

14 December 2023



Daniel Michael McNamara  
138 Woorarra Avenue  
ELANORA HEIGHTS NSW 2101

Dear Sir/Madam

**Application Number:** DA2023/0868  
**Address:** Lot 44 DP 10648 , 39 Hay Street, COLLAROY NSW 2097  
Lot 45 DP 10648 , 41 Hay Street, COLLAROY NSW 2097  
Lot 46 DP 10648 , 43 Hay Street, COLLAROY NSW 2097  
Lot 43 DP 10648 , 37 Hay Street, COLLAROY NSW 2097  
**Proposed Development:** Demolition of existing dwellings and construction of a seniors housing development

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

You should thoroughly read the Notice of Determination and be aware of any conditions imposed that affect the development and guide the next steps in the process before you can commence works and/or the use.

A copy of the Assessment Report associated with this application is available to view in the Planning and Development > Application Search section of Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)

If you have any questions regarding the decision or the conditions, please contact Council to speak to the assessment officer or the undersigned on 1300 434 434 or via email quoting the Application number, property address and the description of works to [council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au)

Regards,



Steven Findlay  
**Manager Development Assessments**

## NOTICE OF DETERMINATION

<b>Application Number:</b>	DA2023/0868
<b>Determination Type:</b>	Development Application

### APPLICATION DETAILS

<b>Applicant:</b>	Daniel Michael McNamara
<b>Land to be developed (Address):</b>	Lot 44 DP 10648 , 39 Hay Street COLLAROY NSW 2097 Lot 45 DP 10648 , 41 Hay Street COLLAROY NSW 2097 Lot 46 DP 10648 , 43 Hay Street COLLAROY NSW 2097 Lot 43 DP 10648 , 37 Hay Street COLLAROY NSW 2097
<b>Proposed Development:</b>	Demolition of existing dwellings and construction of a seniors housing development

### DETERMINATION - REFUSED

<b>Made on (Date)</b>	13/12/2023
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### Reasons for Refusal:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Warringah Local Environmental Plan 2011. The proposal is not compliant with the floor space ratio development standard set by Clause 108(2)(c) of the State Environmental Planning Policy (Housing) 2021. The proposal is supported by a written request to vary the floor space ratio development standard in accordance with clause 4.6 of the WLEP 2011. The written request is not well-founded as it does not satisfactorily demonstrate:
  - that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case because it does not achieve consistency with the objectives of the R2 zone or the objectives of the equivalent development standard contained within clause 4.4 of the WLEP 2011 (in the absence of objectives for clause 108 of the Housing SEPP).
  - that there are sufficient environmental planning grounds to justify contravening the development standard because the provided justification is insufficient and disagreed with.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone R2 Low Density

Residential of the Warringah Local Environmental Plan 2011.

4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of State Environmental Planning Policy (Housing) 2021, with respect to:
  - o Inconsistency with the character of the R2 zone and surrounding locality,
  - o Excessive floor space and building bulk,
  - o Insufficient information relating to building height,
  - o Non-compliant setbacks,
  - o Insufficient planting,
  - o Insufficient information with regard to stormwater management, and
  - o Minor design issues with respect to accessibility: location of bathrooms and laundry dimensions.
5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.4 Development on Sloping Land of the Warringah Local Environmental Plan 2011, with reference to subclause (b). Insufficient information has been provided to demonstrate that the development will not cause significant detrimental impacts because of stormwater discharge from the development site.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the first three objectives of Clause A.5 Objectives of the Warringah Development Control Plan.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B7 Front Boundary Setbacks of the Warringah Development Control Plan, regarding both the primary street frontage (Hay Street) and secondary street frontage (Anzac Avenue).
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B9 Rear Boundary Setbacks of the Warringah Development Control Plan.
9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C4 Stormwater of the Warringah Development Control Plan, regarding the provision of onsite stormwater detention (OSD), and the proposed connection to Council's drainage system in Anzac Avenue.
10. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C9 Waste Management of the Warringah Development Control Plan, in that it does not provide a bulky goods waste storage area.
11. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D7 Views of the Warringah Development Control Plan 2011, in that it results in view loss to Nos. 32, 34, 36 and 38 Hay Street, attributable the proposed building bulk resulting from the non-compliant floor space ratio.
12. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D8 Privacy of the

Warringah Development Control Plan. In particular, the proposed development orientates the living areas and main private open space of the five upper-level units to the east and will result in unreasonable overlooking to Nos. 987, 989, 991, and 993 Pittwater Road.

13. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9 Building Bulk of the Warringah Development Control Plan. In particular, the proposed development relies on a non-compliant floor space ratio, the results in unreasonable visual impact, view loss, privacy loss, and inadequate landscaping.

## 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 Steven Findlay, Manager Development Assessments

Date 13/12/2023