

# PENRITH CITY COUNCIL

## NOTICE OF DETERMINATION

### DESCRIPTION OF DEVELOPMENT

Application number:	DA20/0729
Description of development:	Torrens Title Subdivision of 2 into 3 lots and Construction of Three x Two Storey Boarding House with Associated Fencing, Car Parking, Tree Removal, Landscaping and Drainage Works
Classification of development:	Class 1b

### DETAILS OF THE LAND TO BE DEVELOPED

Legal description:	Lot 16 DP 29528 Lot 15 DP 29528
Property address:	32 Park Avenue, KINGSWOOD NSW 2747 31 Park Avenue, KINGSWOOD NSW 2747

### DETAILS OF THE APPLICANT

Name & Address:	Mim Property Pty Ltd 3/42 Military Road NORTH BONDI NSW 2026
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### DECISION OF CONSENT AUTHORITY

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

Date of this decision	20 January 2021
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### POINT OF CONTACT

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

Assessing Officer:	Lucy Goldstein
Contact telephone number:	+61247328136

## NOTES

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### Reasons

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

### Reasons for refusal

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

### Review of determination

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

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

### Appeals in the Land and Environment Court

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

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

### Designated development

If the application was for designated development and a written objection was made in respect to the application, the objector can appeal against this decision to the Land and Environment Court within 56 days after the date of this notice.

If the applicant appeals against this decision, objector(s) will be given a notice of the appeal and the objector(s) can apply to the Land and Environment Court within 56 days after the date of this appeal notice to attend the appeal and make submissions at that appeal.

### Sydney Western City Planning Panels

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

## SIGNATURE

Name:	Lucy Goldstein
Signature:	

For the Development Services Manager

## ATTACHMENT 1 : REASONS FOR REFUSAL

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1. The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with the provisions of Penrith Local Environmental Plan 2010 as follows:
  - **Clause 2.3 Zone objectives:** The proposal is inconsistent with the following objectives of the R3 Medium Density Residential zone:
    - To enhance the essential character and identity of established residential areas;
    - To ensure that a high level of residential amenity is achieved and maintained; and
    - To ensure that development reflects the desired future character and dwelling densities of the area.
  - **Clause 4.1 Minimum subdivision lot size:** The proposal is non-compliant with the minimum subdivision lot size required for the site.
  - **Clause 4.1(1) objectives:** The proposal is inconsistent with the objectives of Clause 4.1 of Penrith Local Environmental Plan 2010, specifically:
    - To ensure that lot sizes are compatible with the environmental capabilities of the land being subdivided; and
    - To ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.
  - **Clause 4.6 Exceptions to development standards:** The written request to contravene the minimum lot size as required by Clause 4.1 of Penrith Local Environmental Plan 2010 under Clause 4.6 of that Plan provided by the applicant did not include sufficient environmental planning reasons to support the variation.
2. 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:
  - Part 2, Division 3, Clause 29 (2)(b) Landscaped area
  - Part 2 Division 3, Clause 29 (2)(c) Solar Access
  - Part 2, Division 3, Clause 29(2)(e) Parking
  - Part 2, Division 3, Clause 30A Character of local area
3. The development application is not satisfactory for the purpose of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as the proposal is inconsistent with the following provisions of Penrith Development Control Plan 2014:
  - Chapter C1 Planning and Design Principles
  - Chapter C3 Water Management
  - Chapter C5 Waste Management and accompanying Waste Management Guideline
  - Chapter C10 Transport, Access and Parking
  - Chapter C11 Subdivision
  - Chapter C12 Noise and Vibration
  - Chapter D2 Residential Development
  - Chapter D4 Other Land Uses

4. The application is not satisfactory for the purpose of Section 4.15(1)(b) of the Environmental Planning and Assessment Act in terms of the likely impacts of the development, including:
  - The proposed subdivision is not consistent with the established subdivision pattern.
  - The design and scale of the proposed development is not compatible with the existing and desired future character of the immediate locality.
  - The proposal provides inadequate front and rear setbacks to suitably integrate the development into the existing local character, maintain surrounding residential amenity, and provide appropriate landscape treatment of the site.
  - The proposal does not provide a suitability level of internal amenity stemming from the ground floor layout and location of infrastructure (waste rooms, car parking).
  - The proposal provides inadequate design of the car parking areas/driveway being insufficient for proper and safe manoeuvring within the development site.
  - The development is considered to be an over-development of the site.
  - The stormwater drainage design is inadequate, noting drainage infrastructure is proposed to traverse between each lot. Stormwater infrastructure is required to be wholly contained within each Torrens Title lot, and be designed in accordance with Council requirements.
  - The accompanying Acoustic Assessment report provides insufficient information, as the report does not calculate expected noise levels generated by the use of car parking, driveway and communal areas of the development. As such, Council is unable to be satisfied that the noise levels associated with the use of these areas will comply with relevant noise criteria.
  
5. The application is not satisfactory for the purpose of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 as the site is not suitable for the proposed development.
  
6. The application is not satisfactory for the purpose of Section 4.15(1)(d) of the Environmental Planning and Assessment Act due to matters raised in submissions which include:
  - Compatibility of the development with the surrounding local character
  - Amenity and acoustic impacts
  - Car parking impacts
  - Design of development should reflect principles of Crime Prevention Through Environmental Design
  
7. The application is not satisfactory for the purpose of Section 4.15(1)(e) of the Environmental Planning and Assessment Act as the proposal would create an undesirable precedent and is therefore not considered to be in the public interest.