



Mr Paul Mullaly
7 King Street
WAVERTON NSW 2060

D67/217
KRR (CPE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.56 MODIFICATION - REFUSAL**

Development Number: 67/17

Land to which this applies: 7 King Street, Waverton
Lot No.: X, DP: 443872

Applicant: Paul Mullaly

Proposal:

Replace existing structurally deficient sandstone block wall to south west side of the building on the Lower Ground Floor with sandstone clad reinforced concrete wall, as recommended by a Certified Structural Engineer. Currently, this wall supports the structure above including the exterior walls and floors to the Ground and First Floor as well as a portion of the roof. It is in a very poor condition with concerns about its ability to support the existing and future loads imposed upon it and not repairable.

Pursuant to Section 4.56 of the Act, notice is hereby given of the determination by the consent authority of your request for a modification to Development Consent No. **67/17** and registered in Council's records as Application No. **67/17/3** relating to the land described as **7 King Street, Waverton**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **16 November 2017**, has been refused.

Reasons for Refusal:

- 1. The applicant has not provided sufficient information in order for Council to assess the impacts of the proposed modification.**

Particulars

Owners' Consent

The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979 in that the modification proposal includes works which straddle the common boundary wall between and 5 King Street, Waverton. As the wall would be in ownership of both properties, Council requires the consent of the adjoining land owner/s in accordance with the Environmental Planning and Assessment Regulation 2021. The application cannot be determined until such time as official documentation is received in accordance with the Environmental Planning and Assessment Regulation 2021.

Excavations/Earth Works

The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposal is unsatisfactory with regard to the objectives and provisions of the earthworks control Clause 6.10 of NSLEP 2013. The proposal is not considered to adequately address the potential impacts from such deep and encompassing excavations. The threat to adjoining properties is considered high and no clear engineering detail was provided to assure no damage will occur. The scope of works have been referred to Council's Building & Compliance Unit for investigation and to ensure structural certification is provided.

Section 4.56 of the Environmental Planning and Assessment Act 1979 (as amended)

The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act 1979* in that the SEE contains insufficient information to enable an accurate assessment of the proposal and does not address the heads of consideration for Court endorsed modification proposals as set out under Section 4.56 of the *Environmental Planning and Assessment Act 1979* (as amended).

Construction Certificate Approval

The proposal has not detailed why the Construction Certificate plans depict the as proposed modifications nor provided justification as to why these plans were supported by the Private Certifier without the benefit of approval being obtained.

Compliance with Conditions of Consent

The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979 in that the submitted modification statement of environmental effects has not addressed the non-compliance with conditions A1, A5, A7, B1, C4, C9 and C19.

How community views were taken into account:

The proposal was notified and advertised in accordance with s.3.4.3 of the North Sydney Community Engagement Protocol. No submissions were received.

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.

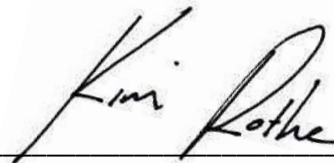
Pursuant to Section 8.2, an applicant is able to request Council to review its determination. An application for a review under Section 8.2 of the Act must be made no later than 28 days after the date on which the application for the modification of the development consent was determined.

Section 4.56 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

27 October 2023

DATE


Signature on behalf of consent authority
DAVID HOY
TEAM LEADER (ASSESSMENTS)

Plans being refused:

Plan No.	Dated	Issue	Title	Drawn by	Received
20-CC-01	01/03/2023	B	Construction Notes	Paul Mullaly	13 March 2023
20-CC-02	05/11/2020	A	Site Plan / Roof Plan	Paul Mullaly	13 March 2023
20-CC-03	20/07/2022	B	Ground Floor and First Floor Plans	Paul Mullaly	13 March 2023
20-CC-04	20/07/2022	B	Garage and Lower Ground Floor Plans	Paul Mullaly	13 March 2023
20-CC-06	05/11/2020	A	North West (Front) Elevation South East (Rear) Elevation	Paul Mullaly	13 March 2023
20-CC-07	20/07/2022	B	South West Elevation North East Elevation	Paul Mullaly	13 March 2023
20-CC-08	05/11/2020	A	Long Sections	Paul Mullaly	13 March 2023
20-CC-09	05/11/2020	A	Cross Sections Sheet 1	Paul Mullaly	13 March 2023