

Dr Satya Yadav
30 Hull Road
BEECROFT NSW 2119

D404/15
LK (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION - REFUSAL**

Development Number: 404/15/2

Land to which this applies: 14 The Avenue, North Sydney
Lot No.: 1, DP: 940094

Applicant: Dr Satya Yadav

Proposal: Various modifications to DA404/15 including an extension to the rear verandah, a new lift, fenestration changes, internal modifications, and landscaping works.

Pursuant to Section 4.55 of the Act notice is hereby given of the determination by the consent authority of your request for a modification to Development Consent No. **404/15** and registered in Council's records as Application No. **404/15/2** relating to the land described as **14 The Avenue, North Sydney**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 8 July 2016, has been refused.

Reason for refusal:

- 1. The application does not meet Objective (f) in Section 1.3 of the Environmental Planning and Assessment Act 1979 (as amended) because it would not result in the orderly and sustainable management of land due to the negative impacts on the heritage item within the Whaling Road Conservation area and its setting.**
- 2. 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 proposed development would set an undesirable precedent for not only the heritage item but also the Whaling Road Conservation area 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 five (5) public submissions were received against the application raising particular concerns about compromised heritage value, the unauthorised works and inconsistencies or inaccuracies on the plans. 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).

3. The application results in adverse impacts on the heritage value and conservation area due to its failure to satisfy the heritage requirements of Clause 1.2 and Clause 5.10 of the North Sydney Local Environmental Plan 2013 as well as the heritage requirements of Section 13 the North Sydney Development Control Plan 2013.

Particulars:

- a) Clause 1.2(2) Aims in Part 1 of NSLEP 2013, specifically aim (f) to protect the natural, archaeological and built heritage of North Sydney and ensure that development does not adversely affect its significance,
- b) Clause 5.10(1) in Part 5 of the NSLEP 2013, specifically objective (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views.
- c) Clause 5.10(4) in Part 5 of the NSLEP 2013, specifically the adverse effect of the proposed modifications on the heritage significance of the item and the Whaling Road Conservation area
- d) The unauthorised works undertaken is not consistent with the objectives or the provisions of Section 13.5.1 “*Protecting heritage significance*” of the NSDCP 2013, or Part C Section 7.3 *Whaling Road Heritage Conservation Area* of the NSDCP, particularly, the unauthorised works is not compatible with the characteristics of the cottage and the conservation area.

4. The application does not comply with the minimum front and side building setbacks; site coverage, landscaped area and un-built upon area controls within the North Sydney Development Control Plan 2013. Consequently, the application results in a development which is no longer subservient to the heritage item, is excessive for the size of the site and is not characteristic of surrounding developments or the conservation area.

Particulars:

- a) Objectives of the R2 Low Density zone, specifically dot point 3;
- b) The proposal does not comply with the front and side setback controls. The proposal is contrary to Objective O2 and O3 in Part B, Section 1.4.6 *Setbacks* in NSDCP 2013.
- c) The proposal provides excessive site coverage across the site. The proposal is contrary to P1 and P2 in Part B, Section 1.5.5 *Site Coverage* in NSDCP 2013;

The proposal provides inadequate landscaping across the site. The proposal is contrary to Objective O1 (a), (c), (f), (h) and (i) in Part B, Section 1.5.6 *Landscaped and unbuilt upon areas* in NSDCP 2013.

5. Uncharacteristic form of development

The application results in a built form which is no longer subservient to the heritage item. The unauthorised works affected the characteristics of the heritage item with the resulting massing considered to overwhelm the heritage fabric of the original cottage.

Particulars:

- a) The proposed development is contrary to the following: -
 - i. Objective O5 in Part B, Section 1.1.1 in NSDCP 2013; (Context)
 - ii. Objective O1 in Part B, Section 1.4.1 in NSDCP 2013; (Context)
 - iii. Objective O1 in Part B, Section 1.4.7 in NSDCP 2013; and (Form, massing & scale)
 - iv. Objective O1 in Part B, Section 1.4.8 in NSDCP 2013. (Built form character)

6. Insufficient and inadequate information

The applicant has not submitted sufficient and/or adequate information as requested by Council under Part 6, Division 1 Clause 54 of the EPA Regulation 2000 to enable a reasonable assessment under the applicable legislation.

Particulars:

- a) The following information was requested, however not provided to Council: -
 - i. BCA compliance report.
 - ii. Structural Certificate.
 - iii. Site coverage and Landscaped area compliance diagrams.
 - iv. Adequate plans: all works clouded and identified.
 - v. Details of retaining walls.
- b) A number of inconsistencies between the plans as lodged on 29 January 2019; and as amended on 12 February 2019 and 11 March 2019.
- c) The plans as amended do not reflect the as-built situation on site.

How community views were taken into account:

The application is recommended for refusal, in part, due to the adverse impact on the heritage item, inconsistent and inaccurate details on the plans and insufficient landscaping across the site as raised in the submissions following neighbour notification.

Any variation to the Development Consent can only be made with the written approval of the Council. Major variations will require a new or amended Development Consent.

Pursuant to Section 8.2, an applicant is able to request Council to review its determination. An application for a review under Section 8.2 of the Act must be made no later than 28 days after the date on which the application for the modification of the development consent was determined.

Section 4.55 of the Act confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court pursuant to Section 8.7 of the Environmental Planning and Assessment Act, 1979.

Endorsed for and on behalf of North Sydney Council

DATE

Signature on behalf of consent authority
ROBIN TSE
A/TEAM LEADER ASSESSMENTS