

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA17/1222
Proposed development:	Demolition of Existing Structures & Construction of Two (2) Storey Boarding House with Basement Parking Level & 18 Boarding Rooms
Property address:	31 Second Avenue, KINGSWOOD NSW 2747
Property description:	Lot 3 DP 39084
Date received:	29 November 2017
Assessing officer	Paul Anzellotti
Zoning:	Zone R3 Medium Density Residential - LEP 2010
Class of building:	Class 3
Recommendations:	Refuse

Executive Summary

Council is in receipt of a Development Application for the demolition of existing structures and construction of a two (2) storey boarding house containing (18) boarding rooms and associated basement car parking at No. 31 Second Avenue, Kingswood.

Under the Penrith Local Environmental Plan 2010, the proposal is defined as a boarding house. The subject site is zoned R3 Medium Density Residential, with the proposal a permissible land use in the zoning. The provisions of the State Environmental Planning Policy 2009 (Affordable Rental Housing) are applicable.

Key issues identified for the proposed development and site include:

- The proposal is not considered to provide for an appropriate landscaped treatment of the front setback area. The provision of an accessible car parking space in this area is considered to provide for a significant impact in the overall appearance of this front setback area.
- The proposal is not considered to have adequately clarified the overall kitchen area provided to each boarding room.
- The design of the proposed building and its relationship to the existing and likely future streetscape is not considered to be compatible with the character of the local area.
- The design of the proposed boarding house is considered to create a number of amenity concerns for future occupants.
- The proposal is considered to create immediate overlooking concerns for adjoining properties
- The presentation of the proposed building is bulky in scale with a number of design features considered to contribute to mass and bulk
- The proposal was not considered acceptable by Council's Development Engineering and Environmental Management Sections.

Correspondence was provided to the applicant on the 16 March, 2018 advising of issues with the proposal following the completion of a preliminary assessment and the receipt of referrals from respective Council Section's and Department's. The applicant also requested an extension of time to respond to these concerns noting the amendment to the State Environmental Planning Policy 2009 (Affordable Rental Housing) which provided for an increase in the required car parking rate associated with boarding house uses. Subsequently, amended plans and documentation were provided to Council on the 11 September, 2018 in response to concerns raised.

The development application was originally advertised in the local newspaper and notified to owners and occupiers of adjoining and nearby properties pursuant to the requirements of the Regulations and in accordance with Council's Development Control Plan. Affected property owners and occupiers were notified in the surrounding area and invited to make a submission on the proposal during the exhibition period from 15 December, 2017 to 31 January, 2018. During this period, Council received two (2) submissions. Following the receipt of amended plans and documents, the application was renotified from the 29 October, 2018 to 12 November, 2018. During this re-notification period, one (1) submission was received.

The application is to be determined under delegated authority by Council.

An assessment under Section 4.15 of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for refusal for the reasons outlined within this report.

Site & Surrounds

The subject site is located on the northern side of Second Avenue in Kingswood between Anthony Crescent and Morphett Street. The site is currently occupied by a single storey dwelling and associated outbuildings with the subject site maintaining an area of 705m². The subject site is provided with a fall in the vicinity of 1.4m from the south eastern corner (facing Second Avenue) to the north western corner (to the rear of the site). The subject site is rectangular in shape maintaining a street frontage of 15.24m, a western side and eastern side boundary of 46m and a rear boundary dimension of 15.24m. The site is sparsely vegetated with a number of middle sized mature trees along the rear northern boundary and north eastern corner of the subject site.

Directly adjoining the site to both its east and north are single detached dwelling houses, which is characteristic of dwellings also to its north. Adjoining the subject site to the east is an existing child care centre (The Little Village) approved under DA09/0973 for 59 children with associated hardstand car parking within the front setback area. Directly opposite the site is the Western Sydney University Penrith Campus, this area consisting of grassland, assorted vegetation and an at grade car parking facility.

Proposal

The proposed development includes the following aspects:

- Demolition of existing dwelling and outbuilding.
- Construction of a 18 room boarding house with accommodation capacity for up to 19 people.

The boarding house is of a two (2) storey design and is to be constructed with a variety of materials and external finishes.

Six (6) boarding rooms are proposed on the lower storey, one (1) of which is to be adaptable, described in the accompanying Statement of Environmental Effects as being the double room. To the rear of the building on the ground floor is a communal living room and laundry which provide access to a terraced outdoor common area and rear yard area maintaining clothes lines. A communal bin storage area is located to the front of the proposed building along the western elevation. The front setback area is provided with a driveway ramp off Second Avenue to the basement level. Directly adjoining this ramp is an accessible car parking space with an associated shared zone while to the front of the proposed building is a bulk waste storage area and bicycle parking area.

A total of twelve (12) boarding rooms are proposed to the first floor along with stair access to the ground floor.

The boarding house is also provided with a basement level car parking area accommodating a total of nine (9) car parking spaces and four motorcycle spaces along with internal stairs to the ground level.

