

Original signed by: Miguel Rivera Dated: 1/6/2022

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D379/21
MR3 (CIS)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
NOTICE OF DETERMINATION - Refusal

Issued under Section 4.18 of the Environmental Planning and Assessment Act 1979 ("the Act"). Clause 100 of the Environmental Planning and Assessment Regulation 2000 ("the Regulation")

Development Application Number: 379/21

Land to which this applies: 1 Warung Street, McMahons Point
Lot No.: 0, SP: 1927

Applicant: Theo Paradisis

Proposal: Partial demolition of existing residential flat building, construction of below ground basement and reconstructed and new apartment addition above and configuration of remaining apartments.

Determination of Development Application: The development application was considered by the **North Sydney Local Planning Panel (NSLPP)** on 1 June 2022. Subject to the provisions of Section 4.17 of the Environmental Planning and Assessment Act 1979, the subject application has been refused for the reasons stated below.

Date of Determination: 1 June 2022

Reasons for Refusal:

- A. In consideration of the written request made by the Applicant pursuant to Clause 4.6 of the North Sydney Local Environmental Plan 2013, the consent authority is not satisfied that compliance with the development standard contained in Clause 4.3 – Maximum Height of Buildings of NSLEP 2013 is well founded.

The consent authority has identified that there are no sufficient environmental planning grounds which would justify contravening the development standard.

The consent authority has identified that the proposed development is not in the public interest as it fails to achieve consistency with the relevant objectives of Clause 4.3 – Maximum Height of Buildings and the R3 – Medium Density Residential zone under NSLEP 2013.

B. **THAT** the North Sydney Local Planning Panel, exercising the functions of Council as the consent authority, resolve to refuse development consent to Development Application No. 379/21 for development involving partial demolition of existing residential flat building, construction of below ground basement with reconstructed and new apartment addition above and configuration of remaining apartments, on land at No. 1 Warung Street (legally described as SP 1927), as shown on Architectural Plans, prepared by Squillace and dated 28/03/22, for the following reasons:

1. Pursuant to Section 4.15 (1)(a) of the EP&A Act 1979, the proposed development does not comply with the following relevant environmental planning instruments and development controls as follows:
 - a) State Environmental Planning Policy (Biodiversity and Conservation) 2021 – impacts on stability and integrity of rock wall and unable to satisfy relevant provisions under Chapter 10.
 - b) State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development – unable to achieve design quality principles (Principles 1, 2, 3, 4, 6, 7 and 9) under Schedule 1 and key guidance/criteria under the Apartment Design Guide.
 - c) North Sydney Local Environmental Plan 2013 – Aims of the Plan – unable to satisfy the key aims (2)(a), (2)(b), (2)(c) and (2)(e).
 - d) North Sydney Local Environmental Plan 2013 – objectives of R3 zone relating to not compromising amenity of surrounding area and natural and cultural heritage of the area, providing a suitable visual transition between high density and low density residential areas and ensuring a high level of residential amenity is achieved and maintained.
 - e) North Sydney Local Environmental Plan 2013 – objectives of Clause 4.3 – unable to satisfy the objectives (1)(a), (1)(b), (1)(c), (1)(e), (1)(f) and (1)(g).
 - f) North Sydney Local Environmental Plan 2013 – Clause 4.6 – the consent authority is not satisfied as per provisions (3) and (4).
 - g) North Sydney Local Environmental Plan 2013 – Clause 5.10 – unable to satisfy the provisions under this clause.
 - h) North Sydney Local Environmental Plan 2013 – Clause 6.10 – unable to satisfy the provisions under this clause.
 - i) North Sydney Development Control Plan 2013, Part B, Section 1 – Environmental Criteria (Section 1.3) – failure to meet objectives and controls.
 - j) North Sydney Development Control Plan 2013, Part B, Section 1 – Quality Built Form (Section 1.4) – failure to meet objectives and controls.

- k) North Sydney Development Control Plan 2013, Part B, Section 1 – Quality Urban Environment (Section 1.5) – failure to meet objectives and controls.
 - l) North Sydney Development Control Plan 2013, Part B, Section 13 – Heritage and Conservation – failure to meet objectives and controls.
 - m) North Sydney Development Control Plan 2013, Part C, Section 9 – McMahons Point South Conservation Area (Section 9.8) – failure to meet objectives and controls.
2. Pursuant to Section 4.15(1)(b) of the EP&A Act 1979, the proposed development is likely to have adverse impacts on the following aspects on the environment: heritage, streetscape, view loss, privacy, amenity, overshadowing (solar access), structural stability and integrity of adjoining land.
3. Pursuant to Section 4.15(1)(c) of the EP&A Act 1979, the subject site is not suitable for the proposed development for the following reasons: excessive bulk, scale and density, topography response, context and setting response – not sympathetic to heritage conservation area and foreshore area, adverse impacts and lack of residential amenity for future occupants.
4. Pursuant to Section 4.15(1)(e) of the EP&A Act 1979, the proposed development is not considered to be in the public interest and is likely to set an undesirable precedent including poor design response to conservation and foreshore areas, endorsement of an unacceptable non-compliance to the maximum building height provision under Clause 4.3 and non-compliances with criteria under SEPP 65 and design guidance under the ADG.

How community views were taken into account:

The submissions received by Council were addressed in the NSLPP report (see Council's website: https://www.northsydney.nsw.gov.au/Council_Meetings/Meetings/NSLPP/2022/1_June_2022)

Review of determination and right of appeal:

Within six months after the date of notification of the decision, a review of this determination can be requested under Division 8.2 of the Act or an appeal to the Land and Environment Court made pursuant to the provisions of Section 8.7 of the Act. A review of determination should be lodged as soon as possible, and preferably no later two months after the date of notification of the decision to enable the review to be completed within the six-month period.

Endorsed for and on behalf of North Sydney Council

1 June 2022

DATE

Signature on behalf of consent authority
MIGUEL RIVERA
SENIOR ASSESSMENT OFFICER