



Nataly Ernst  
12 Spofforth Street  
CREMORNE NSW 2090

D16/22  
RT (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
NOTICE OF DETERMINATION - Refusal**

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<b>Development Application Number:</b>	<b>16/22</b>
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<b>Land to which this applies:</b>	12 Spofforth Street, Cremorne Lot No.: 1, DP: 559513
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<b>Applicant:</b>	Nataly Ernst
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<b>Proposal:</b>	Construction of a new swimming pool within the rear yard including the removal of existing vegetation
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<b>Determination of Development Application:</b>	Subject to the provisions of Section 4.17 of the <i>Environmental Planning and Assessment Act 1979</i> , the subject application has been refused for the reasons stated below.
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<b>Date of Determination:</b>	6 September 2022
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**Reasons for Refusal**

**1. Unacceptable Landscaping Impacts**

The proposed development is unacceptable because of the adverse impacts on the landscape setting within the subject site and the locality due to the proposed removal of an existing jacaranda tree and other existing vegetation to facilitate the construction of the proposed swimming pool.

- (i) The proposed development does not satisfy Clause 6.10(3)(a)(ii) in Part 6 of NSLEP 2013 due to the detrimental impacts of the proposed development on the structural root zone of an existing 18m high jacaranda tree resulting the need for the removal of this tree.
- (ii) The proposal does not satisfy the aims of North Sydney Local Environmental Plan 2013 (NSLEP 2013) as listed in Clauses 1.2 (2)(e)(ii) in Part 1 of NSLEP 2013.
- (iii) The proposed development does not satisfy the objective of the R2 (Low Density Residential) zone in the Land Use Table in Part 2 of NSLEP 2013 because of the adverse impacts of the proposed development to maintain a high level of residential amenity, particularly dot point 4.

- (iv) The proposed development does not satisfy the Area Character Statement for South Cremorne Planning Area in Section 6.0 in Part C of North Sydney DCP 2013 (NSDCP 2013) given that the proposal does not promote a quality-built form within the planning area because the design of the proposal fails to reflect and reinforce the distinctive landscape areas with established vegetation.
- (v) The application fails to satisfy the development controls for the following sections in Part B of the NSDCP 2013 and is therefore considered unacceptable:
  - a. 1.1.1 General Objective O5: development does not have adverse impacts on residential amenity or environmental amenity and O9: development is consistent with the character that is described in the relevant area character statements
  - b. Section B - 1.3.1 - Topography, particularly O2 relating to the retention of existing vegetation.
  - c. Section B - 1.5.7 - Landscaping, particularly P2 relating to the retention of existing trees wherever practical.

**2. Unacceptable Site Coverage, Unbuilt-Upon Area and Landscaped Area**

The proposed development is unacceptable because of the proposal will result in excessive site coverage and non-compliance with unbuilt upon and landscaped areas.

**Particulars**

- (i) The proposed development will result in a non-compliance with the maximum site coverage for the subject site and is contrary to section 1.5.5 in Part B of NSDCP 2013.
- (ii) The proposed development is contrary to Table B - 1.7 in Section 1.5.6 in Part B of NSDCP 2013 because of the shortfall in meeting the maximum unbuilt upon area and minimum landscaped area requirement.
- (iii) The proposal is contrary to the landscape area provision in Section 1.5.6, particularly P8 requiring the retention of existing matured vegetation.

**3. Unacceptable Swimming Pool Design**

The proposed development is unacceptable because the non-complying design of the proposed swimming pool.

**Particulars**

- (i) The proposed swimming pool does not provide a complying 6m setback from the nearest habitable room within the dwelling on adjoining property and is contrary to P4 in Section 1.5.10 in Part B of NSDCP 2013.
- (ii) The proposed swimming pool will be up to 1.5m above the existing ground level and is contrary to the 500 mm limit as stipulated in P1 in Section 1.5.10 in Part B of NSDCP 2013.
- (iii) The proposed development fails to provide details about rainwater tank and is contrary to P7 in Section 1.5.10 in Part B of NSDCP 2013.
- (iv) The non-compliances with the DCP swimming pool design requirements will result in privacy impacts and the use of potable water and are contrary to O2 and O3 in Section 1.5.10 in Part B of NSDCP 2013.

4. Public Interest

The approval of the proposed development is not in public interest because of the resultant loss of established vegetation and the failure to protect the desirable landscape quality within North Sydney.

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**How community views were taken into account:**

The adjoining property owners and Bennett Precinct were notified about the proposed development between 28 January and 8 February 2022. The notification of the application has attracted no submissions.

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**Review of determination and right of appeal:**

Within 6 months after the date of notification of the decision, a review of this determination can be requested under Division 8.2 of the Act or an appeal to the Land and Environment Court made pursuant to the provisions of Section 8.7 of the Act. A review of determination should be lodged as soon as possible, and preferably no later two months after the date of notification of the decision to enable the review to be completed within the six-month period.

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Any variation to the Development Consent can only be made with the written approval of the Council. Major variations will require a new or amended Development Consent.

Pursuant to Section 8.2, an applicant is able to request Council to review its determination. An application for a review under Section 8.2 of the Act must be made no later than 28 days after the date on which the application for the modification of the development consent was determined.

Section 4.55 of the Act confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court pursuant to Section 8.7 of *the Environmental Planning and Assessment Act, 1979*.

**Endorsed for and on behalf of North Sydney Council**

6 September 2022

DATE



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Signature on behalf of consent authority  
ROBYN PEARSON  
**TEAM LEADER ASSESSMENTS**