



The Trustee for Paul O’Keefe Architects Trust
4/281 Pacific Highway,
NORTH SYDNEY NSW 2060

D355/23
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: 355/23

Land to which this applies: 114 Atchison Street, Crows Nest
Lot: B, DP: 964617

Applicant: The Trustee for Paul O’Keefe Architects Trust

Proposal: Alterations and additions to an existing dwelling including two storey rear addition and alterations to an existing outbuilding ‘Barn’

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 Impact

The proposed development does not conserve the heritage significance of the heritage item proposing excessive demolition and loss of heritage fabric to the single storey Victorian cottage. The two storey addition has insufficient separation with the single storey cottage and requires excessive demolition to provide a staircase from the main dwelling to the two storey addition. The two storey rear addition is

excessive in scale, height and massing compared to the existing single storey and too prominent from the streetscape and conservation area. The two storey addition would be uncharacteristic in the Holtermann Estate A Conservation Area and fails to conserve the heritage significance of the conservation area.

Particulars

- a) The site contains a single storey Victorian rendered cottage with a barn at the rear. The site is a local heritage item (I0140) which is sited within the Holtermann Estate A Conservation Area.
- b) The development proposes removal of fabric including partitions and partial demolition to the rear roof of the single storey dwelling to provide stair access between the principal dwelling and the rear addition.
- c) The works do not maintain the principal rooms and partitions of the single storey Victorian cottage not retaining significant fabric that represents the key period of the item's history contrary to Objective O1 and Provision P5 in Section 13.5.1 'Protecting Heritage Significance' of NSDCP 2013 and contrary to Objective O1 in Section 13.5.5 'Interior Layouts' of NSDCP 2013. Further, the proposed stairs would adversely alter and not retain the roof of the heritage item contrary to Section 13.5.4 'Roofs' of NSDCP 2013.
- d) Insufficient separation is provided between the single storey cottage and two storey addition and the scale of the two storey addition is excessive higher than the roof ridge of the existing dwelling impacting upon the heritage significance of the dwelling contrary to Objective O1 'Form, massing and scale' of NSDCP 2013.
- e) The overall scale of the two storey addition is excessive and is higher than the roof ridge of the existing dwelling making it visible from the conservation area as viewed from Atchison Street. The scale of the two storey addition does not minimise the visual dominance when viewed from a public place contrary to Objective O1, Section 13.5.1 'Protecting Heritage Significance' of NSDCP 2013.
- f) The proposed two storey addition is over scaled and an uncharacteristic element within the Holtermann Estate A Conservation Area. The two storey addition has non-compliant side setbacks and excessive floor to ceiling heights particularly the first floor with a floor to ceiling height of 3.7m resulting in a two storey addition which would be visible from the street and surrounding conservation area and a dominant addition in context with the primary single storey dwelling. The over scaled two storey addition is an uncharacteristic element not supportable as stipulated in s3.4.7 in Part C of the NSDCP 2013.
- g) The proposed two storey addition and alterations to the single storey dwelling will detract from the significance of the heritage item and heritage conservation area contrary to Aims of Plan 1.2(2)(f), Objective 1(b) in Clause 5.10 in NSLEP 2013.

2. Bulk and Scale of the Rear Addition

The two storey addition and associated non-compliant setbacks, site coverage and excessive floor to ceiling heights do not control the bulk and scale of the building resulting in a two storey addition which would be visible from the street and contributes to a site with excessive bulk and scale not of a low density compatible with the surrounding R2 Low Density Residential Zone.

