

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA17/1222.01
Proposed development:	Review of Refusal Determination - 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 March 2019
Assessing officer	Kathryn Saunders
Zoning:	Zone R3 Medium Density Residential - LEP 2010
Class of building:	Class 3
Recommendations:	Refuse

Executive Summary

Council is in receipt of a Review of Determination application under Section 8.3 of the *Environmental Planning and Assessment Act 1979 (the Act)* seeking a review of Refused determination related to development application number DA17/1222. DA17/1222 sought approval for a two storey, 17 room boarding house at 31 Second Avenue, Kingswood. Amended plans received during the assessment increased the number of rooms to 18.

The development application was notified, exhibited and advertised between 15 December 2016 and 31 January 2017 and amended plans were notified between 29 October and 12 November 2018. Three submissions were received in total, two of which were from the adjacent child care facility.

DA17/1222 was refused under delegated authority by Council on 19 December 2018 for the following summarised reasons:

- Inconsistency with objectives of the zone particularly amenity impacts and compatibility with the character of the area under Penrith Local Environmental Plan 2010 (PLEP 2010);
- Non-compliance with the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 [SEPP ARH] in particular clauses related to solar access and character of the local area.
- Non-compliance with the Penrith Development Control Plan 2014 (PDCP 2014) in relation to sustainability, bulk, scale, built form, negative amenity impacts, landscaping and local character;
- Approval of the development as proposed was not considered to be in the public interest.

Under PLEP 2010, the proposal is defined as a boarding house and is a permissible land use within the R3 Medium Density Residential zone under PLEP and under SEPP ARH, with consent.

The Review of Determination application was notified to adjoining land owners and exhibited and advertised in accordance with the Penrith DCP between 12 April and 26 April 2018. Two submissions were received. Matters raised in the submissions are addressed within this report and relate to cumulative impacts and boarding house developments within the area.

An assessment under Section 4.15 of the Act has been undertaken and is included within this report. A review of the previous determination has been undertaken in accordance with the requirements of Section 8.3 of the Act, and as a consequence of this review, the previous determination is confirmed and the application is recommended for Refusal.

The original application was determined under delegated authority by the Development Services Coordinator. As per the provisions of Section 8.3 of the Act, a decision on the review of determination is not to be made by a subordinate of that delegate and as such, the review will be determined by the Manager of Development Services.

Relevant Application History

PL17/0036 - Pre lodgement meeting held 9 May 2017 for a two storey, 18 room boarding house. Rear ground and upper level setbacks were noted as being 6m and side setbacks were identified as 2m. Matters raised in the meeting included lot size, bulk, scale, density, articulation, dominance of hard stand areas, landscaping, privacy, waste management and site overdevelopment.

DA17/1222 - Original plans submitted with this application proposed 7 boarding rooms (5 singles and 2 doubles), a communal living room, share laundry and rear deck at ground floor and 10 single rooms at the upper level. The building length was 24.79m at ground floor and 23.49m at the upper level. Four car spaces and 4 motorcycle spaces were proposed at grade, within the front setback. Ground and upper level layouts largely reflected those submitted at the pre lodgement meeting although it is noted that one room was removed from the upper level and the ground floor rear setback was reduced to 4m.

The applicant was advised that the development proposal would not be supported and that the application should be withdrawn under cover letter dated 16 March 2018. Matters raised included bulk, scale, landscaping, amenity impacts, incompatibility with the character of the area and non-compliance with SEPP ARH.

Amended plans were submitted for review and the application was renotified, exhibited and advertised between 29 October and 12 November 2018. The application was refused on 19 December 2018.

Site & Surrounds

The subject site is located on the northern side of Second Avenue in Kingswood between Anthony Crescent and Morphett Street and has a site area of 705sqm. The site is currently occupied by a single storey older style dwelling and ancillary outbuildings.

The site is relatively flat and has a fall of approximately 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 medium sized mature trees along the rear northern boundary and north eastern corner of the subject site.

Directly adjoining the site to both its west and north are single detached dwelling houses with ancillary outbuildings which is characteristic of dwellings located further to the north-east. Adjoining the subject site to the immediate east is an existing child care centre (The Little Village) approved under consent DA09/0973 for 59 children with associated hardstand car parking within the front setback area. Directly opposite the site is the Western Sydney University Kingswood Campus, this area consisting of grassland, assorted vegetation and an at grade car parking facility. Chapman Gardens and Chapman Oval, which is a large public park and recreational area is located 35m to the west.

