

James Michael Elliot
7/9 Myrtle Street
NORTH SYDNEY NSW 2060

D108/19
MD1 (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 100 of the Environmental Planning and Assessment Regulation 2000 (“the Regulation”)*

Development Application Number: 108/19

Land to which this applies: 15 Montpelier Street, Neutral Bay
Lot No.: 0, SP: 16298

Applicant: James Michael Elliot

Proposal: Demolition of existing duplex, bulk excavation and construction of an attached dual occupancy with basement parking.

Determination of Development Application: The development application was considered by the **North Sydney Local Planning Panel (NSLPP)** on 3 July 2019. 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: 3 July 2019

Reasons for refusal:

1. Dual occupancy minimum lot size and site coverage

The subject site does not meet the minimum site area requirement for dual occupancy development and is substantially less than the necessary lot area for dual occupancies under Clause 6.6 (1) (c) of *North Sydney Local Environmental Plan 2013*. The resulting development fails to achieve the underlying objectives of the dual occupancy provisions and would involve excessive site coverage, insufficient landscaped area and insufficient private open space.

Particulars:

- (a) Under Clause 6.6 (1) (c), development consent must not be granted for the erection of a dual occupancy unless the area of the lot on which the dual occupancy is to be situated is at least 450sqm. The site is 322.5sqm and is 127.5sqm, or 28.3%, below the necessary lot area under Clause 6.6 (1) (c).
- (b) The applicant's Clause 4.6 variation request is not considered to be well founded and has not provided sufficient environmental planning grounds to justify the variation from the LEP minimum site area and character requirement expressed under Cl.6.6(1)(a) & (c) of NSLEP 2013.
- (c) Section 1.2.1 in Part B of *North Sydney Development Control Plan 2013* requires dwelling yield to be 240sqm gross site area per attached dwelling or multi-dwelling housing. The site is thus 157.5sqm, or 32.8%, below the expected lot area under Section 1.2.1.
- (d) Section 1.5.5 limits coverage to 45% (145.13sqm) for dual occupancy development, however proposed coverage is 58.7% (189.46sqm).
- (e) Section 1.5.6 requires a minimum 40% (129sqm) landscaped area for dual occupancy development, however proposed landscaped area is 29.6% (95.42sqm).
- (f) Section 1.5.10 requires each dwelling within dual occupancies to include a minimum of 40sqm private open space at ground level, however proposed Unit 2 only includes two balconies totalling 29.1sqm and does not include any private open space at ground level. The second balcony is only accessed through the laundry.
- (g) Section 1.5.10 requires private open space area include a minimum dimension of 4m and to the rear, however the rear yard does not maintain this minimum dimension and the front yard that is subject to a substantial street wall and fill within the front building line forms the principal private open space to Unit 1. The wall and fill also destroy existing site topography and exposed rock and will lead to site and neighbouring tree loss.
- (h) The retaining wall garden beds along the side and rear property boundaries are insufficiently sized for screen planting, particularly native species. The pavers within the building side setback areas proposed on the Landscape Plan are Un-Built Upon Area under Section 1.5.6 and further inhibit vegetation.
- (i) Section 1.5.8 only enables the achievement of maximum density subject to other controls, retaining significant trees and retaining important topographic features, however the proposed demolition, excavation, construction and level changes would:
 - i. adversely impact Tree 1 *Pittosporum undulatum* and Tree 2 *Olea europaea* subsp. *cuspidata* which are located on the north western boundary of 13 Montpelier Street, however the application did not include the neighbouring property owner's consent to remove the trees,

- ii. require the removal Trees 11 and 12 *Ficus rubiginosa* but which are in good health, good vigour and high value, and
 - iii. demolish the existing front rock retaining wall and the front southern corner rock formation and do not maintain general site levels.
- (j) The proposal is inconsistent with objectives and provisions contained in Clause 2.3 and the Land Use Table, Clause 6.6, Section 1.2.1, Section 1.5.5, Section 1.5.6, Section 1.5.8 and Section 1.5.10. The insufficient amenity to the proposed site units, and the proposed adverse effects on the site, neighbouring properties and the street, demonstrate that the site is not sufficiently sized for the proposed building.

2. Earthworks and front boundary wall

The proposal would not retain the natural features of, and vegetation on, the site and adjoining land including the existing exposed rock to the front, ground levels and trees. The proposed front boundary wall dominates the street.

Particulars:

- (a) The Neutral Bay Planning Area Character Statement contained in Section 7 in Part C of *North Sydney Development Control Plan 2013* identifies natural outcrops of exposed rock, low fences, landscaped front gardens softening the built form, buildings generally set back, and buildings stepped on sloping terrain as significant elements and part of the existing and desired character of the area.
- (b) The existing rock retaining wall and vegetation is characteristic of Montpelier Street and the local area. The application proposes to demolish the existing front rock retaining wall and the front southern corner rock formation, proposes fill up to 5m high (but predominantly 1m high), and proposes to construct a 5m high street wall with a 1m high balustrade upon it.
- (c) The front wall is continuous without setback or modulation. The wall is too high to be effectively softened by vegetation. The wall will prevent sight to ground level and the garden. The proposed wall and fill are uncharacteristic of Montpelier Street and the local area. The wall will dominate the street presentation. The earthworks and wall are inconsistent with aims, objectives and provisions contained in the Aims of Plan, Clause 2.3 and the Land Use Table, and Clause 6.10 of *North Sydney Local Environmental Plan 2013* and Section 1.3.1, Section 1.4.1, Section 1.4.7, Section 1.5.3, Section 1.5.4, Section 1.5.8, Section 1.5.9, Section 7.0, Section 7.2.1 and Section 7.2.3.
- (d) The pedestrian entry is contained within the wall. The entry is no part of a house front. The wall reduces sight of the road reserve from the building entry and casual surveillance of the public domain from each dwelling. The wall is inconsistent with objectives and provisions contained in Section 1.4.5, Section 1.4.6 and Section 1.4.9.
- (e) The balustrade upon the wall is 1m high, results in a total height of wall and balustrade height of 6m, and is inconsistent with objectives and provisions in Section 1.4.14, Section 7.0 and Section 7.2.1.

