

# PENRITH CITY COUNCIL

## MAJOR ASSESSMENT REPORT

<b>Application number:</b>	DA18/1199
<b>Proposed development:</b>	Demolition of Existing Structures & Construction of a Two (2) Storey Boarding House containing 13 Boarding Rooms, Manager's Room & Basement Car Parking
<b>Property address:</b>	6 Edith Street, KINGSWOOD NSW 2747
<b>Property description:</b>	Lot 55 DP 241989
<b>Date received:</b>	4 December 2018
<b>Assessing officer</b>	Wendy Connell
<b>Zoning:</b>	Zone R3 Medium Density Residential - LEP 2010
<b>Class of building:</b>	Class 3
<b>Recommendations:</b>	Refuse

## Executive Summary

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Council is in receipt of a development application for the demolition of all structures on the site and the construction of a two storey, fourteen (14) room boarding house at 6 Edith Street, Kingswood. The development is defined as a 'boarding house' and is a permissible form of development in the R3 Medium Density Residential zone under *Penrith Local Environmental Plan 2010* (PLEP 2010). The development proposal is also permissible within the R3 Medium Density Residential 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:

- The design of the building and its relationship to the existing and likely future streetscape is not considered compatible with the character of the local area,
- The presentation of the building is bulky in scale, with a number of design features considered to contribute to the scale and bulk, causing overbearing and overshadowing impacts,
- The proposal is not considered to provide for an appropriate landscape treatment of the front setback area, or meet the minimum landscape requirements for the site area,
- The design has not provided an adequate communal living room, in terms of functionality,
- The design has not provided for adequate on-site waste infrastructure,
- The application has not demonstrated that the site is suitable for the proposed use as required by *State Environmental Planning Policy No. 55* (SEPP 55),
- The proposal was not considered acceptable by Council's Development Engineering, Social Planning, Waste Services, Public Health and Environmental Management Sections.

The application has been notified to adjoining properties and land owners, and exhibited and advertised between 14 December 2018 and 1 February 2019, in accordance with relevant legislation. A total of fourteen (14) submissions, with one being a petition, were received in response. Submissions raised various matters including impacts on amenity, local character, privacy and overlooking, traffic and parking, property values, bulk and scale, safety and security, noise, overshadowing and the cumulative impacts of boarding house developments in the vicinity. A response to the matters raised in the submissions is provided within this report.

As the application has received more than 10 submissions, it is a statutory requirement that the application be determined by the Penrith Local Planning Panel as identified by the *Environmental Planning and Assessment Act 1979*.

An assessment under Section 4.15 of the *Environmental Planning and Assessment Act 1979 (as amended)* has been undertaken and the application is recommended for refusal for the reasons stated at the end of this report.

## Site & Surrounds

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The subject site is legally described as Lot 55 in DP 241989 and is known as 6 Edith Street, Kingswood. The site is relatively flat and is a rectangular shaped allotment located on the eastern side of Edith Street, close to the intersection of Edna Street, and is 644 sqms in area. The site currently contains a single storey, brick residential dwelling with attached garage and carport with vehicle access via a driveway from Edith Street.

The site shares its northern boundary with a single storey dwelling at 4 Edith Street and its southern boundary with a single storey dwelling at 8 Edith Street. Although it is noted that the zoning of the land within this area permits a greater level of density than currently exists, the local character of the area is that of single storey, older style residential dwellings with ancillary structures. Edith Street consists of all single storey dwellings, with one exception at No.18 Edith Street, where a two storey dwelling is located.

The campus of Western Sydney University is located 695m to the east of the subject site. Kingswood Railway Station is approximately 1.2 km walking distance to the north-west of the site. Local shops including an art supplies store, a taylor, convenience store, a restaurant and take away food shop are located at the intersection of Second Avenue and Manning Street which is approximately 200m walking distance to the north-east.

## Proposal

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The proposed development, as amended involves:

- Demolition of all structures on the site,
- Construction of a two storey, 14 room boarding house for a maximum of 28 boarders. Each boarding room is provided with a double bed to accommodate two (2) persons and is also provided with a bathroom and kitchenette,
- a separate managers room is provided to the ground floor, in addition to a waste room and communal space/lobby; and
- Basement parking for 8 cars, 3 motorcycles and 4 bicycles.

