

# PENRITH CITY COUNCIL

## NOTICE OF DETERMINATION

### DESCRIPTION OF DEVELOPMENT

Application number:	DA18/0792
Description of development:	Demolition of Existing Structures & Construction of Two (2) x Six (6) Storey Residential Apartment Developments including 63 Apartments & Two (2) Levels of Basement Car Parking
Classification of development:	Class 2

### DETAILS OF THE LAND TO BE DEVELOPED

Legal description:	Lot 30 DP 31239 Lot 31 DP 31239 Lot 32 DP 31239 Lot 33 DP 31239 Lot 29 DP 31239
Property address:	16 Hope Street, PENRITH NSW 2750 18 Hope Street, PENRITH NSW 2750 20 Hope Street, PENRITH NSW 2750 22 Hope Street, PENRITH NSW 2750 24 Hope Street, PENRITH NSW 2750

### DETAILS OF THE APPLICANT

Name & Address:	Morson Group Pty Ltd PO Box 170 POTTS POINT NSW 1335
-----------------	--

### DECISION OF CONSENT AUTHORITY

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

Date of this decision	11 September 2019
-----------------------	-------------------

## POINT OF CONTACT

---

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

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

## NOTES

---

### Reasons

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

### Reasons for refusal

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

### Review of determination

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

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

### Appeals in the Land and Environment Court

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

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

### Designated development

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

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

### Sydney Western City Planning Panels

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

## SIGNATURE

---

Name:	Paul Anzellotti
Signature:	

For the Development Services Manager

## ATTACHMENT 1 : REASONS FOR REFUSAL

---

1. The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the provisions of Penrith Local Environmental Plan 2010 as follows:
  - (i) Clause 1.2 Aims of the plan - The proposal is inconsistent with the aims of the plan in relation to promotion of development consistent with Council's vision for Penrith and to meet the emerging needs of Penrith's communities while safeguarding residential amenity.
  - (ii) Clause 2.3 Zone objectives - The proposal is inconsistent with the objectives of the R4 High Density Residential zone, particularly (a) The design of the proposed development does not ensure that a high level of residential amenity is achieved and maintained.
  - (iii) Clause 4.3 Height of buildings - The proposal exceeds the maximum building height standard for the subject site.
  - (iv) Clause 4.6 Exceptions to development standards - The proposal fails to satisfy the development standard for building height and the request for a variation to the development standard is not supported as the proposed development will not be in the public interest as it will not ensure a high level of residential amenity is achieved and maintained in accordance with the zone objectives.
  - (v) Clause 7.4 Sustainable development - The proposal does not demonstrate that the principles of sustainable development have been appropriately incorporated into the design.
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 No 65 - Design Quality of Residential Flat Development as follows:
  - (i) Clause 30(2)(a) - compliance with the design quality principles specified in the Apartment Design Guide:
    - Principle 1: Context and Neighbourhood Character
    - Principle 2: Built Form and Scale
    - Principle 3: Density
    - Principle 4: Sustainability
    - Principle 5: Landscape
    - Principle 6: Amenity
    - Principle 7: Safety
    - Principle 8: Housing Diversity and Social Interaction
    - Principle 9: Aesthetics
  - (ii) Clause 30(2)(b) - compliance with the objectives specified in the Apartment Design Guide:
    - 3B Orientation
    - 3C Public Domain Interface
    - 3D Communal and Public Open Space
    - 3E Deep Soil Zones
    - 3F Visual Privacy
    - 3G Pedestrian Access and Entries
    - 4A Solar and Daylight Access
    - 4E Private Open Space and Balconies
    - 4F Common Circulation and Spaces
    - 4G Storage
    - 4K Apartment Mix
    - 4M Facades

- 4O Landscape Design
- 4L Ground Floor Apartments
- 4U Energy Efficiency
- 4W Waste Management

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 provide areas for positive social interaction or promote positive community interaction, and the proposal does not minimise its ecological footprint or promote sustainable production and consumption.

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

- The proposal is not considered to be site responsive nor demonstrated how the proposed buildings is contextually appropriate in the location.

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

- The proposal is not considered to be in compliance with Council's Stormwater controls not has the application been accompanied by a geotechnical report for the basement car park excavation.

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

- Excavation of the site exceeds 1m from natural ground level and extensive retaining walls are proposed to manage the cut.

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

- The proposal has not demonstrated that the flat building can accommodate or manage waste in an acceptable manner.

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

- The proposal has not demonstrated that effective landscaping may be provided to the front setback area due to the minimal deep soil zones provided, and
- The proposal has not clearly identified the location of fencing associated with private open spaces and communal open spaces.

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

- The proposal is deficient by 3 spaces in regard to the minimum residential car parking spaces to facilitate the residential flat building,
- The proposal is deficient by 1 space in regard to the minimum visitor spaces to facilitate the residential flat building, and
- The proposal is deficient by 5 space in regard to the minimum bicycle spaces to facilitate the residential flat building.

(viii) The application has not satisfied Council with respect to the requirements under Section D2 'Residential Development', specifically:

- Clause D2.5.5 The landscaping provided is non compliant with the 35% minimum landscaped area required for a residential flat building.
  - Clause D2.5.8 The building design does not ensure that overlooking problems are minimised between each building as part of this proposal.
  - Clause D2.5.12 The proposal is not considered to incorporate sufficient architectural articulation or façade variation to adequately address the bulk and scale of each building.
  - Clause D2.5.13 The building design does not allow for appropriate solar access to a necessary number of apartments.
  - Clause D2.5.19 The design does not ensure that the safety and security of occupants is able to be maintained.
4. The application is not satisfactory for the purpose of Section 4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the regulations as follows:
    - (i) Schedule 1 Forms of the *Environmental Planning and Assessment Regulation 2000* requires a BASIX Certificate to be submitted that reflects the amended proposal.
  5. 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,
    - (ii) Limited Landscaping and Deep Soil Zone,
    - (iii) Traffic, Access and Car Parking,
    - (iv) Bulk, Scale and Overbearing,
    - (v) Solar Access and Privacy Impacts,
    - (vi) Waste Management Impacts,
    - (vii) Amenity, Safety and Security Impacts Related to the Ground Floor Layout and Pedestrian Access,
    - (viii) Excavation,
    - (ix) Communal Open Space, and
    - (x) Environmental Sustainability
  6. 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 deemed not suitable for the scale of proposed development.
  7. 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*.
  8. 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.