

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 NOVEMBER 2019



Ashleigh Sherry
Manager Business Systems and Administration

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

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 13 NOVEMBER 2019

RECOMMENDATION

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

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1

**MOD2019/0409 - 2 TOURMALINE STREET, NARRABEEN -
MODIFICATION OF DEVELOPMENT CONSENT DA2018/1290
GRANTED FOR ALTERATIONS AND ADDITIONS TO AN
EXISTING DWELLING HOUSE**

REPORTING MANAGER Steve Findlay
TRIM FILE REF 2019/664240
ATTACHMENTS
1 Assessment Report
2 Site Plan & Elevations

PURPOSE

To refer the attached application for determination as required under adopted delegations of the Charter.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Mod2019/0409 for Modification of Development Consent DA2018/1290 granted for alterations and additions to an existing dwelling house on land at Lot B DP 377414, 2 Tourmaline Street, Narrabeen, subject to the conditions outlined in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0409
Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot B DP 377414, 2 Tourmaline Street NARRABEEN NSW 2101
Proposed Development:	Modification of Development Consent DA2018/1290 granted for alterations and additions to an existing dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Tony Ian Nicol
Applicant:	Micris Design Pty Ltd
Application Lodged:	26/08/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	06/09/2019 to 20/09/2019
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Executive Summary

The application seeks to modify Development Consent No DA2018/1290 granted for alterations and additions to 2 Tourmaline Street, Narrabeen. The application was approved by the Development Determination Panel (DDP) on the 23 of January 2019.

The modification seeks to achieve compliance with condition No.2 that was imposed by DDP at its panel meeting held on 23 January 2019. The condition required an increase to the setbacks on the southern and western boundaries, and an increase to the sill height of window (W7) located southern elevation. This modification also includes internal reconfiguration, minor alterations to the external cladding/finish on the northern facade, and additional window changes on the northern, eastern and southern elevations.

The proposed development was notified and one (1) submissions was received. The primary concern raised by the southern adjoining property was the additional privacy impacts as a result of the window changes. The issue raised has been addressed and appropriately conditioned to address the specific concern.

There is no change to the previously approved building height.

The assessment of the application, as amended against Warringah DCP 2011 has found that the modified proposal does raise additional impact in relation visual privacy. However, suitable conditions are recommended to ensure that the development, as amended achieves compliance with the requirement of Clause D8-Privacy of WDCP 2011.

The modification application is recommended for approval.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks to modify Development Consent No.DA2018/1290. Amended Plans have been submitted to address to requirements of Condition No. 2 of the Development Consent, which reads as follows:

2. Amendments to the approved plans

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

- a) The first floor is to maintain a minimum setback of 2.5 metres to the southern boundary*
- b) The first floor is to maintain a minimum setback of 3.0 metres to the western boundary*
- c) The sill height of window W7 is to be a minimum height of 1.5m above the finished floor level.*

In addition to the above, the proposed modification seeks to modify the plans as follows:

- *New kitchen layout, including the removal of an internal wall*
- *New window (W2) on the northern elevation adjoining the kitchen*
- *New window (W3) on the eastern elevation adjoining the kitchen*
- *Change to the internal access stairs*
- *Existing ground floor deck to be reduced in size*
- *Proposed copper cladding panels to the accent walls of the northern facade*
- *Internal reconfiguration of the first floor (location of the walk in robe and en-suite)*
- *Modify the northern elevation windows W10 and W5 (formally W3)*
- *Modify the southern first floor windows W6 & W7 (formally W4, W5 & W6) adjoining the walk in robe, en-suite and stairwell.*

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

Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot B DP 377414 , 2 Tourmaline Street NARRABEEN NSW 2101
Detailed Site Description:	<p>The subject site is legally identified as Lot B in DP 377414, and is known as 2 Tourmaline Street Narrabeen. The site located within the R2 Low Density Residential zone.</p> <p>The subject property is located immediately south of Tourmaline Street, with Collaroy-Narrabeen Beach adjoining the site on the eastern boundary. The overall site area is 569.1m². The subject site has a northern street frontage to Tourmaline Street of 36.27 metres, a eastern boundary dimension of 15.71 metres, southern boundary dimension of 36.345 metres, and a western boundary dimension of 15.635 metres.</p> <p>The surface of the site is relatively flat with the site being previously excavated for the lower ground floor. The Lower Ground Floor Level of the existing dwelling has a finished floor level of 7.6m AHD, and is below the natural ground level, separated by a retaining wall with a crest level of 8.2m AHD. The Ground Floor finished floor level is 9.9m AHD.</p> <p>The site currently contains a two level dwelling house, with lawned area in the eastern area of the site adjoining the vegetated sand dunes of Collaroy/Narrabeen beach.</p> <p>Surrounding sites consist of a range of dwelling types, including single dwelling house, dual occupancy</p>

and residential flat buildings. The site to the south and the west contains two storey dwelling houses, with the site to the north being a three storey residential flat building on the opposite side of the street.

Map:



SITE HISTORY

Development Application (DA2018/1290)

The original DA for alterations and additions to a dwelling house, was lodged with Council on 1 August 2018. The application was assessed and reported to Development Determination Panel with recommendation for refusal. The Panel at its meeting held on 23 January and approved the DA subject to conditions.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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 and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and 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 given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2018/1290, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2018/1290.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2019/1290 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Environmental Plan 2011 and Warringah Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	
	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments

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	Warringah 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><u>Division 8A</u> 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 in the original consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</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 in the original 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 in the original 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 in the original 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 Warringah 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> <p>(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.</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	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 'Matters for Consideration'	Comments
EPA Regs	
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.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

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 1 submission/s from:

Name:	Address:
Hendrik Pieter Laubscher	171 Ocean Street NARRABEEN NSW 2101

The following issues was raised in the submission and each has been addressed below:

- Visual Privacy**

The submission received has raised concern that the proposed changes to the first floor windows, and the external privacy screens on the southern elevation will result in additional privacy impact on the adjoining development at 171 Ocean Street, Narrabeen.

Comment:

This matter is discussed in detail under Part D8 Privacy of the WDCP section in this report. In summary, the window changes have a direct impact on the privacy levels of the adjoining development. Accordingly, it is recommended that suitable conditions be included in the modified consent to ensure the privacy between the properties is reasonably maintained. The conditions also ensure that the development, as amended, remains consistent with the requirement of Clause D8 - Privacy control and the conditions of the original development consent.

Therefore, this issue is addressed by suitable conditions.

REFERRALS

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

External Referral Body	Comments
	recommended.

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

An amended BASIX certificate has been submitted with the application (see Certificate No. 1039627S and date 25 August 2019). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 1039627S and date 25 August 2019).

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

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

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.

SEPP (Coastal Management) 2018

The subject site is identified as being located within the Coastal Use Area under the provisions of SEPP (Coastal Management) 2018. The application has been considered with regard to the relevant provisions of State Environmental Planning Policy (Coastal Management) 2018 and Council can be satisfied that the proposal is consistent with the relevant matters prescribed by this policy.

Warringah Local Environmental Plan 2011

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

Development Standard	Requirement	Approved	Proposed	Complies
Height of Buildings:	8.5m	8.6m (RL16.8)	8.6m (RL16.8)	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	N/A
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
5.5 Development within the coastal zone	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes
6.5 Coastline hazards	Yes

Detailed Assessment

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	up to 8m	No change	Yes
B3 Side Boundary Envelope	4m South	Encroachment of up to 1.0m for a length of 11m	0.4m for a length of 8m	Yes
	4m West	Encroachment of up to 0.87m for 6.5m, and 0.4m for a length of 10.5m	No encroachment	Yes
B5 Side Boundary Setbacks	0.9m West	0.9m Garage 1.9m - 2.1m First Floor	1.0m 3.0m First Floor	Yes
	0.9m South	1.4m - 2.4m First Floor	2.5m	Yes
B7 Front Boundary Setbacks	6.5m	0.6m Garage 0.0m Roofing 3.1m - 3.7m First Floor	No change Over the front boundary line (0.1m) No change	Yes No Yes
B9 Rear Boundary Setbacks	6m	13.3m First Floor Balcony 10.7m Access Stairs	No change	Yes
D1 Landscaped Open Space and Bushland Setting	40%	37%	No change	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E9 Coastline Hazard	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

The approved building envelope will be reduced as result of Condition No. 2 of the Development Consent DA2018/1290. The amended plans show the increased setback to the southern and western boundaries. The modified development now only encroaches the side boundary envelope of 4m and 45 degrees on the southern elevation as follows:

- South Elevation - Encroachment of 0.4m for a length of 8m (10% variation); and
- West Elevation - no encroachment

Therefore, the proposed modification reflects the requirements of Condition No. 2 of the Development Consent DA2018/1290, and is considered to be an improvement and consistent with the objectives of this Clause.

B7 Front Boundary Setbacks

Whilst there is no change to the front setback of the garage or first floor, the modified roof line of the ground floor is located forward of the front boundary line encroaching above the road reserve on

Tourmaline Street.

Therefore, a condition is recommended to delete this structure from the approved plans.

D8 Privacy

The modification seeks to make amendments to the previously approved windows on the northern, eastern, and southern elevations.

The proposed changes to the windows on the northern and eastern elevation do not raise visual privacy issues due to the distance to the neighbouring Tourmaline Street residential properties and the public beach area. Therefore, these proposed modified windows are acceptable.

The following changes are proposed to southern elevation windows:

- Window W8 (formally W7) displays the conditioned 1.5m sill height
- Window W7 (formally W6) adjoining the sitting room sill height is now 0.9m above the finished floor level
- Window W7 (formally W6) adjoining the stairwell sill height is now 0.9m above the finished floor level
- Windows W6 adjoining the ensuite replace former windows W5 and W4

A comparison between the proposed modified southern elevation and the approved development are shown below in diagram 1 and 2 below.