The proposed boarding house is to be treated externally in a mixture of painted rendered finish, face brick and aluminium panels (presenting as dark timber). The boarding house is provided with a flat roof with colourbond roof sheeting.

## Plans that apply

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- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Affordable Rental Housing) 2009
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

## Planning Assessment

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### • 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 proposal has been undertaken with regard to the provisions of SEPP ARH and the proposal is found to be non-compliant as detailed below:

#### **Division 3 Boarding houses**

##### Clause 29 Standards that cannot be used to refuse consent

Clause 29 of the SEPP ARH states that a consent authority must not refuse consent to a development to which this Division applies on any of the following grounds:

- (a) Building Height - if the building height is not more than the maximum permitted under another environmental planning instrument for any building on the land.
- (b) Landscaped area - if the landscaped treatment of the front setback area 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 9:00am and 3:00pm 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 20sqm's with a minimum dimension of 3m's is provided for the use of all lodgers

(ii) if accommodation is provided on site for a boarding house manager - one area of at least 8sqm's with a maximum dimension of 2.5m is provided.

(e) Parking - if

(i) 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.

(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 12sqm's for a single room and 16sqm's in any other case.

Clause 29 also states that Council may consent to development to which this Division applies whether or not the development complies with the standards listed above.

The proposed development is assessed to comply with the above mentioned applicable standards related to parking, height and accommodation size. However, the proposal does not comply with the standards related to landscaped area, solar access and private open space.

#### *Clause 29(b) - non compliance*

Almost 50% of the area within the front setback is provided as a hardstand area to accommodate vehicle and pedestrian access (total of 8m) with the remaining area proposed to accommodate above ground on-site detention. The landscaping of the front setback is not compatible with the streetscape in which the building is located and is not representative of the landscape treatment of front setback as anticipated by residential landscaping controls of the Penrith Development Control Plan 2014. The landscape plan has only identified a turfed area to be provided to the front setback with no consideration provided for the planting of any other vegetation.

#### *Clause 29(c) - non compliance*

The shadow diagrams provided to support the proposal demonstrates that the communal living room will not receive the required amount of solar access. This is the result of its narrow design, its central position within the building and a 600mm roof overhang.

#### *Clause 29(d) - non compliance*

The proposal has not provide private open space for a boarding house manager. The communal area to the rear of the site incorporates both communal outdoor area for boarders and a boarding house manager.

#### Clause 30 Standards for boarding houses

Clause 30 of the SEPP ARH states that a consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:

- (a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,*
- (b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25 square metres,*
- (c) no boarding room will be occupied by more than 2 adult lodgers,*
- (d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,*
- (e) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.*

The development proposal is assessed to comply with the above mentioned requirements, however the communal living room mentioned in (a) is considered non-compliant with the intent of the development standard, due to the lack of functionality and useability of the space. The internal plans indicate a 'communal space/lobby' however this space is narrow, and also functions as a thoroughfare to access the communal outdoor area and Room 3 rather than providing for a clear area for persons to congregate which is the intention of the space.

#### Clause 30A Character of local area

Clause 30A states that a consent authority must not consent to a 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. As discussed elsewhere in this report, the design of the development is not

compatible with the character of the local area, in that 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 at the first floor or side elevations, and the building's length and rectangular design add bulk and inappropriate scale to the structure which is not representative of, or complementary to, the character of the local area.

The building is provided with a mix of building elements which are not considered to be provide for a harmonious relationship with each other to the front façade. Each side elevation provides inadequate visual interest, with large areas of either rendered or face brick finish which is a result of the nature of the small openings proposed. In addition, the failure to step back the upper level from the ground level is considered to accentuate the bulk and create a visually dominant built form.

The built form is not representative of the traditional pattern of development for residential accommodation existing in Edith Street or that which is anticipated through the applicable controls and objectives of the PLEP 2010 and the PDCP 2014. Due to the volume of car parking required to facilitate a compliant level of car parking spaces under the SEPP ARH, landscaping is deficient and does not complement the streetscape of Edith Street. As previously discussed, the nature of the landscaping proposed to the front setback area is poor and void of adequate vegetation.

