

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

Notice is hereby given that a Meeting of the Development Determination Panel will be held in the Walamai Room, Civic Centre, Dee Why

WEDNESDAY 27 MARCH 2019



Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 27 March 2019
in the Walamai Room, Civic Centre, Dee Why**

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 13 MARCH 2019

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 13 March 2019 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1 **DA2018/1665 - 11 COOLANGATTA AVENUE, ELANORA HEIGHTS - CONSTRUCTION OF A DWELLING HOUSE INCLUDING A SWIMMING POOL**

REPORTING MANAGER **MATTHEW EDMONDS**

TRIM FILE REF **2019/160612**

ATTACHMENTS **1** [↓](#) **Assessment Report**
 2 [↓](#) **Site Plan and Elevations**

PURPOSE

To refer the attached application for determination by the discretion of the Executive Manager Development Assessment.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority grant Development Consent to DA2018/1665 for construction of a dwelling house including a swimming pool on land at Lot 12 DP 13643, 11 Coolangatta Avenue, Elanora Heights subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1665
Assessment by:	Natalie Nolan, Nolan Planning Consultants (External Consultant)
Land to be developed (Address):	Lot 12 in Deposited Plan 13643, 11 Coolangatta Avenue, Elanora Heights
Proposed Development:	Construction of a dwelling house including a swimming pool
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Diana and Paul Sedgman
Applicant:	Diana and Paul Sedgman
Application lodged:	10/10/18
Integrated Development	No
Designated Development	No
State Reporting Category	N/A
Notified:	16/10/2018 to 01/11/2018
Advertised:	Not Advertised
Submissions:	1
Recommendation:	Approval with conditions

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding

the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

SUMMARY OF ASSESSMENT ISSUES

C1. 5 Visual Privacy

C1.6 Acoustic Privacy

D5.6 Side and Rear Building Line

B5.7 Building Envelope

SITE DESCRIPTION

Property Description:	Lot 12 in Deposited Plan 13643, 11 Coolangatta Avenue ELANORA HEIGHTS NSW 2101
Detailed Site Description:	<p>The subject site consists of a single parcel of land located on the western side of Coolangatta Avenue. The site is generally rectangular in shape with splayed front and rear boundaries. The site has a frontage of 15.66m to Coolangatta Avenue and a maximum depth of 63.62m. The site has an area of 1034m². The site is located within the E4 Environmental Living zone and accommodates a single-storey dwelling house with garage under. Separate consent (DA2018/1528) has been approved for the demolition of the existing structures. The site has a gradual slope from the rear (RL94.91) towards the street (RL89.96). The site contains a large variety of bushes, trees and small plants. Overgrown turfed grass occupies the majority of the site.</p> <p>Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by a mix of one and two storey detached residential dwellings on generally similar sized allotments to the subject site. More recent development comprises larger two storey dwellings with associated outbuildings/structures and landscaped gardens.</p>

Map:



SITE HISTORY

Development Consent (DA2018/1528) for the demolition of the existing structures on site was approved by Council on 05/02/2019.

The land has been used for residential purposes for an extended period of time

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks approval for the construction of a new two storey dwelling and inground swimming pool.

The new dwelling is to be constructed of rendered masonry with a pitched metal sheet roof. The dwelling is to be provided with a setback to the street frontage which ranges from 8.341m. Setbacks of at least 1.787m and 1.001m are provided to the sites northern and southern boundaries, respectively.

The dwelling will comprise of living areas, media room, kitchen, laundry, guest room, bathroom and double garage on the ground floor level. The upper level provides for 4 bedrooms, a lounge and bathrooms. A large alfresco area is provided at the rear of the dwelling which provides access to the new swimming pool.

The proposed pool is located in the rear yard and provides for a setback of 1.0m to the northern side boundary.

Associated landscaping, retaining walls and stormwater drainage works are proposed as part of this application.

In consideration of the application a review of (but not limited to) documents as provided by the applicant in support of the application was taken into account

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	The Pittwater Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p>Clauses 54 and 109 of the EP&A Regulation 2000, enables Council to request additional information. A Geotechnical Report was requested and provided by the applicant.</p> <p>Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. The proposal does not require any demolition works and therefore this is not applicable.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater Development Control Plan section in this report.</p> <p>(ii) Social Impact</p>

Section 4.15 Matters for Consideration	Comments
	The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Manly Development Control Plan.

As a result of the public exhibition process Council received one submission.

Name:	Address
Mr Anthony Foy	9 Coolangatta Avenue, Elanora Heights

The following issues were raised in the submissions and each have been summarised and are addressed below:

- *Potential for loss of privacy from external access stair and laundry on northern side of dwelling. Concern over potential lighting of these stairs.*

Comment: The laundry is a low use room. The main access to the rear yard is via the dining room/living. To ensure appropriate privacy however, a condition of consent is recommended requiring landscaping adjacent to the northern boundary. There is no lighting proposed as part of this application, however the landscaping will assist in minimising any light spill.

- *Loss of privacy from first floor slimline windows towards the eastern end (front) of the northern elevation.*

Comment: The upper level slimline windows on the northern elevation serve a lounge room. As this is a high use area it is recommended that privacy measures be provided. A condition of consent has been recommended that requires either obscure glazing, external screen or raising the height of the sill to 1.6m. This will prevent overlooking to the adjoining property, whilst also maintaining good light and ventilation for the occupants.

- *Concern over location of any future air conditioning units/compressors.*

Comment: The proposed plans do not depict any air-conditioning units and the location of such would need to meet the requirements of SEPP (Exempt and Complying) 2008 and Council controls.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The landscape component of the proposal is acceptable subject to completion of landscaping, and the protection of existing trees and vegetation not impacted by the proposed development.</p> <p>Council's Landscape section has assessed the proposal against the following Pittwater 21 DCP 2014 Controls: B4.22 Preservation of Trees or Bushland Vegetation C1.1 Landscaping</p>
Development Engineer	<p>The submitted concept plan for OSD is satisfactory. The existing driveway crossing is to remain and the internal driveway grades to the proposed garage are also satisfactory. The proposal includes excavation greater than 1.5 metres in depth and as such a geotechnical report in accordance with Council's Geotechnical Risk Management Policy is required for the application.</p> <p>The Development Engineering cannot support the application due to insufficient information to assess the application in accordance with Clause B8.1 of Council's DCP.</p> <p>Additional Information Submitted 5/02/2019</p> <p>The submitted Geotechnical report addresses the relevant DCP controls. No objection to approval, subject to conditions as recommended.</p> <p>Referral Body Recommendation Recommended for approval, subject to conditions</p>

External Referral Body	Comments
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Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
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ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A317970) dated 6 September 2018. A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended

Pittwater Local Environment Plan 2014

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
Aims of the LEP?	Yes
Zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	%Variation	Complies
Height of Buildings	8.5m	8.3m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
5.10 Heritage Conservation	Yes
6.1 Acid Sulfate Soils	Yes
7.2 Earthworks	Yes
7.10 Essential Services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	Compliance
Front Building Line	6.5m	8.341m	Yes
Rear Building Line	6.5m	24.08m	Yes
Side Building Line	2.5m	1.787m	No
	1.0m	1.001m	Yes
Building Envelope	3.5m	Refer to plans	No
Landscaped Area	60%	61%	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.5 Elanora Heights Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D5.1 Character as viewed from a public place (Excluding Elanora Heights Village Centre)	Yes	Yes
D5.2 Scenic protection - General	Yes	Yes
D5.3 Building colours and materials (Excluding Elanora Heights Village Centre)	Yes	Yes
D5.5 Front building line (Excluding Elanora Heights Village Centre)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D5.6 Side and rear building line (Excluding Elanora Heights Village Centre)	No	Yes
D5.9 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D5.11 Fences - General (Excluding Elanora Heights Village Centre)	Yes	Yes
D5.13 Construction, Retaining walls, terracing and undercroft areas (Excluding Elanora Heights Village Centre)	Yes	Yes

Detailed Assessment

C1.5 Visual Privacy

A submission was received from the adjoining property owner in relation to potential for overlooking from the laundry and lounge room windows first floor both on the northern elevation of the proposal.

The relevant provisions of this clause provide:

Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level).

Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.

In relation to the laundry landing, this landing services a low use area (laundry) with the main access to the rear yard being via the living/dining area. However, the landing is elevated and it is recommended that landscaping be provided adjacent to the landing along the northern boundary.

In relation to the upper level windows on the northern elevation which serve the lounge, it is acknowledged that these windows serve a high use area. Therefore, a condition has been recommended requiring screening devices or providing a minimum sill height of 1.6m to prevent overlooking.

Subject to the suggested conditions it is considered that the proposal achieves the objectives of this clause and will maintain an appropriate level of privacy to the adjoining property.

C1.6 Acoustic Privacy

The proposed plans do not depict any air-conditioning units and the location of such would need to meet the requirements of SEPP (Exempt and Complying) 2008 and Council controls.

D5.6 Side and Rear Building Line

Side Building Line

Required: 2.5m

Proposed Dwelling 1.787m

The DCP requires a setback of 1.0m to one side boundary and 2.5m to the other side boundary. The proposal provides for a setback of 1.001m to the southern boundary with the dwelling providing for a setback ranging from 1.787m to 2.594m to the northern boundary. The proposal is considered against the Outcomes of the Control as follows:

- *To achieve the desired future character of the Locality.*

Comment: It is considered that the desired future character of the Elanora Heights locality will be achieved. The non-compliance is very minor, being only 700mm for a very small portion of the dwelling with the non-compliance reducing towards the rear of the dwelling and complying at the rear northwest corner. The proposal will retain the low-density character and does not result in the removal of any significant vegetation. The proposal complies with the building height controls and colours will harmonise with the natural environment.

- *The bulk and scale of the built form is minimised.*

Comment: The proposed dwelling provides for an appropriate bulk and scale. The proposal presents as a two storey dwelling with a bulk that is compatible with the existing surrounding development. The development is well articulated particularly when viewed from the street. The minor non-compliance with the setback control does not result in a dwelling of unreasonable bulk or scale.

- *Equitable preservation of views and vistas to and/or from public/private places.*

And

- *To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*

Comment: The subject and surrounding properties have some water views/glimpses from upper levels towards the south. However, the minor non-compliance with the setback control does not obstruct any significant views. Ensuring strict compliance with the side setback control would not provide for any increased views from adjoining properties.

- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.*

Comment: Conditions of consent are recommended requiring some landscaping adjacent to the northern boundary and screening to the upper level windows of the lounge. These measures will ensure a reasonable level of privacy is maintained to the adjoining property. The proposal does not result unreasonable overshadowing, noting that the non-compliance is on the northern elevation and does not contribute to overshadowing.

- *Substantial landscaping, a mature tree canopy and an attractive streetscape.*

Comment: There is ample area on site for landscaping including large trees. The dwelling has been designed to maintain significant vegetation. Council's Landscape Officer has no objection to the removal of trees proposed.

- *Flexibility in the siting of buildings and access.*

Comment: The proposal enables flexibility in design whilst ensuring access to the rear yard.

- *Vegetation is retained and enhanced to visually reduce the built form.*

Comment: The proposal retains significant vegetation and there is sufficient area for additional landscaping as per the landscape plan.

- *To preserve and enhance the rural and bushland character of the locality.*

Comment: The proposal retains ample vegetation on site and the proposal ensures appropriate visual separation to complement the character of the locality.

- *To ensure a landscaped buffer between commercial and residential zones is established.*

Comment: This outcome is not applicable to the subject site.

In summary it is considered that the minor non-compliance with the controls of this clause do not result in any adverse impacts and the proposal achieves the outcomes of the clause.

B5.7 Building Envelope

This clause specifies that buildings are to be sited within a building envelope extending at 45 degree from a height of 3.5m above the boundary. The proposal results in a non-compliance with for a portion of the northern upper elevation at the front of the dwelling. The proposal is considered against the Outcomes of the Control as follows:

- *To achieve the desired future character of the Locality.*

Comment: The proposal results in a two storey dwelling that is considered to be compatible with the desired future character of the Elanora Heights locality. The non-compliance is minor, and relates only to the front portion of the dwelling with the rear elevation depicting compliance with the envelope. The proposal will retain the low-density character and does not result in the removal of any significant vegetation. The proposal complies with the building height controls and colours will harmonise with the natural environment.

- *To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*

Comment: The proposal provides for a two storey dwelling that is well-articulated through varied setbacks, architectural features and balconies. There is sufficient area forward of the dwelling for landscaping. The minor non-compliance is not considered to be unreasonable, particularly given the non-compliance is a result of the splayed side boundary. There is sufficient separation to the adjoining built form.

- *To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.*

Comment: The proposal responds well to the spatial characteristics of the natural environment. The development does not require the removal of any significant vegetation and there is sufficient area on site for landscaping including with the setbacks.

