

NORTH SYDNEY COUNCIL
REASONS FOR REFUSAL
70-76 ALEXANDER STREET, CROWS NEST
DEVELOPMENT APPLICATION NO. 360/25

RECOMMENDATION

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

- A. **THAT** the Development Application 360/2025 for demolition of a three storey commercial building and the construction of a mixed use development with three basement levels, a ground floor with retail uses, five levels of independent living units and rooftop amenities and a roof plant zone at 70-76 Alexander Street, Crows Nest be refused pursuant to Section 4.16(1) (b) of the *Environmental Planning and Assessment Act 1979* subject to the below reasons for refusal.

1. Height of Building

The development application should be refused because the height of the proposed development is excessive and fails to comply with the maximum building height development standard contained within the North Sydney Local Environmental Plan 2013 (NSLEP 2013). The excessive building height and resulting built form would not maintain adequate solar access to existing dwellings in Willoughby Lane and would not be compatible with surrounding development due to its excessive scale. Further, the written request seeking to vary the height of buildings development standard is not well founded and insufficient environmental planning grounds have been identified to support the proposed breach.

Particulars

- (a) The building comprises of seven storeys and a height of 23.9m to the roof and 25m to the lift overrun. The proposed height is substantially greater than the 16m maximum height permitted for the site and exceeds the height of many adjoining sites that are limited to 10m, as well as the nearby R2 Low Density Residential Zoned Land.
- (b) The additional shadow cast from the proposed development would affect three (3) east facing apartments of 13 Ernest Place. The shadow cast from the proposal would impact both windows and balconies for these units and would prevent access to sunlight at 9am in mid-winter (21 June), being the only time these units receive sunlight at mid-winter.

- (c) The shadows cast by non-compliant elements of the building will significantly contribute to the reduced solar amenity of the three apartments. The height variation should not be supported where insufficient and non-compliant standards for solar access would be achieved to adjoining existing dwellings. The proposal is contrary to Objective (1)(c), Clause 4.3 'Height of Building' in NSLEP 2013.
- (d) The three apartments, due to their existing limited access to sunlight, should not worsen solar access and amenity. This is concordant with Clause 4.3(1)(c) where solar access to is to be maintained.
- (e) The shadow cast from non-compliant building elements which exceed the maximum building height casts extensive shadow over Willoughby Lane at 10am in mid-winter and additional shadow across Alexander Street in the afternoon hours between 1pm and 3pm in mid-winter. Mid-summer shadow diagrams also confirm additional shadows cast over Alexander Street particular at 2pm and 3pm.
- (f) The Clause 4.6 Variation Request does not provide justification for the additional shadow impacting the streetscape.
- (g) Clause 4.3(1)(c) 'Height of Buildings' is not satisfactorily addressed nor is a variation to the objective satisfied in terms of not maintaining solar access to existing streets. The amenity of a street which includes access to sunlight is important and should not be undermined. The additional shadows cast due to the height exceedance does not contribute to the vibrancy of Alexander Street or contributes to a high quality urban environment not upholding bullet point 2 and 5 objectives for the MU1 Mixed Use Zone stipulated in NSLEP 2013.
- (h) The site is subject to a maximum building height of 16m which is the same height for lots in a northern and southern location between Alexander Street and Willoughby Lane. Land to the west and east of the site have a lesser maximum building height of 10m.
- (i) To the east approximately 60m from the subject site is low density residential land with a maximum 8.5m building height. The low density residential land is also the Holtermann Estate B Conservation Area.