Each boarding room is proposed to be provided with their own private kitchen and bathroom facilities.

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 No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

• Section 4.15 - Evaluation

The development has been assessed in accordance with the matters for consideration under Section 4.15 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 (Affordable Rental Housing) 2009

The ARH SEPP aims to provide affordable housing. Clause 8 of the ARH SEPP provides that in the event of an inconsistency between an EPI and the ARH SEPP, the SEPP prevails to the extent of the inconsistency. The provisions of the ARH SEPP relevant to boarding houses are addressed below.

Permissibility

Boarding houses are defined under the standard instrument as:

boarding house means a building that:

- (a) is wholly or partly let in lodgings, and*
- (b) provides lodgers with a principal place of residence for 3 months or more, and*
- (c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and*
- (d) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,*

but does not include backpackers' accommodation, a group home, hotel or motel accommodation, senior housing or a serviced apartment.

However there is no definition of a boarding house under the ARH SEPP.

Comment: The ARH SEPP provides that development for the purposes of boarding houses may be carried out with consent in a number of zones, including the R1, R2, R3 or R4 zones or any zone equivalent to those zones. The proposal is therefore a permissible land use as the subject site is situated in a R3 zone.

Development Standards

Clause 29 provides a number of matters that cannot be used as grounds for refusal by a consent authority. These are addressed below.

(1) A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:

- (a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or*

Comment: Not applicable as no FSR applies.

(b) if the development is on land within a zone in which no residential accommodation is permitted—the existing maximum floor space ratio for any form of development permitted on the land, or

Comment: Not applicable as residential accommodation is permitted.

(c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register—the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus:

- (i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or*
- (ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.*

Comment: Not applicable as no FSR applies.

(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:

(a) building height

if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land,

Comment: The proposal is consistent with this control as a maximum building height of 8.3m is proposed against the development standard of 8.5m.

(b) landscaped area

if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,

Comment: The front setback area is considered to be dominated by a driveway to the proposed basement car parking area and accessible car parking space directly adjoining with an associated shared zone. Notwithstanding the adjoining child care centre use which has provided for the majority of its front setback area to be provided as a hardstand car park associated with its use, it is considered that this area of hardstand on the subject site does not allow for an appropriate relationship with the surrounding dwellings along Second Avenue noting that an area of only 74.953m² (43%) is provided as landscaped area to a total area of 174m² to the front of the boarding house. It is also noted that 75% of the adjoining child care centre frontage has a landscaped setback to the front boundary unlike the subject site which is less than 50% of the frontage reinforcing its unsatisfactory streetscape presentation. It is considered imperative that front setback areas be treated with an appropriate measure of landscaping and greenery to maintain the desired residential characteristics of the subject sites R3 zone rather than presenting as a commercial use as is the case with the adjoining child care centre.

(c) solar access

where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,

Comment: The proposal will provide an acceptable amount of sunlight to the proposed communal living room noting its northern orientation.

(d) private open space

if at least the following private open space areas are provided (other than the front setback area):

- (i) one area of at least 20 square metres with a minimum dimension of 3 metres is provided for the use of the lodgers,*
- (ii) if accommodation is provided on site for a boarding house manager—one area of at least 8 square metres with a minimum dimension of 2.5 metres is provided adjacent to that accommodation,*

Comment: An area of 73m² is provided to the rear of the building for the use of the lodgers.

(e) parking

if:

- (i) in the case of development in an accessible area—at least 0.5 parking spaces are provided for each boarding room, and*
- (ii) in the case of development not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and*
- (iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,*

Comment: The subject site is located within an accessible area. Eighteen (18) boarding rooms will require the provision of nine (9) car spaces. Ten (10) spaces including one (1) accessible parking space are provided on site, the accessible spaces located on the ground level within the front setback area fronting Second Avenue. The design of the accessible space is in the front setback with reversing onto the road is also an unsatisfactory outcome as entry and exit should be in a forward direction for this form of development.

(f) accommodation size

if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:

- (i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or*

(ii) 16 square metres in any other case.

Comment: While each boarding room is provided with a kitchen, the proposal has failed to identify individual kitchen areas for each room (i.e, what floor space is dedicated to the individual kitchens), only identifying the counter where the sink and hot plate are to be located. In this regard, room sizes are not considered compliant.

(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.

Comment: Each boarding room is provided with kitchen and bathroom facilities.

Clause 30 provides a number of standards that a consent authority must be satisfied of prior to the granting of consent to development for the purposes of a boarding house. Comment is provided below against these provisions.

(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:

(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,

Comment: A communal living room is provided.

(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25 square metres,

Comment: Each boarding room is compliant.

(c) no boarding room will be occupied by more than 2 adult lodgers,

Comment: Each boarding room is to be occupied by a maximum of 2 lodger.

(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,

Comment: Rooms have a capacity for either 1 or 2 lodgers

(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,

Comment: Not applicable noting 19 lodgers is proposed.