- *The bulk and scale of the built form is minimised.*

Comment: The bulk and scale of the development is comparable with the existing surrounding development, particularly having regard to more recently constructed dwellings. The bulk is minimised through the use of varied setbacks, articulation, balconies and opportunity for landscaping.

- *Equitable preservation of views and vistas to and/or from public/private places.*

Comment: The subject and surrounding properties have some water views/glimpses from upper levels towards the south. However, the minor non-compliance with the setback control does not obstruct any significant views. Ensuring strict compliance with the side setback control would not provide for any increased views from adjoining properties

- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.*

Comment: The non-compliance with the building envelope does not result in the loss of any unreasonable loss of privacy. Conditions of consent have been recommended including landscaping and screening of the upper level northern elevation windows serving the lounge room. The non-compliance with the envelope does not result in any additional overshadowing given that the non-compliance is on the northern elevation.

- *Vegetation is retained and enhanced to visually reduce the built form.*

Comment: The proposal does not require the removal of any significant vegetation. The application was referred to Council's Landscape Officer who was satisfied that the 'landscape component of the proposal is acceptable subject to completion of landscaping, and the protection of existing trees and vegetation not impacted by the proposed development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of Pittwater LEP 2014 / Pittwater 21 DCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance, subject to the recommended conditions.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Pittwater Section 94 Council Contributions Plan for Residential Development

This plan applies to the site.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater 21 Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1665 for the construction of a dwelling house and swimming pool, on land at Lot 12 in DP 13643, No. 11 Coolangatta Avenue, Elanora Heights, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans – Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA1003 Site Plan	10-10-2018	Rapid Plans
DA1008 Excavation & Fill Plan	10-10-2018	Rapid Plans
DA1009 Landscape Open Space Plan	10-10-2018	Rapid Plans
DA1010 Landscape Plan	10-10-2018	Rapid Plans
DA1011 Sediment and Erosion Control Plan	10-10-2018	Rapid Plans
DA1012 Waste Management Plan	10-10-2018	Rapid Plans
DA2001 Ground Floor Plan	10-10-2018	Rapid Plans
DA2002 First Floor Plan	10-10-2018	Rapid Plans
DA2003 Roof Plan	10-10-2018	Rapid Plans
DA3001 Sections 1	10-10-2018	Rapid Plans
DA3002 Sections 2	10-10-2018	Rapid Plans
DA3003 Pool Plan	10-10-2018	Rapid Plans
DA3004 Section Drive	10-10-2018	Rapid Plans
DA4001 Elevations 1	10-10-2018	Rapid Plans
DA4002 Elevations 2	10-10-2018	Rapid Plans
DA5002 Material and Colour Sample Board	10-10-2018	Rapid Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Investigation – J2077	4 February 2019	White Geotechnical
BASIX Certificate No. 960107S_02	10 October 2018	Rapid Plans
Arboricultural Impact Assessment – Revision A	4 October 2018	Joanne Leigh
Stormwater Management Plan	11/09/2018	Civil & Structural Engineering Design Services Pty Ltd

- b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.
- c) Any plans and / or documentation submitted to satisfy the Conditions of this consent.
- d) The development is to be undertaken generally in accordance with the following:

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited. Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.

- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative Requirement (DACPLB09)

3. General Requirements

- (a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewerage areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

FEES / CHARGES / CONTRIBUTIONS

4. Security Bond

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

5. Privacy Screen

Screen planting is to be provided adjacent to the proposed laundry landing and the northern boundary. A plan detailing the proposed screen planting depicting the proposed plant species which can obtain a height of 2.5m shall be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To maintain privacy of the adjoining residents

6. Privacy Screening

The two first floor north facing windows of the lounge room shall be provided with one of the following measures:

- A fixed external privacy screen to prevent views back to the northwest; or
- Fixed obscure glazing to a height of 1.6m above floor level; or
- Increased sill height of 1.6m.

Amended plans detailing the proposed privacy measures shall be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To maintain privacy to the adjoining residents.

7. Sydney Water "Tap In"

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

Reason: To ensure compliance with the statutory requirements of Sydney Water.

8. Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White Geotechnical Group dated 4 February 2019 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

9. On-site Stormwater Detention

An On-site Stormwater Detention system must be designed and constructed in accordance with Northern Beaches Council's Pittwater DCP21 Clause B5.7 and generally in accordance with the concept drainage plans prepared by Civil & Structural Engineering Design Services Pty Ltd, drawing number S-11-266517, dated 11/09/2018.

Detailed drainage plans are to be prepared by a qualified experienced practicing Civil Engineer, with Corporate membership of the Institute of Engineers Australia (M.I.E.) or who is eligible to become a Corporate member and has appropriate experience and competence in the related field.

The drainage plans must address the following:

- i) Step irons are to be provided to the two access grates in the detention tank.
- ii) The overflow pipe from the detention tank is to be connected to the outlet pipe beyond the tank.

Detailed drainage plans, including engineering certification confirming the above requirements have been satisfied and complying with Council's requirements, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of storm water and storm water management arising from the development.

10. Structural Adequacy and Excavation Work

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To provide public and private safety.

11. Shoring of Adjoining Property

Should the proposal require shoring to support an adjoining property or Council land, owner's consent for the encroachment onto the affected property owner shall be provided with the engineering drawings.

Council approval is required if temporary ground anchors are to be used within Council land. A Temporary Ground Anchors (Road Reserve) Application is to be submitted with Council for assessment and approval subject to Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

12. Vehicle Crossings Application

A Driveway Levels and Formwork Inspections Application shall be made with Council subject to the payment of the fee in accordance with Council's Fees and Charges. The fee includes all Council inspections relating to the driveway construction and must be paid.

Approval of the application by Council is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

13. Compliance with Standards

The development is required to be carried out in accordance with all relevant Australian Standards. Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**14. Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

15. Approved tree removal

Approval is granted for the removal of the existing trees No.1 - Japanese Maple, No.2 – Japanese Cedar within the site, and existing trees No.3 - Brush Cherry, No.4 - Orchid Tree, and No.5 – Orchid Tree within the road reserve, as assessed and recommended in the Arboricultural Impact Assessment prepared by Joanne Leigh Consultant Arboriculturist, subject to tree replacement as conditioned.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

16. Road Reserve

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: Public Safety.

17. Tree and vegetation protection

A) Existing trees and vegetation shall be retained as follows:

i) all trees and vegetation within the site not impacted by the proposed development, shall be protected during all construction stages, excluding exempt trees under the relevant planning instruments or legislation,

ii) all other trees and vegetation located on adjoining properties,

B) Tree protection shall be generally undertaken as follows:

i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4,

ii) to minimise the impact on the trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of vegetation.

iii) any roots exposed during excavation with a diameter greater than 25mm within the TPZ must be assessed by an Arborist.

iv) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorized by the Project Arborist on site,

v) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,

vi) should either or both iv) and v) occur during site establishment and construction works, a AQF Level

5 Arborist shall provide recommendations for tree protection measures provided,

vii) Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority should either of the above events occur.

Reason: to retain and protect significant planting on development sites.

18. Maintenance of Road Reserve

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: Public Safety.

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF
THE OCCUPATION CERTIFICATE****19. Authorisation of Legal Documentation Required for Onsite Detention**

The original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan) and hydraulic engineers certification. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To create encumbrances on the land.

20. Registration of Encumbrances for On-site Stormwater Detention

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To identify encumbrances on land.

21. Positive Covenant and Restriction as to User for On-site Stormwater Detention

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure the on-site detention system is maintained to an appropriate operational standard.

22. Geotechnical Certification Prior to Occupation Certificate

Prior to issue of the Occupation Certificate, Form 3 of the Geotechnical Risk Management Policy is to be completed and submitted to the Principal Certifying Authority.

Reason: To ensure geotechnical risk is mitigated appropriately.

23. Restoration of Damaged Public Infrastructure

Restoration of all damaged public infrastructure caused as a result of the development to Council's satisfaction. Council's written approval that all restorations have been completed satisfactorily must be obtained and provided to the Private Certifying Authority with the Occupation Certificate application.

Reason: To ensure public infrastructure is returned to the state it was in prior to development

24. Landscape works

Landscaping shall be installed in accordance with the Landscape Plan DA101, prepared by Rapid Plans, inclusive of the following requirements:

- i) where construction works removes existing street trees or damages the existing turf within the road reserve, the verge shall be re-turfed,
- ii) two (2) small native canopy street trees shall be installed to the road reserve verge, consisting of *Callistemon 'Hannah Ray'* planted at minimum 75 litre pot size and double-staked, into a prepared tree pit at least 600 x 600 x 500mm deep, backfilled with sandy loam soilmix,
- iii) two (2) medium canopy trees capable of attaining 8-12 metres in height at maturity shall be installed within the front setback, planted at a minimum pot size of 75 litre, and selected from the following species: *Eucalyptus haemastoma*, *Backhousia myrtifolia*, and *Melaleuca linariifolia*,
- iv) screen shrub planting capable of achieving 3 metres in height at maturity shall be planted along the northern boundary to the extent of the pool and terrace, planted at no more than 1 metre apart, and planted at minimum 200mm pot size.

Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: to ensure that the landscape treatments are installed to provide landscape amenity.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

25. Landscape maintenance

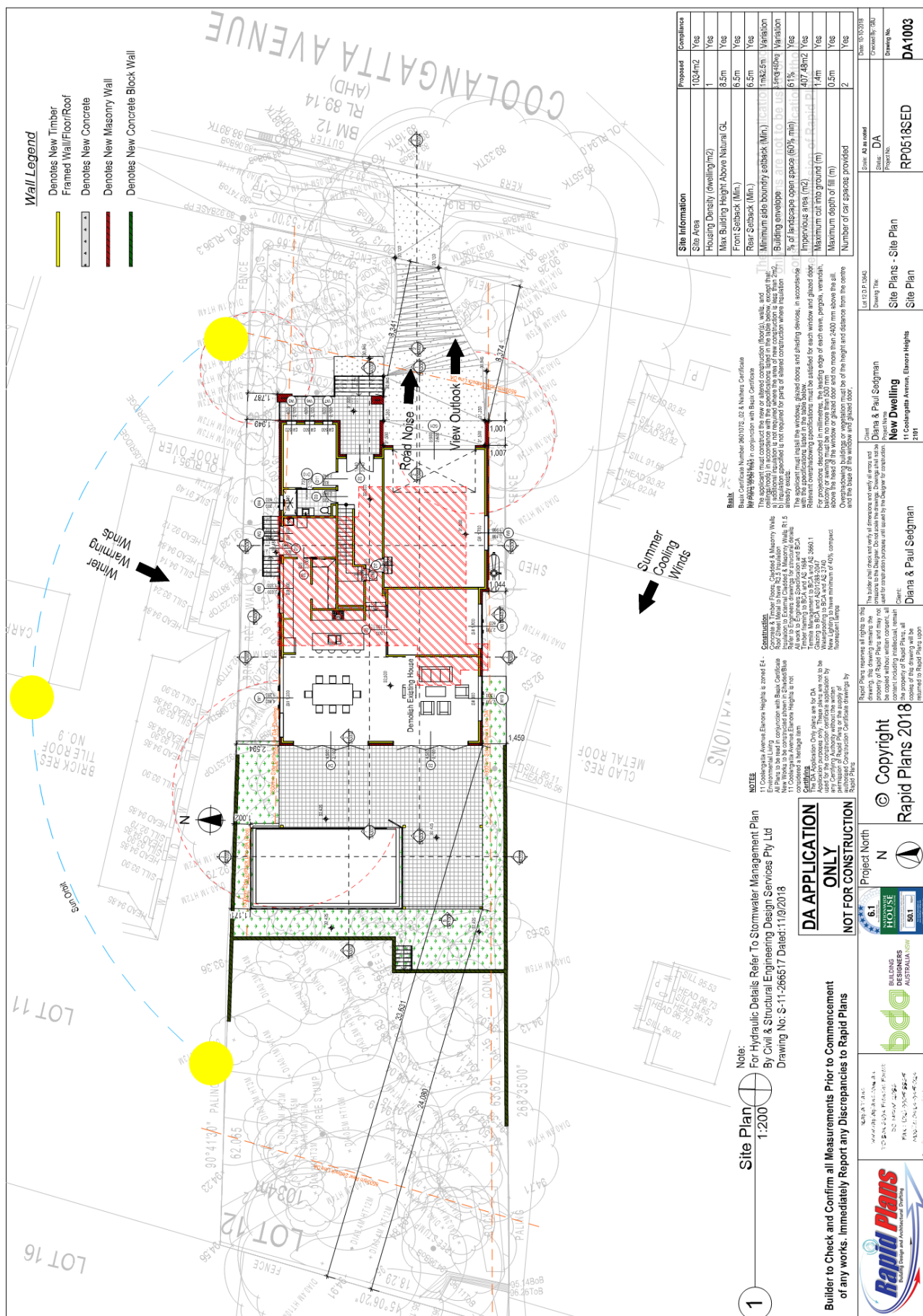
All landscape components are to be maintained for the life of the development. A maintenance program is to be established. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components and species to maintain the landscape theme of the landscape plan, and associated conditions.

