

# PENRITH CITY COUNCIL

## MAJOR ASSESSMENT REPORT

<b>Application number:</b>	DA20/0729
<b>Proposed development:</b>	Torrens Title Subdivision of 2 into 3 lots and Construction of Three x Two Storey Boarding House with Associated Fencing, Car Parking, Tree Removal, Landscaping and Drainage Works
<b>Property address:</b>	32 Park Avenue, KINGSWOOD NSW 2747 31 Park Avenue, KINGSWOOD NSW 2747
<b>Property description:</b>	Lot 16 DP 29528 Lot 15 DP 29528
<b>Date received:</b>	5 November 2020
<b>Assessing officer</b>	Lucy Goldstein
<b>Zoning:</b>	SEPP WSA - Affected by Obstacle Limitation SEPP WSA - Affected by Wildlife Buffer Zone Zone R3 Medium Density Residential - LEP 2010
<b>Class of building:</b>	Class 1b
<b>Recommendations:</b>	Refuse

## Executive Summary

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Council is in receipt of a development application for Torrens Title Subdivision of 2 into 3 lots and Construction of Three x Two Storey Boarding House with Associated Fencing at 31, 32 Park Avenue, Kingswood NSW 2747.

The development is defined as a boarding house and is a permissible land use in the R3 Medium Density Residential zone under Penrith Local Environmental Plan 2010 (LEP). The development proposal is also permissible within the R3 Medium Density Residential zone under State Environmental Planning Policy (Affordable Rental Housing)2009.(SEPP ARH).

Key issues identified in the assessment of the application include:

- The proposal is non-compliant with the minimum subdivision lot size of 450sqm required under Clause 4.1 of Penrith LEP 2010 for the site. Proposed Lot 2 and Lot 3 are undersized, having a total land area of 407sqm and 371sqm respectively, representing a variation to development standard of 9.6% and 17.6% respectively. The application was supported by a written request to vary the minimum lot size standard under the provisions of Clause 4.6 of Penrith LEP 2010. However, the written request has failed to demonstrate that the proposal will result in a better outcome for the site. The proposal's non-compliance with the minimum lot size standard reflects that the scale of the development is inappropriate for the site, being an overdevelopment of the site. Compliance with the standard is considered both reasonable and necessary in this instance.
- The proposal is non-compliant with key controls under the SEPP ARH, particularly relating to local character and solar access requirements;
- The proposal is non-compliant with key built form, character and amenity controls under Penrith Development Control Plan (DCP) 2014. Notably, the proposal provides inadequate landscaped rear setbacks with car parking areas encroaching upon the rear setback area, insufficient building separation, and provides poor internal layouts;
- The design of the car parking areas is inadequate, proving insufficient vehicle maneuvering, and being non-compliant with Penrith DCP and Australian Standard AS2890.1.
- The proposed stormwater management design and onsite detention systems are non-compliant with Penrith DCP 2014.

The application has been notified to adjoining properties and land owners and exhibited and advertised between 23 November 2020 and 7 December 2020 in accordance with relevant legislation. Council received a total of 4x unique submissions. The submissions received raised various matters including impacts on amenity, local character, traffic and parking, safety and security, noise, and the cumulative impacts of boarding house developments in the vicinity. A response to the matters raised by the submissions is provided within this report.

As the application proposes a variation to a development standard of greater than 10% (being 17.6%), the application has been referred to the Local Planning Panel for determination.

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

## Site & Surrounds

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The subject site is legally described as Lot 15 and Lot 16 DP 29528, commonly referred to as 31 and 32 Park Avenue Kingswood, respectively.

**Location:** The site is located on the northern side of Park Avenue, approximately 230sqm from its intersection with Walter Street. The site is situated east of Kingswood Railway Station, being approximately 700m walking distance from the Railway Station.

**Site Context:** The surrounding area consists of predominately residential development, comprising a mix of low density (single cottages) and medium density development (townhouses, dual occupancies). The site is located within a pocket of land zoned R3 Medium Density Residential, which acts as a transition area from higher density development located around the Kingswood Railway Station. To the immediate north, north-east and east of the site are townhouse developments. Adjoining the site to the west is a Council owned public park, and to the south of the site is the Railway line.

**Site Properties:** The site is irregular in shape with a total land area of 1466sqm. The site has a 31m frontage to Park Avenue, lot depth of 52m (western boundary) and 44m (eastern boundary), and rear width of 30m. The site slopes from the rear to the front (north to south) with a total cross fall of approximately 2.5m. The land is partially affected by overland flooding.

## Proposal

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The application seeks development consent for the following works:

- Consolidation of Lot 15 and Lot 16 DP 2952, and Torrens Title Subdivision to create 3x Lots;
- Construction of 3x 2-Storey Boarding House on each lot (3 buildings in total). Each proposed Boarding House contains 7x boarding rooms and 1x manager's room.
- Associated car parking, fencing, tree removal, landscaping and drainage works.

