

Thirdi Kurraba Point Ltd
343 Pacific Highway
NORTH SYDNEY NSW 2060

D446/18
LD (CIS)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979
Notice to Applicant of Determination of a Development Application

Pursuant to Section 4.18 of the Act notice is hereby given of the determination by the consent authority of the **Development Application No. 446/18** for demolition of the existing structures, site consolidation and the construction of a new part five, part seven storey residential flat building containing 31 apartments with basement car parking for 70 vehicles and associated landscaping work on land described as **147, 151 and 153 Kurraba Road, Kurraba Point** and as indicated on the following drawings:

Drawing Numbered Revision 03, dated 08/01/19, Revision 03 and 04 dated 6/03/19, Revision 05 dated 11/03/19 all drawn by SJB Architects; Landscape Plans, Revision A dated 18/12/18, Revision B dated 6/03/19,

Panel Reason:

The Development Application, has been determined by the **North Sydney Local Planning Panel (NSLPP)** at its meeting of 1 May 2019 by **refusing consent** for the the reasons identified in the officer's report

The reasons for refusal as identified in the officer's report are as follows: -

1. Inadequate written request pursuant to Clause 4.6 in North Sydney Local Environmental Plan 2013

The written request pursuant to Clause 4.6 in the NSLEP 2013 seeking a variation to the height of building development standard in Clause 4.3(2) in NSLEP 2013 is not considered to be well founded.

Particulars

- a) The proposed development breaches the 12m maximum height of building development standard specified in Clause 4.3(2) in NSLEP 2013 by between 19% (east building) and 76.8% (southern building).
- b) The written request submitted with the application seeking a variation to the maximum height of building development standard has inadequately addressed the matters required to be addressed in subclause (3) in Clause 4.6 in NSLEP 2013. The written request has failed to adequately demonstrate that compliance is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the height of building development

- c) The proposed development is not considered to be in the public interest as the development fails to satisfy all objectives of the height of building standard in Clause 4.3(1) in NSLEP 2013 and the objectives of the R4 High Density Residential zone (dot points 2, 4 and 5).

2. The proposed development is not appropriate to its context and is incompatible with the built form and landscape character of Kurraba Point

The proposed development is not appropriate to its context or compatible with the existing and future character of Kurraba Point by virtue of its excessive bulk and scale.

Particulars

- a) The proposed development is between five and seven storeys in scale with a vast majority of the development non-compliant with the maximum height of building development standard. Surrounding developments are predominantly three and four storeys in scale. The proposed development is therefore not compatible with the predominantly scale of Kurraba Point.
- b) The proposed development has a site coverage of 54% which is significantly non-compliant with the maximum site coverage of 45% specified in P1 in Part B, Section 1.5.5 in NSDCP 2013. The proposed development fails to satisfy Objectives O1, O2, O3 and O4 in Part B, Section 1.5.5 in NSDCP 2013.
- c) The proposed development is significantly non-compliant with the building setbacks controls specified in Part B, Section 1.4.6 in NSDCP 2013. The proposed development fails to satisfy Objectives O2, O3 and O4 in Part B, Section 1.4.6 in NSDCP 2013.
- d) The significantly non compliances with site coverage and building setbacks demonstrates that the bulk of the proposed development is excessive for this site.
- e) The proposed development is not considered to maintain, protect and enhance the visual qualities of Sydney Harbour by virtue of the excessive bulk and scale contrary to the planning principles in Clauses 13(f) and 14(d) and Clause 25 of SREP (Sydney Harbour Catchment) 2005.
- f) The proposed development does not satisfy design planning principles 1 'context and neighbourhood character' and 2 'built form and scale in SEPP 65- Design Quality of Residential Apartment Development.
- g) The proposed development is contrary to Clause 1.2(2)(a) and 1.2(2)(b)(i), Aims of Plan in NSLEP 2013.

3. The proposed development will adversely impact on existing views and result in an unreasonable level view sharing for surrounding properties.

The proposed development will fail to retain existing views from a number of the apartments with the building at No's 143 and 145 Kurraba Road, Kurraba Point.

Particulars

- a) The proposed development does not retain existing views for a number of the apartments within the buildings at No. 145 and 143 Kurraba Road. The impact on existing views is generally caused by elements of the proposed development that fail to comply with Council's maximum building envelope controls.

