sympathetic to the existing character of the area and the proposed treatment and landscaping of the front setback is inappropriate in the context of the site.

C3 Water Management

The development application was referred to Council internal Development Engineer who has raised matters related to compliance with Council's Stormwater controls and has requested further detail regarding pit and pipe details such as invert levels, surface levels of pits, pit numbers and gradients of pipes and finished ground levels. It is also noted that the site is proposed to be retained along the northern, eastern and western boundaries. The Development Engineer has noted that proposed retaining wall along the eastern boundary are not supported due to the obstruction of overland sheet flows passing through the site as this will concentrate, dam and divert flows onto adjoining properties and had requested top of retaining wall details.

The application was also referred to Council's Environmental Waterway officer with regard to Water Sensitive Urban Design. Whilst no major objections were raised it was noted that BASIX landscaping and rainwater harvesting commitments were not noted on plans and a condition was recommended.

Additional information with regard to drainage layout and top of wall levels was not requested as the proponent was unable to resolve other matters related to amenity, landscaping and apartments layout and as the application is recommended for refusal, conditions related to BASIX commitments are not recommended.

C5 Waste Management

The proposed method waste storage, management and collection is not supported. The proposal has not demonstrated that the flat building can accommodate or manage waste in an acceptable, innovative or compliant manner and as such the development is recommended for refusal. It is noted that no waste chutes are proposed above level one and that the capacity and location of the waste and bulky waste storage room does not comply with Council's Waste Policy.

Council does not support on-street pick up or waste collection that requires trucks to reverse over the public way. Further, the waste room at ground floor is insufficiently integrated into the design of the building and is resulting in a poor streetscape presentation.

C6 Landscape Design

An amended landscape plan was not submitted with amended architectural plans (Revision B dated 26.07.2015) and as such does not reflect the amended ground floor layout. Notwithstanding the above, it is considered that effective, sustainable and compliant levels of landscaping within the front setback cannot be accommodated due to the minimal area available for landscaping. The front setback is

dominated by hardstand areas, paving and ramps and is not contextually appropriate in the location. The development does not adequately address Barber Avenue which is characterised by deep and highly landscaped setbacks and front gardens.

Further to the above, the location of fencing and retaining walls is unsympathetic to the location of proposed terraces with some fencing proposed to be forward of the building line. Further, it is unclear how high proposed retaining walls will be and what their relationship will be to the adjacent residential yards or dwellings. It is for the above reasoning that the proposed landscaping scheme is not supported.

C10 Transport Access and Parking

The proposal is assessed to be contrary to the objectives of the chapter in that proposed car parking provision does not provide for an appropriate or compliant level of car parking to cater for the proposed number of apartments or ancillary uses such as service and car wash spaces. Specific matters are discussed further below:

Number of bedrooms

It is not accepted that proposed rooms labelled 'open study' are excluded from number of bedroom calculations related to car parking provision. The design, size, location and scale of these rooms are conducive for use as a bedroom and as such should be included in car parking calculations. It is for the above reasoning that Units numbered 0.1-4.1 are included in car parking calculations as 3 bedroom apartments.

Car Parking

Car parking compliance is detailed in the table below:

Penrith DCP – Parking Requirements			
Required	Proposed	Discussion	Complies
1 bed units x 5 = 1 per unit 5 x spaces required	Total 42 spaces (including 4 accessible)	A shortfall of 20 spaces is proposed.	No
2 bed units x 23 = 1 per unit 23 x spaces required			
3 bed units x 17 = 2 per unit 34 x spaces required			
Total 62 resident spaces required (inclusive of 6 x accessible spaces)			
Service space = 1 space per 40 Units (1 space required)	2 x Visitor/service	Dual use as visitor space is not supported.	Yes
Visitor space = 1 space per 5 dwellings (9 Spaces required)	12 x Visitor Spaces		Yes
1 x Car wash bay required	Nil		No
20-30% of number of units - Bicycle spaces required as per the Planning Guidelines for Walking and Cycling document.	7 x Bicycle spaces	A shortfall of 2 spaces	No

The proposed departure from the car parking rates required under the DCP is not adequately justified and is considered to be more than minor in nature, particularly given the demand for on-street spaces in

the location (in close proximity to a school and the Nepean Hospital) and is not supported.