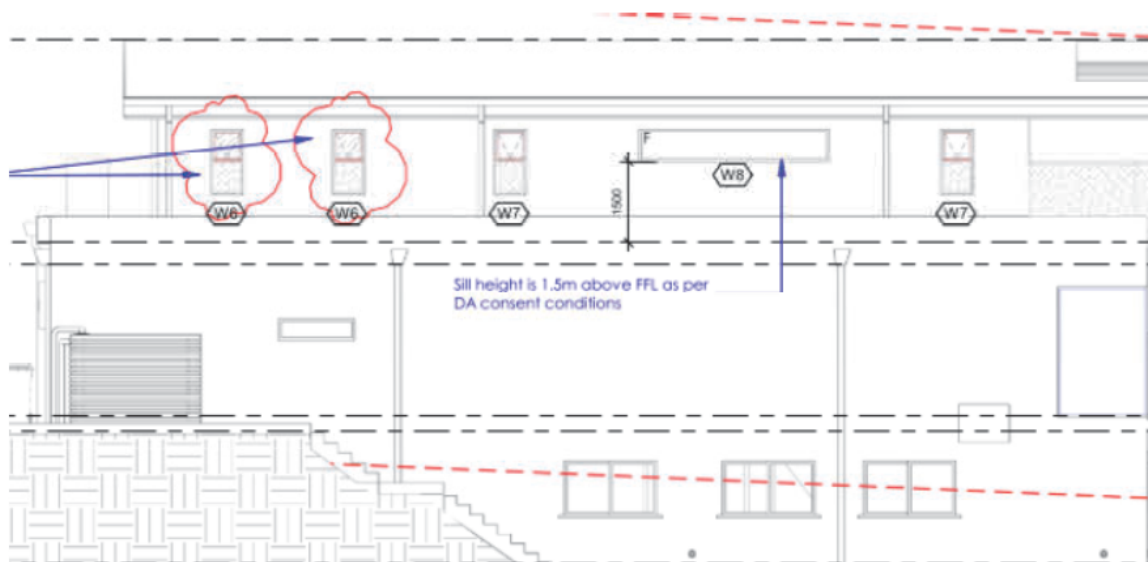


Diagram 1. Modified southern elevation with modified window changes

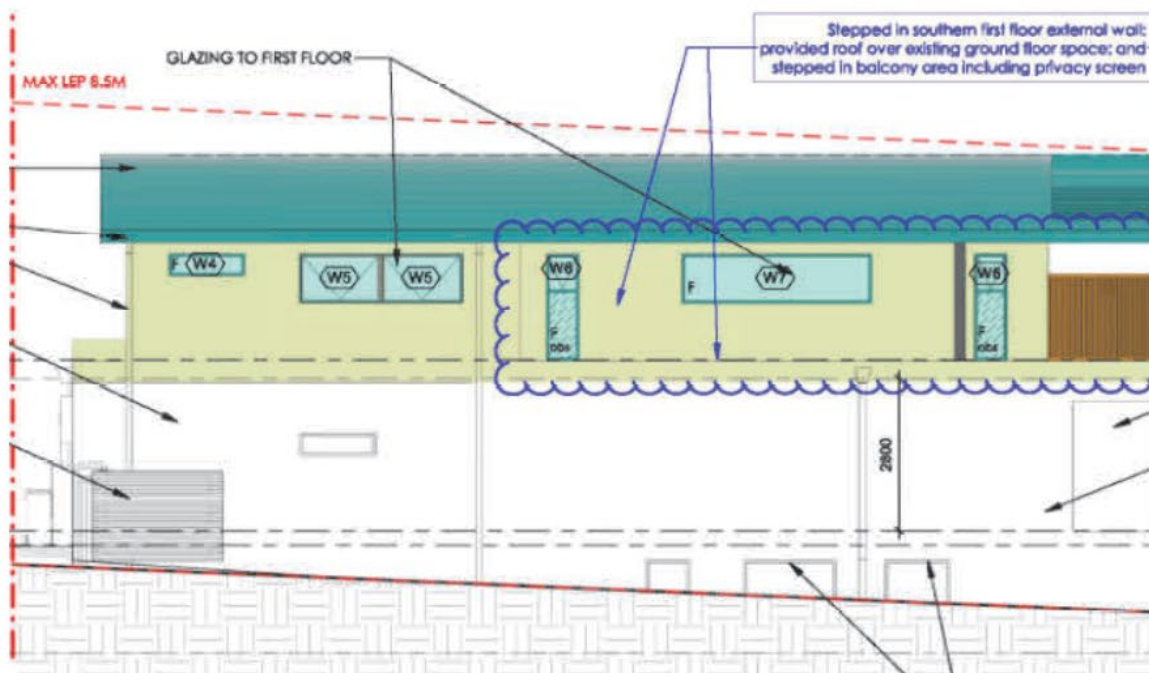


Diagram 2. Development application southern elevation windows.

The changes to the southern elevation windows will have direct impact to the amenity of the adjoining property to the south, being No.171 Ocean Street, Narrabeen.

Whilst the new windows (W6 x 2 and W7 x 2) are located adjoining what is considered a transitional area (i.e the stairwell), and a low usage room (i.e. en-suite), additional privacy measures are required to maintain reasonable privacy levels.

The modified windows are shown as shaded on the submitted plans to represent opaque glazing. However, as this is not documented on the submitted plans, and in absence of a window schedule, a condition is included to ensure that these shaded areas of windows are treated with opaque glazing. This will ensure a reasonable level of privacy and amenity to No.171 Ocean Street Narrabeen is achieved, and also demonstrates consistency with the DDP condition.

There is also proposed changes to the materials utilised for the external privacy screens on the southern elevation. No details have been provided on the materials to be utilised for these privacy screens, and in the absence of a window schedule, a condition will also be imposed to ensure that these glazed privacy screens are of opaque glazing to maintain reasonable privacy and amenity to No.171 Ocean Street Narrabeen.

Therefore, the conditioned changes to the proposed windows and privacy screens on the southern elevation will ensure the modified proposal satisfies the previous conditions of the DDP and the objectives of the privacy control.

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

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development 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;
- Warringah Local Environment Plan;
- Warringah 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 proposal has been assessed in accordance with Section 4.55(2) and the heads of consideration listed in Section 4.15 of the Environmental Planning & Assessment Act 1979 (as amended) and is considered to be satisfactory.

The amended proposal, as conditioned, is assessed as being generally consistent with the applicable planning controls that apply to the site under WLEP 2011 and WDCP 2011 and the requirements of Condition No. 2 of the Development Consent DA2018/1290.

The primary concern raised by the southern adjoining property has been addressed and appropriately conditioned to address the specific concern.

The assessment of the application has demonstrated that the proposed development (as amended) is found to be satisfactory subject to conditions with regard to visual privacy and its impact on the adjoining and nearby development.

Accordingly, it is recommended that approval be granted to the modification application subject to the modified conditions.

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 approval to Modification Application No. Mod2019/0409 for Modification of Development Consent DA2018/1290 granted for alterations and additions to an existing dwelling house on land at Lot B DP 377414,2 Tourmaline Street, NARRABEEN, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Analysis Plan	14/08/2019	Micris Design Pty Ltd
Ground Floor Demolition Plan	14/08/2019	Micris Design Pty Ltd
Site, Ground Floor, First Floor Plan	14/08/2019	Micris Design Pty Ltd
East, north,south, west elevation and section	14/08/2019	Micris Design Pty Ltd

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

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

B. Delete Condition No.2 Amendments to the approved plans as follows:

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

- The first floor is to maintain a minimum setback of 2.5 metres to the southern boundary
- The first floor is to maintain a minimum setback of 3.0 metres to the western boundary
- The sill height of window W7 is to be a minimum height of 1.5m above the finished floor level.

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.

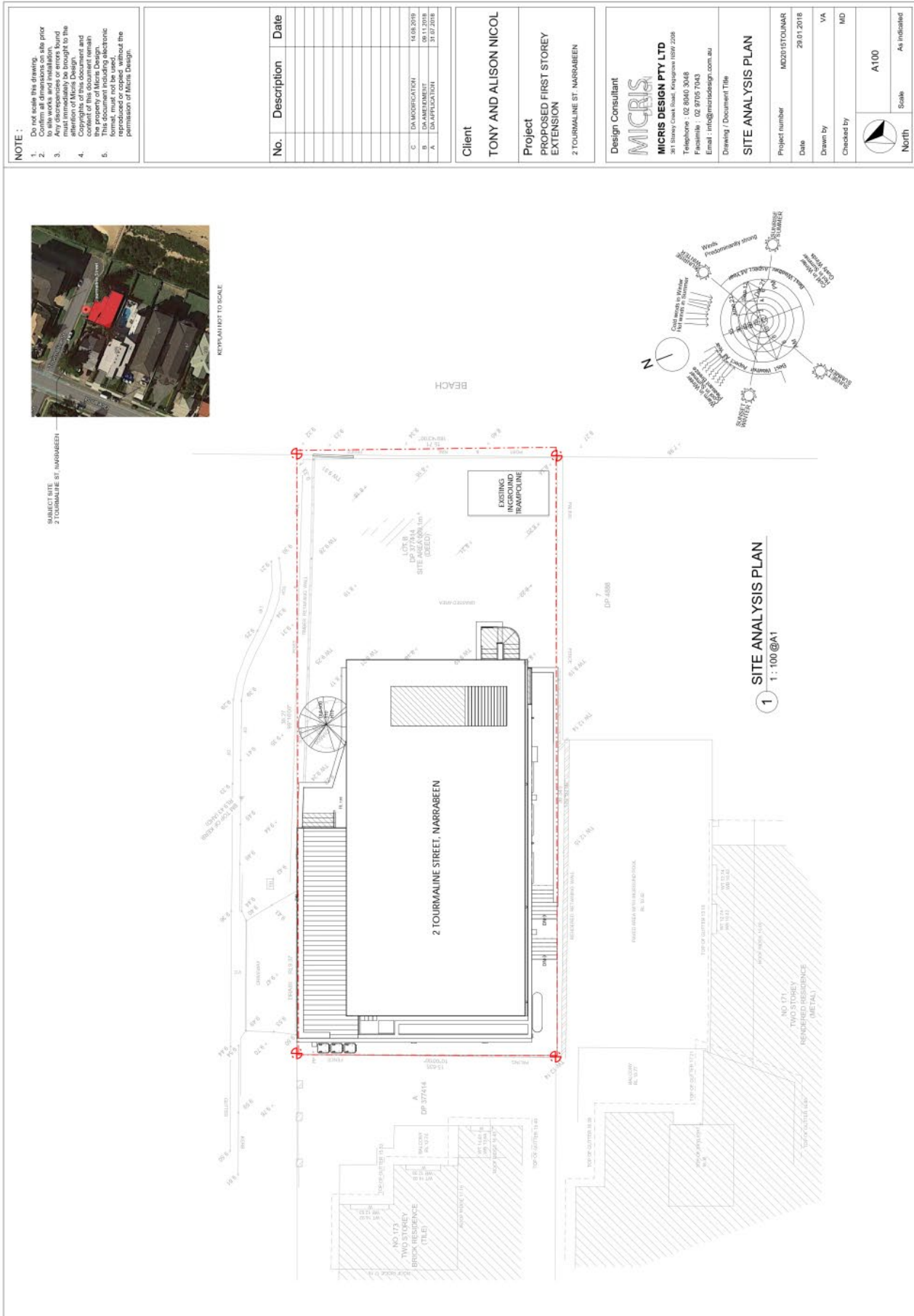
B. Add Condition No.2a Amendments to the approved plans to read as follows:

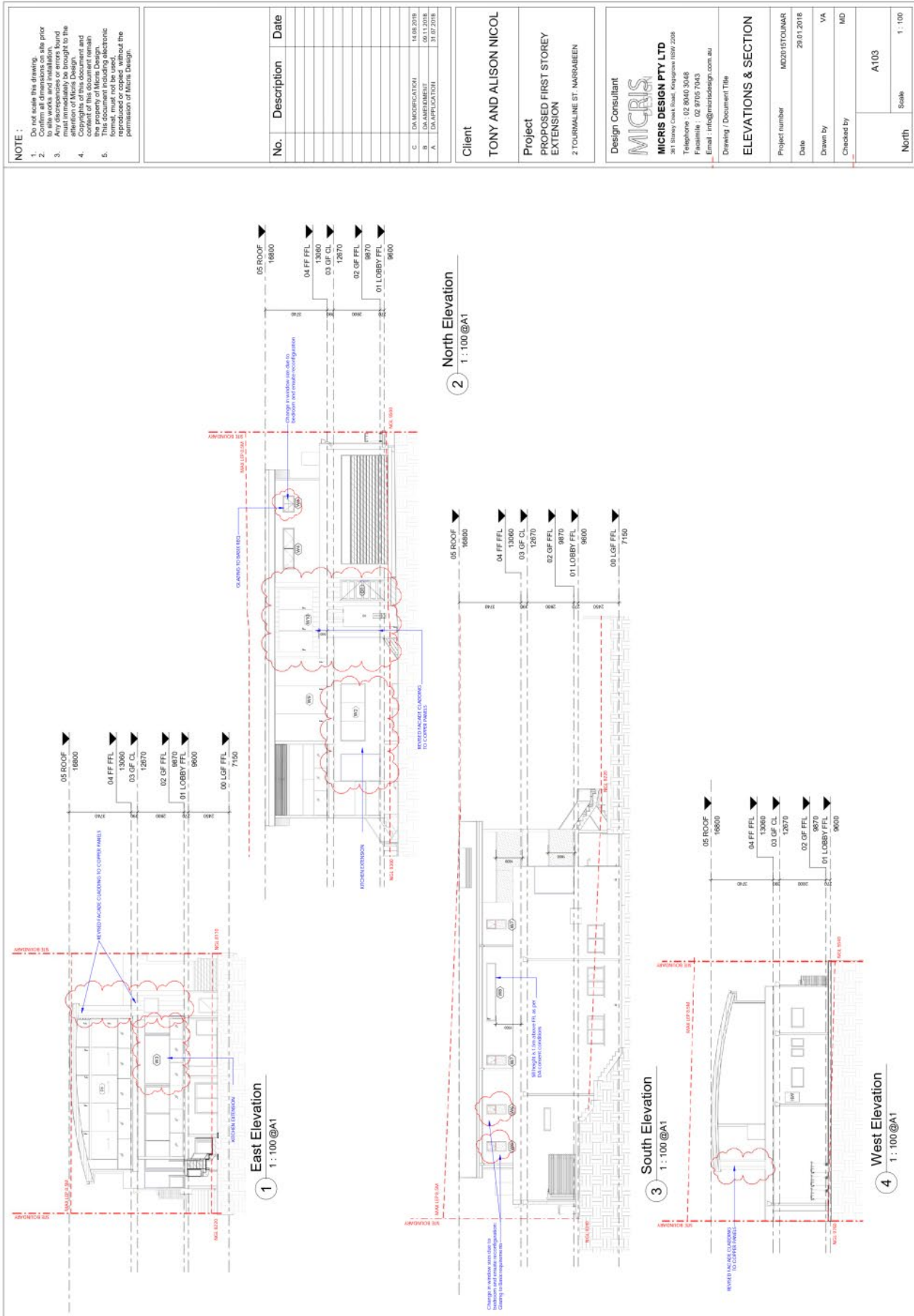
The following amendments are to be made to the approved plans:

- a) Windows W6, adjoining the en-suite on the southern elevation are to be fitted with obscure glazing.
- b) Window W7 adjoining the stairwell on the southern elevation is to be fitted with obscure glazing to a minimum height of 1.5m above the finished floor level.
- c) Window W7 adjoining the sitting room on the southern elevation is to be fitted with obscured glazing to a minimum height of 1.5m above the finished floor level.
- c) The privacy screens adjoining the balconies on the southern elevation are to be fitted with obscure glazing.
- d) The roof is not to encroach above the road reserve on Pacific Lane, and is to remain wholly within the property boundaries.

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.





ITEM 3.2	DA2019/1070 - 81 PALMGROVE ROAD, AVALON BEACH - CONSTRUCTION OF A SECONDARY DWELLING
REPORTING MANAGER	Matthew Edmonds
TRIM FILE REF	2019/664257
ATTACHMENTS	1 Assessment Report 2 Site Plan & 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 **refuse** Development Consent to DA2019/1070 for construction of a secondary dwelling on land at Lot 381 DP 16902, 81 Palmgrove Road, Avalon Beach, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1070
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Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 381 DP 16902, 81 Palmgrove Road AVALON BEACH NSW 2107
Proposed Development:	Construction of a secondary dwelling
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Roslyn Lily Saunders
Applicant:	Avalon Granny Flats

Application Lodged:	26/09/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New second occupancy
Notified:	11/10/2019 to 25/10/2019
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 10.91%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 93,000.00
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The applicant seeks development consent for the construction of a secondary dwelling which is non-complaint with the 5.5m maximum height development standard for a detached secondary dwelling under Clause 4.3(2FA) of the PLEP 2014. The secondary dwelling has a maximum height of 6.1m, which represents a variation of 10.91%. As such, the application is referred to the DDP for a determination.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for the construction of a secondary dwelling. The secondary dwelling comprises:

- One (1) bedroom;
- A living room;

- A kitchen;
- An external laundry;
- An elevated deck on the northern elevation; and
- A attached carport on the southern elevation.

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 - 7.7 Geotechnical hazards
Pittwater 21 Development Control Plan - B1.4 Aboriginal Heritage Significance
Pittwater 21 Development Control Plan - B3.1 Landslip Hazard
Pittwater 21 Development Control Plan - B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community
Pittwater 21 Development Control Plan - B5.7 Stormwater Management - On-Site Stormwater Detention
Pittwater 21 Development Control Plan - C1.12 Waste and Recycling Facilities
Pittwater 21 Development Control Plan - D1.5 Building colours and materials
Pittwater 21 Development Control Plan - D1.8 Front building line

SITE DESCRIPTION

Property Description:	Lot 381 DP 16902 , 81 Palmgrove Road AVALON BEACH NSW 2107
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Palmgrove Road, Avalon Beach.</p> <p>The site is irregular in shape with a frontage of 15.85m along</p>

	<p>Palmgrove Road and a maximum depth of 93.92m along the western side boundary. The site has a surveyed area of 1379sqm.</p> <p>The site is located within the E4 Environmental Living zone and accommodates a single storey detached dwelling house with a hardstand parking area in front of the dwelling.</p> <p>The site experiences a fall of approximately 26m that slopes towards the northern front boundary.</p> <p>The site contains landscaped open space within the front and rear yards and contains a number of trees and dense vegetation throughout the site.</p> <p>The site is mapped as being located within the 'Littoral Rainforest Proximity Area' under the provisions of the <i>State Environmental Planning Policy (Coastal Management) 2018</i> (CM SEPP).</p> <p>The site is mapped as being located within the 'Geotechnical Hazard H1' area and the 'Biodiversity' area under the provisions of the <i>Pittwater Local Environmental Plan 2014</i> (PLEP 2014). Furthermore, the site is mapped as containing 'Acid Sulfate Soils Class 5' under the provisions of the PLEP 2014.</p> <p>The majority of the site is mapped within the Pittwater Spotted Gum Ecological Endangered Community area.</p> <p>The rear portion of the site is mapped as being located within an 'Extremely High' Aboriginal Potential area.</p> <p>Detailed Description of Adjoining and Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one (1) and two (2) storey detached dwelling houses.</p>
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Map:



SITE HISTORY

The site has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- Development Application N0285/17 for the construction of a secondary dwelling with attached carport including removal of three (3) trees approved on 13 September 2017 by Council staff under delegation;
- Development Application DA2019/0822 for the construction of a secondary dwelling rejected by Council on 10 September 2019 due to a lack of required documentation.

Site Visit

A site visit was undertaken on 09 October 2019.

Request for Withdrawal of Development Application

On 31 October 2019 a formal letter was sent to Avalon Granny Flats (applicant) requesting the withdrawal of the development application due to a number of areas of non-compliance and insufficient information. Council afforded the applicant seven (7) days to confirm the withdrawal. The applicant has not responded to the request. As such, Council assumes that the applicant is not withdrawing the application.

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	See discussion on "Environmental Planning Instruments" in this report.

Section 4.15 Matters for Consideration'	Comments
planning instrument	
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><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters may be addressed via a condition of consent, should the application be approved.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</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.</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 clause is not relevant to this application.</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 may be addressed via a condition of consent, should the application be approved.</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 may be addressed via a condition of consent, should the application be approved.</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 may be addressed via a condition of consent, should the application be approved.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>

Section 4.15 Matters for Consideration'	Comments
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> <p>(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.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The applicant did not submit a Geotechnical Risk Assessment and associated certified forms in accordance with Council's Geotechnical Risk Management Policy for Pittwater. As such, Council could not ascertain the suitability of the site for the proposed secondary dwelling.
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	This assessment has found the proposal to be contrary to the relevant requirements in relation to building sustainability, building height, geotechnical hazards and stormwater management. The proposed development will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bushfire prone land. Accordingly, a Bushfire Assessment report prepared by Bushfire Consultancy Australia was submitted with this application. The report stipulates that the bushfire attack level is 'BAL-12.5' for the subject site. The application was not referred to the NSW Rural Fire Service for comment.

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 2 submission/s from:

Name:	Address:
Mr Mark Blake	79 Palmgrove Road AVALON BEACH NSW 2107
Ms Sally Louise Rose Martin	77 Palmgrove Road AVALON BEACH NSW 2107

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

- Off-street parking;
- Stormwater Management; and
- Tree Removal and Landscaping.

The matters raised within the submissions are addressed as follows:

Off-street Parking

A submission was received from the occupant of the eastern adjoining property (79 Palmgrove Road). The submission raised concern that the proposed development would not provide off-street parking, ultimately resulting in a surplus of vehicles being parked on Palmgrove Road. In response to this concern, the application proposes a double carport at the rear of the secondary dwelling. The proposed spaces, in conjunction with the existing hardstand area would provide three (3) compliant off street parking spaces.

Stormwater Management

A submission was received from the occupant of 77 Palmgrove Road (property located to the east) seeking clarification on the proposed stormwater management system. The proposed development would result in an addition impervious area that exceeds 50sqm. Accordingly, the application requires the provision of on-site detention (OSD) tanks pursuant to Clause B5.7 of the P21 DCP. The application does not propose OSD tanks. As a consequence, this has been outlined as a reason for refusal.

