

# PENRITH CITY COUNCIL

## MAJOR ASSESSMENT REPORT

<b>Application number:</b>	DA19/0172
<b>Proposed development:</b>	Demolition of Existing Structures & construction of a Two (2) Storey Boarding House containing 19 Boarding Rooms & Basement Car Parking
<b>Property address:</b>	12 Anthony Crescent, KINGSWOOD NSW 2747
<b>Property description:</b>	Lot 67 DP 212261
<b>Date received:</b>	7 March 2019
<b>Assessing officer</b>	Gemma Bennett
<b>Zoning:</b>	Zone R3 Medium Density Residential - LEP 2010
<b>Class of building:</b>	Class 3 , Class 7a
<b>Recommendations:</b>	Refuse

### Executive Summary

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Council is in receipt of a development application for the demolition of existing structures and construction of a two storey boarding house with basement car parking containing 19 boarding rooms at 12 Anthony Crescent, Kingswood.

The proposal is defined as a boarding house under Penrith Local Environmental Plan 2010 (LEP) and is a permissible form of development within the R3 High Density Residential zone, with consent. The proposal is also permissible within the zone under Division 3 Boarding houses of State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH).

Key issues identified for the proposed development and site include:

- Non-compliance with character, landscaped area and solar access controls as required under SEPP ARH,
- Non-compliance with Penrith LEP zone objectives,
- Non-compliance with built form, character and amenity controls under Penrith Development Control Plan (DCP) 2014,
- Bulk, scale and density of the development,
- Visual and acoustic amenity impacts,
- Inappropriate onsite parking and accessibility provision,
- Inappropriate waste infrastructure.

The application was notified to adjoining and nearby properties and advertised and exhibited between 22 March and 5 April 2019, in accordance with the relevant legislation. During this period 16 submissions were received in response, of these submissions, 10 are considered unique and in this regard the application is referred for determination by the Local Planning Panel.

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 67 in DP 212261 and is known as 12 Anthony Crescent, Kingswood NSW 2747. The site is located 82m west of the intersection of Anthony Crescent and Morphett Street in Kingswood. The site has an area of 619m<sup>2</sup>, is primarily rectangular in shape, and maintains a 15.24m frontage to Anthony Crescent.

The site has a gentle slope towards the northern Anthony Crescent frontage of the site of approximately 600mm. There are several bushes and shrubs scattered across the property, as well as 1 x mature tree that is greater than 3m in height, located within the front setback of the existing dwelling on the site.

The site is located approximately 250m north (via road access) of the round-a-bout entrance to Dunstan Avenue (entrance to Western Sydney University, Kingswood Campus). Werrington Creek reserve is located on the eastern side of Morphett Street which connects to a larger reserve located on the southern side of Second Avenue.

The Little Village Early Learning child care centre is located 215m to the west. Two boarding houses are located at 51 and 53 Second Avenue approximately 75m west of the subject site, opposite the University car parking area.

An attached dual occupancy was approved previously on the lot in 2017 (DA17/0389) and in 2014 (DA13/1316).

No pre-lodgement meetings are recorded for the subject site for the current proposal.

A boarding house development was approved at 6 Anthony Crescent under DA17/0708. Construction of the boarding house on this site has not commenced, with the site owned by a social housing provider and it is currently occupied by a single storey dwelling with ancillary structures.

## Proposal

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The proposed development includes the following aspects:

- Demolition of all existing structures on the site, and the removal of vegetation.
- Construction of a 2 storey, 19 room boarding house.
- Basement car parking.
- Associated driveway, landscaping and drainage works.

The proposed boarding house is comprised of the following elements:

### **Basement Car Parking**

- 9 x car parking spaces, 4 x motorcycle parking spaces and a bicycle storage space (2m x 3m in area).
- Basement vehicle entry/exit is proposed from ramp access to Anthony Crescent, on the northern boundary frontage of the site.

### **Ground Floor**

- 8 x boarding rooms, each with a kitchenette, bathroom and combined bedroom/living area.
- A common living area with kitchenette/bench and attached communal bathroom. The common living area is adjacent to a rear door access into the proposed communal open space at the rear of the site.
- A combined disabled parking garage (with 1 space) and waste bin storage room.

### **First Floor**

- 11 x boarding rooms, each with a kitchenette, bathroom and combined bedroom/living area.

### **Open Space Area**

- The plans indicate a 20m<sup>2</sup> area (5m x 4m) of private open space for the proposed boarding house that connects directly with the communal living area to the southern end of the site, with approximately 63m<sup>2</sup> of rear yard space behind the structure. It is noted 6 x trees and a clothesline are proposed in this area.

## Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Affordable Rental Housing) 2009
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

## Planning Assessment

### • Section 4.15 - Evaluation

The proposal 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 79C(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:

<b>State Environmental Planning Policy (Affordable Rental Housing) 2009</b>		
<b>Division 3 Boarding Houses</b>		
<b>3 Boarding Houses</b>		
<b>Requirement</b>	<b>Comment</b>	<b>Compliance</b>
<i>Clause 25 – Definition</i>	Definition given for a 'communal living room'. The communal living space proposed appears to align with this definition.	Yes
<i>Clause 26 – Land to which Division applies</i>	This Division applies to land within any of the specified zones (or equivalent); including: (c) Zone R3 Medium Density Residential	Yes
<i>Clause 28 – Development may be carried out with consent</i>	Development to which this Division applies may be carried out with consent.	Yes
<i>Clause 29 – Standards that cannot be used to refuse consent</i>	<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>(a) N/A, as there is no FSR requirement, as per LEP 2010, for the subject site or area.</p> <p>(a) Yes, the ridgeline of the roofline is no higher than 8.5m (the maximum height listed for the site in the Height of Building Map).</p>

(b) landscaped area – if the landscape treatment of the front setback is compatible with the streetscape in which the building is located.

(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.

(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.

(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.

(b) No, the landscaped treatment of the front setback area is incompatible with the streetscape in which the building is located.

The proposed dual driveway servicing the basement level and at grade carparking space, is considered uncharacteristic of Anthony Crescent, and also reduces the amount of landscaping within the front setback, presenting a site frontage of predominantly hardstand area.

Additionally, the proposal includes the removal of a mature tree (greater than 3m in height) that is currently positioned within the front setback area for the proposed basement entry/exit and driveway. No arborist report has been submitted to support the removal of this tree.

