

Paul and Renata Etherington
C/- COSO Architects
Studio 4.04, 56 Bowman Street
PYRMONT NSW 2009

D56/20
LK (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: 56/20

Land to which this applies: 58 Cowdroy Avenue, Cammeray
Lot No.: 33, DP: 8933

Applicant: Paul and Renata Etherington
C/- COSO Architects

Proposal: Demolition of existing dwelling and construction of a new dwelling with associated tree removal and earthworks.

Determination of Development Application: The development application was considered by the **North Sydney Local Planning Panel (NSLPP)** on 5 August 2020. 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 August 2020

Reasons for refusal

- 1. Inadequate written request pursuant to Clause 4.6 in North Sydney Local Environmental Plan 2013.**

The written request pursuant to Clause 4.6 in the NSLEP 2013 seeking a variation to the height of building development standard in Clause 4.3(2) in NSLEP 2013 has not correctly identified the non-compliance and is not considered to be well founded.

Particulars:

- a) The proposed development significantly breaches the 8.5m maximum height of building development standard specified in Clause 4.3(2) in NSLEP 2013 across most of the proposed building.
- b) The written request seeking a variation to the height of building development standard required by Clause 4.6 (3) in NSLEP 2013, has failed to accurately identify the full extent of the breach.
- c) The written request submitted with the application seeking a variation to the maximum height of building development standard has inadequately addressed the matters required to be addressed in subclause (3) in Clause 4.6 in NSLEP 2013. The written request has failed to adequately demonstrate that compliance is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the height of building development
- d) The proposed development is not considered to be in the public interest as the development is not consistent with the objectives of the height of building standard in Clause 4.3(1) in NSLEP 2013 and the objectives of the R2 Low Density Residential zone (dot points 4 and 5).

2. The proposed development is not appropriate in its waterfront context and is incompatible with the built form and landscape character of the area.

The proposed development is not appropriate to its context or compatible with the existing and future character of the Cammeray foreshore by virtue of its excessive height, bulk and scale, its excessive building footprint and inadequate landscaped area, its incongruous built form and materiality, and its failure to respond to the natural topography of the site.

Particulars:

- a) The proposed development has a large sloping roof form, high side walls and internal floor to ceiling heights of up to 7.74 metres with the majority of the building exceeding the height of building development standard. Surrounding dwellings provide a significantly reduced volume and overall proportions. The proposed development is therefore not compatible with the predominant scale of the area, contrary to Aims of NSLEP 2013, specifically Clause 1.2(2)(a) and 1.2(2)(b)(i) and (iii), Clauses 4.3(1)(e) and (f) in NSLEP 2013 (Height of Buildings - Objectives), the Objectives of the E4 Environmental Living zone, Objective O5 in Part B Section 1.1.1 in NSDCP 2013 (General Objectives), and Objective O1 and Provisions P1 and P3 in Part B Section 1.4.7 in NSDCP 2013.
- b) The proposed development does not follow the natural topography of the site through a stepping of the built form contrary to Aims of NSLEP 2013, specifically Clause 1.2 (2)(e)(i), Clause 4.3(1)(a) in NSLEP (Height of Buildings - Objectives), Objective O8 in Part B Section 1.1.1 (General Objectives),) the Objectives of the E4 Environmental Living zone, Objective O1 and Provisions P1, P3, P4 and P5 in Part B Section 1.3.1 (Topography), and Provision P5 in Part C Section 4.2.3 (Cammeray Neighbourhood) in NSDCP 2013.
- c) The proposed development has a site coverage of 60% which is substantially noncompliant with the maximum site coverage of 40% specified in P1 in Part B, Section 1.5.5 in NSDCP 2013. The proposed development fails to satisfy Objectives O1, O2, O3 and O4 in Part B Section 1.5.5 in NSDCP 2013.
- d) The proposed development has a landscaped area of 22% which is substantially noncompliant with the minimum landscaped area of 30% specified in P1 in Part B, Section 1.5.6 in NSDCP 2013, and fails to satisfy Objectives O1(f), (h) and (i) in Part B, Section 1.5.6 in NSDCP 2013, and Objectives O1, O3, O4 and Provisions P1, P2, P3, P5, P6, P7, P9 of Part B Section 1.5.8 in NSDCP 2013.

- e) The proposed rear setback well forward of the western neighbours, combined with the height, building bulk and inadequate stepping to the built form at the rear of the building, fails to satisfy Objectives O2 and O4 of Part B Section 1.4.6 in NSDCP 2013.
 - f) The proposed height, bulk and scale of the building, its incongruous materiality, and the extensive works and removal of vegetation within the foreshore area, incompatible with the waterfront natural environment. The development is therefore contrary to Aims of NSLEP 2013, specifically Clause 1.2(2)(a) and 1.2(2)(b)(i) and (iii), Clauses 4.3(1)(e) and (f) in NSLEP (Height of Buildings - Objectives), Clause 6.9 (1), (3)(a), (b), and (g), the Objectives of the E4 Environmental Living zone specifically dot point 1), Objectives O4 and O5 in Part B Section 1.1.1 in NSDCP 2013, Objective O1 and Provisions P2, P4, P5, P7, P8, P9 and P10 in Part B Section 1.3.4 in NSDCP 2013, Objective O1 and Provision P2 in Part B Section 1.4.12 in NSDCP 2013, Provision P8 in Part B Section 1.3.4 in NSDCP 2013, and Objective O1 and Provision P3 in Part B Section 1.4.7 in NSDCP 2013.
 - g) The proposed side setbacks, which provide no stepping at the upper levels, fail to satisfy objectives O2, O3 and O4 of Part B Section 1.4.6 in NSDCP 2013.
 - h) The proposed development is not considered to maintain, protect and enhance the visual qualities of Sydney Harbour by virtue of the excessive height, bulk and scale of the building along with the extensive works and removal of vegetation within the foreshore area contrary to the planning principles in Clauses 13(f) and 14(d) and Clause 25 of SREP (Sydney Harbour Catchment) 2005.
- 3. The proposed development will adversely impact on existing views and result in an unreasonable level of view sharing for surrounding properties.**

