



Rodborough Development Pty Ltd
Unit 5, 95 Pitt Street
SYDNEY NSW 2000

D232/20
MS3(CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION - REFUSAL**

Development Consent Number: 232/20/3

Land to which this applies: 5 Rodborough Avenue, Crows Nest
Lot No.: 1, DP: 1275996

Applicant: Rodborough Development Pty Ltd

Date of Determination: 5 October 2022

Proposal: Section 4.55(2) modification application relating to Development Consent DA 232/20 for the demolition of the existing buildings and the construction of a 4 storey residential flat building with basement parking and associated landscaping, including strata subdivision.

The Section 4.55 application was considered by the **North Sydney Local Planning Panel (NSLPP)** on 5 October 2022.

Pursuant to Section 4.55 of the Act notice is hereby given of the determination by the consent authority of your request for a modification to Development Consent No. **232/20** and registered in Council's records as Application No. **232/20/3** relating to the land described as **5 Rodborough Avenue, Crows Nest**.

Your request for the modification of the Development Consent has been refused.

Reason for refusal:

The Panel considers the modification application does not warrant approval for the reasons outlined below:

1. Inconsistent with the reasons for the original approval

The modification application is refused because it would be contrary to the reasons for approval of the original development application on the 7 July 2021. The consent authority must take into account the reasons for the granting of consent when making its determination, as required by section 4.55(3) of the Act.

Particulars

- a) The original application limited the extent of the third-floor level on the basis that this allowed for an acceptable variation to the height of buildings development standard which had regard to the topography. Furthermore, the additional roof top communal area was considered to provide excellent open space amenity and complied with the requirements for the quantity and amenity of the communal open space to serve the development.
- b) The roof top open space area as approved provides very good amenity for the occupants of the development and satisfies the Apartment Design Guidelines (ADG) requirements for communal open space. The proposed modification significantly reduces the quality and quantity of roof top communal open space from 395sqm to 83sqm, and as a consequence the modification application would not satisfy the ADG requirements.
- c) Furthermore, the modification would increase the demand for communal open space by increasing the number of apartments while decreasing the amenity of the communal open space.

2. Objectives of the zone

The proposed modification is refused because it is inconsistent with the objectives of the zone.

The subject site is zoned R4 High Density Residential. The objectives of the R4 High Density Residential zone are:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage the development of sites for high density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To ensure that a reasonably high level of residential amenity is achieved and maintained.*

Particulars

- a) The modification application does not satisfy the above dot point 4 because the massing and scale of the proposed development is inconsistent with the desired character of the area and would diminish the amenity of the cul-de-sac and surrounding properties given the overbearing nature of the non-complying portion of the additions.
- b) The proposed modification is inconsistent with dot point 5 because the approved rooftop communal open space area is proposed to be significantly reduced from 395sqm to 83sqm. The total useable outdoor communal open space equates to 334sqm or 12% of the site area, with less than 50% of the area receiving solar access for at least 2hrs in mid-winter. The overall quantity and quality of communal open space for the future residents of the approved development would be significantly diminished for the additional development yield and a high level of residential amenity would not be achieved.

3. Building Height

The modification application is refused because it contravenes the maximum height of buildings, development standard, in clause 4.3 in NSLEP 2013.

The objectives of the height of buildings development standard are:

- a) *to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- b) *to promote the retention and, if appropriate, sharing of existing views,*
- c) *to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- d) *to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- e) *to ensure compatibility between development, particularly at zone boundaries,*
- f) *to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,*
- g) *to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.*

Particulars

- a) A 12m height of buildings development standard applies to the subject site pursuant to subclause 4.3(2) in NSLEP 2013.
- b) The proposed additional apartment contravenes the development standard by between 1m-1.8m or 8.3-15%.
- c) The proposed development would be inconsistent with objectives a), c), e) and f) of the development standard.

4. SEPP 65 – Design Quality Principles

The modification application is refused because it would detract from the design quality of the approved development.

Particulars

- a) The proposed building form is contrary to design quality principles: 1 *Context and neighbourhood character*, and 2 *Built form and scale*. Further increase to the breach of height creates an overbearing built form and poor streetscape outcome.
- b) The proposal does not comply with the design quality principle 5 *Landscape*. The communal open space does not comply with the area and amenity requirements of the ADG's.
- c) The proposal does not comply with design quality principle 6 *Amenity*. The basement communal room does not have windows and is not suitable for habitable space.
- d) The proposal does not comply with design quality principle 8 *Housing diversity and social interaction*.
- e) The communal open space provided is inadequate for a project of this scale and does not align with the principles and objectives of the ADG.

5. Form, Massing and Scale

The modification application is refused because it does not comply with the form, massing and scale controls.

Particulars

- a) The proposed development does not comply with the height requirement in Provision P1 as required by provision P8(a) in Section 1.4.7 of Part B in NSDCP 2013 to justify the proposed flat roof.
- b) The proposed development does not comply with the top-most storey setback control of 36 degrees as required by Provision P8(b) in Section 1.4.7 of Part B in NSDCP to justify the proposed flat roof.

6. Communal Open Space

The modification application is refused because it would detract from the amenity of the approved communal open space arrangements and would then not meet the ADG requirements.

Particulars

- a) The proposed modified roof top communal open space has been reduced from 395sqm to only 83sqm in size (3% of the site area) and is inconsistent with objective 3D of the ADG.
- b) The supplementary communal open space at ground level within the southern side setback area would receive no solar access to the principal usable portion of the space and only marginal solar access to the fringes of the space between 9am to 3pm in mid-winter.
- c) The Panel does not accept the basement room should form part of the open space provision given its limited utility.

7. Insufficient Information

The modification application was lodged with insufficient information. Nonetheless, it fails for all the fundamental reasons above.

Particulars

- a) An amended landscape plan has not been provided to reflect the amended architectural plans lodged 1 August 2022.
- b) An amended strata plan has not been provided to reflect the amended architectural plans lodged 1 August 2022.

How community views were taken into account:

The development application and amended plans were notified in accordance with Council's Community Engagement Protocol. 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/2022/5_October_2022)

Review of determination and right of appeal:

Pursuant to Section 8.2, an applicant is able to request Council to review its determination. An application for a review under Section 8.2 of the Act must be made no later than 28 days after the date on which the application for the modification of the development consent was determined.

Section 4.55 of the Act confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court pursuant to Section 8.9 of the Environmental Planning and Assessment Act, 1979.

Endorsed for and on behalf of North Sydney Council

12 October 2022

DATE



Signature on behalf of consent authority
ROBYN PEARSON
TEAM LEADER (ASSESSMENTS)