

PENRITH CITY COUNCIL

NOTICE OF DETERMINATION

DESCRIPTION OF DEVELOPMENT

Application number:	DA17/1222
Description of development:	Demolition of Existing Structures & Construction of Two (2) Storey Boarding House with Basement Parking Level & 18 Boarding Rooms
Classification of development:	Class 3

DETAILS OF THE LAND TO BE DEVELOPED

Legal description:	Lot 3 DP 39084
Property address:	31 Second Avenue, KINGSWOOD NSW 2747

DETAILS OF THE APPLICANT

Name & Address:	GMKA Pty Ltd 11 Richmond Street SOUTH WENTWORTHVILLE NSW 2145
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DECISION OF CONSENT AUTHORITY

Penrith Council has determined to refuse to grant consent to the subject development application. In accordance with Section 4.18(1) (a) of the Environmental Planning and Assessment Act 1979, the reasons for refusal to grant consent are in Attachment 1.

Date of this decision	19 December 2018
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POINT OF CONTACT

If you have any questions regarding this determination you should contact:

Assessing Officer:	Paul Anzellotti
Contact telephone number:	+612 4732 8606

NOTES

Reasons

The reasons for refusal in the attached schedule have been imposed in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 as amended.

Reasons for refusal

Your attention is drawn to the attached reasons for refusal in attachment 1.

Certification and advisory notes

You should also check if this type of development requires a construction certificate in addition to this development consent

It is recommended that you read any Advisory Note enclosed with this notice of determination.

Review of determination

The applicant may request Council to review its determination pursuant to Division 8.2 of the Environmental Planning and Assessment Act 1979 within six months of receiving this Notice of Determination.

These provisions do not apply to designated development, complying development or crown development pursuant to Section 8.2(2) of the Environmental Planning and Assessment Act 1979.

Appeals in the Land and Environment Court

The applicant can appeal against this decision in the Land and Environment Court within six months of receiving this Notice of Determination.

There is no right of appeal to a decision of the Independent Planning Commission or matters relating to a complying development certificate pursuant to clause 8.6(3) of the Environmental Planning and Assessment Act 1979.

Designated development

If the application was for designated development and a written objection was made in respect to the application, the objector can appeal against this decision to the Land and Environment Court within 28 days after the date of this notice.

If the applicant appeals against this decision, objector(s) will be given a notice of the appeal and the objector(s) can apply to the Land and Environment Court within 28 days after the date of this appeal notice to attend the appeal and make submissions at that appeal.

Sydney Western City Planning Panels

If the application was decided by the Sydney Western City Planning Panel, please refer to Section 2.16 of the Environmental Planning and Assessment Act, 1979 (as amended) for any further regulations.

SIGNATURE

Name:	Paul Anzellotti
Signature:	

For the Development Services Manager

ATTACHMENT 1 : REASONS FOR REFUSAL

1. 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. 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. 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. 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. 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. 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*).
7. 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.