

Our Reference:
Contact:
Phone:

2019/11
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**ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979 (AMENDED)
NOTICE OF DETERMINATION OF APPLICATION**

14 August 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: Lots 29-34, Sec 9, DP734

STREET ADDRESS: 58-60 Berwick Street, Guildford

REFUSAL NO. 2019/11/1

DECISION: Cumberland Local Planning Panel

PROPOSED DEVELOPMENT: Demolition of existing structures and construction of a 4 storey building comprising of a 76 place child care centre on the ground floor with 18 residential units above with two basement car parking levels for 36 vehicles; under Affordable Rental Housing SEPP 2009

This Development Application is **REFUSED** in accordance with the Environmental Planning & Assessment Act 1979 (amended). 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 integrated or designated development). A fee is required for this review.

It should also be noted that an application under Section 8.3 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 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:-

Floor Space Ratio

- 1.1 Clause 13 applies to development if the percentage of the gross floor area of the development that is to be used for the purposes of affordable housing is at least 20%. No affordable units have been identified to confirm the percentage of affordable housing provided, and to determine overall floor space ratio (FSR) compliance inclusive of any FSR bonus applicable.

Landscaped Area

- 1.2 Clause 14(1)(c) requires that not less than 30% of the site area is to be provided as landscaped area. The proposal provides 27.28% of landscaped area, which is considered unsatisfactory.

Deep Soil Zones

- 1.3 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 2.22% of the site area as deep soil zones, which is considered unsatisfactory.

Solar Access

- 1.4 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 proposal provides direct sunlight to only 66.7% of the proposed dwellings which is considered unsatisfactory.

Clause 16A – Character of Local Area

- 1.5 In accordance with Clause 16A, the excessive height, inadequate setbacks, outdoor play spaces within the front setback area, and limited landscaped and deep soil areas, result in an overly bulky development that will adversely impact the adjoining properties and is not in harmony with the existing or desired future character of the local area.

2. 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

- 2.1 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:

3B – Orientation

- 2.1.1 By reason of the inadequate separation distances between proposed development and the southern boundary, the shadow from the proposed building is such that the adjoining dwellings at 62-66 Berwick Street, Guildford do not receive 3 hours of direct sunlight to living areas between the hours of 9am and 3pm during mid-winter. It is noted that the north-facing windows and balconies on the adjoining dwellings to the south are overshadowed between the hours of 9am and 1pm during mid-winter. Council is unable to accurately determine the extent of the overshadowing due to the inadequacy of the information provided.

3C – Public Domain Interface

- 2.1.2 The public domain along both Berwick Street and Beaufort Street, Guildford comprise of groundcover and shrub planting forward of the outdoor play spaces of the childcare centre, enclosed by high acoustic fencing. The landscape treatment proposed to both street frontages does not promote an active street edge and conceals direct view of the building entrances.

3F – Visual Privacy

- 2.1.3 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, balconies of Typical Units 01.05 and 01.06 on Levels 1-3, require a 6m separation to the eastern boundary. However, only 5.5m is provided.
 - Up to 4th storey, balconies and habitable rooms of typical units '01.04' and '01.05' on Levels 1-3, require a 6m separation to the southern boundary. However, balconies and habitable rooms only provide a 4.8m and 5.4m separation respectively.
 - The 5th storey common open space area requires a 9m separation to the eastern and southern boundaries. However, only a 6m separation to the eastern boundary is provided.

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

3G – Pedestrian Access and Entries

- 2.1.4 The building entry to apartments from Berwick Street is not clearly defined or easily identifiable. The residential pedestrian access is narrow and hidden between two outdoor play spaces of the child care centre and as such can be easily mistaken as the entry for the child care centre.

4D – Apartment Size and Layout

- 2.1.5 The central single facing east apartment (“Unit 01.06”) is replicated on Levels 1-3 inclusive and proposes a snorkel bedroom (being the master bedroom). The snorkel bedroom is positioned in between the southern wall (2m depth) of the second bedroom and balcony of the adjoining apartment, and as such receives poor sunlight and ventilation.

4M – Facades

- 2.1.6 The building’s presentation along both street frontages, at the street level is not considered acceptable as it comprises the outdoor play spaces of the child care centre and is inconsistent with the existing streetscape and changing character of the local area. The building entries are also not clearly defined.

