

Environmental & Planning Services Department

Our Reference: 2015/63
Contact: Ms L Markham
Phone: 9840 9623

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

TBA

DRAFT

Landmark Group Australia Pty Ltd
PO Box 725
BONDI JUNCTION NSW 2022

Attention: Guy Brady

Dear Sir,

Pursuant to Section 81 of the Act, Council has refused to grant approval to your Development Application described as follows:

PROPERTY: Lot 11, DP 228782 & Lot 1, DP 203553
STREET ADDRESS: 1 –11 Neil Street, Holroyd
REFUSAL NO. 2015/63/1
DECISION: Joint Regional Planning Panel
PROPOSED DEVELOPMENT: Construction of a part 4 & part 10 storey residential flat development containing 123 residential units over 2 levels of basement parking accommodating 137 carparking spaces

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 82A 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 82A of the Act cannot be reviewed/determined after 6 months of the date of determination. Therefore, the submission of a Section 82A 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 97 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 twelve (12) months of the date of determination, or as otherwise prescribed.

REASONS FOR REFUSAL

1. Under State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development, the Residential Flat Design Code (RFDC) must be taken into consideration. The proposal fails to satisfy the following provisions of the RFDC (pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979): -
 - i) Building Depth – The maximum 18m glass line to glass line depth has been exceeded for Building 6 and satisfactory day light and natural ventilation has not otherwise been achieved to the units.
 - ii) Building separation – The buildings fail to provide for “their share” of the building separation requirements applying to existing and proposed adjoining residential flat buildings (RFBs).
 - iii) Private Open Space (POS) – The proposals fails to provide the minimum 25m² recommended POS for a number of ground level units. All ground floor units in Building 5 (particularly Unit 5.0.03 which only provides 6m² POS) and 1 unit within Building 6 (Unit 6.0.02 which only provides 23m² POS) are deficient in regard to the required ground floor POS.
 - iv) Orientation – The buildings have an orientation which fails to optimise solar access to the units, their private open spaces (POS) and to the communal open space (COS). The units are generally oriented north west or south east. The proposed design does not take advantage of the northern or north eastern aspects, which consist largely of blank walls, windows and balcony edges with fixed privacy screens.
 - v) Safety – The RFBs are accessed via a bridge over the swale. Their main entries are hidden from the street, which is a safety and security concern. Serious issues arise from the lack of accessibility to the entrances, excessively long and indirect travel paths, lack of natural surveillance and opportunities for concealment.
 - vi) Views / Outlook – The development fails to maximise outlook and views from principal rooms and private open space without compromising privacy. Blank walls, minimal numbers of windows and louvered privacy screens block outlook and views from the units.
 - vii) Building Entry / Pedestrian Access – Walking distance from the street to the entrance of the units is considered excessive and particularly onerous for the disabled, elderly and small children. Access is problematic for those moving in or out of units as a truck cannot access the basement, so must park on the street and move furniture at least 55m to the closest entry door. In addition, the main entries are hidden from the street and are not clear or direct.
 - viii) Apartment Depth – All 15 units in Building 5 and 46 of the 76 single aspect units in Building 6 are deeper than 8m, which adversely affects residential amenity by limiting access to daylight and ventilation.
 - vix) Apartment Layout– 59 units (48% of the overall total) have the back of a kitchen more than 8m from a window which limits their access to daylight and ventilation.

- x) Apartment Size – Each 3 bedroom unit provided does not meet the minimum 95m² floor area.
- xi) Acoustic Privacy – Low traffic rooms (bedrooms) of some units adjoin high traffic rooms (living rooms) of other units. Many units adjoin 3 other units. This impacts negatively upon residential amenity.
- xii) Daylight Access -
 - The proposal has not been designed to optimise the northerly aspect of the site with the units' generally orientated north west (NW) or south east (SE).
 - The proposal does not ensure direct daylight access to the COS between March and September as it is overshadowed by Building 5 and the building on 42-50 Brickworks Drive.
 - The development fails to address shading & glare control. Many units and their POS will be exposed to harsh westerly sun in summer.
 - The proposal fails to satisfy the requirement for the living rooms and private open spaces of at least 70% of apartments to receive a minimum of three hours direct sunlight between 9am and 3pm in mid-winter. There are several single aspect south facing units, and many units which have the characteristics of such. It has been calculated that only 61% of POS and 68.3% of living rooms achieve close to 3 hours. As the shadow diagrams provide for insufficient detail, the actual percentages are likely to be less.
 - The number of single-aspect apartments with a southerly aspect (south west or south east) should be a maximum of 10% of the total units proposed. Building 6 has 38 units which are single SE aspect, or which are dual aspect with the characteristics of single SE aspect. In this regard, 30.9% of units are considered to be single aspect, which is not acceptable.
 - A number of units (e.g. Building 5, Unit 5.0.01) have habitable rooms (studies) with no direct access to fresh air or daylight, which provides for insufficient natural ventilation and contributes towards increased energy consumption.
- xiii) Natural ventilation - 60% of units (or 74 units) should be naturally cross ventilated. All of the 15 units in Building 5 are regarded as single aspect and 76 of the units in Building 6 are regarded as single aspect. Thus only 32 units, which equates to a total of 26%, are naturally cross-ventilated.
- xiv) Facades - Facades should define and enhance the public domain. In this context the public domain consists of the street & the swale. Only Building 5 is visible from the public domain. Its front elevation has flat balcony edges with minimal step back to walls behind, and no front entry facing the street. This does not present well to the street and is considered to be bland with little articulation.