(f) (Repealed)

(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,

Comment: Not applicable noting the subject site's R3 Medium Density Residential zoning.

(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.

Comment: A total of four bicycle and four motorcycle parking spaces are proposed which is compliant.

Character of Local Area

Clause 30A (Character of local area) requires the following:

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.

Comment: The nature of the proposed accessible car parking space and associated shared area directly adjoining a basement entry ramp car parking area is considered to dominate the front setback area of the proposal and is not considered complimentary to the existing streetscape. Hardstand is provided to a significant portion of the front setback area with minimal relief provided. While the application has identified the provision of a mature 'silk tree' to be provided to the front setback area, it is not considered that the plans have clearly identified that deep soil is available for the proper growth of this identified species. In this regard, the proposal as amended is considered deficient of an appropriate proportion of landscaping for this front setback area in relation to hardstand provided..

In addition to the above, residential development in the vicinity of the subject site does primarily present to the street as traditional or complimentary residential dwellings. While it is acknowledged that No. 35 Second Avenue directly adjoining the subject site is provided with a significant amount of hardstand in association with the operation of this child care facility, the continuation of the treatment of the proposed front setback area in this manner is not considered an acceptable design solution for the current proposal or any future proposal's along Second Avenue. In this regard, residential accommodation in the local area primarily maintains generous landscaped front setbacks with minimal hardstand areas with the current proposal creating a precedent for future developments (as it maintains a reliance on the adjoining property to support the continuation of an irregular appearance to Second Avenue) which is not considered acceptable.

The application will provide for a cantilevering of the ground floor via the first floor for the building façade fronting Second Avenue which is not considered consistent with its residential context. The ground floor is provided with a number of columns as well as a sizeable portion of facebrick (noting the location of internal stairs behind) which is not considered an acceptable design solution, this blank wall considered to exacerbate the visual bulk and prominence of the proposed built form upon its surrounds. The front façade is also provided with a mixture of finished materials via a rendered finish, facebrick as well as the location of the driveway to the basement which is not considered an appropriate inclusion to the existing streetscape.

Subdivision

Clause 52 provides that boarding houses cannot be strata subdivided. Strata subdivision does not form part of the application.

State Environmental Planning Policy No 55—Remediation of Land

An assessment has been undertaken of the development proposal against the relevant criteria within State Environmental Planning Policy No 55—Remediation of Land and the application is considered satisfactory. Conditions of consent may be applied with regard to contamination procedures, should unexpected finds be uncovered during construction as well as standard conditions related to asbestos removal. As the development application is recommended for refusal, the above mentioned conditions are not recommended to be included.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the proposed development against the relevant criteria within Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997) and although the development proposal is not in conflict with the Policy, the development application is recommended for refusal based on other matters.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 2.3 Permissibility	Complies
Clause 2.3 Zone objectives	Does not comply - See discussion
Clause 2.7 Demolition requires development consent	Complies
Clause 4.3 Height of buildings	Complies
Clause 4.4 Floor Space Ratio	N/A
Clause 5.9 Preservation of trees or vegetation	Complies
Clause 5.10 Heritage conservation	Complies - See discussion
Clause 7.6 Salinity	Complies - See discussion
Clause 7.7 Servicing	Complies

Clause 2.3 Zone objectives

The subject site is located within the R3 Medium Density Residential zone under Penrith Local Environmental Plan 2010. Objectives of the zone include:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enhance the essential character and identity of established residential areas.*
- *To ensure that a high level of residential amenity is achieved and maintained.*
- *To ensure that development reflects the desired future character and dwelling densities of the area.*

Although the development would add to the variety of dwelling types and numbers within the zone, the development proposal is in conflict with core objectives of the zone related to enhancing essential character and residential amenity.

The design of the boarding house does not enhance the essential character and identity of the established residential area, in that the built form does not complement qualities of existing residential development that define the character of the area. The development proposal does not include adequate articulating elements along its roof form or side elevations and the building's length and rectangular bulky design are not representative of or complementary to the character of the local area.

Each side elevation is provided in part as a two storey sheer wall height for more than 50% of its length, while the concrete columns identified to the front of the building are not representative of the traditional pattern of development and add bulk to the building. In addition, the front elevation is provided with a significant area of facebrick to the ground floor which is unsightly and contrary to the desired future presentation for this part of Kingswood.

The density of rooms proposed and the requirement under the SEPP ARH to provide a minimum of 0.5 car spaces per room is resulting in an overdevelopment of the site with unacceptable levels of site coverage, limited opportunity for meaningful landscaping also noting the location of an accessible car parking space within the front setback area. To mitigate against self imposed impacts related to noise and privacy, the development provides minimal window openings to boarding rooms along its side elevations which is resulting in large expanses of unarticulated wall and poor architectural composition.

In addition, the development does not reflect the desired future character and dwelling densities of the area, in that the proposal is in conflict with the comparable built form controls of the Penrith Development Control Plan 2014.