- (f) The proposed demolition, excavation, construction and level changes would:
- i. adversely impact Tree 1 *Pittosporum undulatum* and Tree 2 *Olea europaea* subsp. *cuspidata* which are located on the north western boundary of 13 Montpelier Street, however the application did not include the neighbouring property owner's consent to remove the trees,
 - ii. require the removal Trees 11 and 12 *Ficus rubiginosa* but which are in good health, good vigour and high value, and
 - iii. demolish the existing front rock retaining wall and the front southern corner rock formation and do not maintain general site levels.

The proposal is inconsistent with the aims of *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*, provisions contained in Clause 6.10, and objectives and provisions contained in Section 1.3.1, Section 1.4.1, Section 1.5.7, Section 1.5.9, Section 7.0 and Section 7.2.1.

- (g) The proposed basement includes an excessive number of parking spaces and manoeuvring area for a highly constrained site. The basement unnecessarily introduces landslip and structural damage risks to neighbouring properties and is inconsistent with objectives and provisions contained in Clause 6.10, Section 1.3.1, Section 1.5.4 and Section 1.5.7.

3. Height, envelope and appearance

The proposed building height of 8.88m is 0.38m, or 4.48%, above the Height of Buildings development standard contained in Clause 4.3 of *North Sydney Local Environmental Plan 2013* and is part of a three storey building upon a high basement. The height non-compliance leads to neighbouring view loss and is part of a development that alters topography, site and neighbouring property features and which is inconsistent with the surrounding and desired area character. The street wall, fill, terrace and building, including the front balcony, are not contained in the building envelope and are within the average front setback. The extent of glass and parapet building form are inconsistent with surrounding buildings.

Particulars:

- (a) The proposal involves significant excavation to accommodate a basement accommodating four parking spaces, turning area, bicycle parking, waste, services and pedestrian entry, and a third storey upon a new, lowered ground level. The application also proposes fill to obtain private open space to the front.
- (b) The existing site is sloped. The proposal includes a single ground level. The proposal also destroys existing exposed rock and removal of all trees.
- (c) The proposed 1.5m side setback, third storey and new height will obstruct the rear property's view down towards Forsyth Park. The proposal is inconsistent with the aims, objectives and provisions contained in the Aims of Plan, Clause 4.3, Clause 4.6 and Section 1.3.6, Section 1.4.6 and Section 1.4.7 in Part B of *North Sydney Development Control Plan 2013*.

- (d) The application's BASIX certificate also proposes air-conditioning and a photovoltaic system, yet these systems are not shown on the plans. These systems also have the potential to obstruct neighbouring views.
- (e) Adjoining buildings are one- and two-storeys without any street level garages or basements. The proposed building is three storeys upon a basement. The proposal is inconsistent with objectives and provisions contained in Section 1.4.1 and Section 1.4.7.
- (f) The average setback of the adjoining buildings to the street boundary is 7.1m, however the proposed building is set back only 1.9m at its closest point and 1.7m to window elements. The proposal is inconsistent with objectives and provisions contained in Section 1.4.1, Section 1.4.6, Section 1.5.4, Section 1.5.7, Section 7.0 and Section 7.2.1.
- (g) The building includes a 1.6m setback to the second floor balcony. The balconies are not contained in the building envelope. The proposal is inconsistent with objectives and provisions contained in Section 1.4.1, Section 1.4.6, Section 1.4.8, Section 1.4.13, Section 7.0 and Section 7.2.1. The street wall and fill are also within the prescribed front setback.
- (h) The building façade, including behind screens to a third of the building, is 95% glass. The façade does not include masonry or solid portions. The proposal is inconsistent with objectives and provisions contained in Section 1.4.7, Section 1.4.12 and Section 1.5.1.
- (i) The proposed third storey and parapet form with flat roof are uncharacteristic of surrounding buildings and inconsistent with objectives and provisions contained in Section 1.4.1, Section 1.4.10 and Section 7.0.

4. BASIX requirements

The application's BASIX Certificate:

- (a) Did not nominate common area lawn or garden, and the floor plans only show unit 1 includes access to natural ground level, yet the BASIX Certificate nominates that unit 2 includes 30sqm of garden and lawn;
- (b) Proposes air-conditioning and a photovoltaic system, yet these systems are not shown on the plans. These systems also have the potential to obstruct neighbouring views; and
- (c) Proposes 'no mechanical ventilation' to the car park area, yet the basement is submerged below ground without windows or natural ventilation.

The proposal did not include shading to north facing windows.

The proposal is inconsistent with *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*, *Environmental Planning and Assessment Regulation 2000* and objectives and provisions contained in Section 1.6 in Part B of *North Sydney Development Control Plan 2013*.

The fundamental reasons for refusal in the opinion of the Panel is that the development is an overdevelopment of the site in terms of site coverage, inadequate setbacks and landscaped areas.

How community views were taken into account:

The owners of adjoining properties and the Neutral Precinct were notified of the proposed development for a 14-day period, between 17 May 2019 and 31 May 2019, in accordance with section A4 of NSDCP 2013. 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/2019/3_July_2019)

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

DATE

Signature on behalf of consent authority
DAVID HOY
TEAM LEADER ASSESSMENTS