Particulars

- a) The proposed two storey rear addition is designed with a nil side setback to the western side boundary and a 430mm side setback to the eastern side boundary not compliant with the minimum 900mm setback requirement stipulated in Table B-1.5. The first floor also has non-compliant side setbacks 1.3m from the western boundary and 1.28m from the eastern boundary not compliant with the minimum 1.5m stipulated in Table B-1.5, Provision P2, s1.4.6 of NSDCP 2013. The two storey rear addition is therefore not supportable due to the non-compliant side setbacks on both levels and resulting insufficient separation and excessive bulk and scale contrary to Objectives O2 and O3 in s1.4.6 of NSDCP 2013.
- b) The two storey addition is excessive in height proposing reduced floor to ceiling heights especially the first floor which currently has a 3.7m floor to ceiling height. Additionally, the two storey addition does not have compliant side setbacks for either the ground or first floor. The bulk and scale of the rear addition is excessive and cannot be supported visible from the street and surrounding conservation area contrary to P1, s1.4.8 of NSDCP 2013.
- c) The proposal involves a total site coverage of 63.6% (177m²) including the existing barn and dwelling subject to alterations and additions. A maximum site coverage of 50% applies to the proposed development in accordance with exclusions expressed in P2 to s1.5.5 of DCP 2013. The proposed site coverage of 63.6% is an exceedance of 13.6% more than the maximum 50% permitted and is a substantial exceedance in site coverage and is over development, not controlling site density and not promoting the low density character of the neighbourhood contrary to Objectives O1, O2 and O3 in s1.5.5 of NSDCP 2013.
- d) The development seeks an over scaled two storey rear addition which contributes to a site with excessive bulk and scale not of a low density compatible with the surrounding R2 Low Density Residential Zone. The development therefore does not contribute a low density residential property contrary to objective (bullet point one) of the R2 Low Density Residential Zone.

3. Proposed Use of the Barn

Insufficient information has been provided to confirm the existing use of the rear Barn as a secondary dwelling or dual occupancy (detached). The proposed alterations and additions seek consent to alter the existing structure as a separate dwelling but has not established the existing use is lawful and not otherwise prohibited in the R2 Low Density Residential Zone.

Particulars

- a) The Statement of Environmental Effects (SEE) refers to the Barn as containing an existing secondary dwelling and it appears this use is sought to remain for the Barn. Secondary dwellings are prohibited in the applicable R2 Low Density Residential Zone and although secondary dwellings are permitted with consent subject to Chapter 3, Part 1 of the State Environmental Planning Policy (Housing) 2021 the site area is less than 450m² and the floor area of the secondary dwelling is greater than that permitted. The secondary dwelling has a large floor area which is more than 60m² and greater than 30% of the total floor area of the principal dwelling therefore the development cannot rely on Division 2, Cl. 52(2)(c) of SEPP (Housing) 2021.

- b) The development application contains insufficient information confirming whether the existing use of the Barn as a secondary dwelling is a lawful use pursuant to Division 4.65 – 4.67 ‘Existing uses’ of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979) and whether the alterations is permitted with consent pursuant to directions in Part 7 ‘Existing uses’ of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021).
- c) Due to the size of the Barn the development excludes reliance on Division 2, of Part 1 in Chapter 3 of the SEPP (Housing) 2021 relating to secondary dwellings.

4. Landscaping

Insufficient detail is provided regarding proposed landscaping and no tree canopy is proposed therefore the current landscaping is insufficient and not appropriate for the site. Insufficient information is also provided confirming retention or replacement landscaping within the front setback and whether the landscaping would soften the built form of the dwelling and complement the landscaped character of the street.

Particulars

- a) The existing front and rear garden contain a mixture of grasses, shrubs, and small trees proposed for removal to be replaced with a new landscaped rear garden. The ground floor plan provides insufficient detail regarding landscaping and no tree canopy is proposed therefore the current landscaping is insufficient and not appropriate for the site contrary to Objective O1 and contrary to Provision P9 in s1.5.7 of NSDCP 2013.
- b) The existing planter bed within the front setback is to be demolished along with the existing brick boundary wall as detailed in the Demolition Plan Issue B. It is unclear from the proposed plans whether the existing landscaping within the front garden would remain or be replaced. Insufficient information is provided confirming landscaping within the front setback would soften the built form of the dwelling and complement the landscaped character of the street contrary to Objective O2 and Provisions P3, P4, P5 and P6 in s1.5.8 of NSDCP 2013.

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 item and 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 \(nsw.gov.au\)](https://www.nsw.gov.au/nslpp))

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

DATE

Thomas Holman

Signature on behalf of consent authority
THOMAS HOLMAN
SENIOR ASSESSMENT OFFICER