



A Machkevitch and M Fortunato
Corona Projects Pty Ltd
Level 7, 35-45 Spring Street
BONDI JUNCTION NSW 2022

D357/22
MR3 (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: 357/22

Land to which this applies: 63 Victoria Street, McMahons Point
Lot No.: 1, DP: 202869

Applicant: A Machkevitch and M Fortunato, Corona Projects Pty Ltd

Proposal: Alterations and additions to an existing semi-detached dwelling.

Determination of Development Application: The development application was considered by the **North Sydney Local Planning Panel (NSLPP)** on 2 August 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: 2 August 2023

Reason for refusal:

The Council Officer’s Report and Recommendation for refusal are endorsed by the Panel for the following reasons:

- A. In consideration of the written request made by the Applicant pursuant to Clause 4.6 of the North Sydney Local Environmental Plan 2013, the Panel is not satisfied that compliance with the development standard contained in Clause 4.3 – Maximum Height of Buildings of NSLEP 2013 is well founded.

The consent authority has identified that there are no sufficient environmental planning grounds which have been identified which would justify contravening the development standard.

The consent authority has identified that the proposed development is not in the public interest as it fails to achieve consistency with the relevant objectives of Clause 4.3 – Maximum Height of Buildings and the E3 - Productivity Support zone under NSLEP 2013.

B. The North Sydney Local Planning Panel, resolves on a merits assessment to refuse development consent to Development Application No. 357/22 for development involving alterations and additions to an existing semi-detached dwelling on land at No. 63 Victoria Street, McMahons Point (Lot 1 in DP 202869), as shown on Architectural Plans, prepared by Archispectrum and dated 16/06/23, for the following reasons:

1. Under Part 3, Section 24 (1)(b) of the EP&A Regulation, the development application fails to contain all the information and documents required by the approved form and as per the Act or Regulation in that the proposal indicated works within No. 65 Victoria Street, McMahons Point and owner's consent from this property was not obtained and provided to Council. As such, the consent authority is unable to grant consent for the respective works.
2. Pursuant to Section 4.15 (1)(a) of the EP&A Act 1979, the proposed development does not comply with the following relevant environmental planning instruments and development controls as follows:
 - a. North Sydney Local Environmental Plan 2013 – Aims of the Plan – unable to satisfy the key aims (2)(a), (2)(b)(i) and (2)(c)ii.
 - i. The proposal fails to promote development that is appropriate to its context and enhances the amenity of the North Sydney Community and environment. It involves introducing a built form that is not contextually appropriate, is excessive and disproportionate to the respective undersized allotment, and features a substantial height breach that will generate view loss and privacy impacts.
 - ii. The proposal fails to provide a compatible built form that is acceptable in terms of streetscape response, bulk, scale and appearance. The provision of a roof terrace is a key concern as it promotes a height breach that will result in view loss and amenity impacts.
 - iii. The proposal is unable to maintain and protect residential amenity due to the roof terrace generating view loss and privacy impacts.
 - iv. The proposal fails to not adversely affect residential amenity in terms of visual and acoustic privacy and view sharing.
 - b. North Sydney Local Environmental Plan 2013 – objectives of E3 zone relating to permitting development that is compatible with the scale, intensity and character of the surrounding residential area.
 - c. North Sydney Local Environmental Plan 2013 – objectives of Clause 4.3 – unable to satisfy the objectives (1)(b), (1)(d), (1)(e) and (1)(f).

- d. North Sydney Local Environmental Plan 2013 – Clause 4.6 – the consent authority is not satisfied as per provisions (3) and (4).
 - e. North Sydney Development Control Plan 2013, Part B, Section 1 – Environmental Criteria (Section 1.3.6 and Section 1.3.10) – failure to meet objectives and controls with respect to Views and Visual Privacy.
 - f. North Sydney Development Control Plan 2013, Part B, Section 1 – Quality Built Form (Section 1.4) – failure to meet objectives and controls with respect to Form, Massing and Scale; Built Form Character; Roofs and Materials.
 - g. North Sydney Development Control Plan 2013, Part C, Section 9 – McMahons Point Business Precinct (Section 9.2) – failure to meet objectives and controls.
3. Pursuant to Section 4.15(1)(b) of the EP&A Act 1979, the proposed development is likely to have adverse impacts on the following aspects on the environment: view loss, privacy and amenity.
 4. Pursuant to Section 4.15(1)(c) of the EP&A Act 1979, the subject site is not suitable for the proposed development for the following reasons: excessive height and adverse impacts on neighbouring properties.
 5. Pursuant to Section 4.15(1)(e) of the EP&A Act 1979, the proposed development is not considered to be in the public interest and is likely to set an undesirable precedent including poor design and planning response to the re-development of a substantially undersized and built-up allotment and endorsement of an unacceptable non-compliance to the maximum building height provision under Clause 4.3 and non-compliances with provisions and controls under Council policy.

How community views were taken into account:

The submissions received by Council were addressed in the NSLPP report (see Council’s website: <https://www.northsydney.nsw.gov.au/downloads/file/2667/lpp02-63-victoria-street-mcmahons-point-da35722-2-august>)

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



7 August 2023

DATE

Signature on behalf of consent authority
MIGUEL RIVERA
SENIOR ASSESSMENT OFFICER