Tree Removal and Landscaping

A submission was received from the occupant of 77 Palmgrove Road seeking clarification on proposed planting within this application. An Arboricultural Impact Assessment was submitted with this application and recommended the removal of one (1) *Angophora floribunda* tree. Council's Biodiversity Officer assessed the application with respect to the tree removal and raised no objections, subject to the replanting of one (1) locally native canopy tree and additional conditions. No further landscaping was proposed with this application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p>Council's Natural Environment - Biodiversity section raises no objections to the proposal, subject to conditions.</p> <p>This application was assessed against Pittwater LEP Clause 7.6 and Pittwater DCP B4.7 Pittwater Spotted Gum EEC. The southern portion of the site is mapped as Pittwater Spotted Gum (PSG) EEC within the "The Native Vegetation of the Sydney Metropolitan Area" mapping project (OEH 2016). The site is also mapped within the Coastal Management SEPP as "Littoral Rainforest Proximity Area" and therefore this SEPP applies to the land.</p> <p>The proposal for the construction of a secondary dwelling which is situated within an area of mown lawn, and will result in the removal of one prescribed tree, T2 <i>Angophora floribunda</i>. An Arborist report has been submitted which satisfies tree impact assessment requirements. The tree to be removed is not within areas mapped as PSG EEC. The Coastal SEPP was not addressed in the SEE, however the proposal meets the objectives relating to Littoral Rainforest Proximity Area.</p> <p>This applicant has demonstrated that the proposal has been sited and designed to avoid and minimise impacts to biodiversity values. Replacement canopy tree plantings will be conditioned to comply with controls to achieve no net loss of canopy trees.</p>
NECC (Development Engineering)	<p><u>Geotechnical Risk Assessment Report:</u> The site is located in Geotechnical Hazard H1 Areas. In accordance with Council's Geotechnical Risk Management Policy for Pittwater, the application is to be accompanied by a geotechnical risk assessment report and certified forms. The applicant will need to submit an updated report and the forms to Council for the development.</p> <p><u>Stormwater management:</u> Additional impervious area is more than 50 m². Therefore, the proposed scale of development requires provision for OSD in accordance with Pittwater DCP Clause B5.7.</p> <p>As a result the application can not be supported.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>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.</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 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 was not submitted with this application. This has been included as a reason for refusal.

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.

SEPP (Coastal Management) 2018

The site is mapped as being located within the 'Littoral Rainforest Proximity Area' under the provisions of the CM SEPP. Accordingly, the application is assessed against Clauses 11 and 15 of the CM SEPP.

11 Development on land in proximity to coastal wetlands or littoral rainforest

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
- (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
 - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

The subject site is located approximately 79m from the adjacent littoral rainforest area. As such, it is not anticipated that the proposed development would adversely impact the biophysical, hydrological or ecological integrity of the adjacent littoral rainforest. Furthermore, the proposed development would not impact ground water flows to and from the adjacent littoral rainforest.

15 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The proposed development would not exacerbate coastal hazards within the locality.

Having regard to the above assessment, it is considered that the proposed development meets the relevant Objectives of the CM SEPP.

Pittwater Local Environmental 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:	5.5m	6.1m	10.91%	No
Gross Floor Area:	60sqm	59.1sqm	-	Yes

Compliance Assessment

Clause	Compliance with Requirements

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	No
5.4 Controls relating to miscellaneous permissible uses	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	No
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

This application proposes a building height that exceeds the maximum permitted by Clause 4.3 (2FA) of the PLEP 2014. A formal written request to justify contravention of the development standard has required by Clause 4.6 of the PLEP 2014 has not been submitted. Under these circumstances, Council has no power to vary the height limit.

7.7 Geotechnical hazards

The site is mapped as being located within the 'Geotechnical Hazard H1' area under the provisions of the PLEP 2014. In accordance with Council's Geotechnical Management Policy for Pittwater, the application is to be accompanied by a geotechnical risk assessment report and certified forms. The applicant has not provided a geotechnical report or certified forms as required by Council's policy. Therefore, Council is unable to ascertain the geotechnical risks of the proposed development. As a consequence, the proposed development fails to comply with the requirements of this Control.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	20.3m (established building line)	8.33m (North)	58.97%	No
Rear building line	6.5m	61.86m (South)	-	Yes
Side building line	2.5m	7.03m (West)	-	Yes
	1m	1.5m (East)	-	Yes
Building envelope	3.5m	Within envelope	-	Yes
	3.5m	Within envelope	-	Yes
Landscaped area	60% (827.4sqm)	63.48% (875.4sqm)	-	Yes

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for Landscaped area - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	No	No
A4.1 Avalon Beach Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	No	No
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	No	No
B6.2 Internal Driveways	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
C1.11 Secondary Dwellings and Rural Worker's Dwellings	Yes	Yes
C1.12 Waste and Recycling Facilities	No	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.4 Scenic protection - General	Yes	Yes
D1.5 Building colours and materials	No	Yes
D1.8 Front building line	No	Yes
D1.9 Side and rear building line	Yes	Yes
D1.11 Building envelope	Yes	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

B1.4 Aboriginal Heritage Significance

The rear portion of the site is mapped as being located within an 'Extremely High' Aboriginal Potential area. No works are proposed within this area and no significant landscape features (i.e. large rock outcrops) are within the vicinity of the proposed works. As such, it is considered that the proposed development complies with the requirements of this Control.

B3.1 Landslip Hazard

The site is mapped as being located within the 'Geotechnical Hazard H1' area under the provisions of the PLEP 2014. In accordance with Council's Geotechnical Management Policy for Pittwater, the application is to be accompanied by a geotechnical risk assessment report and certified forms. The applicant has not provided a geotechnical report or certified forms as required by Council's policy. Therefore, Council is unable to ascertain the geotechnical risks of the proposed development. As a consequence, the proposed development fails to comply with the requirements of this Control.

B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community

The majority of the site is mapped within the Pittwater Spotted Gum Ecological Endangered Community area. It is noted that the proposed secondary dwelling would be located within this area. Council's Biodiversity Officer has assessed the application against the requirements of this Control and raised no objections, subject to conditions. As such, it is considered that the proposed development is consistent with the Objectives of this Control.

B5.7 Stormwater Management - On-Site Stormwater Detention

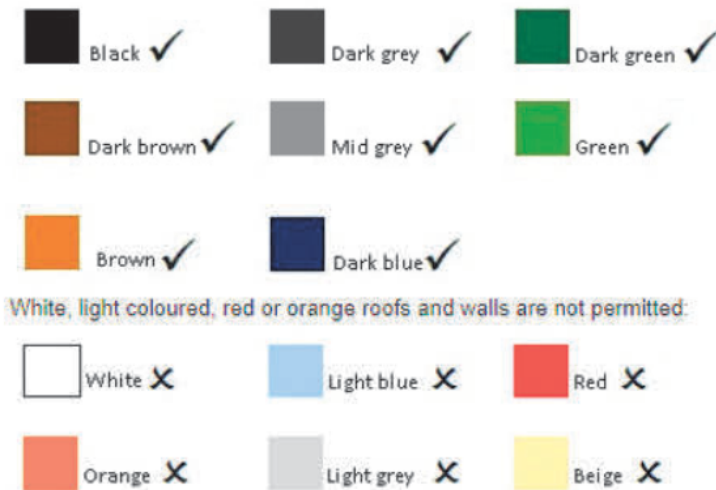
The proposed development would result in an addition impervious area that exceeds 50sqm. Accordingly, the application requires the provision of on-site detention (OSD) tanks pursuant to Clause B5.7 of the P21 DCP. The application does not propose OSD tanks. As a consequence, the proposed development fails to comply with this Control.

C1.12 Waste and Recycling Facilities

A detailed Waste Management Plan was not submitted with this application. As a consequence, the application fails to comply with the requirements of this Control. It is noted that this matter could be addressed through conditional approval.

D1.5 Building colours and materials

Clause D1.5 of the P21 DCP stipulates that development is to incorporate external colours and materials that are of dark and earthy tones as indicated on the diagram.



The application proposes to utilise a light grey tone on the external walls of the proposed secondary dwelling, which fails to comply with this Control. It is noted that this matter could be addressed through conditional approval.

D1.8 Front building line

Description of non-compliance

Clause D1.8 of the P21 DCP stipulates that built structures (other than driveways, fences and retaining walls) shall be setback 6.5m from the front boundary or the established building line within the locality, whichever is greater. In calculating the established building line, the front building line is taken from the immediate adjoining properties (77 and 83 Palmgrove Road - 79 is a battle-axe allotment). The survey submitted with this application indicates that the established building line within the locality is 20.3m. The proposed secondary dwelling would be setback 8.33m from the northern front boundary, which fails to comply with the Control.

Merit Assessment

With regard to the consideration for a variation, the proposed development is considered against the underlying Objectives of the Control as follows:

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

Comment:

The proposed development is consistent with the desired character statement of the Avalon Beach Locality.

- *The amenity of residential development adjoining a main road is maintained.*

Comment:

The site does not adjoin a main road, therefore this Objective is not relevant to this application.

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

Comment:

An Arboricultural Impact Assessment was submitted with this application and recommended the removal of one (1) *Angophora floribunda* tree. Council's Biodiversity Officer assessed the application with respect to the tree removal and raised no objections, subject to the replanting of one (1) locally native canopy tree and additional conditions. The recommended replacement planting, in conjunction with the existing vegetation on site, would soften the built form and reduce the visual impact on the streetscape.

- *Vehicle manoeuvring in a forward direction is facilitated.*

Comment:

The proposed development would allow vehicles to enter and exit the site in a forward direction.

- *To encourage attractive street frontages and improve pedestrian amenity.*

Comment:

As noted above, the proposal would not adversely impact the street frontage.

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

Comment:

Whilst the proposed secondary dwelling would encroach into the established building line, it is noted that numerous developments along Palmgrove Road contain a front building line that reflects a 6.5m setback on average. Having regard for this matter, it is considered that the proposed secondary dwelling sufficiency responds to the spatial characteristics of the existing urban environment.

Having regard to the above assessment, it is considered that the relevant Objectives of the Control have been achieved. Therefore, the application is supported on merit, in this particular circumstance.

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.

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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

- Inconsistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Inconsistent 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 does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