(c) No, given the limited fenestration along the eastern elevation of the building, consisting of 1 x window that is 1.2m high and 850mm wide for the communal living area. In addition, insufficient information has been provided regarding the solar access received by each room in the building. The application is also not considered to demonstrate that minimum of solar access requirements are achieved for the sole communal living room; in accordance with the requirements of this Policy.

(d)(i) Yes, the minimum private open space requirement has been provided.

(e)(iia) Yes, the proposed car parking for the site includes 9 x car parking spaces in the basement parking area and 1 x accessible parking space within waste storage room on the ground floor, accessed via an unsealed driveway from the frontage to Anthony Crescent. While numerically compliant with the SEPP ARH requirements the proposed accessible parking space is not considered to be appropriately positioned as it is in conflict due to its position within the

waste storage room.

Additionally, Council's Development Engineers do not support the accessible parking arrangement on the ground floor, and request that only one vehicular access be provided for such a development via a concreted driveway. The proposed one-way basement ramp for two-way traffic movements is also not supported, with a minimum width of 5.5m for two-way traffic movements, in accordance with AS2890, being required for compliance.

As such, while it is considered that compliant on-site parking has been achieved the layout of the carparking areas is not considered appropriate with further discussion to be provided in later sections of this report.

(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.

(f)(i)&(ii) No, while each boarding room is provided with a kitchen, the proposal has failed to identify individual kitchen areas for each room (i.e. what floor space is dedicated to the individual kitchens), only identifying the counter where the sink and hot plates are to be located. In this regards, room sizes are not considered complaint.

<p><i>Clause 30 – Standards for boarding houses</i></p>	<p>(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:</p> <p>(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided.</p> <p>(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.</p> <p>(c) no boarding room will be occupied by more than 2 adult lodgers.</p> <p>(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger.</p> <p>(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.</p> <p>(f) (Repealed).</p> <p>(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.</p> <p>(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.</p>	<p>(a) Yes, communal space provided on ground floor.</p> <p>(b) Yes, each room is no more than 25m<sup>2</sup> in area.</p> <p>(c) Single rooms are proposed.</p> <p>(d) Yes, each room provided with bathroom and kitchen facilities. A communal bathroom and kitchenette (within the communal area) is also provided.</p> <p>(e) N/A.</p> <p>(g) N/A</p> <p>(h) Yes, the minimum parking requirement for motorcycles has been provided; with 4 x motorcycle parking spaces. However, although a 6.3m<sup>2</sup> area has been designated for bicycle parking, it has not been demonstrated that this area complies with AS2890.3: 1993 Bicycle Parking Facilities.</p>
<p>30A – Character of local area</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>No, the character of the local area is defined by deep set landscaped front yards with remnant canopy tree planting. The area is expected to undergo a gradual shift to higher densities permissible within the R3 Medium Density Residential zone which includes multi dwelling housing. Examples of more recent multi dwelling housing developments within the block bounded by Second Avenue to the south and along Anthony Crescent to the east and west, are articulated by the provision of stepped vertical</p>

and horizontal wall elements to the ground and first floor levels and the inclusion of separated buildings.

As discussed elsewhere in this report, the design of the development is not compatible with the character of the local area. The built form does not complement existing built form qualities that are considered to define the character of the local area. The development proposal does not include adequate articulating elements along its side (eastern and western) boundaries and the building's length and rectangular design are considered to add bulk to the structure. Little opportunity is provided for substantial landscaping around the development which is considered to exacerbate the built forms bulk and scale.

Each side elevation is provided with a mixture of steel matt Colorbond and rendered wall finish which is considered, noting the length of the proposed building, to dominate its adjoining neighbouring lots. In addition, the Anthony Crescent façade is provided with a mixture of colours and finishes that are not considered an appropriate inclusion to the existing streetscape.

The use of a dark Colorbond finish to both the first floor and roof structure is considered to highlight the size and scale of the proposal to its surrounds.

The density of the development is directly related to the inability of the design to adequately respond to the future desired character of the area in that the bulk, scale and building design is not compliant with the boarding house controls under Part D5 Other Land Uses, clause 5.11 Boarding Houses of the DCP, which requires the development to be consistent with the comparative built form controls applicable to multi dwelling housing.

## 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. Given the prior residential use for the subject location and continued use of the land for residential purposes (which is not considered a potentially contaminating activity) as stated in the supporting documentation with the application, the site is considered suitable for the proposed use in regards to contamination.

## 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.

## Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Does not comply - See discussion
Clause 2.3 Permissibility	Complies
Clause 2.3 Zone objectives	Does not comply - See discussion
Clause 2.7 Demolition requires development consent	Complies
Clause 4.1A Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings	N/A
Clause 4.3 Height of buildings	Complies
Clause 4.4 Floor Space Ratio	N/A
Clause 7.1 Earthworks	Complies
Clause 7.2 Flood planning	Complies
Clause 7.4 Sustainable development	Does not comply - See discussion
Clause 7.6 Salinity	Complies
Clause 7.7 Servicing	Complies

### Clause 1.2 Aims of the plan

The proposed development does not achieve the aims of the plans expressed under Clause 1.2(2) of the LEP. In particular, the proposal is contrary to Clause 1.2(2)(b) and (c) in that the proposal will not promote development that is consistent with Council's vision for Penrith, including the promotion of harmony of urban development and environmental protection and enhancement. The proposal does not safeguard residential amenity by way of its density, bulk, scale and contribution to streetscape and local character.

### Clause 2.3 Zone objectives



The subject site is located within the R3 Medium Density Residential zone under the LEP. Objectives of the zone include:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enhance the essential character and identity of established residential areas.*
- *To ensure that a high level of residential amenity is achieved and maintained.*
- *To ensure that development reflects the desired future character and dwelling densities of the area.*

The design of the boarding house does not enhance the essential character and identity of the established residential area, as the proposed built form does not complement those qualities of existing residential development that define the character of the area. The proposal does not include sufficient articulation elements along each side elevation to both the ground and first floor. The length and bulk of the building is not considered to represent, nor complement, residential development within the local area.

The first floor plan is predominantly equal to the ground floor plan in size and architectural elements along the side elevations such as the double height unarticulated walls do not ameliorate bulk and scale or provide relief from the overall height of the building.

