



Amrit Pal Singh
42 Milson Road,
CREMORNE POINT NSW 2090

D302/23
TH1 (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: 302/23

Land to which this applies: 42 and 42A Milson Road, Cremorne Point
SP 32457

Applicant: Amrit Pal Singh

Proposal: Substantial alterations and additions to lower ground, ground level and first floor additions and demolition of garage and replacement with a three bay garage with green roof.

Determination of Development Application: The development application was considered by the **North Sydney Local Planning Panel (NSLPP)** on 5 June 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: 5 June 2024

Reasons 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. Heritage Impacts

The subject property is a Neutral Item located in the Cremorne Point Conservation Area. The 1912 building was built for Hugh MacCallum who established MacCallum's Pool in Cremorne Reserve but has been divided into a duplex with alterations and additions. The house is designed in the Arts and Crafts style and is two storey in scale with rooms in the attic. The proposed development does not contribute to the heritage significance of the site and surrounding Cremorne Point Conservation primarily due to the size of the dormer and excessive glazing to the lower ground of the property which faces Cremorne Point.

The below particulars do not include retention of leadlight windows, battened ceilings and wainscotting on the upper ground and attic level as well as the design of the first floor balcony facing Cremorne Reserve as these elements can be satisfied based on receipt of amended plans (Rev H).

Particulars

- a) The proposed dormer is over scaled in that it will cover more than one third of the roof plane being a dominant addition highly visible from the street and detrimental to the significance of the Cremorne Point Conservation Area contrary to Provision P3, P6 and P12 and O1 in s13.9.2 'Dormer windows' of the NSDCP 2013.
- b) The lower ground floor large glazed window (LG13) facing Cremorne Reserve is excessive not vertically proportioned, multipaned and sympathetic to Federation Arts and Crafts style fenestration. The glazing has a detrimental impact upon the heritage conservation area and it is encouraged the balcony is reinstated to that of the original to satisfy Objectives O1 and O2 in s13.9.3.
- c) The dormer windows are also contemporary in appearance and excessive highly visible from the street. Extensive glazing for the dormer and lower ground floor window facing Cremorne Reserve are uncharacteristic elements as stipulated in Section 6.4.7, Part C of the NSDCP 2013.
- d) The characteristic siting for buildings in the Cremorne Point Conservation Area as stipulated in s6.4.6, Part C of the DCP is to the middle of the lot with gardens to the front and rear. The development comprising of additional building footprint to the front of the lot and a new larger roof form with additional bulk and scale to the front of the site does not uphold the characteristic siting of buildings in the conservation area.
- e) The proposed dormer addition, scale and contemporary design of the dormer windows, bulk, scale and siting of the development and the extensively glazed lower ground facing the Cremorne Reserve will detract from the significance of the heritage conservation area contrary to Aims of Plan 1.2(2)(f), Objective 1(b) in Clause 5.10 in NSLEP 2013.

2. Height of Building

The site is subject to a maximum height of buildings standard of 8.5 metres. The proposed additions as stipulated in the Cl. 4.6 exception statement would have a height of 12.4m being a variation of 3.9m (46%) of the standard. The height of building is not supported and the written request to justify the contravention of the development standard is not well founded.

Particulars

- a) The building has a maximum height of 12.4m (46% exceedance) as stipulated within the supporting Clause 4.6 exception statement prepared by Lance Doyle. The height of building at 12.4m is not annotated or detailed within any corresponding Sections or annotated on the Height Plane Diagram.
- b) The Sections provided within the architectural set prepared by Quattro Architecture are insufficient in determining the extent of height exceedance and both Long Sections and Cross Sections must detail the existing ground level to fully interpret the height of building above the existing ground level.
- c) The Clause 4.6 Exception to a Development Standard variation request includes minimal view analysis not satisfying Clause 4.3, Objective 1(b) of NSLEP 2013. The development subject to increased bulk and scale predominantly due to the large roof addition is considered to have a significant impact to existing views especially water and iconic views from Milson Road.
- d) The alterations and additions to the roof of the building would cast additional shadow impact to the adjoining property 40 Milson Road notably impacting upon an additional window on the first floor on the western elevation of 40 Milson Road in mid-winter at 3pm. The roof which exceeds the maximum 8.5m has an additional shadow impact not maintaining solar access to existing dwellings therefore the development does not comply with objective (1)(c) of Cl. 4.3 'Height of Buildings' in NSLEP 2013 which seeks the maintenance of existing solar access and no additional shadow impact to neighbouring properties.
- e) The alterations to the roof to provide additional habitable floor space including the large dormer is excessive impacting upon the built form of the existing dual occupancy so that the building is more apparent as a three storey building not 1 or 2 storeys which is contrary to both the characteristic number of storeys for buildings within the Cremorne Conservation Area and contrary to objective (1)(g) of Clause 4.3 'Height of Buildings' in NSLEP 2013.
- f) The height of building is not supported and the written request to justify the contravention of the development standard is not well founded. The written request does not demonstrate compliance with the development standard would be unreasonable and there are insufficient planning grounds to justify the variation. In particular the development does not comply with the following objectives in Clause 4.3 'Height of Buildings' of NSLEP 2013.