2. The proposal fails to satisfy the following provisions of the State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979): -

- i) The applicant has not demonstrated that part of the site being 9-11 Neil Street, is suitable for the proposed use. Since no Site Audit Statement (SAS) has been submitted to Council, it is unknown what can be referenced within a SAS and/or if

conditions will be included. In this regard, Council is unable to determine the overall site suitability and whether the site is suitable for the proposed use.

3. The proposal fails to satisfy the following provisions of the State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979): -
 - i) Clause 86 - Excavation in, above or adjacent to rail corridors. As the proposal involves the penetration of ground to a depth of at least 2m below ground level (existing) on land within 25m (measured horizontally) of a rail corridor, concurrence of the chief executive officer of the rail authority (Sydney Trains) must be issued prior to granting consent. To date, concurrence has not been issued by Sydney Trains, only partial information requested by Sydney Trains submitted by the applicant.
4. The proposal fails to satisfy the following provisions of the Holroyd Local Environmental Plan 2013 (LEP 2013) (pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979): -
 - i) Height - Building 6 achieves a maximum building height of approximately 31.95m and is approximately 2.95m above the 29m height permitted. No RL has been provided for the lift over-runs.
 - ii) Heritage – 1-7 Neil Street is known as the “Millmaster Feeds Site” and is an item of environmental heritage listed as an Archaeological site as per Schedule 5, Part 3 of Council’s LEP 2013. Only surface investigation has been undertaken for the purposes of developing the site. A Section 60 Application to the Heritage Division of the Office of Environment and Heritage is required. The applicant has not complied with the request for additional information to be provided to allow for a proper investigation and assessment of the subject site. In this regard, insufficient information has been provided to Council to address the heritage provisions of Council’s LEP 2013.
 - iii) Flooding & Stormwater Management - The expanded bridge structure results in flooding impacts that have not been satisfactorily addressed.
5. The proposal fails to satisfy the following requirements of Holroyd Development Control Plan 2013 (DCP 2013) (pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979): -

Part A

- i) Carparking provided is 5 spaces short of the minimum total of 142 spaces required. The amount of visitor spaces provided is 14, however 25 are required, resulting in a visitor parking deficiency of 11 spaces.
- ii) The submitted architectural basement plan notes 28 bicycle spaces, however only 14 spaces are provided in Basement 2 –60 spaces short of the DCP requirement.

- iii) Council's Traffic Engineer has assessed the submitted plans, documentation and advises that the proposed carparking areas and swept turning paths do not adequately comply with AS 2890.
- iv) Waste Management - The plans have not demonstrated that a 10.5m heavy rigid garbage vehicle can safely collect garbage and recycling bins. The proposed waste collection area adjacent to the pedestrian access bridge is not supported due to access issues associated with the collection of waste and impacts on traffic/pedestrian network.

Part B

- i) Communal Open Space (COS) - COS is proposed between the buildings and to the sides thereof, so the proposed COS has 3 'spines' rather than being in one consolidated parcel. Major sections of COS are located a long distance from Building 5 (particularly those strips along the side of Building 6) and involves an excessively long travel path to access them.
- ii) Private Open Space (POS) - The proposal fails to provide residents with passive and active recreational opportunities and fails to provide sufficient POS as follows: -
 - 59 primary balconies that do not meet the 10m² minimum when sections less than 2m wide are excluded.
 - Several 2 bedroom units that do not have a minimum 2.4m width (have 2.15m maximum).
 - The terrace of a ground floor unit in Building 5 (Unit 5.0.03) is only 6m², as opposed to the 10m² required.
 - Where possible POS shall have northerly or easterly aspect, however all POS has either a north west or south east aspect.
 - Balconies shall not be continuous across the entire façade. Building 5 has balconies along all of the north west (front) façade. Building 6 has balconies along all of the north west façade, for levels 1 to 3.
- iii) Parking & Vehicular Access – The proposal fails to minimise the visual impact of vehicular access and does not provide adequate car parking for the building users or visitors as follows: -
 - The proposal is deficient 5 overall car parking spaces.
 - The vehicle entry is not setback from the main façade. As proposed, the basement entry door lines up with front façade and is at ground level.
 - A separate independent carwash bay has not been provided.
- iv) Amenities – The proposal fails to provide essential amenities and facilities as follows: -
 - No clothes lines have been shown (either within the POS or COS).
 - Mailboxes are shown within the entry gatehouse, in front of security gates into the complex, which will be on private land. Police have advised that they should be accessible from the front/public road for postal workers, with rear openings accessible only to residents from inside the complex.

