



Mr S Ibrahim
PDS Engineering Division Pty Ltd
Level 1, 8 Knox Lane
DOUBLE BAY NSW 2028

D66/23
MH9 (CPE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
NOTICE OF DETERMINATION – Refusal**

Issued under Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979 ("the Act").

Development Application Number: 66/23

Land to which this applies: 286-294 Pacific Highway, Crows Nest
Lot No.: 1, DP: 1279891

Applicant: S Ibrahim, PDS Engineering Division Pty Ltd

Proposal: Partial demolition of the existing heritage item, construction of a 13 storey mixed use building comprising ground floor and first floor commercial tenancies, 61 residential apartments, 4 levels of basement parking containing 105 car parking spaces, public domain works and landscaping

Determination of Development Application: At its meeting of 8 November 2023, the **Sydney North Planning Panel (SNPP)**, as the consent authority, considered PPSSNH-377 – North Sydney - Development Application No. **66/23** and the subject application has been refused for the reasons stated below.

Date of Determination: 10 November 2023

Reasons for Refusal

1. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of *the Environmental Planning and Assessment Act 1979* as the proposal is contrary to the objectives of the aims of plan of North Sydney Local Environmental Plan 2013 pursuant to Clause 1.2 in that the proposal is inconsistent with:
 - (a) The proposal does not provide development that is appropriate to its context and is does not enhance the amenity of the North Sydney community and environment (Clause 1.2(2)(a));
 - (b) The proposal is not compatible with the desired future character in terms of its bulk and scale (Clause 1.2(2)(b)(i));

- (c) The proposal adversely affects the residential amenity of adjoining properties in terms of visual and acoustic privacy and solar access (Clause 1.2(2)(c)(i));
 - (d) The proposal fails to appropriately conserve and enhance the built heritage of North Sydney and protect its significance (Clause 1.2(2)(f));
- 2. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of *the Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the objectives of the R2 Low Density Residential zone pursuant to Clause 2.3 of the North Sydney Local Environmental Plan 2013 in that:
 - (a) The proposal provides for housing that compromises the amenity of the surrounding area;
 - (b) The proposal does not ensure a high level of residential amenity is achieved and maintained;
 - (c) The proposed development contains uses that are not permissible within the zone; and
 - (d) The proposal is for high density housing contrary to the zone objective to provide development of sites for low density housing.
- 3. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of *the Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the objectives of the MU1 Mixed Use zone pursuant to Clause 2.3 of the North Sydney Local Environmental Plan 2013 in that:
 - (a) The proposal does not ensure a high level of residential amenity is achieved and maintained;
 - (b) The proposal has an adverse impact upon the amenity of adjoining low density zones in terms of solar access, overshadowing, overlooking and loss of privacy.
- 4. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of *the Environmental Planning and Assessment Act 1979* as the variation to the building height development standard pursuant to Clause 4.3(2) of North Sydney Local Environmental Plan 2013 lodged pursuant to Clause 4.6(3) has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case or that there are sufficient environmental planning grounds to justify the contravention of the development standard.
- 5. The proposal is unsatisfactory having regard to Section 4.15(1)(a)(i) of *the Environmental Planning and Assessment Act 1979* as the proposed development as a whole does not ensure that a high level of amenity is achieved and maintained. The Clause 4.6 Statement in respect to the non-compliance with Clause 4.3 Height of Building standard is not considered to be well founded or in the public interest.
- 6. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of *the Environmental Planning and Assessment Act 1979* as the proposal is contrary to the provisions of clause 5.10 (10) as it fails to conserve the environmental heritage of North Sydney. The proposed development would adversely impact the significance of the heritage item on the Site, including its fabric, setting and views, and adversely impact the setting of further heritage items located in the vicinity of the Site. The proposal involves the demolition of the majority of the fabric of the heritage item, including fabric identified as having a high level of significance. The proposal is inconsistent with:
 - (a) Clause 5.10 (10) subclause (a) in that the conservation of the heritage item is not facilitated by the proposal. The proposal involves the construction of several levels of basement and a large development which requires the demolition of the majority of the fabric of the heritage item.
 - (b) Clause 5.10 (10) subclause (b) in that it is not in accordance with a heritage management document approved by the consent authority. The heritage management documents submitted

by the proposal are inadequate and have not been approved by Council as the consent authority.

