

13 May 2025

Strathfield Council
65 Homebush Road
Strathfield NSW 2135
Attention: The General Manager

By Email:

council@strathfield.nsw.gov.au

Dear Sir or Madam

DA SUBMISSION - DA2025.47

We refer to Council's site notice relating to development application number DA2025.47 (the **Application**), in relation to the property at 40 Abbotsford Road, Homebush (the **Subject Site**).

The Homebush Residents' Group, Inc. (the **HRG**), is an association of residents in and around the area known as Homebush village, which is located to the south of Homebush station in the suburbs of Homebush and Strathfield. The HRG is registered in New South Wales as an incorporated association with an incorporation number INC2201289. We make these submissions on behalf of the HRG's members, to **oppose** the Application.

Council will already have seen residents' numerous separate and unique objections which express their views on the merits of the Application. HRG's submissions will instead focus on the following:

- By law, the Application must be assessed against the context of the Subject Site and its surrounding area as if the illegal demolition of the contributory item had not occurred.
- The Application is grossly out of character by reference to the desired future character of the Abbotsford Road Heritage Conservation Area.
- When viewed by reference to the context of the Subject Site had the illegal demolition not occurred, the Application is grossly inconsistent with planning controls.
- The planning objectives of the Subject Site, as modified by the Low and Mid Rise Housing Policy applicable to the Subject Site, can be easily achieved in a way which is consistent with the character of the surrounding area.
- By law, Council must not facilitate the proposed destruction of evidence relating to an offence.

The residents of this Municipality see plenty of bad DAs, but this Application is extraordinarily egregious. We are confident that, if it came before the Court, it would certainly be finally refused.

1 The law - prior illegal demolition

It is important context for the Application that, in 2024, Mr Mehedin Abdul-Rahman, the present owner of 40 Abbotsford Road, illegally demolished the existing house, which has been identified by the Strathfield-Homebush District Historical Society as a late Federation bungalow built in 1915/16. It was a contributory item to the Abbotsford Road Heritage Conservation Area. The owner previously received development consent for alterations and additions to the rear of the existing dwelling. Contrary to that consent, the dwelling was unlawfully demolished without development approval. This is not Mr Abdul-Rahman's first illegal development (see *Burwood Council v Meheredin Abdul-Rahman* [2021] NSWLEC 46).

While any enforcement action or prosecution for unlawful demolition is a separate matter to the assessment of the current development application, the fact of the unauthorised demolition is relevant to the planning context of the site and to the assessment of this proposal under Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* (NSW).

The principle is well established that a person must not be permitted to profit from their own wrongdoing. The Court has consistently held that a development application should not be assessed on the basis of any advantage gained through unlawful conduct, particularly where doing so would undermine heritage protection objectives.

That is, the Application must be assessed on the basis that the original Federation-style dwelling still existed at the time of the application. This approach ensures that the heritage values of the HCA are properly considered, and that the applicant does not benefit from having removed a contributory item in breach of planning controls.

A key case illustrating this principle is *Nader v Strathfield Council* [2015] NSWLEC 1370, where heritage elements had been maliciously removed from the facade of the property, the Court considered that the demolished elements must nevertheless be taken into account. The fact that the facade was capable of reconstruction was an important element in the Court's decision to rule in favour of Strathfield Council.

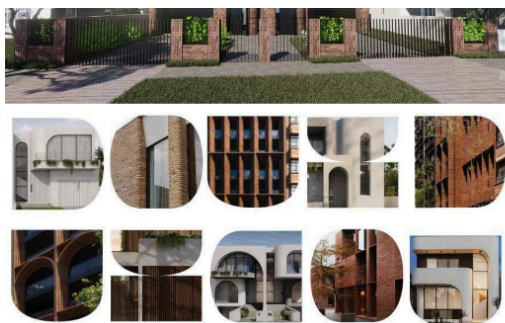
The well-known case *Norm Fletcher & Associates Pty Ltd v Strathfield Council* [2013] NSWLEC 118 was also decided in the Council's favour. This case involved 'Camden Lodge', 102 Burlington Road Homebush, known to surrounding residents as 'the Bush house'. In that case, a deliberately lit fire had destroyed much of the fabric of the house. Nevertheless, the Court ruled against the proposed demolition. As we all know, Camden Lodge was eventually sympathetically rebuilt by a subsequent owner and is a success story of a compliant redevelopment.

2 The subject site and character

The house and its curilege were unusually well preserved, retaining a traditional landscaping plan which is characteristic of its era of development. Because of their locations next to Strathfield Central Library, 'Kiloyth' together with neighbouring 38 Abbotsford Road, street trees and other elements, formed an ensemble which contributed significantly to the attractive character of the Abbotsford Road Heritage Conservation Area.

The subject property formerly contributed to the established character of the area, which is defined in Part the Strathfield Consolidated DCP 2005 (the Heritage DCP) as including housing dating from the late 19th and early 20th century (p.53). The Heritage DCP goes on to say 'There is some modern infill but generally it is unobtrusive', and 'Abbotsford Road is of particular significance for its architectural and aesthetic qualities'. The Heritage DCP imposes planning controls to maintain this character, including most importantly the preservation of the fabric of contributory items, as well as controls on the character of any new developments, retention of contributory elements, as well as the preservation of street tree planting patterns.

The proposed dual occupancy development departs significantly from the form and character of the original contributory item. As the below image (from page 24 of the applicant's 'Architectural Package') will show, the Applicant is not shy about admitting that it has taken its design cues from an eclecticist mixture of postmodern designs. The Applicant has evidently ignored the character of the original contributory item and the character of the area, and presented a mixture of design elements taken from entirely different settings.