## Plans that apply

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- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Affordable Rental Housing) 2009
- State Environmental Planning Policy (Western Sydney Aerotropolis) 2020
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

## Planning Assessment

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### • 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 4.15(1)(a)(i) The provisions of any environmental planning instrument**

#### **State Environmental Planning Policy (Affordable Rental Housing) 2009**

An assessment of the development application has been undertaken with regard to the relevant provisions of SEPP ARH and the proposal is found to be non-compliant, as detailed in the table below:

**State Environmental Planning Policy (Affordable Rental Housing) 2009**

**Division 3 Boarding Houses**

<i>Requirement</i>	<i>Comment</i>	<i>Compliance</i>
<b>Clause 26– Land to which Division applies</b>	This Division applies to land within any of the specified zones (or equivalent); including:  (c) Zone R3 Medium Density Residential High	<b>Yes</b>
<b>Clause 27- Development to which Division Applies</b>	Clause applies to land within R2 Low Density Residential zone.	<b>N/A</b>
<b>Clause 28 –Development may be carried out with consent</b>	Development to which this Division applies may be carried out with consent.	Noted
<b>Clause 29 – Standards that cannot be used to refuse consent</b>	<p>(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:</p> <p>(a) the existing maximum floor space ration for any form of residential accommodation permitted on the land.</p> <p>(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:</p> <p>(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.</p> <p>(b) landscaped area – if the landscape treatment of the front setback is compatible with the streetscape in which the building is located.</p> <p>(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.</p> <p>(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 20sqm with a minimum dimension of 3 metres is provided for the use of the lodgers.</p> <p>(e) parking if: (iia) - in the case of development not carried out by or on behalf of a social housing provider – at least 0.5 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</p>	<p>(1a) <b>FSR: Not applicable</b> as there is no FSR requirement, as per PLEP, for the subject site or area.</p> <p>(2a) <b>Building Height: Complies.</b> The proposal complies with the Maximum Building Height control of 8.5m.</p> <p>(2b) <b>Landscaped Area: Non-Compliant.</b> Penrith DCP requires that a front setback that is the average front setback distance of the two adjoining properties, or a minimum 5.5m whichever is the greater distance be provided. The adjoining property to the east of the site provides a front setback of approximately 6m (30 Park Ave). To the west of the site is a Council owned park (no building). As such, the front setback control has been considered on merit. The properties further along Park Avenue to both the east and west of the site (with the exception of 30 Park Ave) provide deep, landscaped front setbacks containing canopy trees. The proposed building sits forward of the adjoining property to the east, providing a varied setback of a minimum 5.6m. Whilst the encroachment to the front setback is minor in nature, in conjunction with the development's overall scale and bulky built form, the front setback treatment is not considered compatible with the streetscape.</p> <p>(2c) <b>Solar Access: Non-Compliant.</b> The proposal has not satisfactorily demonstrated that the communal living areas will achieve sufficient solar access.</p>

connection with the development and who is resident on site,

(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.

Particularly in regards to Lot 1, given the orientation of the communal living area and positioning of windows, the communal living area is unlikely to achieve the minimum solar access requirements.

**(2d) Private Open Space: Complies.**

The minimum private open space requirement (area and width) has been provided along the western and rear boundaries.

**(2e) Parking: Non-Compliant.** Each boarding house contains 7x boarding rooms and 1x managers room. Using the calculation under the SEPP of 0.5 parking spaces per boarding room inclusive of the manager's room, a total of 4x car spaces is required per lot. The proposal provides 4x car spaces per lot, inclusive of 1x accessible space and additional 2x motorcycle spaces.

As such, the proposal provides a satisfactory number of onsite car parking spaces as required by ARH SEPP. However notwithstanding this, the proposal is considered unsatisfactory for the purpose of Clause (2e), as the design of the car parking spaces is inadequate to allow for proper and safe manoeuvring. The design of the car parking spaces do not meet the minimum width and manoeuvring requirements under Penrith DCP and relevant Australian Standards.

**(2f) Accommodation Size: Compliant.**

The accommodation sizes meet the minimum room sizes.

**Clause  
30 – Standards for  
boarding houses**

(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.

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

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

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

(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.

(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.

(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.

(1a) **Communal Living Room: Compliant.** Communal living spaces are provided per building.

(1b) **Room Size: Complies.** Each room is no more than 25m<sup>2</sup> in gross floor area.

(1c) **Number of Lodgers: Complies.** No room is proposed to be occupied by more than 2 lodgers.

(1d) **Facilities: Complies.** Each boarding room is provided with its own bathroom and kitchen facilities.

(1e) **Manager's Room: Complies.** Each boarding house (per lot) includes 1x manager's room.

(1g) N/A

(1h) **Bicycle Parking: Capable of complying.** A sufficient number of bicycle car parking spaces have been provided, however these spaces are exposed and should be undercover.

<p><b>30A – Character of local area</b></p>	<p>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.</p>	<p><b>Non-Compliant-</b></p> <p>Whilst the surrounding area is in transition to higher densities permissible within the R3 Medium Density Residential zone, the scale and spatial arrangement of the development is not considered compatible with the current character and future desired character of the area.</p> <p>The surrounding area is characterised by landscaped front and rear setbacks containing canopy trees. Lots 1, 2 and 3 provide insufficient rear setbacks, and include encroachment of car parking areas (hard stand) within each rear setback area. Noting that a landscaped rear setback of 4m at ground floor, and setback of 6m for upper stories is required per lot, given that subdivision is proposed. In relation to Lot 3, the location of the car parking area in the rear setback results in an unacceptable edge treatment with the adjoining property. The proposed density of the development, resulting in excessive hard stand area, and a bulky built form does not allow for an open and well landscaped site.</p> <p>In terms of built form, the development does not complement the existing built form qualities to define the character of the local area. The proposal provides inadequate building separation between the buildings on Lot 1 and 2, noting Penrith DCP requires that "open space corridors" between buildings of at least 5m wide be provided for sites that adjoin a park. Little opportunity is provided for substantial landscaping around the development, specially along the northern and eastern boundaries given the hard stand areas, which is considered to exacerbate the bulk and scale of the development and result in poor residential amenity.</p>
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## **State Environmental Planning Policy (Western Sydney Aerotropolis) 2020**

### **Obstacle Limitation Surface Map**

The site is identified on the Obstacle Limitation Surface Map under the State Environmental Planning Policy (Western Sydney Aerotropolis) 2020. Accordingly, the provisions under Clause 24 'Airspace Operations' have been considered. The objectives of Clause 24 are "To provide for the effective and ongoing operation of the Airport by ensuring that its operation is not comprised by development that penetrates the prescribed airspace for the Airport", and "To protect the community from undue risk from the operation of the Airport".

