

**ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979
NOTICE OF DETERMINATION OF APPLICATION**

27 March 2019

Baini Design
PO Box 2402
NORTH PARRAMATTA NSW 1750

Dear Sir/Madam

Pursuant to Section 4.16 of the Act, Council has refused to grant approval to your Development Application described as follows:

PROPERTY: Lot 34, DP 5714

STREET ADDRESS: 7 Birmingham Street, Merrylands

REFUSAL NO. 2017/226/1

DECISION: Cumberland Local Planning Panel

PROPOSED DEVELOPMENT: Demolition of existing structures; construction of a 4 storey residential flat building comprising 6 units under Affordable Rental Housing SEPP 2009; at-grade parking accommodating 5 carparking spaces.

This Development Application is **REFUSED** in accordance with the Environmental Planning & Assessment Act 1979. The reasons for refusal are set out below.

NOTES:

1. Section 8.2 of the Act provides that an applicant may request, within 6 months of the date of determination of the Development Application, that the Council review its determination (this does not apply to designated development). A fee is required for this review.

It should also be noted that an application under Section 8.2 of the Act cannot be reviewed/determined after 6 months of the date of determination. Therefore, the submission of a Section 8.2 Application must allow sufficient time for Council to complete its review within the prescribed time frame, including the statutory requirement for public notification.

2. Section 8.10 of the Act provides that an applicant who is dissatisfied with the Council's determination of the Development Application may appeal to the Land and Environment Court within six (6) months of the date of determination, or as otherwise prescribed.

REASONS FOR REFUSAL

1. Failure to demonstrate compliance with Holroyd Local Environmental Plan 2013 (pursuant to S.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979), with regard to the following:-

Clause 4.3 – Height of Buildings

- 1.1 The maximum height allowable for any buildings on the site is 15 metres. The height of the proposed building is 15.6 metres, which is greater than the permitted maximum.

Clause 4.6 – Exceptions to Development Standards

- 1.2 A written request, under Clause 4.6, justifying the height variation was not submitted with the amended application. The submitted Clause 4.6 statement relates to the original 5 storey residential flat building and it is not relevant anymore.

2. Failure to demonstrate compliance with State Environmental Planning Policy (Affordable Rental Housing) 2009 (pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979), with regard to the following:-

Clause 14(1) – Site and Solar Access Requirements

- 2.1 Clause 14(1)(d) requires that not less than 15% of the site area is to be provided as deep soil zones. The proposal provides only 13.911% of the site area as deep soil zones, which is considered unsatisfactory.
- 2.2 Clause 14(1)(e) requires that at least 70% of the living rooms and private open spaces of proposed dwellings receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter. The amended proposal does not provided sufficient information to assess the number of hours of direct sunlight. It has been assessed that only 50% of the proposed dwellings may meet this minimum requirement which is considered unsatisfactory.

Clause 16A – Character of Local Area

- 2.3 The proposed development is considered inconsistent with the existing and desired future character of the area. Particular concerns are:
 - The narrow frontage results in a building with inconsistent height to width ratio when compared with other residential flat buildings in the local area.
 - Inadequate separation with other buildings.
 - Inadequate landscaped areas within the side and front setbacks.

- Fragmented nature of the two towers and communal open space.
 - Lack of communal facilities at the ground level.
 - No basement parking, as required for all residential flat buildings.
 - Fragmented communal open space at the roof level.
3. Failure to demonstrate compliance with State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (pursuant to S.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979), with regard to the following:-

Clause 28(2) – Determination of Development Applications

- 3.1 In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration the provisions of the Apartment Design Guide (ADG). The proposal is unsatisfactory with regard to the following provisions of the ADG:

3F – Visual Privacy

- 3.1.1 The proposal compromises visual privacy of the future occupants of the subject site and neighbouring buildings, as it fails to achieve the required building separation, as follows:

- Up to 4th storey habitable room windows of all units require a 12m separation between buildings (6m for each building). However, only 5.1m is provided.
- The 5th storey common open space area requires a 18m separation between buildings and 9m separation to the eastern, western and northern boundaries. However, only 3m to 7.81m is provided.

In addition to compromising visual privacy of the proposed dwellings, the above non-compliances will compromise the future development potential of the southern-adjoining property.