Kingswood Railway Station is approximately 1km to the north-west of the site. On street car parking is provided along both sides of Second Avenue, including along the frontage of the subject site. One street tree, power lines and a power pole are also located along the site's frontage to Second Avenue.

Proposal

The review of determination application seeks a review of the Refusal of DA17/1222 and proposes the following aspects:

- Demolition of existing dwelling and outbuildings,
- Tree and vegetation removal,
- Construction of a two storey boarding house with 18 single rooms including two accessible rooms,
- One 35.92sqm ground level communal living area, shared laundry, rear deck, and
- Basement car parking for 9 cars, including one accessible space and 4 motorcycle spaces.

Six boarding rooms and a storage area are proposed on the ground floor with communal residential access via lobby provided to Second Avenue. A communal living room is also provided at ground floor with access to a shared laundry, outdoor deck and rear yard area with wall mounted 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.

A total of twelve boarding rooms are proposed at the upper level along with stair access to the ground floor. A balcony is proposed at the south-eastern corner with frontage to Second Avenue and toward the east with access from proposed boarding room 18.

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

Plans that apply

- State Environmental Planning Policy (Affordable Rental Housing) 2009
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

• **Section 8.2 - Review of determination**

Pursuant to Section 8.3 of Environmental Planning and Assessment Act 1979, an applicant may request Council to review its determination of a Development Application. The request to review must be lodged and determined within 6 months of the date of Council's notice of determination. As the application was determined under the delegation of Council, a decision on the review of determination is not to be made by a subordinate of that delegate and as such, the review will be determined by the Manager of Development Services.

As per the requirements of Section 8.3(3), Council must be satisfied that the development as amended (if amended at all), is substantially the same development as that described in the original application. In this regard, a review of the submitted plans confirms that while amendments have been made, the proposal meets the "substantially the same development" test in that the proposal is of the same essence and remains to be for a two storey, 18 room boarding house with substantially the same building footprint, albeit with a slightly altered design.

The reasons for refusal of the original development application under DA17/1222 are reviewed in turn below, relative to the refused proposal and having regard to the plans and documents submitted with this Review of Determination application.

Reason 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.*

Officer response

A review of the plans submitted with this Review of Determination Application confirms the above reason for refusal, in that the bulk and scale of the boarding house does not enhance the essential character and identity of the established residential area. The development does not provide adequate setbacks to the sides or rear to enable landscaping or mature plantings which would assist in ameliorating the impacts of bulk and scale or which would complement the existing essential character, which includes key features such as remnant mature canopy trees and generous rear private gardens which contribute to a green corridor of trees and shrubs along adjacent backyards.

The design of the development does not ensure that a high level of residential amenity is achieved and maintained. Significant and unacceptable negative acoustic and visual privacy impacts are likely to result and are related to the limited rear and side setbacks provided, coupled with the inability of the proposal to provide for substantial side and rear landscaping which may provide a buffer to existing low density neighbouring developments.

It is noted that the site shares its eastern side boundary with a childcare centre and that its built form allows for substantial rear setback green space and the building design is compatible with key features of the essential character of the local area. Impacts from the proposed development on the privacy, safety and amenity of the children and staff attending the childcare centre are not adequately responded to in the application. In particular impacts related to overlooking, noise and smoking are not addressed by the design, setbacks or landscaping.

The proposed development does not ensure that the development will reflect the desired future character of the area. The desired future character of the area is defined largely by the objectives and controls of the Penrith DCP. The development does not provide for an acceptable level of compliance with these controls as discussed further under the DCP section of this report.

Reason for Refusal 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 [SEPP] 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.

Officer response

With regard to the above reason for refusal, plans submitted with the Review of Determination indicate a total of 18 rooms are proposed inclusive of two accessible rooms. All rooms are for single lodgers and in this respect, the SEPP requires a minimum of 12sqm's excluding any area used for the purposes of private kitchen or bathroom facilities. Plans indicate that adequate area with regard to the SEPP requirements is provided for each room and as such, the reason for refusal as it relates to Clause 29(2)(f) has been satisfactorily addressed and may be disregarded.

Notwithstanding the above, although it is noted that improvements have been made to the landscaped front setback by the deletion of hardstand parking areas related to a previously proposed accessible car parking space and the adjacent share zone, as the frontage of the site is narrow and a double width driveway is required to provide basement car access, limited opportunity remains for a landscape treatment which would be considered compatible with the streetscape in which the building is located.

