

NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION

Application number	RA23/1002
Applicant	Feros Hotel Group Limited
Description of development	Alterations and additions to the Berry Hotel at 120 Queen Street Berry, expansion of the Berry Hotel into 122 Queen Street, construction of new hotel accommodation at 79-83 Princess Street, consolidation of 4 lots, associated parking and landscaping, formalisation of access and parking on 77 Princess St, owned by Council.
Property	120 Queen St, BERRY – Lot 1 DP 578257 122 Queen St, BERRY – Lot 1 SP 93194 77 Princess St, BERRY – Lot 1 DP 209665 79 Princess St, BERRY – Lot 1 DP 342913 81 Princess St, BERRY – Lot 2 DP 342913 83 Princess St, BERRY – Lot 3 DP 342913
Determination	Refusal
Date of determination	To Be Confirmed

Under section 4.18(1) of the EP&A Act, notice is given that the above development application has been determined by way of refusal.

Right of appeal / review of determination

If you are dissatisfied with this determination:

Request a review

You may request a review of the consent authority's decision under section 8.3(1) of the EP&A Act. The application must be made to the consent authority within 6 months from the date that you received the original determination notice provided that an appeal under section 8.7 of the EP&A Act has not been disposed of by the Court.

Rights to appeal

You have a right under section 8.7 of the EP&A Act to appeal to the Court within 6 months after the date on which the determination appealed against is notified or registered on the NSW planning portal.

Dictionary

The Dictionary at the end of this consent defines words and expressions for the purposes of this consent.

REASONS FOR REFUSAL

1. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development contravenes clause 4.3 – Height of buildings of the SLEP 2014.
2. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not satisfactorily address the objectives of the E1 Local Centre zone under the SLEP 2014.
3. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not satisfactorily address clause 4.6 – Exceptions to development standards of the SLEP 2014.
4. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not satisfactorily address clause 5.10 – Heritage conservation of SLEP 2014.
5. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development has not satisfactorily demonstrated compliance with Clause 7.1 of the SLEP 2014.
6. Pursuant to Section 4.15(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development has not satisfactorily demonstrated compliance with the objectives of Section 3.2, Chapter 2 of the SDCP 2014.
7. Pursuant to Section 4.15(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development has not satisfactorily demonstrated compliance with the objectives, controls, performance criteria and acceptable solutions specified in Section 4, Section 5.2, and Section 5.9.1 of Chapter N2 of the SDCP 2014.
8. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not satisfactorily address the Objectives, Performance Solutions and Acceptable Solutions provided in Section 5.1, Chapter G2 of the SDCP 2014.
9. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development has not satisfactorily demonstrated compliance with the performance criteria and acceptable solution of Section G17 in that the height of the fencing along Princess Street inhibits natural surveillance.
10. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development has not satisfactorily demonstrated compliance with

Chapter G21 of the SDCP 2014 in relation to car parking, loading facilities and pedestrian connectivity.

11. Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development has not satisfactorily demonstrated that the proposal would not have an adverse impact upon the natural and built environment.
12. Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development has not satisfactorily demonstrated that the proposal would not have an adverse social impact upon the surrounding locality.
13. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the information submitted with the development application does not satisfactorily demonstrate that the site is suitable for the proposed use.
14. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, and having regard to the above matters, the granting of development consent is not considered to be in the public interest.

General advisory notes

This consent contains the conditions imposed by the consent authority which are to be complied with when carrying out the approved development. However, this consent is not an exhaustive list of all obligations which may relate to the carrying out of the development under the EP&A Act, EP&A Regulation, and other legislation. Some of these additional obligations are set out in the Conditions of development consent: advisory notes. The consent should be read together with the Conditions of development consent: advisory notes to ensure the development is carried out lawfully.

The approved development must be carried out in accordance with the conditions of this consent. It is an offence under the EP&A Act to carry out development that is not in accordance with this consent.

Building work or subdivision work must not be carried out until a Construction Certificate or Subdivision Works Certificate, respectively, has been issued and a principal certifier has been appointed.

A document referred to in this consent is taken to be a reference to the version of that document which applies at the date the consent is issued, unless otherwise stated in the conditions of this consent.

Dictionary

The following terms have the following meanings for the purpose of this consent (except where the context clearly indicates otherwise):

Approved plans and documents means the plans and documents endorsed by the consent authority, a copy of which is included in this notice of determination.

AS means Australian Standard published by Standards Australia International Limited and means the current standard which applies at the time the consent is issued.

Building work means any physical activity involved in the erection of a building.

Certifier means a council or a person that is registered to carry out certification work under the Building and Development Certifiers Act 2018.

Construction Certificate means a certificate to the effect that building work completed in accordance with specified plans and specifications or standards will comply with the requirements of the EP&A Regulation and Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

Council means Shoalhaven City Council.

Court means the NSW Land and Environment Court.

EPA means the NSW Environment Protection Authority.

EP&A Act means the Environmental Planning and Assessment Act 1979.

EP&A Regulation means the Environmental Planning and Assessment Regulation 2021.

Independent Planning Commission means Independent Planning Commission of New South Wales constituted by section 2.7 of the EP&A Act.

Occupation Certificate means a certificate that authorises the occupation and use of a new building or a change of building use for an existing building in accordance with this consent.

Principal certifier means the certifier appointed as the principal certifier for building work or subdivision work under section 6.6(1) or 6.12(1) of the EP&A Act respectively.

Site work means any work that is physically carried out on the land to which the development the subject of this development consent is to be carried out, including but not limited to building work, subdivision work, demolition work, clearing of vegetation or remediation work.

Stormwater drainage system means all works and facilities relating to:

- the collection of stormwater
- the reuse of stormwater
- the detention of stormwater
- the controlled release of stormwater, and
- connections to easements and public stormwater systems.

Strata Certificate means a certificate in the approved form issued under Part 4 of the Strata Schemes Development Act 2015 that authorises the registration of a strata plan, strata plan of subdivision or notice of conversion.