



Karen Chow
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D3/23
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 87 of the Environmental Planning and Assessment Regulation 2021 (“the Regulation”)

Development Application Number: 3/23

Land to which this applies: 13 Shellcove Road, Kurraba Point
Lot No.: 1, DP: 938160

Applicant: Karen Chow, C/- APlus Architecture Pty Ltd

Proposal: Alterations and additions to existing dwelling house and associated works.

Determination of Development Application: The development application was considered by the **North Sydney Local Planning Panel (NSLPP)** on 7 June 2023. 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: 7 June 2023

Reason for refusal:

- 1. The application does not meet Objective (f) in Section 1.3 of the Environmental Planning and Assessment Act 1979 (as amended) because it would not result in the orderly and sustainable management of land due to the adverse impacts on the significance of the heritage item and the Kurraba Point Heritage Conservation area.**

2. Insufficient and inadequate information

The applicant has not submitted sufficient and/or adequate information as requested by Council under Part 6, Division 1 Clause 54 of the EPA Regulation 2000 to enable a reasonable assessment under the applicable legislation.

Particulars:

- a) The following information was requested, however not provided to Council:-
 - i. demolition plan to include all structures proposed for demolition;
 - ii. sections through the proposed swimming pool showing proposed finished RL's of the pool; the coping and adjoining land, as well as any retaining wall details if applicable;
 - iii. elevational shadow diagrams which identify the existing and proposed shadows;
 - iv. view loss analysis in consultation with an AQ5 qualified arborist.
- b) The application lacks sufficient detail to make an informed assessment particularly with respect to determining the extent of overshadowing; potential view loss; existing and finished ground levels; and relationship / impact to adjoining neighbours.

3. Not considered to be in the public interest or suitable for the subject site.

The proposed development is not considered suitable for the subject site nor in the public interest.

Particulars:

- a) The proposed development would set an undesirable precedent for not only the heritage item but also the Kurraba Point Conservation area and is considered to be unsuitable for the subject site contrary to Section 4.15(c) of the Environmental Planning and Assessment Act 1979 (as amended)
- b) A total of twenty seven (27) public submissions were received against the application raising particular concerns about significant impact on the heritage item and conservation area; extent of excavation; as well as structural damage to properties; overshadowing and potential view loss. The proposal is not considered to be in the public interest contrary to Section 4.15(e) of the Environmental Planning and Assessment Act 1979 (as amended).

4. The application results in adverse impacts on the heritage significance of the dwelling and the Kurraba Point Conservation Area due to its failure to satisfy the heritage requirements of Clause 1.2 and Clause 5.10 of the North Sydney Local Environmental Plan 2013 as well as the heritage requirements of Section 13 the North Sydney Development Control Plan 2013.

Particulars:

- a) Clause 1.2(2) Aims in Part 1 of NSLEP 2013, specifically aim (f) to protect the natural, archaeological and built heritage of North Sydney and ensure that development does not adversely affect its significance;
- b) Clause 5.10(1) in Part 5 of the NSLEP 2013, specifically objective (a) and (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views;

- i) The additional two new levels and the demolition of the original architectural detailing within the existing dwelling will cumulatively detract from, and dilute the character of, the Arts and Crafts style dwelling, which was designed by eminent architect B.J. Waterhouse, resulting in a loss of aesthetic and associative significance.
 - ii) The proposed landscaping and swimming pool will result in a loss of Arts and Crafts style character and aesthetic significance to the heritage listed site as a result of the construction of the new retaining walls, the reduction in soft landscaping within the eastern setback and the style of the new landscaping proposal.
 - iii) The proposal will result in a significant loss of heritage significance to the dwelling and its setting. It is a heritage item listed in the NSLEP 2013.
- c) Clause 5.10(4) in Part 5 of the NSLEP 2013, specifically the adverse effect of the proposed development on the heritage significance of the item and the Kurraba Point Conservation area;
- d) The proposal will detract from the setting of the adjoining heritage item at No.11 Shellcove Road, and is inconsistent with Section 13.4 *“Development in the vicinity of heritage items”* of the NSDCP 2013;
- e) The proposed development is inconsistent with:-
- objectives O1 of Section 13.5.1 *“Heritage Item”* of the NSDCP 2013 as it fails to ensure that changes to the heritage item are based on an understanding of the heritage significance of the heritage item;
 - provision P5 of Section 13.5.1 *“Heritage Item”* of the NSDCP 2013 as it fails to locate change away from original areas of the heritage item that are intact;
 - objectives O1 of Section 13.5.2 *“Form massing and scale”* of the NSDCP 2013, as it fails to allow for alterations and additions to the heritage items which do not impact on the heritage significance of the heritage item;
 - objectives O1 of Section 13.5.3 *“Additional Storeys”* of the NSDCP 2013, as it fails to minimise the visual dominance of the new work from public places;
 - objective O1 of Section 13.5.5 *“Interior layouts”* of the NSDCP 2013 as it fails to ensure that significant interior elements are retained and preserved;
 - Objective O1 of Section 13.6.1 *“General objectives”* of the NSDCP 2013 as it fails to ensure that new development is designed to retain and complement the character and significance of the conservation area;
 - Objectives O2 of Section 13.9.3 *“Verandahs and balconies”* of the NSDCP 2013 as it fails to retain the original front verandah especially where it is significant or contributory to the individual building;
 - Objective O1 of Section 13.9.4 *“Materials, colours and finishes”* of the NSDCP 2013 as it fails to ensure that materials and finishes are consistent with the characteristic elements of the heritage item;
 - Objective O1 and provision P5 of Section 13.9.5 *“Garages and Carports”* of the NSDCP 2013 as it fails to ensure that vehicular accommodation does not determinately impact on the significance of the heritage item and failing to retain the original garages for heritage items;
 - Provision P1 of Section 13.9.6 *“Fences”* of the NSDCP 2013 as it fails to retain the original street boundary fence and gate;
 - Provision P3 of Section 13.9.7 *“Gardens”* of the NSDCP 2013 as it fails to retain the strong visual relationship to the existing terraced gardens and topography;