Reason: to maintain local environmental amenity and ensure landscaping continues to soften the built form.

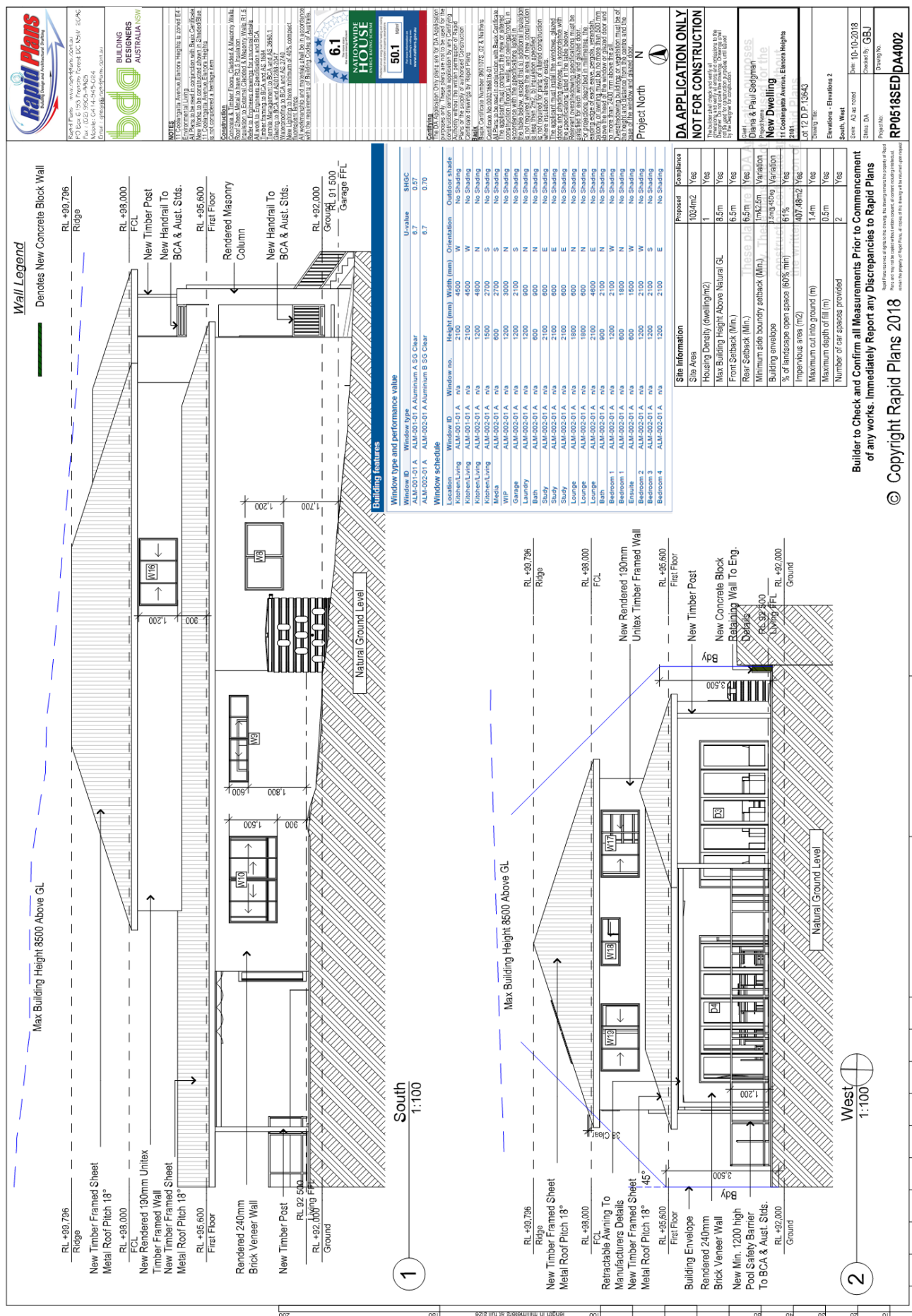
26. Environmental and priority weed control

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: preservation of environmental amenity.







ITEM 3.2	DA2018/1877 - 2-4 BILGOLA AVENUE, BILGOLA BEACH - DEMOLITION OF EXISTING STRUCTURES, CONSTRUCTION OF A DWELLING HOUSE WITH DETACHED WORKSHOP
REPORTING MANAGER	STEVE FINDLAY
TRIM FILE REF	2019/160202
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 4.6 variation to the building height standard

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority grant Development Consent to DA2018/1877 for Demolition of existing structures, construction of a dwelling house with detached workshop on land at Lot 24 & 25 DP 11978, 2-4 Bilgola Avenue, Bilgola Beach subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1877
Responsible Officer:	Daniel Milliken
Land to be developed (Address):	Lot 24 DP 11978, 4 Bilgola Avenue BILGOLA BEACH NSW 2107 Lot 25 DP 11978, 2 Bilgola Avenue BILGOLA BEACH NSW 2107
Proposed Development:	Demolition of existing structures, construction of a dwelling house with detached workshop
Zoning:	E4 Environmental Living E4 Environmental Living SP2 Infrastructure
Development Permissible:	No - Zone SP2 Infrastructure Yes - Zone E4 Environmental Living
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Stephen Grant Rowe
Applicant:	Stephen Grant Rowe
Application lodged:	27/11/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	11/12/2018 to 18/01/2019
Advertised:	Not Advertised
Submissions Received:	3
Recommendation:	Approval
Estimated Cost of Works:	\$ 3,331,333.00

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;



- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 5.1 Relevant acquisition authority
Pittwater Local Environmental Plan 2014 - 5.1A Development on land intended to be acquired for public purpose
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.23 Eaves
Pittwater 21 Development Control Plan - D3.6 Front building line
Pittwater 21 Development Control Plan - D3.7 Side and rear building line

SITE DESCRIPTION

Property Description:	<p>Lot 24 DP 11978 , 4 Bilgola Avenue BILGOLA BEACH NSW 2107</p> <p>Lot 25 DP 11978 , 2 Bilgola Avenue BILGOLA BEACH NSW 2107</p>
Detailed Site Description:	<p>The site consists of two lots, known as Nos. 2 & 4 Bilgola Avenue, Bilgola Beach, legally described as Lot 25, DP 11978 and Lot 24, DP 11978 respectively.</p> <p>The site has a total area of approximately 1509m² with a frontage of approximately 47m to Bilgola Avenue and approximately 28m to the Serpentine. The site slopes down steeply towards the south.</p> <p>The site currently contains two existing dwellings (one on each lot) which are to be demolished as part of this application.</p> <p>The north-western portion of the site (i.e. the north-western portion of No. 2 Bilgola Avenue) is zoned SP2 Infrastructure. This part of the site has been classified for a road. The existing dwelling on No. 2 Bilgola Avenue sits partly on this SP2 zoned land.</p> <p>The surrounding development consists of detached residential dwellings.</p>



Map:



SITE HISTORY

DA2018/0809

This application was for the demolition of the existing dwellings and construction of a new dwelling with workshop and extensive garden. It is the same proposal as the subject application.

The DA was withdrawn on 19 June 2018 due to concerns raised about the building of a dwelling on land zoned SP2 Infrastructure.

The applicant consulted with the Roads and Maritime Service who have provided a letter raising no objections to the approval of the proposal.

The applicant subsequently re-lodged the development application.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes:

- The demolition of both existing dwellings and other structures on the sites.
- The construction of a new two storey, three bedroom dwelling with an attached double garage.
- The construction of a separate workshop with space for car parking.
- The construction of a new driveway.
- Associated landscaping works including the removal of a number of undesirable trees and replacement planting with native species.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

DA2018/1877

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Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p>



Section 4.15 Matters for Consideration'	Comments
	<p>(iii) Economic Impact</p> <p>The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

The proposal is partly on land zoned SP2 Infrastructure, which comprises the north-western edge of Lot 25, No. 2 Bilgola Avenue. Dwelling houses are prohibited in this zone. There is an existing dwelling house on this lot and therefore an assessment of its existing use rights is necessary in order to be able to grant consent to the proposal.

- Does the existing use satisfy the definition of "existing use" under the Environmental planning and Assessment Act, 1979 (the 'Act')?

Section 4.65 of the Act defines an existing use as meaning:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered.

1. Was the use of the building a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

Comment:

The applicant has provided evidence in the form of an existing use rights submission that includes:



- The 1922 real estate subdivision map,
- An aerial photo from 1947 showing a dwelling on the lot,
- A 1951 County of Cumberland Planning Scheme zoning map showing the lot zoned for "living areas" with dwellings permissible,
- An aerial photo from 1956 showing a the same dwelling on the lot,
- Development Application No. N0789/04 for a deck extension approved by the former Pittwater Council.

This submission reveals that the use of the building commenced as a lawful purpose some time between 1922 and 1947, prior to the coming into force of the Pittwater Local Environmental Plan 2014.

2. Was the use of the building granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

Prior to 1947, development consent was not required for the erection of dwelling houses.

The use of the building is therefore assumed to be lawfully approved, prior to the coming into force of Pittwater Local Environmental Plan 2014.

3. Has the use of the building been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

The applicant has provided evidence in the form of an existing use rights submission (details above) which states, in part:

The existing dwelling house on Lot 25 has continued to be used a dwelling house since it was established, which is supported by the fact that on 20 December 2004 Pittwater Council approved the erection of a deck addition to the existing dwelling house.

The use of the building was therefore carried out within one year from the date on which the provision having the effect of prohibiting the use commenced.

- **What is "the land on which the existing use was carried out" for the purposes of cl 42(2) (b) of the Environmental Planning and Assessment Regulation 2000 ("the Regulation")?**

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: "that if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose".

Comment:

Having regard to the above case law, it is noted that a part of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and



that existing use rights apply to Lot 25.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles which should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the court in this case will have general application in dealing with Development Applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment:

The proposed dwelling is reasonably consistent with the existing dwellings on the site and with dwellings on surrounding sites.

The proposed dwelling will be larger than either of the two existing dwellings on the site, however, overall, the proposal is replacing two dwellings with one and will therefore result in a reduced intensity of use of the site.

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Comment:

The existing building on Lot 25 is a dwelling house. The proposal seeks to demolish this existing dwelling and construct a new dwelling, partly over Lot 25 and partly over the adjoining Lot 24.

The proposed dwelling will be larger than either of the two existing dwellings on the site (comprising Lots 24 and 25), however, overall, the proposal is replacing two dwellings with one and will therefore result in a reduced intensity of use of the site.

The planning controls applying to the E4 zoned portion of the land have been used as a guide to assess the dwelling that will be partly located on the SP2 zoned land.

The proposed dwelling performs well against these controls and does not result in an unacceptable bulk and scale.



3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment:

The proposed dwelling is relatively isolated, being located near the two street frontages of the site and away from the two directly adjoining dwellings.

In this regard, the proposal will not result in any unreasonable overshadowing impacts to nearby properties. Privacy impacts from the roof terrace will be minimised by the significant setback distances to neighbouring dwellings and private open spaces.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment:

The dwelling is located well on the site and will replace one existing dwelling with a landscaped garden, parking area and small workshop.

In this regard, the proposal will maintain a high level of internal amenity for the two adjoining properties, and for the future residents of the subject site.

Conclusion

Based on the evidence provided by the applicant, it is confirmed that the existing dwelling on Lot 25 was lawfully approved and has been continuously used for its approved purpose since before 1947, which is before any zoning came into force. Subsequently, the use can be retained under the current EPI (PLEP 2014).

Therefore, the dwelling house use on Lot 25 has existing use rights and pursuant to Clause 42 of the EP&A Regulation 2000, can be rebuilt on that lot.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Consultancy Australia, dated 15 April 2018) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the



Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
Mr Richard Maxwell Osborn	132 / 79 - 91 Macpherson Street WARRIEWOOD NSW 2102
Janet Susan Anthes	7 Bilgola Avenue BILGOLA BEACH NSW 2107
Julie Louise Cerisola	12 Chowne Place MIDDLE COVE NSW 2068

The following issues were raised in the submissions and each have been addressed below:

- **Privacy**
- **View loss**
- **Landscape planting**
- **Height**
- **Workshop size and use**
- **Compost bin**

The matters raised within the submissions are addressed as follows:

- **Privacy**

The submissions raised concerns that the proposal would result in unreasonable privacy impacts, particularly from the roof terrace.

Comment:

The roof terrace is located a minimum of 18m from No. 8 The Serpentine and 26m from No. 6 Bilgola Avenue, the only two directly adjoining neighbouring properties.