Part M – Merrylands Centre

- i) Aims & Objectives - The objectives of Part M include to:
- *Ensure buildings are designed to maximise appropriate amenity outcomes for the centre.*
 - *Ensure development design promotes the principles of ecologically sustainable development.*

These objectives are not considered to have been satisfied, given in part to the several non-compliances and concerns regarding solar access, overshadowing, safety & security, POS sizes, COS, unit orientation, ventilation, access, building entries and street appeal.

- ii) Public Domain – Indicative Street Section E-E. The design proposed is not in accordance with the following: -

- Section E-E indicates a total public space (between new lot boundaries of Stage 1 and Stage 4) of 34.5m to accommodate the new road, swale, shoulder, footpaths and on-street parking. The plans only show a width of 31m, so 3.5m width has been taken off the public space, and added to the subject site.

- Section E-E shows the swale to be 19m plus 1m shoulder. The proposed plans show the swale 14.5m wide with no shoulder.

- A 2.5m front setback is not provided from the new lot boundary (the Building 5 terrace is hard up on the new lot boundary, so nil setback provided).

- The on street carparking is shown on the other side of the proposed road. A request for on street loading and unloading was not supported by the Holroyd Traffic Committee for a neighbouring site, and is not considered to be supported in this case.

- iii) Building Envelope – The proposal is inconsistent with the endorsed building envelope for Block 5 as follows: -

- The building height of 29m allows for 8 storeys. Building 6 is 10 storeys.
- Figure 6 requires a 2.5m setback from new front lot boundary. Building 5 is provided with no setback from this boundary.
- The maximum horizontal length of any building above the podium shall not exceed 50m. Building 6 is 60.7m long at its south eastern elevation unit walls, and 62.3m at edge of associated terraces.
- All residential developments should substantially contain dual aspect apartments. The development substantially contains units which are single aspect, or which have the characteristics of single aspect. This results in poor amenity outcomes.
- The street address is considered inadequate. Only Building 5 is visible from the street, and it has no direct entry or lobby from the street to the front (entry & lobby access is via rear pathway). Solid walls of ground floor terraces face the public domain. The majority of COS does not provide surveillance of the main pedestrian side entry.

- iv) Block 5 Controls Neil Street Precinct – The site specific controls for Block 5 have not been complied with as follows: -
- A maximum of 8 storeys is permitted along the railway. Building 6 is 10 storeys.
 - Building Depth – maximum 18m (max 15m glassline to glassline) has been exceeded for Building 6.
 - A street setback of 2.5m from the swale is required. Building 5 has no setback from the swale.
 - Side setback – minimum separation controls as per RFDC apply. These have not been complied with.
 - Deep Soil & Open space – The design has different building envelopes and location of COS. There is no deep soil zone at the front (as 2.5m setback has not been provided).
 - Insufficient information has been submitted to Council to demonstrate the impact of the proposal on the archaeological heritage significance of the site.
 - Buildings adjacent to railway line are required to be perpendicular to, not parallel with, the railway line to minimise the number of units impacted by noise & vibration. Building 6 is parallel to the railway line, thus does not comply.
 - Flood and stormwater management has not been undertaken in a whole-of-site approach, as the applicant has not included site amalgamation or re-subdivision as required to redirect the floodway.
- 6) Insufficient information has been submitted to demonstrate that the proposal will have acceptable impacts upon the natural and built environment. Issues relating to waste services, traffic and parking, stormwater and flooding, contamination, heritage, overshadowing as well as issues raised by Sydney Trains remains unresolved. This is pursuant to Section 79C(b) of the Environmental Planning and Assessment Act, 1979.
- 7) Council considers that objections received in response to public notification raise valid concerns, particularly in relation to poor solar access, shadow impact, insufficient car parking on site, insufficient building separation and resulting privacy impacts, as well as a lack of satisfactory communal open space. This is pursuant to Section 79C(d) of the Environmental Planning and Assessment Act, 1979.
- 8) Based on the assessment of the application and the above specific reasons for refusal, the proposal is considered to be contrary to the public interest. This is pursuant to Section 79C(e) of the Environmental Planning and Assessment Act, 1979.

- 9) The appeal lodged for Development Application 2014/133/1 for Stage 1 Masterplan for building footprints and envelopes for 6 residential buildings, basement parking, road network and open spaces and allocation of gross floor area across 1 – 11 Neil Street was dismissed by the Land and Environment Court on 27 March 2015. The subject DA is consistent with this Masterplan as it relates to Buildings 5 and 6. Approval of building footprints and envelopes in accordance with a Masterplan dismissed by the Court is not considered to be in the public interest. This is pursuant to Section 79C(e) of the Environmental Planning and Assessment Act, 1979.

Yours faithfully,

Merv Ismay
GENERAL MANAGER

Per:
MANAGER DEVELOPMENT