

PENRITH CITY COUNCIL

NOTICE OF DETERMINATION

DESCRIPTION OF DEVELOPMENT

Application number:	DA18/0890
Description of development:	Demolition of Existing Structures & Construction of Six (6) Storey Residential Flat Building including 20 Apartments & Two (2) Levels of Basement Car Parking
Classification of development:	Class 2 , Class 7a

DETAILS OF THE LAND TO BE DEVELOPED

Legal description:	Lot 59 DP 33490 Lot 58 DP 33490
Property address:	38 Rodley Avenue, PENRITH NSW 2750 36 Rodley Avenue, PENRITH NSW 2750

DETAILS OF THE APPLICANT

Name & Address:	Morson Group Pty Ltd PO Box 170 POTTS POINT NSW 1335
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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	22 May 2019
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POINT OF CONTACT

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

Assessing Officer:	Gemma Bennett
Contact telephone number:	+612 4732 8285

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.

Certification and advisory notes

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:	Gemma Bennett
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:
 - (i) Clause 1.2 Aims of the Plan The proposal is inconsistent with the aims of the Plan in relation to promotion of development consistent with Council's vision for Penrith, to meet the emerging needs of Penrith's communities while safeguarding residential amenity and ensuring that the development incorporates the principles of sustainable development.
 - (ii) Clause 2.3 Zone Objectives The proposal is inconsistent with the objectives of the R4 High Density Residential zone, particularly (d) The design of the proposed development does not ensure that a high level of residential amenity is achieved and maintained, and (f) to ensure that development reflects the desired future character and dwelling density of the area.
 - (iii) Clause 7.2 The proposal does not comply with Council's Policy in relation to overland flow management on the site.
 - (iv) Clause 7.6 The proposal has not provided sufficient information to assess the impact of the development on salinity.
 - (v) Clause 7.7 The proposal does not meet the requirements for waste and stormwater servicing.
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 No 65 - Design Quality of Residential Flat Development and the accompanying Apartment Design Guide as follows:
 - (i) Clause 30(2)(a) - compliance with the design quality principles specified in the Apartment Design Guide:
 - Principle 1: Context and Neighbourhood Character
 - Principle 2: Built form and scale
 - Principle 3: Density
 - Principle 4: Sustainability
 - Principle 5: Landscape
 - Principle 6: Amenity
 - (ii) Clause 30(2)(b) - compliance with the objectives specified in the Apartment Design Guide:
 - 3B Orientation
 - 3C Public domain interface
 - 3D Communal and public open space
 - 3F Visual privacy
 - 4A Solar and Daylight Access
 - 4E Private open space and balconies
 - 4H Acoustic privacy
 - 4O Landscape design
 - 4U Energy efficiency
 - 4W Waste management
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:
 - (i) The application has not satisfied Council with respect to the requirements under Part B - 'DCP Principles',

specifically:

- The proposal has not been designed with consideration for the health, recreational and social needs of residents, and the proposal does not minimise its ecological footprint or promote sustainable production and consumption.

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

- The built form and scale of the proposal does not adequately respond to the context of the site.

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

- The proposal provides for street collection and waste bin storage rooms on the ground floor.

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

- The proposal does not include landscaping to the site that responds to the context of the site, or complements the built form or minimises the impacts of the scale of the development.

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

- The indented bay for waste collection is not supported.

(vi) The application has not satisfied Council with respect to the requirements under Section C13 'Infrastructure and Services', specifically:

- The proposal does not meet the requirements for engineering works in relation to the stormwater easement.

(vii) The application has not satisfied Council with respect to the requirements under Section D2 'Residential Development', specifically:

- Clause D2.5.5 The landscaped area does not meet the minimum 35% required for the site. The landscaping provided is compromised by servicing requirements.

- Clause D2.5.8 The proposal does not achieve a high level of visual or acoustic privacy for future occupants or adjoining neighbours.

- Clause D2.5.9 The proposal results in overshadowing of the private open space of adjoining development.

4. 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 was not accompanied by all of the information as required under Schedule 1 Forms of the Regulations or as required to properly consider the proposal, as follows:

- Clause 50 (1A)(1AB) of the *Environmental Planning and Assessment Regulation 2000* requires a statement from a qualified designer to be submitted.

- An updated BASIX Certificate.

- A Geotechnical Report.

5. 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) Streetscape and character,

(ii) Context and landscaping,

(iii) Bulk and scale,

(iv) Solar access and privacy impacts,

(v) Amenity, safety and security impacts related to the ground floor layout,

(vi) Communal open space,

(vii) Access, traffic and parking,

(viii) Energy efficiency,

(ix) Waste management impacts.

6. 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.
7. 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*.
8. The application fails to satisfy the development standard for building height and the request for a variation to the development standard is not supported because the proposed development will not be in the public interest as it will not ensure a high level of a residential amenity, provide a high quality urban form or reflect the desired future character of the area, being the objectives of the zone and height standard.