Clause 24(2) states that "The clause applies to development on land shown on the Obstacle Limitation Surface Map that is a controlled activity within the meaning of Part 12, Division 4 of the Airports Act 1996."

The proposal is not a controlled activity, noting the proposed structure will not result in any penetration or intrusion into the prescribed airspace by way of the physical height of the structure, intense light, reflection, or emission of smoke/dust/other particulate matters. As such, the provisions under Clause 24 are not relevant and do not apply to the proposal.

### **Wildlife Buffer Zone**

The site is mapped as affected by the Wildlife Buffer Zone. Accordingly, the proposal has been assessed against the provisions under Clause 21. Clause 21(2) requires that development consent must not be granted to relevant development on land in the 13 km wildlife buffer zone unless the consent authority has considered several matters (as listed a-c). In accordance with Clause 21(4) the proposal is not defined as relevant development for the purpose of the clause. As such, the provisions under Clause 21 are not relevant and do not apply to the proposal.

Given the above, the proposal is considered satisfactory in regards to the requirements under the State Environmental Planning Policy (Western Sydney Aerotropolis) 2020.

## **Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River**

Sydney Regional Environmental Plan No. 20 - Hawkesbury-Nepean River (No. 2 -1997) (SREP 20) integrates planning with catchment management to protect the Hawkesbury-Nepean river system, requiring the impact of future land use to be considered in a regional context. The application has been assessed against relevant criteria of SREP 20, and is found to be inconsistent with the objectives of SREP 20. The proposed stormwater system and onsite detention system (OSD) are non-compliant with Council requirements, noting Council's Development Engineer does not support the application.

In this regard, the Drainage Plan shows stormwater lines traversing between lots and OSD systems encroaching between lots. Given that Torrens Title Subdivision is proposed, all private drainages lines are required to be wholly contained within each lot, with a single inter-allotment drainage line and easement for drainage discharging to the street where required. In addition, a separate OSD system is required to be provided per lot, wholly contained within the lot. OSD storage cannot be split or stored between lots.

As such, the proposal has not been designed to suitably mitigate stormwater impacts, and therefore the proposal is considered inconsistent with the objectives of SREP 20.



## Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Does not comply - See discussion
Clause 4.1 - Minimum subdivision lot size	Does not comply - See discussion
Clause 4.3 Height of buildings	Complies - See discussion
Clause 4.4 Floor Space Ratio	N/A
Clause 4.6 Exceptions to development standards	Does not comply - See discussion
Clause 7.2 Flood planning	Complies

### Clause 2.3 Permissibility

Under Penrith LEP 2010, the subject site is zoned R3 Medium Density Residential. The proposal is defined as a 'Boarding House' which is a permissible land use in the R3 Medium Density Residential zone with consent.

### Clause 2.3 Zone objectives

The proposal is not considered consistent with the objectives of the R3 Medium Density zone, specifically:

- *To enhance the essential character and identity of established residential areas.*
- *To ensure that development reflects the desired future character and dwelling densities of the area.*  
The proposed subdivision arrangement is not compatible with the established subdivision pattern, is non-compliant with the minimum lot size required under Penrith LEP 2010, and exceeds the maximum number of lots permitted within a battle-axe arrangement (of two lots) under Penrith DCP. In terms of built form, the development does not enhance the character and identity of the surrounding area. In this regard, the proposal provides insufficient rear setbacks, inadequate building separation, and excessive hardstand areas, including the encroachment of car parking area within rear setback area.
- *To ensure that a high level of residential amenity is achieved and maintained.*  
The ground floor layout of the development is poor and does not achieve a high level of residential amenity for future occupants. Pedestrian movements are generally convoluted and entrances to buildings are not easily legible and accessible (Lot 2 & 3). The building on Lot 1 locates the front entrance immediately adjacent to the entrance of the common bin room, providing poor amenity. In terms of maintaining residential amenity of neighboring properties, the location of car parking areas and driveway along the northern and eastern side boundaries results in a poor edge treatment to adjoining properties, and minimises opportunity to provide suitable screening landscaping.

### Clause 4.1 - Minimum subdivision lot size

The proposal has been assessed against relevant criteria under Clause 4.1- *Minimum subdivision lot size*. Overall, the proposal does not meet the minimum subdivision lot size required under Clause 4.1(4B) for battle-axe lots on land in the R3 Medium Density Residential zone. Noting the application was accompanied by a 4.6 Request to Vary Development Standard (see discussion in this report under Clause 4.6 for further detail).

Clause 4.1(2) specifies the type of development to which Clause 4.1 applies. Clause 4.1(2) states that *'This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.'* In this instance, the application seeks Torrens Title Subdivision of land that is shown on the Lot Size Map, the proposal requires development consent, and the application was lodged following the commencement of the LEP 2010. Therefore, Clause 4.1 applies to the proposal.

Clause 4.1(3) requires that *'The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.'* The land is identified on Council's Lot Size Map as requiring a minimum lot size of 400sqm.

It is noted that Clause 4.1(4) specifies that the Clause does not apply in relation to the subdivision of land in relation to a strata plan, or by kind of subdivision under the Community Land Development Act 1989, which is not relevant to the application.

However, Clause 4.1(4B) further states that:

*'Despite subclause (3), development consent must not be granted for the subdivision of land in Zone R3 Medium Density Residential unless each lot to be created by the subdivision would have-*  
*(a) if it is a standard lot—a minimum width of 12 metres, or*  
*(b) if it is a battle-axe lot—a minimum width of 15 metres and a minimum area of 450 square metres.*

As the subject site is zoned R3 Medium Density Residential, and the proposal seeks to create a battle-axe arrangement the requirements of Clause 4.1(4B)(b) apply. In this regard, a minimum width of 15m and a minimum area of 450sqm is required.