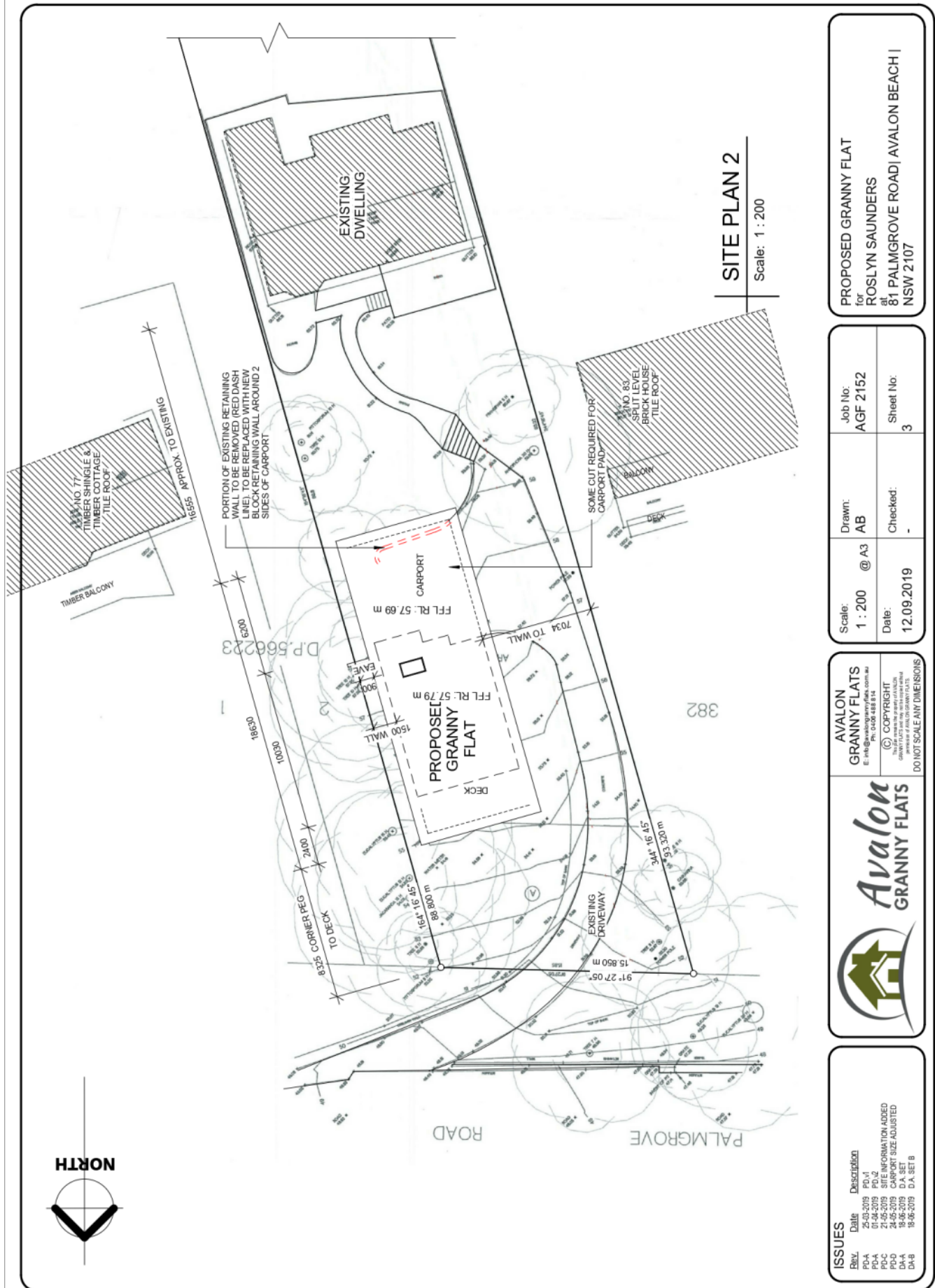
RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2019/1070 for the Construction of a secondary dwelling on land at Lot 381 DP 16902,81 Palmgrove Road, AVALON BEACH, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of buildings of the Pittwater Local Environment Plan 2014.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to development standards of the Pittwater Local Environment Plan 2014.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.7 Geotechnical hazards of the Pittwater Local Environment Plan 2014.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B3.1 Landslip Hazard of the

Pittwater 21 Development Control Plan.

6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B5.7 Stormwater Management - On-Site Stormwater Detention of the Pittwater 21 Development Control Plan.





GENERAL NOTES

Roof water to be discharged to rainwater tank in accordance with Local Authority requirements.

Design based upon non-cyclonic N3 for wind speeds to 41m/s.

TERMITE PROTECTION
As per Australian Standard AS 3660.1 - 2000.

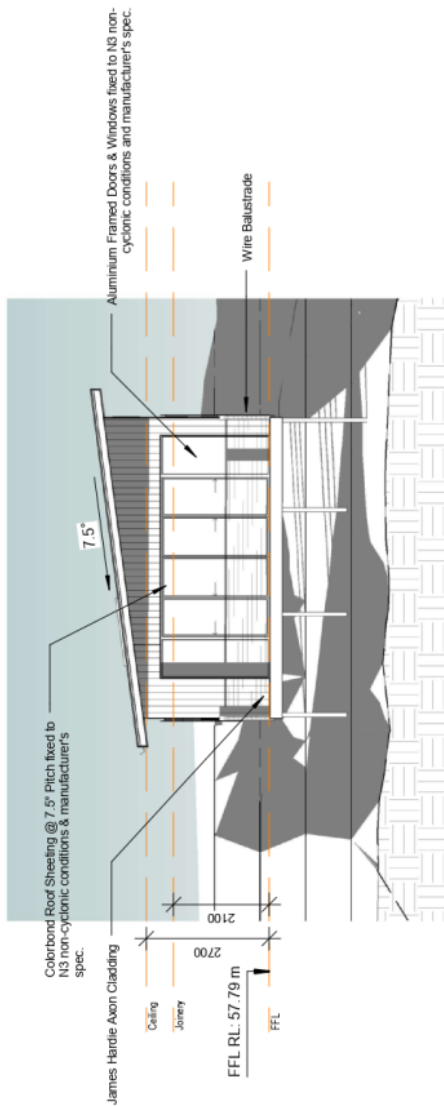
Hitchings and fittings are indicative only. Refer Builders Specifications.

Line underside of external covered areas with FC sheeting

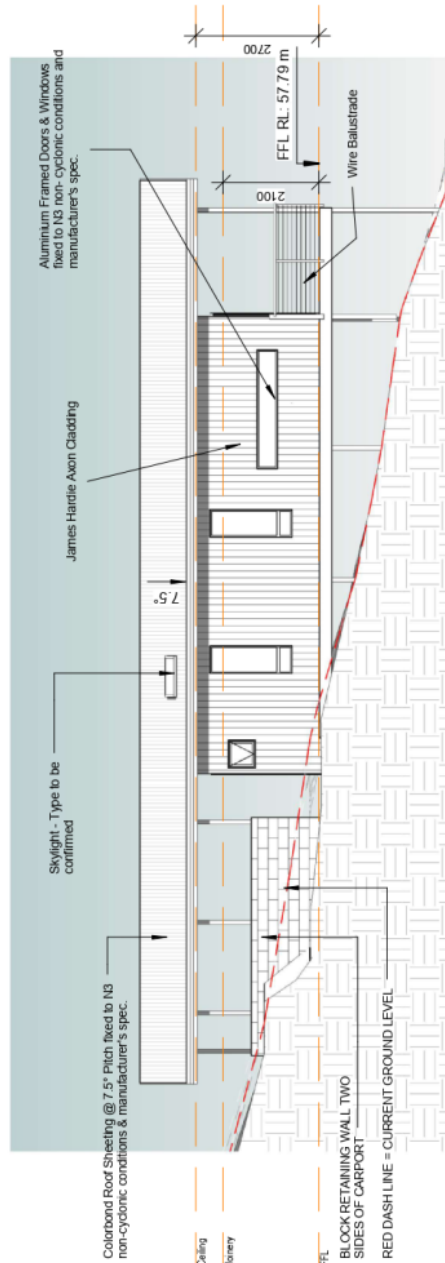
All doors and windows are to be aluminium framed unless noted otherwise.

LEGEND:

OH Overhang
DP Downpipe
PL Plasterboard
CO Colorbond
NGL Natural Ground Line
FGL Finished Ground Line



1 NORTH ELEVATION
1:100



2 EAST ELEVATION
1:100

ISSUES	Rev	Date	Description
	PD-A	25-03-2019	PD.1
	PD-A	01-04-2019	PD.2
	PD-C	21-05-2019	SITE INFORMATION ADDED
	PD-D	24-05-2019	CARPOT SIZE ADJUSTED
	DA-A	18-06-2019	DA.1
	DA-B		DA.2 SET B

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Scale: 1 : 100 @ A3	Drawn: AB	Job No: AGF 2152
Date: 12.09.2019	Checked: LJ	Sheet No: 13

PROPOSED GRANNY FLAT
for
ROSALYN SAUNDERS
at
81 PALMGROVE ROAD | AVALON BEACH |
NSW 2107



GENERAL NOTES

Roof water to be discharged to rainwater tank in accordance with Local Authority requirements.

Design based upon non-cyclonic N3 for wind speeds to 41m/s.

TERMITES PROTECTION
As per Australian Standard AS 3660.1 - 2000.

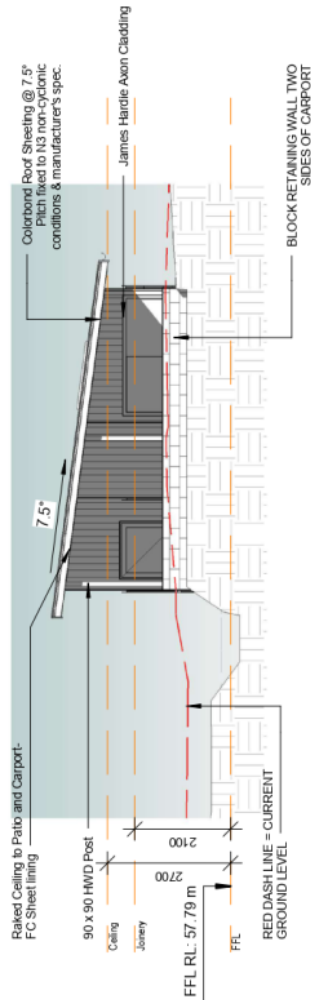
Halfchips and fittings are indicative only. Refer Builders Specifications.

Line underside of external covered areas with FC sheathing

All doors and windows are to be aluminium framed unless noted otherwise.

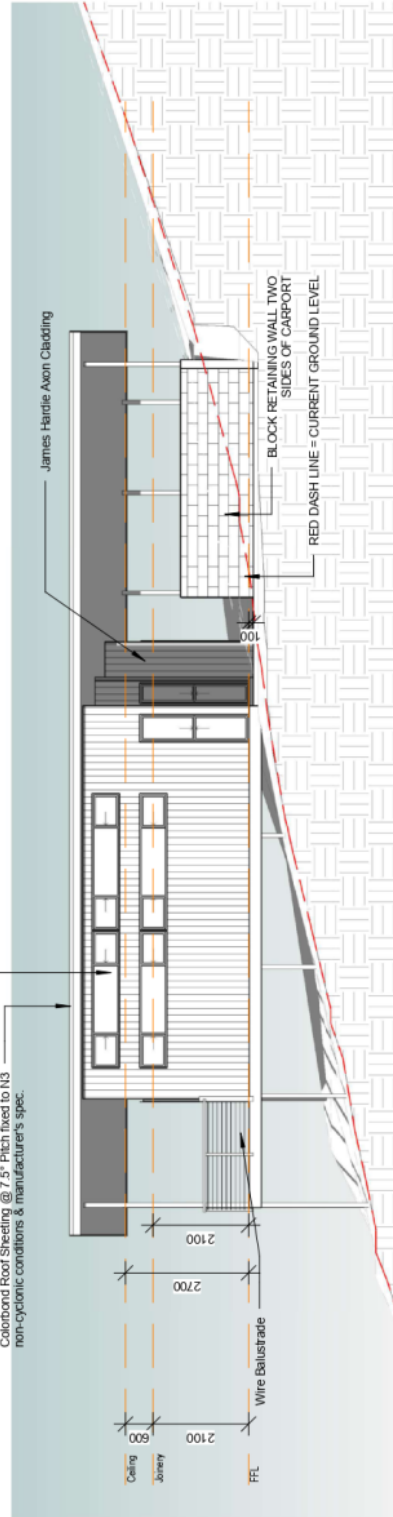
LEGEND:

OH Overhang
JP Jowhepp
JP James Hardie - Primline
PL Cladding
CO Colorbond Custom Orb
NGL Natural Ground Line
FGL Finished Ground Line



1 SOUTH ELEVATION
1:100

Aluminium Framed Doors & Windows fixed to N3 non-cyclonic conditions & manufacturer's spec.
Colorbond Roof Sheeting @ 7.5° Pitch fixed to N3 non-cyclonic conditions & manufacturer's spec.