Clause 5.10 Heritage conservation

The subject site is located directly opposite a site containing an item of local heritage significance being a former teachers residence (Item No. 670 under Schedule 5 of the Penrith LEP) at Western Sydney University along the southern side of Second Avenue. In addition, directly adjoining the Western Sydney University to the west is Kingswood Public School which is also identified as an item of local heritage significance (Item No. 098 under Schedule 5 of the Penrith LEP).

While located opposite identified heritage items of local significance, it is not considered that a two storey boarding house will create an adverse impact upon the curtilage associated with either heritage item noting the width and nature of Second Avenue.

Clause 7.6 Salinity

The subject site is affected by moderate salinity. While so, it is not considered necessary in this instance to include any specific condition(s) in relation to construction noting the nature of the proposed works.

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

State Environmental Planning Policy (Affordable Rental Housing) 2009 is currently subject to an amendment limiting boarding houses to 12 boarding rooms per site within a R2 Low Density Residential Zone. This amendment is currently on exhibition from the 28 November, 2018 to the 19 December, 2018. As the subject site is located within a R3 Medium Density Residential zone, the amendment does not have any implications for the current application.

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	Complies
C3 Water Management	Does not comply - see Appendix - Development Control Plan Compliance
C4 Land Management	Complies
C5 Waste Management	Complies
C6 Landscape Design	Complies
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	Does not comply - see Appendix - Development Control Plan Compliance
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	Does not comply - see Appendix - Development Control Plan Compliance
D2.5 Residential Flat Buildings	N/A
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 applying to this development proposal.

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

The application was referred to Council's Building Surveyor for assessment. No objections were raised. Further, the development application has been notified, exhibited and advertised in accordance with the requirements of the Regulations. Notwithstanding, the proposal is recommended for refusal related to building design matters.

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

Context and Setting

The proposal will provide for the construction of a two storey, 18 bedroom boarding house which is considered to have a negative impact upon the existing streetscape and character of the area. The proposal is considered to provide for an inadequate treatment of the front setback area via the location of an accessible car parking space and associated shared area directly adjoining the front boundary. The failure to accommodate all required car parking spaces within the basement level is considered to not allow for an appropriate treatment of the front setback area, in particular in the provision of an improved landscaping scheme fronting Second Avenue. While it is acknowledged that the adjoining child care centre to the east of the subject site has provided for the majority of the front setback area to be provided as a hardstand car parking area, this is not considered an appropriate justification to allow for a visually inappropriate treatment within an established residential area to be extended further to adjoining sites.

The provision of an overhanging first floor above the ground floor fronting Second Avenue is also considered to create a direct impact upon the streetscape which is extenuated via the provision of supporting columns. The undercroft area is not considered consistent with the desired character for the area and is considered unsightly and garish in appearance. In addition, the treatment of this facade is not considered appropriate noting the location of internal stairs from the basement level to the ground floor provided to the front of the proposed building which has consequently created a blank wall void of any architectural features for part of the ground floor. The Second Avenue façade is also considered to provide for an inconsistent window pattern noting for instance the disproportionate windows provided to unit 7 on the first floor fronting Second Avenue, which is further highlighted by the 'colourbond surfmist' coloured aluminium window frames proposed.

The bulk and scale of the proposal is also considered to be extenuated to both side elevations noting the provision of highlight windows with a sill height of 1.6m which in turn will provide for elevational finishes with small openings and a large mass of wall. This is considered to create an overbearing effect for adjoining neighbours which is further compounded by the applications failure to allow for stepped finished floor levels in line with the contours of the subject site. In this regard by maintaining a single finished floor level to the ground floor throughout the length of the building, this has created an elevated portion above the existing natural ground level which becomes prolonged to a height of 1m to the rear of the building.

While the built form does provide for a varied side setback, the failure to allow for a reduced footprint for the first floor comparatively to the ground floor for the majority of the building envelope is also considered to extenuate the bulk of the proposed building to adjoining neighbours and the Second Avenue streetscape. The proposal is also considered to provide for a bland colours and finishes schedule noting an over reliance of facebrick for the majority of both side elevations and an irregular treatment of the front and rear facades with facebrick and coloured finish which is not considered an appropriate addition to the streetscape and its surrounds.

Noting the above concerns, the presentation of the proposed building is not considered acceptable and not an appropriate response to the subject site and its surrounds.

Overlooking

The proposal will provide for a significant number of windows to both the side and rear elevations which is considered to create an immediate overlooking concerns for adjoining properties. While noting that the majority of these windows are provided with a 1600mm sill height, the number of these windows is considered to have an overbearing effect and create amenity concerns to the existing childcare centre adjoining to the east and especially to the use of an existing rear yard area for No. 29 Second Avenue to the west of the subject site. While it is noted that bathroom windows would be in all probability be treated in obscured glazing if consent were forthcoming, as previously discussed, the elevated ground floor level is also considered to contribute to overlooking concerns providing for higher angles of observation to adjoining properties which cannot be compensated for via boundary fencing.