The proposed development, by way of its height, scale and siting, will result in unreasonable view loss for several properties around the site and particularly the neighbour to the immediate west.

Particulars:

- a) The proposed development does not retain existing views for properties around the site. The impact on existing views is generally caused by elements of the proposed development that fail to comply with Council's maximum building envelope controls.
 - b) Having regard to the view sharing principle established in *Tenacity Consulting v Warringah Council [2004]* NSWLEC 140 the majority of the views that are to be impacted are significant including water views with land and water interface. These views whilst across side boundaries are from primary living spaces and for the western neighbour the view impacts would be considered moderate to severe from all primary living areas.
 - c) Occupants of the new dwelling will obtain unobstructed views at the expense of the neighbouring properties. This is not considered reasonable view sharing.
 - d) The proposed development is contrary to Clause 1.2(2)(c)(i) Aims of Plan in NSLEP 2013, the Objectives of the E4 Environmental Living zone and Objective O2 and P4 in Part B, Section 1.3.6 in NSDCP 2013.
- 4. The excessive excavation and fill and building footprint for the proposed development would result in the unjustified removal of significant trees and natural features of the site and may affect the structural integrity of neighbouring land and buildings.**

The proposed development involves extensive excavation or fill across the majority of the site and construction of a new dwelling with significantly non-complaint site coverage, which results in the removal of all trees from the site including significant trees and natural features of the site.

Particulars:

- a) The application proposes the removal of all trees from within the site including several significant trees which would be likely to reduce the visual amenity and ecological performance of the site within its waterfront location within close proximity to bushland. The tree removal has not been adequately justified in the submitted arborists report. The development is therefore contrary to Clause 1.2(2)(e)(i) Aims of Plan in NSLEP 2013, Objectives O1, O2, O3 and O4 in Part B, Section 1.5.7 in NSDCP 2013, Objectives O1, O3 and O4 and provisions P1, P2, P3, P5, P6, P7, and P9 in Part B, Section 1.5.8 in NSDCP 2013, Objective O1 of Part B Section 16.2.1 in NSDCP 2013 and Provisions P2, P3, P4 in Objective O1 of Part B Section 16.2.2 in NSDCP 2013.
- b) The application has failed to provide clarity as to the extent of excavation and any required retaining walls near site boundaries, and limited details are provided in respect of measures that may be necessary to support the excavation, including whether support extending into neighbouring land will be required. The proposed excavation is contrary to the Objectives of Clause 6.10 in NSLEP 2013, and Provisions P4 and P5 in Part B, Section 1.3.1 in NSDCP 2013.

5. Unreasonable privacy impacts to the neighbouring properties

The proposed development would result in unreasonable loss of visual and acoustic privacy for neighbours.

Particulars:

- a) The proposed large elevated terrace to the north side of the building would enable close and/or direct views into neighbours windows and outdoor amenity areas resulting in a loss of visual privacy, and due to its size may also create noise nuisance, contrary to the Aims of NSLEP 2013, specifically (2)(c)(i); (Residential amenity); the Objectives of the E4 Environmental Living zone, specifically dot point 3, Objective O4 in Part B, Section 1.1.1 in NSDCP 2013, Objective O1 and Provisions P6 and P8 in Part B, Section 1.3.10 in NSDCP 2013, and Objective O1 in Part B, Section 1.3.8 in NSDCP 2013.

6. Unreasonable loss of sky outlook and ambient for the neighbouring properties

The proposed development would result in unreasonable loss of sky outlook and ambient light for neighbours.

Particulars:

- a) The proposed development, by way of its excessive scale, bulk and height, and non-compliant rear setback would result in a significant loss of sky outlook and ambient light for neighbours, contrary to the Aims of NSLEP 2013, specifically (2)(c)(i); (Residential amenity); the Objectives of the E4 Environmental Living zone, specifically dot point 3, Objective O4 in Part B, Section 1.1.1 in NSDCP 2013, and Objectives O2 and O4 and Provision P4 in Part B, Section 1.4.6 in NSDCP 2013.

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

Particulars:

- a) The above matters were raised in the five (5) submissions from nearby residents. The proposal is, therefore, not considered to be in the public interest or suitable for the site contrary to Section 4.15 of the Environmental Planning and Assessment Act, 1979 (as amended).

How community views were taken into account:

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/2020/5_August_2020)

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
ROBYN PEARSON
TEAM LEADER (ASSESSMENTS)
