

PENRITH CITY COUNCIL

NOTICE OF DETERMINATION

DESCRIPTION OF DEVELOPMENT

Application number:	DA18/0488
Description of development:	Demolition of Existing Structures & Construction of Six (6) Storey Residential Flat Building containing 41 Apartments with Communal Roof Top Terrace & Two (2) Levels of Basement Car Parking
Classification of development:	Class 2 , Class 7a

DETAILS OF THE LAND TO BE DEVELOPED

Legal description:	Lot 35 DP 31239 Lot 36 DP 31239 Lot 34 DP 31239
Property address:	28 Hope Street, PENRITH NSW 2750 30 Hope Street, PENRITH NSW 2750 26 Hope Street, PENRITH NSW 2750

DETAILS OF THE APPLICANT

Name & Address:	M Makhoul PO Box 795 KINGS LANGLEY NSW 2147
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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	12 June 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.

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 (a) The design of the proposed development does not ensure that a high level of residential amenity is achieved and maintained.
 - (iii) Clause 4.3 Height of buildings - The proposal exceeds the maximum building height standard for the subject site.
 - (iv) Clause 4.6 Exceptions to development standards - The proposal 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 residential amenity is achieved and maintained in accordance with the zone objectives.
 - (v) Clause 7.4 Sustainable development - The proposal does not demonstrate that the principles of sustainable development have been appropriately incorporated into the design.
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 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 3: Density
 - Principle 4: Sustainability
 - Principle 5: Landscape
 - Principle 6: Amenity
 - Principle 9: Aesthetics
 - (ii) Clause 30(2)(b) - compliance with the objectives specified in the Apartment Design Guide:
 - 3C Public domain interface
 - 4A Solar and daylight access
 - 4B Natural ventilation
 - 4E Private open space and balconies
 - 4F Common circulation and spaces
 - 4U Energy efficiency
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 does not recognise and protect the intrinsic value of natural systems, 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 proposal does not adequately respond to the natural topography of the site or attempted to minimise site disturbance.

(iii) The application has not satisfied Council with respect to the requirements under Section C4 'Land Management', specifically:

- Excavation of the site exceeds 1m from the natural ground level and extensive retaining walls are proposed to manage the cut.

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

- Clause D2.5.8 The building design does not ensure that overlooking problems are minimised for the eastern elevation between ground and first floor units.

- Clause D2.5.13 The building design does not promote cross-ventilation standards.

- Clause D2.5.14 The design of ground floor courtyards includes terraces higher than 1.5m above ground level.

- Clause D2.5.18 Retaining walls are greater than 500mm.

- Clause D2.5.19 The design does not ensure that the safety and security of occupants is able to be maintained.

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 is inconsistent with the regulations as follows:

(i) Schedule 1 Forms of the *Environmental Planning and Assessment Regulation 2000* requires a BASIX Certificate to be submitted that reflects the amended proposal.

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) Solar access,

(ii) Excavation and terraces,

(iii) Environmental sustainability, and

(iv) Overlooking from elevated private open space areas to first floor units.

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 grade and orientation of the site is not suitable for the proposed development.
7. 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.