The eastern and western elevations each present as two storey sheer walls for more than two thirds of the site depth, which is not representative of, nor complementary to, the traditional pattern or design of development in the vicinity of the site. The above mentioned walls are likely to be an overbearing element impacting existing and future development on the neighbouring sites noting also the dependency on a dark coloured finish to the upper level.

The density of rooms proposed, in combination with the requirement under the SEPP ARH to provide a minimum of 0.5 car spaces per boarding room (total of 10 car spaces required), is considered to result in an overdevelopment of the site with unacceptable levels of site coverage, limited opportunity for sufficient landscaping along the side boundaries, reduced deep soil provision and non-compliant solar access provision to the communal room at ground floor.

The development provides minimal window openings to boarding rooms along its side elevations which results in several sections of large expanses of unarticulated wall. The location of air conditioning units are not noted on plans and as such noise and visual impacts from air conditioning units is not known.

Additionally, the development does not reflect the desired future character and dwelling densities of the area, in that the proposal is in conflict with the objectives and controls of Section D5, Clause 5.11 (Boarding houses) of the DCP. It is noted that these controls relate to solar access, car parking, landscaping and character as required by SEPP ARH.

Details of compliance with individual objectives and controls is discussed under the DCP and SEPP ARH sections of this report.

#### **Clause 7.4 Sustainable development**

Clause 7.4 of the LEP requires the consent authority to have regard to the principles of sustainable development as they relate to the development based on a 'whole of building' approach by considering each of the following:

- (a) conserving energy and reducing carbon dioxide emissions.*
- (b) embodied energy in materials and building processes.*
- (c) building design and orientation.*
- (d) passive solar design and day lighting.*
- (e) natural ventilation.*
- (f) energy efficiency and conservation.*
- (g) water conservation and water reuse.*
- (h) waste minimisation and recycling.*
- (i) reduction of vehicle dependence.*
- (j) potential for adaptive reuse.*

A minor number of rooms have the potential to receive natural cross flow ventilation (with 7 of the 19 boarding rooms afforded with more than one opening).

The standards for any air conditioning for the proposed development were addressed in the Part J BCA report, prepared by Frys Energy Wise. However, there is no identification on the plans for any air conditioning units to be provided, and where such units would be located.

The height and scale of the two storey, unarticulated and unshaded walls with no eaves, in addition to the dark colour choices of materials, will attract a significant amount of heat during summer; particularly on the western elevation.

Minimal natural light is afforded to the internal lobby, hallway areas and, especially, the communal living room which is unlikely to receive direct solar access due to its positioning on the south-east corner and minimal provision of fenestration, also covered by the level above.

It is also noted that no water tanks are proposed for water-reuse for the site.

The above aspects display that the proposed development is not designed in such a way that takes into consideration the principles of sustainable design, particularly in relation to (b), (c), (d), (e) and (g) of clause 7.4 of the LEP.

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

### Development Control Plan 2014

Provision	Compliance
DCP Principles	Does not comply - see Appendix - Development Control Plan Compliance
C1 Site Planning and Design Principles	Does not comply - see Appendix - Development Control Plan Compliance
C2 Vegetation Management	Does not comply - see Appendix - Development Control Plan Compliance
C3 Water Management	Complies - 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	N/A
C12 Noise and Vibration	Does not comply - see Appendix - Development Control Plan Compliance
C13 Infrastructure and Services	Complies
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 79C(1)(a)(iv) The provisions of the regulations**

The application was referred to Council's Building Surveyor for assessment. Concern was raised with the proposed basement parking, as under BCA Clause D1.2(c)(i) the basement parking area is required to have 2 exits, due to the size of its floor area. Additionally, no advice has been supplied by the applicant regarding a BCA "Alternative Solution" to resolve this matter.

Accordingly, the proposal does not satisfy BCA requirements in this regard.

The application was also referred to Council's Public Health Officer for assessment against Public Health Regulations. No objection to the proposal was raised subject to further information being provided in the Plan of Management, including laundry arrangements and the provision for an external clothesline of sufficient size.

Further, the development application has been notified, exhibited and advertised in accordance with the requirements of the Regulations.

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

### **Streetscape and Local Character**

The proposal to construct a two storey, 19 room boarding house of the scale and design proposed will result in negative impacts on the existing streetscape and character of the local area. The development proposal is not compliant with the controls of the SEPP ARH which are related to boarding houses, local character, landscaping and solar access. The design is also in contrast to comparable built form controls of the DCP, in that the bulk and scale of the development is not adequately mitigated by landscaping or articulating design elements along its elevations or through its roof form. The design of the boarding house does not enhance the essential character and identity of the established residential area.

### **Noise and Privacy Impacts**

The proposal does not adequately demonstrate measures to mitigate against negative privacy and amenity impacts as an acoustic report was not submitted with the application. Side setbacks are minimal and insufficient space is provided for landscaped screening. The proposed length of the building and the extent of the first floor level results in negative and overbearing impacts on neighbouring properties.

### **Parking, Access and Manoeuvring**

The parking and access is not compliant with Council and Australian Standards. Provision of the accessible space on the ground level within the waste bin storage room and accessed by a secondary driveway is not supported. The second driveway also serves as the front pedestrian entry to the boarding house, which promotes opportunity for vehicular and pedestrian conflicts, as well as providing surfacing incompatible with accessibility standards. The single width basement ramp that proposes to cater for two way traffic is not supported due to the potential for vehicle conflicts. Car parking spaces 1, 6, 7 and 9 are of insufficient width due to locations adjacent to obstructions, and the aisle is of inadequate length with regards to Australian Standard AS2890.01. Swept path plans have not been provided to demonstrate that vehicles can enter and exit the basement utilising a maximum of 3 turns. It is likely that residents, particularly short term residents and visitors, would rely on street parking rather than use the on site parking, with the existing marked street parking in demand due to proximity to Western Sydney University to the south of the subject site.

### **Solar Access Impacts**

The proposed boarding house development does not achieve compliance with the SEPP ARH, as it is not demonstrated that the communal living room receives a minimum of 3 hours direct solar access between 9:00am and 3:00pm during the winter solstice. This aspect of the communal living room would likely result in residents being unlikely to use the space for its intended purpose noting its southerly perspective.

### **Sustainable Design**

The design of the proposed boarding house does not sufficiently respond to the site analysis. The two storey shear and predominantly unarticulated walls on the east and western elevations, and their proposed colour and materials (being mostly black in colour), are likely to retain significant thermal load in the summer season. The building design and landscape concept do not respond to the site's orientation in this regard, and insufficient shading is provided for the site as a result of the minimal width of landscaped areas proposed.

