



Dr George Lewkovitz  
Suite 307/35 Spring Street  
BONDI JUNCTION NSW 2022

D38/23  
AB7 (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 87 of the Environmental Planning and Assessment Regulation 2021 ("the Regulation")*

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**Development Application Number:** 38/23

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**Land to which this applies:** 21 Cowdroy Avenue, Cammeray  
Lot No.: 58, DP: 1079491

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**Applicant:** Dr George Lewkovitz

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**Proposal:** Demolition of a dwelling house and construction of a new dwelling house.

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**Determination of Development Application:** The development application was considered by the **North Sydney Local Planning Panel (NSLPP)** on 1 November 2023. 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:** 1 November 2023

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**Reason for refusal:**

- The proposed development is inappropriate to its context and is incompatible with the built form and landscape character of the Cammeray Neighbourhood and the Cowdroy Avenue streetscape;**

The proposed development is not appropriate to its context or compatible with the character of the Cammeray Neighbourhood, and Cowdroy Avenue by virtue of its excessive height, bulk and scale, its excessive building footprint and inadequate area for deep soil tree planting, its incongruous built form, and its failure to respond to the landscaped and topographical context of the site and adjoining properties.

**Particulars:**

- a) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not satisfy the aims of *North Sydney Local Environmental Plan 2013 (NSLEP 2013)* as listed in Clauses 1.2 (2)(a), (2)(c)(i), (2)(b)(i), (2)(e)(i) in Part 1 of NSLEP 2013, and the Objectives of the C4 Environment Living zone, to ensure developments are appropriate and compatible to the context, and character of an area and that development does not adversely affect the amenity of neighbouring properties, or the ecological and aesthetic values of the area.
- b) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not comply with the maximum permitted height of buildings pursuant to clause 4.3 of the *North Sydney Local Environmental Plan 2013 (NSLEP 2013)*: The portion of the building that does not comply with the height control results in a loss of amenity to surrounding developments including unnecessary view loss and overshadowing. The height and scale of the development exceeds that of the surrounding development and the written request to justify the contravention has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary, or that there are sufficient environmental planning grounds to justify the variation.
- c) 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 proposed development fails to satisfy the development standard as listed in Clause 6.10 in Part 4 of *NSLEP 2013* to ensure that earthworks will not have a detrimental impact upon the environmental functions and processes, and natural vegetation of the land.
- d) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(iii) and s. 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in that the proposed development would have an adverse visual and amenity impact upon surrounding properties, the streetscape presentation of the site, and results in an over-scaled development that is unsympathetic to existing development and character within the street and surrounding area.

The proposed development therefore fails to satisfy the objectives and provisions within Section 1 (Residential Development) in Part B of the North Sydney Development Control Plan 2013 (NSDCP 2013). Specifically, Objectives O5, O6, O7, and O9 of Section 1.1.1 (General Objectives); Objective O1 and Provision P1 of Section 1.4.1 (Context); Objectives O1, O2, O3, and O4, and Provisions P2, P3, P4, and P5, of Section 1.4.6 (Setbacks); Objective O1 and Provision P1 of Section 1.4.7 (Form, massing & scale); Objective O1 of Section 1.4.8 (Built form character); Objective O4 and Provisions P1, P3, and P5 of Section 1.4.14 (Front Fences); Objectives O3 and O4 and Provisions P1, P10, P11 and P14 of Section 1.5.4 (Vehicular access and parking); and Objectives O1, O2, O3 and O4, and Provision P1 of Section 1.5.5 (Site coverage).

- e) The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development would have an unacceptable impact upon the landscaped context of the site that is located within a bushland buffer zone including the loss of natural sandstone outcrops, insufficient landscaped areas, and significant impacts arising from excavation upon adjoining site trees.