4O – Landscape Design

- 2.1.7 The landscape design proposed at the ground level is minimal and limited to a width of 1m and 2m along Beaufort St and Berwick St respectively, forward of the child care centre’s outdoor play space. In addition, the proposed landscape treatment of the front setback area has not been distributed within the front setback to provide adequate visual softening of the building.

3. 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

- 3.1 Pursuant to the Height of Buildings Map referred to in Clause 4.3(2) of HLEP 2013, the maximum permissible building height for the site is 15m. The maximum height of the proposed building is 16.5m, which is 1.5m greater than the maximum building height, representing a 10% variation to the development standard.

Clause 4.4 – Floor Space Ratio

- 3.2 Pursuant to the Floor Space Ratio (FSR) Map referred to in Clause 4.4(2) of HLEP 2013, the maximum permissible FSR for the subject site is 1.2:1. The proposal has a FSR of 1.53:1 which exceeds the maximum FSR permitted by 412.08m², representing a variation of 27.78% to the development standard.

The development application must be refused because the FSR of the proposal is excessive and the Applicant has not provided a written request pursuant to Clause 4.6 of HLEP 2013 in relation to the contravention of the development standard in clause 4.4(2) of HLEP 2013 to demonstrate:

- i. that compliance with the development standard in clause 4.4(2) of HLEP 2013 is unreasonable or unnecessary in the circumstances of the case, and
- ii. that there are sufficient environmental planning grounds to justify contravening the development standard in clause 4.4(2) of HLEP 2013.
- iii. that the proposed development will be in the public interest because it is consistent with the objective of the standard in clause 4.4(2) of HLEP 2013.

Clause 4.6 – Exceptions to Development Standards

- 3.3 The development application has not adequately demonstrated that the variation to the building height would allow the development to maintain the provision of adequate solar access for the subject site or the adjoining property to the south. With inadequate provision of building separation and setbacks, the excessive height is therefore not considered appropriate as it will result in a building that presents an excessive bulk and scale and is inconsistent with the desired future character of the area. In this regard, the Clause 4.6 variation request submitted with the application is not well founded.

4. Failure to demonstrate compliance with State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979), with regard to the following:-

Clause 23 – Matters for consideration by consent authorities

- 4.1 The proposed child care does not comply with the provisions of the Child Care Planning Guideline (CCPG) 2017 as listed under Section 5 below.

Clause 25 – Non discretionary development standards

- 4.2 The location and the size of indoor and outdoor space of the proposed child care do not comply with the provisions of the CCPG 2017 as listed under Section 5 below.

5. Failure to demonstrate compliance with Child Care Planning Guideline (CCPG) 2017 (pursuant to S.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979), with regard to the following:-

Part 2 – Design quality principles

- 5.1 The proposed development is not considered to have been designed having regard to the design quality principles, particularly in relation to context, built form, adaptive learning spaces, amenity and safety.

Part 3 – Matters for consideration

- 5.2 The proposed development is not considered to have been designed having regard to site selection and location in accordance with Parts 3.1, 3.2, 3.3, 3.4, 3.5, 3.6 and 3.8 of CCPG 2017, particularly unsatisfactory setbacks, acoustic and privacy impacts, landscaping and fencing, parking and traffic impacts and inconsistent with the character of the locality.

Part 4 – Applying the National Regulations

- 5.3 Under Part 4.2 of the CCPG2017 (Regulation 106 of E&CSNR), there must be laundry facilities provided on site or access to laundry facilities provided. There are no laundry facilities provided on site for the child care centre and no details of external laundry service arrangements for dealing with soiled clothing, nappies and linen.
- 5.4 Under Part 4.9 of the CCPG2017 (Regulation 108 of E&CSNR) a minimum of 7m² of unencumbered outdoor space must be provided per child. Council's assessment of the plans indicate a non-compliance with this regulation as the OSD pits, retaining walls and landscaping within the swale outdoor play area are not included. In addition, outdoor spaces are provided within the required front setback area along both street frontages which would have negative impacts on the streetscape, set an undesirable precedent for future development within the locality and is unsafe for the children's well-being.
6. Failure to demonstrate compliance with Holroyd Development Control Plan (DCP) 2013, Part A – General Controls (pursuant to S.4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979), with regard to the following:-

Clause 3.1 – Bicycle Parking

- 6.1 The proposal is required to provide 11 residential bicycle spaces. Only 7 bicycle spaces are provided which results in shortfall of 4 bicycle spaces.

