

Original signed by: Robin Tse Dated: 9/5/2019

Grafton Property Group Pty Ltd  
**Attention: George Tawaf**  
6 Lower Brooks Street  
LINLEY POINT NSW 2066

D401/18  
LK(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. 401/18** for demolition of the existing dwelling, construction of an attached dual occupancy, and strata subdivision of the development on land described as **104 Grasmere Road, Cremorne** and as indicated on the following drawings:

Drawing Number	Revision	Title	Drawn by	Dated
A0000	DA01	Cover	ess	26 November 2018
A1001	DA01	Site Location Plan	ess	26 November 2018
A1010	DA01	Site Analysis	ess	26 November 2018
A1050	DA01	Site Demolition	ess	26 November 2018
A2201	DA01	Lower Ground	ess	26 November 2018
A2202	DA01	Ground	ess	26 November 2018
A2203	DA01	Level 1	ess	26 November 2018
A2204	DA01	Roof	ess	26 November 2018
A2501	DA01	Subdivision Plan Lower Ground	ess	26 November 2018
A2502	DA01	Subdivision Plan Ground	ess	26 November 2018
A2503	DA01	Subdivision Plan Level 01	ess	26 November 2018
A3101	DA01	Elevation South and East	ess	26 November 2018
A3102	DA01	Elevation North and West	ess	26 November 2018
A3201	DA01	Sections A and B	ess	26 November 2018
A7101	DA01	Windows Schedule	ess	26 November 2018
A7102	DA01	Doors Schedule	ess	26 November 2018
A8201	DA01	Finishes Materiality	ess	26 November 2018

The development application has been assessed against the North Sydney Local Environmental Plan 2013, the North Sydney Development Control Plan 2013, other Council policies and the relevant State Planning Policies.

The proposed development would exceed the 8.5m maximum height development standard within NSLEP, and the applicant not submitted a written request to justify the proposed variation to the building height control. Notwithstanding this, it is considered unlikely that a well-founded case could be made for the proposed breach.

The proposed attached dual occupancy development, by way of its height, scale, and incongruous built form and materials, is not considered to be sympathetic to the character, scale and proportions of existing dwellings in the locality, and would demonstrably harm the character of the site and surrounds, particularly given the visually prominent nature of the site being located on a corner of an intersection.

The development fails to respond favourably to the topography of the site and does not provide a stepping of the built form to follow the natural gradient and provide a transition in scale to neighbouring development.

The development would result in an unacceptable loss of visual and acoustic privacy to neighbours and future occupants, and may also reduce solar access to a neighbour.

Having regard to the above, the application is recommended for **refusal** for the following reasons.

Reasons for Refusal:

**1. Failure to provide a written request pursuant to Clause 4.6 in North Sydney Local Environmental Plan 2013.**

The proposed building exceeds the 8.5 metre height of building development standard within NSLEP 2013 and the applicant has not provided a written request seeking a variation to the height of building development standard required by Clause 4.6 (3) in NSLEP 2013.

**Particulars:**

- a) The proposed development breaches the 8.5m maximum height of building development standard specified in Clause 4.3(2) in NSLEP 2013 in the northern section of the building.
- b) The applicant has not provided a written request seeking a variation to the height of building development standard required by Clause 4.6 (3) in NSLEP 2013, and therefore consent cannot be granted to the development.
- c) The proposed development is not considered to be in the public interest as the development is not consistent with the objectives of the height of building standard in Clause 4.3(1) in NSLEP 2013 and the objectives of the R2 Low Density Residential zone (dot points 4 and 5).

**2. The form of the building would not appear as a dwelling house contrary to Clause 6.6 (1)(a) in NSLEP 2013.**

The proposed building would appear as a residential flat building rather than a dwelling house due to its excessive scale and bulk and incongruous built form, car parking entrance which appears as basement parking, and separate street entrances for the two dwellings.

**Particulars:**

- a) The form of the building would not appear as a single dwelling house because the proposed building is significantly larger both in terms of height and overall bulk, than surrounding characteristic 1-2 storey dwelling houses in the R2 Low Density Residential Zone, contrary to Clause 6.6 (1)(a) in NSLEP 2013.

- b) The form of the building would not appear as a single dwelling house because the proposed car parking entry appears as a basement entrance within a residential flat building, contrary to Clause 6.6 (1)(a) in NSLEP 2013.
- c) The form of the building would not appear as a single dwelling house because there are two separate street entrances to the dwellings, contrary to Clause 6.6 (1)(a) in NSLEP 2013.

**3. The proposed development is not appropriate in its context and is incompatible with the built form, character, and materiality of existing dwellings around the site.**

The proposed development is not appropriate to its context or compatible with the existing and future character of Cremorne by virtue of its excessive bulk and scale, incongruous form and materiality, and failure to respond to the natural topography of the site.