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

This Policy ensures the implementation of the BASIX scheme that encourages sustainable residential development. It requires certain kinds of residential development to be accompanied by a list of commitments to be carried out by applicants. This application is subject to these requirements as it involves the construction of a new two storey, 14 room boarding house.

BASIX Certificate No. 969627M was submitted with the development application. The certificate demonstrates compliance with set sustainability targets for water, energy efficiency and thermal comfort. The BASIX Certificate indicated air conditioning units for each room however the submitted architectural plans do not indicate the location of any air conditioning units.

### **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 (SEPP 55) and the application is considered unsatisfactory. When determining a development application for any development of land, Clause 7 of SEPP 55 requires that Council consider "*whether the land is contaminated*" and "*if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out*".

From historic aerial photographs it can be seen that fill material has been imported onto the property. Fill can be seen imported onto the south-west portion of the property at various points in time between 9 May 2012 and 5 May 2016. The piles of fill identified within this time frame vary in size and colour. The origin and contamination status of the fill is not known and therefore Council cannot, with certainty, be satisfied that the site is not contaminated.

Documentation was not submitted with the application to detail the source, quantity and nature of the fill imported onto the site. Therefore, Council cannot determine whether the land is contaminated and if the fill material is suitable for the proposed use as required by SEPP 55.

### **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 4.3 Height of buildings	Complies
Clause 4.4 Floor Space Ratio	N/A
Clause 7.1 Earthworks	Complies
Clause 7.2 Flood planning	N/A
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

Approval of the development proposal would not be supportive of the aims of the plan expressed under Clause 1.2(2) of PLEP. In particular, support for the proposal would be contrary to clause 1.2(2)(b) and (c) in that the proposal will not promote development that is consistent with the Council's vision for Penrith including particulars related to the promotion of harmony of urban development and environmental protection and enhancement. The development 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 PLEP 2010. 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.*

Although the development would add to the variety of dwelling types and numbers within the zone, the development proposal is considered to be in conflict with core objectives of the zone related to enhancing essential character and residential amenity.

It is not considered that the design of the boarding house enhances the essential character and identity of the established residential area, in that the built form does not complement qualities of existing residential development that define the character of the area. The development proposal does not include adequate articulating elements along its side elevations and the building's length and rectangular bulky design are not representative of or complementary to the character of the local area.

The density of rooms proposed, and the requirement under the SEPP ARH to provide a minimum of 0.5 car spaces per room, is resulting in an overdevelopment of the site with unacceptable levels of site coverage and limited opportunity for meaningful landscaping within the setback areas. To mitigate against self imposed impacts related to noise and privacy, the development provides minimal window openings to boarding rooms along its side elevations which is resulting in large expanses of unarticulated wall and poor architectural composition.

In addition, the development does not reflect the desired future character and dwelling densities of the area, in that the proposal is in conflict with the comparable built form controls of the PDCCP 2014 which is to be discussed later within this report.

### Clause 7.4 Sustainable development

Clause 7.4 of PLEP requires Council 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.*

Due to the sheer wall heights, minimal glazed elements and elevated unarticulated design of the building, the thermal load of the concrete and brickwork will result in high energy consumption in the hotter months of the year. No sun shading is provided to north facing openings or walls, also noting that the building design is void of eaves to assist in this manager.

A minimal drying area is nominated on plans which does not meet best practice standards for the number of people able to reside in the development. Minimal rooms are provided with the opportunity for natural cross flow ventilation. Minimal natural light is provided to the internal lobby and hallway areas at the ground floor and communal living room is unlikely to receive direct solar access due to its narrow design and its central position within the building. In this regard, the amenity provided for future occupants is considered poor as a consequence of the above design elements.

In addition, no water tanks are proposed for water re-use. The development was submitted with a BASIX certificate (No. 919612M ) indicating compliance with minimum sustainability requirements. The BASIX Certificate notes that air conditioning is provided to each room however, the location of the air-conditioning units is not shown on plans, and visual and noise impacts cannot be adequately assessed.

It is for the above reasoning that the development proposal is not considered to comply with clause 7.4 of PLEP 2010.

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

The State Environmental Planning Policy (Affordable Rental Housing) 2009 is currently subject to an amendment limiting boarding houses to 12 boarding rooms per site within a R2 Low Density Residential zone. This amendment was on publicity exhibited from the 28 November 2018 to 19 December 2018. As the subject site is located within a R3 Medium Density Residential zone, the amendment does not have any implications for this application.