Open Studies

To avoid rooms labelled 'open study' proposed in Units numbered 0.2, 0.3, 1.2, 1.3, 2.2, 2.3, 3.2, 3.3 being used as bedrooms the units would need to be re-configured with studies deleted. Should studies be proposed these should be open nooks rather than walled rooms with no window openings. As the application is recommended for refusal the design amendment is not sought at this time.

D2 Residential Development

The proposal has been assessed against the applicable provisions of the chapter and is found to be non-compliant. Compliance with particular clauses is discussed below:

Landscaped Area

The proposal is contrary to the controls of the clause in that the proposal does not provide effective separation between the subject building and neighbouring dwellings and does not incorporate a high quality landscaped front setback fronting Barber Avenue. The front setback area is not contextually sympathetic and is dominated by hardstand areas, ramps and bin storage areas.

Front and Rear Setbacks

The DCP states that setbacks are to reflect the character of established garden suburbs and provide for development of flora and fauna corridors. Although the proposal complies with the 6m rear setback and 5.5m front setback allowable under the DCP, encroachments into the setback area are not acceptable and so not allow for the growth of trees which will contribute to a green corridor along the front and rear setbacks of neighbouring allotments.

Further, the amended building design was not accompanied by an amended landscape concept. The rear setback is dominated by paving, fencing and clothes drying areas and it is not demonstrated how the new layout will accommodate the level of landscaping previously proposed.

Visual and Acoustic Privacy

The proposal does not demonstrate that the proposed development will not result in negative privacy and overbearing impacts related to the proposed non-compliance with the 9m upper level setback requirements.

Building Design

The development does not incorporate sufficient architectural articulation or façade variation to adequately address the bulk and scale of the building. The depth of the building is considered to be excessive with only one lift core servicing the units. The upper levels (fifth and sixth floors) are not compliant with the RFDC setback are not sufficiently recessed resulting in overbearing bulk and an unsympathetic and dominating building form. The building is not affectively landscaped particularly along the Barber Avenue frontage which is dominated by service and vehicle ramps, an external covered patio entry and the bin storage area.

The entry of the building is insufficiently articulated with no central lobby area incorporated, resulting in poor opportunity for social interaction and safety and security impacts.

Energy Efficiency

The internal arrangements of the majority of apartments is not conducive to effective solar access or natural cross ventilation. Units do not have utility areas grouped together and some units have laundry and kitchen areas located with hallways.

Design of Dwellings and Private Courtyards

Common circulation areas are not provided by the development the entry lobby is provided as an external covered patio within the front setback area. The lift core is not provided with sufficient or practical circulation space to accommodate its use. No lobby or natural light into the lift areas or internal hallways is provided. Further, it is not demonstrated that sufficient space is provided outside of the lift core to allow occupants to move furniture in or out of apartments.

Balconies attached to upper level units do not comply with the DCP requirement to provide a 2.5m x 2.5m open space area capable of accommodating outdoor dining or drying and as discussed above, it

is not demonstrated that the internal layouts of units are sufficient to accommodate the range of furnishings typically associated with the use and function of the room or the practical circulation spaces needed facilitate the uses of the rooms or spaces.

Garden Design

Insufficient landscaping is proposed across the site and along all facades, in particular the front setback does not include sufficient landscaping to soften the building or contribute to streetscape amenity. The proposal does not comply with the clause in that the development does not contribute to a canopy of interlocking trees and shrubs and does not provide a civic garden frontage appropriate for the established neighbourhood character.

Paving Design

The proposed streetscape presentation does not provide for an attractive 'address' or minimise widths of driveway and hardstands along the frontage of the site.

Fences and Retaining Walls

The proposed front facing side fencing is not supported as it will be highly visible and does not contribute a quality streetscape presence. Fencing along the western side boundary is not appropriately integrated into the design of the building and will be greater in height than the balcony of the adjacent apartment terrace.