The proposal seeks to create 3x Torrens Title lots within a battle-axe arrangement, comprising:

Proposed Lot	Required Lot Size	Required Lot Width	Proposed Lot Size	Proposed Lot Width	Complies
1	450sqm	15m	496sqm	31m	Yes
2	450sqm	15m	407sqm	30m	No- lot area
3	450sqm	15m	371sqm	30m	No- lot area

In calculating lot sizes, Clause 4.1(4C) clarifies that *'For the purposes of this clause, if a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size.'* The calculations as shown above exclude the access handle in accordance with Clause 4.1(4C).

### Clause 4.3 Height of buildings

A Maximum Building Height of 8.5m is permitted on the site. The three proposed buildings are two-storey and vary in height due to the slope of the land. All buildings comply with the height control, having a Maximum Building Height of 7.67m (ridge level of 46.57AHD).

### Clause 4.6 Exceptions to development standards

Clause 4.6 of Penrith LEP allows the applicant to make a written request to vary the applicable development standard that is contravened. In this case, the proposal seeks to vary the development standard relating to the minimum subdivision lot size contained within Clause 4.1. Clause 4.1 is a principal development standard, and can therefore be varied pursuant to Clause 4.6. Noting that Clause 4.6(2) refers to "a development standard imposed by this or any other environmental planning instrument". In addition, Clause 4.6(8) does not exclude the operation of Clause 4.6 from the minimum subdivision lot size standard.

The objective of Clause 4.6 is contained at Sub-Clause (1) and is, "to provide an appropriate degree of flexibility in applying certain standards to particular development"; and "to achieve a better outcome for and from the development by allowing flexibility in particular circumstances".

Proposed Variation:

The subject site is identified on Council's Lot Size Map as requiring a minimum lot size of 400sqm. However, pursuant to Clause 4.1(4B), as the subdivision relates to a battle-axe arrangement and is on land zoned R3 Medium Density Residential, a minimum lot area of 450sqm and minimum lot width of 15m is required under Penrith LEP 2010. The proposal seeks to create 3x Torrens Title lots within a battle-axe arrangement, of which two of the proposed lots do not meet the required minimum lot size (area). Lot 2 and Lot 3 are undersized, having a total land area of 407sqm and 371sqm respectively. These calculations exclude the area of the access handle in accordance with the requirements under Clause 4.1(4C). This represents a departure of the development standard of 9.6% (Lot 2) and 17.6% (Lot 3).

It is noted that Lot 1 is fully compliant with the minimum lot width and lot area, and Lot 2 and 3 comply with the minimum lot width requirement of 15m, but not the total land area.

Written Request to Vary Development Standard:

The Development Application was supported by a written request to seek to allow variation to the minimum subdivision lot size. The written request has been considered against relevant criteria under Clause 4.6, as detailed below.

Clause 4.6(3) requires the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating the following:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- (b) That there are sufficient environmental planning grounds to justify contravening the development standard.

Whilst the written request contains the appropriate information, the arguments put forward in the request are not supported. The written request states that a variation to development standard should be permitted in this instance for the following main reasons. Please note, the written request in its entirety has been provided to the Local Planning Panel as an attachment to this report, and the following points have been summarised.

- *strict compliance with the development standard is unnecessary and unreasonable in the circumstances of the case, given there are sufficient environmental planning grounds, and the objectives of the standard are achieved;*
- *The proposed variations relate to the paper plan subdivision lot boundaries only and would not be visually discernible given the proposed building siting and design, bulk and scale, landscaping, private open space, access, car parking and fencing would remain unchanged*
- *the proposed subdivision facilitates the provision of new residential accommodation of a significantly lesser scale and intensity of development that could otherwise be achieved on an unsubdivided site*
- *The proposal complies with relevant development controls including setbacks, building height, landscaping, private open space, solar access, visual privacy, car parking, access, stormwater and waste management.*
- *The proposed lot sizes ranging from 407sqm (excluding the access handle) and 497sqm are compatible with the environmental capabilities of the R3 medium density zoned land being subdivided.*
- *The proposal is consistent with the existing pattern of development and desired future character of this section of the street and the local area*

Clause 4.6, Sub-Clause (4) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied of the following:

- (i) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3); and
- (ii) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The written request has not demonstrated that the variation to the minimum subdivision lot size standard will result in a better outcome for and from the development. As a result of the non-compliance, the development will adversely impact the amenity of surrounding residences, and provide a poor level of amenity for future occupants.

Further, the proposal does not meet the objectives of the R3 Medium Density Residential zone, specifically:

- 'to enhance the essential character and identity of established residential areas',
- 'to ensure that development reflects the desired future character and dwelling densities of the area' and
- 'to ensure that a high level of residential amenity is achieved and maintained.'

In this regard, the proposed subdivision arrangement is not compatible with the established subdivision pattern, and exceeds the maximum number of lots permitted within a battle-axe arrangement (of two lots) under Penrith DCP.

In terms of built form, the development does not enhance the character and identity of the surrounding area, noting the proposal provides insufficient rear setbacks, inadequate building separation, and excessive hardstand areas, including the encroachment of car parking area within rear setback area.

The proposal's non-compliance with the standard reflects that the scale of the development is inappropriate for the site, being an overdevelopment of the site. The current proposal is not considered to be in the public interest, and compliance with the standard is considered both reasonable and necessary in this instance. Therefore, the request to vary the standard is not supported.