## 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	Complies
C3 Water Management	Does not comply - see Appendix - Development Control Plan Compliance
C4 Land Management	Complies
C5 Waste Management	Does not comply - see Appendix - Development Control Plan Compliance
C6 Landscape Design	Does not comply - see Appendix - Development Control Plan Compliance
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Complies - see Appendix - Development Control Plan Compliance
C11 Subdivision	N/A
C12 Noise and Vibration	Complies
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

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

There are no planning agreements in place applying to this development proposal.



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

The application was referred to Council's Building Surveyor for assessment. No objections were raised. Further, the development application has been notified, exhibited and advertised in accordance with the requirements of the Regulations. Notwithstanding, the proposal is recommended for refusal related to building, amenity, streetscape character and landscape design matters.

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

Likely impacts of the proposed development are discussed below:

### **Streetscape and Local Character**

The proposal to construct a two storey, 14 bedroom boarding house will have a negative impact on the existing streetscape and character of the local area. The development proposal is inconsistent with controls of PDCCP 2014 which are related to boarding houses, local character, landscaping, built form and solar access. The design is also in contrast to comparable built form controls of the PDCCP, in that the bulk and scale of the development is not adequately mitigated by landscaping or articulating design elements along its elevations. The design of the boarding house does not enhance the essential character and identity of established residential areas.

In addition to the above, this form of development is considered to be in conflict with the objectives of the subject site zoning related to maintaining residential amenity and development being designed to reflect the desired future character of the area.

### **Noise and Privacy Impacts**

The development proposal does not adequately demonstrate a package of measures to mitigate against negative privacy and amenity impacts. Side setbacks at the basement are minimal (500mm) and results in an inadequate area for landscape screening along each side boundary. The length of the building and the extent of the upper level will result in negative overbearing and overlooking impacts on neighbouring sites.

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

### **Traffic, Access and Manoeuvring**

The development complies with the minimum number of spaces required by the State Environmental Planning Policy (Affordable Rental Housing) 2009. However, impacts related to site coverage, landscaping, local character and overbearing are resulting from the requirement to provide 0.5 car spaces per room.

### **Solar Access Impacts**

Shadow diagrams indicate that the residential dwelling to the south will be primarily negatively impacted. Windows along its northern elevation will have reduced direct solar access having less than 2 hours per day at mid-winter. This is considered a consequence of the large built form proposed and the length of the building which is not considered an acceptable design for the subject site and its surrounds.

### **Social and Economic Impacts**

The proposal was referred to Council's Social Planner who has not raised any objections to the boarding house development. However, it has been identified that there are functionality concerns with the internal communal area required under the SEPP ARH, and that there is no accessible access arrangement to the external open space. The development proposal is inconsistent with the objectives of the zone and applicable controls of PDCCP, as such the development application is recommended for refusal.

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

The site is considered to be unsuitable for the following reasons:

- The design of the building is not compatible with, or complementary to the character of the local area,
- The excessive building bulk and site coverage is attributed to the number of rooms proposed and the requirement to comply with the applicable car parking rate set out in the SEPP ARH, and
- The development proposal does not adequately demonstrate that impacts related to bulk, scale, privacy, noise and amenity are adequately mitigated against or addressed in the design of the building.

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

### Community Consultation

In accordance with Appendix F4 of Penrith Development Control Plan 2014, the proposed development was notified to nearby and adjoining residents and was exhibited advertised between 14 December 2018 and 1 February 2019. Council received 14 submissions (one being a petition) in response.

Matters raised in the petition and submissions have formed part of this assessment. A response to the summarised matters raised are also provided below.