4E – Private Open Space and Balconies

- 3.1.2 Two bedroom apartments are required to have a minimum balcony area of 10sqm, apartments 01.02, 02.02 and 03.02 have a balcony area of 9.5sqm. This will result in an unacceptable amenity outcome for future tenants.

4G – Storage

- 3.1.3 One bedroom apartments are required to have 6sqm of storage space and two bedroom apartments are required to have a minimum 8sqm of storage space with up to 50% of storage located outside of the apartment. The proposal has 0.7-1.3sqm for one bedroom apartments and 0.7sqm for two bedroom apartments and 1sqm per

apartment located on the ground floor. Resulting in an unacceptable amenity outcome for future tenants.

4. Failure to demonstrate compliance with Holroyd Development Control Plan (DCP) 2013, Part A – General Controls (pursuant to Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979), with regard to the following:-

Clause 7.3 – Stormwater Drainage – Technical

- 4.1 The proposal does not clearly demonstrate how it will manage overland flow on site. This results in an inability of Council to assess the proposed stormwater system.
- 4.2 The proposal does not clearly demonstrate that overland flow will not enter the ground floor areas of the buildings. This results in an inability of Council to assess the proposed stormwater system.
- 4.3 There are numerous differences between the architectural plans and stormwater management plans submitted. This results in an inability of Council to assess the proposed stormwater system.

Clause 7.4 – Easements

- 4.4 The proposal includes construction of a concrete slab over the existing public easement on the site, contrary to Council's controls. This will inhibit the accessibility for maintenance of the stormwater drainage line.

Clause 8.2 – Flood Prone Land – Additional Information Required

- 4.5 The proposal has not clearly demonstrated how it will manage potential flooding to ensure neighbouring properties are not impacted. These result in an inability of Council to assess the proposed flood effects of the proposal.

5. Failure to demonstrate compliance with Holroyd Development Control Plan (DCP) 2013, Part B – Residential Controls (pursuant to Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979), with regard to the following:-

Clause 1.4 – Visual & Acoustic Privacy

- 5.1 The proposed building materials and finishes of open style vertical louvres to the western side of the staircases for both buildings will result in an unacceptable level of acoustic and visual privacy impacts on the neighbouring site. This will also have potential amenity impacts on future occupants of the site.

Clause 6.1 – Lot Size & Frontage

- 5.2 The minimum site frontage for residential flat building development is 24m. The proposal has a site frontage of 15.24m. Given the proposed development also fails to provide adequate setbacks and building separation

and if approved will result in isolation of the adjoining lot, this shortfall cannot be supported.

Clause 6.2 – Site Coverage

- 5.3 The maximum site coverage for residential flat development is 30% of the site area. However, the proposed development has site coverage of 56.8%. Given the proposed development also fails to provide adequate setbacks, building separation, stormwater management and lot frontage, the excessive site coverage cannot be supported.

Clause 6.8 – Building Entry & Pedestrian Access

- 5.4 The proposed building entry is not clearly identified, sheltered, well lit and visible from the street. It also enters directly into the at grade car parking level and has no entry foyer. As such this design does not comply with the DCP and cannot be supported.

Clause 6.9 – Parking and Vehicular Access

- 5.5 The DCP requires parking for residential flat buildings to be at basement level. The proposed at grade carparking cannot be supported.

Clause 6.10 – Dwelling Mix

- 5.6 The total number of one-bedroom dwellings proposed is 50%, which exceeds the required maximum of 20% provided under the DCP.

Clause 7– Landlocked Sites

- 5.8 The submitted documentation as per the amended proposal included provision of 2 x valuations and an offer to purchase the adjoining site. As per the DCP requirement for landlocked sites, however no concept plan was submitted which demonstrated how a future development at No. 9 Birmingham Street could be achieved to ensure a high quality streetscape.
6. Based on the above deficiencies, the likely environmental impacts of the development are not considered acceptable (pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979).
7. Based on the above deficiencies, the site is not considered suitable for the development as proposed (pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979).
8. Based on the above deficiencies, approval of the proposed development would not be in the public interest (pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979).

Yours faithfully

Karl Okorn
MANAGER DEVELOPMENT ASSESSMENT