3. Clause 6.6 – Dual Occupancy

The Statement of Environmental Effects and Heritage Impact Statement do not satisfactorily address the Cl. 6.6 provisions. The statements have not contended with Cl. 6.6(2)(b) in a detailed sense, and the plans and written statement have not substantiated the works will be situated 'substantially within' the fabric of the building and 'conserve the appearance' of the building.

Particulars

Clause 6.6(2)(i) 'Dual Occupancies'

(2) A dual occupancy must not be erected on land that is located within a heritage conservation area or on which a heritage item is located unless—

(b) the dual occupancy—

(i) will be situated substantially within the fabric of an existing building.

- a) substantial partitions would remain for the lower ground floor, however more substantial demolition is proposed to the ground level, including demolition of the existing garage and a larger roof form is proposed.
- b) Insufficient reasoning is provided that the scope of works is substantially within the fabric of the existing building and a particular challenge the Applicant faces with this subclause is the additional bulk and scale and scope of additions transforming the design and bulk and scale beyond that of the existing building.
- c) The subclause restricts the scope of work to more minor alterations and additions compared to that currently proposed therefore the works are deemed not to be substantially within the fabric of the building to satisfy Cl. 6.6(2)(b)(i) of NSLEP 2013.

(2) A dual occupancy must not be erected on land that is located within a heritage conservation area or on which a heritage item is located unless—

(b) the dual occupancy—

(ii) will conserve the appearance of the existing building, as visible from a public place.

- d) The works proposed comprise substantial alterations to the existing roof enlarging the existing roof line of the building and providing an extended roof projecting in line with the principal elevation of the dual occupancy. The alterations to the roof combined with the size of dormer proposed is not supportable not conserving the appearance of the existing building from Milson Road.
- e) The application seeks alterations to the façade facing Cremorne Reserve that although seek to alter the appearance of the existing building are supportable most notably changes detailed in the amended set of architectural plans within set of plans in revision H dated 03 April 2024 apart from the excessive glazing to the lower ground floor window LG 13.

4. Site Coverage & Un-built Upon Area

The set of architectural plans (Rev G) includes a Proposed Calculations Diagram (DA-A-022 Rev G) detailing the proposed building footprint (site coverage) and the landscaped area. The proposed calculations diagram does not detail the proposed un-built upon area noting proposed pathways within the setbacks of the site particularly the eastern and southern setback are not accounted for as un-built upon area.

The proposed site coverage of 56% (294.5m²) is considered a significant exceedance greater than the maximum 45% stipulated in s1.5.5 of NSDCP 2013.

Particulars

- a) The proposed calculations diagram comprises errors or discrepancies detailing the site coverage and landscaped area but not the un-built upon area. It is unclear whether the development complies with the un-built upon area requirements stipulated in Table B-1.7, P1 in s1.5.6 of NSDCP 2013.
- b) The site coverage shown in DA-A-022 Rev G does not accurately show the full extent of proposed site coverage for instance it appears the lower ground floor is utilised to measure the site coverage/building footprint but the additional site coverage from the garage within the front setback, the covered porch on the eastern elevation and covered terrace to the rear northern elevation also needs to be accounted which would increase the extent of site coverage.
- c) The proposed building footprint/site coverage stipulated in the Proposed Calculations Diagram (DA-A-022 Rev G) of 294.5m² (56%) is excessive and a substantial exceedance compared to the minimum 45% stipulated in Table B-1.6, Provision P1, s1.5.5 of NSDCP 2013.
- d) The development is not balanced and in keeping with the optimum capacity of the site and is considered over development not controlling site density contrary to Objectives O1 and O3 in s1.5.5 of NSDCP 2013.
- e) The substantial exceedance in site coverage does not maintain the low density character of the zone and the additional building footprint and built form to the front of the site affects the siting of the property contrary to Objective O2 in s1.5.5 of NSDCP 2013.
- f) It is required that careful consideration and design amendments are required to not increase additional site coverage but have a net reduction in site coverage to ensure an improved site coverage outcome to control site density and limit the building footprint to ensure a development more commensurate to its Low Density Residential Zoning.

5. Public Interest

- a) 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 outcome due to the detrimental impact to the heritage conservation area and due to the non-compliances with objectives and controls under Council policy including the NSLEP 2013 and NSDCP 2013.

How community views were taken into account:

The application has been notified and details of the notification and submissions were addressed in the NSLPP report (see Council's website: [North Sydney Local Planning Panel \(NSLPP\) – North Sydney Council \(nsw.gov.au\)](http://www.northsydney.nsw.gov.au))

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

13 June 2024

Thomas Holman

DATE

Signature on behalf of consent authority
THOMAS HOLMAN
SENIOR ASSESSMENT OFFICER