<b>Matter Raised</b>	<b>Officer Comments</b>
<p><i>Bulk, Character and Density</i></p> <ul style="list-style-type: none"><li><i>This part of Kingswood has already been the subject of significant development proposals for boarding houses resulting in development which is not compatible with the existing character.</i></li><li><i>The boarding house setbacks do not align with the existing dwellings in Edith Street.</i></li><li><i>The boarding house is too large a scale and there is no similarity between the architecture and external colours proposed by this development and the surrounding single storey residential properties.</i></li><li><i>The bulk of the building does not integrated well with the cottage style of the dwellings on the street and is impacting on the solar access to the adjoining property at 8 Edith Street.</i></li></ul>	<ul style="list-style-type: none"><li>As discussed within this report, the development is considered inconsistent with the comparative built form controls of the DCP and is inconsistent with the objectives of the zone.</li><li>Although boarding houses are permissible under the SEPP ARH, the design of the development is considered to be inconsistent with Clause 30A of the Policy which relates to local character.</li><li>As detailed within this report it has been identified that the density of rooms proposed at the site is resulting in excessive bulk, overbearing and negative amenity impacts.</li><li>It is agreed that elements of the essential character of the area are not complemented by the design of the building.</li></ul>

<p><b>Traffic and Parking</b></p> <ul style="list-style-type: none"> <li>• <i>Families, visitor and emergency and other service vehicles cannot enter and exit the suburb safely due to on street parking associated with other multi-unit and boarding house developments, the local school and University.</i></li> <li>• <i>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).</i></li> <li>• <i>Parking is inadequate for the number of rooms proposed and does not account for visitors.</i></li> <li>• <i>Potential damage to adjoining properties due to the extent of basement excavation required to contain the car parking for the proposal.</i></li> </ul>	<ul style="list-style-type: none"> <li>• Council's Traffic Engineers have assessed the development in relation to impact on local road network and have no objection from a traffic impact perspective.</li> <li>• It is the intention of the SEPP ARH, that developments incorporating affordable rental housing are located with accessible locations. This is to facilitate connected communities and allow individuals making use of affordable rental housing, opportunity to access services, facilities and transport options. It is not expected that the traffic and parking needs of the development will result in negative impacts to the detriment of the local area. The proposed parking meets the required parking rates under the SEPP ARH.</li> <li>• Adequate conditions of consent may be applied with regards to the pre-development and post development condition of adjoining properties, however the application is recommended for refusal and as such standard conditions are not recommending in this regard.</li> </ul>
<p><b>Safety and Social Impacts</b></p> <ul style="list-style-type: none"> <li>• <i>The character and behaviour of potential tenants is raised as a concern.</i></li> <li>• <i>Safety is raised as an issue related to the proximity to the school and young children living/visiting adjoining properties.</i></li> <li>• <i>Approval of the boarding house will decrease property values and people will move.</i></li> </ul>	<ul style="list-style-type: none"> <li>• The development proposal was referred to Council's Social Planner who has identified a need for diverse forms of affordable rental housing within the local area. Selection of tenants of the boarding house will be a matter for the owner and /or manager to resolve.</li> <li>• It is not documented that the safety of children in the area would be impacted by the proposal.</li> <li>• No evidence has been provided to suggest that property values will be impacted in the vicinity of the site, should the boarding house be approved.</li> </ul>
<p><b>Waste</b></p> <ul style="list-style-type: none"> <li>• <i>The large number of bins required to service the development.</i></li> </ul>	<ul style="list-style-type: none"> <li>• The waste infrastructure is inadequate however as the development application is recommended for refusal, the applicant was not requested to amend their proposal to rectify inconsistencies with Section C5 Waste Management of the Penrith DCP.</li> </ul>
<p><b>Operational Arrangements</b></p> <ul style="list-style-type: none"> <li>• <i>Concern was raised as to how the Boarding House would operate and complaint management.</i></li> </ul>	<ul style="list-style-type: none"> <li>• A Plan of Management was submitted to support the proposal however it is not consistent with PDGP 2014 requirements or the requirements under Schedule 2 of the Local Government (General) Regulations 2005. 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 recommending in this regard.</li> </ul>
<p><b>Noise</b></p> <ul style="list-style-type: none"> <li>• <i>Concern raised regarding noise impacts from communal areas and air conditioning units.</i></li> </ul>	<ul style="list-style-type: none"> <li>• It is considered that noise levels may have an impact on existing levels of amenity in the area. The applicant has submitted a Plan of Management which includes conflict resolution and instructions of how complaints will be managed.</li> <li>• No acoustic report was submitted to support the proposal. It is considered that the proposed development has not demonstrated that noise can effectively be managed at the site.</li> </ul>