- (c) Clause 5.10 (10) subclause (c) as the proposal does not require the carrying out of all necessary conservation works.
 - (d) Clause 5.10 (10) subclause (d) in that the proposed development would adversely affect the heritage significance of the heritage item.
7. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of *the Environmental Planning and Assessment Act 1979* as the design quality of the proposal when evaluated in accordance with the design quality principles is unacceptable, contrary to Clause 28(2)(b) of State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development ('SEPP 65') and adequate regard has not been demonstrated to the design quality principles contrary to Clause 30(2)(a) of SEPP 65. Consent must not be granted as the proposal does not demonstrate that adequate regard has been given to the design quality principles. In particular, the proposal is inconsistent with the following design quality principles:

- (a) Principle 1 - Current and Neighbourhood Character: The thirteen and eleven storey building does not respect the existing context, comprising the spatial; and visual qualities of Five Ways intersection and Willoughby Road, the heritage item on the site, the adjacent heritage item I0173, Crows Nest Fire Station and item I0151 at the corner of Shirley Road. The height of the development is inconsistent with the desired future character and built forms envisaged by the St Leonards and Crows Nest 2036 Plan.
- (b) Principle 2 - Built Form and Scale: The height, bulk and scale would be a significant departure from the existing context along the Pacific Highway and a dominating presence in the R2 zone in Sinclair Street. The setbacks of the proposed development do not provide adequate building separation at the side boundaries.

The north elevation would present large areas of blank wall visible from the public domain and the heritage listed Fire Station in Shirley Road. The proposed 42.93m building height in the R2 zone and 53.77m height in the MU1 zone is excessive and inappropriate. The built form should step down in height within the MU1 zone to the boundary with the R2 zone and be set back at the rear. The development would encourage creep of more tall buildings from the south towards the Five Ways intersection, creating an unacceptable sense of enclosure of the public domain.

The development is not consistent with the current built forms permissible under North Sydney Local Environmental Plan 2013 or the built forms envisaged under the St Leonards and Crows Nest 2036 Plan. The built form would produce a dominating presence towering above and over the heritage listed former North Shore Gas Company building and in the visual curtilage of the heritage listed Fire Station.

- (c) Principle 3 - Density: The floor space provided by a building that: exceeds height standards by a large margin; extends across the R2 zone boundary; has insufficient side and rear and front setbacks would result in unacceptable amenity outcomes and a significant overdevelopment of the site.
- (d) Principle 5 - Landscape: Insufficient deep soil is provided. The effective deep soil, discounting the through site link and driveway, is 141.8m² = 5.1%, which is confined to the rear of the site. An arborist's report must be provided to assess impacts on the tree at the north boundary and

the trees on the northern boundaries of properties to the south. The benefits of the proposed public open space bordering Sinclair Street are limited due to the remote location within the development, which is more likely to be used by residents of the apartments. The proposed through site link is not required in the strategic planning framework for the locality and would be of limited value to the public.