The terrace incorporates low height screening devices (not at the height of standard privacy screens) and is only accessed via the upper level bedroom.

In this regard, it is reasonable to state that the roof top terrace will not be heavily used (it is not adjacent to a living area) and is located at such a distance from any neighbouring dwelling that there will be no unreasonable privacy impacts from the small number of people likely to use it.

- **View loss**

The submissions raised concerns that the proposal would result in unreasonable view loss from No. 8 The Serpentine.

Comment:

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This matter is discussed in detail under Part C1.3 View Sharing, below in this report.

In summary, the affected views from No. 8 The Serpentine will be blocked by a portion of the upper level of the proposal. This portion of the upper level is fully compliant with height, setbacks and side boundary envelope controls, the critical controls relating to view loss in this particular case. It is noted that the south-eastern section of the upper level is non compliant with the height control, however, the views are blocked by the western and northern sections and so the height breach does not affect view loss. As the proposed dwelling will be only 1.21m higher than the existing chimney and 1.48m higher than the current ridge height, the development is considered to be a reasonable response to the site constraints.

As to whether there is a better design that will create greater view sharing; Moving the dwelling further to the south east would not result in the loss of less views, just that different parts of the hinterland would be blocked. The dwelling has been sited to have the least impact on the adjoining neighbours (i.e. in the northern part of the site, as far as possible from the south-eastern neighbour and adjacent to the front yard and driveway of the north-eastern neighbour).

Overall, the proposal is an upgrade to the site and will result in a reasonable sharing of views.

- **Landscape planting**

The submissions raised concerns that the proposal would result in the removal of trees along the northern boundary and requested that *"the Kentia palms and Oleanders already planted against the fence line remain and that additional advanced trees be planted as necessary"*. The submissions also raised concerns around the planting along the south-eastern boundary and its effect on overshadowing.

Comment:

The planting along the northern boundary includes removing the existing Cocos Palms and replacing them with Cabbage Palms, located further from the boundary. The Kentia Palms are to remain. It is not considered necessary to prevent the replacement of the Cocos Palms with Cabbage Palms and the distance to the boundary for these plants is considered acceptable.

The planting along the south-eastern boundary is considered to be excessive in height (maximum heights ranging from 5m to 10m). It is considered that these plantings, particularly at the density proposed, will result in unnecessary overshadowing. As such, a condition has been included in the consent requiring the planting along the southern boundary, adjacent to the dwelling at No. 6 Bilgola Avenue, to be changed to species with maximum heights of no more than 4.0m.

- **Height**

The submissions raised concerns that the proposal breaches the height limit.

Comment:

This non-compliance is discussed in detail under Clause 4.6, below in this report.

In summary, the proposal does include a breach of the 8.0m height limit. However, the breach is relatively minor and is mainly caused by the slope of the site.



The development meets the objectives of the zone and the height of buildings development standard. The applicant provided a written justification that included sufficient environmental planning grounds to vary the control.

Overall, the breach of the height limit will not result in any unreasonable impacts to any surrounding properties.

- **Workshop size and use**

The submissions raised concerns that the workshop is large and may be used for commercial activities.

Comment:

The workshop is relatively small, measuring 12.75m x 1.8m (approx 23 sqm). A portion of this space is for bin storage and not technically part of the workshop.

The large area in front of the workshop is a gravel parking area and is not covered.

The workshop is not proposed for commercial or industrial activities and a condition will be included in the consent to ensure this.

- **Compost bin**

The submissions raised concerns about the compost bin being located on the boundary.

Comment:

A condition has been included in the consent requiring the compost bin to be set back a minimum of 2.0m from any boundary.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The landscape component of the proposal is acceptable subject to the protection of existing trees and vegetation, and completion of landscaping.</p> <p>The proposed planting along the western boundary shall be increased in quantity and/or installation size, as conditioned, to provide a landscape buffer for the common benefit of both No. 4 and No. 6 Bilgola Avenue.</p> <p>The proposed planting along the northern boundary in the vicinity of the proposed removal of exempt species, shall be increased in</p>



Internal Referral Body	Comments
	<p>quantity and/or installation size, as conditioned, to provide a landscape buffer for the common benefit of both No. 4 and No. 8 The Serpentine.</p> <p>The DA documents indicate that the existing driveway servicing No. 4 Bilgola Avenue is to be removed. No arboricultural assessment or recommendations are provided on the proposed verge works including the protection of the existing heritage listed Norfolk Island Pine in close proximity to the driveway. Demolition of the existing driveway, removal of the existing walls and filling to match existing ground levels may impact upon the Norfolk Island Pine, and as such may not be advisable, with retention of the retaining walls and the existing driveway to boundary to be considered.</p> <p>An Arboricultural Impact Assessment report is required to provide recommendations on the proposed work within the road verge, that protects the long term health of the Norfolk Island Pine.</p> <p>Council's Landscape section has assessed the proposal against the following Pittwater 21 DCP 2014 Controls: B4.22 Preservation of Trees or Bushland Vegetation C1.1 Landscaping</p>
NECC (Bushland and Biodiversity)	<p>The proposed development is considered unlikely to have any significant adverse impact on the condition, ecological value and significance of the native vegetation and fauna habitat on the locality. The proposal includes predominately native landscaping, will not impact adjoining bushland, and will protect the more significant trees on site and on the adjoining road verge. The development has been designed, sited and will be managed to avoid any significant adverse environmental impact.</p>
NECC (Development Engineering)	<p>The proposal is to remove two dwellings and build a single dwelling. There is no increase in impervious area, accordingly no OSD will be required. Applicant proposes to discharge to the street drainage system which is satisfactory. The redundant vehicular access must be removed and reinstated. No development engineering objection subject to conditions.</p>
NECC (Riparian Lands and Creeks)	<p>This application is recommended for approval with stormwater treatment and sediment and erosion controls as described in the Stormwater Concept Plan H-01 and Waste Management and Sediment Erosion Control Plan, and the Stormwater Drainage and Sediment Control Management Report No 2018-U-5.</p> <p>Sediment and erosion controls must be installed prior to any work on site and maintained until groundcover is re-established.</p>
Road Reserve	No impact on existing Council assets
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	This proposal has been referred to Heritage as it adjoins a heritage item

Internal Referral Body	Comments																		
	<p>Item - Street Trees - Norfolk Island Pines and Canary Island Date Palms</p>																		
	<p>Details of heritage items affected</p>																		
	<p>Details of the item contained in the Pittwater heritage inventory are:</p>																		
	<p><u>Statement of Significance</u></p>																		
	<p>The Street Trees - Norfolk Island Pines (<i>Araucaria heterophylla</i>) and Canary Island Date Palms (<i>Phoenix canariensis</i>) are a defining landscape element for Bilgola Beach, but also for many ocean beaches in Pittwater and along the coast of NSW and southern QLD. These pines are significant for their historic association with early settlement and as local cultural plantings, in some instances dating from the 1930's period. The Norfolk Island Pine plantings also have a high level of visual, environmental and aesthetic value.</p>																		
	<p><u>Physical Description</u></p>																		
	<p>Many trees have achieved dramatic proportions and scale although many are threatened by recreational and erosional pressures. In this location they have been planted in association with the exotic Canary Island Date Palm.</p>																		
	<p><u>Other relevant heritage listings</u></p>																		
	<table><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td>No</td><td></td></tr></table>	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	No		RAIA Register of 20th Century Buildings of Significance	No		Other	No	
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RAIA Register of 20th Century Buildings of Significance	No																		
Other	No																		
	<p><u>Consideration of Application</u></p>																		
	<p>The proposal seeks consent for the demolition of the two existing dwellings at 2 and 4 Bilgola Avenue and the construction of a new dwelling with ancillary works. There is three heritage listed Norfolk Island Pines located in the road reserve outside 4 Bilgola Avenue. While the proposal does not include the removal of any of these Norfolk Island Pines, it does include the removal of the redundant driveway that is directly adjoining the western most pine tree. Heritage notes that the removal of the driveway has the potential to damage the tree and impact upon its survival and longevity. The other works proposed as part of this application are considered to</p>																		



Internal Referral Body	Comments
	<p>not impact upon the heritage items or their significance.</p> <p>Heritage raises no objections to the proposal subject to conditions for the protection of the western most heritage listed Norfolk Island Pine tree due to the proposed removal of the redundant driveway. Heritage notes the conditions recommended by the Landscape Officer dated 9 January 2019 and considers these conditions appropriate.</p> <p>Consider against the provisions of CL5.10 of PLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
NSW Dept of Transport (Roads and Maritime Services) (Dev. On Classified Roads)	<p>The applicant consulted with the RMS prior to the lodgement of the DA.</p> <p>The RMS has provided a letter stating they have no objections to approval. They do request that a planning proposal be lodged to correct the zoning anomaly, however, the anomaly extends onto multiple sites along The Serpentine and will need to be resolved as part of the wider LEP review.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant

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period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 920306S_02 dated 9 November 2018).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	67
Thermal Comfort	Pass	Pass
Energy	50	94

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone SP2: No Zone E4 : Yes
After consideration of the merits of the proposal, is the development consistent with: aims of the LEP?	Yes
zone objectives of the LEP?	Zone SP2: Yes Zone E4 : Yes



Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.0m	9.5m	18.75%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.1 Relevant acquisition authority	Yes
5.1A Development on land intended to be acquired for public purpose	No
5.9 Preservation of trees or vegetation	Yes
5.9AA Trees or vegetation not prescribed by development control plan	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.0m
Proposed:	9.5m
Percentage variation to requirement:	18.75%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 - Height of Buildings development standard, has taken into consideration the recent judgement contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

Clause 4.6 Exceptions to development standards:

(1) The objectives of this clause are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular



circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

Clause 4.3 - Height of Buildings development standard is not expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.



Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

"The proposed breach is only through a small section of roof as the land topography has been modified over time.

The development is considered reasonable in the context of the site and it's ability to result in no adverse impact on adjoining neighbours. Strict compliance with the control is considered to be unreasonable and unnecessary in the site circumstances for the following reasons:

- *The breach only occurs through a small section of roof.*
- *The breach does not cause any adverse environmental impact on adjoining properties.*
- *The location of the dwelling ensures that the amenity of neighbours is maintained.*

Therefore, it is considered that the objectives of the development standard are met notwithstanding the breach of Council's building height control, so strict compliance with the control is unreasonable and unnecessary in the site circumstances and site context.



It is our opinion that there are sufficient environmental planning grounds to justify contravening the building height standard in this instance. These are as follows:

- *The proposed development is consistent with the objectives of the zone and the objectives of the building height control.*
- *The height variation equates to a maximum 1.5m for a minor portion of the building.*
- *The proposal does not result in any adverse impact from adjoining properties.*

Whilst the proposal exceeds the building height control applicable to the site, it is considered the proposed design does not unreasonably detract from the amenity of streetscape or the existing quality of the environment as demonstrated in architectural plans."

It is agreed that the breach is minor and occurs as a result of the steep topography of the site. It is also agreed that the breach does not result in any unreasonable impacts to any surrounding properties.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the E4 Environmental Living zone (the site is also partly zoned SP2 Infrastructure, however, the element that breaches the height limit is not located on this part of the site). An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the PLEP 2014 are:

(1) The objectives of this clause are as follows:

- a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*

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Comment:

The proposal replaces two dwellings with one. Overall, the bulk and scale of structures on the site will be reduced, despite the breach of the height limit, and the total landscaped area increased. The new dwelling will be similar in size and scale to other nearby dwellings and will be well in proportion to the size of the site.

In this regard, the development will be consistent with the desired character of the locality.

b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

Comment:

The new dwelling will be similar in size and scale to other nearby dwellings and will be well in proportion to the size of the site. The height breach is only a result of the steep topography of the site.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The dwelling is located well away from the two adjoining properties and, as a result, will not result in any unreasonable overshadowing.

d) to allow for the reasonable sharing of views,

Comment:

This matter is discussed in detail under Part C1.3 View Sharing, below in this report. In summary, the proposal will result in a minor loss of views, however, this loss is minor and will not be a result of the height breach. Overall, the proposal will allow for the reasonable sharing of views.

e) to encourage buildings that are designed to respond sensitively to the natural topography,

Comment:

The dwelling is reasonably well located on what is a steep site and does include a degree of stepping (although is not an obvious step down). Relatively minimal excavation is required to accommodate the development and the landscaping on the site will be improved by the proposal. The general topography of the site will be maintained.

In this regard, the dwelling reasonably responds to the site topography.

f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items,

Comment:

Given the proposal will increase the amount of natural environment (i.e. landscaped area) on the site, the relatively minor breach of the height limit, being located near the centre of the property, will not have an unreasonable visual impact.



Zone objectives

The underlying objectives of the E4 Environmental Living zone are:

The underlying objectives of the E4 Environmental Living zone

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

Comment:

The proposal replaces two dwellings with one, and therefore is a lower impact residential development than what is existing on site.