### **Social and Economic Impacts**

The proposal was referred to Council's Social Planner and Community Safety Coordinator. Each officer did not support the proposed boarding house development due to the following:

- *There has been an emerging trend for boarding houses to be targeted at young professionals, students and other tenants unable to afford ordinary private market rental. Students, contract-workers and low-income household are likely to be more transient than the general population, and this can negatively impact on the social cohesion and sense of safety for all residents in the area, particularly considering the cumulative impacts from the clustering of proposed boarding houses in the Kingswood area.*
- *The proposal provides poor visual connection between the public domain and the occupants of the building. In further addressing principles of Crime Prevention Through Environmental Design (CPTED), more windows should face Anthony Crescent to provide passive surveillance opportunities to the street.*
- *The external colour schedule, and other external plans, indicate that all surfaces on the first floor and roof will be black in colour. In the interest of incorporating principles from the 'Cooling the City Strategy 2016', lighter coloured materials would have a better outcome for the proposal and site. The increased solar reflectance of light shades would also contribute to the overall reduction of the urban heat island effect that is experienced in the Penrith Local Government Area.*

### **Servicing the Site**

With regard to use of the proposed accessible space, front door access and on site waste infrastructure, a combination of issues are considered to have the potential to occur. The accessible space proposed within the waste storage room on the ground floor is a poor design outcome in that it creates conflict with pedestrians accessing the front door, potential conflict for tenants accessing the waste storage room for both everyday use and on waste collection days, and is also adjacent to boarding room no. 1 which may lead to unknown acoustical issues for tenants living in this room. The front door access to the boarding house is via a combined driveway/pathway, for use of both pedestrians to access the front door and vehicles to park in the accessible space. This is viewed as a poor design outcome as it creates conflicts between those who wish to utilise the access way at any time.

Due to the size of the basement parking, a minimum of 2 exits is required to the floor area of the development, in accordance with BCA Clause D1.2(c)(i). The proposal only includes one entry/exit to and from the basement, with no BCA alternative solution proposed. As such, the proposal currently does not comply with BCA requirements concerning fire safety and access.

### **Section 79C(1)(c) The suitability of the site for the development**

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

- The density of the rooms proposed is resulting in excessive building bulk and site coverage, attributed to the number of rooms proposed and the requirement to comply with the applicable car parking rates as set out under the SEPP ARH.
- The design of the building, its presentation to the street and the proposed landscaping is not considered to be compatible with, nor complementary to, the character of the local area or the future desired character of the area.
- The proposal does not adequately demonstrate that impacts related to minimum side and rear setbacks, local character, streetscape presentation, bulk, scale, privacy, noise and amenity adequately mitigated against nor addressed through the design of the building.

### **Section 79C(1)(d) Any Submissions**

## Community Consultation

The application was notified to adjoining and nearby properties and advertised and exhibited between 22 March and 5 April 2019, in accordance with the relevant legislation. During this period 16 submissions were received in response, of which 10 were considered to be unique submissions with the remainder provided as proforma letters. Due to the number of unique submissions made, this application is referred for determination by the Local Planning Panel.

The following issues were raised in the submission received with feedback commentary detailed below:

Issue Raised	Comments
<p><b>1. Traffic congestion and limited street parking along Anthony Crescent.</b></p> <p>Families, visitors and emergency and other service vehicles cannot enter and exit the street safely due to on street parking associated with other residential development, primary school and the local university.</p> <p>Safety issues related to increased traffic in the area which is already experiencing high traffic demands, particularly during peak times (school pick up and drop off times).</p>	<p>Council's Traffic Engineer has assessed the development in relation to the impact on the local road network and have no objection from a traffic impact perspective.</p> <p>The proposed parking meets the required parking rates under the SEPP ARH. However, the proposal includes a single-lane basement ramp meant for two-way traffic that is not supported. The access ramp is required to be a minimum of 5.5m width for two-way traffic as per AS2890.1.</p> <p>Additional widening is required for particular parking spaces and clarification is required regarding the proposed bicycle parking facilities (see DCP section C10 of this report for more information).</p>
<p><b>2. No on-site manager to manage occupants.</b></p> <p>Concern was raised as to how the Boarding House would operate, including complaint management.</p>	<p>No on site manager is required for the 19 room boarding house as per the requirements of SEPP ARH. Adequate conditions of consent may be applied with regards to the operational management plan, however the application is recommended for refusal and as such standard conditions are not recommended in this regard.</p>
<p><b>3. Impact on neighbouring home's value.</b></p> <p>Concern was raised that the increase of boarding houses in the area will negatively impact on value of neighbouring resident's properties.</p>	<p>There is no evidence available that confirms that boarding houses result in negatively impacting the value of homes within an area.</p>
<p><b>4. Visual and acoustic privacy concerns.</b></p> <p>Concern was raised that the height of the boarding house would lead to overlooking into neighbouring properties private open space areas. Additional concern was raised regarding the increased densification and the noise that would be generated as a result.</p>	<p>Insufficient area has been proposed surrounding the proposed building for substantial or sustainable landscaping. Privacy impacts are not able to be mitigated through landscape screening.</p> <p>The two storey boarding house, with limited articulation across the ground and first floors, results in additional bulk which is overbearing in appearance and may lead to overlook the private open space areas of the adjoining single dwellings. These concerns are extenuated by the length of the proposed building.</p>

<p><b>5. Lack of services/infrastructure for the street.</b></p> <p>Concern was raised that the street is low density in nature and the increased densification would add stress on the local infrastructure that does not have the capacity to accommodate the increased traffic. Additional concern was raised for the waste collection and how the increased density of the site would negatively contribute to this.</p>	<p>The proposed dual driveway layout and integrated waste infrastructure is considered an inadequate design solution to adequately cater for the operations of the proposed boarding house. However, as the development application is recommended for refusal, the applicant was not requested to amend their proposal to rectify inconsistencies with DCP sections C5 Waste Management, and C10 Transport, Access and Parking.</p>
<p><b>6. Potential to increase crime along Anthony Crescent.</b></p> <p>Concern was raised that the increase of boarding houses will introduce more incidents of crime in the area.</p>	<p>Referral to Council's Social Planning team highlighted that boarding house development is usually advertised as affordable housing that attracts students, contract-workers and low-income households who are likely to be more mobile than the general population. This may potentially impact on the sense of social cohesion for the more established residents in the area. While this aspect is acknowledged, the proposal is recommended for refusal largely relating to design and presentation factors.</p>
<p><b>7. Overshadowing of neighbours.</b></p> <p>The proposed two storey boarding house will overshadow adjoining residents.</p>	<p>The shadow diagrams submitted with the application demonstrate that overshadowing will not be unacceptable and compliant with the standards required by the DCP.</p>