Clause 3.5 – Access, Manoeuvring and Layout

- 6.2 Driveways shall be setback a minimum of 1.5m from the side boundary. The driveway provides a deficient side setback of 1.225m to the eastern boundary.

Clause 8 – Flood Prone Land

- 6.3 The site is identified as flood prone in Council's mapping. The proposal comprises of a child care centre which is identified within the sensitive land use category in Table 7 – Land Use Categories for Development upon Flood Prone Land – Section 8 – Flood Prone Land in Part A of HDCP 2013. In this

regard, the finished floor level (FFLs) shall be equal to or greater than the PMF level in accordance with the Flood Risk Precincts (FRPS) in Part A of HDCP 2013. Given the submitted Survey Plan is incorrect, the proposal fails to provide the required levels for the proposal and there is inadequate information to support the development.

Waste Management

- 6.4 The proposal fails to provide separate bin storage rooms for the child care centre and residential apartments, and is unsatisfactory with regard to the ongoing management of waste.
7. Failure to demonstrate compliance with Holroyd Development Control Plan (DCP) 2013, Part B – Residential Controls (pursuant to S.4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979), with regard to the following:-

Clause 1.2 – Fences

- 7.1 Under Clause 1.2, Part B of the Holroyd Development Control Plan (HDCP) 2013 front fences are permitted to be solid up to a height of 1 metre and are to be at least 50% transparent to 1.5metres. The fencing proposed along Berwick Street and Beaufort Street frontages is greater than 1.5 metres in height and will be solid construction, which is inconsistent with the existing streetscape.

Clause 1.4 – Visual & Acoustic Privacy

- 7.2 Non-compliance with building separation and setbacks, and close proximity of habitable windows and balconies, and the roof top terrace of the proposal to north-facing units at 62-66 Berwick Street, and properties adjoining the site to the east at 63 & 63A Bangor Street; would have unacceptable impacts on the visual and acoustic privacy of the future occupants of these units.

Clause 1.8 – Sunlight Access

- 7.3 Insufficient information was provided with the application to demonstrate that one main living area and at least 50% of the principal private open space area of units at 62-66 Berwick Street will receive a minimum 3 hours of direct sunlight between 9am and 4pm at mid-winter.

Clause 6.2 – Site Coverage

- 7.4 The maximum site coverage for residential flat development is 30% of the site area. However, the proposed development has site coverage of 38%. Given the proposed development also fails to provide adequate communal open space, setbacks and building separation, the excessive site coverage cannot be supported.

Clause 6.3 – Setbacks

- 7.5 A minimum front setback of 6m from the principal street is required up to 4 storey and 9m for the 5th storey element of the development. However, the outdoor play spaces are provided within the front setback area and balconies are setback 5.5m from the Berwick Street/western boundary.
- 7.6 A minimum front setback of 4m from the secondary street is required to Beaufort Street. However, the outdoor play spaces are provided within the front setback area and balconies are setback 3.5m from the Berwick Street/northern boundary.

Clause 6.5 – Internal Building Depth

- 7.7 The maximum internal depth of a residential flat building shall be 18m. The proposal provides a 19.4m internal building depth and exceeds maximum internal building depth permitted.
8. Failure to demonstrate compliance with Holroyd Development Control Plan (DCP) 2013, Part I – Child Care Centres Controls (pursuant to S.4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979), with regard to the following:-

Clause 2 – Vehicular Access and Parking

- 8.1 The proposal fails to provide separate entry and exit driveways to ensure safe pedestrian and vehicular movements and that inbound and outbound vehicles are separated.

Clause 3 – Acoustic and Visual Privacy

- 8.2 The submitted acoustic report provides no consideration for the use/impacts of noise from the child care centre. The report also did not have consideration of the use/impacts from the proposed 76 place child care centre on the future residents on the site as well as adjoining neighbours. As such, projected noise levels have not been identified for the child care centre, and no acoustic fencing has been recommended or incorporated within the design of the centre to minimise the impact of noise generated by the child care centre on surrounding properties.

Clause 4 – Indoor Spaces

- 8.3 It has not been adequately demonstrated that indoor spaces receive a minimum 3 hours of sunlight between 9am and 3pm, mid-winter as required by Section 4 – Indoor Spaces – Part I – Child Care Centres of HDCP 2013. In this regard, the design does not ensure that solar access to indoor spaces is optimised.