- *To ensure that residential development does not have an adverse effect on those values.*

Comment:

The proposal will increase the landscaped area on the site, thereby increasing any special ecological, scientific and aesthetic values.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

Comment:

The proposal replaces two dwellings with one, and therefore is a lower impact residential development than what is existing on site. Relatively minimal excavation is required to accommodate the development and the landscaping on the site will be improved by the proposal.

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

Comment:

The proposal will have no unreasonable impacts on riparian and foreshore vegetation or wildlife corridors.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E4 Environmental Living zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development



standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel, for which Council has an exemption for dwelling houses that can be determined by the Development Determination Panel.

5.1 Relevant acquisition authority

The Roads and Maritime Service has been consulted in relation to this application. The RMS provided a letter stating:

***"PROPOSED DWELLING AND WORKSHOP INCLUDING GARDEN 2-4 BILGOLA AVENUE,
BILGOLA BEACH***

Reference is made to Council's email dated 29 May 2018, regarding the abovementioned Application which was referred to Roads and Maritime Services (Roads and Maritime) for comment.

Roads and Maritime has reviewed the submitted application and notes that the subject property is partly affected by a County Road Reservation as shown on Council's Planning Scheme Maps and by the broken green boundary line on the attached Aerial – "X"

Roads and Maritime has since received additional information submitted by the proponent on 21 August 2018. Roads and Maritime has reviewed the submitted information and would not object to the development proposal.

However, part of the site is zoned SP2 – Infrastructure and Council's Local Environmental Plan does not allow construction of residential dwellings within this zone.

The applicant is to submit a planning proposal to modify the zoning of the site to allow development of residential dwelling. Roads and Maritime will not object to any such proposal.

Comment:

The construction of the dwelling on the SP2 Infrastructure zoned land is an existing use rights matter and has been discussed in detail, above in this report.

The request for the applicant to lodge a planning proposal is not necessary based on the fact that the site benefits from existing use rights and is not a matter that can be dealt with under the planning assessment.

5.1A Development on land intended to be acquired for public purpose

The objective of this clause is to limit development on certain land intended to be acquired for a public purpose.

This clause applies to land shown on the Land Reservation Acquisition Map and specified in Column 1 of the table to this clause and that has not been acquired by the relevant authority of the State specified for the land in clause 5.1.

Development consent must not be granted to any development on land to which this clause applies other than development for a purpose specified opposite that land in Column 2 of that table.



Comment:

The proposal is partly located on land zoned SP2 Infrastructure and marked "Classified road" in Column 1 of the table relating to this clause. Column 2 allows "Roads" to be built.

While the RMS has been consulted and has raised no objections to the proposal, the development is for a dwelling house.

This clause would therefore prevent consent being granted, however, given there is an existing dwelling on the site (which is in the location of the proposed dwelling, partly on the SP2 zoned land) the development benefits from existing use rights, as demonstrated above in this report.

In this regard, the existing use rights takes precedent over this clause meaning consent can be granted in this particular case.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	South-west (Bilgola Avenue) - 6.5m	Existing dwelling - Minimum of 5.54m Proposed terraces - Minimums of 5.06m and 6.33m Proposed dwelling walls - Minimum of 8.71m	N/A 22.15% and 2.62% N/A	N/A No Yes
Secondary front building line	North-west (The Serpentine) - 3.25m	Existing dwelling - Minimum of 0.8m Proposed dwelling - Between 1.73m and 4.75m	N/A Maximum of 46.77%	N/A No
Side building line	South-east - 2.5m	2.77m	N/A	Yes
	North-east - 1m	Minimum of 0.8m	20%	No
Building envelope	South-east - 3.5m	Within envelope	N/A	Yes
	North-east - 3.5m	Within envelope	N/A	Yes
Landscaped area	60%	71.28% (1076.23sqm)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.3 Bilgola Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.4 Stormwater Harvesting	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.8 Stormwater Management - Water Quality - Low Density Residential	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B5.12 Stormwater Drainage Systems and Natural Watercourses	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.23 Eaves	No	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D3.1 Character as viewed from a public place	Yes	Yes
D3.3 Building colours and materials	Yes	Yes
D3.6 Front building line	No	Yes
D3.7 Side and rear building line	No	Yes
D3.9 Building envelope	Yes	Yes
D3.11 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D3.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment



C1.3 View Sharing

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- A reasonable sharing of views amongst dwellings.
- Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.
- Canopy trees take priority over views. (En, S)

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".

Comment to Principle 1:

Views will be affected from No. 8 The Serpentine, which currently enjoys views including vegetation and the escarpment to the north and west, and views of Bilgola Beach and the ocean to the south east.

The views that will be affected consist of views of vegetation to the west.

2. What part of the affected property are the views obtained

"The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".

Comment to Principle 2:

The views are obtained from the upper level western facing rooms and balcony, plus the front porch. The views are over the side boundary and are from sitting and standing positions.

3. Extent of impact

"The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is



20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.

Comment to Principle 3:

The views that will be affected consist of a very small portion of the overall views from No. 8 The Serpentine and a small portion of the views of vegetation to the west. The views lost do not include any of the most valuable views (eg: the ocean and the beach) from the site.

Overall, the view loss is considered to be minor.

4. Reasonableness of the proposal that is causing the impact

“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”

Comment to Principle 4:

The affected views from No. 8 The Serpentine will be blocked by a portion of the upper level of the proposal. This portion is fully compliant with the height, setbacks and side boundary envelope controls, the critical controls relating to view loss in this particular case. It is noted that the south-eastern section of the upper level is non compliant with the height limit, however, the views are blocked by the western and northern sections and therefore the height breach will have no affect on views. In this regard, the development is considered to be a reasonable response to the site constraints.

As to whether there is a better design that will create greater view sharing; Moving the dwelling further to the south east would not result in the loss of less views, just that different parts of the vegetation would be blocked. The dwelling has been sited to have the least impact on the adjoining neighbours (i.e. in the northern part of the site, as far as possible from the south-eastern neighbour and adjacent to the front yard and driveway of the north-eastern neighbour).

Overall, the proposal is an upgrade to the site and will result in a reasonable sharing of views.

C1.5 Visual Privacy

The development includes a roof top terrace. Several of the submissions raised concerns in relation to this terrace.

The outcomes of this clause state:

- *Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.*
- *A sense of territory and safety is provided for residents.*



The roof top terrace is located a minimum of 18m from the dwelling at No. 8 The Serpentine and 26m from the dwelling at No. 6 Bilgola Avenue, the only two directly adjoining properties.

The terrace incorporates low height screening devices (not at the height of standard privacy screens) and is only accessed via the upper level bedroom. It is not adjacent to a living area.

In this regard, it is reasonable to state that the roof top terrace will not be heavily used and is located at such a distance from any neighbouring dwelling that there will be no unreasonable privacy impacts.

C1.23 Eaves

This clause requires:

Dwellings shall incorporate eaves on all elevations.

Eaves must be a minimum of 450mm in width, excluding any fascia/barge boards and gutters.

Comment:

The proposal is a modern design and does not incorporate eaves on all elevations.

The development has a current and complying BASIX certificate and the design will reasonably fit within the local area. The provision of eaves on all elevations is not necessary.

D3.6 Front building line

Description of the non-compliance:

The proposed terraces are set back at minimums of 5.06m and 6.33m from the Bilgola Avenue front boundary.

The proposed dwelling is set back between 1.73m and 4.75m from The Serpentine, the secondary front boundary.

The control requires minimums of 6.5m to Bilgola Avenue and 3.25m to The Serpentine.

Merit assessment:

The outcomes of the control are:

- *Achieve the desired future character of the Locality.*
- *Equitable preservation of views and vistas to and/or from public/private places.*
- *The amenity of residential development adjoining a main road is maintained.*
- *Vegetation is retained and enhanced to visually reduce the built form.*
- *Vehicle manoeuvring in a forward direction is facilitated.*
- *To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*
- *To encourage attractive street frontages and improve pedestrian amenity.*
- *To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.*

Comment:

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The site sits well below the level of The Serpentine, due to the steep slope of the land, meaning the site is not readily visible from this frontage.

The proposed dwelling is set back a greater distance to both street frontages (except for a corner of one terrace) than the existing dwelling on the site. In addition, the proposal will upgrade the landscaping around the dwelling, providing a better streetscape appearance.

In this regard, the proposal will better achieve all the above listed outcomes. In addition, reducing the number of dwellings on the site from two to one will also benefit the Bilgola Avenue frontage by reducing the number and size of the built elements on the land.

Overall, the proposal meets the above outcomes and the non-compliance is considered acceptable.

D3.7 Side and rear building line

Description of the non-compliance:

The corner of one terrace on the north-western elevation is set back a minimum of 0.8m.

The control requires a minimum of 1.0m.

Merit assessment:

The outcomes of the control are:

- *To achieve the desired future character of the Locality.*
- *The bulk and scale of the built form is minimised.*
- *Equitable preservation of views and vistas to and/or from public/private places.*
- *To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*
- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.*
- *Substantial landscaping, a mature tree canopy and an attractive streetscape.*
- *Flexibility in the siting of buildings and access.*
- *Vegetation is retained and enhanced to visually reduce the built form.*
- *To ensure a landscaped buffer between commercial and residential zones is established.*

Comment:

The non-compliance is only to one corner of one terrace and is only 200mm.

This portion of the site is located next to the driveway of the neighbouring property, the terrace is at ground level and landscape planting is proposed between the terrace and the boundary.

In this regard, the non-compliance will not result in any unreasonable impacts to the neighbouring property and is considered to satisfy the outcomes listed above.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect threatened species, populations or ecological communities, or their habitats.



CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Pittwater Section 94 Development Contributions Plan

S94 Contributions are not applicable to this application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

The site comprises two lots, each currently containing a dwelling house. The proposal seeks to demolish these two dwellings and replace them with one across both sites (i.e. a reduction from two to one dwellings on the land). The proposal also includes an increase to the landscaped area on the site as well as a workshop and parking area.

The site is partly zoned SP2 Infrastructure, where dwelling houses are prohibited. However, Lot 25, which is the corner lot of the site does, benefit from existing use rights, meaning that consent for the proposal can be granted.

The development includes several non-compliances, including a breach of the height of buildings development standard and has attracted three submissions objecting to aspects of the proposal.

This assessment has found that the non-compliances are reasonable, and the variation to the height of buildings development standard can be sustained based on the applicant's written request.



There are heritage listed Norfolk Island Pine trees on the Bilgola Avenue frontage of the site (on the Council road reserve). The protection of these trees is vital and conditions have been included in the consent requiring an Arborist Report to be prepared and for all works occurring near these trees to be supervised by that Arborist.

The issues within the submissions have either been resolved via conditions or are not sufficient to require amendments to, or refusal of, the proposal.

Overall, the development will be an upgrade to the site, will achieve the objectives of the zone and will be consistent with the desired future character of the locality.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1877 for Demolition of existing structures, construction of a dwelling house with detached workshop on land at Lot 24 DP 11978, 4 Bilgola Avenue, BILGOLA BEACH, Lot 25 DP 11978, 2 Bilgola Avenue, BILGOLA BEACH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA 140 Issue 1	23 November 2018	Peter Stutchbury Architecture
DA 210 Issue 1	14 May 2018	Peter Stutchbury Architecture
DA 220 Issue 1	14 May 2018	Peter Stutchbury Architecture
DA 230 Issue 1	14 May 2018	Peter Stutchbury Architecture
DA 310 Issue 1	23 April 2018	Peter Stutchbury Architecture
DA 320 Issue 1	14 May 2018	Peter Stutchbury Architecture
DA 410 Issue 1	23 April 2018	Peter Stutchbury Architecture
Material Sample Board	Not dated	Peter Stutchbury Architecture

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b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
DA Landscape Plan	16 May 2018	Tropic of Sydney

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

2. Amendments to the approved plans

The following amendments are to be made to the approved plans:

- The compost bin is to be located no closer than 2.0m from any boundary.
- The proposed landscape planting along the portion of the south-eastern boundary that is adjacent to the dwelling on No. 6 Bilgola Avenue, is to be changed to native species with maximum heights of no more than 4.0m.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:



- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative Requirement

4. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).



- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:



- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

FEES / CHARGES / CONTRIBUTIONS

5. **Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

6. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

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The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Douglas Partners, (Project 86358.00) dated 9 May 2018 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

7. Vehicle Crossings Application

An application shall be made with Council for the removal of redundant vehicular crossing subject to the payment of the fee in accordance with Council's Fees and Charges. The fee includes all Council inspections relating to the removal and reinstatement of driveway and must be paid.

Reason: To facilitate suitable vehicular access to private property.