The proposed development therefore fails to satisfy the objectives and provisions within Section 1 (Residential Development), Section 15 (Bushland), and Section 16 (Tree and Vegetation Management) in Part B of the North Sydney Development Control Plan 2013 (NSDCP 2013). Specifically, Objective O5 of Section 1.1.1 (General Objectives); Objectives O1, O2, O3 and O4 and Provisions P1 and P2 of Section 1.3.1 (Topography); Objective O1 and Provision P1 of Section 1.3.2 (Properties in proximity to bushland); Objective O1 and Provisions P1, P3, P4, P8, and P10 of Section 1.5.6 (Landscaped Area); Objectives O1, O3, O4, and Provisions P1 P2, P3, P5, P6 and P7 of Section 1.5.7 (Landscaping); Objectives O1 and O2, and Provisions P2, P3, P5, and P6 of Section 1.5.8 (Front Gardens); Objective O5 of Section 15.1.1 (General Objectives); Objectives O1 and O2 of Section 15.2.1 (Siting and design); Objective O1 and Provision P3 of Section 15.3.3 (Indigenous Vegetation); and the Objectives O2, O3, O4 and O6 of Section 16.1.1 (General Objectives).

- f) The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not satisfy the Area Character Statement for the Cammeray Planning Area in Section 4 in Part C of NSDCP 2013 – The proposal will adversely and unreasonably impact upon the built form character of the Greens Drive neighbourhood and its context within the surrounding area and is contrary to the objective of development within the planning area that “*reflects and reinforces the existing distinctive built form/landscape areas and distribution of accommodation types*”.
- g) The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not satisfy the Area Character Statement for the Cammeray Neighbourhood in Section 4.2 in Part C of NSDCP 2013, specifically section 4.2.1 (Significant Elements) Provision P4; and section 4.2.2 (Desired Built Form – Form, scale and massing), provision P5.
- h) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979* in that the proposed development is an overdevelopment of the site which is not suitable for development of the proposed form.
- i) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979* in that the proposed development will create undesirable precedent and the building proposes significant variations to numerical and merit-based controls and is therefore not in the public interest.

**2. Unnecessary overshadowing to and view loss from neighbouring properties caused by an excessive bulk and scale;**

The proposed development would result in unnecessary overshadowing and view loss for neighbours.

**Particulars:**

- a) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in that the proposed development, although complying with the minimum 3 hours of solar access to neighbours requirement, still results in unnecessary overshadowing to adjoining neighbours by way of the proposal's excessive scale, bulk and height and is contrary to the Aims of NSLEP 2013, specifically (2)(c)(i); (Residential amenity); the Objectives of the C4 Environment Living zone, Objectives O5, O6 and O7 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.
- b) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(i) and s. 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in that the proposed development, although retaining the majority of the views and outlooks of adjoining sites with only minor view impacts, a compliant scheme would minimise the view impacts and the proposal is therefore is contrary to the Aims of NSLEP 2013, specifically (2)(c)(i); (Residential amenity); the Objectives of the C4 Environment Living zone, specifically dot points 3 and 4; Objective O5 in Part B, section 1.1.1 in NSDCP 2013, and Objective O2 and Provisions P2 and P3 in Part B, section 1.3.6 (Views) in NSDCP 2013.

**3. Insufficient and inadequate plans and supporting information;**

The supporting information is inadequate.

**Particulars:**

- a) 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 proposed development fails to meet the requirements outlined in Clauses 23 and 36 of the *Environmental Planning and Assessment Regulation 2021*. This includes the necessary additional information to properly consider the development application with regards to the inconsistency between documentation. The Statement of Environmental Effects suggests that the existing driveway layback/crossover is to be retained while the submitted plans indicate a new crossover within the structural root zone of the existing street tree (*Lagerstroemia indica*), which has the potential for additional impacts.
- b) 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 proposed development fails to meet the requirements outlined in Clauses 23 and 36 of the *Environmental Planning and Assessment Regulation 2021*. The submitted Shadow Diagrams are of limited utility in assessing the overall overshadowing upon adjoining properties, including the shadows cast in relation to the openings and elevations of adjoining properties.

**4. The amended development is not in the public interest given the above likely impacts.**

**Particulars:**

- a) The application is considered unacceptable pursuant to the provisions of s.4.15(1)(d) & (e) of the *Environmental Planning and Assessment Act 1979* in that the above matters were raised in the twelve (12) submissions from nearby residents. The proposal is, therefore, not considered to be in the public interest or suitable for the site.

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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/downloads/file/2875/lpp01-21-cowdroy-ave-cammeray-da-38-23>)

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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**

**06 November 2023**

DATE



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Signature on behalf of consent authority  
ISOBELLA LUCIC  
**TEAM LEADER (ASSESSMENTS)**

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