Overshadowing

As the subject site is provided in principle with a north to south orientation (Second Avenue provided to the southern end), solar access to adjoining properties is considered to have been appropriately maintained throughout the winter period. In this regard, a minimum of 3 hours solar access will be maintained between

9.00am and 4.00pm to either eastern or western adjoining properties.

Traffic, Access and Manoeuvring

While it is noted that the proposal complies with the minimum number of car parking spaces as required by the State Environmental Planning Policy (Affordable Rental Housing) 2009 SEPP ARH, it is considered in part that the impacts related to site coverage, landscaping, local character and overbearing presentation are also a consequence of the requirement to provide 0.5 car spaces per room.

In addition to the above, car parking provided is not considered acceptable following comments returned from Council 's Traffic Engineering Section noting the following;

- The proposed 3m wide access and driveway is considered insufficient as the width must comply with the Australian Standard 2890 for two-way movement, and
- Concern is raised that users of car parking spaces 1 and 9 in the basement level will not be able to demonstrate manoeuvring on-site for vehicles entering and exiting in a forward direction.

Noting the above, the nature of car parking spaces proposed is not acceptable.

Amenity of Boarding House

The amenity of the proposed boarding house rooms is considered to have been compromised via the provision of highlight windows as the sole source of solar access for 15 of the proposed 18 rooms (83% of all rooms). With a window height of 600mm, this is considered to restrict the amount of solar access available for these rooms which is considered to impact upon the amenity of future occupants. It is considered that the amenity of a number of rooms may have been improved where possible via the introduction of an additional window which would also assist in improving natural ventilation to these rooms. The application has also failed to clearly identify the area allocated to kitchenettes within each room which is non compliant with the SEPP ARH for specific room sizes.

Users of the proposed accessible room are provided with access to shared facilities such as the identified communal living area, laundry and outdoor common area. While so, the application has not allowed for clarification as to how a person who would reside in an accessible room may obtain access to the rear yard area, noting that access from the front door and use of the side passageways is not considered to provide for an equitable and direct means of access.

Social and Economic Impacts

The proposal was referred to Council's Social Planner who in principle has not raised any objections to the boarding house development. While so, it has been identified that there are significant non-compliances with the non-refusable standards under the SEPP ARH and the development proposal is inconsistent with the objectives of the zone and applicable controls of the Penrith DCP and as such the development application is recommended for refusal.

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

The site is considered to be unsuitable for the proposed development for the following reasons;

- The proposal is considered contrary to the objectives of the subject sites R3 Medium Density Residential zone,
- The design of the building is not compatible with, or complimentary to the character of the local area, and
- The development proposal is not considered to have adequately demonstrated that impacts in relation bulk, scale, privacy, manoeuvring from car parking spaces, noise and amenity have been appropriately mitigated against or addressed in the design of the building.

Section 79C(1)(d) Any Submissions

Community Consultation

The development application was originally advertised in the local newspaper and notified to owners and

occupiers of adjoining and nearby properties pursuant to the requirements of the Regulations and in accordance with Council's Development Control Plan. Affected property owners and occupiers were notified in the surrounding area and invited to make a submission on the proposal during the exhibition period from 15 December, 2017 to 31 January, 2018. During this period, Council received two (2) submissions.

Following the receipt of amended plans and documents, the application was re-notified from the 29 October, 2018 to 12 November, 2018. During this re-notification period, one (1) submission was received.

The concerns raised in these submissions are addressed below.

Issue: Concern that proposal will provide for an excessive number of windows overlooking the adjoining outdoor play area of the Child Care Centre at 35 Second Avenue.

Comment: The application has provided for six (6) ground floor windows and eight (8) first floor windows for an overall total of fourteen (14) windows to the eastern side elevation facing the adjoining child care centre. Of these windows 50% are provided to bathroom areas, the remainder to the boarding rooms themselves. It is noted that the front setback of the child care centre is maintained as a car parking area and in this regard, direct overlooking of this area is not considered inappropriate. Windows which are considered to be provided with the potential for overlooking are considered to be from rooms 4 and 5 on the ground floor and rooms 14 to 16 on the first floor. All windows are identified as providing for a 1.6m sill height with a maximum head height of 2.2m providing for an overall window height of 600mm.

While the size of windows provided are considered relatively small and are highlight in presentation, it is considered that the number of windows proposed to the elevation are excessive and in this regard, it is acknowledged that the potential may exist for overlooking of the adjoining child care centre. These concerns are considered to be exacerbated via the design which maintains an elevated floor level especially to the middle and rear of the subject site relative to the existing natural ground level.

Issue: Concern that proposal will create unacceptable overshadowing of the adjoining child care centres 0-2 play area during the winter months.

Comment: An assessment of the provided architectural plans has indicated that solar access will be maintained for the whole of the morning period to the adjoining child care centre. It is also noted that the open space to the child care centre is provided with shade structures. In this regard, the impact of overshadowing to the adjoining use is considered acceptable in this instance.