- b) Having regard to the view sharing principle established in *Tenacity Consulting v Warringah Council [2004]* NSWLEC 140 the majority of the views that are to be impacted are primary and iconic views of Sydney Harbour including land water interface, Sydney Harbour Bridge, Fort Denison, Mrs Macquarie's Chair Garden Island and Sydney CBD. These views whilst across side boundaries are from primary living spaces and the view impacts would be considered severe and devastating from a number of the apartments within the buildings at No. 143 and 145 Kurraba Road.
- c) The proposed south and south western apartments will obtain unobstructed iconic views at the expense of a number of the apartments at No 143 and 145 Kurraba Road. This is not considered reasonable view sharing.
- d) The proposed development is contrary to Clause 1.2(2)(c)(i) Aims of Plan in NSLEP 2013, Objectives of the R4 High Density zone (dot points 4 and 5) and Objective O2 and P4 in Part B, Section 1.3.6 in NSDCP 2013.

4. The excessive excavation for the proposed development will likely adversely impact existing vegetation and natural features of the site

The proposed development involves extensive excavation across the majority of the site which will likely adversely impact existing vegetation on the site and adjoining land and natural features of the site.

Particulars

- a) The Ficus hilli tree (Tree 1) located in the southern corner of the site is a highly visible and significant large tree within the Sydney Opera House Buffer Zone. The proposed major incursions into the structural root zone from the extensive excavation will adversely impact the on-going health of this tree.
- b) The Ficus rubiginosa trees (Trees 2 and 3) are located partially within Kurraba Reserve (listed as a landscaped heritage item under schedule 5 of NSLEP 2013), and are precariously attached to the cliff face and retaining wall on the western boundary of the subject property. The amenity value of these trees is extremely high, and the proposed excavation will also likely adversely impact the health of these trees.
- c) The proposed development will also involve the removal of the natural rock wall that runs along the Kurraba Road boundary and alongside the driveway that provides access to the building at No. 151 Kurraba Road and is considered a natural feature of the site.
- d) The proposed development is contrary to Clause 1.2(2)(e)(i) Aims of Plan in NSLEP 2013, Objective O1 and P3 in Part B, Section 1.3.1 in NSDCP 2013, P6 and P7 in Part B, Section 1.5.8 in NSDCP 2013.

5. The proposed development may impact the structural integrity of adjoining properties.

The depth and proximity of excavation to the boundaries of the site may impact the structural integrity of Council land and adjoining private properties

Particulars

- a) The proposed excavation for the basement is approximately 355mm from the front boundary of the site. Limited details are provided in respect of rock anchors, bolts, shotcrete that may be necessary to support the excavation, noting that these works will likely impact Council land.
- b) The proposed excavation will likely impact the future development of the adjoining properties to the north at No's 145 and 145A Kurraba Road. It is likely that rock anchors will be required to support the excavation which is located between 1170mm and 2320mm from the northern boundary of the site. The anchors would need to extend below the buildings at No's 145 and 145A Kurraba Road and may impact footings and basements structures of these buildings.
- c) The proposed excavation is within 5510mm of the western boundary of the site. The retaining wall along the western boundary of the site and the rock cliff within Kurraba Reserve may be adversely impacted by this excavation which is to a depth of more than 8m.
- d) Owners consent has not been obtained for reliance on adjoining land/s for excavation support.
- e) The proposed excavation is contrary to the Objective of Clause 6.10 in NSLEP 2013, Objective O1 and P3 in Part B, Section 1.3.1 in NSDCP 2013 and Objectives O1, O2, O3 and O4 in Part B, Section 1.5.7 in NSDCP 2013.

6. The proposed development provides for an excessive number of car parking spaces and vehicular access to basement levels will likely create significant traffic impact along Kurraba Road.

The proposed development provides for an excessive number of car parking spaces and vehicular access via the car lift will likely create significant traffic impacts along this one-way section of Kurraba Road.

