



Stothard Projects  
Suite 1/60 Penshurst Street  
WILLOUGHBY NSW 2068

D403/22  
TH3 (CIS)

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

<b>Development Number:</b>	<b>403/22</b>
<b>Land to which this applies:</b>	41 Carter Street, Cammeray Lot No.: 2 & 3, DP: 318311
<b>Applicant:</b>	Probuild Project Management Pty Ltd
<b>Proposal:</b>	Demolition and construction of a new dwelling house and associated works
<b>Determination of Development Application:</b>	Subject to the provisions of Section 4.17 of <i>the Environmental Planning and Assessment Act 1979</i> , the subject application has been refused for the reasons stated below.
<b>Date of Determination:</b>	28 July 2023

**Reasons for Refusal:**

**1. Built Form, Massing and Scale and Site Context**

The proposed dwelling does not respond appropriately to its local context and is inconsistent with the built form character of the surrounding buildings that comprise the streetscape.

Particulars:

- i. Height of Buildings - The building exceeds the maximum height of buildings development standard stipulated in Clause 4.3 of NSLEP 2013, which is also contrary to Provision P1, Section 1.4.7 of Part B in NSDCP 2013. A written request pursuant to Clause 4.6 'Exceptions to development standards' has not been provided within the development application to justify the contravention of the development standard. The new building is inconsistent with surrounding dwellings and would appear as a significantly larger dwelling from Carter Street and does not reflect the existing context that comprises a low-density residential area, contrary to objectives 1 and 3 for the R2 Low Density Residential zone.

The building does not satisfy the objectives within Clause 4.3 'Height of Buildings' in NSLEP 2013 because it does not maintain a scale of development that is in accordance with its low density residential surrounds and the dwelling, due to the lower ground floor garage, appears as a three storey dwelling when viewed from Carter Street, contrary to objective (g) which seeks to maintain a scale of one to two storeys within the R2 Low Density Residential zone.

- ii. Site Coverage - the proposal involves a total site coverage of 46% (234.1m<sup>2</sup>) which includes the proposed dwelling, garage, porch and covered alfresco patio with its vergola roof to the rear of the dwelling. The site coverage exceeds the maximum site coverage of 40% stipulated in Table B-1.6, Provision P1, Section 1.5.5 of Part B in NSDCP 2013. The proposed dwelling, exceeding the maximum site coverage requirement, results in a development not in keeping with the optimum capacity of the site and is considered an overdevelopment, not promoting the desired future character of the neighbourhood or providing adequate landscaping.

The development is therefore considered contrary to Objectives O1 - 04 stipulated in Section 1.5.5 'Site Coverage' of Part B in NSDCP 2013.

- iii. Roofs - the proposed dwelling comprising of a flat roof is contrary to Provision P1, Section 1.4.10 of Part B in NSDCP 2013, not having a pitched roof and the proposed flat roof is not compatible with the pitched roofs of neighbouring properties. The existing roof form of neighbouring properties comprise of pitched roofs and the proposed roof form of the dwelling is not compatible with the characteristic roof typology of the locality, contrary to Objective O1 and Provision P1 of Section 1.4.10 of Part B in NSDCP 2013.
- iv. Built Form Character - Due to the combination of its flat roof, articulated elevations with varying styles of window openings including large single pane windows/sliding doors visible from Carter Street/Greens Drive, and variety in proposed material and finishes, the building is substantially out of character with the built form character of adjoining properties, particularly the adjoining properties (33, 35, 37 and 39 Carter Street), which are notable for having less variety and complexity in the use of materials and finishes for elevations, pitched terracotta tile roofs and smaller multi-pane window openings. The proposed dwelling house does not reflect, reinforce or complement the built form character of the locality contrary to Provision P2 and Objective O1, Section 1.4.8 of Part B in NSDCP 2013.
- v. Finished floor height of the ground floor level - the finished floor height of the ground floor level is greater than 1m above the existing ground level contrary to Provision P3, Section 1.4.7 of Part B in NSDCP 2013. The dwelling would appear excessive in size and inconsistent with surrounding dwellings due to the ground floor level exceeding the maximum 1m stipulated in Provision P3 and would appear from Carter Street as a significantly larger dwelling contrary to Objective O1 in Section 1.4.7 of Part B in NSDCP 2013.
- vi. Front Setback - the front setback of the lower ground floor garage measuring 2.98m from the front boundary with Carter Street is inconsistent with the alignment of the primary facades of buildings on adjoining properties contrary to Provision P1, Section 1.4.6 of Part B in NSDCP 2013. The front setback for the lower ground floor garage does not reinforce the characteristic pattern of setbacks within the street and control the bulk and scale of the building as viewed from the public domain contrary to Objectives O1 and O2, Section 1.4.6 of Part B in NSDCP 2013.