## Referrals

The application was referred to the following stakeholders and their comments have formed part of the assessment:

Referral Body	Comments Received
Building Surveyor	Not supported
Development Engineer	Not supported
Environmental - Environmental management	Not supported
Environmental - Waterways	No objections
Environmental - Public Health	No objections - subject to conditions
Waste Services	Not supported
Traffic Engineer	Not supported
Community Safety Officer	Not supported
Social Planning	Not supported

## Section 79C(1)(e)The public interest

The proposed development is contrary to the aims, and zone objectives, of the LEP. The proposed development does not comply with key clauses of Division 3 Boarding houses of SEPP ARH, including those related to compatibility with local character and development standards related to solar access and landscaped area provision.

The proposal does not comply with the provisions of section 5.11 Boarding Houses of the DCP, in particular those requiring the design of the development to be compatible with the context of the site and to have regard to the site analysis. Further, the proposed setbacks, character and bulk and scale of the development are not compliant with the applicable built form controls detailed under the section.

It is for the above reasoning that approval of the development application would not be in the public interest and would also set an undesirable precedent in the locality.

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

Development contributions apply to the subject proposal, however as the application is recommended for refusal, a condition of consent requiring their payment prior to the issue of a Construction Certificate is not recommended.

## **Conclusion**

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The development application has been assessed against the applicable planning control and policies including State Environmental Planning Policy (Affordable Rental Housing) 2009, Penrith Local Environmental Plan 2010 and Penrith Development Control Plan 2014, and the proposal does not satisfy the aims, objectives and provisions of these policies.

In its current form, the proposal would result in negative and unacceptable impacts 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.

The development application was also submitted with insufficient information regarding acoustic impacts, basement car park design, waste infrastructure and accessibility.

Support of this application would set an undesirable precedent in the locality, particularly considering the incompatibility of the design with the boarding house controls from Penrith Development Control Plan 2014. The proposed building design is not site responsive and does not comply with the key development standards which are directly resulting in unacceptable negative impacts in the locality, and is not in the public interest.

As such, considering the above aspects, the subject application is recommended for refusal, with the reasons for refusal detailed below.

## **Recommendation**

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1. That DA19/0172 for the demolition of existing structures and construction of a 19 room, two storey boarding house with basement car parking at 12 Anthony Crescent, Kingswood NSW 2747, be refused for the attached reasons; and
2. 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:

(i) Clause 1.2 Aims of the Plan - The proposal is inconsistent with the aims of the plan in relation of promotion of development consistent with Council's vision for Penrith, and the safeguarding of residential amenity.

(ii) Clause 2.3 Zone Objectives - The proposal is inconsistent with the objectives of the R3 Medium Density Residential zone, specifically:

- The proposed boarding house does not ensuring 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.

(iii) Clause 7.4 Sustainable Development - The proposal does not demonstrate that the principles of sustainable development have been appropriately incorporated into the design.

### 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)(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 (excessive paving in front setback area), (c) Solar Access (inadequate in common room), (f) Accommodation size (many rooms do not meet the 12sqm minimum area for single lodgers) and Clause 30A Character of local area (inadequate treatment of front setback 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:

(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 and bulk and scale of the proposal 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 C2 'Vegetation Management', specifically:

- The removal of the existing tree in the front setback has not be adequately justified via provision of appropriate supporting documentation.

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

- No bulky waste storage area is provided and the waste collection room is not effectively sized.

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

- The landscaped design does not enhance the amenity of the site or contribute to the streetscape.
- The landscape design does not appropriately screen service areas or block unwanted views that reduce

(vi) The application has not satisfied Council with respect to the requirements under Section C10 'Traffic, Access and Parking', specifically;

- The proposed access ramp is considered insufficient as the width and grade must comply with the Australian Standard 2890.1 for two-way movement.
- The second driveway and proposal to use the driveway as the main entry pathway is an unacceptable design solution.
- Five (5) of the ten (10) provided car parking spaces are insufficient in width as required by AS2890.1 and AS2890.6.

(vii) The application has not satisfied Council with respect to the requirements under Section C12 'Noise and Vibration', specifically:

- No acoustic report was submitted with the application.

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

- The lot width does not meet the minimum 22m requirement.
- The proposal is in conflict with controls requiring external walls to be a maximum of 5m in length between distinct corners.
- The proposal does not meet the respective controls for rear or side setbacks.
- The proposal does not meet the minimum side setback requirements for the basement level.
- A landscaped area of 23% of the total site area has been provided which is non compliant with the minimum 40% landscaped area required.
- The insufficient landscaped area and basement design is considered to limit the opportunity for deep soil planting or screening vegetation, particularly along the eastern and western boundaries.
- 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 elevated form above existing ground level increases the appearance of bulk.
- The 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.
- The proposal is not considered to have adequately demonstrated that privacy is maintained for the subject or adjoining sites due to the minimal boundary separation and lack of screen planting.
- The proposal has not adequately addressed the principles of Crime Prevention Through Environmental Design.
- The proposal has not adequately considered accessibility requirements, in particular to access the front door.

(ix) The application has not satisfied Council with respect to the requirements under Section D5.11 Boarding Houses', specifically:

- The proposal does not comply with the objectives of clause 5.11 to ensure boarding houses fit the existing and desired future character of the area, minimise negative impacts on neighbourhood amenity, respond to increasing densities resulting from boarding house development and ensure that boarding houses operate in a manner that maintains a high level of amenity, health and safety for residents.
- The proposal does not comply with the controls within clause 5.11 including that boarding houses shall be designed to have a sympathetic relationship with adjoining development, and that the neighbourhood amenity will not be adversely impacted in relation to noise and privacy.
- The proposal does not comply with the controls related to tenant amenity, safety and privacy, visual and acoustic amenity impacts.