- (j) The Clause 4.6 Variation placed excessive and undue emphasis on providing a building that is compatible with the increased heights of buildings within the nearby Crows Nest TOD Precinct, rather than the compatibility with its immediate surrounds including achieving compatibility and a transition in bulk and scale to the nearby R2 Low Density Residential Zone. The development therefore does not meet Objective (1)(e) in Clause 4.3 'Height of Building' of NSLEP 2013.
- (k) Analysis of surrounding buildings indicates the general locality comprises 3 storey buildings and that although there are instances of properties with a greater scale such as 78-80 Alexander Street (4-5 storeys) and 13 Ernest Place (4 storeys) they still are substantially less in height. The development due to its excessive height does is not sensitively integrated with its surrounds and the building scale does not support the local context or future character of the area contrary to Objective 4.2.2, Section 4.2 'Typology and scale' of the Seniors Housing Design Guide. the development is contrary to Objective (1)(f) in Clause 4.3 'Height of Building' of NSLEP 2013.
- (l) The environmental planning grounds stipulated in the Clause 4.6 Variation Request do not justify the contravention of the development standard. The development is not considered comparable to the bulk and scale of the development at 70-76 Alexander Street where substantial scale inclusive of 1.5 storeys of residential are above the maximum height of building.
- (m) The development approved at 82-90 Alexander Street, Crows Nest was approved by Appeal to the Land and Environment Court (File Number 2022/334267) for construction of a five storey shop top housing development and recessed rooftop common open space with a maximum height of 19.71m (a variation of 3.71m) and is not a comparable development to that proposed for 70-76 Alexander Street.
- (n) Development consent should not be granted for the development which contravenes the development standard Cl. 4.3 'Height of Buildings' because the Applicant has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are insufficient environmental planning grounds to justify the contravention of the development standard.
- (o) The development height exceedance is contrary to the provisions of Cl.4.3(3) of NSLEP 2013. In addition, the degree of flexibility sought in applying development

standard Cl.4.3 is not appropriate in the context of the site, nor would a better outcome be achieved due to the exceedance in height. The development fails to satisfy Objectives 1(a) and 1(b) of Cl. 4.6 in NSLEP 2013.

2. Quality Built Form

The development application should be refused because the built form specifically the podium heights and scale of built form for the rooftop are excessive and the development does not comply with the applicable Objectives and Provisions contained within Section 2.4 'Quality Built Form' in Section 2 – Development in Employment and Mixed Use Zones of the North Sydney DCP 2025.

Particulars

- (a) Section 2.4 'Quality Built Form' in Section 2 – Development in Employment and Mixed Use Zones of the North Sydney Development Control Plan 2025 (NSDCP 2025) includes provisions with the aim to ensure buildings respond to their built environment and make a positive contribution to the character of their applicable locality.
- (b) The site is subject to a four (4) storey podium requirement for Ernest Street and Alexander Street and a three (3) storey podium requirement for Willoughby Lane. The Podium Heights Map in Figure F-3.2-4, Section 3.2.3.4 'Podium Heights' of the Crows Nest Town Centre Character Statement stipulated area specific podium height controls.
- (c) The podium height for the proposed building is five (5) storeys to Alexander Street and Ernest Street and four (4) storeys to Willoughby Lane.
- (d) The podium height is excessively high for its corner location and is not in accordance with the desired built form directions for the Crows Nest Town Centre Character Statement contrary to Provision P1, Section 3.2.3.4 of the Character Statement and Provision P1, Section 2.4.3 of Section 2 – Development in Employment and Mixed Use Zones.
- (e) The podium height would result in inconsistency in street wall heights at street intersections, will unreasonably impact on the pedestrian street environment resulting on unsatisfactory design impacts on daylight, scale and sense of enclosure. The resulting built form would substantially depart from the existing and desired character of the surrounding streetscape contrary to Objectives O1, O2 and O3, Section 3.2.3.4 of the Character Statement.

- (f) The communal areas at the roof level consist of several multi-function spaces and facilities for residents including swimming pool, yoga spaces and pickleball court. Several rooms are also proposed such as a gym, lounge, private dining and media rooms as well as the provision of WCs, plant rooms, lifts and a refuse room.
- (g) The rooftop building elements required to support these facilities are extensive and not integral with the overall design of the building but contribute to the bulk and massing of the building. An example of a roof element not integrated into the overall design of the building and highly visible from the street is the pickleball court and associated glass balustrade considered a dominant element on the south eastern corner of the building.
- (h) The rooftop elements are not integral with the overall design of the building, contained in a single structure or centrally located adding to the bulk and scale of the building therefore contrary to Objective O1, Provisions P2 and P3 in s2.4.5 'Skyline' of NSDCP 2025.
- (i) The rooftop elements also conflict with the directions in Objective O2 and Provisions P2 and P10 of s3.2.3.2 'Form, massing and scale' in the Crows Nest Town Centre Character Statement because the roof design comprises substantial bulk and scale contributing to an exceedance in height and is not minor in context with the roofscape increasing the building's overshadowing.

3. Non-residential floor space ratio

The development application should be refused because the proposal seeks to partially use the basement for 197m² non-residential floor space which fails to provide a use at street level and it is unclear how the space can provide a high quality non-residential space to the Crows Nest Town Centre.

