

## Development Application No. 155/18

### Notice of Determination

Section 4.18 of the Environmental Planning and Assessment Act 1979 (“the Act”)  
Clause 100 of the Environmental Planning and Assessment Regulation 2000 (“the  
Regulation”)

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#### **Applicant’s Name**

Michael John McCarthy  
PO Box 79  
MILSONS POINT NSW 1565

#### **Land to which this applies**

7 Penshurst Avenue, Kurraba Point  
Lot No.: 3, DP: 813650

#### **Proposal**

Alterations and additions to the existing dwelling including a new second floor.

#### **Determination of Development Application**

The development application was considered by the North Sydney Local Planning Panel (NSLPP) on 7 November 2018. 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.

#### **Reasons for refusal**

##### **1. Inadequate written request pursuant to Clause 4.6 in NSLEP 2013**

The written request pursuant to Clause 4.6 in NSLEP 2013 is not considered to be well founded.

#### **Particulars**

- a) The written request pursuant to Clause 4.6 in NSLEP 2013 has not adequately demonstrated that compliance with the development standard is unreasonable and unnecessary in the site circumstances nor has it provided sufficient environmental planning grounds to justify contravening the height of building development standard.

- b) The proposal is not consistent with an objective of the height of building development standard, specifically (1)(b) and is not consistent with objectives of the R2 Low Density Residential zone specifically dot points three and four. The proposal is therefore not in the public interest.
- c) Development consent must not be granted as the proposal fails Clause 4.6(4) in NSLEP 2013.

**2. Adverse impacts on the residential amenity of the adjoining properties**

The proposal will adversely affect residential amenity for the adjoining property. Specifically, the proposed level 2 addition will negatively impact existing views for townhouses 6 and 7 within No. 9 Penshurst Avenue.

**Particulars**

- a) The proposal is contrary to 1.2 (2)(c)(i) Aims of Plan in NSLEP 2013.
- b) The proposal is contrary to objectives of the R2 Low Density Residential zone, specifically dot points three and four.
- c) The proposal does not retain existing views and/or share existing views for No. 9 Penshurst Avenue contrary to Objective 1(b) in Clause 4.3 in NSLEP 2013.
- d) The proposal is contrary to Objective O4 in Part B, Section 1.1.1 'General Objectives' in NSDCP 2013.
- e) The proposal does not encourage view sharing contrary to Objective O2 in Part B, Section 1.3.6 in NSDCP 2013.
- f) The part three storey scale of the dwelling is not compatible with the desired future character of the area which contributes to view impacts for the adjoining property contrary to Provisions P2 and P3 in Part C, Section 6.2.6 in NSDCP 2013.

**3. Insufficient and inadequate information**

The applicant has not submitted sufficient and/or adequate information to enable a detailed assessment of the development application.

**Particulars**

- a) The following information was requested, however not provided to Council –
  - i. Additional long and cross section at 1:100 scale on A3 paper, must be submitted to Council to understand the maximum height of the addition above ground level (existing).
  - ii. A minimum of two height poles must be erected at both the north-western and south-eastern ends of the proposed central ridge (RL50.78). These height poles must be certified by a registered surveyor.
  - iii. The following stormwater information is required to be submitted:

1. Hydraulic calculations are required to show that roof drainage systems have been designed to comply with AS3500.3:2015, Part 3-Stormwater Drainage taking into consideration such as slope of the roof and catchment area;
2. The Rainfall Intensity to be used for the hydraulic calculations is for North Sydney Area only. Correct longitude and latitude are to be used to generate IFD from BOM websites; Using Sydney Airport to calculate IFD is not accepted.
3. ARI is to be used in accordance with AS/NZS 3500.3:2015 to prevent risk of property damage, inconvenience or injury to people must be taken into account. For example, properties at No's 126 and 128 Kurraba Roads are to be protected during any storm event.
4. Provision of overflow measures/devices for the roof gutters during high rainfall intensities and blockages of drainage system;

**4. Not considered to be in the public interest or suitable for the subject site.**

The proposed development is not considered suitable for the subject site nor in the public interest.

**Particulars**

- a) The design of the level 2 addition will result in unreasonable view impacts for the adjoining property and is considered to be unsuitable for the subject site contrary to Section 4.15(c) of the Environmental Planning and Assessment Act 1979 (as amended)
- b) A total of thirteen (13) public submissions were received against the application raising particular concerns about building height non-compliance, inadequate Clause 4.6 request, view and privacy impacts, excessive scale, overshadowing and stormwater issues. The proposal is not considered to be in the public interest contrary to Section 4.15(e) of the Environmental Planning and Assessment Act 1979 (as amended).

The Panel considers there is scope for a more skilful design involving a reduced floor area for level 2 with reduced floor to ceiling heights and retention of a pitched roof which would significantly reduce the view impacts on the adjoining town houses, while retaining iconic views.

The Panel has also considered the concept sketch tabled at the meeting and the approximation of the view loss. However, the Panel does not consider that this would achieve an equitable sharing of views and that a more sensitive attic style addition would be more appropriate in the circumstances of this case.

**How were public submissions taken into account**

The original plans were notified to surrounding property owners between 8 June and 22 June 2018. The submissions received by Council were addressed in the NSLPP report (see Council's website: [https://www.northsydney.nsw.gov.au/Council\\_Meetings/Meetings/NSLPP/2018/7\\_November\\_2018](https://www.northsydney.nsw.gov.au/Council_Meetings/Meetings/NSLPP/2018/7_November_2018))

**Review of determination and right of appeal**

Within 6 months after the date of determination, 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. If a review is contemplated, it should be lodged within two months of the date of this determination to enable the six month period, which includes Council's review to be met.

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DATE

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Signature on behalf of consent authority  
DAVID HOY  
TEAM LEADER (ASSESSMENTS)