2 WEST ELEVATION
1:100

PROPOSED GRANNY FLAT
for
ROSALYN SAUNDERS
at
81 PALMGROVE ROAD | AVALON BEACH |
NSW 2107

Scale: 1:100 @ A3
Job No: AGF 2152
Date: 12.09.2019
Checked: LJ
Sheet No: 14

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ISSUES	Rev	Date	Description
	PD-A	25.03.2019	PD-A1
	PD-A	01.04.2019	PD-A2
	PD-C	21.05.2019	SITE INFORMATION ADDED
	PD-D	24.05.2019	CARPORT SIZE ADJUSTED
	DA-A	18.06.2019	DA-A1
	DA-B	18.06.2019	DA-B1

ITEM 3.3**DA2019/0309 - 257 WHALE BEACH ROAD, WHALE BEACH -
DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING
HOUSE INCLUDING SWIMMING POOL****REPORTING MANAGER****Rodney Piggott****TRIM FILE REF****2019/664270****ATTACHMENTS**

- 1 Assessment Report**
- 2 Site Plan & Elevations**

PURPOSE

To refer the attached application for determination as required under adopted delegations of the Charter.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/0309 for demolition works and construction of a dwelling house including swimming pool on land at Lot 171 DP 15376, 257 Whale Beach Road, Whale Beach, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0309
Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot 171 DP 15376, 257 Whale Beach Road WHALE BEACH NSW 2107
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	Yes
Owner:	Jennifer Elizabeth Davies
Applicant:	Walter Barda Design Pty Ltd
Application Lodged:	01/04/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	17/10/2019 to 31/10/2019
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 3,394,643.00

Based on a detailed assessment of the proposal against the applicable planning controls, the development is suitable and appropriate for the subject site.

A number of issues were raised during the assessment of this development application which relate to the previous approved development application (DA2018/0797 - Demolition works and construction of a new dwelling house with car stacker garage, swimming pool, front fencing and associated driveway and landscaping works). This application is subject to a Class 4 Appeal within the Land and Environment Court (Case number 2019/65673) filed on 27 February 2019 by the owners of Nos. 228, 230, 232 and 255 Whale Beach Road.

Additionally, it is noted that a Class 1 Appeal within the Land and Environment Court (Case number 2019/150634) was filed on 14 May 2019 for this current development application.

During the assessment the following issues were critical:-

- Overshadowing;
- Privacy;
- Height of building;
- Building envelope and setback controls;
- Views;
- State Environmental Planning Policy (Coastal Management) 2018;
- Objectives of the E4 Environmental Living Zone; and
- Desired future character of the Palm Beach Locality

A total of six (6) submissions were raised in the original notification and two (2) raised during the re-notification. Issues raised by the residents were as follows: -

- Proposal results in unreasonable overshadowing;
- Proposal results in unreasonable privacy impacts;
- Non-compliance with the building envelope and setback controls in the P21 DCP;
- Inconsistency with the objectives of the E4 Environmental Living zone;
- Inconsistency with the desired future character of the Palm Beach Locality in relation to bulk and scale;
- Inconsistency with the objectives of Clause 4.3 Height of Buildings of the Pittwater LEP 2014;
- Proposal unreasonably impacts on the view to the ocean from the street and from Nos. 226, 228, 230, 232, 234 and 255 Whale Beach Road;
- Height poles should be erected;
- Notification process;
- Misleading information contained in the View Sharing Assessment (VSA); and
- Landscaping within the front setback area and the nature strip

Referrals were sent to a number of Council Internal Referral Departments.

- Natural Environment (Coast and Catchments) reviewed the issues of Coastal Management SEPP and also reviewed the Coastal Engineering Advice prepared by Horton Coastal Engineering Pty. Ltd. submitted with the development application and agreed with their advice.
- Natural Environment (Bushland and Biodiversity) reviewed and recommended approval subject to conditions.
- Natural Environment (Development Engineering) reviewed the proposal including the Geotechnical Report which addresses the relevant control of the DCP controls and certifies that an acceptable risk is achievable for the development. A recommendation of approval subject to conditions.
- Landscape reviewed the landscape plans and subject to the protection of the existing Norfolk Island Pine on site and the completion of the landscaping that the outcome from a landscape perspective could be supported subject to conditions.

A number of site inspections were undertaken on the subject site including inspections at Nos. 226, 228, 230, 232, 234 and 255 Whale Beach Road to assess the impacts of the proposal.

The application has been assessed against the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), Environmental Planning and Assessment Regulations 2000 (EP&A Regulations 2000), relevant Environmental Planning Instruments (EPIs) and Council policies. The outcome of this

assessment is detailed within this report.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be approved subject to conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development seeks consent for the following works:

- Demolition of existing structures;
- Construction of dwelling house with double garage and vehicle turntable;
- Construction of a swimming pool; and
- Landscaping works.

Amended Plans, Statement of Support and View Sharing Assessment were received on 8 October 2019 addressing concerns raised by Council, in particular privacy for the adjoining property to the south (255 Whale Beach Road and some of the building elements of the proposed development).

The amendments are as follows:-

- *"1A: Stairwell Window W3.07 glazing to be obscure glass;*
- *1B: Proposed fixed splay privacy screen along terrace walkway at 02 Bedroom Level extended by 2475mm;*
- *1C: Kids terrace balcony extent at 02 Bedroom Level reduced by 1m at southern edge;*
- *2A: Proposed full height fixed privacy blades in front of W3.31 (south elevation) at 03 Master Level;*
- *2B: Reduced Master Bedroom Terrace (deletion of 1910mm x 2605mm round deck extension). Size of terrace reduced from 18m² to 12m². Deck increased 750mm towards east; and*
- *2C: Fixed low height (525mm) planter proposed on southern end of Master Terrace balcony (2060mm x 1940mm in size) - reducing trafficable area on south end of terrace at 03 Master Level."*

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 - Zone E4 Environmental Living
Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.3 Flood planning
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater Local Environmental Plan 2014 - 7.10 Essential services
Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.4 Solar Access
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.12 Waste and Recycling Facilities
Pittwater 21 Development Control Plan - D12.5 Front building line
Pittwater 21 Development Control Plan - D12.6 Side and rear building line
Pittwater 21 Development Control Plan - D12.8 Building envelope
Pittwater 21 Development Control Plan - D12.12 Fences - Flora and Fauna Conservation Areas
Pittwater 21 Development Control Plan - D12.13 Construction, Retaining walls, terracing and undercroft areas

SITE DESCRIPTION

Property Description:	Lot 171 DP 15376 , 257 Whale Beach Road WHALE BEACH NSW 2107
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Whale Beach Road, Whale Beach.</p> <p>The site is irregular in shape with a frontage of 15.285m along Whale Beach Road and an average depth of 67.6m. The site has a surveyed area of 1,027m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates a dwelling and shed.</p> <p>The site steeply slopes down approximately 24m from west to east. The site contains some significant vegetation, including a Norfolk Island Pine (across the common boundary between Nos. 257 and 259 Whale Beach Road), and extends to the dunes of Whale Beach.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by two- and three-storey detached dwellings.</p>

Map:



SITE HISTORY

DA2018/0797 - Demolition works and construction of a new dwelling house with car stacker garage, swimming pool, front fencing and associated driveway and landscaping works approved 28 November 2018 (by delegation of the Development Determination Panel)

Class 4 Appeal Land and Environment Court (Case number 19/65673) filed on 27 February 2019

This is a third party appeal.

Grounds for the Appeal

- "Ground 1: Failure to take into account increased risk of coastal hazards
- Ground 2: Failure to take into account view loss control in DCP
- Ground 3: Failure to take into account view sharing principles in DCP
- Ground 4: Failure to notify Development Application
- Ground 5A: Failure to renotify in breach of DCP
- Ground 5B: Decision not to renotify manifestly unreasonable
- Ground 6: Failure to consider management objectives for Coastal Use Area in Coastal Management Act 2016
- Ground 7: Character of Palm Beach Locality"

The appeal is pending the outcome of this current development application.

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	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><u>Division 8A</u> 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. Amended plans were requested to address concerns raised by Council in relation to privacy for southern property/dwelling at No. 255 Whale Beach Road. On 8 October 2019 amended plans and supporting information was received addressing these matters and form part of this assessment.</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>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	<p>(i) Environmental Impact</p> <p>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>

Section 4.15 Matters for Consideration'	Comments
environment and social and economic impacts in the locality	<p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(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.</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

Existing Use Rights are not applicable to this application.

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 Building Code and Bushfire Hazard Solutions, dated 22 March 2019) 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 6 submission/s from:

Name:	Address:
Ms Janet Elizabeth France	5 Tenilba Road NORTHBRIDGE NSW 2063
Mr John Michael Keldoulis	8D/45 Ocean Avenue DOUBLE BAY NSW 2028
Mr Livio Panozzo	PO Box 213 EASTWOOD NSW 2122
BBC Consulting Planners	PO Box 438 BROADWAY NSW 2007

Name:	Address:
Mr Derick Alex Borean	8 Griffith Avenue ROSEVILLE CHASE NSW 2069
Philip Bettman	PO Box 2009 NORTH SYDNEY NSW 2059

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

- Proposal results in unreasonable overshadowing;
- Proposal results in unreasonable privacy impacts;
- Non-compliance with the building envelope and setback controls in the P21 DCP;
- Inconsistency with the objectives of the E4 Environmental Living zone;
- Inconsistency with the desired future character of the Palm Beach Locality in relation to bulk and scale;
- Inconsistency with the objectives of Clause 4.3 Height of Buildings of the Pittwater LEP 2014;
- Proposal unreasonably impacts on the view to the ocean from the street and from Nos. 226, 228, 230, 232, 234 and 255 Whale Beach Road;
- Height poles should be erected;
- Notification process;
- Misleading information contained in the View Sharing Assessment (VSA); and
- Landscaping within the front setback area and the nature strip

The matters raised within the submissions are addressed as follows:

- Overshadowing

Comment: The proposed development is acceptable in relation to overshadowing for the reasons detailed in the section of this report relating to Section C1.4 Solar Access of the P21 DCP.

In summary the proposal complies with the DCP requirements (based on merit assessment).

- Privacy

Comment: The proposed development is acceptable in relation to privacy for the reasons detailed in the section of this report relating to Section C1.5 Visual Privacy of the P21 DCP.

In summary the proposal results in reasonable levels of privacy to adjoining properties.

- DCP Non-Compliance - Building Envelope, Front and Side Building Lines, Palm Beach Locality

Comment: The proposed development is acceptable in relation to non-compliance with the P21 DCP for the reasons detailed throughout this report.

In summary the variation to Section D12.5 Front building line, Section D12.6 side and rear building line and Section 12.8 Building envelope results in a proposal that is consistent with the objectives of the controls.

