

Alex Michael
12 Mary Place
PADDINGTON NSW 2021

D65/20
DWH (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
NOTICE OF DETERMINATION – Refusal**

Development Application Number: 65/20

Land to which this applies: 60 Milray Avenue, Wollstonecraft
Lot No.: 3, DP: 801569

Applicant: Alex Michael

Proposal: Demolition of existing dwelling and construction of a new dwelling over 3 levels including studio, in-ground swimming pool, cabana, double garage, garden pavilion and landscape works.

Determination of Development Application: 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: 4 September 2020

REASONS FOR REFUSAL OF THE APPLICATION

1. Front and side building setback

The proposed development does not comply with the minimum and characteristic front and side boundary setbacks and is inconsistent with the requirements and Objectives for development in the R2 (Low Density) Residential zone. The proposed dwelling is inappropriately orientated in relation to property boundaries and is of excessive scale fronting the street boundary.

Particulars:

- a) The proposed ground and first floor levels of the proposed dwelling is set back 1.6m and 1.5m respectively from the street boundary. The proposal is sited substantially further forward and significantly higher than the existing dwelling on site, and adjoining properties.
- b) The proposed dwelling has a height of 7.1 metres at 1.5m from the street boundary which would unreasonably impact on the streetscape character of the locality.

- c) The proposal incorporates a double garage and pool outbuilding that are placed immediately on the side boundaries with adjoining properties and provides insufficient separation between buildings.
- d) By virtue of the non-compliances identified in a), b) & c) the proposal is considered to be inconsistent with the *Provision and Objectives P1, O1 and O2 in Subsection 1.4.6 Setbacks of North Sydney DCP 2013*.
- e) The proposed setbacks would result in a building that is substantially dominant over adjoining properties and is inconsistent with existing building form and character of the site.
- f) The building is inconsistent with the zone objectives (c) and (d) expressed under Clause 2.3 of in *North Sydney Local Environmental Plan 2013*. As the siting of the proposed dwelling would not enhance the amenity of the environment.
- g) The building is inconsistent with the aims of the plan expressed under Clause (2)(a) in *North Sydney Local Environmental Plan 2013*. The proposed dwelling would not promote development that is appropriate in its context or enhances the amenity of the North Sydney community and environment.

2. Height, Built form, massing and scale

The building height exceeds the maximum height of buildings standard and the proposed built form and scale of the proposed dwelling is inconsistent with the prevailing built form evident in the surrounding area. The proposed contemporary built form incorporates an uncharacteristic roof form & materials which would significantly detract from the character of surrounding areas through an imposing built form.

Particulars:

- a) The proposed dwelling has a maximum height of 8.74 metres above ground level (existing) and does not comply with the maximum building height development standard of 8.5 metres, as expressed under Clause 4.3 of NSLEP 2013.
- b) The application has not been accompanied by a Clause 4.6 written request to address the non-compliance with the maximum height of buildings development standard expressed under *Clause 4.3 of the NSLEP 2013*. In absence of a well founded written request for variation Council is unable to grant development consent to the proposal.
- c) The proposed cantilevered first floor and gable fronted roof is insufficiently set back from the street boundary and would overly dominate the street.
- d) The proposed driveway, ground floor entry, and non-compliant front setback to the ground and first floor and would not enable sufficient landscaping to be established between the dwelling and the street boundary. Greater landscaping forward of the dwelling is required to reduce the impact of the proposed contemporary form on the street.
- e) The site is located in the Wollstonecraft Peninsula Neighbourhood Planning Area and the proposed dwelling form is not consistent with the desired built form identified in *Part C S.10.3.3 of the North Sydney DCP 2013*. Which encourages development which generally consist of brick and tile construction within a landscaped setting and which follows the topography of the land.

- f) Whilst a contemporary built form may be acceptable in the location, a significantly different contemporary form which is more recessive in scale and complements existing characteristic elements and the prevailing landscape character of the area must be achieved.
- g) The proposed built form would unreasonably interrupt and dominate the prevailing landscape character of the area and is not sufficiently recessive in its form. The use of expansive areas of black metal cladding, a high pitched gable roof forms and cantilevered first floor are not characteristic and do not complement the desired built form encouraged by the area character statement for the area.
- h) The building is inconsistent with the aims of the plan expressed under Clause (2)(a) in *North Sydney Local Environmental Plan 2013*. The proposed dwelling would not promote development that is appropriate in its context or enhances the amenity of the North Sydney community and environment.

