

# PENRITH CITY COUNCIL

## NOTICE OF DETERMINATION

### DESCRIPTION OF DEVELOPMENT

Application number:	DA19/0713
Description of development:	Demolition of Existing Structures and Construction of a Seven (7) Storey Mixed Use Development Including Ground and First Floor Commercial Tenancies, 41 Residential Apartments & Three (3) Levels of Basement Car Parking
Classification of development:	Class 2 , Class 7a , Class 6

### DETAILS OF THE LAND TO BE DEVELOPED

Legal description:	Lot 61 DP 36728 Lot 60 DP 36728 Lot 62 DP 36728
Property address:	40 Orth Street, KINGSWOOD NSW 2747 38 Orth Street, KINGSWOOD NSW 2747 26 Somerset Street, KINGSWOOD NSW 2747

### DETAILS OF THE APPLICANT

Name & Address:	Ac Project Group Suite 310 7 Railway Street CHATSWOOD NSW 2064
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### 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	25 March 2020
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## POINT OF CONTACT

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

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

## NOTES

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### 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

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Name:	Paul Anzellotti
Signature:	

For the Development Services Manager

## ATTACHMENT 1 : REASONS FOR REFUSAL

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1. The proposal is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the application has not satisfied the provisions of the *State Environmental Planning Policy No. 55 - Remediation of Land*.
2. The proposal 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 B4 Mixed Use zone, particularly (a) To provide for a mixture of compatible land uses and (e) To provide a wide range of retail, business, office, residential, community and other suitable land uses.
  - (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 commercial and 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.
  - (iv) Clause 7.11 Penrith Health and Education Precinct - The proposal does not demonstrate that the design in exceedance of the 20% bonus to the height of building requirements is acceptable in nature.
3. The proposal 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 Apartment Development as follows:
  - (i) Clause 30(2)(a) - compliance with the design quality principles specified in the State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development and 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 and design guidance 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
- 3H Vehicle Access
- 4A Solar and Daylight Access
- 4B Natural Ventilation
- 4D Apartment Size and layout
- 4E Private Open Space and Balconies
- 4F Common Circulation and Spaces
- 4G Storage
- 4M Facades
- 4O Landscape Design
- 4Q Universal Design
- 4V Water Management and Conservation
- 4W Waste Management

4. The proposal 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 proposal is unsatisfactory 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 proposal is unsatisfactory with respect to the requirements under Section C1 'Site Planning and Design Principles', specifically:

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

(iii) The proposal is unsatisfactory 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, nor is the proposal considered to utilise the principles of Water Sensitive Urban Design.

(iv) The application is unsatisfactory with respect to the requirements under Section C4 'Land Management', specifically:

- The provided Preliminary Site (Contamination) Investigation is not considered to identify that the subject site is suitable for the proposed use.

(v) The proposal is unsatisfactory with respect to the requirements under Section C5 'Waste Management', specifically:

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

(vi) The proposal is unsatisfactory with respect to the requirements under Section C8 'Public Domain', specifically:

- The proposal has not demonstrated that the Somerset Street frontage has been appropriately activated noting the difference in finished floor levels from the ground floor to the existing footpath along Somerset

Street.

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

- The proposal is considered to create an immediate conflict between vehicles accessing the car parking levels and location and operation of the waste facilities via the positioning of the service vehicle turntable and loading bay, and
- The proposal is considered to create a safety concern for users of Basement Level 1 and 2 via the mixture of residential and commercial car parking spaces.

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

- Clause D2.5.8 - The building design does not ensure that overlooking problems are minimised between the proposed building and adjoining properties as part of the 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 the building,
- Clause D2.5.13 - The building design does not allow for appropriate natural ventilation 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, and
- Clause D2.5.20 - The proposal is deficient by 1 adaptable unit with a minimum of 5 to be provided and is not considered to provide for an equitable path of travel from Orth Street and Somerset Street to the commercial or residential lobby areas on the ground floor.

(ix) The proposal is unsatisfactory with respect to the requirements under Section E12 'Penrith Health and Education Precinct', specifically:

- The proposal does not provide for an appropriate separation of commercial and residential activities due to the conflict provided between the operation of the basement level car parking with the location of a turntable and waste truck loading area and via the mixture of residential and commercial car parking spaces at Basement Levels 1 and 2,
- The entry design solution for the Somerset Street residential lobby will create safety concerns, is not clearly identifiable and will not assist in activating this street frontage,
- The proposal does not provide for a 4m building alignment for the ground floor to the Somerset Street frontage,
- The proposal does not provide for any sun shade devices for Level 1 upwards to assist in minimising the harshness of the sun,
- Points of the proposed tenancy 1 are greater than 10m from a daylight source,
- The blank wall presentation along the southern elevation in addition to the blank wall presentation at the south eastern corner of the subject site associated with the operation of the waste truck loading area will create an immediate visual impact upon adjoining properties,
- The proposal is not considered to provide for appropriate areas of deep soil,
- The design of the proposal has not suitably considered its immediate impact upon the nature of adjoining buildings surrounding the subject site,
- The external appearance of the building is not considered to enhance the existing streetscape,
- The proposal is not considered to encourage an active street front presentation onto Somerset Street,
- Ground floor activities fronting Somerset Street are not provided at the same level as the existing footpath, and
- The proposal does not provide for a continuous street frontage awning.

5. The proposal 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) Privacy Impacts,
- (vi) Waste Management Impacts,
- (vii) Amenity, Safety and Security Impacts Related to the Basement Floor Layout and Pedestrian Access,
- (viii) Communal Open Space, and
- (x) Environmental Sustainability.

6. The proposal 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 the proposed development.
7. Based on the above deficiencies and submission 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 proposal is not satisfactory for the purpose of Section 4.15(1)(e) of the Environmental Planning and Assessment Act as the proposal is not in the public interest.