**Particulars:**

- a) The proposed development is three storeys in scale with the northern section of the building exceeding the height of building development standard. Surrounding dwellings are predominantly one to two storeys in scale. The proposed development is therefore not compatible with the predominant scale of the area, contrary to Aims of NSLEP 2013, specifically Clause 1.2(2)(a) and 1.2(2)(b)(i) (Context and Character), Clauses 4.3(1)(e) and (f) in NSLEP (Height of Buildings - Objectives) the Objectives of the R2 Low Density zone, specifically dot point 3, Objective O5 in Part B Section 1.1.1 in NSDCP 2013, and Objective O1 in Part B Section 1.4.7 in NSDCP 2013.
- b) The proposed development does not conform to natural topography or follow the natural gradient through a stepping of the built form contrary to Aims of NSLEP 2013, specifically Clause 1.2 (2)(e)(i), Clause 4.3(1)(a) in NSLEP (Height of Buildings - Objectives), Objective O8 in Part B Section 1.1.1 (General Objectives), Objective O1 and Provision P1 in Part B Section 1.3.1 (Topography), and Provision P4 in Part C Section 5.4.3 (Belong Neighbourhood Character Statement) in NSDCP 2013.
- c) The proposed mansard roof form does not successfully reduce the scale and bulk of the building, and this form along with dark metal materiality of the mansard roof is incongruous in the locality where neighbouring dwellings and apartment buildings typically display traditionally pitched and tiled roofs. The development is therefore contrary to Aims of NSLEP 2013, specifically Clause 1.2(2)(a) and 1.2(2)(b)(i) (Context and Character), Clauses 4.3(1)(e) and (f) in NSLEP (Height of Buildings - Objectives), the Objectives of the R2 Low Density zone, specifically dot point 3, Objective O5 in Part B Section 1.1.1 in NSDCP 2013, and Objective O1 in Part B Section 1.4.7 in NSDCP 2013
- d) The first and second floor side setbacks from Illiliwa Street do not comply with the required 1.5m (first floor) and 2.5m (second floor) setback requirements specified within Provision P2 in Part B Section 1.4.6 in NSDCP 2013. The non-compliance with side setback requirements, height, and topography requirements demonstrates that the scale and bulk of the proposed development is excessive for this site.

**4. Unreasonable privacy impacts to the neighboring properties and future occupants**

The proposed development, by way of its height, scale and design, will result in unreasonable visual and acoustic privacy impacts for neighbours.

**Particulars:**

- a) The proposed large elevated terraces to the north side of the building would enable views into neighbours windows and outdoor amenity areas resulting in a loss of visual privacy. Providing privacy screening to the uppermost terrace at Level 02 would further add to the scale and bulk of the building, which is already unacceptable for the reasons listed in (2) above.
- b) The proposed development would unacceptably reduce visual and acoustic privacy to the neighbour to the west due to the close proximity between proposed windows and existing habitable room windows.
- c) The proposed development would also not maintain privacy for future residents of the building given the large size and clear glazed nature of windows facing neighbours and the public domain, whereby clear and reasonably close overlooking of the future residents would be possible.
- d) The proposed development is therefore contrary to the following:
  - Aims of NSLEP 2013, specifically (2)(c)(i); (Residential amenity);
  - Objectives of the R2 Low Density zone, specifically dot point 3;
  - Objective O4 in Part B, Section 1.1.1 in NSDCP 2013; (Residential amenity);
  - Objective O1 in Part B, Section 1.3.10 in NSDCP 2013; and (Visual privacy);
  - Objective O1 in Part B, Section 1.3.8 in NSDCP 2013; and (Acoustic privacy);
  - Objective O1 and P8 in Part B, Section 1.4.7 in NSDCP 2013; and (Form, massing & scale)

**5. Insufficient detail and information provided on the submitted plans.**

The submitted plans are not adequate to for a full assessment of the proposed development and likely impacts on neighbours.

**Particulars:**

- a) Insufficient information has been provided to be clear on the extent of the exceedance the height of building development standard specified in Clause 4.3(2) in NSLEP 2013. Additional existing spot levels and a sectional plan through the highest part of the building are required to be clear on the proposed height of the building.
- b) Insufficient sectional plans and proposed levels have been provided to be clear on the extent of cut and fill, and the consequential impacts on the streetscape and the amenity of the building for future occupants. Details of proposed levels outside the footprint of the building are also required.

- c) Insufficient information has been provided to be clear on the extent of the solar access impacts to the neighbour to the immediate west of the site. Elevational shadow diagrams are required to be clear on these impacts.
- d) Insufficient details of proposed boundary treatment along the street frontages has been provided. Plans providing details of proposed fencing (materials and finishes/colours) are required to enable an assessment of the impacts on the streetscape.
- e) Insufficient details of proposed landscaping have been provided. In particular, no details have been provided of the number of plants and their proposed pot sizes.

**6. Contrary to the public interest and not suitable for the subject site**

**Particulars:**

- (i) The proposal is not considered to be in the public interest given that the above matters were raised in the eight (8) submissions from nearby residents. The proposal is, therefore, not considered to be in the public interest or suitable for the site contrary to Section 4.15 of the Environmental Planning and Assessment Act 1979 (as amended).

**How community views were taken into account**

The proposal was notified and advertised in accordance with Part A, Section 4 *Notification of Applications* of North Sydney DCP 2013. Eight (8) submissions were received, with key concerns being around excessive scale and bulk, incongruous form and materiality, loss of views, amenity impacts, traffic safety impacts and general overdevelopment in the area. These concerns have been considered in the assessment of the application and refusal is recommended for reasons including those identified in the submissions.

**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.

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DATE

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Signature on behalf of consent authority  
ROBIN TSE  
A/TEAM LEADER (ASSESSMENTS)