

Original signed by **David Hoy** on **26/08/2021**

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D196/20
KRR (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION - Refusal**

Development Application Number: **196/20/2**

Land to which this applies: 85 Bank Street, North Sydney
Lot No.: 7, Sec 6, DP: 418

Applicant: Nick Hibberd Architect

Proposal: To modify Consent No 196/20/2 with regard to carport,
new window and extension on upper level

Determination of Development Application: Subject to the provisions of Section 4.17 of the Environmental Planning and Assessment Act 1979, approval has been granted subject to conditions in the notice of determination.

Pursuant to Section 4.55 of the Act notice is hereby given of the determination by the consent authority of your request for a modification to Development Consent No. **196/20/2** and registered in Council's records as Application No. **196/20** relating to the land described as **85 Bank Street, North Sydney**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 27 August 2021, has been refused.

Reasons for Refusal:

Not Substantially the Same Development

1. **The proposed modifications would not result in development that is substantially the same as that originally determined by Council. The modifications would also be inconsistent with the reasons given for the approval.**

Particulars

- a) The modification proposal is contrary to the original development consent granted with conditions imposed to preserve an existing street tree, to retain existing areas of soft landscaping and to preserve and enhance the contribution of the soft landscaping to the Conservation Area.
- b) The modification proposal is contrary to the reason given in Condition A4 given as follows:
Reason: *The proposed carport and crossover would result in the loss of a street tree which would have an unreasonable impact on the amenity of the street and the conservation area, Clarification of consent.*
- c) The proposed modifications would see significant improvements required by the original consent, deleted from the consent, that being the retention of a street tree and improved landscape response to the Bank Street frontage.
- d) The proposed modifications seek installation of a structure which was expressly deleted from the consent.
- e) The applicant has provided no supportive statement which has addressed the relevant provisions of Section 4.55(2) of the EP&A Act 1979 or provided a qualitative assessment of the effects of the proposed modifications in comparison to the approved development application.

Loss of Street Tree and Impact on Heritage Conservation Area

2. **The proposed modifications would have an unsatisfactory impact on the character of the heritage conservation area through loss of a street trees, reduction in the overall site landscaping and by location of a carport forward of the primary building line.**

Particulars

- a. 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) and (3)(b)(i) in Part 1 of NSLEP 2013 which seeks to ensure new development is appropriate and compatible to the context and character of an area.
- b. The proposed development does not satisfy the objectives of the R2 Low Density Residential zone in the Land Use Table in Part 2 of NSLEP 2013 because of the inappropriate context, removal of established street trees and the modifications of the approved development which does not ensure that a high level of residential amenity will be maintained to adjoining premises.

- c. The application fails to satisfy the objectives and controls for the following sections in Part B Section 1 Residential Development of the NSDCP 2013 and is therefore considered unacceptable:
- i. Part B, Section 1.3.10 Visual privacy - O1, P3 , P4, P5
 - ii. Part B, Section 1.4.1 Context - O1, P1
 - iii. Part B, Section 1.4.3 Streetscape - O1, P2, P3
 - iv. Part B, Section 1.4.8 Built form character - O2, P1 P2 and P7
 - v. Part B, Section 1.4.10 Roofs - O1, P1
 - vi. Part B, Section 1.5.4 Vehicular Access and Car Parking - O3, O4, P14 and P15
 - vii. Part B, Section 1.5.6 Landscaped Area - O1 and P1
 - viii. Part C, Section 9.10.7 Uncharacteristic Elements

Privacy Impacts

- 3. The proposed changes to Window WD05 are not supported due to the unsatisfactory loss of privacy for the private adjoining property to the immediate north, being No. 87 Bank Street.**

Particulars

- a. The proposed orientation, elevation and dimensions of window WD05 would result in an unreasonable level of overlooking of the adjoining dwelling to the north.
- b. The application fails to satisfy the objectives and controls for the following sections in Part B Section 1 Residential Development of the NSDCP 2013 and is therefore considered unacceptable:
- i. Part B, Section 1.3.10 Visual privacy - O1, P3 , P4, P5

Public Interest

- 4. The proposed development is not in the interest of the public due to the adverse impact of the development.**

How community views were taken into account:

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 section A4 of NSDCP 2013 and Council's Community Engagement Protocol. The notification resulted in one submission which has been dealt with in the considerations of this report.

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.

Endorsed for and on behalf of North Sydney Council

26 August 2021

DATE

Signature on behalf of consent authority
DAVID HOY
TEAM LEADER - ASSESSMENTS