The proposed bin storage room is not supported as it is not adequately ventilated and is not readily accessible for residents or Council's staff. It is unclear from the submitted documents, who would be responsible for its cleaning or who would take bins in and out for collection and in this regard, a separated bin storage area within the front setback would be required.

Due to the narrow lot frontage and number of bins required, coupled with the requirement to provide a double width driveway entry to the basement and a separated pedestrian entry pathway, it is raised that inadequate landscaping within the front setback could be practically accommodated within the remaining area and as such, the development does not comply with Clause 29(2)(b) Landscaped area as required by the SEPP and this reason for refusal remains relevant.

Further to the above, as a result of the assessment of the proposal under Section 4.15 of the Act, the development proposal is additionally found to be non-compliant with Clause 29(2)(c) Solar access which is discussed further under the SEPP section of this report. It is recommended that this reason for refusal be amended to delete reference to (f) accommodate size and to add reference to (c) solar access.

Reason for Refusal 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.*

Officer response

As detailed within this assessment, it is agreed that the development proposal does not comply with the DCP Principle referred to above, and Sections C1 and C10 of the DCP which relate to site planning and design principles and traffic, access and parking. These matters remain largely unresolved by the submitted amended plans.

The bulk, scale and general design of the development does not comply with the applicable controls, does not complement or positively contribute to the local character and will result in negative and unsupportable amenity impacts in the location, with no justification for the non-compliances provided.

Class 3, self contained boarding rooms are BASIX effected development and a BASIX Certificate has not been provided. Plans do not detail the locations of air conditioning units and the Acoustic report provided does not satisfactorily address the noise impact the proposal will have upon sensitive receivers during the demolition, construction and operational phases.

Matters previously raised related to Waterways are resolved and in this respect reason for refusal 3(iii) above is not relevant and is recommended to be deleted.

With regard to traffic matters raised under (iv) above, the amended plans address aspects of this reason for refusal. It is accepted that a one way ramp may be provided to the 9 basement spaces, subject to the inclusion of a traffic management system such as lights or the like and that adequate manoeuvring area is provided for vehicles in the basement. Notwithstanding, the site's limited lot width will require Council's waste truck to park across the driveway entry of the subject site (or the sites adjacent) during collection. This is not acceptable due to the density of rooms on the site which requires a larger volume of 240L bins to be presented to the kerb, resulting in the waste truck blocking access to the driveway for an extended period

of time. Further, the retaining walls to the basement are not adequately stepped or treated to reduce their appearance to the street, contrary to the DCP controls of the section.

The review of determination application was assessed against the matters for evaluation under Section 4.15 of the Act. As such, further reasons for refusal which relate to non-compliances with sections of the DCP were established (as detailed within the relevant section of this report).

Reason for refusal 3 remains relevant although it is recommended that it is modified to reflect the matters resolved and the additional matters resulting from the assessment of the application.

Reason for Refusal 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.*

Officer response

The above reason for refusal remains relevant as detailed within this report. The design of the development as modified has not had adequate regard to this reason for refusal. Side and rear setbacks remain non-compliant and overall site coverage is excessive. Landscaping is not adequate having regard to the bulk and scale of the development and the character of the local area. The building platform is raised over 1m at the rear of the site and the setbacks and landscaping proposed are not successful in ameliorating associated negative impacts of overbearing, bulk, scale and privacy.

The lot frontage to Second Avenue is not adequate to allow Council's waste truck to park along side the site without blocking access to driveways.

Reason for Refusal 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.

Officer response

The proposal is an overdevelopment of the site for the reasons expressed above and in this regard, this reason for refusal remains relevant.

Reason for Refusal 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).

Officer response

Matters raised in the submission received in response to this Review of Determination application have been addressed. It is agreed that due to the extent of non-compliance with the applicable State and local planning policies and development control plans, approval of the proposal would not be in the public interest.

Reason for Refusal 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.

Officer response

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

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 environmental planning instrument 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

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

Officer 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 Medium Density Residential zone.

Clause 29 Standards that cannot be used to refuse consent

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

(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,

Officer comment: The development complies with the height of building development standard under PLEP of 8.5m. Although it is noted that a maximum building height of 8.5m is proposed on sections and elevations which indicate a roof RL of 50.498. This conflicts with the site plan (Site Plan/Analysis, Sheet A01, dated 08/03/2019, revision 04) which states that the maximum roof RL is 51.433m which would result in the development exceeding the 8.5m height of buildings development standard. It is assumed that this is a drafting error and as the review of determination application is recommended for refusal based on other matters, amended plans were not requested.