- Provision P2 of Section 13.10.3 “*Larger scale single dwellings*” of the NSDCP as it fails to locate new additions forward of the original eastern building façade altering its perceived storey height.

5. The proposed excavation is considered excessive resulting in a detrimental impact on the subject heritage item and the surrounding areas, pursuant to Clauses 5.10 (1) and 6.10(1) of the North Sydney Local Environmental Plan 2013 as well as the requirements of Section 1.3.1 the North Sydney Development Control Plan 2013.

Particulars:

- a) The proposal will result in extensive excavation below the subject dwelling and within its gardens to allow for the proposed two new levels. Cumulatively, these will result in irreversible impacts on the heritage item and loss of character, particularly when viewed from the harbour and from the Federation Houses Walk which forms part of the Bondi to Manly Walk within Cremorne Reserve. This is contrary to Clause 5.10 (1) and Clause 6.10(1) of NSLEP 2013.
- b) The proposed excavation is inconsistent with O4 of Section 1.3.1 of NSDCP 2013, as the proposal will result in major site disturbance due to the amount of excavation proposed not just the depth but also beyond the existing building footprint;
- c) The proposed excavation with a maximum depth of 16.1m will have a detrimental impact on the existing landform within the subject site and surrounding properties and is contrary to O1 of Section 1.3.1 of NSDCP 2013;
- d) The extent of the excavation would result in the removal of sandstone retaining wall and the sandstone base of the heritage listed dwelling contrary to P2 of Section 1.3.1 of NSDCP 2013;
- e) New finished floor levels will be greater than 500mm below existing ground level contrary to P3 Section 1.3.1 of NSDCP 2013;
- f) New habitable rooms will be located more than 1m below existing ground level for more than 50% of the rooms floor area contrary to P4 of Section 1.3.1 of NSDCP 2013;
- g) The proposal will result excavation and associated works to occur within 200mm from the property boundary is contrary to the P5 of Section 1.3.1 of NSDCP 2013.

6. Uncharacteristic form of development

The application results in a built form which is not subservient to the heritage item. The proposed development would contain a total of six (6) levels, including subterranean/basement levels, with a proposed floor area 1.25 times of the area of the subject site. The proposed development would have a detrimental impact upon the characteristics features of the heritage item resulting in a massing that is likely to overwhelm the heritage item contrary to the following provisions within NSDCP 2013.

Particulars:

- a) Objectives of the R2 Low Density zone, specifically dot point 3 relating to then amenity of the surrounding area and the natural and cultural heritage within the area;
- b) The proposal fails to retain the visual character of the dwelling, contrary to objective O1 in Part B, Section 1.3.5 *Visual Impact* in NSDCP 2013;
- c) The proposed bulk and scale within the side setbacks results in a massing which dominates the heritage item contrary to Objective O2, in Part B, Section 1.4.6 *Setbacks* in NSDCP 2013;

- d) Objective O1 in Part B, Section 1.4.7 in NSDCP 2013 (*Form, massing & scale*);
- e) Objective O1 in Part B, Section 1.4.8 in NSDCP 2013 (*Built form character*);
- f) Provision P6 in Part B of Section 1.5.1 in NSDCP 2013 (*High quality residential accommodation*);
- g) Objective 1 in Part B Section 1.5.2 in NSDCP 2013 (*Lightwells and Ventilation*);
- h) Provision P3 of Section 1.5.4 in NSDCP 2013 (*Vehicle access and parking*);
- i) The proposal provides excessive site coverage across the site contrary to O1 and O2 in Part B, Section 1.5.5 *Site Coverage* in NSDCP 2013;
- j) Objectives O1 and O2 in Part B Section 1.5.8 in NSDCP (*Front Gardens*); and
- k) The proposal is contrary to P2 in Part C in Section 6.2.6 in NSDCP 2013 in relation to number of storeys for detached dwellings within Kurraba Point Conservation Area.

The proposal will overwhelm the integrity of the Arts and Crafts cottage. It will no longer function as a dwelling, given that there is excessive floorspace devoted to individual uses not normally associated with a dwelling. The amenity of these underground facilities is unsatisfactory and not characteristic of dwelling houses, in particular of the arts and crafts era. The extensive basement levels will not be ancillary to the dwelling itself but rather the dwelling will be overwhelmed by the excessive size and new floor space area of the new development.

How community views were taken into account:

The submissions received by Council were addressed in the NSLPP report (see Council's website: [lpp01-13-shellcove-road-kurraba-point-da323-rpt-7-june-2023 \(nsw.gov.au\)](http://lpp01-13-shellcove-road-kurraba-point-da323-rpt-7-june-2023.nsw.gov.au))

Review of determination and right of appeal:

Within 6 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
ROBIN TSE
A/TEAM LEADER (ASSESSMENTS)