Particulars

- a) The proposed 70 car parking spaces within the basement levels of the building exceed the allowable parking rates of 51 spaces specified in the Part B, Section 10.2.1. in NSDCP 2013. The proposed number of parking spaces fails to comply with Objectives O2 and O3 in Part B, Section 10.2.1 in NSDCP 2013.
- b) The proposed development will generate additional 14 vehicle trips in the peak hour. This increase will have significant impact on the traffic flow in the area as all the additional vehicle trips will flow through the one-way loop of Kurraba Road to access the site.
- c) Based on the queuing analysis provided in the traffic report submitted with the application, the 98th percentile queue is expected to be up to 3 vehicles. The architectural plans submitted with the application do not indicate where the waiting area is located.
- d) Design reliance on car lifts would require on-street loading for removalists and bulky deliveries. The basement entrances and site layout would need to be modified to ensure off-street loading for a medium rigid vehicle. The proposal is contrary to objective O1, O2 and P2 in Part B, Section 10.4 in NSDCP 2013.

7. Adverse impacts on heritage items in the vicinity of the subject site

The proposed development is likely to negatively impact the heritage significance of the nearby local heritage items and will fail to comply with the requirements of the SREP (Sydney Harbour Catchment) 2005.

Particulars

- a) The proposal negatively impacts upon the heritage significance of the local heritage item identified as Hodgson Lookout Park (I0669) in Schedule 5 of the NSLEP 2013 and would fail to comply with Part B Section 13.4 in NSDCP 2013 by virtue of the excessive bulk and scale of the development.
- b) The proposal negatively impacts the landscape character and visual dominance of the reserve when viewed from Sydney Harbour and therefore does not comply with Part B Section 13.4 of NSDCP 2013 in that it will detract from the aesthetic significance of the heritage listed reserve.
- c) The proposal will likely result in the loss of significant trees that provide high amenity value within Kurraba Reserve. The proposal will also result in additional overshadowing of this reserve. The proposal will therefore adversely impact the amenity of Kurraba Reserve, contrary to objective (1)(a) in Clause 5.10 in NSLEP 2013.
- d) The proposed development will not maintain solar access to Hodgson Lookout Park contrary to objective (1)(c) in Clause 4.3 in NSLEP 2013.
- e) The proposed demolition of the existing buildings will negatively impact the setting of the Opera House as the loss of the dark materials (the brickwork) within the Buffer Zone that currently contrasts the white sails of the Opera House (Conservation Management Plan Policy 2.2) will reduce the visual contrast. The proposal is contrary to the Conservation Management Plan, specifically, Policies 2.1 (Landmark Qualities), 2.2 (Buffer Zone) and 2.3 (Protect Setting).
- f) The application has not adequately assessed the impact of the proposal from the Opera House as required by Clause 58B(b) of the SREP and therefore has not adequately made reference the Conservation Management Plan.

8. Unreasonable privacy impacts to the adjoining properties

The proposed development will result in unreasonable visual and acoustic privacy impacts for the apartments within the building at No. 145 and 145A Kurraba Road.

Particulars

- a) The proposed northern windows and western balconies to the apartments (Apartments 3.01, 4.01, 4.06, 5.01, 5.06 and 7.02) are setback 2190mm and 2925mm from the northern boundary and significantly non-compliant with the minimum setbacks specified in Part 3F of the Apartment Design Guide.
- b) The location of the balconies and the northern windows to the living rooms of the apartments (Apartments 4.06 and 5.06) will result in direct overlooking of the living spaces of the southern apartments at No. 145 Kurraba Road.

- c) The proposed development will result in an unreasonable level of privacy with the adjoining properties contrary to Clause 1.2(2)(c)(i) Aims of Plan in NSLEP 2013, objectives of the R4 High Density Residential zone (dot points 4 and 5), Objective O1 and P2 in Part B, Section 1.3.10 in NSDCP 2013.
- d) The information submitted as part of the application has not demonstrated that the use of the roof top private terrace (north western building) will result in reasonable acoustic privacy with the apartments within the building at No. 145A Kurraba Road.

How community views were taken into account

The owners of adjoining properties and all Precinct Committees were formally notified of the development application between 1 February 2019 and 22 February 2019 and then extended through to 1 March 2019. The notification was undertaken in accordance with Section A4 of NSDCP 2013.

The notification of the proposal resulted in one hundred and forty-six (146) submissions against the application and one (1) submission in support of the application. The issues raised in the submissions were considered in the officer's report and where appropriate included within the reasons for refusal.

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 than two months after the date of notification of the decision to enable the review to be completed within the six month period.

DATE

Signature on behalf of consent authority
LUKE DONOVAN
A/EXECUTIVE PLANNER