

4 July 2023



Daniel Michael McNamara  
138 Woorarra Avenue  
ELANORA HEIGHTS NSW 2101

Dear Sir/Madam

**Application Number:** DA2023/0045  
**Address:** Lot 34 DP 4689 , 36 Bardo Road, NEWPORT NSW 2106  
**Proposed Development:** Demolition works and construction of a seniors housing development including basement car parking

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,



Steven Findlay  
**Manager Development Assessments**

## NOTICE OF DETERMINATION

<b>Application Number:</b>	DA2023/0045
<b>Determination Type:</b>	Development Application

### APPLICATION DETAILS

<b>Applicant:</b>	Daniel Michael McNamara
<b>Land to be developed (Address):</b>	Lot 34 DP 4689 , 36 Bardo Road NEWPORT NSW 2106
<b>Proposed Development:</b>	Demolition works and construction of a seniors housing development including basement car parking

### DETERMINATION - REFUSED

<b>Made on (Date)</b>	21/06/2023
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### Reasons for Refusal:

#### 1. 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 following provisions of Pittwater Local Environmental Plan 2014:**

- **Clause 1.2 Aims of Plan**
- **Clause 7.2 Earthworks**
- **Clause 4.6 Exceptions to development standards**

Particulars:

i) The proposed development fails to achieve consistency with the objectives of Clause 1.2 Aims of the Plan of the PLEP 2014 in that the proposal is inconsistent with the desired character of Pittwater's localities.

ii) The applicant has not provided sufficient information to enable a complete and proper assessment of the proposed excavation and earthworks.

iii) The proposal is not accompanied by a written request pursuant to Clause 4.6 Exceptions to Development Standards seeking to justify contraventions of Section 93; Section 108(2)(c) and Section 84(2)(c)(iii) of State Environmental Planning Policy (Housing) 2021

**2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following provisions of the State Environmental Planning Policy (Housing) 2021:**

- **Section 84(2)(c)(iii) -Development Standards (Building Envelope)**
- **Section 93 - Location and access to facilities and services**
- **Section 97 - Design of in-fill self-care housing**
- **Section 99 - Neighbourhood amenity and streetscape**
- **Section 100 - Visual and acoustic privacy**

- **Section 101- Solar access and design for climate**
- **Section 104 - Accessibility**
- **Section 103 - Crime prevention**
- **Section 108 (2)(c) - Floor Space Ratio**
- **Section 108 (2)(i) - Private Open Space**

Particulars:

- i) The application has failed to demonstrate, by written evidence, that residents of the proposed development will have satisfactory access to services and facilities.
- ii) The floor area of the proposed development is excessive and results in associated impacts on the character of the locality and the amenity of adjoining properties.
- iii) The proposed development has excessive bulk and scale which would result in unreasonable impacts upon the amenity of adjoining properties and inconsistency with the desired character of the locality.
- iii) The application has failed to demonstrate that the design of the proposed development provides adequate consideration for accessibility, in particularly provisions for visitor parking and access to services.
- iv) The proposed development does not provide sufficient private open space for Apartment 05 and Apartment 06.
- v) The proposed development has not been designed to encourage crime prevention.
- vii) The proposal does not include a mix of dwelling sizes, and is therefore not consistent with the Seniors Living Policy Urban Design Guideline for Infill Development March 2004.

**3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following provisions of the Pittwater 21 Development Control Plan:**

- **A4.10 Newport Locality**
- **B5.15 Stormwater**
- **B6.3 Off-Street Vehicle Parking Requirements**
- **C1.4 Solar Access**
- **C1.5 Visual Privacy**
- **C1.7 Private Open Space**
- **C1.21 Seniors Housing**
- **D10.7 Front building line (excluding Newport Commercial Centre)**
- **D10.8 Side and rear building line (excluding Newport Commercial Centre)**

Particulars:

- i) The proposed development fails to meet the numerical requirements of the front building line and side building line controls. The numerical non-compliances result in a cumulative impact, that increases the built form, resulting in an overdevelopment of the site.
- ii) The excessive gross floor area, bulk and scale and building mass of the proposal is not compatible with character of the locality, which is primarily low density residential.
- iii) The proposed development presents unacceptable amenity impacts to adjoining properties by way of solar access impacts, and visual privacy impacts, that arise because of the excessive bulk and scale of the proposal.

iv) Inadequate details have been provided to address the management of stormwater in terms of the additional impact of water runoff associated with the site changes.

v) The proposed development does not provide sufficient private open space for Apartment 05 and Apartment 06.

vi) The proposal does not provide any convenient on-site parking for visitors.

**4. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the proposed development is not consistent with the Desired Future Character of the location and is an over-development of the site.**

**5. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not within the public's interest.**

Particulars:

The proposed development is contrary to the provisions of relevant environmental planning instruments, development control plans and design guidelines. Notification of the development application has generated a number of submissions for residents in objection to the proposed development. The consent authority could not be satisfied that s.4.15(1)(e) of the Act has been satisfied.

## 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                            21/06/2023