Issue: Concern that any demolition of existing structures will impact upon the health of children in the adjoining child care centre.

Comment: Should development consent be granted, the development will be subject to conditions of consent which will require all demolition works to be in accordance with the provisions of Australian Standard 2601-1991 *"The Demolition of Structures"*. In addition, it is considered that dust suppression techniques employed during the demolition stage will reduce the potential nuisance to surrounding properties.

In addition to the above, any development consent issued will be subject to conditions of consent which include stringent conditions in regard to the handling and disposal of potentially hazardous materials. In this regard, any demolition works involving the removal of any asbestos discovered on the subject site can only be carried out by a licenced asbestos removal contractor who maintains a current WorkCover Asbestos Licence. In addition, all asbestos laden waste must be disposed of at a tipping facility licensed by the Environment Protection Authority to receive asbestos wastes.

Issue: Concern that noise level during the construction phase will impact upon the operation of the adjoining child care centre.

Comment: The accompanying Noise Report has been considered unacceptable by Council's Environmental Management Section which has identified that it has not addressed the noise impact the proposed development will have upon sensitive receiver's during the demolition, construction and operation phase. While so, were the application to be provided with a recommendation of approval, any approval granted would be provided with conditions in regard to hours of operation for the construction of the

proposal. In this regard, standard hours of operation are primarily restricted to the periods of Mondays to Fridays, 7am to 6pm, Saturdays, 7am to 1pm with no work permitted on Sundays and Public Holidays. Should excessive noise or complaints be received during the construction period, this shall be also subject to conditions of development consent and may be directed to either the Certifying Authority for the proposal or Council to investigate.

Issue: Concern that noise generated from persons using the proposed boarding house, especially along any area adjoining the common boundary with the adjoining child care centre will create an unacceptable noise impact upon children wanting to sleep in the centre.

Comment: The accompanying noise report is not considered to have appropriately demonstrated that that the proposal will not create an unacceptable impact upon the amenity of adjoining properties.

Issue: Concern that odours emanating from the garbage room will create an amenity impact upon the surrounding residential properties.

Comment: The application has identified the location of the communal bin storage area and bulk waste storage area along the western elevation to the front of the proposed building. As this room is provided with a door, the likelihood of odours creating a disturbance to adjoining properties is not considered significant. While so, should approval be granted any development consent provided would also incorporate appropriate conditions in relation to the protection of adjoining properties from gases, vapours, dusts or other impurities emanating from the use of the subject premises.

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
Environmental - Environmental management	Not supported
Environmental - Waterways	No objections
Environmental - Public Health	No objections - subject to conditions
Waste Services	No objections - subject to conditions
Traffic Engineer	No objection subject to conditions
Community Safety Officer	No objections - subject to conditions
Social Planning	No objections - subject to conditions

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

The proposed development is assessed to be contrary to the aims and zone objectives of Penrith Local Environmental Plan 2010 and is non-compliant with key clauses of State Environmental Planning Policy (Affordable Rental Housing) 2009, including those related to compatibility with local character and development standards related to landscaping and accommodation size.

It is for the above reasoning that approval of the development application would not be in the public interest.

Section 94 - Developer Contributions Plans

Development contributions apply to the subject proposal, however as the application is recommended for refusal, a condition of consent requiring their payment prior to the issue of a Construction Certificate is not recommended.

Conclusion

The development application has been assessed against the applicable environmental planning instruments, including State Environmental Planning Policy (Affordable Rental Housing) 2009 and Penrith Local Environmental Plan 2010 and the proposal does not satisfy the aims, objectives and specific provisions of these policies.

In its current form, the proposal will have a negative impact on the surrounding character of the area, specifically the bulk, scale and design of the development is not compatible with local character and is not representative of the future desired character of the area, as defined by Penrith Local Environmental Plan 2010 and the Penrith Development Control Plan 2014.

Support for this application would set an undesirable precedent in the locality, particularly given the incompatibility of the design with comparable built form controls of the Penrith Development Control Plan 2014. The building design is not site responsive and does not comply with key development standards which are directly resulting in unacceptable negative impacts in the locality, and is not in the public interest.

It is for the above reasoning that the development application is not worthy of support. Reasons for refusal are detailed below.

Recommendation

1. That DA17/1222 for the demolition of existing structures and construction of a two (2) storey boarding house containing eighteen (18) rooms at 31 Second Avenue, Kingswood be refused for the attached reasons; and
2. 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 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:

The proposal is inconsistent with the objectives of the R3 Medium Density Residential zone, specifically

- the proposed boarding house is not considered to enhance the essential character and identity of an established residential area;
- the proposed boarding house does not ensure that a high level of residential amenity is achieved and maintained; and
- the proposed boarding house does not ensure that the development will reflect the desired future character of the area.