## Section 4.15(1)(a)(iii) The provisions of any development control plan

### Development Control Plan 2014

Provision	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	Does not comply - see Appendix - Development Control Plan Compliance
C6 Landscape Design	Does not comply - see Appendix - Development Control Plan Compliance
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Does not comply - see Appendix - Development Control Plan Compliance
C11 Subdivision	Does not comply - see Appendix - Development Control Plan Compliance
C12 Noise and Vibration	Does not comply - see Appendix - Development Control Plan Compliance
C13 Infrastructure and Services	Does not comply - see Appendix - Development Control Plan Compliance
D2.1 Single Dwellings	N/A
D2.2. Dual Occupancies	N/A
D2.3 Secondary Dwellings	N/A
D2.4 Multi Dwelling Housing	Does not comply - see Appendix - Development Control Plan Compliance
D2.5 Residential Flat Buildings	N/A
D2.6 Non Residential Developments	N/A
D5.1. Application of Certification System	N/A
D5.2. Child Care Centres	N/A
D5.3. Health Consulting Rooms	N/A
D5.4. Educational Establishments	N/A
D5.5 Parent Friendly Amenities	N/A
D5.6. Places of Public Worship	N/A
D5.7. Vehicle Repair Stations	N/A
D5.8. Cemeteries, Crematoria and Funeral Homes	N/A
D5.9. Extractive Industries	N/A
D5.10 Telecommunication Facilities	N/A
D5.11 Boarding Houses	Does not comply - see Appendix - Development Control Plan Compliance

## Section 4.15(1)(a)(iiia) The provisions of any planning agreement

No planning agreements apply to the site.

## **Section 4.15(1)(a)(iv) The provisions of the regulations**

The proposal is considered capable of complying with the requirements under the Environmental Planning and Assessment Regulation 2000, subject to conditions that enforce the development to comply with all relevant requirements under the Building Code of Australia. Notwithstanding this, the proposal is recommended for refusal on other planning grounds.

## **Section 4.15(1)(b) The likely impacts of the development**

### **Streetscape and Local Character**

Whilst the surrounding area is in transition to higher densities permissible within the R3 Medium Density Residential zone, the scale and spatial arrangement of the development is not considered compatible with the current character or future desired character of the area. The surrounding area is characterised by landscaped front and rear setbacks containing canopy trees.

Noting that Torrens Title Subdivision is proposed, Penrith DCP requires that a landscaped rear setback of 4m at ground floor, and setback of 6m for upper storeys be provided per lot. Lots 1 and 2 provide insufficient rear setbacks (providing setback of 900m and 2.4m respectively) and include encroachment of car parking areas (hard stand) within each rear setback area, leaving insufficient space to plant suitable landscaping to provide a buffer between lots. Whilst the building on Lot 3 provides a 4m rear setback, the rear setback area is encroached by car parking area located hard against the rear boundary, resulting in an unacceptable edge treatment with the adjoining property.

The proposed density of the development, resulting in excessive hard stand area, and a bulky built form does not allow for an open and well landscaped site.

In terms of building siting, Penrith DCP requires that a front setback that is the average front setback distance of the two adjoining properties, or a minimum 5.5m whichever is the greater distance be provided. The adjoining property to the east of the site provides a front setback of approximately 6m (30 Park Ave). To the west of the site is a Council owned park (no building). As such, the front setback control has been considered on merit. The properties further along Park Avenue to both the east and west of the site (with the exception of 30 Park Ave) provide deep, landscaped front setbacks containing canopy trees.

The proposed building sits forward of the adjoining property to the east, providing a varied setback of a minimum 5.6m. Whilst the encroachment to the front setback is relatively minor in nature, in conjunction with the development's overall scale, and bulky built form, the front setback treatment is not considered compatible with the streetscape.

### **Built Form**

The development does not complement the existing built form qualities to define the character of the local area. The proposal provides inadequate building separation between the buildings on Lot 1 and 2, noting Penrith DCP requires that "open space corridors" between buildings of at least 5m wide be provided for sites that adjoin a park (Chapter D2, Section 2.4.11). Little opportunity is provided for substantial landscaping around the development, specially along the northern and eastern boundaries given the hard stand areas, which is considered to exacerbate the bulk and scale of the development and result in poor residential amenity.

### **Stormwater Management**

The Drainage Plan shows stormwater lines traversing between lots and Onsite Detention (OSD) systems encroaching between lots. Given that Torrens Title Subdivision is proposed, all private drainages lines are required to be wholly contained within each lot, with a single inter-allotment drainage line and easement for drainage discharging to the street where required. In addition, a separate OSD system is required to be provided per lot, wholly contained within the lot. OSD storage cannot be split or stored between lots. OSD calculations shall be demonstrated for each lot, including SSR, PSD and bypass area specific to each lot.

### **Traffic, Access and Manvouring**

The proposed car parking and access arrangement is not supported by Council's Development Engineer for

the following reasons:

- Parking spaces are required to be a minimum width of 2.5m for residential development to allow full opening of vehicle doors, in accordance with Penrith DCP 2014 and AS2890.1.
- All parking spaces are to be designed so vehicles can enter and exit the space without the need to make more than three combined turning manoeuvres, in accordance with Penrith DCP 2014 (i.e. enter in one manoeuvre and reverse out in two or vice versa).
- The vehicular crossover shall be sited perpendicular to the kerb, in accordance with Council's Driveway Standards and Specifications.
- The proposed driveway encroaches an existing Telstra pit and electricity box. Services are required to be located a minimum of 1.0m clear of the driveway, in accordance with Council's Driveway Standards and Specifications. There is also an existing power pole adjacent to the driveway within the property that encroaches the driveway.
- Missing Information: The swept path diagrams provided are illegible and cannot be properly assessed. The dimensions of the carports are not shown on the plans.