4 [X Special 06 \(Refusal under Section 4.15\(1\)\(a\)\(iv\) of EPA Act 1979\)](#)

The development application is not satisfactory for the purpose of Section 4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act 1979* in that development does not satisfactorily demonstrate compliance with the provisions of the National Construction Code.

5 [X Special 07 \(Refusal under Section 4.15\(1\)\(b\) 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 the development including those related to:

- (i) negative streetscape and local character impacts;
- (ii) noise and privacy impacts;
- (iii) inadequate car parking provision;
- (iv) insufficient solar access;
- (v) landscaping, setbacks and site coverage;
- (vi) negative impacts on residential amenity;
- (vii) energy efficiency and sustainable development;
- (viii) negative social and economic impacts; and
- (ix) insufficient waste infrastructure and site access.

6 [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 scale of the proposed development.

7 [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 1979*, as the proposal is not in the public interest.

8 [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*.

# Appendix - Development Control Plan Compliance

## Development Control Plan 2014

### Part B - DCP Principles

The proposed development is contrary to the principles, commitments and objectives of the DCP. The proposal does not enable the minimisation of the site's ecological footprint and does not promote sustainable production and consumption through appropriate use of environmentally sound technologies and management.

The development does not sufficiently protect the occupants of the structure from any heat that the site would be subject to, especially in the summer time. No eaves are provided to shade the building elevations. The minimal planting proposed along the southern boundary will have little effect in providing shade. The 1.2-1.3m proposed side setbacks and basement encroachment are unlikely to support any canopy tree planting to allow for effective screening.

It is unclear from the plans submitted that solar access can be provided to the proposed common living room in accordance with the requirement of the SEPP ARH; being 3 hours of direct solar access between 9am and 3pm in mid-winter. There is little opportunity provided for natural cross flow ventilation or canopy trees on the site.

In addition to the above, it is not known if individual air conditioning units are proposed to each room and if so locations of the units are not nominated on submitted plans. No water capture and re-use is proposed.

### Part C - City-wide Controls

#### C1 Site Planning and Design Principles

The design of the proposed boarding house is contrary to the objectives of this Section, in that the application has not been accompanied by a sufficient site analysis for the subject site. Ivory Curl Trees are proposed along the southern and northern elevations of the site and no protection is provided to a majority of western and eastern facing walls which are unshaded. In addition, there are no eaves proposed along the east and western elevations which is not an acceptable design solution.

##### 1.2.2 Built Form - Energy Efficiency and Conservation

This section of the DCP states that:

*"buildings should be designed on passive solar design principals which respond to orientation to maximise the northern aspect and solar access in the cooler periods; reduce overheating in summer and promote solar gain in winter; and ensure there is adequate cross flow of air by utilising natural ventilation, resulting in a reduction in the use of mechanical ventilation and/or air-conditioning systems".*

The design of the proposed boarding house facilitates little opportunity for natural cross flow ventilation, noting that the building is positioned and orientated in such a way that, in combination with the choice of colour for the first floor, the west facing walls will incur significant thermal load. This is likely to result in poor thermal comfort for any future occupants. There is also no tree shading or eaves provided to the western or eastern elevations of the building.

##### 1.2.3 Building Form - Height, Bulk and Scale

The proposed development is not consistent with the height, bulk and scale of adjacent development or likely future adjacent development along Anthony Crescent. It is acknowledged that the area is zoned R3 Medium Density Residential under the LEP and some growth in the density of the area is to be expected. However, the proposal does not demonstrate an acceptable level of compliance with the applicable built form controls and boarding house controls under the DCP, nor the objectives of the R3 zone under the LEP.

The proposed development provides insufficient and minimal articulation along its side elevations. The setbacks and finished floor heights of the proposal are not comparable nor are

they complementary to other development within the vicinity of the site. The proposed landscaped elements do not sufficiently mitigate against the negative amenity impacts such as western heat, privacy (visual and acoustic), the overbearing nature of the structure and other impacts on local streetscape character.

## **C2 Vegetation Management**

An objective of this section is to preserve existing trees and vegetation, where possible, during the design, development and construction process and justify any tree or vegetation removal.

The proposed development includes the removal of several bushes and shrubs, and at least 1 mature tree greater than 3m in height. A site inspection confirmed the status of this vegetation, and the mature tree appears to be in a healthy condition. The Statement of Environmental Effects does mention the removal of the subject tree, however, no arborist report or statement has been provided that analyses the species, value or status of this tree, and any recommendations with regard to its removal.

Given the insufficient information provided in this regard, the proposal does not satisfy the requirements of Section C2 of the DCP.

## **C3 Water Management**

According to the 2006 Overland Flow Overview Study, this lot is subject to a minor overland flow flooding. However, referral to Council's Development Engineering team identified that, according to the *College, Orth and Werrington Creeks Catchment Overland Flow Flood Study, revision 3, dated November 2016*, this lot is not flood affected at all. Therefore, the flood development control is not applicable for this application, and as this lot falls towards street there is no drainage issue.

## **C5 Waste Management**

As stated in the submitted 'Waste Management Plan' accompanying the application, the proposed demolition includes the removal of an estimated 10m<sup>3</sup> of asbestos and/or gyprock lining, which is destined for removal by Sita Australia Veolia, of whom hold asbestos removal licences.

The design of the proposed boarding house is not considered to comply with the design requirements for the waste storage area as detailed in Part C5 of the DCP. It is acknowledged that there is potential for these matters to be rectified through design amendments, however, as the recommendation for the application is for refusal based on other matters, a revised design was not requested and the standard waste conditions of consent are not recommended in this instance.

## **C6 Landscape Design**

### 6.1.3 Neighbourhood Amenity and Character

The submitted landscape design does not comply with the requirements of this Chapter; as explained below:

- The Landscape Plan does not sufficiently enhance the amenity and visual quality of the site. The bulk and scale of the boarding house structure is not ameliorated through the use of landscaped elements, such as screening or shade along the west and east side elevations.
- The design of the proposed landscaped areas do not ensure that the development integrates into and enhances the existing landscape character through either setbacks, materials and colour selection, architectural character or vegetation selection/placement, particularly across the side elevations and within the front and rear setbacks.