2 [X Special 03 \(Refusal under Section 79C\(1\)\(a\)\(ii\) 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 3, Clause 29 Standards that cannot be used to refuse consent (2)(b) Landscaped area and (f) accommodation size and Clause 30A 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:

(i) The application has not satisfied Council with respect to the requirements under Part B - 'DCP Principles', specifically:

- The proposal does not minimise its ecological footprint or promote sustainable production and consumption through appropriate use of environmentally sound technologies and effective demand management.

(ii) The application has not satisfied Council with respect to the requirements under Section C1 'Site Planning and Design Principles', specifically:

- The built form, façade treatments and excessive provision of hardstand to the front setback area is not considered to provide for a positive addition to the streetscape character.

(iii) The application has not satisfied Council with respect to the requirements under Section C3 'Water Management', specifically:

- Calculations have not been provided in regard to the discharge flow rate from the site, and
- The basement pump out system has not identified that it may be a minimum 2 submersible type, each with a minimum capacity of 5 L/s.

(iv) The application has not satisfied Council with respect to the requirements under Section C10 'Transport, Access and Parking', specifically:

- The proposed 3m wide access and driveway is considered insufficient as the width must comply with the Australian Standard 2890 for two-way movement,
- The application has not appropriately identified that users of car parking spaces 1 and 9 in the basement level will not be able to appropriately manoeuvre on-site for vehicles entering and exiting in a forward direction, and
- The area of hard stand required to facilitate a compliant level of car parking is resulting in a high level of site coverage and minimal landscaping via the provision of an adaptable car parking space within the front setback area.

(v) The application has not satisfied Council with respect to the requirements under Section C12 'Noise and Vibration', specifically:

- The submitted noise report accompanying the application has unsatisfactorily addressed the noise impact the proposed development will have upon sensitive receiver's during the operation phase. In this regard, the submitted noise report accompanying the application has not adequately addressed noise arising through mechanical ventilation, the use of external recreation areas and noise associated with increased vehicular use at the subject site as well as accounting for impacts on future occupants from external noise sources.

(vi) The application has not satisfied Council with respect to the requirements under Section D2.4 'Residential - Multi Dwelling Housing' specifically:

- The development proposal is in conflict with controls requiring external walls to be a maximum of 5m in length between distinct corners,
- The communal bin storage area and enclosed stairs leading from the basement level to the ground floor are located 1.2m from the boundary for a length of 6.2m alongside the western boundary and is therefore non compliant with the permissible minimum side setback,
- A landscaped area of only 19% of the total site area has been provided which is non compliant with the minimum 40% landscaped area required,
- The design does not effectively mitigate against bulk through the use of a variety of materials, articulating elements such as stepped walls and the number and design of window openings,
- The development proposal does not adequately employ design techniques to reduce thermal loads and allow for effective solar shading which is not considered an acceptable design solution especially for the proposed side elevations, and
- The development proposal is not considered to have adequately demonstrated that a number of measures have been included to prevent privacy (visual and acoustic) impacts to adjoining properties.

4 [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:

- (i) streetscape and local character impacts;
- (ii) noise and privacy impacts;
- (iii) traffic, access and manoeuvring;
- (iv) overlooking; and
- (v) landscaped area and site coverage.

5 [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 of the proposed development.

6 [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.

7 [X Special 9 \(Refusal under Section 79C\(1\)\(d\) of EPA Act 1979\)](#)

Based on the above deficiencies and submissions received, approval of the proposed development would not be in the public interest (pursuant to Section 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979*).

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part B - DCP Principles

The development proposal is considered to be contrary to the principles, commitments and objectives of the Penrith Development Control Plan 2014 (DCP) in particular, the proposal does not enable communities to minimise their ecological footprint or promote sustainable production and consumption through appropriate use of environmentally sound technologies and effective demand management.

The development does not adequately protect the occupants from the western or eastern heat. Innapropriate shading is provided to the west, east and north facing openings and little opportunity is provided for natural cross flow ventilation or canopy trees for shading. Due to the location and orientation of the building and elevated nature of the upper level, the building will be exposed to high levels of direct solar access and inadequate shade is provided to reduce the thermal loading, which will be retained in the summer months.

Part C - City-wide Controls

C1 Site Planning and Design Principles

The proposal is not considered to provide for a high architectural quality finish with façade treatments not considered to contribute to the street character. The application is considered to provide for a prominent provision of hardstand to the front setback area with the provided facades not allowing for any proportion or articulation, but rather serving to create an ad hoc appearance with no distinct characteristics. The built form presentation is considered excessively bulky in scale with blank wall treatments contributing to the out of character impact its construction would create upon its surrounds.

C3 Water Management

The application was referred to Council's Development Engineering Section to provide for appropriate consideration of the treatment of stormwater for the proposed development. In this regard, comments returned on the proposal as amended have identified that the application is unacceptable with the following matters outstanding;

- Calculations have not been provided in regard to the discharge flow rate from the site, and
- The basement pump out system has not identified that it may be a minimum 2 submersible type, each with a minimum capacity of 5 L/s.

Noting the above, it is not considered that the proposal has adequately displayed the use of sustainable practices in relation to the use of water resources.