3. Excavation in proximity to southern boundary and natural rock face

The proposed lower ground floor storage, plant rooms, garden room and workshop would result in substantial excavation within close proximity to the southern property boundary and would result in the removal of substantial volumes of natural rock from the site. The resulting development would not protect existing significant rock features and would not reflect the natural fall of the site. A development which substantially reduces the impact to existing rock on the site is required.

Particulars:

- a) The proposed excavation does not achieve the objectives for earthworks expressed in Clause 6.10(1) of the NSLEP 2013 6.10 Earthworks which is to “*ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.*”
- b) The proposed excavation is also inconsistent with objectives and provisions in North Sydney Local Environmental Plan 2013, in particular:
 - i) The proposal would disrupt soil stability, rock, topography and trees of the site and the adjoining property. The proposal is inconsistent with Clause 6.10(3) (a) and (d).
- c) The proposed excavation does not comply with Section 1.3.1 Topography - Provisions and Objectives P1, P3, P4, P5 and Objective: O1 To ensure that the natural topography and landform are maintained.
- d) The resulting development and is inconsistent with the requirements and objectives for development in the R2 (Low Density) Residential zone expressed in *Clause 2.3(c) and (d) of NSLEP 2013*.

INSUFFICIENT PLANS, INFORMATION OR DOCUMENTATION

4. Inadequate information

The application has not been accompanied by sufficient supporting documentation to address all likely impacts arising from the development proposal.

Particulars:

- a) The architectural plans submitted with the application inaccurately depict existing site conditions at relevant locations, chiefly in relation to the existing and proposed finished levels adjacent to the southern boundary. Revised architectural plans drawn to an acceptable standard are required. Revised architectural plans which clearly depict development on adjoining land and existing and proposed finished levels are required
- b) Additional sections through the building at critical locations are required particularly in relation to the proposed driveway crossing to Milray Avenue to demonstrate appropriate transitions and clearance for a B85 standard vehicle.
- c) An updated BASIX Certificate reflecting the amended plans has not been submitted.
- d) Shadow diagrams submitted with the application have not been updated to reflect the amended design and are unreliable for assessment purposes.
- e) The submitted survey is incomplete and has not identified sufficient features on adjoining properties to enable a full and proper analysis of the impacts of the proposal. An updated survey which includes the full building footprint and levels of structures on adjoining land must be provided. The required survey must detail the height location of windows and levels within the rear pool area of No 58 Milray Avenue to the south.
- f) The application includes no elevations, or sections and insufficient floor plans for the proposed detached studio below the existing rock shelf.
- g) The landscape design submitted with the application response has not had regard for the Bushfire Protection Asset Protection requirements expressed in the Bushfire Assessment report prepared by Building Code & Bushfire Hazard Solutions Pty Limited dated 26 February 2020.
- h) An ecological and bushland management plan and landscape scheme must be prepared in consultation with a suitably qualified ecologist which outlines how the asset protection zone is to be managed, having regard for the prevalence and proximity to nearby ecologically significant flora & fauna species and communities.
- i) The bushland management plan required above must include a Test of Significance as required under the NSW Biodiversity Conservation Act 2016 and must have regard for all potential impacts of the development.
- j) A concept stormwater management plan that is prepared by a suitably qualified hydraulic engineer or civil engineer must be prepared which demonstrates that stormwater discharge from the dwelling can be directed to the Public drainage system in Milray Avenue.
- k) An Aboriginal Heritage Impact Assessment and Construction Management Site Plan prepared by a suitably qualified expert is required which addresses potential impacts to nearby aboriginal heritage sites.

5. Overshadowing of adjoining property

The proposed dwelling would result in substantial additional overshadowing of the rear swimming pool and private open space areas of the adjoining property to the south at No. 58 Milray Avenue. The application has not been accompanied by shadow diagrams which demonstrate that the adjoining property would retain three hours sunlight to internal living areas and private open space, or that the proposed level of overshadowing is reasonable.

Particulars:

- a) The site layout and building design is not considered to adequately respond to the orientation of site boundaries and dwellings on adjoining land. The east-west elongated orientation of the proposed first floor and elevated nature of the subject site has not minimised overshadowing of 58 Milray Avenue.
- b) To address overshadowing impacts the proposed first floor should be reduced and redesigned to reduce the shadow profile of the of the proposed dwelling.
- c) The proposal is inconsistent with Provision P1 and Objective O1 in Subsection 1.3.7 Solar Access in *North Sydney Development Control Plan 2013*.
- d) The proposed overshadowing is inconsistent with aims of plan (2)(c)(i) and R2 zone objectives (c) and (d) in *North Sydney Local Environmental Plan 2013*.

6. Potential impact on ecological communities in adjoining Gore Cove.

The proposed development will have potential impacts on existing ecological communities and habitat present on the site and in proximity to the site arising from management of the site as an asset protection zone.