- LEP Non-Compliance - E4 Zone, Height of Building (incl. Height Pole Request)

Comment: The proposed development is compliant with the Pittwater LEP 2014 Height of Buildings control detailed under Part 4.3 Height of buildings for the reasons detailed throughout this report. Height poles have been erected by the Applicant. It is not considered necessary to request additional or alternative height poles as the information available via the height poles enables an accurate assessment.

A detailed assessment has been completed of the objectives under the Zone E4 Environmental Living zone within the Pittwater Local Environmental Plan 2014 and it is considered that the proposed development is consistent with those objectives.

- View Loss

Comment: The proposed development is acceptable in relation to view loss for the reasons detailed in the section of this report relating to Section C1.3 View Sharing of the P21 DCP.

It is considered that Clause 1.3 View Sharing of the P21 DCP and the view sharing principles of Tenacity Consulting vs Warringah Council [2004] NSWLEC 140 have been addressed and the issues raised within the submissions in relation to view loss do not warrant further amendment and/or refusal of this development application.

It is noted that BBC Planners representing the owners of Nos. 228, 230, 232 and 255 Whale Beach Road raised issues of view impacts on the properties of Nos. 259 and 261 Whale Beach Road (who they are not representing). Additionally, it is noted that Nos. 259 and 261 Whale Beach Road did not object against this current development application. Council considers that these properties will maintain reasonable view sharing in accordance with the view sharing principles of Tenacity Consulting Pty Ltd vs Warringah Council [2004] NSW LEC and in accordance with Section 1.3 View Sharing of the Pittwater 21 Development Control Plan.

- Notification

Comment: Issues were raised in relation to the original notification process by the owners of 234 Whale Beach Road. It is considered that the application has been notified in accordance with the notification process via A5.1 Exhibition, Advertisement and Notification of Applications, which included a site sign at the front of the subject site (257 Whale Beach Road). Issues raised by the owners of 234 Whale Beach Road have been considered and addressed within this report.

- Misleading information contained in the View Sharing Assessment (VSA)

Comment: Issues were raised from the owner of No. 226 Whale Beach Road in relation to the information contained within the View Sharing Assessment (VSA) prepared by Richard Lamb & Associates dated 1 October 2019. The owner of No. 226 Whale Beach Road believes the VSA has trivialises the value and importance of the "sublime views" available from this property.

Reviewing the comments and the photos within the VSA from Dr Lamb, the Statement of Support by Ms Alison McCabe from SJP Planning and from the photos by Council's Planner it is considered that the view assessment is correct and concurred with.

The owner of No. 226 Whale Beach Road has also raised issues about the location of photos

within the VSA and there particular location and why no wireframe view of the proposed dwelling was not shown other properties. The issue about the location of the photo(s) maybe correct, however given the number of view sharing assessments (Dr Lamb, Ms McCabe and Council's Planer) which have been completed from all the properties that raised issues over views (Nos. 226, 228, 230, 232, 234 and 255 Whale Beach Road) it is considered there is significant information for a full and proper assessment by Council's Planner. The requirement for a wireframe photomontage from all other properties with the exception of No. 228 Whale Beach Road is not warranted.

It is noted that BBC consulting Planners representing the owners of Nos. 228, 230, 232 and 255 Whale Beach Road have identified an incorrect reference to the property at No. 228 Whale Beach Road within the View Sharing Assessment by Dr Richard Lamb (as referred as No. 226 Whale Beach Road in the photomontages in Appendix 2: Photomontages and certification reports) and this is noted and concurred with by Council's Planner.

Given the above it is considered that the issue(s) raised have been addressed and do not warrant further information/amendments or warrant refusal of the current development application.

- Landscaping within the front setback area and the nature strip

Comment: Issues were raised by the owner of No. 226 Whale Beach Road about the proposed use of *Cupaniopsis Anacdiodes* (Tuckeroo) trees for the front landscaping of No. 257 Whale Beach Road within the front yard and within the road reserve will obscure views. The height of Tuckeroo is proposed to be 5m and spread of 4m and is considered excessive. It is recommended that more low level native planting replace these plants/trees to ensure reasonable views are maintained from surrounding properties.

Given the above suitable condition(s) will be added for suitable native planting for the replacement of the *Cupaniopsis Anacdiodes* (Tuckeroo) trees ensuring this issue has been addressed.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The proposal, in terms of landscape outcome, is acceptable subject to the protection of the existing Norfolk Island Pine on-site, and the completion of landscaping.</p> <p>Council's Landscape section has assessed the proposal against the following Pittwater 21 DCP 2014 Controls: B4.22 Preservation of Trees and Bushland Vegetation C1.1 Landscaping</p> <p>A Landscape Plan and a Arboricultural Impact Assessment is provided with the application, satisfying DA Lodgement Requirements.</p>
NECC (Bushland and Biodiversity)	<p>This application has been assessed under Pittwater LEP Clause 7.6 and DCP B4.17 Littoral Rainforest EEC.</p> <p>The proposal is for demolition of the existing dwelling and construction</p>

Internal Referral Body	Comments
	<p>of new multi-level terraced dwelling with double garage, swimming pool, access driveway, turntable, terraces, landscaping and fencing. No native trees or vegetation are proposed to be removed.</p> <p>The sites' vegetation currently consists of one large Norfolk Island pine and exotic invasive understorey with scattered native species. The Arborist report (Plateau Trees 21/03/2019) assesses the pine (including root mapping within the SRZ) and provides mitigation measures to be implemented throughout construction to ensure the safe retention of this tree. The site also contains large natural rock outcrops. The eastern boundary directly connects to the sand dunes of Whale Beach.</p> <p>The submitted Landscape Plan (Walter Barda Design 19/03/2019) includes mostly local native species east of the proposed dwelling and pool and proposes planting of 66 trees and small trees. All <i>Cupaniopsis anacardioides</i> must be replaced with a non-invasive tree species.</p> <p>It should be noted that the Stormwater Concept Design (SGC 21/03/2019) appears to show the need to excavate an existing rock outcrop (which is proposed to be retained) and also directly conflicts with the proposed path and native planting within submitted Landscape Plan. The Stormwater piping, dispersal trench, and rock rip rap must be relocated to an area which avoids impacts to the rock boulders and outside of proposed landscaping, preferably west of the rock outcrops.</p> <p>Councils Natural Environment - Biodiversity section supports the application, subject to conditions.</p>
NECC (Coast and Catchments)	<p>12 Development on land within the coastal vulnerability area</p> <p><i>Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:</i></p> <ul style="list-style-type: none"> (a) <i>if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and</i> (b) <i>the proposed development:</i> <ul style="list-style-type: none"> (i) <i>is not likely to alter coastal processes to the detriment of the natural environment or other land, and</i> (ii) <i>is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and</i> (iii) <i>incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and</i>

Internal Referral Body	Comments
	<p>(c) <i>measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.</i></p> <p><u>Comment:</u> The subject land has not been included on the Coastal Vulnerability Area Map under State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP) and in regard to CM SEPP the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land.</p> <p>Also reviewed the Coastal Engineering Advice prepared by Horton Coastal Engineering Pty. Ltd. dated 31 March 2019 and submitted along with the DA application. I agree with their advice.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p>
NECC (Development Engineering)	The proposed development does not require OSD and the stormwater management proposed has been assessed and is satisfactory. The submitted Geotechnical report addresses the relevant DCP controls and certifies that an acceptable risk is achievable for the development. No Development objection subject to conditions.
NECC (Riparian Lands and Creeks)	<p>This application is recommended for approval and satisfies Pittwater 21 DCP B5.8 and B5.11.</p> <p>Stormwater drainage must be installed as shown on the Stormwater Concept Plan Revision B provided by SGC Engineering.</p> <p>Sediment and erosion controls must be installed prior to any work on site and maintained until work is complete and groundcover re-established.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed development is not within the Flood Planning Area.
Property Management and Commercial	<p>The proposal is for the demolition of the existing structures on the site and the construction of a new dwelling house, garage, swimming pool and associated landscaping works.</p> <p>Property has no objections to the proposal as submitted.</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.

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. 1003412S dated 20 March 2019). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 2668408 dated 20 March 2019).

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

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

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.

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

10 Development on certain land within coastal wetlands and littoral rainforests area

- (1) *The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:*
- (a) *the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
 - (b) *the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
 - (c) *the carrying out of any of the following:*
 - (i) *earthworks (including the depositing of material on land),*
 - (ii) *constructing a levee,*
 - (iii) *draining the land,*
 - (iv) *environmental protection works,*
 - (d) *any other development.*

Comment:

Not applicable to the site.

11 Development on land in proximity to coastal wetlands or littoral rainforest

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
- (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
 - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

Not applicable to the site.

12 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- (a) *if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of*

- the building or works, and*
- (b) *the proposed development:*
- (i) *is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
 - (ii) *is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
 - (iii) *incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) *measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.*

Comment:

At the commencement of this Policy, no Coastal Vulnerability Area Map was adopted and therefore no coastal vulnerability area has been identified. Not applicable.

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a*

- disability,*
- (f) *Aboriginal cultural heritage, practices and places,*
- (g) *the use of the surf zone.*

Comment:

The proposed works are unlikely to cause an adverse impact upon the matters identified in this clause. The proposal is located wholly within the subject site and does not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes.

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
 - (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or
 - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The proposal has been designed in such a way that it satisfies the relevant matters identified in this clause.

14 Development on land within the coastal use area

- (1)
 - (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
 - (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposal is setback from the foreshore and will not impact upon the existing and safe access to and along the foreshore. The visual amenity from private and public space is not adversely effected. In addition, the surrounding area consists of examples of similar developments.

No aboriginal heritage sites have been identified within the vicinity of the proposed development. The proposed works are not likely to cause an adverse impact upon the matters identified in this clause.

As such, it is considered that the application does not comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

15 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The proposal is unlikely to cause increased risk of coastal hazards on that land or other land, due to its design, location and relevant reports indicating no unreasonable impacts.

Coastal Management Act 2016

The subject site identified as Coastal use area under the Coastal Management Act 2016. The management objectives for the coastal use area are as follows:

- "(a) to protect and enhance the scenic, social and cultural values of the coast by ensuring that:*
(i) the type, bulk, scale and size of development is appropriate for the location and natural scenic quality of the coast, and
(ii) adverse impacts of development on cultural and built environment heritage are avoided or mitigated, and
(iii) urban design, including water sensitive urban design, is supported and incorporated into development activities, and
(iv) adequate public open space is provided, including for recreational activities and associated infrastructure, and
(v) the use of the surf zone is considered,
(b) to accommodate both urbanised and natural stretches of coastline."

Comment: The proposal is setback from the foreshore and will not impact upon the existing and safe access to and along the foreshore. The visual amenity from private and public space is not adversely effected. In addition, the surrounding area consists of examples of similar developments.