- (e) Principle 6 - Amenity: The proposed development would adversely affect the privacy and outlook of properties in the R2 zone along Sinclair Street. The shadow diagrams indicate that a significant increase of overshadowing would be experienced by residents in the dwelling houses in Sinclair Street. The proposed development responds poorly to various aspects of the Apartment Design Guide detailed at particular (n).
 - (f) Principle 7 - Safety: A Crime Prevention through Environmental Design report has not been provided. Safety and security of the through site link and residential entry should be properly addressed.
 - (g) Principle 9: - Aesthetics: The building steps out to zero setback above Level 7 above the podium, which would create an uncharacteristic built form with a dominating effect towards the Pacific Highway. The south-east corner of the eleven-story rear section of the building steps out above Level 3. That part of the building extends 22 metres beyond the R2 zone boundary and would present a dominant bulk and scale to the properties in the R2 zone.
8. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of *the Environmental Planning and Assessment Act 1979* as there are numerous inconsistencies with the Apartment Design Guide pursuant to Clause 28(2)(c) of State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development ('SEPP 65') which result in an unsatisfactory impact to amenity, adjoining properties and the streetscape, including the following:
- (a) Part 3A: The site analysis does not recognise the sensitive interface with existing properties in the R2 zone with regard to potential impacts of bulk and scale, relationships to heritage items, overshadowing and privacy.
 - (b) Part 3D: Although communal open space provided meets the 25% of site area in Design Criterion 1 in 3D-1, the distribution of the spaces is such that the communal/public open space at the rear of the site is isolated by a twelve-metre wall of commercial spaces and the communal open space at ground level is accessible only to occupants of the commercial accommodation and is overshadowed. A WC should be provided within the communal open spaces at levels 11 and 13.
 - (c) Part 3E: The area identified as deep soil zone at the rear of the site is claimed to have an area 9% of the site area. The effective deep soil zone has an area of 5% of the site area due to the unavailability of land for planting on the through site link and the driveway.
 - (d) Part 3F: The side setback from 270 - 272 Pacific Highway boundary is six metres for the full height of the building. The setback above four levels is required to be nine metres to provide building separation and privacy regardless of whether the adjacent building (proposed at similar height) is residential or commercial. Although angled windows are proposed (within the setback), balconies will face into a high narrow space with poor outlook and poor privacy, either to blank walls or commercial windows. The indented lightwell on the north side of the building separates opposing windows of bedrooms in different apartments. Privacy issues have not been adequately addressed.

- (e) Part 4A: Seventeen of the sixty-one apartments would receive no sunlight between 9.00am and 3.00pm at the winter solstice. This represents 28% of the apartments and does not comply with the maximum 15% required. Daylight to the bedroom windows on the north side of the building would be severely limited by the depth of the lightwell and its narrow aperture of 5 metres on the boundary, as well as existing and future buildings at 296-304 Pacific Highway.
9. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with various parts of Part A, B and C of the North Sydney Development Control Plan 2013 in that:
- (a) The proposed development does not satisfactorily respond to Part B Section 2.1.1 General Objectives - O8 and O10 as it does not provide an acceptable level of amenity to residents living within some apartments and adjoining and nearby properties.
 - (b) The proposed development does not satisfactorily respond to P2 in Part B Section 2.3.7 - Solar Access. Solar access to residential properties in Sinclair Street would be significantly reduced.
 - (c) The potential impact of reverberation of sound in the six-metre gap between the south-east facing apartments and a tall building on 270-272 Pacific Highway should be addressed in an Acoustic report to satisfy O1, P2 and P4 of Part B Section 2.3.9.- Acoustic Privacy.
 - (d) The building separation between 270-272 Pacific Highway and between opposing bedroom windows across the light well have not been adequately assessed to address O1, P1, P4, P5 and Table B 2.8 in Part B Section 2.3.11- Visual Privacy.
 - (e) The design of the proposed development is not consistent with the provisions of Part A Section 5 - Site Analysis and O1, P1, P2 of Part B Section 2.4.1. Context.
 - (f) The proposed development does not provide a reduction in scale at the interface with the R2 zone or compliant side setbacks and is inconsistent with Part B Section 2.4.3 Setbacks: O1, O2 and P2 and P7.
 - (g) The design of the street façade is not in accordance with Part B Section –2.4.4 - Podiums O1 and P1. The street frontage setback above Level 3 does not maintain the setback for the height of the building and has zero setback above Level 8. P1 states “*where required, a podium must be provided along all street frontages including laneways, with a height and setback above the podium, in accordance with the relevant area character statement (refer to Part C of the DCP)*”.
 - (h) The proposed development does not satisfactorily respond to Part B Section 2.4.5 - Building design - O1, P9 and P11. It does not ensure that buildings are designed to reinforce the urban character of a locality by complying with the height standard of North Sydney DCP or the height proposed under the St Leonards and Crows Nest 2036 Plan, where lower buildings are intended around the Five Ways intersection and in response to the setting and visual curtilage of heritage items in that locality. The proposed development would expose seven and ten storey high blank walls on the north elevation.
 - (i) The proposed development fails to satisfy Part B Section 2.4.6 - Skyline O1 and P2. It does not step down from the centre of the mixed-use centre to a comparable scale at the interface of the adjoining R2 residential zone.

