

PENRITH CITY COUNCIL

NOTICE OF DETERMINATION

DESCRIPTION OF DEVELOPMENT

Application number:	DA19/0252
Description of development:	Demolition of existing structures and construction of a Two (2) Storey Boarding House containing 12 Boarding Rooms and at grade Car parking
Classification of development:	Class 3

DETAILS OF THE LAND TO BE DEVELOPED

Legal description:	Lot 80 DP 2167
Property address:	75 Castlereagh Street, PENRITH NSW 2750

DETAILS OF THE APPLICANT

Name & Address:	G Robinson 15 Macquarie Road MORISSET PARK NSW 2264
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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	26 June 2019
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POINT OF CONTACT

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

Assessing Officer:	Sufyan Nguyen
Contact telephone number:	+612 4732 8568

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.

It is recommended that you read any Advisory Note enclosed with this notice of determination.

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 six 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 six 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 28 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 28 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:	Sufyan Nguyen
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*, *State Environmental Planning Policy (Affordable Rental Housing) 2009*, *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* and *State Environmental Planning Policy No 55 —Remediation of Land* as follows:

Penrith Local Environmental Plan 2010

(i) Clause 1.2 Aims of the Plan - The proposal is inconsistent with the aims of the plan in relation to the provision of orderly and economic development, promotion of development consistent with Council's vision for Penrith, the safeguarding of residential amenity, risk to human life and property, and ensuring development incorporates the principles of sustainable development.

(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 demonstrate that it enhances the essential character and identity of the 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.

(iii) Clause 4.3 Height of Buildings - The proposal is inconsistent with the objectives of the height of buildings, specifically:

- The proposed boarding house does not demonstrate that it is compatible with the height, bulk and scale of the existing and desired future character of the locality,
- The proposed boarding house does not demonstrate that it minimises its visual impact, disruption of views or loss of privacy; and
- The proposed boarding house does not demonstrate that it nominates a height that will provide a high quality urban form for all buildings and a transition in built form and land use intensity.

(iv) Clause 7.1 Earthworks - The proposal is inconsistent with earthwork requirements, specifically:

- The proposed boarding house does not ensure that the associated earthworks required will not have a detrimental impact on neighbouring uses.

(v) Clause 7.2 Flood Planning - The proposal is inconsistent with Flood Planning requirements, specifically:

- The proposed boarding house does not minimise the flood risk to life and property associated with the use of the land or adequately demonstrated the potential impacts on existing drainage patterns as a result of the proposed fill.

State Environmental Planning Policy (Affordable Rental Housing) 2009

- The proposal is non-compliant with Part 2, Division 3, Clause 29 Standards that cannot be used to refuse consent of the *State Environmental Planning Policy (Affordable Rental Housing) 2009*, specifically (2b) landscaped area (excessive hardstand and elevated front terrace), (2c) solar access, (2e) parking spaces (2 parking spaces inappropriately situated within the secondary street frontage), and Clause 30A Character of the local area (the development is considered to be incompatible with the desired future character of the local area).

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

- The proposal has not provided a BASIX Certificate to demonstrate that BASIX commitments are satisfactory.

State Environmental Planning Policy No 55—Remediation of Land

- The proposal has not satisfactorily demonstrated that the site is suitable for the proposed use to due to the potential for land contamination.

2. The application is not satisfactory for the purpose of Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it does not comply with the following provisions of the *Penrith Development Control Plan 2014* as follows:

(i) The application has not satisfied Council with respect to the requirements under Part B - 'DCP Principles', specifically:

- Principle 1: Provide a long term vision for cities, based on sustainability; intergenerational, social, economic and political equity; and their individuality;
- Principle 2: Achieve long term economic and social security; and
- Principle 6: Recognise and build on the distinctive characteristics of cities, including their human and cultural values, history and natural systems.

(ii) The application has not satisfied Council with respect to the requirements under Section C1 'Site Planning and Design Principles', specifically:

- The built form, facade treatments, roof forms, excessive provision of hardstand to the front landscape treatment including elevated terraces is not considered to be a positive addition to the streetscape character;
- The application does not demonstrate how the building is consistent with the height, bulk and scale of adjacent buildings of similar type and use,
- The split building design and isolation of rooms does not provide adequate residential amenity;
- The application does not demonstrate that the safety and security principles of Crime Prevention Through Environmental Design are satisfied.

(iii) The application has not satisfied Council with respect to the requirements under Section C3 'Water Management', specifically:

- The proposal has not demonstrated that there will be no significant impacts on adjoining properties due to the potential diversion and/or blockage of overland flows.

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

- The waste infrastructure and bulky waste storage area does not facilitate safe and efficient waste collection service.

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

- The landscape design does not provide an appropriate front landscape treatment and includes excessive hardstand areas; and
- Two (2) parking spaces are situated within the secondary street frontage, which impede opportunity for landscaping.

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

- The proposal does not make provision for adequate on-site parking; and
- The proposal provides for parking spaces situated within the secondary street frontage which is not an acceptable design solution.

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

- The lot width does meet the minimum 22m lot frontage requirement;

- The proposed building does not comply with the maximum 20m building length;
- The proposed built form does not provide sufficient articulation to reduce its overall bulk and scale;
- 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 maintain the established front building line;
- The proposal does not comply with the 6m minimum rear setback requirement for the second storey component;
- The proposal does not comply with the 2m minimum side setback requirement;
- The proposal has a landscaped area of 23.4% which does not comply with the 40% minimum landscaped area requirement;
- The proposal does not meet the minimum 5.5m secondary street frontage setback requirement;
- The proposal does not provide adequate front fencing; and
- The proposal does not provide adequate accessibility.

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

- The proposal does not adequately demonstrate that it is compatible with the local character;
- The proposal does not adequately provide for a suitable bulk and scale relative to the site's capacity and existing surrounding housing stock;
- The proposal does not adequately provide sufficient residential amenity;
- The proposal does not adequately provide for equitable access; and
- The proposal does not adequately maintain adequate amenity and privacy for adjoining and nearby residences.

3. 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, amenity and privacy impacts;
 - (iii) inadequate car parking provision;
 - (iv) inadequate solar access;
 - (v) landscaping, setbacks and site coverage;
 - (vi) negative impacts on residential amenity;
 - (vii) potential for land contamination and flooding risks; and
 - (viii) inadequate waste infrastructure and site access.
4. 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 deemed not suitable for the scale of proposed development.
5. 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*.
6. 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.