8. Soil and Water Management Program

A Soil and Water Management Plan prepared in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and implemented on site until the works are completed.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites. (DACHPC02)

9. Tree protection plan for existing Norfolk Island Pine within road verge

An Arboricultural Impact Assessment shall be conducted by a AQF level 5 qualified Arborist on the action required to the existing driveway servicing No. 4 Bilgola Avenue, to provide recommendations of the ground works near the existing heritage listed Norfolk Island Pine.

The report shall determine if the existing driveway and stone walling is to remain in place within the road verge, or otherwise removed, in terms of the best long-term outcome for the retention of the existing Norfolk Island Pine.

A tree protection plan is to be prepared indicating:

- i) location of driveway and walling,
- ii) location of the existing Norfolk Island Pine,
- iii) extent of canopy spread and subsurface root locations;
- iv) recommended works within the road verge to preserve the existing Norfolk Island Pine,
- v) tree protection measures;
- vi) location of tree protection fencing / barriers

The Arboricultural Impact Assessment shall be issued to the Certifying Authority and Council for
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approval prior to the issue of a Construction Certificate.

Annotated photographs of the existing Norfolk Island Pine, with emphasis on the lower part of the tree and the canopy distribution, shall be submitted to the Certifying Authority prior to issue of a Construction Certificate.

Reason: to retain and protect the significant Norfolk Island Pine planting on the road verge.

10. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

11. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:

- o "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- o Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

Reason: To ensure compliance with the statutory requirements of Sydney Water.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

12. **Project Arborist**

A Project Arborist with minimum qualification equivalent to AQF Level 5 is to be appointed prior to commencement of works.

The Project Arborist is to specifically oversee all tree protection measures and works adjacent to the existing Norfolk Island Pines within the road verge fronting No. 4 Bilgola Avenue and the existing Norfolk Island Pine within No. 2 Bilgola Avenue, located at the western boundary corner with the southern boundary.

All works in the vicinity of these trees shall be conducted under the supervision of the Project Arborist.

All tree protection measures shall be place place before work commences on the site, be maintained in good condition during the construction period, and remain in place for the duration of the construction works.

Reason: to ensure protection of vegetation is provided and maintained.

13. **Installation and Maintenance of Sediment and Erosion Control**

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Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site (DACNED06)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

14. Tree and vegetation protection

A) Existing trees and vegetation shall be retained and protected as follows:

i) all trees and vegetation within the site, as nominated on DA Tree Schedule, drawing 180603, prepared by Tropic of Sydney, excluding exempt trees and palms under the relevant planning instruments of legislation,

ii) all other trees and vegetation located on adjoining properties,

iii) all road reserve trees and vegetation,

B) Tree protection shall be generally undertaken as follows:

i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4,

ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,

iii) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an Arborist. Details including photographic evidence of works undertaken shall be submitted by an AQF Level 5 Arborist to the Certifying Authority, iv) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,

v) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a Project Arborist on site,

vi) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,

vii) excavation for stormwater lines is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist,

viii) should either or all of v), vi) and vii) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,

ix) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

Reason: to retain and protect significant planting on development and adjoining sites.

CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

15. Landscape works

Landscaping is to be implemented in accordance with the DA Landscape Plan, drawing number 180602, prepared by Tropic of Sydney, inclusive of the following requirements:



- i) all large canopy tree planting as listed in the planting schedule (*Acmena smithii*, *Casuarina glauca*, and *Syzygium australe*) shall be planted a minimum of 5 metres from existing and proposed built structures, or minimum of 3 metres where pier and beam footings are used, with each tree to have a minimum area of 3 metres x 3 metres to ensure growth is not restricted,
- ii) all other trees / palms listed in the planting schedule shall be planted a minimum of 5 metres from existing and proposed built structures,
- iii) all trees planted along the northern or western boundary shall be a minimum size of 75 litres,
- iv) all shrubs planted along the northern or western boundary shall be a minimum size of 300mm pot size, and planted no more than 1 metre apart,
- v) the Cabbage Tree Palm proposed within the north-west corner area shall consist of at least five (5) planted with a 2 metre trunk, and two (2) planted with a 3 metre trunk.

Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the approved landscape plan and inclusive of any conditions of consent.

Reason: to ensure that the landscape treatments are installed to provide landscape amenity.

16. **Condition of retained vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an AQF Level 5 Arborist (or equivalent), shall be submitted to the Certifying Authority, assessing the health and impact of trees and vegetation required to be retained as a result of the proposed development, including the following information:

- a) Compliance to Arborist recommendations for tree protection and excavation works.
- b) Extent of damage sustained by vegetation as a result of the construction works.
- c) Any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: to retain and protect significant planting on development sites, and protect the existing amenity that trees and/or bushland vegetation provide.

17. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

18. **Reinstatement of Kerb**

All redundant laybacks and vehicular crossings shall be reinstated to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To facilitate the preservation of on street parking spaces

19. **Geotechnical Certification Prior to Occupation Certificate**

Prior to issue of the Occupation Certificate, Form 3 of the Geotechnical Risk Management Policy is to be completed and submitted to the Principal Certifying Authority.



Reason: To ensure geotechnical risk is mitigated appropriately.

20. **Installation of stormwater controls**

Certifying authority to confirm that stormwater treatment including first flush device and sediment trap on boundary have been installed according to the stormwater concept plan prepared by JCL Development Solutions Drawing 2 May 2018.

Reason: Protection of the receiving environment (DACNEFPOC1)

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

21. **Landscape maintenance**

All landscape components are to be maintained for the life of the development.

A maintenance program is to be established. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components and species to maintain the landscape theme in accordance with the landscape plan.

Reason: to maintain local environmental amenity and ensure landscaping continues to soften the built form.

22. **Environmental and priority weed control**

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015 No. 24.

Reason: preservation of environmental amenity.

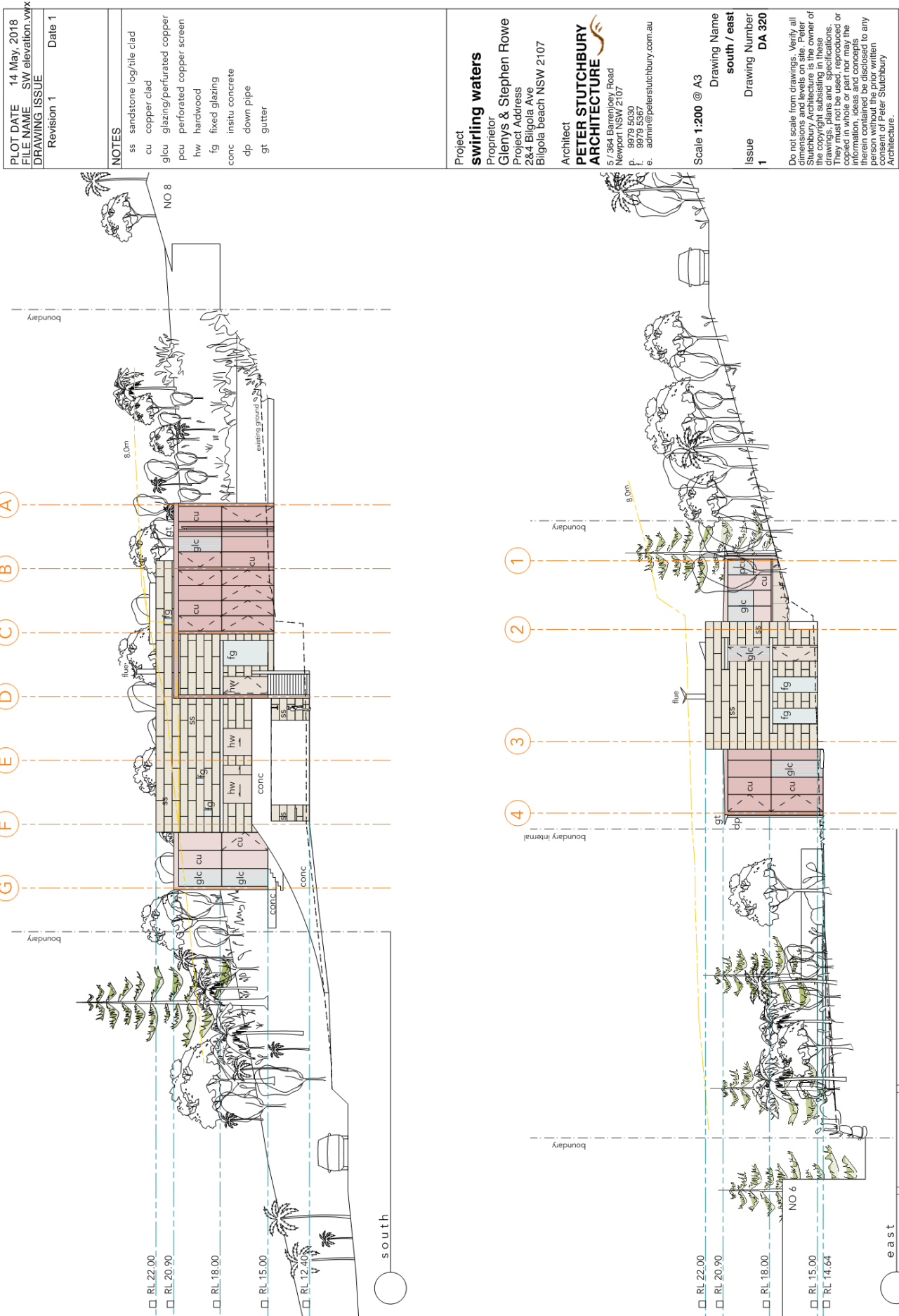
23. **Workshop use**

The workshop must not be used for commercial or industrial activities.

Reason: To protect the amenity of the neighbourhood.







ITEM 3.3

DA2018/0089 - 4 DYGAL STREET, MONA VALE - DEMOLITION OF SITE STRUCTURES AND CONSTRUCTION OF A SENIORS LIVING DEVELOPMENT UNDER SEPP (HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY) COMPRISING EIGHT (8) DWELLINGS WITH BASEMENT CARPARKING

REPORTING MANAGER**ANNA WILLIAMS****TRIM FILE REF****2019/156670****ATTACHMENTS**

- 1** [↓](#) **Supplementary Assessment Report**
- 2** [↓](#) **Draft Conditions of Consent**

PURPOSE

To refer the attached application for determination by the discretion of the Executive Manager Development Assessment.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority grant Development Consent to DA2018/0089 for demolition of site structures and construction of a Seniors Living Development under SEPP (Housing for Seniors or People with a Disability) comprising eight (8) dwellings with basement carparking on land at Lot 5 DP 9767 and Lot 2 DP 356334, 4 Dygal Street, Mona Vale subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION SUPPLEMENTARY REPORT

Application Number:	DA2018/0089
Land to be developed (Address):	Lot 5 DP 9767 and Lot 2 DP 356334 4 Dygal Street MONA VALE
Proposed Development:	Demolition of site structures and construction of a Seniors Living Development under SEPP (Housing for Seniors or People with a Disability) comprising eight (8) dwellings with basement carparking
Re-Notification (Advertising)	Re-notification / advertising not required for the amended plans (dated Revision E), pursuant to the DCP. The changes reduce the size of the building (improve setback and envelope compliance) and have a lesser environmental impact. Original notification / advertising 23/02/2018 to 14/03/2018 Second notification / advertising (amended plans) 11/7/2018 to 29/7/2018
Land and Environment Court Action:	Yes – Class 1 Appeal (Deemed Refusal) lodged 20 December 2018
Submissions Received:	2 (1 late submission received also considered)

Background:

The proposal was referred to the *Development Determination Panel* (DDP) on Wednesday 13 February 2019 with a recommendation for refusal (See Attachment A).

The Panel considered the item, including all public submissions, including matters raised by the applicant in addressing the Panel (See Attachment B). At the meeting the Panel made the following determination:

*“THAT Determination Application DA2018/1290 for alterations and additions to an existing dwelling house on land at Lot B DP 377414, 2 Tourmaline Street, Narrabeen be **deferred** for the following reasons:*

- a. For the panel to clarify inconsistencies within the assessment report.*
- b. For details to be submitted to clarify boundary levels in order to establish Building Height Envelope.*
- c. For details to be submitted to clarify ground levels of the path on the southern elevation.*
- d. For details to be submitted to illustrate the size and sill height of the windows on the south elevation.*

The outstanding information must be amended and submitted to the Council otherwise the

application will be determined on the information currently provided. Following receipt of this information, the Panel will determine the application."

Supplementary Information:

The applicant has provided clarification of items "a" to "d" above, including selected revisions to the plans and information therein to address the above items as follows:

Item a. Inconsistencies within the report required additional information demonstrating solar access compliance. The applicant provided 3D solar access diagrams (DA-12 and DA-13 Revision C) that replaced previously revised solar access diagrams assessed by the external planning consultant (see Attachment C). The Version C 3D solar access diagrams provide clarity that the development complies with internal solar access requirement pursuant to the SEPP HSPD.

