



Mr A Turner
Minto Planning Services
PO Box 424
BEROWRA NSW 2081

D110/23
MR3 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
NOTICE OF DETERMINATION - Refusal**

Development Number:	110/23
Land to which this applies:	35 Burlington Road, Crows Nest Lot No.: D, DP: 309404
Applicant:	A Turner - Minto Planning
Proposal:	Alterations and additions to existing dwelling
Determination of Development Application:	Subject to the provisions of Section 4.17 of the <i>Environmental Planning and Assessment Act 1979</i> , the subject application has been refused for the reasons stated below.
Date of Determination:	9 August 2023

Reasons for Refusal:

1. The proposed built form and scale of the development is excessively large and inappropriate for the constrained site. The proposed built form is incompatible with the existing and desired future character of the area and would result in unreasonable impacts to adjoining properties.

Particulars

- a. 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:
 - i. The proposal does not promote development that is appropriate to its context and enhances the amenity of the North Sydney community and environment.
 - ii. The proposal would not facilitate new development that is compatible with the existing and desired future character of the area as it involves a built form that is out-of-scale, bulk, excessive and disproportionate to the respective site.
- b. North Sydney Local Environmental Plan 2013 - Aims of the Plan - unable to satisfy the key aims (2)(a), (2)(b) and (2)(c).

- iii. The proposal is an overdevelopment of a constrained site.
 - iv. The proposal does not maintain or protect a reasonable residential amenity for adjoining properties to the east and west
 - v. The proposal would introduce a prominent 2-storey structure adjacent to neighbouring private open spaces that will visually intrude these spaces and adversely affect residential amenity.
 - vi. The proposed rear addition does not have reasonable form and massing or sufficient modulation and articulation to provide visual relief to the affected rear spaces and open courtyards of neighbouring residences.
- c. North Sydney Local Environmental Plan 2013 - objectives of R2 zone relating to not compromising amenity of surrounding area and natural and cultural heritage of the area and ensuring a high level of residential amenity is achieved and maintained. The proposed rear addition comprises a form that is excessive and bulky, such that visual relief cannot be provided to the affected rear spaces and open courtyards of neighbouring residences.
- d. North Sydney Local Environmental Plan 2013 - objectives of Clause 4.3 - unable to satisfy the objectives (1)(c) and (1)(f). The proposed first floor addition continues the 2-storey form beyond the characteristic/prevaling rear building line of existing first floor extensions and the scale, massing and presentation of the resultant building is considered to be inappropriate and does not promote the character of the area. Further changes to have a more recessive first floor will result in reduced and more reasonable overshadowing impacts and improved solar access for neighbouring properties.
- e. North Sydney Local Environmental Plan 2013 - Clause 5.10 - unable to satisfy the provisions under this clause. The proposed first floor addition will result in a building that is excessive, bulky, and out-of-character and that will interrupt the prominent architectural language and style, aesthetic and development pattern that is unique to the conservation area and the immediate streetscape along Burlington Street and Falcon Lane. The proposed development fails to deliver a contextually appropriate built form that is sufficiently responsive to the site's setting within a conservation area and will introduce uncharacteristic elements as well as excessive bulk and scale that are undesirable for the locality and conservation area. As such, the provisions of Clause 5.10 have not been achieved and the proposal cannot be supported on heritage grounds.
- f. North Sydney Development Control Plan 2013, Part B, Section 1 - Environmental Criteria (Section 1.3) - failure to meet objectives and controls. The visual and overshadowing impacts created by introducing an excessive and non-compliant 2-storey form into the rear, are considered unreasonable and unacceptable.
- g. North Sydney Development Control Plan 2013, Part B, Section 1 - Quality Built Form (Section 1.4) - failure to meet objectives and controls.
- i. The proposed rear setback extends beyond the rear building line of the first floors of residences along Burlington Street.
 - ii. The rear setback of the first-floor addition is not in-line with the prevailing rear setback of surrounding and adjoining properties along Burlington Street (such as No. 37 Burlington Street). The final scheme reflects an overdevelopment of the site and features an excessive, bulky built form with a rearward projection that is not characteristic of the development pattern and streetscape prevailing in the vicinity.
 - iii. The proposal introduces substantial bulk and massing that visually intrudes and imposes open spaces and rear yards. As such, the rear setback of the first-floor addition cannot be supported.

- iv. The non-compliant first floor addition in-combination with the excessive site coverage, will introduce an undesirable built form and design outcome for the site and conservation area that is out-of-character and will result in unreasonable and unacceptable impacts on the streetscape, conservation area and the amenity of surrounding properties.
 - v. The variation to the site coverage control is not supported due to the impacts of the 2-storey rear addition. This bulky and excessive addition could not reasonably be delivered on a site with such a substantial variation to the maximum site coverage control.
- h. North Sydney Development Control Plan 2013, Part B, Section 13 - Heritage and Conservation - failure to meet objectives and controls. The proposed development fails to deliver a contextually appropriate built form that is sufficiently responsive to the site's setting within a conservation area and will introduce uncharacteristic elements as well as excessive bulk and scale that are undesirable for the locality and conservation area.
- i. North Sydney Development Control Plan 2013, Part C, Section 3 - Holtermann Estate B Conservation Area (Section 3.5) - failure to meet objectives and controls. The proposed development will introduce an excessive expansion of the residence that is out-of-character and not in-context with the conservation area.
2. 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: heritage, streetscape, overshadowing and visual impacts on adjoining land.
3. 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 bulk, scale and density, streetscape response, context and setting response - not sympathetic to heritage conservation area and overshadowing and visual impacts.
4. 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 due to non-compliances with objectives and controls under Council policy including NSLEP 2013 and NSDCP 2013.

How community views were taken into account:

Council received a total of two (2) submissions from the community. These concerns and issues have been discussed in this report and are considered to be adequately addressed by the final scheme and/or can be addressed through the imposition of conditions (should the application be supported).

Having regard to the merits of the proposed development, the application is recommended refusal for reasons outlined below.

Any variation to the Development Consent can only be made with the written approval of the Council. Major variations will require a new or amended Development Consent.

Pursuant to Section 8.2, an applicant is able to request Council to review its determination. An application for a review under Section 8.2 of the Act must be made no later than 28 days after the date on which the application for the modification of the development consent was determined.

Section 4.55 of the Act confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court pursuant to Section 8.7 of the Environmental Planning and Assessment Act, 1979.

Endorsed for and on behalf of North Sydney Council



9 August 2023

DATE

Signature on behalf of consent authority
MIGUEL RIVERA
A/TEAM LEADER (ASSESSMENTS)