Clause 5 – Outdoor Spaces

- 8.4 The provision of outdoor spaces adjacent to the basement car parking entry, and within the front setback areas is not supported. Acoustic measures are

not proposed to mitigate any potential noise impacts from outdoor spaces. In addition, there is potential for objects to fall onto the outdoor play spaces from apartments above.

Clause 8 – Fire Safety and Emergencies

- 8.5 The evacuation plan indicates that there is only one emergency exit via the entry of the centre. In the case of an emergency, this would be impractical having regard to the number of children proposed for the centre. An additional point of exit is not provided to assist with evacuation in the event of an emergency also noting that there are apartments above.

Traffic and Parking

9. The development application should be refused because the design of the basement and car parking provided is unacceptable and fails to meet relevant Australian Standards. There is inadequate information to demonstrate the following:
- i. An accessible parking space shall be provided for each adaptable unit.
 - ii. Details of loading / unloading within the site shall be provided for garbage collection, removal trucks and delivery vehicles.
 - iii. Separate entry and exit driveways shall be provided with a minimum width of 3 metres each. This will produce the traffic circulation system, minimise the number of vehicles reversing out and improve a safety of children in the car park. A separation distance of 1.2m is required between the driveways.
 - iv. The proposed aisle width shall be widened to accommodate two way traffic flow in accordance with Australian Standard 2890.1-2004 at the below locations:
 - Basement 1 – between lift and stairs.
 - Basement 1 – between disabled shared area (parking bay 15) and wall.
 - Basement 2 – between parking bays 16 and 17.
 - v. Swept path analysis shall be provided demonstrating the following:
 - A vehicle can pass another vehicle at all passing areas (particularly at the entry points and at top and bottom of the ramps).
 - A vehicle can exit the car park areas when all commercial parking spaces are occupied.
 - A vehicle can enter and exit the driveway in a forward direction. Details of the road including, kerbline, signs, traffic devices, power poles, other structures and neighbouring driveways shall be shown on the plans.
 - The largest vehicle (heavy vehicle) can enter the site, manoeuvre into the loading area and exit the site in a forward direction.
 - vi. Two way traffic flow shall be provided throughout the proposed basements carpark, driveway and ramps.
 - vii. The proposed curved ramps for two-way traffic flow shall be designed in accordance with Australian Standard 2890.1-2004.
 - viii. All vehicles shall be able to enter and exit the site in a forward direction.
 - ix. Long sections of the proposed driveway/ramp shall be provided with gradients and dimensions. The transition at the top and bottom of the driveway/ramps should be checked for scraping and bottoming out.

- x. The head height clearance for parking space/s underneath the proposed ramp shall be designed in accordance with Australian Standard 2890.1-2004 and shall be showing on the plan.
- xi. Details of the control device for the roller gate shall be shown on the plans. The control device shall not reduce the width of the access driveway and shall not impact on the flow of traffic and road safety.

Inadequate Information

- 10. The development application should be refused because there is inadequate information submitted with regard to the following:
 - i. A survey plan prepared by a registered surveyor that includes existing site contours and spot levels throughout the site along with the location of all existing structures to the Australian Height Datum (mAHD) is required – The submitted survey plan does not correspond with levels as identified in Council’s mapping system. The variation of levels is approximately 6.0m.
 - ii. The elevation plans are incorrectly labelled.
 - iii. The submitted Acoustic Report does not consider the noise impacts of the proposed child care centre, car park noise or noise generated from mechanical plant, on surrounding properties.
 - iv. Insufficient information was provided with the application to demonstrate that at least one main living area and private/communal open space areas of the southern-adjointing property will receive adequate solar access.
 - v. There is inadequate information submitted to address issues raised with respect to the design of the basement and traffic and parking matters.
 - vi. There is inadequate information submitted to ensure adequate safety clearances are provided from the existing electricity powerlines.

Suitability of the site for the proposed development

- 11. The subject site is not considered suitable for the development as proposed due to the inadequacies detailed above (section 4.15(c) of the Environmental Planning and Assessment Act 1979).

Environmental Impact

- 12. Due to the deficiencies detailed above, the likely environmental impacts of the proposed development are considered to be unacceptable (section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979).

Public Interest

- 13. Due to the deficiencies detailed above and resident submissions received, approval of the proposed development would be contrary to the public interest (section 4.15(1)(d) & (e) of the Environmental Planning and Assessment Act 1979).

Yours faithfully,

Sohail Faridy
COORDINATOR DEVELOPMENT ASSESSMENT