C10 Transport, Access and Parking

Car parking requirements are set by State Environmental Planning Policy (Affordable Rental Housing) 2009 [SEPP ARH] and are found to be compliant. Notwithstanding the compliance with the number of car parking spaces required by the SEPP ARH, the development is recommended for refusal. It is noted that the area of hard stand required to facilitate a compliant level of car parking is resulting in a high level of site coverage and minimal landscaping via the provision of an adaptable car parking space within the front setback area. In addition, the parking area associated with the accessible car parking space is not considered to have been effectively screened from the neighbouring residential dwellings and will be provided as a prominent feature along the Second Avenue frontage.

C12 Noise and Vibration

The application as amended is not considered to have adequately demonstrated that the future development via noise generation does not adversely affect the amenity of surrounding land uses. It is noted that the amended proposal was accompanied by a Noise Report prepared by Issa Makdissi dated 27 August, 2018 which was referred to Council's Environmental Management team for consideration. Comments returned have advised that the application is not supported as the submitted noise report has unsatisfactorily addressed the noise impact the proposed development will have upon sensitive receiver's during the demolition, construction and operation phase. The report is not considered to adequately address noise arising through mechanical ventilation, the use of external recreation areas and noise associated with increased vehicular use at the subject site as well as accounting for impacts on future occupants from external noise sources, for instance the movement of vehicles along Second Avenue or the adjoining child care centre.

Noting the above, were the application to be approved it is considered that appropriate conditions may be included to allow for compliance with appropriate guidelines and policies during the demolition and construction phases, being the 'Noise Policy for Industry' (2017), 'Interim Construction Noise Guideline' (2009) and 'Assessing Vibration: A Technical Guideline' (2006). While so, it is considered that it is not possible to condition the operational phase of the intended use and this remains an outstanding concern.

D2 Residential Development

To enable an assessment of the built form of the development an assessment has been made

of the proposal having regard to comparative built form controls applying to development achievable within the R3 Medium Density Residential zone.

The anticipated built form for the purposes of multi dwelling housing and dual occupancies is detailed within the DCP and includes controls requiring greater levels of articulation and the inclusion of deep external side setbacks with an upper storey surrounded by a larger floor plan. The development does not include characteristics of traditional suburban development where the building form is stepped with integrated landscaped elements.

Clause 2.4.4 Urban Form

The development proposal is in conflict with controls requiring external walls to be a maximum of 5m in length between distinct corners. In this regard, the proposal is not considered to have been provided with an appropriate stepped or articulated form to allow it to properly integrate with its surrounds.

Clause 2.4.6 Building Envelope and Side Setbacks

The following control is provided for side setbacks;

Setbacks from side boundaries should be varied to articulate wall to side boundaries:

- a) a minimum setback of 2m, but only*
- b) along not more than 50% of any boundary.*

An assessment of the amended architectural plans has identified that the communal bin storage area and enclosed stairs leading from the basement level to the ground floor are located 1.2m from the boundary for a length of 6.2m alongside the western boundary and is therefore non compliant with the permissible minimum side setback. This area of the elevation is also considered to create a visually inappropriate relationship with the adjoining residential property noting the excessive use of facebrick void of openings in this section of the elevation.

Clause 2.4.8 Landscaped Area

As the subject site is located within a R3 Medium Density Residential zone, landscape area controls as provided by Section D2 'Multi Dwelling Housing', Clause 2.4.8 are considered applicable. In this regard, the minimum landscaped area percentage of the site is 40%, with landscaping in part to:

- *have a minimum width of 2m - with no basement encroachment and containing unexcavated soil to promote landscaping that is effective and healthy,*
- *may include terraces and patios located not higher than 0.5m above ground and pedestrian pathways to building and dwelling entrances; and*
- *does not include substantially-paved areas such as buildings, driveways and covered garages.*

An assessment of the provided plans has identified that a landscape area of only 136m² (19% of the total site area) has been provided in compliance with the above guidelines. In this regard, the proposal is not considered to provide for a landscaped area in keeping with the desired character of this residential area.

Clause 2.4.12 Building Design

The development proposal is contrary to the controls of the clause, in that the design does not effectively mitigate against bulk through the use of a variety of materials, articulating elements such as stepped walls and the number and design of window openings.

Clause 2.4.13 Energy Efficiency

The development proposal does not adequately employ design techniques to reduce thermal

loads and allow for effective solar shading which is not considered an acceptable design solution especially for the proposed side elevations.

Clause 2.4.19 Visual and Acoustic Privacy and Outlook

The development proposal is not considered to have adequately demonstrated that a number of measures have been included to prevent privacy (visual and acoustic) impacts to adjoining properties. The number of windows proposed to each side elevation is considered to create immediate overlooking concerns for adjoining neighbours while as previously discussed within this assessment, the accompanying Noise Report was provided to Council's Environmental Management team who have advised that this report has unsatisfactorily addressed noise impacts generated by the proposal upon sensitive receivers during the demolition, construction and operational phases.