

Original signed by: **Robyn Pearson** on: **27/11/19**

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D227/17
LK (CIS)

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

Development Number: 227/17/4

Land to which this applies: 12-14 Lower Wycombe Road, Neutral Bay
Lot No.: 80, DP: 1245188

Applicant: Vergome Pty Ltd

Proposal: Section 4.55(2) modifications to DA227/17 for attic conversion and provision of two new dormer windows.

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. **227/17** and registered in Council's records as Application No. **227/17/4** relating to the land described as **12-14 Wycombe Road, Neutral Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 6 December 2017, has been refused.

Reasons for refusal:

1. Adverse heritage impacts

The proposed development will have unacceptable impacts on the subject property and the Kurraba Point Conservation Area, contrary to the objectives at (a) and (b) of Clause 5.10(1) of NSLEP and the provisions of Section 13 of NSDCP.

Particulars:

- (a) The proposal detracts from the significance and character of the conservation area through the provision of two large dormer windows which are uncharacteristic in the conservation area.

- (b) The proposed dormer additions would reduce the heritage significance of the subject building, which has contributory significance within the conservation area, by introducing new works on the primary façade and significantly altering the roof form.
 - (c) The proposed dormer windows are over scaled and would increase the scale and bulk of the proposed development leading to the impression of a new third floor, which will have a detrimental impact on the character and significance of both the subject building and the conservation area.
 - (d) As a result of the matters listed above at subparagraphs (a) to (c), the proposed development does not aim to preserve the environmental heritage of North Sydney (objectives (a) and (b) of Clause 5.10(1) of NSLEP).
 - (e) The proposed development is contrary to the following provisions for dormers as contained in Part B Section 1.4.11 of NSDCP 2013:
 - (i) The proposed provision of two large dormer windows on the primary (street) façade of the building will be visually intrusive from the public domain and is contrary to P2 in Part B Section 1.4.11 of NSDCP requiring dormers not to be placed on the street elevation of a building;
 - (ii) The dormer windows are 2m high, contrary to P7 in Part B Section 1.4.11 of North Sydney DCP 2013 requiring the height of a dormer be limited to 1.5m from its base to the ridge;
 - (iii) The dormer windows occupy approximately 70% of the roof plane, contrary to P8 in Part B Section 1.4.11 of North Sydney DCP 2013 which states that dormer windows must not comprise more than 1/3 of the width of the roof plane on which they are placed.
 - (f) The proposed development is contrary to the following heritage controls as contained in Part B Section 13 in NSDCP 2013:
 - (i) The proposed dormer windows do not comply with P1 in Part B Section 13.9.2 of North Sydney DCP 2013 which require compliance with the requirements for dormers in Part B Section 1.4.11 of North Sydney DCP 2013;
 - (ii) The dormer windows are over scaled and would overwhelm the original roof form, and consequently they are not secondary in scale to the roof and do not complement the style the existing building and its roof, contrary to Provisions P2 and P3 in Part B Section 13.9.2 of NSDCP 2013.
 - (g) The proposed development is contrary to Part C Section 6.2.7 of NSDCP 2013 which describes front and side dormer windows are being uncharacteristic elements within the Kurraba Point Conservation Area.
- 2. The modified development is not substantially the same development as originally approved.**

The proposal is contrary to Section 4.55 (2)(a) of the Environmental Planning and Assessment Act of 1979 because the proposed modification is not substantially the same development as originally approved.

Particulars:

- (a) The proposed over scaled dormer windows would result in material harm to the character of the subject contributory item and to the wider Conservation area. It is likely that the impact on the subject building and wider Kurraba Point Conservation Area proposed within this application would not have been supported by Council if this were proposed in the original development application.
- (b) The proposed over scaled dormer windows give the impression of a new third storey which increases the visual scale and bulk of the building substantially beyond that which was originally granted consent.

3. Unacceptable variation to the LEP maximum building height development standard

There are insufficient environmental grounds to justify contravening the development standard.

Particulars:

- (a) The variation to the LEP's maximum building height development standard is unacceptable because the proposed dormer windows fail to promote the character of the Conservation Area. The proposal is contrary to:-
 - (i) Clauses 1.2(2)(a), (b)(i) and (f) of NSLEP 2013;
 - (ii) Clauses 4.6(1)(b) and (4)(a)(ii) of NSLEP 2013;
 - (iii) Sections 1.6(a), (b), (e) and (f) Aims in Part A of NSDCP 2013;
 - (iv) Sections 1.4.8 Built Form Character O1, P1 in Part B of NSDCP 2013;
 - (v) Sections 1.4.11 Dormers O1, P1, P2, P3(d), P4, P7 and P8 in Part B of NSDCP 2013; and
 - (vi) Section 6.2.7 Uncharacteristic Elements P1 in Part C of NSDCP 2013.

4. Contrary to the public interest and not suitable for the subject site

Particulars:

- a) The proposed modifications are not considered to be in public interest due to the adverse impacts on the heritage significance of the subject property and wider conservation area.

How community views were taken into account:

The adjoining properties and the Hayes Precinct were notified about the proposed development for the period between 20 September and 4 October 2019. The notification attracted no submissions.

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
ROBYN PEARSON
TEAM LEADER (ASSESSMENTS)