- vii. Front Fences - the aluminium batten front fence is uncharacteristic with the characteristic pattern of surrounding front fences, noting front fences of neighbouring properties incorporates greater proportions of masonry or sandstone. Sandstone fences and sandstone retaining walls are a significant element of the streetscape in the Cammeray Neighbourhood as stipulated in P21, Section 4.2.1, of Part C in NSDCP 2013. The proposed front fence significantly differs from the design and materiality of front fences of adjoining properties and is not considered to contribute to the characteristic pattern of fences in the locality contrary to Objective O1, Section 1.4.14 of Part B in NSDCP 2013.
- viii. Context - the proposal is not compatible with the wider context and is inconsistent with the built form character of buildings in the streetscape. The design of the dwelling, due to the combination of its flat roof, varying style in built form including use of materials and finishes and its excessive bulk and scale, is out of character with the built form character of adjoining properties in the surrounding streetscape. The design of the dwelling does not respond to the character of the locality and is contrary to Objective O1, Section 1.4.1 of Part B in NSDCP 2013.

## **2. Landscaping, Earthworks and Vehicular Access**

The proposed development does not adequately maintain the landscaped quality and amenity of the site and surrounds, providing insufficient landscaping, including type of plant species, and does not provide adequate protection for adjoining trees.

### Particulars:

- i. Landscaped and Unbuilt Upon Area - the proposed landscaped area equates to approximately 171m<sup>2</sup> (33%) which does not comply with the minimum 40% required in Table B-1.7, Section 1.5.6 of Part B in NSDCP 2013. The development has an unbuilt upon area (UBA) of 109.6m<sup>2</sup> (21%) inclusive of paths, driveways and unenclosed paved areas and does not comply with the maximum 20% stipulated in Table B-1.7, Section 1.5.6 of Part B in NSDCP 2013.

The proposed landscaped area is incorrectly identified in the submitted Landscaped Area Calculation (Sheet No. 16 Rev D) to be 50.49% (258.60m<sup>2</sup>) and includes landscaping within all setbacks of the site apart from the driveway. However, the landscaped area calculation is incorrect noting less landscaping is proposed within the submitted Landscape Plan (C1 Rev A).

The development provides insufficient landscaped areas and excessive unbuilt upon areas which do not comply with the minimums / maximum stipulated in Provision P1, Table B-1.7, Section 1.5.6 of Part B in NSDCP 2013. The shortfall in landscaped area and exceedance in unbuilt upon area does not maximise the retention and absorption of surface water drainage on the site, does not promote landscaping including tree planting especially within the front setback facing Carter Street or setback to the secondary frontage facing Greens Drive thereby not contributing to the streetscape contrary to Objective O1, Section 1.5.6 of Part B in NSDCP 2013.

- ii. Vehicular Access and Car Parking - the proposed new vehicular access from Carter Street is contrary to Provision P14, Section 1.5.4 of Part B in of NSDCP 2013 because the new vehicular access is from the primary street frontage rather than the secondary frontage (Greens Drive) compromising the appearance of the streetscape by forming a large

concrete driveway and vehicular crossing, diminishing the opportunity for landscaping and increasing the prominence of the dwelling within the Carter Street streetscape.

