

PENRITH CITY COUNCIL

NOTICE OF DETERMINATION

DEVELOPMENT APPLICATION DETAILS

Application number:	DA21/0788
Description of development:	Demolition of Existing Structures & Construction of Seven (7) Storey Mixed Use Development including Ground & First Floor Commercial Tenancies, Boarding House including 96 Boarding Rooms & Manager's Room & Two (2) Levels of Basement Car Parking
Classification of development:	Class 3 , Class 5
Name of Applicant:	Gus Fares Architects

DETAILS OF THE LAND TO BE DEVELOPED

Legal description:	Lot 5 DP 215200 Lot 3 DP 215200
Property address:	2 a Bringelly Road, KINGSWOOD NSW 2747 31 Santley Crescent, KINGSWOOD NSW 2747

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.

Decision	Refuse
Date of this decision	23 February 2022

POINT OF CONTACT

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

Assessing Officer:	Donna Clarke
Contact telephone number:	(02) 4732 7991

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:	Gavin Cherry Development Assessment Coordinator
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 is inconsistent with the provisions of Penrith Local Environmental Plan 2010 as follows:
 - (a) The proposal is inconsistent with Clause 1.2, Aims of Plan, and the objectives of the B4 Mixed Use zone, in particular that the development proposal does not minimise conflicts between zones and within the zone.
 - (b) The proposed building exceeds the maximum height limit under Clause 4.3 Height of Buildings and Clause 7.11 Penrith Health & Education Precinct.
 - (c) The application was not accompanied by a written request as required by Clause 4.6 in relation to the contravention of Clause 4.3 (and 7.11).
 - (d) The proposed development has not demonstrated that the proposed earthworks will not have a detrimental impact on environmental functions and processes or neighbouring uses and is considered unsatisfactory with respect to Clause 7.1 Earthworks.
 - (e) The proposal is unsatisfactory having regard to the principles of sustainable development under Clause 7.4 Sustainable development.
 - (f) The design of the proposal does not provide suitable servicing as required by Clause 7.7 Servicing.
 - (g) The proposal is contrary to the objectives of Clause 7.11 in that the built form has not demonstrated it is suitable for both residential and health services facility.
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 has not satisfied the provisions of Clause 7 of the provisions of State Environmental Planning Policy No. 55 Remediation of Land.
3. 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, specifically Clauses 29, 30 and 30A, as the development application:
 - Exceeds the maximum building height control.
 - Does not satisfy the minimum landscaped area controls.
 - Does not satisfy the minimum car parking provisions.
 - Does not satisfy the minimum motorcycle provisions (with no clause 4.6 request to vary the development standard submitted).
 - Does not suitably respond to the local character of the area in terms of urban design and transition between zones and to adjoining development.
4. The application is not satisfactory for the purpose of Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 as the provisions of State Environmental Planning Policy (Housing) 2021 (the Housing SEPP) have not been addressed given it was a Draft Environmental Planning Instrument at the time of lodgement. Significant and determinative weight should be given to the provisions and objectives of State Environmental Planning Policy (Housing) 2021.
5. 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:

- DCP Principles;
 - C1 Site Planning and Design Principles;
 - C2 Vegetation Management;
 - C3 Water Management;
 - C4 Land Management;
 - C5 Waste Management;
 - C6 Landscape Design;
 - C10 Transport, Access and Parking;
 - C12 Noise & Vibration;
 - Part D2 Residential Development;
 - Part D5, Section 5.11 Boarding houses; and
 - Part E12 Penrith Health & Education Precinct.
6. The development application is not satisfactory for the purpose of Section 4.15(1)(a)(i) and 4.15(1)(iv) of the Environmental Planning and Assessment Act 1979, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 and Clause 50 of the Environmental Planning and Assessment Regulation 2000 in that the application was not accompanied by a BASIX Certificate relevant to the type of development proposed, nor has there been any assessment of the external traffic impacts of the development or adequate analysis of the provision and implications of a car lift instead of a ramp servicing Basement 2.
7. 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) unsatisfactory urban design, streetscape and local character impacts;
 - (ii) unsatisfactory noise and amenity impacts;
 - (iii) unsatisfactory traffic, parking, access and maneuvering;
 - (iv) unsatisfactory external and internal amenity;
 - (v) unsatisfactory sustainability considerations;
 - (vi) inadequate landscaping provision and setbacks; and
 - (viii) inadequate Operational Plan of Management.
8. 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. The size of the site and dimensions of the site creates limitations to the driveway gradient and access / circulation, turning area and waste management arrangements. The proposed development removes all existing vegetation and does not propose a suitable landscape design treatment.
9. The proposal results in adverse impacts to the adjacent property at the corner of Bringelly Road and Santley Crescent and has the likelihood of impeding this site from realising its appropriate development potential. This is due to the provision of part nil-boundary setbacks and inadequate upper floor setbacks coupled with the elongated length, mass and bulk of the development which is unbroken for the full length of both allotments.
10. The architectural form, building mass and scale, repetitious window treatments, blank elevational form and non-compliant building height does not reflect design quality or design excellence outcomes. The proposal was also not supported by Council's Urban Design Review Panel, which the Panel concurred with.
11. The application is not satisfactory for the purpose of Section 4.15(1)(d) and 4.15(e) of the Environmental Planning and Assessment Act 1979 due to matters raised in submissions and the public interest with

respect to impacts of the development on residential amenity, solar access, local character and privacy.