



Mrs J Shetty
C/- McKendry Hunt Architects
The Production Hub
Suite 3, Level 1, 4 Crown Street
NEWCASTLE NSW 2300

D290/23
JD6 (PE)

**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: 290/23

Land to which this applies: 1/19 Lavender Street, Lavender Bay
Lot No.: 1, SP: 66449

Applicant: Mrs J Shetty
C/- McKendry Hunt Architects

Proposal: Alterations and additions to a dwelling in an attached dual occupancy and associated works.

Determination of Development Application: The development application was considered by the **North Sydney Local Planning Panel (NSLPP)** on 01 May 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: 01 May 2024

Reasons for refusal:

The Panel determined that the application is refused for the reasons below:

1. The requirements of clause 4.6 (3) North Sydney Local Environmental Plan 2013 (the LEP) have not been satisfied. Consent must not be granted because the applicant’s written request to vary the height of building development standard does not demonstrate that compliance would be unreasonable or unnecessary and neither does the request demonstrate that there are sufficient environmental planning grounds to justify contravening the standard.

2. The application is inconsistent with the following objective of the R3 Medium Density Housing zone:
 - *To ensure that a high level of residential amenity is achieved and maintained.*
3. The application is inconsistent with the objectives of the height of building development standard of the LEP, clause 4.3 (1).
4. The application does not satisfy the objectives of the LEP, clause 5.10 Heritage conservation, subclause (1), paragraphs (a) and (b).
5. The application is inconsistent with the following provisions of North Sydney Development Control Plan 2013 (the DCP), Part B Development Controls, Section 1 - Residential Development:
 - a) Clause 1.3.6 – Views, the development has unacceptable impacts on views from the public domain and whether the development has acceptable impacts on views from private residences in proximity of the site has not been adequately demonstrated.
 - b) Clause 1.3.7 – Solar access, it has not been adequately demonstrated that increased overshadowing of trees adjacent to the site will adversely impact the health of those trees.
 - c) Clause 1.4.1 – Context, for the reasons provided by the Conservation Planner’s assessment and reason 6 below, the proposed development is incompatible with its heritage context.
 - d) Clause 1.4.3 – Streetscape, the proposed development is inconsistent with the streetscape due to its height, bulk and scale, and potential impact on nearby significant vegetation.
 - e) Clause 1.4.6 - Side Setbacks, Provision P2, the proposed development does not provide compliant and adequate setbacks on the western side of the site.
 - f) Clause 1.4.6 – Rear Setback, Provision P5, the rear setback of the proposed additions is inconsistent with objectives O2, O3 and O4.
 - g) Clause 1.4.7 – Form, massing and scale, inconsistencies with requirements and objectives for height, setbacks, site coverage, and landscaped area result in the proposal having excessive form, massing and scale. These inconsistencies indicate that the proposed development is an overdevelopment of the site, as does the fact the proposed development forms, in conjunction with existing buildings on the site, a continuous wall of built form from the north western corner to the south eastern corner of the site.
 - h) Clause 1.5.5 – The development has excessive site coverage and is inconsistent with the provisions of this clause.
 - i) Clause 1.5.6 - The development has inadequate landscaped area and is inconsistent with the provisions of this clause.
6. The application is contrary to the following provisions of the DCP, Part B Development Controls, Section 13 – Heritage Conservation and Part C Lavender Bay Planning Area:
 - a) Clause 13.1.1 Guiding Statement: in terms of managing North Sydney’s heritage for present and future generations in accordance with the principles of intergenerational equity as per the Burra Charter;
 - b) Clause 3.1.2 General objectives – Objective O5
 - c) Clause 13.4 Development in the vicinity of heritage items, Objective O1, Provisions P1 and P5;

- d) Clause 13.5.1 Protecting heritage significance - Objectives O1, O3 and O5 and Provisions P4 and P5;
 - e) Clause 13.5.2 Form, massing and scale;
 - f) Clause 13.5.3 Additional Storeys – Objective O1;
 - g) Clause 13.5.4 Roofs – Objective O1;
 - h) Clause 13.5. 5 Interior layouts, Objective O1 and Provisions P1 and P8;
 - i) Clause 13.9 Controls for specific building elements; and
 - j) Part C Section 9 Lavender Bay Planning Area, Lavender Bay Conservation Area: clause 9.9.4 Views, Provision 10; Clause 9.9.6 Characteristic Built Elements, Provision P7 and Clause 9.9.7 Uncharacteristic Elements, Provision P1.
7. The application is inconsistent with the following provisions of State Environmental Planning Policy (Biodiversity and Conservation) 2021:
- a) Clause 6.28 (1), paragraphs a), c), f), g) and h), and
 - b) Clause 6.28 (2), paragraph e).
8. The site is unsuitable for the site, for reasons 1-7.
9. Approval of the application would not be in the public interest, for reasons 1-7.

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/3276/lpp02-1-19-lavender-street-lavender-bay-da29023-rpt>)

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 and must be completed under Division 8.2 of the Act, or an appeal to the Land and Environment Court made pursuant to the provisions of Division 8.3 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

8 May 2024

DATE



Signature on behalf of consent authority
JIM DAVIES
EXECUTIVE PLANNER