### **Acoustic Impacts**

The proposal was accompanied by an Acoustic Assessment addressing potential noise impacts on surrounding residences, and future occupants of the development. The Acoustic Assessment was reviewed by Council's Environmental Health Officer, and was found to provide insufficient information. Specifically relating to noise associated with the use of the carpark/driveway, and communal area, noting the report did not calculate these noise levels.

The acoustic assessment should include the noise levels anticipated to be produced by each of these noise sources and the predicted levels that may be experienced by the neighboring sensitive receivers (ie. properties to the north and east, and residents of the development). The report needs to clearly demonstrate that the criteria can be achieved, and has formed a reason for refusal of the application.

### **Crime Prevention Through Environmental Design**

The ground floor layout of the development is poor and has not been designed to incorporate the principals of Crime Prevention Through Environmental Design. On Lot 1 (fronting the street), minimal passive surveillance is provided on ground floor. The building entrances on Lot 2 and 3 are convoluted and not clearly legible.

## **Section 4.15(1)(c) The suitability of the site for the development**

The site is considered unsuitable for the development for the following reasons:

- The subdivision arrangement is not compatible with the established subdivision pattern, is non-compliant with the minimum lot size required under Penrith LEP 2010, and exceeds the maximum number of lots permitted within a battle-axe arrangement (of two lots) under Penrith DCP.
- The scale of the development on the site is excessive in that inadequate setbacks and building separation is provided.
- The proposal does not adequately demonstrate that impacts related to bulk, scale, and amenity are adequately mitigated against or addressed in the design of the building.

## **Section 4.15(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. The proposal was also advertised in the local newspaper on 19 November 2020.

Council notified forty-six residences in the area and the exhibition period occurred between 23 November 2020 and 7 December 2020. Council received a total of 5x submissions comprising 4x unique submissions.

The following issues were raised in the submissions received and have formed part of the assessment.

<b>Issue Raised</b>	<b>Comments</b>
<i>Local character</i>	Concerns agreed. The proposal is not considered compatible with the surrounding local character, and has been included as a reasons for refusal. Refer to discussion in this report under 'SEPP ARH' and 'Likely Impacts'.
<i>Objection to Development Type</i>	A Boarding House is a permissible land use on the site. Notwithstanding, the site is considered unsuitable for the proposed development. Refer to discussion under 'Site Suitability' in this report.
<i>Car Parking Impacts</i>	The rate of car parking required for the development is determined by the SEPP ARH. Under the SEPP ARH, the proposal provides a sufficient number of car parking spaces (being 4x spaces per lot). Notwithstanding this, the design of the car park area and driveway is inadequate and has formed a reason for refusal of the application.
<i>Increased traffic congestion</i>	The proposal is considered capable of being accommodated by the local road network. Notwithstanding, the proposal is recommended for refusal on other grounds, as detailed in this report.
<i>Acoustic Impacts</i>	<p>Concerns noted. The proposal was accompanied by an Acoustic Assessment addressing potential noise impacts on surrounding residences, and future occupants of the development. The Acoustic Assessment was found to provide insufficient information. Specifically, the Acoustic Assessment did not calculate noise levels associated with the use of the carpark/driveway and communal areas of the development. These noise levels and its impact on sensitive receivers (adjoining properties to the north and east, and residents of the development) should be calculated and assessed.</p> <p>Insufficient information regarding acoustic impacts has formed a reason for refusal of the application.</p>
<i>Proximity of development to a school</i>	There are no planning controls requiring boarding houses to be a certain distance from schools.
<i>Perceived Social Impacts due to nature of development</i>	Boarding houses are a permissible land use in the zone and provide a type of residential accommodation within the community. Notwithstanding, the design is not considered to have factored in the principals of Crime Prevention Through Environmental Design (CTEP). Minimal passive surveillance is provided on ground floor for Lot 1, and the general layout of the development is poor, with entrances to buildings being not clearly legible. These considerations have contributed to the recommendation to refuse the application.

## 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 - Public Health	No objections - subject to conditions
Waste Services	Not supported
Traffic Engineer	Not supported
Community Safety Officer	No objections - subject to conditions
Social Planning	No objections

### **Section 4.15(1)(e)The public interest**

The proposal is not considered in the public interest, as the application is non-compliant with key objectives and controls under SEPP ARH, Penrith LEP 2010, and Penrith DCP 2014.

### **Section 94 - Developer Contributions Plans**

Penrith City Council's Section 7.11 Contribution Plan applies to the proposal. However, given the application is recommended for refusal on other grounds, contribution fees have not applied in this instance.

## **Conclusion**

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In assessing this application against the relevant environmental planning policies, being State Environmental Planning Policy Affordable Rental Housing 2009, Penrith Local Environmental Plan 2010, and Penrith Development Control Plan 2014, the proposal does not satisfy the aims, objectives and provisions of these policies.

The proposed design does not comply with key development standard, is not site responsive, and is not in the public interest.

In its current form, the proposal will have a negative impact on the surrounding character of the area, and there is likely to be negative impacts arising from the proposed development.

Therefore, the application is recommended for refusal, for the attached reasons:

## **Recommendation**

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1. That Development Application DA20/0729 for Torrens Title Subdivision of 2x Lots into 3x Lots and Construction of Three x Two Storey Boarding House at 31-32 Park Avenue Kingswood be refused for the following reasons;
2. That the submitted variation to a development standard under clause 4.6 of the standard instrument not be supported; and
3. That those making submissions are notified of the determination.

