

6 February 2023

MacKenzie Architects International
736 Pacific Highway
GORDON NSW 2072

Dear Sir/Madam

Application Number: DA2022/0919
Address: Lot 188 DP 16719 , 3 Gondola Road, NORTH NARRABEEN NSW
2101
Proposed Development: Demolition works and construction of shop top housing

Please find attached the Notice of Determination for the above mentioned Application.

Please be advised that a copy of the Assessment Report associated with the application is available on Council's website at www.northernbeaches.nsw.gov.au

Please read your Notice of Determination carefully and the assessment report in the first instance.

If you have any further questions regarding this matter please contact the undersigned on 1300 434 434 or via email quoting the application number, address and description of works to council@northernbeaches.nsw.gov.au

Regards,



Steven Findlay
Manager Development Assessments

NOTICE OF DETERMINATION

Application Number:	DA2022/0919
Determination Type:	Development Application

APPLICATION DETAILS

Applicant:	MacKenzie Architects International
Land to be developed (Address):	Lot 188 DP 16719 , 3 Gondola Road NORTH NARRABEEN NSW 2101
Proposed Development:	Demolition works and construction of shop top housing

DETERMINATION - REFUSED

Made on (Date)	01/02/2023
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Reasons for Refusal:

1. **1. Building Height**

The development proposes a building height that is 91% in excess of the maximum permitted height.

Particulars

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal is inconsistent with the provisions of Clause 4.3 *Height of Buildings* of the Pittwater Local Environmental Plan 2014.

2. **Request for Variation**

The written request submitted to vary the building height development standard does not identify sufficient environmental planning grounds that would warrant a variation to the development standard. The written request does not adequately demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the application, and it is not well-founded.

Particulars

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal is inconsistent with the provisions of Clause 4.6 *Exceptions to Development Standards* of the Pittwater Local Environmental Plan 2014.

3. **Objectives of the B2 Local Centre zone**

The development is inconsistent with the objectives of the B2 Local Centre zone as

detailed in the Land Use Table of the Pittwater Local Environmental Plan 2014. Specifically, the ratio of commercial to residential floor space is unacceptable and does not strengthen or encourage retail vitality or active day and evening economies.

Particulars

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal is inconsistent with the provisions of the *B2 Local Centre zone* of the Pittwater Local Environmental Plan 2014.

4. Site Suitability – Contaminated Lands

Inadequate information has been submitted to demonstrate that due to the risk of hydrocarbon contamination resultant of the adjacent petrol station, that the basement car parking areas would not be exposed to major vapour intrusion. Because of this, the consent authority cannot be satisfied that the site is or can be made suitable for the purpose which the development is proposed to be carried out.

Particulars

Pursuant to Section 4.15(1)(a)(i) and (iii) of the Environmental Planning and Assessment Act 1979, the consent authority is not satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose of which the development is proposed to be carried out. The proposal is inconsistent with Clause 4.6 (1) and (3) of the State Environmental Planning Policy (Resilience and Hazards) 2021, and with Part B3.6 Contaminated Land and Potentially Contaminated Land of the Pittwater 21 Development Control Plan 2014.

5. Design Quality Principles

(a) Principle 1 – Context and Character

The building is too big for the site and is proportionally incongruent with all other developments within the zone, and immediately adjacent zones. The development sets a poor precedent and would jeopardise the future success of the locality when considered against the underlying zone objectives and desired future character statement.

(b) Principle 2 – Built Form and Scale

The building is too tall and will tower over all adjacent developments. The development has inadequate areas of deep soil planting. The flank facades of the building do little to ameliorate the buildings proportions when viewed from the undeveloped neighbouring properties.

(c) Principle 4 – Sustainability

The development is not of a good sustainable design. The BASIX and NatHERS Certificates submitted are misleading and do not represent the building's performance in actuality given the absence of basement ventilation, and the reliance on air-conditioning which is not sought for on the plans.

(d) Principle 5 – Landscape

The development provides an inadequate provision of landscaped area and deep soil area. The architecture of the building inhibits the provided deep soil areas from accommodating large plantings. The landscaping proposed is contextually incongruent with the locality.

(e) Principle 6 – Amenity

The development provides a poor level of amenity to future occupiers.

(f) Principle 7 – Safety

The developments does not provide a safe pedestrian environment for residents, users of the commercial space or pedestrians in general. The publicly accessible and complexly laid out ground floor plan jeopardises public safety.

(g) Principle 9 – Aesthetics

Because of the reasons above, the aesthetics of the building are flawed and unacceptable.

Particulars

In accordance with Clause 28(2)(b) of the State Environmental Planning Policy 65 (Design Quality of Residential Apartment Development), the development is inconsistent with the Design Quality Principles detailed in Schedule 1 of the SEPP. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal is inconsistent with the provisions of the SEPP.

6. Apartment Design Guide

(a) Part 3A – Site Analysis

The development has not adequately assessed the context of the site. Inadequate justification is provided that design decisions have been based on relationships with the surrounding context and site opportunities and constraints.

(b) Part 3B – Orientation

The development is not orientated to protect the solar amenity of neighbours or future occupants; does not address the contextual constraint of existing next to a scrap metal yard; and does not respond to the desired streetscape character.

(c) Part 3C – Public Domain Interface

The development has a poor public domain interface given the uninviting building entrance, building height, minimal landscaping and prominence of driveway infrastructure into the site.

(d) Part 3E – Deep Soil Zones

The development provides an insufficient area of deep soil landscaping, at only 17m².

(e) Part 3F – Visual Privacy

The building provides inadequate spatial separation to the west to provide an acceptable level of visual privacy. Half of the apartments are set back only 3m from the western boundary. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part C1.5 *Visual Privacy* of the Pittwater 21 Development Control Plan 2014.

