

Development Application No. 176/18

Notice of Determination

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”)

Applicant’s Name

Highbury Group Pty Ltd
Suite 5, 540 Sydney Road
SEAFORTH NSW 2092

Land to which this applies

58-60 Aubin Street, Neutral Bay
Lot No.: 2, DP: 209194

Proposal

Demolition of the existing semi-detached dwellings, site consolidation, and the construction of a four storey residential flat building with basement car parking and associated landscaping.

Determination of Development Application

The development application was considered by the North Sydney Local Planning Panel (NSLPP) on 7 November 2018. 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:

1. Uncharacteristic form of development

The proposed development is considered to be incompatible with the character of the area in terms of bulk and appearance.

Particulars

- a) The bulk of the building is considered to be excessive for the size of the site and the materials and built form are uncharacteristic of surrounding developments along Aubin and Thrupp Street. The proposed development is contrary to the following:

- i. Design Quality Principles 1 and 2 in SEPP (Design Quality of Residential Apartment Development); (Context, neighbourhood character; Built form & bulk and scale)
- ii. Aims of NSLEP 2013, specifically (2)(a) and (b)(i); (Context & Amenity, Desired future character)
- iii. Objective O5 in Part B, Section 1.1.1 in NSDCP 2013; (Context)
- iv. Objective O1 in Part B, Section 1.4.1 in NSDCP 2013; (Context)
- v. Objective O1 in Part B, Section 1.4.7 in NSDCP 2013; and (Form, massing & scale)
- vi. Objective O1 in Part B, Section 1.4.8 in NSDCP 2013. (Built form character)

2. Adverse impacts on residential amenity and a failure to satisfy a number of objectives within the North Sydney Development Control Plan 2013.

The proposed development is considered to adversely impact the residential amenity of the adjoining properties at No's 56 and 62 Aubin Street, Neutral Bay and fails to satisfy the objectives of a number of the controls within the North Sydney Development Control Plan 2013 (NSDCP 2013).

Particulars

- a) The non-compliances with the minimum side building setbacks, building separation and top storey controls in North Sydney Development Control Plan (NSDCP 2013) result in a development that will likely compromise the residential amenity of No. 56 Aubin Street and No. 62 Aubin Street. Specifically, the development will compromise solar access and privacy to No. 56 Aubin Street and result in an unreasonable level of view sharing to certain apartments (No's 5 and 6) within the building at No. 56 Aubin Street.

The proposed development is contrary to the following:

- i. Design Quality Principle 6 in SEPP (Design Quality of Residential Apartment Development); (Amenity)
 - ii. Aims of NSLEP 2013, specifically (2)(c)(i); (Residential amenity)
 - iii. Objectives of the R4 High Density zone, specifically dot point 4;
 - iv. Objective O4 in Part B, Section 1.1.1 in NSDCP 2013; (Residential amenity)
 - v. Objective O1 in Part B, Section 1.3.7 in NSDCP 2013; (Solar access)
 - vi. Objective O1 in Part B, Section 1.3.10 in NSDCP 2013; and (Visual privacy)
 - vii. Objective O2 in Part B, Section 1.3.6 in NSDCP 2013. (Views)
- b) The proposed apartments within the building will not receive reasonable solar access contrary to O1 in Part B, Section 1.3.7 in NSDCP 2013.
 - c) The proposal provides inadequate landscaping across the site. The proposal is contrary to the following:
 - i. Design Quality Principle 6 in SEPP (Design Quality of Residential Apartment Development); and (Amenity)

- ii. Objective O1 (a), (c), (f), (h) and (i) in Part B, Section 1.5.6 in NSDCP 2013. (Landscaped and unbuilt upon areas)
- d) The size of the proposed building is significant larger than characteristic residential flat buildings along Aubin and Thrupp Street that are located on comparable site areas contrary to Objective O1 in Part B, Section 1.4.7 in NSDCP 2013. The top floor of the proposed building is significantly non-compliant with Provision P8(b) in NSDCP 2013.
- e) The design of the proposed building, in terms of materials, façade treatment and roof form and does not reflect the existing character of the locality contrary to Objective O1 in Part B, Section 1.4.8 in NSDCP 2013.

3. Adverse impacts on the redevelopment of the adjoining properties

The proposed development will likely adversely impact any future redevelopment of the adjoining properties at No's 54 and 56 Aubin Street.

Particulars

- a) The negotiations between the owner of the subject site and the owners of the adjoining properties at No's 54 and 56 Aubin Street took place after the subject application was lodged with Council contrary to the requirements of the planning principle established in *Karavellas v Sutherland Shire Council [2004] NSWLEC 251*
- b) The owners of No's 54 and 56 Aubin Street have not formally accepted any offer from the owners of the subject site.
- c) The indicative building footprint for the possible future redevelopment of No's 54 and 56 Aubin Street is limited in detail. Notwithstanding, the indicative building footprint would likely fail to comply with the applicable building envelope controls. An indication that the size of the proposed buildings on both the subject site and No's 54 and 56 Aubin Street are too large for these sites.

4. Insufficient and inadequate information

The applicant has not submitted sufficient and/or adequate information to enable a detailed assessment of the development application.

Particulars

- a) The architectural plans submitted as part of the applicant fail to accurately indicate the location and use of the windows and doors for the dwelling on the adjoining property at No. 56 Aubin Street, consequently solar access impacts to this property cannot be accurately determined.
- b) The applicant has failed to provide details as to the relocation of the existing power pole adjacent to the proposed driveway or on the impacts to the existing street tree located in front of the subject site.
- c) The applicant has not provided any details as to the possible impacts to the nearby sewer line as a consequence of the proposed development.
- d) The applicant has failed to provide comprehensive drawings for the vehicular crossing with respect to the existing footpath and road carriageway levels to make sure that external driveway gradients align with the internal driveway ramp gradients.

- e) The applicant has failed to provide sweep path analysis for each car parking spot within the basement level of the building.
- f) The applicant has failed to adequately address section 19 in NSDCP 2013 concerned with waste management.
- g) An adaptable unit was not marked on the plans to satisfy section 1.2.1 provision P6 in NSDCP 2013.

5. Not considered to be suitable for the subject site nor in the public interest

The proposed development is not considered suitable for the subject site nor in the public interest.

Particulars

- a) The size of the proposed residential flat building is not considered to be suitable for a site with an area of 549.9m² contrary to Section 4.15(c) of the Environmental Planning and Assessment Act 1979 (as amended)
- b) A significant number (35) of public submissions were received against the application raising particular concerns about the excessive bulk, scale and density of the development, uncharacteristic built form, non-compliance with the landscape area, building height plane and setbacks controls, significant excavation, view, privacy, traffic and solar access impacts. The proposal is not considered to be in the public interest contrary to Section 4.15(e) of the Environmental Planning and Assessment Act 1979 (as amended).

Reason for refusal

The Panel agrees with the reasons provided in the NSLPP report (and given above) that the application does not warrant approval as it has significant non compliances including: setbacks, building separation, landscaped area, streetscape presentation, excessive bulk and scale, insufficient daylight to northern excavated ground floor and ADGs.

How were public submissions 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/2018/7_November_2018)

Review of determination and right of appeal

Within 6 months after the date of determination, 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. If a review is contemplated, it should be lodged within two months of the date of this determination to enable the six month period, which includes Council's review to be met.

DATE

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