

Original signed by: **Luke Donovan**

Dated: ...15/04/2021....

Peter Princi Architects  
PO Box 615  
FRENCHES FOREST NSW 1640

D8/21  
HS1 (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”)*

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**Development Application Number:** 8/21

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**Land to which this applies:**

101 Blues Point Road, McMahons Point  
Lot No.: 1, DP: 216475

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**Applicant:**

Peter Princi Architects

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**Proposal:**

Alterations and additions to a heritage item, which includes new administration areas associated with the use as a medical centre and residential works in the form of a first-floor addition.

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**Determination of Development Application:**

The development application was considered by the **North Sydney Local Planning Panel (NSLPP)** on 7 April 2021. 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].

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**Date of Determination:**

7 April 2021

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**Reason for refusal:**

The North Sydney Local Planning Panel has refused this development application DA 8/21 for both alterations and additions to a heritage item, which include new administration areas associated with the medical centre and residential works in the form of a first floor addition described as a ‘doctors residence’, on land at 101 Blues Point Road, McMahons Point, for the following reasons:

**1. Heritage Impacts**

The proposed works would have an adverse impact on the heritage item and are contrary to the objectives outlined in the EP&A Act 1979 (as amended), NSLEP 2013 and NSDCP 2013.

**Particulars:**

- (a) The proposal is considered to be inconsistent with subclause (f) in Section 1.3 - Objects of the Act in the Environmental Planning and Assessment Act 1979 (as amended).
- (b) Clause 1.2 Aims of Plan, subclause (2)(c)(ii) and (2)(f).
- (c) Clause 5.10 Heritage Conservation, subclause (1)(a) and subclause 5.10 (1)(b);
- (d) 13.1.1 Guiding Statement: in terms of managing North Sydney's heritage for present and future generations in accordance with the principles of intergenerational equity as per the Burra Charter;
- (e) 13.1.2 General objectives O4 and O5;
- (f) 13.5.1 Protecting heritage significance O1, O3, O4, O5, O7, P4 and P5;
- (g) 13.5.2 Form, massing, scale O1, O2, P1, P4 and P5;
- (h) 13.5.3 Additional storeys O1, P1 and P2;
- (i) 13.5.4 Roofs O1, P1, P2, P3 and P6;
- (j) 13.5.5 Interior layouts O1, P1, P2, P3, P4, P5, P6, P7 and P8;
- (k) 13.6.1 General Objectives O1 and O2;
- (l) 13.6.2 Form, Massing and Scale P1 and P9;
- (m) 13.6.3 Roofs O1 and P1;
- (n) 13.6.4 Additional storeys and levels O1 and P1;
- (o) 13.8 Demolition O1 and P1;
- (p) 13.11 Guidelines for Non-Residential Business Types (Retail Building and Shops) O4 and P6; and
- (q) Section 9.7.7 ACA - Uncharacteristic Elements, P1

**2. Prohibited Development (Permissibility - 'Doctor's residence' (Proposed First Floor Addition))**

The proposed first floor addition above the commercial building (operating as a medical centre) is prohibited development under Clause 2.3 of the NSLEP 2013.

**Particulars:**

- (a) The proposal is considered to be inconsistent with subclause (c) in Section 1.3 - Objects of the Act in the Environmental Planning and Assessment Act 1979 (as amended).
- (b) The proposed residential works are considered to be defined as prohibited development under Clause 2.2 of the NSLEP 2013.
  - i. The proposed residential works located above the approved use a *medical centre* as a "residence" are more accurately defined as *Shop top housing*, which means one or more dwellings located above ground floor *retail premises* or *business premises*. A *business premises* does not include *medical centre* as part of the definition.

- ii. The proposed works above the *medical centre* cannot be described as *Shop top housing*.
  - iii. The proposed works above the *medical facility* are therefore not permissible within the B1 Neighbourhood Centre Zone.
- (c) The proposed residential works are inconsistent with the zone objectives for the B1 Neighbourhood Centre Zone outlined in Clause 2.3 of the NSDCP 2013.

### **3. *Non-compliances with the NSDCP 2013***

The proposed works result in a number of non-compliances with the applicable sections of the NSDCP 2013, which are considered to have adverse impacts to adjoining properties.

#### ***Particulars:***

- (a) B2.1.1 General Objectives O5;
- (b) B2.3.6 Awnings P1 and P2;
- (c) B2.3.7 Solar Access O3 and P2;
- (d) B2.3.11 Visual Privacy O1 and P3;
- (e) B2.4.3 Setbacks P7(a);
- (f) B2.4.8 Balconies – Apartments P1;
- (g) B2.4.10 Streetscape P4 and P7;
- (h) B2.5.1 Accessibility P1;
- (i) B2.5.9 Garbage Storage P2 and P3;
- (j) B10.3 Design and Layout P3; and
- (k) B10.5 Bicycle Parking and Associated Facilities P1 and P6.

### **4. *Reliance on Unauthorised Work - Part Demolition of a Heritage Item***

The site and premises are identified in Schedule 5 of NSLEP 2013 as a heritage item of local significance, being Heritage Item No. I0411. Unauthorised demolition work was carried out to the heritage listed building (former dwelling) in August 2020.

- (i) The proposed works rely upon access created by the unauthorised work to provide access to the proposed upper ground floor office areas and the proposed first floor residences.

#### ***Particulars:***

- (a) The unauthorised demolition work included the loss, removal and potential destruction of a number of sandstone blocks from the south-western corner façade of the former dwelling.
- (b) The unauthorised demolition work is not supported by Council's Heritage planner due to the significant impacts of the proposal on the heritage significance of the heritage item.
- (c) No lawful approval is in place which permits the unauthorised demolition works.
- (d) Council cannot grant retrospective development consent to any development which relies upon these works, including for the purposes of access.
- (e) Insufficient evidence is provided in the development application documentation to support the unauthorised works. The submitted Heritage Impact Statement does not directly address or support the unauthorised works.

- (f) The unauthorised demolition of the dwelling cottage should be rectified by replacement of lost sandstone block work, under supervision of a suitably qualified conservation consultant that is acceptable to Council.

**5. *Public Interest***

The proposal is not in the public interest.

***Particulars:***

- (a) The notification of the application received nine (9) submissions against the proposal.

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**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/2021/7\\_April\\_2021](https://www.northsydney.nsw.gov.au/Council_Meetings/Meetings/NSLPP/2021/7_April_2021))

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**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.

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**Endorsed for and on behalf of North Sydney Council**

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DATE

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Signature on behalf of consent authority  
LUKE DONOVAN  
A/TEAM LEADER (ASSESSMENTS)

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