(b) landscaped area

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

Officer comment: The front setback area is considered to remain dominated by hardstand areas including a double driveway with passing bay providing access to the proposed basement carpark. Notwithstanding the adjoining child care centre use which has provided for the majority of its front setback area to be provided as a hardstand carpark 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 minimal areas of landscaping are proposed. The submitted landscape plans indicate no trees or shrubs are provided within the rear setback and one tree within a limited area of the front setback is proposed. Minimal side setback landscaping is proposed which is further impacted or limited by the basement extent and proposed drainage (pipe and pit) locations.

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 40% 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. Front landscaping would be further impacted by the requirement to provide for a separated collect and return bin bay for the residents.

(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,

Officer comment: The proposal will provide an acceptable amount of sunlight to the proposed communal living room noting its northern orientation. The proposal does not provide for a minimum of 3 hours direct sunlight between 9am and 3pm in midwinter. The rear north facing windows to the communal room have a high sill and are located in close proximity to existing trees, neighbouring outbuildings and fencing which have not been accounted for in the submitted shadow diagrams. Upon review of these plans it is considered that less than 3 hours of direct sunlight between 9am and 3pm would be provided to the communal living room in midwinter, and it is also unclear how effective solar access to these high sill windows would be in providing amenity to the room at ground level, in accordance with the intent of the control.

(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,

Officer comment: Adequate area is provided at the rear of the building for the use of the lodgers which exceeds the requirement of the SEPP.

(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,

Officer comment: With regard to the above rates, the site is located within an accessible area and as such 0.5 spaces per room are required. Eighteen boarding rooms will require the provision of nine car spaces and a total of nine car parking including one accessible parking space are proposed within the basement. The proposal complies in this regard. It is noted that two accessible rooms are proposed and should the development application be approved, the development would be required to provide for two accessible spaces or be amended to delete the proposal to have two accessible rooms.

(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.

Officer comment: the development complies with the above requirement and indicates that all 18 rooms are single rooms being between 12.10sqm's and 15.93sqm's in area.

(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.

Officer 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,

Officer comment: A 35.92sqm ground floor 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,

Officer comment: All rooms are compliant.

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

Officer comment: Each boarding room is proposed to be occupied by a maximum of 1 lodger. A condition of consent may be applied in this regard, should the application be approved. Notwithstanding, the recommendation for refusal based on other matters.

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

Officer comment: Adequate facilities are proposed to be provided.

(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,

Officer comment: The maximum number of lodgers is proposed to be 18. No boarding house manager 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,

Officer comment: Not applicable.

(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.

Officer comment: A total of four motorcycle parking spaces and although no bicycle parking spaces are proposed adequate area is provided for within the lobby to provide for secure bicycle parking at a compliant rate.

Clause 30A 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.

Officer comment: Hardstand areas are considered to dominate the front setback of the proposal which is not considered complimentary or compatible to the existing streetscape or character of the local area in the vicinity of the site.

Residential development in the vicinity of the subject site primarily presents to Second Avenue as traditional or complimentary residential dwellings. While it is acknowledged that 35 Second Avenue directly adjoining the subject site to the east is provided with a significant amount of hardstand in association with the operation of this childcare 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 overall bulk and scale of the development and its limited side and rear setbacks with little meaningful landscaping will result in overbearing and amenity impacts in the locality. The location of air conditioning units attached to the side elevations are not indicated on plans and the bulk of the building is not comparable or complementary to existing or future desired residential character in the locality. Side setback s are limited and no meaningful or substantial landscaping is proposed for the entire length of the building.

The development is not compatible with the character of the local area in terms of overall site coverage, bulk, scale, landscaping provision, setbacks or streetscape presentation. The proposed development will result in an overall detracting addition to the streetscape and does not satisfactorily align itself with the applicable DCP controls and their objectives.

Clause 52 No subdivision of boarding houses

Clause 52 provides that boarding houses cannot be strata subdivided. Subdivision is not proposed.

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

A BASIX Certificate was not submitted and is required for Class 3 Boarding house developments. This requirement is confirmed by a recent NSW Land and Environment Court Judgement which confirmed that self contained boarding rooms capable of being occupied or used as a separate domicile are BASIX affected development and in this regard the development proposal does not comply with the provisions of the SEPP BASIX or Schedule 1, Part 1(2A) of the Regulations.

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.

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

Draft Environmental Planning Instruments

The Review of Determination application has been assessed against the provisions of Draft State Environmental Planning Policy No. 55 - Remediation of Land and is considered to be acceptable.