Particulars:

- a) The site is mapped as Ecological Communities and Landscape Characters: Terrestrial Ecological Communities: Open Forest (Type B) under the Sydney Harbour - Foreshores and Waterways Area Development Control Plan 2005. Asset Protect Zone, Bushland Management and Rehabilitation
- b) The lower portion of the property below the rock shelf contains remnant bushland greater than 500sqm in size however an ecological and bushland management plan and complementary landscape scheme for the whole of the site has not been submitted.
- c) The Bushfire Protection Asset Protection requirements expressed in the Bushfire Assessment report prepared by Building Code & Bushfire Hazard Solutions Pty Limited dated 26 February 2020, requires that the whole of the site be managed as an Asset Protection Zone.
- d) As the site is to be maintained as an asset protection zone in accordance with the Bushfire Assessment Report, the development has potential to have adverse impact on ecological communities.

- e) A bushland management plan and landscape scheme must be prepared in consultation with a suitably qualified ecologist which outlines how the asset protection zone is to be managed, having regard for the prevalence and proximity to nearby ecologically significant flora & fauna species and communities.
- f) The BMP must be prepared in consultation with a suitably qualified ecologist which outlines how the asset protection zone is to be managed, having regard for the prevalence and proximity to nearby ecologically significant flora & fauna species and communities.
- g) A Bushland Rehabilitation Plan has not been provided and biodiversity conservation has not been demonstrated. The proposal is inconsistent with Provisions and Objectives P4 and O2 in Subsection 15.3.2 Landscaping Design and, consequently, P1 and O3 in Subsection 1.5.8 Landscaping in North Sydney Development Control Plan 2013.
- h) The proposal is inconsistent with the objectives for development which adjoins the E2 Environmental Conservation in relation to S.1.3.2 of the NSDCP 2013 for *Properties in proximity to bushland*. Objective O1 states:

S.1.3.2 of the NSDCP 2013 for Properties in proximity to bushland.

Objectives

O1 To ensure that development located within proximity of land zoned E2 – Environmental Conservation is compatible with long term conservation and management of Council’s Bushland reserve system in accordance with Council’s Bushland Plan of Management and other relevant legislation and policies.

7. Potential impact to nearby Aboriginal heritage sites

The site has been identified as being in close proximity to six (6) sites of aboriginal heritage significance, relating to the adjoining bushland corridor, Gore Cove and existing topographical features. Further investigation by an appropriately qualified expert in aboriginal heritage is required to ensure impacts arising from the development would not result in unsatisfactory impacts. Consideration of such impact includes potential impact and loss to existing rock overhangs, bushland clearing, the proposed landscape design and stormwater management. Any future development application must be reviewed and accompanied by a report prepared by a suitably qualified consultant with expertise in management of aboriginal heritage sites.

Particulars:

- a) In accordance with the Aboriginal Heritage Office advice and the Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales (2010), any land within 200m of water or 20m of or in a rock shelter is considered to have Aboriginal heritage sensitivity and the potential to contain Aboriginal sites.
- b) The subject site at 60 Milray Ave Wollstonecraft has six (6) registered sites within 200m making the land an area of sensitivity and potential to contain Aboriginal sites.
- c) An Aboriginal Heritage Impact Assessment prepared by a suitably qualified expert is required which addresses potential impacts to nearby aboriginal heritage sites.

- d) All Aboriginal objects, including those which are not registered, are protected under the NPW Act. Inadvertent impacts are considered harm under the NPW Act (1974). Storing materials, parking vehicles on an Aboriginal site or area likely to contain Aboriginal sites is considered harm. A Construction Management Plan which has regard for the likely activities of all workers and contractors should be prepared to outline measures to be implemented to prevent harm to Aboriginal sites and areas of Aboriginal sensitivity.

The owners of adjoining properties and the local community precinct committee were notified of the proposed development for a 14-day period in accordance with Council's Community Engagement Protocol.

How community views were taken into account:

The notification resulted in one submission/s raising concerns that excavation vehicles may obstruct the street, damage the road retaining wall and services and cause settlement of neighbouring buildings, and trades vehicle parking. The matters raised in the submissions were considered in the assessment and where relevant have been included in the above reasons for refusal.

Review of determination and right of appeal:

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 within 12 months after the notification of this decision.

A review of determination should be lodged as soon as possible, after the date of notification of the decision to enable the review to be completed within the 12-month period.

Endorsed for and on behalf of North Sydney Council

DATE

Signature on behalf of consent authority
DAVID HOY
TEAM LEADER ASSESSMENTS