



Mr Ken Demlakian
Level 1, 126 Willoughby Road
CROWS NEST NSW 2065

D279/22
DK4 (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 87 of the Environmental Planning and Assessment Regulation 2021 (“the Regulation”)

Development Application Number: 279/22

Land to which this applies: 126-128 Willoughby Road, Crows Nest
Lot No.: 21, DP: 315327

Applicant: Mr Ken Demlakian

Proposal: Alterations and additions to an existing building to create a mixed use development of 2 levels and a mezzanine of commercial and retail premises, and 4 residential units on the upper 2 levels and associated works.

Determination of Development Application: The development application was considered by the **North Sydney Local Planning Panel (NSLPP)** on 7 February 2024. 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: 7 February 2024

Reason for refusal:

Pursuant to the provisions of Clause 4.6 of the North Sydney Local Environmental Plan 2013 (“the LEP”), the Panel is not satisfied that the written request to the contravention of the Height of Buildings development standard in Clause 4.3 of the LEP, adequately addresses the required matters in Clause 4.6 of the LEP. As such, being a threshold question, the application is determined by refusal of this consent for the following reasons:

1. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposal is contrary to the objectives of the aims of plan of North Sydney Local Environmental Plan 2013 pursuant to Clause 1.2 in that the proposal is inconsistent with:
 - (a) The proposal does not provide development that is appropriate to its context and is does not enhance the amenity of the North Sydney community and environment (Clause 1.2(2)(a));
 - (b) The proposal is not compatible with the desired future character in terms of its height, bulk and scale (Clause 1.2(2)(b)(i));
 - (c) The proposal adversely affects the residential amenity of adjoining properties in terms of visual privacy (Clause 1.2(2)(c)(i));

2. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the variation to the building height development standard pursuant to Clause 4.3(2) of North Sydney Local Environmental Plan 2013 lodged pursuant to Clause 4.6(3) has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case or that there are sufficient environmental planning grounds to justify the contravention of the development standard. The proposal is unsatisfactory having regard to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposed development as a whole does not ensure that a high level of amenity is achieved and maintained. The Clause 4.6 Statement in respect to the non-compliance with Clause 4.3 Height of Building standard is not considered to be well founded or in the public interest.

3. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the design quality of the proposal when evaluated in accordance with the design quality principles is unacceptable, contrary to Clause 28(2)(b) of State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development ('SEPP 65') and adequate regard has not been demonstrated to the design quality principles contrary to Clause 30(2)(a) of SEPP 65. Consent must not be granted as the proposal does not demonstrate that adequate regard has been given to the design quality principles. In particular, the proposal is inconsistent with the following design quality principles:
 - (a) Principle 1 - Current and Neighbourhood Character: The four storey building does not respect the existing context of Willoughby Road. The height of the development is inconsistent with the desired future character and built forms envisaged by the NSLEP 2013 and NSDCP 2013.
 - (b) Principle 2 - Built Form and Scale: The height, bulk and scale is inconsistent with the existing and desired future character of the locality.

The development is not consistent with the current built forms permissible under North Sydney Local Environmental Plan 2013 or the built forms envisaged under the St Leonards and Crows Nest Planning Area. The built form would produce a dominating presence within the streetscape.

- (c) Principle 3 - Density: The floor space provided by a building that exceeds height standards results in an overdevelopment of the site.
 - (d) Principle 6 - Amenity: The amenity of apartment 2 is compromised due to the use of light wells for the provision of light and ventilation.
4. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as there are numerous inconsistencies with the Apartment Design Guide pursuant to Clause 28(2)(c) of State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development ('SEPP 65') which result in an unsatisfactory impact to amenity, adjoining properties and the streetscape, including the following:
- (a) Part 3F: Apartments 3 and 4 allow for direct overlooking onto No.33 Albany Street living areas and private open space.
 - (b) Part 3J: the proposal fails to provide adequate bicycle parking facilities.
 - (c) Part 4D: Apartment 4 exceeds the maximum habitable room depth.
5. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with various parts of Part B of the North Sydney Development Control Plan 2013 in that:
- (a) The proposed development does not satisfactorily respond to Part B Section 2.1.1 General Objectives - O8 as it does not provide an acceptable level of amenity to adjoining properties.
 - (b) The proposed development does not satisfactorily respond to Part B Section 2.4.1 in that the proposed developments height, bulk and scale is not in context with the surrounding development.
6. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with the waste management objectives and requirements of Section 19 Waste Minimisation and Management of the North Sydney Development Control Plan 2013 in that the proposed waste management arrangements are unacceptable and do not adequately demonstrate compliance with the requirements including:
- (a) A functional bulky waste storage area has not been provided to hold household clean up material. This must be separate from the garbage room.
7. The proposal is unsatisfactory having regard to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 as the development will cause adverse impacts upon the built environment with respect to the impact upon the streetscape and amenity to adjoining properties.
8. The proposed development is unsatisfactory having regard to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 in that the proposed development in its current form is not suitable for the site.

9. The proposed development is considered unacceptable pursuant to the provisions of Section 4.15(1) (e) of the Environmental Planning and Assessment Act 1979 as the proposal in its current form given its height, bulk and scale and massing, is not in the public interest as it is inconsistent with the relevant planning controls in relation to the adverse impacts on the streetscape and amenity of immediately adjoining properties. The proposal also lacks good urban design and will negatively affect the character and nature of the neighbourhood. It is considered to be an inappropriate outcome for the site and will establish an undesirable precedent in the area which will not be in the public interest.

How community views were taken into account:

On 28 September 2022, Council notified adjoining properties and the Holtermann Precinct of the proposed development seeking comment between 7 October 2022 and 21 October 2022. Council received no submissions. An amended proposal being of a similar scope and smaller scale to the original proposal, renotification was considered unnecessary in accordance with the provisions of Council's Community Engagement Protocol.

Review of determination and right of appeal:

Within 6 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

15 February 2024

DATE



Signature on behalf of consent authority

DAMON KENNY
EXECUTIVE PLANNER