- (j) The proposed thoroughfare through the Site is not 6 metres wide, does not receive natural light where it is under the building, and is not open to the sky. It does not comply with Part B Section 2.4.9 - Through-site pedestrian links - O3, P5, P8 and P9.
 - (k) The proposed lightwell is not in accordance with O1, and P1 of Part B Section 2.5.5 - Light Wells and Ventilation.
 - (l) The form massing and scale is inconsistent with O2 and P1 of Part C Section 3.2.3.2. It does not provide a positive transition in height and scale from tall towers to the neighbouring and adjoining lower density area or transition in scale from the Crows Nest Metro Station area.
 - (m) Side and rear setbacks are not in accordance with Part C Section 3.2.3.3 - O1, P3 and P7. The front setback above the podium from Level 8 is not in accordance with Section 3.2.3.5 - O1, O2, O3, O5, P1, P4 and Figure C-3.2 -5.
10. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(iii) of *the Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the relevant Australian Standards for car parking and service vehicle facilities and does not comply with the NSDCP 2013 Part B, Section 10 in that:
- (a) Table B-10.2 of NSDCP 2013, Part B, Section 10 specifies a maximum car parking rate of 1 space per 400m² non-residential Gross Floor Area (GFA). The development proposes a total non-residential (commercial) GFA of 2,443m², which based on the applicant parking rate, requires the development to provide a maximum of 6 car parking spaces for the non-residential (commercial) use. The development proposes a total of 54 car parking spaces for the non-residential (commercial) use, which significantly exceeds and is non-compliant with Table B-10.2 of NSDCP 2013, Part B, Section 10.
 - (b) The design of the proposed accessible car parking spaces do not comply with the relevant requirements of AS 2890.6-2022 and Clause 10.3 of the NSDCP 2013 Part B, Section 10.
 - (c) The centrally located lift opens onto the vehicular roadway / parking aisle on Basement Levels 1-4. This arrangement is unsafe for pedestrians and motorists and does not comply with BCA requirements.
 - (d) The design of the western loading bay on Lower Ground level does not allow for the required 2 metre clearance zone at the rear of parked Medium Rigid Vehicle (MRV), as is required under the Waste Management Plan prepared by MRA Consulting Group. Furthermore, the swept path analysis drawings included in the Traffic and Parking Impact Assessment report prepared by McLaren Traffic Engineering, demonstrate that an unacceptable number of turn movements are required when entering the western loading bay and that an MRV is unable to satisfactorily exit the site onto Sinclair Street. The proposed vehicle access and loading bay arrangements are therefore non-compliant against the requirements of AS 2890.2-2018 and Clause 10.4 of the NSDCP 2013 Part B, Section 10.
 - (e) It has not been demonstrated how vehicular traffic including cars and service vehicles, will be managed at the vehicle access and how the basement car park and loading area will be secured, as per Clause 10.3.1 of the NSDCP 2013 Part B, Section 10, Provision P6.
 - (f) The swept path analysis drawings included in the Traffic and Parking Impact Assessment report prepared by McLaren Traffic Engineering demonstrate that B99 and B85 Design Vehicles are unable to satisfactorily pass one another when circulating throughout the basement levels. The

proposed traffic circulation and car parking arrangements are therefore non-compliant with AS 2890.1-2004 and Clause 10.3 of the NSDCP 2013 Part B, Section 10.