<p><i>Privacy and overshadowing</i></p> <ul style="list-style-type: none"> <li>• <i>The two storey building will deprive families in adjoining properties of privacy.</i></li> <li>• <i>The development will overshadow adjoining residents.</i></li> </ul>	<ul style="list-style-type: none"> <li>• Windows at the upper and lower levels have a ceiling height at 1.8m which will limited any downward view.</li> <li>• The limited number of windows on the subject building is resulting in additional bulk and limited articulation.</li> <li>• Insufficient area for substantial or sustainable landscaping is provided for. Privacy impacts are not able to be mitigated through landscape screening.</li> <li>• Council's DCP does not have specific overshadowing controls related to boarding house development, the solar access controls specified for multi dwelling housing development can be used as a guide. In this respect, the DCP requires that the proposed development provides a minimum of 4 hours sunlight between 9:00am and 3:00pm on June 21 to the living zones (not including bedrooms, bathrooms, kitchen or laundry) of any adjoining dwelling.</li> <li>• The submitted shadow diagrams indicate that the development will overshadow the north facing window openings for the dwelling at No. 8 (to the immediate south) of the site for most of the day with less than 2 hours provided in the pm hours at the winter solstice. In this regard, compliance with the DCP control is not demonstrated.</li> </ul>
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## Referrals

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

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

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

The proposed development is assessed to be contrary to the aims and zone objectives of Penrith Local Environmental Plan 2010 and is non-compliant with key clauses of State Environmental Planning Policy (Affordable Rental Housing) 2009, including those related to compatibility with local character and development standards related to landscaping and solar access.

The proposal is not considered to comply with the relevant provisions of Penrith Development Control Plan 2014, in particular Section 5.11 - Boarding Houses, requiring the design to be compatible with the context of the site and its immediate surrounds. Furthermore, the proposed bulk and scale of the proposal are not considered compliant with the applicable built form controls detailed under this Section.

It is for the above reasoning that approval of the development application would not be in the public interest.

## Section 94 - Developer Contributions Plans

Development contributions apply to the subject proposal, however as the application is recommended for refusal, a condition 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 environmental planning instruments, including *State Environmental Planning Policy (Affordable Rental Housing) 2009* and *Penrith Local Environmental Plan 2010* and the proposal does not satisfy the aims, objectives and specific provisions of these policies.

In its current form, the proposal will have a negative impact on the surrounding character of the area, specifically the bulk, scale and design of the development is not compatible with local character and is not representative of the future desired character of the area, as defined by *Penrith Local Environmental Plan 2010* and the *Penrith Development Control Plan 2014*.

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

It is for the above reasoning that the development application is not worthy of support. Reasons for refusal are detailed below.

## Recommendation

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1. That DA18/1199 for a two storey, 14 room boarding house at 6 Edith Street, Kingswood, be refused for the following reasons; and
2. That those making submissions are notified of the determination.

## Refusal

1 [X Special \(BLANK\)](#)

Based on the above deficiencies and submissions received, approval of the proposed development would not be in the public interest for the purpose of Section 4.15(1)(d) of the *Environmental Planning and Assessment Act*.

2 [X Special \(BLANK\)](#)

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.

3 [X Special 01 \(Refusal under Section 78A\(9\) of EPA Act 1979\)](#)

The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the provisions of Penrith Local Environmental Plan 2010 as follows:

The proposal is inconsistent with the objectives of the R3 Medium Density Residential zone, specifically

- the proposed boarding house is not considered to enhance the essential character and identity of an established residential area;
- the proposed boarding house does not ensure that a high level of residential amenity is achieved and maintained; and
- the proposed boarding house does not ensure that the development will reflect the desired future character of the area.:

4 [X Special 02 \(Refusal under Section 79C\(1\)\(a\)\(i\) of EPA Act 1979\)](#)

The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 as follows:

The development application does not meet the performance based criteria of the guidelines relating to landscaped area within Part 2, Division 3, Clause 29(2)(b).

5 [X Special 03 \(Refusal under Section 79C\(1\)\(a\)\(i\) of EPA Act 1979\)](#)

The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the provisions of *State Environmental Planning Policy (Affordable Rental Housing) 2009* as follows:

The development application does not satisfy the performance based criteria of the guidelines relating to character of the communal living room Part 2, Division 3, Clause 30(1)(a).

