

CMBR Marine Pty Ltd
223 Liverpool Street
DARLINGHURST NSW 2010

D353/21
RT (CIS)

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

Issued under Section 4.18 of the Environmental Planning and Assessment Act 1979 ("the Act"). Clause 100 of the Environmental Planning and Assessment Regulation 2000 ("the Regulation")

Development Application Number: **353/21**

Land to which this applies: 11 Bennett Street, Cremorne
Lot No.: 1, DP: 1110849 and Lot B, DP:350785

Applicant: CMBR Marine Pty Ltd

Proposal: Demolition of existing structures and erection of an attached dual occupancy and associated works on each lot in an approved subdivision of the subject land into 2 lots (Consent DA 237/2018).

Determination of Development Application: The development application was considered by the **North Sydney Local Planning Panel (NSLPP)** on 4 May 2022. Subject to the provisions of Section 4.17 of the Environmental Planning and Assessment Act 1979, the subject application has been refused for the reasons stated below.

Date of Determination: 4 May 2022

Reasons for refusal:

- 1) **The proposed development is contrary to the following objectives of the NSLEP, R2 – Low Density Residential Zone:-**
 - 'To encourage development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.

- To ensure that a high level of residential amenity is achieved and maintained.'

(Reasons: The current design of the dual occupancies will compromise the amenity of the surrounding area and heritage items and the existing high level of residential amenity of the surrounds will be degraded)

2) The proposed development is contrary to the objectives of NSLEP, Clause 4.3, Height of Buildings Development Standard:-

Clause 4.3(1)

- (b) *to promote the retention and, if appropriate, sharing of existing views,*
- (c) *to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- (d) *to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) *to ensure compatibility between development, particularly at zone boundaries,*
- (f) *to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,*
- (g) *to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.'*

and:

- (2) *'The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map'.*

(Reasons: The design of the dual occupancies as currently proposed will impact views, solar access and privacy of adjoining development. Furthermore, the 3 storey development has excessive bulk and scale and does not maintain the built form of 1 or 2 storeys specified.)

3) The provisions of NSLEP, Clause 4.6 (3)(a) & (b) have not been met as the applicant has failed to demonstrate that:-

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.'*

(Reasons: The applicant's submission under clause 4.6 has not demonstrated that compliance with the height standard is unreasonable, or that there are any special circumstances of the case. No convincing environmental planning grounds have been put forward)

4) The provisions of NSLEP, Clause 4.6 (4)(a)(i) & (ii) have not been met;

(Reasons: The applicant's clause 4.6 submission has not adequately addressed the matters required to be demonstrated by subclause (3) above and the proposed development is not in the public interest because it is inconsistent with several of the objectives of the height of buildings development standard and two of the objectives for development within the R2 – Low Density Residential zone)

5) The following objectives of NSLEP, Clause 5.10 - Heritage conservation have not been met, specifically:-

- (a) to conserve the environmental heritage of North Sydney,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,

(Reasons: The development (as proposed) is not sympathetic to the conservation area or the two adjoining heritage items. Further, the settings and outward views of the items are impacted by the height and bulk of the proposal which is exacerbated by loss of screening trees and vegetation)

6) The proposed development is contrary to Clause 6.6(2)(a) in NSLEP.

(Reasons: The proposed dual occupancy is a form of development prohibited within a conservation area where existing structures on the site have not been demolished pursuant to Clause 6.6(2)(a) in NSLEP)

7) The proposal does not comply with North Sydney DCP 2013 Part B Section 1- Residential Development in the following matters:-

1.3 Environmental Criteria

- 1.3.6 Views
- 1.3.7 Solar Access
- 1.3.10 Visual Privacy

1.4 QUALITY BUILT FORM

- 1.4.6 Setback – Side
- 1.4.7 Form Massing Scale
- 1.4.8 Built Form Character
- 1.4.9 Dwelling Entry
- 1.4.10 Roofs
- 1.4.13 Balconies
- 1.4.14 Front Fences

1.5 QUALITY URBAN ENVIRONMENT

- 1.5.5 Site Coverage
- 1.5.6 Landscape Area

(Reasons: The proposed pair of dual occupancies does not comply with the requirements of the sections of the NSDCP as specified above and as discussed within the Planning Report prepared for the North Sydney Local Planning Panel)

How community views were taken into account:

The submissions received by Council were addressed in the NSLPP report (see Council's website: https://www.northsydney.nsw.gov.au/Council_Meetings/Meetings/NSLPP/2022/4_May_2022)

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 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

DATE

Signature on behalf of consent authority
ROBYN PEARSON
TEAM LEADER (ASSESSMENTS)