### 6.1.4 Site Amenity

This section states that the '*landscape design should seek to screen development, particularly from the side and rear of an allotment*' and that '*shrubs and small trees should be used to*

*screen service areas and block unwanted views that reduce privacy'. Additionally, that 'landscaped design should also be responsive to the bulk and scale of the development'.*

The landscape plan only proposes 2 species - a grass type and a tree. The lack of variety in heights and species will provide no screening for privacy and is uncharacteristic of traditional residential landscaping.

The proposal does not adequately demonstrate that the above controls have been satisfied. The minimal side setbacks, in comparison to the sheer wall heights of the ground and first levels, do not allow for canopy spread to provide shading along these elevations. The proposed amount of site coverage from the boarding house structure and basement is excessive and available deep soil zones are minimal in width. As such, planting in these locations would not result in any significant contribution to amenity or local character and do not respond sufficiently to the bulk and scale of the building.

The proposal to include a second 'driveway', which is not completely sealed as a conventionally designed driveway, is not acceptable for practicality and amenity reasons. A dual driveway arrangement is not characteristic of Anthony Crescent, and increases the amount of hardstand area within the front setback of the site. In this regard, the front landscape design is complaint with the concepts mentioned above.

As such, the proposal does not satisfy the requirements of Section C6 of the DCP.

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

The car parking rates for boarding houses are set out under the SEPP ARH, which requires that in the case of development not carried out by or on behalf of a social housing provider, requires at least 0.5 car parking spaces to be provided for each boarding room. The proposal includes 19 x boarding rooms and, as such, 10 parking spaces are required. The proposal includes 9 x parking spaces in the basement and 1 x accessible parking space on the ground level within the waste bin storage room; satisfying the 10 x parking space requirement.

However, referral to Council's Development Engineers as part of the assessment process identified the following:

- The proposed one-way basement ramp for two-way traffic movements is not supported by Council's Development Engineers. The ramp requires a minimum width of 5.5m for two-way traffic movements, in accordance with AS2890; the ramp proposed is only 3m in width.
- The access/parking arrangement for the accessible space is not supported. Only 1 x vehicular access shall be provided for the development via a sealed concrete driveway. Additionally, a separate pedestrian access is required to ensure that risk of vehicle and pedestrian conflicts are minimised.

Additionally, referral to Council's Traffic Engineering team identified the following issues of concern:

- Bicycle and motorcycle parking is required at a rate of 1 space per 5 boarding room, requiring the provision of 4 x motorcycle spaces and 4 x bicycle spaces. The motorcycle spaces have been satisfied, with the provision of 4 x spaces. However, the bicycle parking is located within a designated area with no detail. It has not been demonstrated whether this constitutes secure, all weather bicycle parking in accordance with *AS2890.3:1993 Bicycle Parking Facilities, the DCP and Planning Guidelines for Walking and Cycling (NSW Government 2004)*.
- The proposed basement is a blind aisle and subsequently, space no. 9 requires widening by 300mm and the aisle requires lengthening by 1m in accordance with AS2890.1. Additionally, car spaces 1, 6 and 7 require 300mm widening in accordance with AS2890.1, due to their location which is adjacent to an obstruction.
- Swept path plans have not been provided demonstrating that vehicles can enter and exit the site in a forward direction, utilising no more than 3 turns.

Furthermore, referral to Council's Building Surveying team identified the following:

- Under BCA Clause D1.2(c)(i), the basement is required to have 2 x exits due to the floor area of the basement parking area. Additionally, in addressing this, no BCA "Alternative Solution" has been formulated and this could significantly affect the design of the building.

As such, the proposed parking, access and manoeuvring areas for the proposed boarding house development do not satisfy the requirements of Section C10 of the DCP.

## **C12 Noise and Vibration**

The objective of this section is to ensure that future development that has the potential to generate noise or vibration does not adversely affect the amenity of surrounding land uses.

An acoustic report was not submitted in support of this application. Referral to Council's Environmental Management team identified that an acoustic assessment is required to be submitted as part of the application to demonstrate that the proposed boarding house will not have any impact on nearby sensitive receivers, including 10 & 14 Anthony Crescent and 63, 65 & 67 Second Avenue in Kingswood. Such a report would need to be prepared by a suitably qualified acoustic consultant, and consider the following:

- The *'NSW Noise Policy for Industry'* in terms of assessing the noise impacts associated with the development, including noise from the indoor and outdoor communal spaces on surrounding properties (including their outdoor spaces), the use of the basement carpark, as well as any mechanical plant associated with air conditioning for individual units or mechanical ventilation for the development (including basement carpark);
- The AS/NZS 2107:2016 Acoustics – Recommended design sound levels and reverberation times for building interiors in terms of ensuring that internal noise levels can be achieved;
- The Interim Construction Noise Guideline in assessing the impacts associated with the construction phase of the development; and
- The potential impact from road traffic noise resulting from vehicles entering and exiting site, demonstrating compliance with NSW *'Road Noise Policy'*.

Should mitigation measures be necessary as a consequence of the development, suitable recommendations would also be required to be included to this effect. Any recommendations and noise mitigation measures must be also shown on all architectural plans.

As such, noting the failure of the application to be accompanied with the necessary acoustic information, the proposal does not satisfy the requirements of Section C12 of the DCP.

## **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 floor plan. The development proposal does not include characteristics of traditional suburban development where the building form is stepped with integrated landscaped elements.

### **2.4.3 Development Site**

The subject site is 15.26m wide, which is non-compliant with the 22 metre lot width control. 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 and deep soil zones and the incapacity to accommodate a dual width driveway for adequate basement access.

#### **2.4.4 Urban Form**

The development proposal is in conflict with controls requiring external walls to be a maximum of 5m in length between distinct corners and does not provide a variety of roof forms representative or complementary to traditional dwelling designs within the immediate area. No eaves are provided to the east or west to provide shading or relief from the western heat. Minimal areas for substantial landscape are proposed within the front and rear setback areas.

Regarding the front entrance to the proposed boarding house, there is no separate pathway from the street frontage to the front porch. Instead the proposed 'second driveway' that leads into the combined waste bin storage room and accessible parking space is widened to address the front porch for pedestrian access. This proposed 'fusion accessway' for both vehicular and pedestrian access to the boarding house is not supported due to both its untraditional/uncharacteristic design and due to the potential conflicts that may arise from not having a dedicated pathway for safe pedestrian access. It is acknowledged that no accessibility report supports this application to address compliance with accessibility standards, in addition to the non-compliances covered in the Chapter C10 section of this report.