6 [X Special 04 \(Refusal under Section 79C\(1\)\(a\)\(iii\) 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 satisfy the performance based criteria of the guidelines relating to character of the local area under Part 2, Division 3, Clause 30A Character of Local Area. .

7 [X Special 05 \(Refusal under Section 79C\(1\)\(a\)\(iia\) 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 has not satisfied the provisions of the *State Environmental Planning Policy No. 55 - Remediation of Land*.

8 [X Special 06 \(Refusal under Section 79C\(1\)\(a\)\(iv\) 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 Plan of Management is inconsistent with the provisions of *Schedule 2 of the Local Government (General) Regulations 2005*.

9 [X Special 07 \(Refusal under Section 79C\(1\)\(b\) of EPA Act 1979\)](#)

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

Part C City-wide Controls;

- C1 Site Planning and Design Principles
- C3 Water Management
- C5 Waste Management
- C6 Landscape Design
- C10 Transport, Access and Parking

Part D2 Residential:

- 2.4 Multi Dwelling Housing

Part D5 Other Land Uses;

- 5.11 Boarding Houses

10 [X Special 08 \(Refusal under Section 79C\(1\)\(c\) 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* and Clause 54 of the *Environmental Planning and Assessment Regulation 2000* in that the consent authority requested additional information that was not submitted, being an acoustic report.

11 [X Special 10 \(Refusal under Section 79C\(1\)\(e\) of EPA Act 1979\)](#)

The application is not satisfactory for the purpose of Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979* as the site is not suitable for the scale of the proposed development.

12 [X Special 9 \(Refusal under Section 79C\(1\)\(d\) of EPA Act 1979\)](#)

The development application is not satisfactory for the purpose of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in terms of the likely impacts of that development including those related to:

- (i) negative streetscape and local character impacts;
- (ii) noise and privacy impacts;
- (iii) traffic, access and manoeuvring;
- (iv) solar access; and
- (v) landscaping, setbacks and site coverage;
- (vi) stormwater management.

# Appendix - Development Control Plan Compliance

## Development Control Plan 2014

### Part B - DCP Principles

The development proposal is considered to be contrary to the principles, commitments and objectives of the Penrith Development Control Plan 2014 in particular, the proposal does not enable communities to minimise their ecological footprint or promote sustainable production and consumption through appropriate use of environmentally sound technologies and effective demand management.

The 2m proposed side setbacks are unlikely to support canopy tree planting. No canopy tree planting is proposed around the development.

Solar access can not be provided in accordance with the requirement of the SEPP ARH (3 hours of direct solar access between 9am and 3pm in mid-winter to the communal living area). There is limited opportunity is provided for natural cross flow ventilation.

Plan do not nominate the location of air conditioning units. No water capture and re-use is proposed.

### Part C - City-wide Controls



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

### *Clause 1.2.2 Built form - Energy Efficiency and Conservation*

This section of the PDCP 2014 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 building does not facilitate opportunity for natural cross flow ventilation resulting in overheating and poor internal amenity and thermal comfort for lodgers, and reliance on air conditioning systems.

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

The proposal fails to demonstrate how the development is consistent with the height, bulk and scale of adjacent development. It is acknowledged that the area is zoned R3 Medium Density Residential under PLEP 2010 and some growth in the density of the area is expected. However, the development proposal does not demonstrate an acceptable level of compliance with applicable built form controls under the PDCP 2014 or objectives of the zone. The development will result in unacceptable levels of overshadowing to the south, and is not sufficiently articulated and its bulk and scale is unacceptable in the location.

Proposed setbacks, separation distances and landscaped elements do not adequately mitigate against negative and unacceptable amenity impacts such as privacy (visual and acoustic), overbearing and impacts on local streetscape character.

## **Section C5 Waste Management**

The design of the development does not comply with design requirements of the waste bin and bulky waste area as detailed within the DCP. It is acknowledged that these could be rectified by design amendments however, as the recommendation is for refusal on other matters a revised design was not requested and standard waste conditions of consent are not recommended.

