



Felicity King
C/- Studio Barbara
Suite 6, 20-28 Maddox Street
ALEXANDRIA NSW 2015

D381/22
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: 381/22

Land to which this applies: 9 Gundimaine Avenue, Kurraba Point
Lot No.: 2, DP: 9797

Applicant: Felicity King
C/- Studio Barbara

Proposal: Alterations and additions to an existing detached dwelling including a first floor addition and a double garage.

Determination of Development Application: The development application was considered by the **North Sydney Local Planning Panel (NSLPP)** on 7 February 2024. 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 February 2024

Reason for refusal:

The Council Officer’s Report and Recommendation are accepted by the Panel and the development application is determined by the refusal of consent for the following reasons:

1. The written request pursuant to clause 4.6 of NSLEP is not supported

The written request pursuant to clause 4.6 of NSLEP seeking a variation to the height of building development standard in clause 4.3 of NSLEP is not considered to be well founded.

Particulars:

- (i) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not comply the 8.5m maximum height of building development standard specified in clause 4.3(2) in NSLEP 2013.
- (ii) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the written request submitted with the application seeking a variation to the maximum height of building development standard has inadequately addressed the matters required to be addressed in subclause (3) in clause 4.6 in NSLEP 2013.
- (iii) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the written request has failed to adequately demonstrate that compliance is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the height of building development standard.
- (iv) The proposed development is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a) and (e) of the *Environmental Planning and Assessment Act 1979* in that the development is not consistent with the objectives of the height of building standard in clause 4.3(1) in NSLEP 2013 and the objectives of the R2 (Low Density Residential) zone (dot point 4) under NSLEP 2013 and is therefore not in the public interest.

2. Unacceptable Heritage Impacts

The proposed development is unacceptable because of the adverse impacts on the subject dwelling and the conservation area.

- (i) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not satisfy Clause 5.10(1)(a), Clause 5.10(1)(b) and Clause 5.10(4) in Part 5 of NSLEP 2013 due to the detrimental impacts of the proposed development on the subject building and the conservation area, in particular the loss of the interwar character of the original dwelling with the removal of the existing roof over and the uncharacteristic design of the new building elements.
- (ii) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposal does not satisfy the aims of North Sydney Local Environmental Plan 2013 (NSLEP 2013) as listed in Clauses 1.2 (2)(a), (2)(b)(i), and (2)(f) in Part 1 of NSLEP 2013.
- (iii) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not satisfy the objective of the R2 (Low Density Residential) zone in the Land Use Table in Part 2 of NSLEP 2013 because of the adverse impacts of the proposed development on the significance of the conservation area, particularly dot point 3.

- (iv) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* in that proposed development does not satisfy the Area Character Statement for South Cremorne Planning Area in Section 6.0 in Part C of North Sydney DCP 2013 (NSDCP 2013) given that the proposal does not promote the character within the conservation area because the design of the proposal fails to reflect and reinforce the characteristic built form as identified in the Area Character Statement.
- (v) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* in that it fails to satisfy the development controls for the following sections in Part B of the NSDCP 2013 and is therefore considered unacceptable:
 - a. Section B – 13.6.1 – General Objectives
 - b. Section B – 13.6.2 – Form Massing and Scale
 - c. Section B – 13.6.3 – Roofs
 - d. Section B – 13.6.4 – Additional Storey and levels
 - e. Section B – 13.6.5 – Internal Layout
 - f. Section B – 13.6.8 – Demolition
 - g. Section B – 13.9.3 – Verandah and Balconies
 - h. Section B – 13.9.4 – Materials
 - i. Section B – 13.9.5 – Garages and Carports
 - j. Section B – 13.9.6 – Fences
 - k. Section B – 13.9.7 – Gardens
 - l. Section B – 13.10.3 – Larger Scale Single Dwelling

3. Inappropriate context, excessive height, bulk and scale and built form

The proposed development is unacceptable because of the proposed works will result in an appropriate built form within the locality.

Particulars

- (i) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development is inappropriate to its context being a dwelling within a conservation area with uncharacteristic building elements which is contrary to aim 1.2 (2)(a) in NSLEP 2013 as well as section 1.4.1 in Part B of NSDCP 2013.
- (ii) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development is contrary to Section 1.4.5 in Part B of NSDCP 2013 because the uncharacteristic siting of the double garage with extensive paving and the loss of a garden setting within the western building setback.
- (iii) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development contrary to Section 1.4.6 in Part B of NSDCP 2013 because the front building setback is not consistent with the front building setback of the group of dwellings along the Shell Cove foreshore.

- (iv) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development is contrary to Section 1.4.7 and 1.4.8 in Part B of NSDCP 2013 because the proposed addition will increase the bulk and scale of the existing building with an uncharacteristic built form.
- (v) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979* in that proposed development is contrary to Sections 1.4.10 and 1.4.11 in Part B of NSDCP 2013 because of the inappropriate roofing materials.

4. Overdevelopment

The proposed development is an overdevelopment of the subject site because of the non-compliance with site coverage, unbuilt upon area and landscaped area requirements.

Particulars

- (i) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposed development is an overdevelopment of the subject site and is contrary to aim 1.2 (2)(a) in NSLEP 2013 as well as sections 1.5.5 and 1.5.6 in Part B of NSDCP 2013.
- (ii) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not satisfy the objective of the R2 (Low Density Residential) zone in the Land Use Table in Part 2 of NSLEP 2013 because of the proposed development with a non-complying site coverage and the reduction in landscaped area does not promote a high level of residential amenity.
- (iii) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development is contrary to Section 1.5.5 in Part B of NSDCP 2013 because the proposal is not consistent with the objectives of site coverage and does not comply with the maximum site coverage requirements.
- (iv) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development is contrary to Section 1.5.6 in Part B of NSDCP 2013 because the proposal is not consistent with the objectives of landscaped area and does not comply with the minimum landscaped area and maximum unbuilt upon area requirements.

5. Landscaping

The proposed development is unacceptable because the proposal is unsatisfactory and fails to address the concerns raised by Council's Landscape Officer.

Particulars

- (i) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposed development is contrary to aim 1.2 (2)I in NSLEP 2013 as well as section 1.5.7 in Part B of NSDCP 2013.

- (ii) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not satisfy the objective of the R2 (Low Density Residential) zone in the Land Use Table in Part 2 of NSLEP 2013 because of the proposed landscape treatments do not promote a high level of residential amenity.
- (iii) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development is contrary to Section 1.5.7 in Part B of NSDCP 2013 because the proposal does not achieve a landscaping outcome that will clearly satisfy the DCP objectives and provisions for landscaping.

6. Public Interest

The proposed development is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979* in that the approval of the proposed development is not in public interest because of the adverse impacts on the significance of conservation area and the adverse impacts on the residential amenity of the locality.

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/3062/lpp03-9-gundimaine-avenue-kurraba-point-da38122-7-february-2024>)

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

14 February 2024

DATE



Signature on behalf of consent authority
ROBIN TSE
SENIOR ASSESSMENT OFFICER