Particulars

- (a) The below ground non-residential floor space allocated for a future non-residential tenancy would not be visible at street level and does not positively contribute to economic and social vitality contrary to Provision P3, s2.2.1 'Diversity of activities, facilities, opportunities and services' of NSDCP 2025.

- (b) The dedication of a large non-residential space that is below ground level is contrary to directions in Provision P6, s2.2.1 'Diversity of activities, facilities, opportunities and services' of NSDCP 2025.
- (c) The below ground large non-residential space is not easily accessible other than via an internal lift requiring customer to traverse through the basement which raises safety concerns. The basement non-residential floor space is not a high grade space posing potential risks with vehicles manoeuvring within the basement and therefore does not meet Objective O1, s2.2.1 'Diversity of activities, facilities, opportunities and services' of NSDCP 2025.
- (d) The proposed non-residential floor space within the building basement is not considered to promote employment or reflect the importance in providing non-residential uses for the MU1 Mixed Use Zone and Crows Nest Centre and therefore does not meet Objective 1(d) of Cl. 4.4A 'Non-residential floor space ratios' of NSLEP 2013.

4. Social Impact and Housing Diversity

The Development Application should be refused because it does not provide sufficient diversity or variety of housing choice. Below are particulars raising concerns regarding the limited housing diversity by the North Sydney Council Design Excellence Panel and Council's Community Worker and Social Planner as well as non-compliances with relevant Objectives and Provisions in the NSDCP 2025 and Objectives and Design Guidance in the Seniors Housing Design Guide.

Particulars

- (a) The proposal provides 96% 3 bedroom dwellings and only 4% 2 bedroom dwellings. This represents a poor outcome in terms of housing diversity and affordability and is not supported by the Panel. Additional 2 bedroom dwellings should be considered.
- (b) The seniors housing diversity in the development does not satisfy Objectives 4.7.1 and 4.7.4 and Design Guidance 4.7.7 in Section 4.7 'Local Character' of the Seniors Housing Design Guide. There is not a diversity in retirement living indicative of the predominance of 3 bedroom independent living units, giving older people no variety in choice and a generalist large style form of accommodation.

- (c) The predominance of large three (3) bedroom apartments does not provide a mixed residential population in terms of housing diversity for seniors housing and is not considered to meet Objective O1, s1.2.1 'Population Mix' of NSDCP 2025.
- (d) The development lack in housing diversity due to the predominance of three (3) bedroom independent living units does not satisfy Cl. 1.2(g) 'Aims of Plan' of NSLEP 2013 because a more varied mix of housing would adhere to the aim of providing a full range of housing.

5. Amenity

The Development would result in poor access to sunlight for south eastern facing apartments, insufficient privacy measures for lower levels units facing Ernest Street and the lightwell does provides a poor amenity for bedrooms with their only openings on to this space with these spaces having poor standards of daylight and ventilation contrary to the design requirements of the Seniors Housing Guide and the Apartment Design Guide (ADG).

Particulars

- (a) The ADG can be used where applicable to assist in the design of Seniors Housing as per Section 18.0 'Alignment with the Apartment Design Guide' of the Seniors Housing Design Guide.
- (b) The extent of privacy screens to the west elevation of levels 1 – 3 should be modified to ensure an appropriate balance between light and ventilation and privacy between existing residential units at 13 Ernest Street.
- (c) The lower 3 levels of have a limited setback to Willoughby Lane (approximately 2-3 metres to the boundary adjoining Willoughby Lane) and the proximity of east facing apartments from 13 Ernest Place to the subject site warrants improved mitigation measures beyond that proposed for levels 1 – 3.
- (d) The development fails to provide sufficient design elements to increase privacy of the western lower level apartments pursuant to the directions in Objective 3F-2 'Visual Privacy' of the ADG.
- (e) The design of the level 1 – 3 west facing apartments do not satisfy Design Principle 2(a) 'Visual and acoustic privacy' of SEPP Housing 2021 with inadequate site planning, consideration of the location and design of windows and balconies or the use of screening and landscaping to improve the visual privacy to both adjacent

apartments at 13 Ernest Place and also future residents of the independent living units.