- (g) The retail trip generation rate adopted for the existing development in the Traffic and Parking Impact Assessment report prepared by McLaren Traffic Engineering is incorrect and significantly overestimates the traffic generation of the existing development. Furthermore, as a result of the required reduction in commercial car parking as per Particular (a), the traffic generation and distribution assessment, and SIDRA modelling included in the Traffic and Parking Impact Assessment is incorrect. It therefore has not been demonstrated that the proposed development satisfies Section 2.119 of SEPP (Transport and Infrastructure) 2021 and has not been demonstrated that the development will not result in unacceptable traffic impacts on the surrounding road network.
11. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(iii) of *the Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the waste management objectives and requirements of Section 19 Waste Minimisation and Management of the North Sydney Development Control Plan 2013 in that the proposed waste management arrangements are unacceptable and do not adequately demonstrate compliance with the requirements including:
- (a) A temporary bin holding area for the residential waste bins has not been provided for collection of garbage and recycling bins that is of sufficient size to accommodate the required garbage and recycling bins is required to be provided off the street and within 2 metres of the street alignment.
 - (b) The proposed development does not provide for a garbage chute and recycling bins on each level. Council does not permit dual use chutes; recycling must be on each level.
 - (c) A functional bulky waste storage area has not been provided to hold household clean up material. This must be separate from the garbage room.
 - (d) It has not been demonstrated that the proposed on-site loading bay arrangements are capable of accommodating Council's waste collection vehicle.
12. The proposal is unsatisfactory having regard to Section 4.15(1)(b) of *the Environmental Planning and Assessment Act 1979* as the development will cause adverse impacts upon the built environment with respect to the impact upon the streetscape, amenity for future occupants and to adjoining properties.
13. The proposal is unsatisfactory having regard to Section 4.15(1)(b) of *the Environmental Planning and Assessment Act 1979* as the development will cause adverse impacts upon the natural environment in respect to existing trees on adjoining properties and street trees.
14. The proposed development is unsatisfactory having regard to Section 4.15(1)(c) of *the Environmental Planning and Assessment Act 1979* in that the proposed development in its current form is not suitable for the site.
15. The proposed development is considered unacceptable pursuant to the provisions of Section 4.15(1) (e) of *the Environmental Planning and Assessment Act 1979* as the proposal in its current form given its siting, location, design, bulk and scale and massing, is not in the public interest as it is inconsistent with the relevant planning controls in relation to the adverse impacts on the streetscape, heritage and amenity of immediately adjoining properties. The proposal also lacks good urban design and will negatively affect the character and nature of the neighbourhood. It is considered to be an inappropriate outcome for the site and will establish an undesirable precedent in the area which will not be in the public interest.

16. The application is unsatisfactory in that there is inadequate information on the following matters:
- (a) Plan of Management for the communal open space areas has not been provided.
 - (b) An updated Wind analysis report is to be provided that provides suitable recommendations and achieves compliance with Council's DCP.
 - (c) The location and design of the fire hydrant booster and electricity substation (if required) should be provided. Given this is a necessary utility and service it needs to be integrated into the final design. Clarification of the siting and location needs to be provided.
 - (d) An arborist report detailing the impact of the proposal on all site, street, and neighbouring trees shall be required.
 - (e) An updated acoustic report should be provided to address the potential impact of reverberation of sound in the six-metre gap between the south-east facing apartments and a tall building on 270-272 Pacific Highway.
 - (f) Insufficient information has been provided to justify the need for the significant area of storage and services on Basement Level 2-4 and Lower Ground level.
 - (g) Insufficient information has been provided to ensure that the retained fabric of the heritage item would be able to withstand the construction of the basement and the tower. A structural engineers report and construction management plan for the method of retaining the heritage fabric must be provided to enable a proper assessment of the heritage impacts.
 - (h) The heritage management document identifies that significant fabric must be removed from the site to enable the construction of the basement, and that the fabric will be stored for later reinstatement. Full and proper details of the fabric to be removed, the method and place of storage and the process of removal and reinstatement must be provided to enable a proper assessment of the heritage impacts.
 - (i) Details of the proposed public artwork are to be provided in accordance with the provisions of NSDCP 2013.

How community views were taken into account:

In coming to its decision, the Panel considered 18 written submissions made during the public exhibition of the proposal and also heard from members of the public who wished to address the public meeting. Issues raised included: permissible use, density, bulk and scale, construction disruption, parking and traffic impacts, solar access, cross ventilation, heritage item, height variation and privacy impacts.

The Panel considers community concerns in the submissions and expressed during the public meeting have been adequately addressed in Council's Assessment Report.

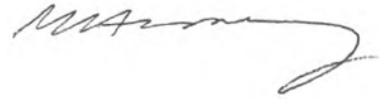
Review of determination and right of appeal:

Within six 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.

Endorsed for and on behalf of North Sydney Council

21 November 2023

DATE



Signature on behalf of consent authority
MICHAEL HORNERY
EXECUTIVE PLANNER (ASSESSMENTS)