In particular, the Application proposes to use material and employs architectural elements which are inconsistent with the material used in the contributory item. Whereas the contributory element uses primarily

liver brick masonry with rendered and timber elements, the proposed Development is characterised by the use of new brick and painted concrete structures, including the white curved balconies that dominate the frontage. Further, the Application proposes to interface with the public realm primarily via two garages, which is entirely out of character with the built form of the original contributory item, and the Abbotsford Road Heritage Conservation Area entirely. Whereas the original contributory item contained landscaped lawn and garden beds across almost the entire width of the frontage (much of which appears still to be in situ), the Application will reduce landscaping on the frontage to four narrow strips adding up to about two metres of frontage width. References to intrusive items such as the flat building on the other side of Abbotsford Road do not address the character concerns raised by the design.

The proposed development:

- is premised on Council countenancing the demolition of a significant contributory item;
- involves destruction of any remaining contributory items, including the front garden, garages that are visible from the street, driveway in a traditional pattern, and a significant number of mature trees; and
- is materially different in scale, form and character, and is not appropriate regardless of whether the contributory item still existed.

As such, it is inconsistent with the desired future character of the Heritage Conservation Area and fails to satisfy the heritage objectives of the Heritage DCP. In line with established planning principles and relevant case law, the proposal cannot be supported in its current form.

3 Compliant development is feasible

The Subject Site is located in a Low and Mid Rise Housing Policy (**LAMRHP**) area and a dual-occupancy mid rise density development is a permitted type of development. However, the Subject Site remains subject to the Heritage DCP controls. The two regimes are not inconsistent, and it is entirely possible to satisfy the development objectives of both the LAMRHP and the Heritage DCP. Abbotsford Road and surrounding areas are replete with examples of sympathetically developed secondary dwellings. A number of recent developments have featured developed forms which, although intended for single household dwelling, can easily be used for dual occupancy.

In the case of 40 Abbotsford Road, a compliant dual-occupancy development is eminently possible. This would involve the retention (or reconstruction) of the principal part of the original dwelling facing the street, and the construction of the second part of the dual occupancy dwelling behind it, separated by a shared parking area or courtyard accessed by the existing driveway.

Why, then, does Mr Abdul-Rahman propose such a non-compliant Application? The reason is apparent: the Application seeks to take advantage of the earlier illegal demolition to submit an Application for a new, poor quality development, thereby saving money compared to a compliant development.

Council must not entertain the Application as if the original property does not exist: to do so would be to confer a direct financial advantage on Mr Abdul-Rahman for an illegal act.

4 Removal of trees

The arborists' report in support of the Application is so incoherent as to be meaningless. Of particular offence is its support for the removal of a street tree to allow a slight realignment of the existing driveway. The street trees of Abbotsford Road are themselves important part of the character: 'The streetscape is tied together with mature street planting and well-maintained gardens' (Heritage DCP, p.53). In particular, the Heritage DCP requires that 'the characteristic pattern of street tree planting comprising mature trees on the verge must be retained. New development must be designed to avoid impacting on the health of the street trees'.

The proposal to remove the street tree is non-compliant with planning controls, and the purported justification of a slight modification to an existing driveway is farcical.

5 Additional driveway

The Application proposes an additional driveway. There is no design justification for an additional vehicle crossing that unnecessarily cuts up the footpath and verge when a single shared driveway for a dual occupancy property is the usual design solution. In the immediate vicinity of the Subject Site, there are already too many driveways clustered within a short stretch of roadway. The addition of another driveway is both unnecessary and undesirable.

6 Illegality of development even if approved

Section 317 of the *Crimes Act 1900* (NSW) provides that a person who, with intent to mislead any judicial tribunal in any judicial proceeding, suppresses, conceals, destroys, alters or falsifies anything knowing that it is or may be required as evidence in any judicial proceeding. This is itself an offence punishable by imprisonment for 10 years.

Until the anticipated prosecution against Mr Abdul-Rahman and other parties is concluded, any attempt to carry out the development proposed in the Application is likely to amount to destroying the existing evidence at the Subject Site of criminal wrongdoing. Criminal prosecution under the *Crimes Act* is a matter for the proper authorities. However, the Council must not be complicit in facilitating this offence. Moreover, since there is no prospect of the applicant being able to carry out the development in a legal way even if the Application is approved, Council should not purport to give the applicant ostensible authorisation to undertake the development.

7 Conclusion

Approval of this Application would set a highly undesirable planning precedent that would encourage developers to demolish contributory buildings and profit

Our members are rightly outraged by the Application. Mr Abdul-Rahman clearly has no respect for Council, the state planning system, or the law. Residents have put up with enough instances of non-compliance already. That one person can get so far along the path of criminality and still have the cheek to seek to profit from it is frankly astonishing, and that it is happening in Strathfield Municipal Council is doubly so. Putting law-abiding residents to the trouble of even opposing the Application is itself offensive, considering Mr Abdul-Rahman's history and the widely reported conduct of the applicant for the Application. Council must take decisive action now to assure residents that the law still applies equally to all in Strathfield Municipal Council. The residents of the Municipality will not stand by if Council approves the application or countenances a conciliation or settlement with the applicant unless the outcome includes a substantial restoration of the demolished property.

We respectfully request that Council should **reject** this Application. If the current owner refuses to comply with the law, we suggest that Council consider acquiring the property.

Yours faithfully