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

This section requires that two storey elements are to be setback 6m from the rear boundary. Encroachment into the rear first floor level setback area include the 2 storey blade feature walls at each side of the building, which have a 5.6m separation to the rear boundary. Although minor encroachments into the rear setback of this nature might, on their own be acceptable subject to an overall general compliance, they are not supported in this instance as they contribute to the overall bulk and scale of the development and having regard to other non-compliances such as car parking areas, landscaping, negative impacts on local character, amenity and built form design.

#### **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. The proposal is for 1.34m side setback to the west boundary for 64% of the length of the site, and a 1.2m side setback to the east boundary for 68% of the length of the site, for both the ground and upper floors. As such, the proposal does not comply with this requirement.

The proposal does not comply with the objectives of the clause under 2.4.6(A) which state that the development shall comply with the building envelope controls, minimise disturbance to existing topography and natural soil profiles and provide for reasonable landscaped separation between neighbouring dwellings. The proposed development does not comply with key building envelope controls and does not provide reasonable landscape separation.

The density of the subject 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 basement excavation being excessive; as a consequence of meeting the identified boarding room yield such that deep soil landscaping is negatively impacted.

#### **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 or 247.6m<sup>2</sup> for the Site. The application proposes 141.5m<sup>2</sup> of landscaped area, or 22.7% of the site to be landscaped, a deficiency of 106.1m<sup>2</sup>.

The development is inconsistent with clause 2.4.8 in Part D2 of the DCP in that the proposed landscape treatment is inadequate. The insufficient landscaped area and basement design limit the opportunity for deep soil planting or screening vegetation, particularly along the eastern and



western boundaries. This reduces the development proposal's ability to contribute to the canopy coverage and green networks in the vicinity. The development does not contribute to the contextual fit of, or enhance the landscape quality of the area in the vicinity of the site.

#### **2.4.12 Building Design**

The development proposal is contrary to the controls of the clause, in that the design does not effectively mitigate against bulk through the use of a variety of materials, articulating elements such as stepped walls and roof forms, and the number (and appropriate design) of window openings.

#### **2.4.13 Energy Efficiency**

The development proposal does not adequately employ design techniques to reduce thermal loads, increase natural cross flow ventilation and allow for effective solar shading. No shading is provided to the western elevation and no eaves are proposed to the side elevations.

The standards for any air conditioning for the proposed development were addressed in the Part J BCA report, prepared by Frys Energy Wise. However, there is no identification on the plans for any air conditioning to be provided, where such units would be located.

#### **2.4.19 Visual and Acoustic Privacy and Outlook**

The development proposal has not adequately demonstrated measures to prevent issues impacting on privacy (both visual and acoustic) while the nature of windows to the east and west elevations are not considered to have appropriate recognition of neighbouring buildings or private open areas therefore increasing overlooking opportunities. Minimal landscaping is provided to the side and rear setback to provide a buffer to adjoining properties. An acoustic report was not submitted to support the application. Air conditioning units are not nominated on plans and as such an assessment of their noise and visual impact cannot be made.

It is unclear from the submitted plans if adequate privacy can be maintained to the window openings of the adjacent dwellings to the east and west.

### **D5 Other Land Uses**

#### **Section 5.11 Boarding Houses**

At its Policy Review Committee meeting on 10 December 2018, Council resolved to adopt amendments to Penrith Development Control Plan 2014. The amendments, which have been titled Amendment No. 5, include revised controls relating to Multi Dwelling Housing and new controls for Boarding Houses. Amendment No. 5 came into effect on 21 December 2018. No savings provisions apply to these amendments but while so, it is noted that the application was received after the amendment came into effect. The proposal has been assessed against the provisions of Section 5.11 of Penrith Development Control Plan 2014, as follows:

##### Clause 5.11 - B. Objectives

The proposal does not comply with the following objectives listed under the clause which include:

- (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 bulk and 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 due to the scale and overall height of the east and west facing walls, their potential for thermal load in the summer months and the inability for landscaping to provide relief in this regard.

It has not been demonstrated that the communal room can comply with the minimum requirements for solar access under the SEPP ARH, and the bulk and scale of the design coupled with the minimal setbacks proposed will result in over bearing and amenity impacts (both visual and acoustic) on neighbouring low density residential properties.

Clause 5.11 - C. Controls

The proposed development does not comply with clause 5.11(C)(2)(b) of this section which states that '*boarding houses shall be designed to have a sympathetic relationship with adjoining development*', as discussed above and under the SEPP ARH section of this report. Further, due to the bulk and scale and the reduced side setbacks proposed on the western and eastern boundaries, the proposal does not comply with clause 5.11(C)(2)(d) which requires proposals to demonstrate that neighbourhood amenity will not be adversely impacted with regard to visual and acoustic privacy.

The proposal also does not comply with clause 5.11(C)(2)(f) which states that a boarding house proposal of a scale similar to a multi dwelling housing development should comply with the controls and objectives for multi dwelling housing within the DCP, where they are not in conflict with the requirements of the State Policy and the objectives of the zone. The design of the boarding house is not compliant with the controls for multi dwelling housing as detailed under Section D2 Residential Development of this report.

The proposal does not comply with the following controls of clause 5.11(C)(3) Tenant Amenity, Safety and Privacy:

- Clause (b) which requires 10% of units to be accessible as only 1 accessible unit is proposed.
- Clause (c) which requires cross ventilation to be achieved to reduce reliance on air conditioning as only a maximum of 7 out of the 19 rooms may achieve natural cross flow ventilation.
- Clause (d) requires fly screens on all windows. It is unclear if this is proposed.

The proposal does not comply with the following controls of clause 5.11(C)(4) Visual and Acoustic Amenity Impacts:

- Clause (d) which requires screen fencing, plantings and acoustic barriers in appropriate locations. No screen planting is provided to the side setback areas, and no acoustic report has been submitted to demonstrate that sufficient acoustic measures have been implemented/achieved.

Regarding the Plan of Management (POM) for the proposed boarding house, the submitted POM is regarded as satisfactory with the inclusion of the aspects below:

- The POM notes that a complaints register will be kept and provided to Council on request. However, this complaints register is only provided as part of the Public Complaints Resolution Procedure. To support residents of the proposal, the Plan of Management should also include a clear procedure for addressing resident complaints.
- Availability of longer terms of rental (longer than 3 months) and provision of information on local social services is required by the DCP, which should also be noted in the POM.