

9 November 2023



Luxitecture Pty Ltd  
Shop 1 35 Terry Street  
ROZELLE NSW 2039

Dear Sir/Madam

**Application Number:** DA2022/2207  
**Address:** Lot A DP 358783 , 30 Abernethy Street, SEAFORTH NSW 2092  
**Proposed Development:** Demolition works and construction of a dwelling house including swimming pool

Please find attached the Notice of Determination for the above mentioned Application.

Please be advised that a copy of the Assessment Report associated with the application is available on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)

Please read your Notice of Determination carefully and the assessment report in the first instance.

If you have any further questions regarding this matter please contact the undersigned on 1300 434 434 or via email quoting the application number, address and description of works to [council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au)

Regards,



Rodney Piggott  
**Manager Development Assessments**

## NOTICE OF DETERMINATION

<b>Application Number:</b>	DA2022/2207
<b>Determination Type:</b>	Development Application

### APPLICATION DETAILS

<b>Applicant:</b>	Luxitecture Pty Ltd
<b>Land to be developed (Address):</b>	Lot A DP 358783 , 30 Abernethy Street SEAFORTH NSW 2092
<b>Proposed Development:</b>	Demolition works and construction of a dwelling house including swimming pool

### DETERMINATION - REFUSED

<b>Made on (Date)</b>	08/11/2023
-----------------------	------------

### Reasons for Refusal:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development contravenes Clause 4.3 of Manly Local Environmental Plan 2013 and will have unacceptable impacts.

#### Particulars:

- The development results in a building height of up to 11.0 metres and contravenes the building height development standard of 8.5 metres under Clause 4.3 of the Manly Local Environmental Plan 2013.
  - The written request seeking a variation to the building height development standard has not demonstrated compliance with the standard is unreasonable or unnecessary pursuant to Clause 4.6(3)(a).
  - Pursuant to Clause 4.6(3)(b) the written request to vary the building height development standard does not demonstrate sufficient environmental planning grounds for the building height contravention. The building height contravention does not occur as a result of the site slope and existing excavation as suggested by the Applicant. The exceedance occurs as a result of the preferred architecture of the building.
  - The height breach creates unacceptable view loss and solar access impacts on adjoining properties.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development contravenes Clause 4.4 of Manly Local Environmental Plan 2013 and will have unacceptable impacts.

Particulars:

- The development results in a Floor Space Ratio which contravenes the maximum permitted by Clause 4.4 of the Manly Local Environmental Plan 2013.
- The written request seeking a variation to the FSR development standard has not demonstrated compliance with the standard is unreasonable or unnecessary pursuant to Clause 4.6(3)(a).
- Pursuant to Clause 4.6(3)(b) the written request to vary the FSR development standard does not demonstrate sufficient environmental planning grounds for the FSR contravention. The FSR has not been calculated correctly in accordance with the definitions of gross floor area contained within the Manly Local Environmental Plan 2013 and the submitted Clause 4.6 written request is not well founded.
- The excessive FSR creates unacceptable view loss and solar access impacts on adjoining properties.
- The jurisdictional prerequisites have not been met with respect to the development application, and development consent cannot be granted.

3. Pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979, the development is contrary to Section 1.3 Objects for the following reasons:

Particulars:

- The proposal does not promote the orderly and economic use and development of land. The development results in adverse impacts upon surrounding properties.
- The proposal does not promote good design and amenity of the built environment. The development is not sufficiently responsive to the site's topography, results in amenity impacts upon neighbouring properties, and is inconsistent with the suite of built form controls applying to the land.

4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development is inconsistent with the provisions of the Manly Local Environmental Plan 2013.

Particulars:

- The development exceeds the maximum building height prescribed by Clause 4.3 Height of Buildings and the maximum floor space ratio prescribed by Clause 4.4 Floor Space Ratio. The proposed height and FSR results in unacceptable amenity impacts on adjoining properties, namely view loss, solar access, privacy and bulk and scale.

5. The development is inconsistent with provisions of the Manly Development Control Plan 2013.

Particulars:

- The development results in an unacceptable bulk and scale contrary to Section 4.1.4.2 of the Manly Development Control Plan in that:
  - The development results in an excessive wall height and non-compliant side setbacks along the southern and northern elevations.
  - The proposed breaches of the side setback contribute to view loss, privacy issues and reduced solar access to the adjoining southern property and streetscape impacts.

- The bulk and scale of the development is excessive, and inconsistent with the provisions of Section 4.1.4.2 of the Manly DCP.

6. The site is not suitable for the proposed development pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.

Particulars:

- For the reasons set out in refusal reasons 1 to 5, the site is not considered suitable for the proposed development in terms of its size, scale and design, despite it being residential development in the Low Density Residential R2 zone

7. Having regard to the reasons noted above, pursuant to the provisions of Section 4.15(1)(d) and Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the development application is not in the public interest.

Particulars:

- The extent of issues identified with the proposed development are such that the public's interest is not served by way of approval of the development application.

## Request a review of the determination

If you are dissatisfied with this determination, you may request a review of the determination:

- You do not have the right to request a review of the determination under section 8.3 of the EP&A Act if you are excluded from those developments listed under Section 8.2(2) of the EP&A Act.
- You may request a review of the consent authority's decision under section 8.3(1) of the EP&A Act. The application must be made to the consent authority within 6 months from the date that you received the original determination notice provided that an appeal under section 8.7 of the EP&A Act has not been disposed of by the Court.

## Rights to appeal

You have a right under section 8.7 of the EP&A Act to appeal to the Court within 6 months after the date on which the determination appealed against is notified or registered on the NSW planning portal.

## Objector's right of appeal against the determination

An objector who is dissatisfied with the consent authority's determination to grant consent, in relation to Designated Development only has the right to appeal to the Court against the determination under section 8.8 of the EP&A Act within 28 days after the date that the objector was notified of the determination appealed against.

## Dictionary

The Dictionary at the end of this consent defines words and expressions for the purposes of this determination.

### Signed

On behalf of the Consent Authority



Name

Rodney Piggott, Manager Development Assessments

Date

08/11/2023