## Refusal

### 1 X Special 02 (Refusal under Section 4.15(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:

- **Clause 2.3 Zone objectives:** The proposal is inconsistent with the following objectives of the R3 Medium Density Residential zone:
  - To enhance the essential character and identity of established residential areas;
  - To ensure that a high level of residential amenity is achieved and maintained; and
  - To ensure that development reflects the desired future character and dwelling densities of the area.
- **Clause 4.1 Minimum subdivision lot size:** The proposal is non-compliant with the minimum subdivision lot size required for the site.
- **Clause 4.1(1) objectives:** The proposal is inconsistent with the objectives of Clause 4.1 of Penrith Local Environmental Plan 2010, specifically:
  - To ensure that lot sizes are compatible with the environmental capabilities of the land being subdivided; and
  - To ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.
- **Clause 4.6 Exceptions to development standards:** The written request to contravene the minimum lot size as required by Clause 4.1 of Penrith Local Environmental Plan 2010 under Clause 4.6 of that Plan provided by the applicant did not include sufficient environmental planning reasons to support the variation.

### 2 X Special 03 (Refusal under Section 4.15(1)(a)(ii) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 4.15(1)(a)(ii) 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:

- Part 2, Division 3, Clause 29 (2)(b) Landscaped area
- Part 2 Division 3, Clause 29 (2)(c) Solar Access
- Part 2, Division 3, Clause 29(2)(e) Parking
- Part 2, Division 3, Clause 30A Character of local area

### 3 X Special 04 (Refusal under Section 4.15(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:

- Chapter C1 Planning and Design Principles
- Chapter C3 Water Management
- Chapter C5 Waste Management and accompanying Waste Management Guideline
- Chapter C10 Transport, Access and Parking
- Chapter C11 Subdivision
- Chapter C12 Noise and Vibration
- Chapter D2 Residential Development
- Chapter D4 Other Land Uses

4 [X Special 07 \(Refusal under Section 4.15\(1\)\(b\) of EPA Act 1979\)](#)

The application is not satisfactory for the purpose of Section 4.15(1)(b) of the Environmental Planning and Assessment Act in terms of the likely impacts of the development, including:

- The proposed subdivision is not consistent with the established subdivision pattern.
- The design and scale of the proposed development is not compatible with the existing and desired future character of the immediate locality.
- The proposal provides inadequate front and rear setbacks to suitably integrate the development into the existing local character, maintain surrounding residential amenity, and provide appropriate landscape treatment of the site.
- The proposal does not provide a suitability level of internal amenity stemming from the ground floor layout and location of infrastructure (waste rooms, car parking).
- The proposal provides inadequate design of the car parking areas/driveway being insufficient for proper and safe manoeuvring within the development site.
- The development is considered to be an over-development of the site.
- The stormwater drainage design is inadequate, noting drainage infrastructure is proposed to traverse between each lot. Stormwater infrastructure is required to be wholly contained within each Torrens Title lot, and be designed in accordance with Council requirements.
- The accompanying Acoustic Assessment report provides insufficient information, as the report does not calculate expected noise levels generated by the use of car parking, driveway and communal areas of the development. As such, Council is unable to be satisfied that the noise levels associated with the use of these areas will comply with relevant noise criteria.

5 [X Special 08 \(Refusal under Section 4.15\(1\)\(c\) 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 proposed development.

6 [X Special 10 \(Refusal under Section 4.15\(1\)\(e\) 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 as the proposal would create an undesirable precedent and is therefore not considered to be in the public interest.

7 [X Special 9 \(Refusal under Section 4.15\(1\)\(d\) of EPA Act 1979\)](#)

The application is not satisfactory for the purpose of Section 4.15(1)(d) of the Environmental Planning and Assessment Act due to matters raised in submissions which include:

- Compatibility of the development with the surrounding local character
- Amenity and acoustic impacts
- Car parking impacts
- Design of development should reflect principles of Crime Prevention Through Environmental Design

# Appendix - Development Control Plan Compliance

## Development Control Plan 2014

### Part C - City-wide Controls

The proposal does not meet the objectives and controls under Part C of Penrith Development Control Plan, including:

#### **C1 Site Planning and Design Principles**

The ground floor layout of the development is poor, does not provide a high level of amenity for residents, and does not incorporate the principals of Crime Prevention Through Environmental Design. On Lot 1 (fronting the street) provides minimal passive surveillance on ground floor, as a laundry and waste room fronts the street. The building entrances on Lot 2 and 3 are convoluted and not clearly legible.

#### **C3 Water Management**

The Drainage Plan shows stormwater infrastructure traversing between lots. Given that Torrens Title Subdivision is proposed, all drainage infrastructure is required to be wholly contained within each lot. Refer to discussion in this report under 'Likely Impacts'.

#### **C5 Waste Management**

The proposal was reviewed by Council's Waste Officer, and found to be unsatisfactory, as the proposal is non-compliant with Chapter C5 of Penrith DCP and the accompanying 'Multi-Unit Dwelling Waste Management Guideline.' In this regard, Penrith DCP requires that the proposal provide communal waste storage area within each boarding house, whilst also providing an integrated centralised collection area accessible from Park Avenue. The proposal does not provide or nominate a collection area accessible from street. In addition, a common bulky waste area of a minimum 5.02sqm in area, should be provided to cater for the boarding houses to permit a designated collection area for Council's contractor to perform scheduled collections.

From a planning perspective, the proposed locations of the waste rooms are poorly considered, particularly Lot 1 which locates the bin room immediately adjacent to the front entrance, providing a poor level of residential amenity.

#### **C6 Landscape Design**

The density and spatial arrangement of the development provides little opportunity for the provision of quality landscaped areas, particularly along the rear (northern) and side (eastern) boundary, providing poor edge treatments to neighbouring properties. Screening landscaping should be provided along the rear and side boundaries to mitigate privacy and amenity impacts on adjoining properties.

