

18 September 2024

Stephen Crosby & Associates Pty Ltd  
Po Box 204  
CHURCH POINT NSW 1205

Dear Sir/Madam

**Application Number:** DA2024/1036  
**Address:** Lot 1 DP 208499 , 60 Cabarita Road, AVALON BEACH NSW 2107  
Lot LIC 556724 , 60 Cabarita Road, AVALON BEACH NSW 2107  
**Proposed Development:** Construction of a swimming pool

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,



Stephanie Gelder  
**Planner**

## NOTICE OF DETERMINATION

Application Number:	DA2024/1036
Determination Type:	Development Application

### APPLICATION DETAILS

Applicant:	Stephen Crosby & Associates Pty Ltd
Land to be developed (Address):	Lot 1 DP 208499 , 60 Cabarita Road AVALON BEACH NSW 2107 Lot LIC 556724 , 60 Cabarita Road AVALON BEACH NSW 2107
Proposed Development:	Construction of a swimming pool

### DETERMINATION - REFUSED

Made on (Date)	18/09/2024
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### Reasons for Refusal:

1. Pursuant to Section 4.15(1)(a)(iv) of the of the Environmental Planning and Assessment Act 1979, the application has not been accompanied by the required information for a Development Application.

#### Particulars:

- i. Section 23(1) of the Environmental Planning and Assessment Regulation 2021 provides:
  - (1) A development application may be made by—
    - (a) the owner of the land to which the development application relates, or
    - (b) another person, with the written consent of the owner of the land.
- ii. The proposed swimming pool is located on a structure which is partially below the mean high water mark on Crown Land as detailed on the submitted Survey Plan.
- iii. No written consent of the owner of the adjoining Crown Land has been provided with the Development Application.
- iv. In the absence of land owners consent from the owner of the Crown Lands to the making of the development application the Consent Authority is not empowered to approve the application.

2. 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 (Resilience and Hazards) 2021.

#### Particulars:

- i. The proposed swimming pool is inconsistent with Clause 2.10(1)(e) and Clause 2.11(1)(a)(i) that requires safe access along the foreshore for a member of the public, including persons with a disability.

- ii. The encroachment of the swimming pool below the mean high water mark will result in adverse impacts and restricted access in the foreshore area.
- iii. The proposed swimming pool is inconsistent with Clause 2.11(1)(a)(iii) that requires the visual amenity and scenic qualities of the coast to not be adversely impacted.
- iv. The proposed elevated swimming pool and location abutting and below the mean high water mark will impact upon the visual amenity and scenic qualities of the coast due to the elevated nature of the swimming pool, which is bulky and the absence of physical separation from the mean high water mark and foreshore area.
- v. The proposed swimming pool is inconsistent with Clause 2.11(1)(c) and has not taken into consideration the surrounding coast and built environment, and the bulk, scale and size of the proposed swimming pool.

**3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is not permissible within the W1 Zone under Pittwater Local Environmental Plan 2014.**

Particulars:

- i. The application seeks consent for the construction of a swimming pool on a structure that is partially located on land zoned W1 Natural Waterways of Pittwater Local Environmental Plan 2014.
- ii. The proposed swimming pool is a prohibited form of development within the W1 Natural Waterways zone.

**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 Clause 7.8 Limited development on foreshore area of the Pittwater Local Environmental Plan 2014.**

Particulars:

- i. The proposed swimming pool is inconsistent with Clause 7.8(3)(a) that requires the swimming pool to be consistent with the objectives of the W1 Natural Waterway zone. As swimming pools are a prohibited form of development in the W1 Natural Waterways zone, the proposal is inconsistent with and not capable of satisfying the objectives of the zone.
- ii. The proposed swimming pool is inconsistent with Clause 7.8(3)(c) as the elevated nature of the swimming pool is incompatible with surrounding development, and will visually detract from the foreshore, through its elevated form and in ability for it to be landscaped or screened in anyway.
- iii. The proposed swimming pool is inconsistent with Clause 7.8(3)(e) as the proposal does not provide opportunities for continuous public access along the foreshore due to the encroachment of the proposed swimming pool below the mean high water mark.
- iv. The proposed swimming pool is inconsistent with Clause 7.8(3)(h) as the proposal has not considered future sea level rising with the location of the swimming pool abutting and encroaching on the mean high water mark.
- v. The proposed swimming pool is inconsistent with Clause 7.8(4) as the proposal does not encourage continuous public access to and along the foreshore through or adjacent to the proposed development or public access above the mean high water mark.

**5. 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 D1.14 Landscaped Area - Environmentally Sensitive Land of the Pittwater 21 Development Control Plan.**

Particulars:

- i. Clause D1.14 requires 60% (560.0m<sup>2</sup>) of the site to be landscaped.
- ii. The proposal presents a total of 29% (249.4m<sup>2</sup>) landscaped area, presenting a variation of 51.67% (266.6m<sup>2</sup>).
- iii. Significant works have been undertaken at the rear of the site, including new retaining walls, pathways, and the provision of a concrete slab with no approval from Council.
- iv. The proposed swimming pool and surrounding pool presents a further decrease of landscaped area and it is considered that the cumulative impact from the unauthorised works in conjunction with the further decrease of landscape from the proposed works is inconsistent with the outcomes of the control.

**6. 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 D1.20 Scenic Protection Category One Areas of the Pittwater 21 Development Control Plan.**

Particulars:

- i. Clause D1.20 requires screen planting to be located between structures and boundaries facing waterways.
- ii. As the proposed swimming pool is abutting and located below the mean high water mark, there is no opportunity for screen planting between the proposed swimming pool and boundary facing Pittwater Waterway.
- iii. The proposal will detract from the visual significance of district and local views of Pittwater's waterfront due the elevated swimming pool located along and below the mean high water mark.
- iv. The proposal does not maintain or enhance the natural environment of Pittwater as the predominant feature being the built form due to the elevated swimming pool along the foreshore area.
- v. The proposed swimming pool does not provide for visual integration and connectivity to the natural environment due to the elevated nature and prominent location along the mean high water mark.
- vi. The elevated nature of the swimming pool presents unacceptable visual impacts on the natural environment when viewed from the waterway. The location of the swimming pool does not allow for any suitable screening to soften the built form, and as such the elevated swimming pool detracts from the natural environment.

**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 D15.12 Development seaward of mean high water mark of the Pittwater 21 Development Control Plan.**

Particulars:

- i. Clause D15.12 requires all new buildings are to be located landward of mean high water mark.
- ii. The proposed swimming pool is partially located below the mean high water mark, and therefore is inconsistent with the control.
- iii. The proposed swimming pool will encroach upon Crown Land below the mean high water mark and obstruct upon the public access along the foreshore area.

## 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



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Name Stephanie Gelder, Planner

Date 18/09/2024