Item b. Supplementary details have been provided for the Panel to clarify boundary levels along the Building Height Envelope and across the site (See Attachment C). The applicant provided revised elevation plans (DA-07 and DA-08 Revision E) and revised floor plans (DA-04 and DA-05 Revision E). Amendments made to demonstrate compliance with the side boundary envelope include:

- Upper floor side setback increased to 4.15m at the selected corners of Building A & B, and
- Increase the side setback for the stone feature wall to 3.0m.

The side boundary envelope amendments are clearly notated on the plans and these changes to the plans also reduced the floor space / balconies (see table below)

Unit Number	Previous Unit Area (sqm)	Amended Unit Area (Revision D)	Previous Balcony Area (sqm)	Amended Balcony Area (Revision D)
UNIT 1	132.3	130.2	16.2	15.1*
UNIT 2	126.5	126.5	16.2	15.0*
UNIT 3	111.1	111.1	23.6	23.6
UNIT 4	129.6	126.5	36.4	36.4
UNIT 5	132.2	132.2	16.2	10.7
UNIT 6	127.4	127.4	16.2	12.7
UNIT 7	115.8	115.8	25.6	22.2
UNIT 8	116.7	112.7	26.9	23.1
TOTAL Site area: 1489 sqm	991.6 (0.666:1 FSR)	982.4 (0.659:1 FSR)	177.3	158.8

Units 1 and 2 also have access to the grassed open space area at the front of the building.

Item c. Supplementary plan information has been provided for the Panel to clarify ground levels of the path on the southern elevation. The applicant provided ground floor plans (DA04, Revision E) showing pathway gradient levels. Amendments also provide for the inclusion of a stair lift in the central entry forecourt area. These changes are clearly notated on the plans.

Item d. Supplementary details have been provided to illustrate the size and sill height of windows on the southern elevation. The applicant provided elevation plans (DA-07 and DA-08 Revision E) that show the height and size of the side elevation windows with the increased sill height and use of opaque glass also clearly notated on plan DA-04 Revision E.

Other Matters

The applicant lodged a Class 1 Appeal (Deemed Refusal) in the NSW LEC on 20 December 2018 and draft conditions (without prejudice) have been prepared which will be required for the Appeal proceedings. The draft conditions are relevant to consideration of the late submission received from the owner of No.48 Waratah Street (See Attachment D)

CONCLUSION

The supplementary information provided and amended details shown on the plans have resolved the Panel's reasons to previously defer the item on 13 February 2019.

RECOMMENDATION

That the Development Determination Panel consider the supplementary information and plans provided by the applicant and determine the development application for demolition of site structures and construction of a Seniors Living Development under SEPP (Housing for Seniors or People with a Disability) comprising eight (8) dwellings with basement carparking on Lot 5 DP 9767 and Lot 2 DP 356334 being No.4 Dygal Street MONA VALE.



CONDITIONS OF APPROVAL

Application Number:	DA2018/0089
Land to be developed (Address):	Lot 5 DP 9767 4 Dygall Street MONA VALE NSW 2103
Proposed Development:	Demolition of the existing dwelling house and construction of a Seniors Living Development under SEPP Housing for Seniors or People with a Disability comprising eight (8) dwellings with basement car parking

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA-01 Site Plan Issue C	20.6.2018	Gartner Trovato Architects
DA-03 Basement Issue C	20.6.2018	Gartner Trovato Architects
DA-04 Upper Ground Lower Ground Issue E	18.3.2019	Gartner Trovato Architects
DA-05 Upper First Lower First Issue E	18.3.2019	Gartner Trovato Architects
DA-06 Roof Plan Issue C	20.6.2018	Gartner Trovato Architects
DA-07 Elevations (Sheet 01) Issue E (including External Finishes)	5.3.2019	Gartner Trovato Architects
DA-08 Elevations (Sheet 02) Issue E (including External Finishes)	5.3.2019	Gartner Trovato Architects
DA-09 Sections (Sheet 01) Issue C	20.6.2018	Gartner Trovato Architects
DA-10 Sections (Sheet 02) Issue C	20.6.2018	Gartner Trovato Architects



Engineering Plans		
Drawing No.	Dated	Prepared By
D00 Issue A - Drawing Schedule	2.11.2017	Loka Consulting Engineers
D01 Issue B - Basement Stormwater Drainage Plan	17.1.2018	Loka Consulting Engineers
D02 Issue A - Basement Stormwater Drainage Details	2.11.2017	Loka Consulting Engineers
D03 Issue B - Ground Floor / Site Stormwater Drainage Plan	17.1.2018	Loka Consulting Engineers
D04 Issue B - Ground Floor Stormwater Drainage Details	17.1.2018	Loka Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Basix Certificate 876584M	22.12.2017	Greenview Consulting
Arboricultural Impact Assessment Report	22.12.2017	Urban Arbor
Geotechnical Investigation	18.09.2017	White Geotechnical Group
Internal Traffic Management Report	15.01.2018	Loka Consulting Engineers Pty Ltd
Disability Access Report	15.01.2018	Loka Consulting Engineers Pty Ltd
Building Code of Australia Report	22.12.2017	Private Building Certifiers Pty Ltd

- b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.
- c) No construction works (including excavation) shall be undertaken prior to the release of the Construction Certificate.
- d) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Plan 201.17/462 Revision A	22.12.2017	iScape Landscape Architecture

Waste Management / Sediment Control		
Drawing No.	Dated	Prepared By
D05 Issue A Erosion and Sediment Control Plan and Details	2.11.2017	Loka Consulting Engineers

Reason: To ensure the work is carried out in accordance with the determination of Council and
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approved plans. (DACPLB01)

2. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the



allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative Requirement (DACPLB09)

3. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged



during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

- (j) Prior to the commencement of any development onsite for:
- i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished
- The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

4. **Occupation of Seniors Housing or Housing for Persons with a Disability**

A positive covenant pursuant to s88E of the Conveyancing Act 1919 is to be registered on the title of the land to which this development consent applies.

The covenant shall stipulate that Council is the sole authority to release or modify the covenant and that the development is only permitted to be occupied by persons detailed as follows:

- (a) seniors or people who have a disability;
- (b) people who live within the same household with seniors or people who have a disability;
- (c) staff employed to assist in the administration of and provision of services to housing provided under this Policy.

(Note: Under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004):

Seniors are people aged 55 or more years, people who are resident at a facility at which residential care (within the meaning of the Aged Care Act 1997 <http://www.comlaw.gov.au/> of the Commonwealth) is provided and / or people who have been assessed as being eligible to occupy housing for aged persons provided by a social housing provider.

AND

People with a disability are people of any age who have, either permanently or for an extended period, one or more impairments, limitations or activity restrictions that substantially affect their capacity to participate in everyday life.)

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue any Interim / Final Occupation Certificate.

Reason: Statutory requirements. (DACPLB11)

FEES / CHARGES / CONTRIBUTIONS



5. **Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

6. **Construction, Excavation and Associated Works Bond (Road)**

A Bond of \$20,000 as security against any damage or failure to complete the construction of road pavement/shoulder reconstruction works as part of this consent.

Reason: Protection of Council's Infrastructure

7. **Construction, Excavation and Associated Works Bond (Crossing / Kerb)**

A Bond of \$50,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter and any footpath works required as part of this consent.

Reason: Protection of Council's Infrastructure

8. **Construction, Excavation and Associated Works Bond (Failure to Remove Waste)**

A bond of \$10,000 as security against damage to Council's road(s) fronting the site caused by the transport and disposal of materials and equipment to and from the site.

Reason: Protection of Council's Infrastructure

9. **Contributions**

A contribution of **\$120,000.00** (at \$20,000 per additional dwelling / allotment) is payable to Northern Beaches Council for the provision of public infrastructure and services pursuant to the Pittwater Section 94 Contributions Plan for Residential Development.

The contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate (whichever occurs first) or prior to the issue of the Subdivision Certificate where no Construction Certificate is required.

The proponent may negotiate with Council for the direct provision of facilities and services specified in the Contributions Plan, the dedication of land or another material public benefit in lieu of full or partial payment of the monetary contribution. Any agreement shall be in accordance with the Pittwater Section 94 Contributions Plan for Residential Development. The agreement must be finalised, formally signed and in place prior to payment being due.



The Pittwater Section 94 Contributions Plan for Residential Development may be inspected at Council's Mona Vale office, 1 Park Street Mona Vale or on Council's website.

Cashier Codes:

SOPS – \$48,000(\$8,000 per additional dwelling or allotment)

SLEL – \$12,000(\$2,000 per additional dwelling or allotment)

SCSF – \$21,000(\$3,500 per additional dwelling or allotment)

SVSS – \$39,000(\$6,500 per additional dwelling or allotment)

Reason: To provide for contributions in accordance with Northern Beaches Council's Development Contributions Plan.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

10. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White Geotechnical Group dated 18 September 2017 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

11. **Fire Safety Compliance**

The relevant fire safety matters contained in the BCA Report prepared by Private Building Certifiers Pty Ltd dated 22 December 2017 (or as modified by a suitably qualified Accredited Certifier), are required to be addressed at the Construction Certificate stage and implemented prior to occupation of the new building or part.

Reason: To ensure adequate provision is made for fire safety in the premises for building occupant safety.

12. **Access for Persons with a Disability**

The recommendations contained in the Access Report prepared by Loka Consulting Engineers Pty Ltd dated 17 January 2018 are to be provided at Construction Certificate Stage and implemented prior to occupation of the new building or part.

Reason: To ensure that adequate provision is made for access to and within the building for persons with a disability.

13. **On-site Stormwater Detention Compliance**

Certification of Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Northern Beaches Council's Pittwater DCP21 Clause B5.7 and the concept drawing by *Loka Consulting Engineers Pty Ltd*, drawing number 17NI178 D00A, D01B, D02A,

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D03B and D04B dated 02/11/17 and 17/01/18 respectively. The drainage plans must address the following:

- i. Where the ponding in the proposed detention basin exceeds 300 millimetres, a pool style fence is to be provided around the perimeter of the basin.

Detailed drainage plans, including engineering certification confirming that the above requirements have been satisfied and complying with Council's DCP21 are to be submitted to the Principal Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

14. **Submission Roads Act Application for Civil Works in the Public Road**

An Application for Works to be approved within Council Roadway, including engineering plans is to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The application is to include four (4) copies of Civil Engineering plans for the design of the kerb and gutter along the entire frontage of Triglone Lane, 1.5 metre wide footpath along the entire frontage of Dygal Street, driveway crossing and refuge island required by Council's Traffic Committee which are to be generally in accordance with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges. An approval is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure compliance with Council's specification for engineering works.

15. **Vehicle Driveway Gradients**

Driveway gradients within the private property are to include a crest of minimum AHD 18.3 metres and be generally in accordance with the plans by Gartnertrovato with a transitions in accordance with AS/NZS 2890.1:2004. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure suitable vehicular access to private property

16. **Tanking of Basement Level**

The basement area is to be permanently tanked. Details of the tanking are to be prepared by a suitably qualified Engineer. Where temporary dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Office of Water. The bore license must be obtained prior to commencement of dewatering works. All requirements of the NSW Office of Water are to be complied with and a copy of the approval must be submitted to the Principal Certifying Authority. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements

17. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are



to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
 - (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.
- Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To provide public and private safety.

18. Shoring of Adjoining Property

Should the proposal require shoring to support an adjoining property or Council land, owner's consent for the encroachment onto the affected property owner shall be provided with the engineering drawings. Council approval is required if temporary ground anchors are to be used within Council land. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

19. Construction Management Program

An application for Traffic Management Plan is to be submitted to Council for approval. The Traffic Management Plan shall be prepared to RMS standard by an appropriately certified person. An approval is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community

20. Soil and Water Management Program

A Soil and Water Management Plan prepared in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and implemented on site until the works are completed.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites. (DACHPC02)

21. Pubic Road Reserve landscaping and infrastructure

Development with a frontage within a residential street, comprising 6 or more dwellings, is required to provide a footpath and street tree planting in accordance with the following:

- i) The footpath shall be 1.5 metres (m) wide, and street trees shall be planted generally at 6m centres. Street trees are to be planted to encourage the free passage of pedestrians.
- ii) New tree plantings are to be a minimum 200 litre size with 1m x 1m tree pit and backfilled with suitable planting medium. Trees are to be appropriately supported by two stakes (minimum 50mm x 50mm) with Hessian ties.



iii) Two (2) *Tristanopsis laurina* (Water Gum) shall be planted along Dygal Street. Street trees shall be located following consideration of existing trees, existing underground services and street lighting.

iv) The street trees must be maintained for a period of 12 months following the issue of an occupation certificate. Any failure due to lack of maintenance will require replacement.

v) Grassed areas are to be turfed with Couch species (weed free) and even grade to a maximum 4% grade.