- (f) The design of the level 1 – 3 west facing apartments do not satisfy Design Principle 2(a) 'Visual and acoustic privacy' of SEPP Housing 2021 with insufficient site planning, consideration of the location and design of windows and balconies or the use of screening and landscaping to improve the visual privacy to both adjacent apartments at 13 Ernest Place and also future residents of the independent living units.
- (g) To achieve cross ventilation a total of ten (10) apartments out of a total twenty four (24) apartments rely on a lightwell. Whilst the lightwell may be an effective a primary source of outlook, daylight or ventilation for habitable rooms, the dimensions of the lightwell are insufficient for enabling cross ventilation which is worsened for lower level apartments.
- (h) The development is contrary to Objective 4B-1 'Natural Ventilation' and associated Design Guidance that is not in support of lightwells as a primary air source for habitable rooms.
- (i) The development due to the over reliance on an inefficient means of ventilation via a lightwell does not satisfy the relevant Design Guidance 6.1.6 (below) in Section 6.1 Care of the Seniors Housing Design Guide.
- (j) South eastern corner apartments do not receive sufficient solar access, and the mid-winter Sun View Diagram also indicates Level 5 south eastern apartment does not achieve the minimum 2 hours solar access as per the requirements in Design Criteria 1, Objective 4A-1 'Solar and daylight access' of the ADG.
- (k) The development due to the poor access to sunlight for the south eastern apartments on all levels is not indicative of a building with a design the promotes access to sunlight and does not satisfy the relevant Design Guidance 6.1.6 in Section 6.1 Care of the Seniors Housing Design Guide.
- (l) The development does not provide residents of the building with adequate daylight contrary to Design Principle 3(a) 'Solar access and design for climate' of SEPP Housing 2021.

6. Traffic, Parking and Access

The development application should be refused because the proposed development does not comply with the relevant Objectives and Provisions in Section 4 – Car Parking and Transport in the North Sydney Development Control Plan 2025.

Particulars

- (a) The architectural plans do not provide an accessible parking space for the retail component of the development which is contrary to the recommendations of the Access Review prepared by Funktion Consultants and not as per the requirements of NCC D4D6.
- (b) The application does not sufficiently confirm that capability for the service bay in Basement 1 to manage deliveries, service and trade services for the development. All servicing and loading needs must be adequately accommodated within the proposed off-street service bay, and that its operation must not rely on on-street loading zones.
- (c) The application and associated traffic report does not adequately confirm the adequacy of the off-street loading bay contrary to Objective O1, Section 4.4 'Loading and Servicing Facilities' of the NSDCP 2025.
- (d) The traffic report and architectural plans do not provide end of trip facilities. Changing and shower facilities should be provided in accordance with requirements of Provision P9, Section 4.5 Bicycle Parking and Associated Facilities.
- (e) The traffic report does not explicitly outline that the development will not result in on-street queuing. The traffic report should confirm that the development will not result in on-street queuing and that all queuing can be accommodated off-street. This is a requirement as per Provision P7(c), Section 4.3.3 'Access & Manoeuvring' of the NSDCP 2025.

7. Landscaping and Trees

The proposed tree planting outcomes for the footpath adjoining Alexander Street are not acceptable.

Particulars

- (a) The planting of 4 x *Tristanopsis laurina* is not supported. Provision for improved on street landscaping, including through improved awning design, cut outs and landscape planter beds must be provided.
- (b) The proposed development fails to provide appropriate tree canopy for the public realm without amendments.
- (c) An improved landscape design must be prepared which fully considers the functionality of Ernest Place as a high amenity publicly accessible area.

8. Public Interest

The development application should be refused because approval of the proposed development is not considered to be in the public interest having regard to the contentions raised and the matters raised by submissions.

Particulars

- (a) The development application is not considered to be in the public interest, contrary to section 4.15 (1)(d) and (e) of the EP& A Act.
- (b) The development application was notified in the circumstances set out in Council's Community Participation Plan. The development application should be refused having regard to the matters raised in the submissions received by Council.

9. Insufficient Information

The development application should be amended with additional information provided concerning the materials and finishes following receipt of feedback by the Design Excellence Panel to enable a proper assessment of the development application and a supportable façade design and material palette.

Particulars

- (a) Elements such as the rebated edges to windows and arches and the balcony soffit linings, require particularly careful attention, due to their widespread use and high visibility from the surrounding streets and buildings. DEP have noted this design approach represents a relatively high risk proposition, very dependent on excellent construction detailing and on-site workmanship.
- (b) Areas featuring external render such as wall spandrels and planter boxes, should be reviewed further, to avoid materials and products prone to deterioration and the need for ongoing repairs and maintenance. Consider natural finish reinforced concrete or pre-fabricated planter boxes in lieu of "concrete look" render.