(f) Part 3G – Pedestrian Access and Entries

The entryway into the building is not safe. Inadequate information is supplied regarding the front lift to demonstrate that it can be used in the event of flooding, to ensure the safe ingress or egress of wheelchair bound persons. The entry into the building is convoluted and unsafe for Council's waste collectors who would have to navigate complex pathways and proceed to carry heavy bins down ten steps to kerb level.

(g) Part 4B – Natural Ventilation

Only 25% of apartments are naturally cross-ventilated, instead of a minimum of 60%.

(h) Part 4D – Apartment Size and Layout

Habitable room depths exceed more than 2.5 x the ceiling height in every apartment. Kitchens would likely never receive direct solar access. The maximum room depths are greater than 8m.

(i) Part 4N – Roof Design

The use of the roof as trafficable space is not appropriate for the site. The roof has not been maximised for sustainability, and the plans do not adequately detail infrastructure that would likely be required on the roof (i.e., air-conditioners, exhaust ducts).

(j) Part 4O – Landscape Design

The shortfall in landscaped area inhibits the ability for any landscape plan to demonstrate compatibility with the character of the locality.

(k) Part 4U – Energy Efficiency

The requirements of the BASIX Certificate are not reflected on the architectural plans – specifically the air-conditioning units that are relied on throughout the building are not shown.

(l) Part 4W – Waste Management

Council's Waste Officers cannot easily or safely enter the building or remove bins

from the site. The development relies on waste officers to traverse the driveway or a complex pathway. The storage room is too far from the property boundary. The waste areas are behind locked security doors.

Particulars

In accordance with Clause 28(2)(c) of the State Environmental Planning Policy 65 (Design Quality of Residential Apartment Development), the development is inconsistent with the design criteria detailed in the Apartment Design Guide. Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal is inconsistent with the provisions of the SEPP.

7. Public Interest

The building is excessively proportioned and if approved, would create an undesirable precedent for development such that it would undermine the desired future character of the area and be contrary to the expectations of the community.

Particulars

Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposal is not in the public interest.

8. Flood Planning

Pedestrian access to the site for disabled persons is via an external lift that would, in the event of flooding, be submerged. No details are provided as to how this lift can operate in such a situation. Council cannot be satisfied as to the safe occupation and efficient evacuation of people in the event of a flood.

Particulars

Pursuant to Section 4.15(1)(a)(i) and (iii) of the Environmental Planning and Assessment Act 1979, the proposal is inconsistent with the provisions of Clause 5.21 *Flood Planning* of the Pittwater Local Environmental Plan 2014 and Part B3.11 *Flood Prone Land* of the Pittwater 21 Development Control Plan 2014.

9. Acid Sulfate Soils

The site falls within the Class 3 of the Acid Sulfate Soils Map, clause 7.1 of the Pittwater Local Environmental Plan 2014 provides that development consent must not be granted for the carrying out of the proposed works unless an Acid Sulfate Management Plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority, and no such plan has been provided to the consent authority.

10. North Narrabeen Desired Future Character

The height of the building, its lack of landscaping, and minimal contribution to commercial floor space are inconsistent with the desired future character of the North Narrabeen locality.

Particulars

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part A4.11 *North Narrabeen Locality* of the Pittwater 21 Development Control Plan 2014.

11. Commercial Floor Space

The development provides an inadequate provision of commercial floor space in contrast to the amount of residential floor space.

Particulars

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part B2.6 *Dwelling Density and Subdivision – Shop Top Housing* of the Pittwater 21 Development Control Plan 2014.

12. Landscaping

The development provides an inadequate provision of landscaping throughout (not limited to deep soil landscaping). The variation is detrimental to the existing and desired character of the locality.

Particulars

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part C1.1 *Landscaping* of the Pittwater 21 Development Control Plan 2014.

13. Safety

The ground floor of the building is unsafe and contrary to the principles of CPTED.

Particulars

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part C1.2 *Safety and Security* of the Pittwater 21 Development Control Plan 2014.

14. Solar Access

The application is not accompanied by adequate shadow diagrams. The diagrams supplied show adjacent buildings that do not exist – including one that is not yet built, and another where development consent has lapsed. Inadequate information is provided to assess solar access implications on existing developments.

Particulars

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part C1.4 *Solar Access* of the Pittwater 21 Development Control Plan 2014.

15. **Acoustic Privacy**

The plans rely on air-conditioning units but do not show where the required equipment would be housed. Inadequate information is provided to make an assessment as to whether the air-conditioning equipment would harm the acoustic privacy of neighbours or future occupiers.

Pursuant

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part C1.6 *Acoustic Privacy* of the Pittwater 21 Development Control Plan 2014.

16. **Aims of Plan**

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 *Aims of The Plan* of the Pittwater Local Environmental Plan 2014.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 *Aims of The Plan* of the Pittwater Local Environmental Plan 2014.

Right to Review by the Council

You may request Council to review this determination of the application under Division 8.2 of the Environmental Planning & Assessment Act 1979. Any Division 8.2 Review of Determination application must be lodged on the NSW Planning portal within 3 months of this determination, to enable the assessment and determination of the application within the 6 month timeframe.

NOTE: A fee will apply for any request to review the determination.

Right of Appeal

If you are dissatisfied with this decision Division 8.3 of the Environmental Planning & Assessment Act 1979 may give you the right to appeal to the Land and Environment Court within 6 months after the date on which you receive this notice.

Signed On behalf of the Consent Authority



Name Steven Findlay, Manager Development Assessments

Date 01/02/2023