All work in the public road reserve is subject to a *Section 138* approval from Council pursuant to the *Roads Act 1993*. Footpath and tree planting details are to be submitted to Council prior to the issue of the Construction Certificate.

Reason: To satisfy the requirements of C1.24 requiring footpath construction and street tree planting

22. **Flooding**

In order to protect property and occupants from flood risk the following is required:

i) Building Components and Structural Soundness – C1

All new development shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

ii) Building Components and Structural Soundness – C2

All new development must be designed and constructed to ensure structural integrity up to the Probable Maximum Flood level (or 0.3m above natural ground level within the flood affected area), taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion. Structural certification shall be provided confirming the above.

iii) Building Components and Structural Soundness – C3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level (or 0.3m above natural ground level within the flood affected area). All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed cut electricity supply during flood events.

iv) Storage of Goods – D1

Hazardous or potentially polluting materials shall not be stored below the Flood Planning Level (or 0.3m above the natural ground level within the flood affected area) unless adequately protected from floodwaters in accordance with industry standards.

v) Car parking – G9

All access, ventilation and any other potential water entry points, including entry ramp crests to the enclosed car parking shall be at or above the Probable Maximum Flood



level (or 0.3m above ground level within the flood affected area).

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

23. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

24. **Requirements for Seniors Housing or Housing for Persons with a Disability**

The development is for the purposes of Seniors Housing or Housing for Persons with a Disability and is required to comply with all the standards specified in Schedule 3 - "Standards concerning accessibility and useability for hostels and self-contained dwellings".

Details demonstrating compliance with the above requirement are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure public safety and equitable access for seniors or people with a disability. (DACPLC16)

25. **Construction of Refuge Island**

A pedestrian refuge island shall be constructed on Waratah Street at the corner of Dygal Street in front of No.48 Waratah Street. The pedestrian refuge island is to be designed in compliance with the *NSW Roads and Maritime Service Technical Direction* and the detail design including signage and line markings shall be submitted to Northern Beaches Council for civil design review and subject to *Local Traffic Committee* approval under the *Roads Act 1993*. The refuge island shall be constructed at no cost to Council.

Design details are to be submitted prior to the issue of the Construction Certificate.

Reason: To provide suitable convenient and safe access to public transport bus stops in Waratah Street (DACTRCPC1)

26. **Car Park Design**

The layout of car park, internal ramps and driveway is to be designed in compliance with Australian Standard (AS 2890.1-2004 & AS 2890.2-2002). The allocated spaces including visitor spaces are to be clearly linemarked /signposted.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate .

Reason: Compliance with Australian Standard (DACTRCPC1)

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27. **Waste and Recycling Requirements**

Details demonstrating compliance with Northern Beaches Council guidelines, including the required Northern Beaches Council Waste Management Plan, are to be submitted to, and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.
(DACWTC01)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

28. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Warringah Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

29. **Tree protection**

- a) A Project Arborist with minimum qualification equivalent to AQF Level 5 is to be appointed prior to commencement of works.
- b) all trees and vegetation on site, located on adjoining properties, and on road reserves must be retained and protected, except where approved for removal. Excluding on-site exempt trees under the relevant planning instruments or legislation.
- c) The Project Arborist is to oversee all tree protection measures for the existing trees identified in the Arboricultural Impact Assessment prepared by Urban Arbor, dated 22 December 2017, including trees T1, T2, T4, T6, and T7, and with reference to section 9. Conclusions, section 11. Recommendations, section 12. Tree Protection requirements, and section 13. Construction Hold Points
- d) The proposed removal of **T5** (exempt species) is not permitted without the written approval of the landowner onto which T5 is located.
- e) The Project Arborist is to familiarise themselves with and ensure compliance with any other tree and environmental requirements conditioned under this consent.
- f) All ground works in the vicinity of the existing trees shall be conducted under the supervision of the Project Arborist.
- g) all tree protection shall be in accordance with the recommendations provided within the Arboricultural Impact Assessment report (Tree Protection Fencing) and AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4.
- h) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees
- i) all tree protection measures, as proposed in the Arboricultural Impact Assessment, are to be in place prior to the commencement, including protective fencing and trunk protection.
- j) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained.
- k) no tree roots greater than 50mm diameter are to be cut from protected trees unless



authorized by a qualified Arborist on site

l) all structures are to bridge tree roots greater than 50mm diameter unless directed a qualified Arborist on site

m) should either or both k) and l) occur during site establishment and construction works, documentary details shall be submitted by the Arborist to the Certifying Authority.

Reason: To ensure compliance with the requirement to retain and protect significant planting on development sites, and protect the existing environmental amenity, and satisfy C1.1 of Council DCP21.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

30. **Road Reserve**

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: Public Safety.

31. **Progress Certification (Road Works)**

Written certification is to be provided by a suitably qualified engineer upon completion and/or as and when requested by the Principal Certifying Authority for the following stages of works.

- (a) Silt and sediment control facilities
- (b) Laying of stormwater pipes and construction of pits
- (c) Proof Roll - AUSPEC Standard
- (d) Sub-grade trimmed and compacted **
- (e) Base-course laid and compacted **
- (f) Kerb and gutter construction
- (g) Pavement
- (h) Landscaping and vegetation
- (i) Clean-up of site, and of adjoining Council roadway and drainage system. (**To be tested by a recognised N.A.T.A. approved laboratory). Details demonstrating compliance are to be submitted to the Principal Certifying Authority.
- (j) All layers of the road formation are to be proof rolled to Council's satisfaction

Reason: To ensure compliance of civil works with Council's specification for engineering works

32. **Civil Works Supervision**

All civil works approved in the Roads Act approval are to be supervised by an appropriately qualified and practising Civil Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works.

33. **Footpath Construction**

The applicant shall reconstruct the existing footpath along the entire Dygal Street frontage to a 1.5 metre wide concrete footpath. The works shall be in accordance with the following:

- (a) All footpath works are to be constructed in accordance with Council's Specification
- (b) Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with Council's specification for footpath.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.



Reason: To ensure compliance of footpath works with Council's specification for engineering works.

34. **Notification of Inspections for Public Road Reserve Works**

Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:

- (a) Installation of Silt and Sediment control devices
- (b) Prior to pouring footpath concrete
- (c) Prior to pouring refuge island
- (d) Prior to pouring of kerb and gutter
- (e) Subgrade level / basecourse level / subbase
- (f) Sealing road pavement

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification. Council approval or acceptance of any stage of the work must be obtained in writing, and will only be issued after completion of the work to the satisfaction of Council and receipt of the required certification

Reason: To ensure new Council infrastructure is constructed to Council's requirements.

35. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Principal Certifying Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety

36. **Vehicle Crossing**

The provision of a vehicle crossing 4 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property

37. **Kerb and Gutter Construction**

Kerb and gutter is to be constructed along the entire frontage of the site in Triglone Lane in accordance with Northern Beaches Council Drawing No. A4 2276/A.

Reason: To facilitate the preservation of on street parking spaces.

38. **Waste/Recycling Requirements (Waste Plan Submitted)**

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan.



Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided. (DACWTE01)

CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

39. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

40. **Authorisation of Legal Documentation Required for On-site Stormwater Detention**

An application for the authorisation of legal documents is to be lodged with Council and payment of the associated fee. The application is to include the original completed request forms (Department of Lands standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and photographic evidence of the completed system.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard

41. **Registration of Encumbrances for On-site Stormwater Detention**

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To identify encumbrances on land. (DACENF02)

42. **Restriction as to User for On-site Stormwater Detention**

A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements, (available from Northern Beaches Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure modification to the on-site stormwater detention structure is not carried



without Council's approval. (DACENF04)

43. **On-Site Stormwater Detention Compliance Certification**

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council. Additionally a Compliance Certificate is to be issued by an Accredited Certifier in Civil Works registered with the Institute of Engineers Australia, stating that the works are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure stormwater disposal is constructed to Council's satisfaction. (DACENF10)

44. **Positive Covenant for the Maintenance of Stormwater Pump-out Facilities**

A Positive Covenant (under the provisions of Section 88B of the Conveyancing Act 1919) is to be created on the property title to ensure the on-going maintenance of the stormwater pump-out facilities on the property being developed.

Warringah Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Warringah Council's delegate shall sign these documents prior to the submission to the Land & Property Information Department.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard. (DACENF11)

45. **Positive Covenant for On-site Stormwater Detention**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Warringah Council's delegate prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such covenant.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure ongoing maintenance of the on-site stormwater detention system. (DACENF12)

46. **Creation of Positive Covenant and Restriction as a User**

Where any conditions of this Consent require the creation of a positive covenant and/or restriction as a user, the original completed request forms, (Department of Lands standard forms 13PC and/or 13RPA), shall be submitted to Northern Beaches Council for authorisation.

A certified copy of the documents shall be provided to Northern Beaches Council after final approval and registration has been affected by the "Department of Lands".

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the



issue of a Interim / Final Occupation Certificate.

Reason: To identify encumbrances on land. (DACENF14)

47. **Geotechnical Certification Recommendations have been Implemented**

Prior to issue of the Occupation Certificate, Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

Reason: To ensure geotechnical risk is mitigated appropriately.

48. **Landscape completion**

Landscaping is to be implemented in accordance with the Landscape Plan 201.17/462, prepared by iScape Landscape Architecture (to be updated to correspond with the stamped approved architectural plans):

- a) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the approved landscape plan and inclusive of any conditions of consent.
- b) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been established and maintained in accordance with the approved landscape plan.

Reason: To ensure that the landscape treatments are installed to provide landscape amenity

49. **Existing tree protection and health**

Documentary evidence including photographic material shall be submitted by the Project Arborist to the Certifying Authority that the proposed works have not adversely impacted on the health of the existing trees on adjacent land or trees within the site to be retained in accordance with the approved plans.

Reason: To ensure compliance with the requirement to retain and protect significant planting on development sites, and protect the existing environmental amenity.

50. **Garbage and Recycling Facilities**

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To prevent pollution of the environment and to protect the amenity of the area. (DACPLF03)

51. **House / Building Number**

House/building number is to be affixed to the building / street entry (fence) to be readily visible from the public domain.



Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: Proper identification of buildings. (DACPLF04)

52. **Sydney Water**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure compliance with the statutory requirements of Sydney Water. (DACPLF08)

53. **Occupation of Seniors Housing or Housing for Persons with a Disability**

A positive covenant pursuant to s88E of the Conveyancing Act 1919 is to be registered on the title of the land to which this development consent applies.

The covenant shall stipulate that Council is the sole authority to release or modify the covenant and that the development is only permitted to be occupied by persons detailed as follows:

- (a) seniors or people who have a disability;
- (b) people who live within the same household with seniors or people who have a disability;
- (c) staff employed to assist in the administration of and provision of services to housing provided under this Policy.

(Note: Under State Environmental Planning Policy (Housing for Seniors or People with a Disability 2004):

Seniors are people aged 55 or more years, people who are resident at a facility at which residential care (within the meaning of the Aged Care Act 1997 <http://www.comlaw.gov.au/> of the Commonwealth) is provided and/or people who have been assessed as being eligible to occupy housing for aged persons provided by a social housing provider.

AND

People with a disability are people of any age who have, either permanently or for an extended period, one or more impairments, limitations or activity restrictions that substantially affect their capacity to participate in everyday life.)

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue any Interim / Final Occupation Certificate.



Reason: Statutory requirements. (DACPLF11)

54. **Certification of completion of requirements for Seniors Housing or Housing for Persons with a Disability**

Details demonstrating that all stipulated requirements of this development consent for Seniors Housing or Housing for Persons with a Disability have been completed.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure statutory requirements have been completed, public safety, and equitable access for seniors of people with a disability. (DACPLF12)

55. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and Fire and Rescue NSW.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Interim / Final Occupation Certificate.

Each year the Owners must send to the Council and Fire and Rescue NSW, an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000. (DACPLF07)

56. **Waste and Recycling Facilities Certificate of Compliance**

The proposal shall be constructed in accordance with Northern Beaches Council Waste Management Guidelines

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste and recycling facilities are provided. (DACWTF01)

57. **Waste/Recycling Compliance Documentation**

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled. (DACWTF02)

58. **Positive Covenant for Waste Services**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to provide access to the waste storage facilities prior to the issue of an Interim/Final Occupation Certificate. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such covenant.



Reason: To ensure ongoing access for servicing of waste facilities (DACWTF03)

59. **Authorisation of Legal Documentation Required for Waste Services**

The original completed request form (Department of Lands standard form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land. (DACWTF04)

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

60. **Landscape maintenance**

Landscape works shall be maintained for a minimum period of 12 months following practical completion.

i) A maintenance program is to be established for the ongoing maintenance of landscaping for the life of the development.

ii) If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan, and relevant conditions.

Reason: To maintain local environmental amenity