The application has also been assessed against the applicable provisions of the Draft Environmental SEPP. The Draft Policy is a consolidated plan which will incorporate aspects of current and separate existing environmental policies related to conservation of bushland and waterways and will related to canal estates, protected areas and catchment and heritage areas. The heads of consideration identified within the associated Explanation of Intended Effect include:

- Water quality and flows within watercourses,
- Native plants, animals, habitats and ecosystems, and
- Recreational, scenic and environmental amenity.

The proposal is acceptable having regard to the heads of consideration and the intended effect of the Draft plan.

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

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

There are no planning agreements in place that apply to this review of determination application.

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

The original application was referred to Council's Building Surveyor for assessment. No objections were raised. Further, the development application has been notified and exhibited in accordance with the requirements of the Regulations.

In addition to the above, Schedule 1, 2A of the Regulation states that a BASIX Certificate must accompany a development application for any BASIX affected development. The proposed Class 3 boarding rooms are BASIX effected development. This requirement is confirmed by a recent NSW Land and Environment Court Judgement which held that self contained boarding rooms capable of being occupied or used as a separate domicile are BASIX affected development and in this regard, the development proposal does not comply with the provisions of the SEPP BASIX or Schedule 1, Part 1(2A) of the Regulations.

Also refer to discussion under SEPP BASIX and clause 7.4 of PLEP of this report. A BASIX Certificate is required and has not been provided contrary to the requirements of the Regulations.

The Review of Determination application is recommended for refusal as the application does not satisfy the requirements of the Regulations, and for other matters related to the design of the development as discussed elsewhere in this report.

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

Likely impacts of the proposed development are discussed below:

Streetscape and Local Character

The proposal will have a negative impact on the existing streetscape and character of the local area. The development proposal is inconsistent with controls of Penrith Development Control Plan 2014 (PDCP) in particular those that relate to boarding house development, bulk, scale, design, and those that are related to local character, landscaping and solar access. The design is also in contrast to comparable built form controls of the PDCP, in that the bulk and scale of the development is not adequately mitigated by landscaping or articulating design elements along its elevations. The design of the boarding house does not enhance the essential character and identity of established residential areas.

Noise and Privacy Impacts

The development proposal does not adequately demonstrate a package of measures to mitigate against negative privacy and amenity impacts. Side setbacks are minimal and inadequate area is provided for landscape screening or buffer separation. The length of the building and the extent of the upper level will result in negative overbearing and overlooking impacts on neighbouring sites.

Impacts related to demolition, excavation, site preparation and construction could be adequately managed via recommended conditions of consent related to hours of demolition and construction, dust, erosion and sediment control, however, the development application is recommended for refusal based on other matters.

Traffic, Access and Manoeuvring

The development complies with the minimum number of spaces required by the State Environmental Planning Policy (Affordable Rental Housing) 2009 [SEPP ARH] however, impacts related to site coverage, landscaping, local character and overbearing are resulting from the requirement to provide 0.5 car spaces per room remain unresolved. It is noted that the development provides for two accessible rooms and only one accessible car parking space. The driveway width is less than that required for two way movement of vehicle for its length, as required by PDCP. Alternative traffic management solutions and an additional accessible spaces may be provided an amended plans although this was not requested as the proposal is recommended for refusal based on other matters.

The site is inadequate in width (15.24m lot frontage) to provide sufficient area along the frontage of the site for Council's 10.5m long waste collection vehicle to park while bins are being emptied. The design will require Council's truck to either block access to the subject site's basement entry or the driveways of adjacent sites.

The proposed variance to the minimum lot frontage of 22m cannot be supported.

Solar Access Impacts

The development proposal does not achieve compliance with the SEPP ARH, in that the communal living room does not receive a minimum of 3 hours direct solar access between 9.00am and 3.00pm at the winter solstice.

Social and Economic Impacts

The proposal was referred to Council's Social Planner who has not raised any objections to the boarding house development. However, 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 PDCP, 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 following reasons:

- The density of rooms proposed is resulting in excessive building bulk and site coverage. The proposal does not comply with the side and rear setback controls of the DCP,
- The design of the building is not compatible with, or complementary to the character of the local area,
- The development proposal does not adequately demonstrate that impacts related to bulk, scale, privacy, noise and amenity are adequately mitigated against or addressed in the design of the building or landscaping, and
- The site's lot width (15.24m) is less than the 22m minimum required for boarding house development and does not allow for the parking of Council's 10.5m long waste collection vehicle along the frontage of the site, without it blocking access to neighbouring sites or the proposed basement entry.

