

PENRITH CITY COUNCIL

NOTICE OF DETERMINATION

DESCRIPTION OF DEVELOPMENT

Application number:	DA17/1222.01
Description of development:	Review of Refusal Determination - 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 39 Monterey Street SOUTH WENTWORTHVILLE NSW 2145
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DECISION OF CONSENT AUTHORITY

Penrith Council has determined to refuse 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 are in Attachment 1.

Date of this decision	20 May 2019
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POINT OF CONTACT

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

Assessing Officer:	Kathryn Saunders
Contact telephone number:	+612 4732 8567

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

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:	Kathryn Saunders
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 (c) solar access** and Clause 30A Character of Local Area.

Amended 20 May 2019 under DA17/1222.01 in accordance with Section 8.3 of the Environmental Planning and Assessment Act 1979.

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:

- ***Principle 2, which is to 'Enable communities to minimise their ecological footprint';***
- ***Principle 5 which is to 'Build on the characteristics of ecosystems in the development and nurturing of healthy sustainable cities'; and***
- ***Principle 9, which is to '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.
- ***The application does not demonstrate how the building is consistent with the height, bulk and scale of adjacent buildings and buildings of a similar type and use, and***
- ***The application fails to demonstrate how the building's height, bulk and scale will avoid or minimise negative impacts on an area's landscape, scenic or rural character (where relevant) taking into account the topography of the area, the surrounding landscape and views to and from the site, and***
- ***The application does not demonstrate that the safety and security principles of Crime Prevention Through Environmental Design are satisfied.***

(iii) Deleted

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

- *The proposal is unable to demonstrate how waste collection can be managed without disrupting the local road network, specifically access to driveways from Second Avenue, and*
- *The proposal does not adequately screen or otherwise reduce the visual impacts of the basement car park entry ramp and associated retaining walls.*

(v) Deleted

(vi) The application has not satisfied Council with respect to the requirements under Section C2 'Vegetation Management', specifically:

- *The application is unsatisfactory having regard to tree retention, removal and protect of existing trees.*

(vii) The application has not satisfied Council with respect to the requirements under Section C4 'Land Management', specifically:

- *The application is unsatisfactory having regard to the height of the building platform above natural ground level.*

(viii) The application has not satisfied Council with respect to the requirements under Section C5 'Waste Management', specifically:

- *The application is unsatisfactory having regard to the design and location of the waste area and the safe and efficient management (and collection) of waste.*

(ix) The application has not satisfied Council with respect to the requirements under Section C6 'Landscape Design', specifically:

- *The design does not reflect or contribute to existing and desired vegetation patterns to the side or rear of the site,*
- *Landscaping does not complement existing landscape within the vicinity of the site, or the streetscape character and will not contribute to a green corridor of canopy trees within adjacent rear yards, and*
- *Proposed landscaping is not used effectively to screen or be responsive to the building's bulk and scale.*

(x) The application has not satisfied Council with respect to the requirements under Section D5 Other Land Uses - Section 5.11 Boarding Houses, specifically:

- *The proposal is contrary to the objectives of the section,*
- *The proposed development is not designed to have a sympathetic relationship with adjoining development,*
- *The application does not satisfactorily address the impacts of the development on privacy and existing amenity, and*
- *The proposal is not satisfactory having regard to the requirements under the section, for the development to comply with the multi dwelling housing controls under Section D2.4 of the DCP.*

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

- *The design does not have adequate regard to the context of the site and local character, The lot frontage of 15.24m does not comply with the required 22m frontage,*
- *The proposal for a rear ground floor setback of between 4-2.8m does not comply with the required ground floor setback of 4m,*
- *The building's length of 29.975m exceeds the maximum of 20m,*
- *Side setbacks do not comply with the 2m requirement for less than 50% of the elevation,*
- *The design does not adopt key features of the character of the area in the vicinity of the site,*
- *The proposal does not provide a "green corridor" of trees and shrubs along the rear boundary,*

- **The upper floor plate is not significantly smaller than the ground floor plate and the building platform exceed 1m above natural ground level,**
- **The development proposal is not adequately articulated by the stepping of external walls particularly at the rear, front and western elevations,**
- The development proposal is in conflict with controls requiring external walls to be a maximum of 5m in length between distinct corners,
- The design does not effectively mitigate **negative impacts of** bulk,
- The development proposal does not adequately employ design techniques to reduce thermal loads and allow for effective solar shading, 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.

Amended 20 May 2019 under DA17/1222.01 in accordance with Section 8.3 of the Environmental Planning and Assessment Act 1979.

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.