#### **C10 Transport, Access and Parking**

The proposed car parking area has not been designed in accordance with the requirements of Penrith DCP. Car parking spaces are required to be a minimum width of 2.5m for residential development to allow full opening of vehicle doors, in accordance with Penrith DCP 2014 and AS2890.1. All parking spaces are to be designed so vehicles can enter and exit the space without the need to make more than three combined turning manoeuvres, in accordance with Penrith DCP 2014 (i.e. enter in one manoeuvre and reverse out in two or vice versa). The vehicular crossover is also required to be perpendicular to the kerb, in accordance with Council's Driveway Standards and Specifications.

#### **C11 Subdivision**

Section 11.3.3 requires that no more than 2 allotments are to be served by a shared corridor. The proposed subdivision is non-compliant with this requirement, as the shared corridor services 3x lots. The proposed density and subdivision layout is not considered consistent with the established subdivision pattern.

Notwithstanding the above, application has provided insufficient information regarding the subdivision component, in that no easements have been proposed to service the subdivision.

Such as Right of Ways, easements relating to drainage etc.

**C12 Noise and Vibration**

The application was supported by an Acoustic Assessment Report, which has been reviewed by Council's Environmental Health Officer. Based on this review, the Acoustic Assessment provides insufficient information, as the report does not calculate expected noise levels generated by the use of car parking and communal areas of the development. As such, Council is unable to be satisfied that the noise levels associated with the use of these areas will comply with relevant criteria. Refer to discussion under 'Likely Impacts' on this report for further detail.

**C13 Infrastructure and Services**

The proposed driveway encroaches an existing Telstra pit and electricity box. Services are required to be located a minimum of 1.0m clear of the driveway, in accordance with Council's Driveway Standards and Specifications. There is also an existing power pole adjacent to the driveway within the property that encroaches the driveway.

**D2 Residential Development**

An assessment of the built form of the development has been undertaken having regard to comparative built form controls applying to multi dwelling housing development within the R3 Medium Density Residential zone, as is required by the boarding house objectives and controls of section 5.11 (Boarding Houses) of Section D5 Other Land Uses of the DCP.

The anticipated built form for the area within the vicinity of the site (applicable to boarding houses and multi dwelling housing developments) is detailed within this section of the DCP and includes controls requiring articulation of the built form and the inclusion of deep external side setbacks with an upper storey surrounded by a larger ground floor plan.

#### **2.4.3 Development Site**

The site is approximately 30m wide, which is compliant with the 22m lot width control. However, the proposed lots are small in area (being 496sqm, 407sqm, and 371sqm) which is small for this form of development. The proposal represents an over development of the site in proportion to the site area, with a large building mass and inadequate room for landscaping, suitable design car parking area, and storm water drainage infrastructure.

#### **2.4.5 Front and Rear Setbacks**

The proposal provides an insufficient front setback, being forward of the adjoining property to the east, and forward of the established setback pattern along the street to the west and east of the site. Whilst the encroachment in the front setback is relatively minor in nature, when considering in conjunction the development's overall scale and bulky built form, and overall shortfall of suitable landscaped area to integrated the development into the local character, the proposed front setback is not supported. Refer to discussion under 'ARH SEPP, Clause 29' in this report for full discussion.

Lots 1, 2 and 3 provide inadequate rear setbacks, and include encroachment of car parking areas (hard stand) within each rear setback area limiting opportunity for suitable landscape and canopy trees to provide buffers between lots and adjoining properties. Further, the location of the car parking area in the rear setback on Lot 3 results in an unacceptable interface with the adjoining property to the north. Refer to discussion under 'Likely Impacts' in this report.

#### **2.4.6 Building Envelope and Side Setbacks**

This section states under clause 2.4.6(7)(a) and (b) that a minimum side setback of 2m is permissible, however, for only 50% of any boundary and the proposal complies. The proposal complies with the numerical control relating to the side setbacks. However, the density of the development and the requirement under the State Policy to provide 0.5 car parking spaces per boarding room is also considered to result in the large amount of hardstand area relative to a small site area

The proposal provides inadequate building separation between the buildings on Lot 1 and 2, noting Penrith DCP requires that "open space corridors" between buildings of at least 5m wide be provided for sites that adjoin a park.

#### **2.4.8 Landscaped Area**

The proposal does not meet the minimum landscaped area required by clause 2.4.8 in Part D2 of the DCP, which is 40% of the site area. In calculating the landscaped area, using the Landscape Plan provided the proposal provides a total landscaped area of 340sqm (across all three sites), representing a total of 23.1% of the site as landscaped area. This has been calculated based on areas that are 2m or more wide, as specified in the definition of calculable landscape area under Penrith DCP. The insufficient landscaped area, built form and required car parking area for the scale of development limit the opportunity for suitable landscaped area to contribute and enhance the landscape quality of the site and broader area. Furthermore, the landscape plan does not provide for suitable screening along the rear and eastern boundaries to maintain adjoining residential amenity.

## **D5 Other Land Uses**

## D5.11 Boarding Houses

The proposal does not meet the following objectives relating to Boarding House developments:

- (a) To ensure that boarding houses fit the local character or desired future local character of the area.*
- (b) To minimise negative impacts on neighbourhood amenity.*
- (d) To respond to increasing neighbourhood densities resulting from boarding house development.*
- (e) To ensure that boarding houses operate in a manner which maintains a high level of amenity, health and safety for residents.*

The scale of the development does not adequately respond to the existing or desired future character of the area in the vicinity of the site, as discussed within this report (refer to the local character discussion under the SEPP ARH). The building design and landscaping concept does not respond sufficiently in regard to site analysis. The proposed setbacks and landscaping do not ameliorate the negative and unacceptable impacts on residential amenity.