## **Section C6 Landscape Design**

### *Clause 6.1.3 Neighbourhood Amenity and Character*

The submitted design does not comply with the requirements of the PDCP 2014 as follows:

- The landscape proposal does not enhance the amenity and visual quality of the site. The bulk and scale of the building is not moderated by the use of landscaped elements such as for screening or shade provision.
- The development does not make any contribution to the streetscape by way of the design of structures or landscaping.
- The design of landscaping works do not ensure that the development integrates into and enhances the existing landscape character through either setbacks, materials selection, architectural character or vegetation selection/placement.

### *Clause 6.1.4 Site Amenity*

The PDCP 2014 states that landscape design should seek to screen development, particularly from the sides and rear of an allotment and shrubs and small trees should be used to screen service areas and block unwanted views that reduce privacy. The proposal does not adequately demonstrate that an acceptable level of compliance is achievable. The proposed level of site coverage is excessive and areas of landscaping are minimal in width due to basement design, which is needed to support the car parking requirements under the SEPP ARH.

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

Car parking requirements are set by State Environmental Planning Policy (Affordable rental Housing) 2009 [SEPP ARH] and are found to be compliant. Notwithstanding the compliance with the number of car parking spaces required by the SEPP ARH, the development is recommended for refusal. It is noted that the area required to facilitate a compliant level of car parking is resulting in a high level of site coverage and minimal landscaping.

## **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 clause 5.11 (Boarding Houses) of Section D5 Other Land Uses.

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.

### *Clause 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 provide shadow or relief from the heat. No areas for landscape are proposed.

### *Clause 2.4.5 Front and Rear Setbacks*

The proposal does not comply with the front setback requirement of a minimum of 5.5m or the average of the setbacks of the immediate neighbours, whichever is the greater of the two. Neighbours to the north and south have setbacks of 7.5m. The proposal is for 5.69m, which is not compliant with the DCP requirement and is forward of neighbouring buildings.

### *Clause 2.4.6 Building Envelope and side setbacks*

The proposal does not comply with the side setbacks requirements under 2.4.6(7)(a) and (b) which states a minimum side setback of 2m is permissible however for only 50% of any boundary. The proposal is for 2m side setback (north and south) for 100% of the length of the building for both the ground and upper floors..

### *Clause 2.4.9 Solar Planning*

The DCP requires that the development allow a minimum of 4 hours sunlight between the hours of 9.00am and 3.00pm on June 21, to living zones of any adjoining dwellings. Submitted shadow diagrams do not demonstrate an acceptable level of compliance with the above control.

### *Clause 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 number and design of window openings.

### *Clause 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 eaves are proposed to the side elevations and air conditioning units are not noted on plans.

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

The development proposal has not adequately demonstrated that the package of measures proposed to prevent privacy (visual and acoustic) impacts is acceptable. No landscaping is provided to the side and rear setback to provide a buffer. No acoustic report was submitted to support the application. Air conditioning units are not nominated on plans and as such an assessment of their noise impact cannot be made.

## **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. The proposal has been assessed against the provisions of Section 5.11 of the DCP 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 elsewhere within this report (refer SEPP ARH local character discussion). The building design and landscaping concept does not take adequate regard of the submitted site analysis. Proposed setbacks and landscaping will not ameliorate negative and unacceptable impacts on residential amenity due to the scale and bulk of the building, the wall length and its 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 intent of the space under the SEPP ARH and the bulk and scale of the design proposed will result in over bearing and amenity impacts (visual and acoustic) on neighbouring residential uses.

The density of the development and the requirement under the SEPP ARH to provide 0.5 car parking spaces per bedroom will result in the basement excavation being excessive such that deep soil landscaping is negatively impacted.

*Clause 5.11, C. Controls*

The proposed development does not comply with clause 5.11(C)(2)(c) 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 2m side setbacks proposed, the proposal does not comply with clause 5.11 (C)(2)(b) which requires any new boarding house to not adversely impact upon solar access of adjoining properties and clause 5.11(C)(2)(d) which requires proposals to demonstrate that neighbourhood amenity will not be adversely impacted by factors such as noise and privacy.

The proposal 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 this DCP, where they are not in conflict with the requirements of the SEPP ARH 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. Compliance with the controls for multi dwelling housing would not result in a development that would be in conflict with the objectives of the R3 Medium Density Residential zone or those of the SEPP ARH.

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

- Clause (c) which requires cross ventilation to be achieved to reduce reliance on air conditioning.
- 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 rear and side setback areas.