The proposed width of the vehicular access, measuring 4.74m, is excessive and contrary to the 2.5m width stipulated in Provision P16, Section 1.5.4 of Part B in of the NSDCP 2013. The width of the vehicular access and associated driveway minimises the opportunity for landscaping having an adverse visual impact on the appearance of Carter Street in accordance with Objectives O3 and O4, Section 1.5.4 of Part B in NSDCP 2013.

- iii. Front Gardens - the front garden of the site comprises substantial paved areas including a large concrete driveway with limited landscaping. The front garden fails to soften the dwelling as viewed from the street contrary to Provision P6, Section 1.5.8 of Part B in NSDCP 2013.

The dominance of hard surfacing and limited landscaping between the front elevation and Carter Street boundary provides limited opportunity for water infiltration and does not soften the built form of the dwelling from Carter Street contrary to Objectives O1 and O2, Section 1.5.8 of Part B in of NSDCP 2013.

- iv. Bushland Buffer - the site is located in a bushland buffer area known as Buffer Area B due to the site being within 300m of bushland, therefore consideration is required of Section 15 *Bushland* of Part B in NSDCP 2013.

Provision P3, Section 15.3.3 of Part B in NSDCP 2013 requires a landscape plan to be submitted with at least 50% of the overall number of trees, shrubs and groundcovers being locally occurring native species.

The number of local native plants specified in the plan is 31, which represents approximately 26% of the total number of plants specified (120). The proposed planting within the landscape plan provides insufficient locally occurring native species contrary to the requirements of Provision P3, Section 15.3.3 of Part B in NSDCP 2013.

- v. Tree Planting and Tree Retention - The Landscape Plan requires additional tree planting noting the arborist report recommends removal of four trees (1 x *Callistemon citrinus*, 1 x *Olea europaea*, 1 x *Grevillea robusta* and 1 x *Pittosporum*) and the Landscape Plan proposes replacement with only one tree (1 x *Cupaniopsis anacardioides*). The proposed tree planting does not provide an appropriate tree canopy for the site contrary to Objective O1, Section 1.5.7 of Part B in NSDCP 2013 and fails to assist in softening the built form of the dwelling from the street contrary to Objective O2, Section 1.5.8 of Part B in NSDCP 2013.

The proposed alfresco area and steps to the rear of the dwelling measuring approximately 9.3m x 3m which will require excavation within the Tree Protection Zone (TPZ) of the neighbouring *Lophostemon confertus* located in the rear garden of 39 Carter Street.

The excavation required to construct the proposed alfresco area and associated steps leading to the rear garden will have an adverse impact on the health and vigour of the neighbouring tree and therefore cannot be supported due to the likely detrimental effect on the *Lophostemon confertus* and is contrary to 3(a)(ii) in Clause 6.10 'Earthworks' of NSLEP 2013 and Objective O2 in Section 1.3.1 of Part B in NSDCP 2013.

**3. Insufficient Information**

The plans contain insufficient information to allow the proper assessment of the application contrary to Council requirements in Section 3.3.1 of Part A in NSDCP 2013 and Council's Development Application Checklist.

- i. the building is insufficiently shown on the site plan, restricted to an outline only,
- ii. dimensions from external walls to corresponding boundaries are not shown on corresponding floor plans,
- iii. the identification of existing ground levels on all elevations and sections is inaccurate and the retaining wall on the western boundary is not detailed in the corresponding ground floor plan or site plan.

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**How community views were taken into account:**

The subject application was notified to surrounding properties and the Plateau and Bay Precinct for 14 days where two (2) submissions were received. The issues raised have been considered as part of the assessment of the development application.

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**Review of determination and right of appeal:**

Within six 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**

**31 July 2023**

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DATE



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Signature on behalf of consent authority  
MICHAEL STEPHENS  
**A/TEAM LEADER ASSESSMENTS**