Section 79C(1)(d) Any Submissions

Community Consultation

In accordance with Appendix F4 of Penrith Development Control Plan 2014, the proposed development was notified to nearby and adjoining residents and was exhibited advertised between 19 April 2019 and 3 May 2019. Two submissions were received.

Matters raised in the submissions have formed part of this assessment. A response to the matters raised is also provided below.

Matter Raised	Officer Comments
<i>Traffic and Parking</i> • <i>This boarding house will accommodate 18 people and will have 9 on site car spaces. There is very little parking on Second Avenue during the day.</i>	• It is agreed that there is a high demand for on street parking in the area due to the site's proximity to education and health facilities. • It is the intention of the State Environmental Planning Policy (Affordable Rental Housing) 2009 [SEPP], that developments incorporating affordable rental housing are located with accessible locations. This is to facilitate connected communities and allow individuals making use of affordable rental housing opportunity to access services, facilities and transport options. It is not expected that the traffic and parking needs of the development will result in negative impacts to the detriment of the local area. • The proposal complies with the parking requirements of the SEPP.

Social Impacts <i>The applicant states that the site is situated within walking distance from Western Sydney University, Penrith Campus TAFE, Nepean Hospital, Kingswood commercial precinct, train, bus service to Penrith and Mt Druitt, local primary school, high schools, private schools, child care centres, large parks/sportsground. This is a good description of this area, just were families would like to live. The residents in a boarding house will not need a primary school, high schools, private schools, child care or parks.</i> <i>I would like to know what research shows that this accommodation is required for students?</i> <i>I do not believe additional accommodation in the area is required for students.</i> <i>Has the Penrith Council and/or the staff in the Penrith Planning department looked at any research to see the affected that putting too many boarding/social houses in a small area can have on the residence and the community around this area?</i> <i>Where are the facts to prove that building boarding houses are the best housing required for the good of the people living in them or the community and residents living within these areas. It may be what is best for the developer to make a quick profit, but will it be the best for future of the community?</i> <i>Is this the best social housing required in this area? Boarding houses discriminate against families.</i> <i>Who wants to live in a building where you are grouped together with up to 18 people?</i> <i>It is the responsibility of Penrith Council and Penrith Planning Department to plan for the future not to create problems or destroy a community in the future.</i> <i>I think we have enough boarding and half-way housing in Kingswood at this stage.</i>	- Selection of tenants of the boarding house would be a matter for the owner and /or manager to resolve. No certainty can be given as to who would reside in the boarding house. - It is agreed that the residents of this boarding house will not be families, as the rooms are single rooms only. - Currently the State and local plans do not provide additional controls related to the provision of family rooms in boarding houses although it is not agreed that this is discriminating against families. Boarding house development is a permissible use in the R3 zone under PLEP and the SEPP ARH. - Council has recently amended the Penrith DCP to provide additional controls related to boarding houses and the City Planning unit is currently investigating cumulative impacts of boarding house developments although no controls are currently in place. - The SEPP ARH includes controls aimed at improving the internal amenity for boarding house residents and provides minimum standards that are to be met. The internal amenity of the development has been assessed against these controls and has been found to fail and the development is recommended for Refusal based on this and other reasons discussed within this report. - Boarding house accommodation provides housing options for various members of the community and adds to the variety of accommodation options available.
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Submitters to the Review of Determination application have been advised in writing of the proposed recommendation.

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 the applicable objectives and controls of the Penrith DCP and 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 solar access.

Negative impacts resulting from the development and its inability to comply with the applicable objectives and their controls, are assessed to be unacceptable and no adequate justification is provided for the non-compliances.

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 review of determination 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 review of determination 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. A review has been undertaken of the development proposal and the reasons for refusal of DA17/1222.

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 the applicable 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 review of determination application DA17/1222.01 for a two storey, 18 room boarding house with basement car parking at 31 Second Avenue, Kingswood, be Refused for the following 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 (c) solar access** and Clause 30A Character of Local Area.

Amended 16 May 2019 under DA17/1222.01 in accordance with Section 8.3 of the Environmental Planning and Assessment Act 1979.

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:

- **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 if healthy sustainable cities'; and**

- **Principal 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 16 May 2019 under DA17/1222.01 in accordance with Section 8.3 of the Environmental Planning and Assessment Act 1979.

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*).