



Ms A Turner
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D110/23
S8.2 Review 9/23
IL2 (PE)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
**Notice to Applicant of Review of Determination of a
Development Consent - Refusal**

Review of Determination Number: Section 8.2 Review of Determination No. 9/2023
Development Application No. 110/23

Land to which this applies: 35 Burlington Street, Crows Nest
Lot No.: D DP: 309404

Applicant: Minto Planning Services

Proposal: Review of DA **43/21** for alterations and additions to an existing dwelling

Determination of Development Application: Pursuant to Section 8.5 of the Act, notice is given that Section 8.2 Review of Development Consent No. **110/23** for the above proposal was determined by Council the subject application has been refused for the reasons stated below.

Date of Determination: 8 February 2024

Reasons for Refusal:

Excessive Built form and scale incompatible to Conservation Area

- 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 Conservation Area and would result in unreasonable impacts to adjoining properties.**

The proposed development is not appropriate to its context or compatible with the character of the area by virtue of its excessive bulk and scale, building footprint and incongruous built form and its failure to respond to the context of the site and adjoining properties.

Particulars

- a) 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 aims of *North Sydney Local Environmental Plan 2013 (NSLEP 2013)* as listed in Clauses 1.2 (2)(a), (2)(b)(i), (2)(c)(i), in Part 1 of NSLEP 2013.
- b) 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 Objectives of the R2 zone, to ensure developments are appropriate and compatible to the context, and character of an area and that development does not adversely affect the amenity of neighbouring properties.
- c) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) and (1)(b) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not satisfy the objectives of *North Sydney Local Environmental Plan 2013 (NSLEP 2013)* as listed in Clauses 4.3(1)(c) and (1)(f) in that 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.
- d) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i), (1)(b) and (1)(c) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not satisfy the objectives of *North Sydney Local Environmental Plan 2013 (NSLEP 2013)* as listed in Clauses 5.10 (1)(a) and (b) in that 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.
- e) 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 the proposed development does not satisfy the objectives and controls of *North Sydney Development Control Plan 2013 (DCP 2013)* as listed in Part B, Section 1, Environmental Criteria (Section 1.3) in that the proposal will result in visual and overshadowing impacts created by the excessive rear form.
- f) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(iii), (1)(b) and (1)(c) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not satisfy the objectives and controls of *North Sydney Development Control Plan 2013 (DCP 2013)* as listed in Part B, Section 1, Quality Built Form (Section 1.3) in that:
 - i. The 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 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.
- g) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(iii), (1)(b) and (1)(c) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not satisfy the objectives and controls of *North Sydney Development Control Plan 2013 (DCP 2013)* as listed in Part B, Section 13, Heritage and Conservation in that the proposal fails to deliver a contextually appropriate built form that is sufficiently responsive to the sites setting within a conservation area and will introduce uncharacteristic elements as well as excessive bulk and scale that is undesirable for the locality and conservation area.
- h) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(iii), (1)(b) and (1)(c) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not satisfy the objectives and controls of *North Sydney Development Control Plan 2013 (DCP 2013)* as listed in Part C, Section 3, Holtermann Estate B Conservation Area (Section 3.5) in that the proposal will introduce an excessive expansion of the residence that is out of character and not in context with the conservation area.
- i) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(b), (1)(b) and (1)(c) of the *Environmental Planning and Assessment Act 1979* in that the proposed development is likely to create adverse impacts on heritage, streetscape, overshadowing and visual impacts on adjoining properties.
- j) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979* in that the subject site is not suitable for the proposed development with regard to excessive bulk, scale and density, streetscape response, context and setting, sympathy to heritage conservation and overshadowing and visual impacts.
- k) The application 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 proposed development is not considered to be within the public interest and is likely to set an undesirable precedent due to the non-compliance with objectives and controls under Council policy including the NSLEP 2013 and NSDCP 2013.

How community views were taken into account:

On 8 December 2023 the DA was notified to adjoining/ surrounding properties and the Holtermann Precinct Committee, in accordance with Council's Community Engagement Protocol for a period ending on 19 January 2024. No submissions were received during this period.

Right of appeal:

Within six months after the date of notification of the decision, an appeal to the Land and Environment Court made pursuant to the provisions of Section 8.7 of the Act.

Endorsed for and on behalf of North Sydney Council

8 February 2024

DATE



Signature on behalf of consent authority
ISOBELLA LUCIC
TEAM LEADER ASSESSMENTS