

PENRITH CITY COUNCIL

NOTICE OF DETERMINATION

DESCRIPTION OF DEVELOPMENT

Application number:	DA20/0644
Description of development:	Demolition of Existing Structures & Construction of 200 Place Child Care Centre including Related Car Parking, Fencing, Tree Removal, Landscaping & Drainage & Site Works
Classification of development:	Class 9b

DETAILS OF THE LAND TO BE DEVELOPED

Legal description:	Lot 4211 DP 1150762
Property address:	15 - 17 Garswood Road, GLENMORE PARK NSW 2745

DETAILS OF THE APPLICANT

Name & Address:	Ramakrishnan Baskaran 4 Boyne Avenue PENDLE HILL NSW 2145
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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	21 April 2021
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POINT OF CONTACT

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

Assessing Officer:	Lauren Van Etten
Contact telephone number:	+612 4732 8222

NOTES

Reasons

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

Reasons for refusal

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

Review of determination

The applicant may request Council to review its determination pursuant to Division 8.2 of the Environmental Planning and Assessment Act 1979 within 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:	Lauren Van Etten
Signature:	

For the Development Services Manager

ATTACHMENT 1 : REASONS FOR REFUSAL

1.

The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal has not satisfied the provisions of Clause 7 of *State Environmental Planning Policy No. 55 - Remediation of Land*.

2.

The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act as the proposal is inconsistent with the following provisions of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017:

- Clause 3 The proposal is inconsistent with the following aims and objectives of this plan;

- *establishing consistent State-wide assessment requirements and design considerations for educational establishments and early education and care facilities to improve the quality of infrastructure delivered and to minimise impacts on surrounding areas.*

The proposal is not considered to minimise impacts on the surrounding area as it alters the ratio of landscape to built areas and thus will disrupt the semi-rural character of the locality as viewed from neighbouring properties given the expansive hardstand surfaces, incompatible setbacks, inadequate landscaping provision and tree impacts. The proposal will subsequently result in unacceptable amenity impacts on neighbours in terms of views, outlook and urban heat generation.

- Clause 23 The proposal is inconsistent with the following applicable provisions of the Child Care Planning Guideline as follows:

- Part 2, Principle 1 Context, Principle 5 Landscape and Principle 6 Amenity;
- Part 3 Matters for Consideration;
- 3.1 Site Selection and Location;
- 3.2 Local Character, Streetscape and Public Domain Interface;
- 3.3 Building orientation, envelope and design;
- 3.4 Landscaping;
- 3.5 Visual and acoustic privacy;
- 3.6 Noise and air pollution;
- 3.8 Traffic, parking and pedestrian circulation; and
- 4.10 Natural Environment.

-Clause 26 (1)(d)(ii) The proposal is inconsistent with the matters for consideration regarding side and rear setbacks to preserve trees and other vegetation and to provide adequate areas for landscaping given sold fences, retaining walls and artificial play areas are proposed within the required setback areas.

The proposal is inconsistent with the matters for consideration within this clause regarding car parking rates as there is inadequate parking for administration and food preparation staff without further compromising landscaped area and character.

3.

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

1) Clause 1.2 The proposal is inconsistent with the following aims and objectives of this plan:

(b to promote development that is consistent with the Council's vision for Penrith, namely, one of a sustainable and prosperous region with harmony of urban and rural qualities and with a strong commitment to healthy and safe communities and environmental protection and enhancement,

(c) to accommodate and support Penrith's future population growth by providing a diversity of housing types, in areas well located with regard to services, facilities and transport, that meet the current and emerging needs of Penrith's communities and safeguard residential amenity,
(e) to reinforce Penrith's urban growth limits by allowing rural living opportunities where they will promote the intrinsic rural values and functions of Penrith's rural lands and the social well-being of its rural communities,

2) Clause 2.3. The proposal is inconsistent with the objectives of the E4 Environmental Living zone, specifically:

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values.
- To minimise conflict between land uses within the zone and land uses within adjoining zones.

3) The proposal is unsatisfactory having regard to the following principles of sustainable development under Clause 7.4 Sustainable development as the scale of hardstand surfaces does not create a cool outdoor environment or reduce summer heat

(a) conserving energy and reducing carbon dioxide emissions,
(f) energy efficiency and conservation,

4) The proposal is unsatisfactory having regard to Clause 7.7 Servicing (2)(b) since evidence that the site can be serviced by sewer services has not been submitted and the site is currently not connected to reticulated sewer.

4.

The 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

- DCP Principles;
- Section C2 Vegetation Management;
- Section C3 Water Management;
- Section C4 Land Management;
- Section C5 Waste Management;
- Section C9 Advertising and Signage;
- Section C10 Transport, Access and Parking - It is noted the traffic and access analysis is based on an outdated situation and requires further analysis and justification to reflect the changes made at the intersection of Garswood Road and The Northern Road Glenmore Park. This has impacted access to and around the site;
- Section C12 Noise and Vibration; and
- Section C13 Infrastructure and Services.

Part D2 Residential

Section D1 Rural Development.

5.

The 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 relating to:

- (i) Unsatisfactory rural-residential character impacts;
- (ii) Unsatisfactory amenity impacts in terms of views or outlook stemming from excessive hardstand

surfaces and the urban heat island effect;
(iii) Unsatisfactory traffic impacts;
(iv) Inadequate parking, access and manoeuvring provision;
(v) Unsatisfactory tree impacts;
(vi) Unsatisfactory sustainability outcomes due to excessive hardstand surfaces;
(vii) Inadequate landscaping provision and setbacks; and
(viii) Unsatisfactory access to public transport.

6.

The application is not satisfactory for the purpose of Section 4.15(1)(c) of the Environmental Planning and Assessment Act as the site is not suitable for the proposed development due to the irregular shape and varying lot width which makes it unsuitable for development of a child care centre with the scale proposed.

The proposal is not suitably connected to employment areas, town centres, business centres or shops given there is no access to public transport within Garswood Road.

7.

The application is not satisfactory for the purpose of Section 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979* having regard to the matters raised in the public submissions received insofar as those matters coincide with the preceding reasons for refusal of the application.

8.

The application is not satisfactory for the purpose of Section 4.15(1)(e) of the Environmental Planning and Assessment Act as the proposal is not in the public interest with respect to impacts of the development on local character and rural-residential amenity and it fails to address traffic, access and parking matters, loss of vegetation, noise and air quality impacts, water conservation measures and remediation of the land.

9.

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 Part 2(3) within Sydney Regional Environmental Plan No. 20 regarding water quality.

10.

The application is not satisfactory for the purpose of Section 1.7 of the Environmental Planning and Assessment Act 1979 as the proposal has not accounted for biodiversity impacts on vegetation due to the proposed on-site detention basin, driveways and the acoustic fence/retaining walls, nor has the proposal provided a Test of Significance (5 part test) in accordance with the provisions of Part 7 of the Biodiversity Conservation Act 2016 and the associated Regulations.

11.

The application is not satisfactory for the purpose of Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979 as the proposal does not meet the following matters prescribed by the associated Regulations:

- Insufficient information has accompanied the application in relation to the environmental impacts of the development regarding trees, noise, air quality, traffic, water conservation measures and contamination as required by Schedule 1, Part 1, Clause 2(4)(a) and (b)