Pittwater Local Environmental 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 -10m*	5.6m - 9.5m*	N/A	Yes

Note: Refer Part 4.3 Height of buildings

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
1.9A Suspension of covenants, agreements and instruments	Yes
Part 2 Permitted or prohibited development	Yes
2.7 Demolition requires development consent	Yes
Part 4 Principal development standards	Yes
4.3 Height of buildings	Yes
Part 5 Miscellaneous provisions	Yes
5.7 Development below mean high water mark	Yes
Part 7 Additional local provisions	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone E4 Environmental Living

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is consistent with the Objective of the Zone E4 Environmental Living of the Pittwater Local Environmental Plan 2014 as follows:-

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

Comment: The proposed dwelling is considered to be consistent with the existing low-impact residential development within the vicinity, while maintaining the special ecological and aesthetic values of the area.

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

Comment: It is considered that the proposed dwelling has been designed to ensure the development overall minimises any adverse effects and therefore maintains consistency with these values.

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

Comment: The proposal for a single dwelling is considered to be low density and scale given the stepped down, articulation and modulation demonstrated by the design. The development

integrates adequately with the site topography (significant sloping site) and the landscape.

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

Comment: The development will retain native trees and vegetation including the large Norfolk Island Pine Tree located on the northern boundary via mitigation measures to be implemented throughout construction to ensure the safe retention of this tree.

The site also contains large natural rock outcrops and the eastern boundary connects to the sand dunes of Whale Beach. Given the Landscape Plan includes mostly local native species east of the proposed dwelling and pool it is considered that the proposed development demonstrates consistency with this objective.

4.3 Height of buildings

Clause 4.3(2D) of the PLEP 2014 provides that:

(2D) Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not be more than 10.0 metres if:

- (a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and*
- (b) the objectives of this clause are achieved, and*
- (c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and*
- (d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.*

Clause 4.3(2D) is addressed as follows:

The portion of the development above the 8.5m maximum building height is minor, being only small corners of the development. The objectives of Clause 4.3 are achieved. The portion of the site being developed has a slope of 20.25 degrees or 36.89%, being greater than 16.7 degrees or 30%. The proposal relies on reasonable excavation given the context of the site. As such, the requirements of Clause 4.3(2D) are met and the 10m maximum building height applies.

7.1 Acid sulfate soils

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is consistent with the provisions of Clause 7.1 Acid sulfate soils of the Pittwater Local Environmental Plan 2014.

7.2 Earthworks

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is consistent with the provisions of Clause 7.2 Earthworks of the Pittwater Local Environmental Plan 2014.

In addition comments from Council's Development Engineers stated the following:-

"The submitted Geotechnical report addresses the relevant DCP controls and certifies that an acceptable risk is achievable for the development. No Development objection subject to conditions."

7.3 Flood planning

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is consistent with the provisions of Clause 7.3 Flood planning of the Pittwater Local Environmental Plan 2014.

The following comments from Council's Stormwater and Floodplain Engineering Department - Flood risk:-

"The proposed development is not within the Flood Planning Area."

7.6 Biodiversity protection

"This application has been assessed under Pittwater LEP Clause 7.6 and DCP B4.17 Littoral Rainforest EEC."

The proposal is for demolition of the existing dwelling and construction of new multi-level terraced dwelling with double garage, swimming pool, access driveway, turntable, terraces, landscaping and fencing. No native trees or vegetation are proposed to be removed.

The sites' vegetation currently consists of one large Norfolk Island pine and exotic invasive understorey with scattered native species. The Arborist report (Plateau Trees 21/03/2019) assesses the pine (including root mapping within the SRZ) and provides mitigation measures to be implemented throughout construction to ensure the safe retention of this tree. The site also contains large natural rock outcrops. The eastern boundary directly connects to the sand dunes of Whale Beach.

*The submitted Landscape Plan (Walter Barda Design 19/03/2019) includes mostly local native species east of the proposed dwelling and pool and proposes planting of 66 trees and small trees. All *Cupaniopsis anacardioides* must be replaced with a non-invasive tree species.*

It should be noted that the Stormwater Concept Design (SGC 21/03/2019) appears to show the need to excavate an existing rock outcrop (which is proposed to be retained) and also directly conflicts with the proposed path and native planting within submitted Landscape Plan. The Stormwater piping, dispersal trench, and rock rip rap must be relocated to an area which avoids impacts to the rock boulders and outside of proposed landscaping, preferably west of the rock outcrops.

Council's Natural Environment - Biodiversity section supports the application, subject to conditions."

7.7 Geotechnical hazards

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is consistent with the provisions of Clause 7.7 Geotechnical hazards of the Pittwater Local Environmental Plan 2014.

In addition comments from Council's Development Engineers stated the following:-

"The submitted Geotechnical report addresses the relevant DCP controls and certifies that an acceptable risk is achievable for the development. No Development objection subject to conditions."

7.8 Limited development on foreshore area

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is consistent with the provisions of Clause 7.8 Limited development on foreshore area of the Pittwater Local Environmental Plan 2014.

7.10 Essential services

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is consistent with the provisions of Clause 7.10 Essential services of the Pittwater Local Environmental Plan 2014.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	6m (living level (01)), bedroom level (02) and 5.3m (nib wall - garage)	7.69% 18.5%	No No
Rear building line	6.5m	28.7m	N/A	Yes
Side building line	2.5m (north)	2.5m (Dwelling) 0.55m (Lower Level Deck)	N/A 78%	Yes No
	1m (south)	0.99m (Lower Level Deck)	1%	Yes*
Building envelope	3.5m (south)	Outside envelope	100%	No
	3.5m (north)	Outside envelope	66.67%	No
Landscaped area	60%	61.75% (636.6sqm)	N/A	Yes

* Conditioned to 1m setback from the southern boundary

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Section A Shaping Development in Pittwater	Yes	Yes
A1 Introduction	Yes	Yes
A1.7 Considerations before consent is granted	Yes	Yes
A4 Localities	Yes	Yes
A4.12 Palm Beach Locality	No	Yes
A5 Exhibition, Advertisement and Notification of Applications	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
Section B General Controls	Yes	Yes
B1 Heritage Controls	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3 Hazard Controls	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4 Controls Relating to the Natural Environment	Yes	Yes
B4.17 Littoral Rainforest - Endangered Ecological Community	Yes	Yes
B5 Water Management	Yes	Yes
B5.11 Stormwater Discharge into Waterways and Coastal Areas	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6 Access and Parking	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B8 Site Works Management	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
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
Section C Development Type Controls	Yes	Yes
C1 Design Criteria for Residential Development	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	No	Yes
C1.5 Visual Privacy	No	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
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
Section D Locality Specific Development Controls	Yes	Yes
D12 Palm Beach Locality	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.12 Fences - Flora and Fauna Conservation Areas	No	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	No	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.12 Palm Beach Locality

The proposed development consists of part two/part three/part four storeys dwelling house, where the locality calls for two-storey development. However, the proposed development is in a landscaped setting, adequately integrated with the landform and landscape. The development is set well below the general tree canopy height, includes building modulation to minimise bulk, and steps with the topography of the land. As such, the proposed development achieves the intention of the desired character of the area and is acceptable in this regard.

C1.3 View Sharing

The proposed development is considered against the outcomes of the control as follows:

A reasonable sharing of views amongst dwellings. (S)

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.

Nature of the views affected

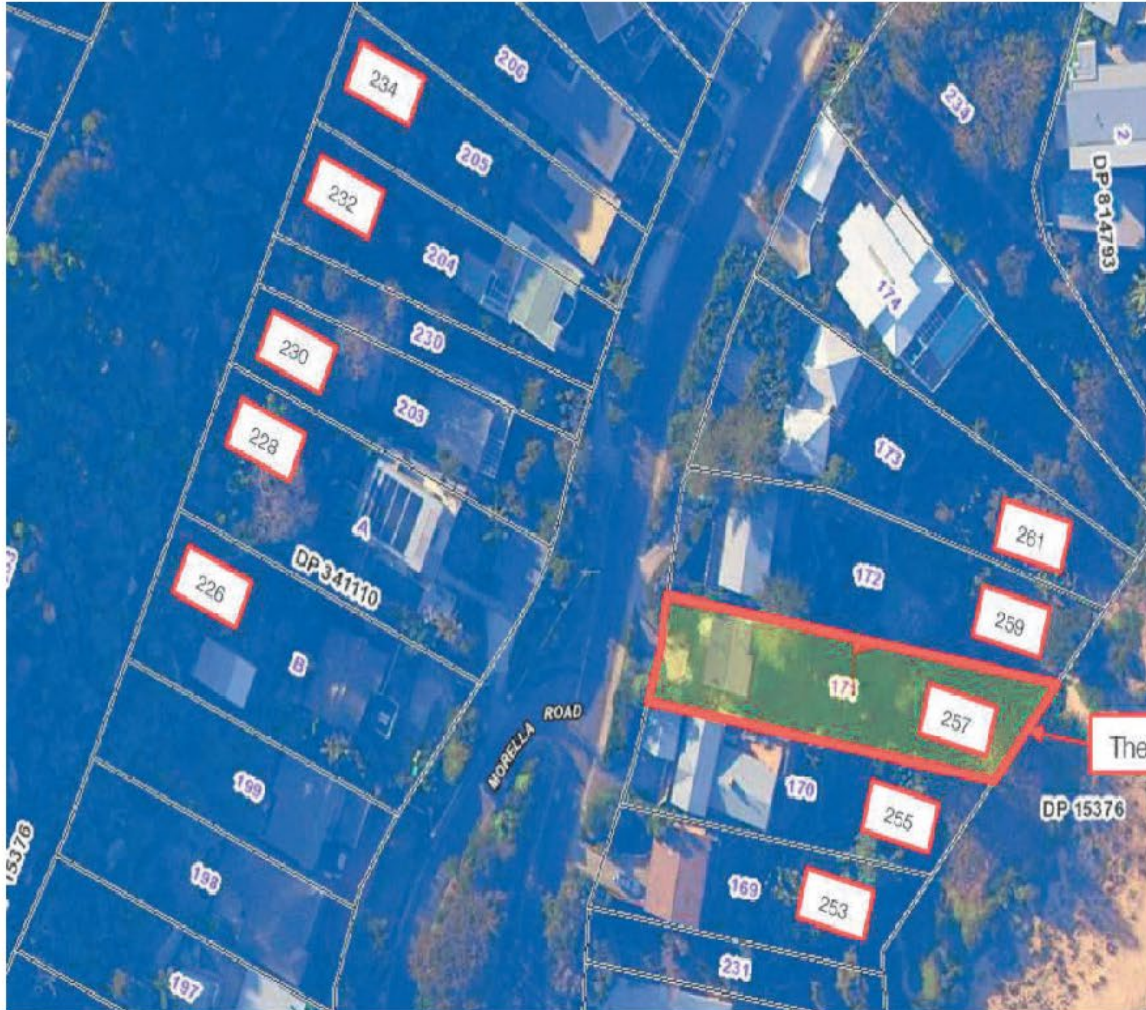
"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water 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:

The views from private property affected by the proposal include:

- No. 226 Whale Beach Road: Ocean, sand, surf, horizon, and Norfolk Island Pines. No iconic views.
- No. 228 Whale Beach Road: Ocean, sand, surf, horizon, Norfolk Island Pines, and Careel Head and its interface with the ocean. No iconic views.
- No. 230 Whale Beach Road: Ocean, sand, surf, horizon, Norfolk Island Pines, and Careel Head and its interface with the ocean. No iconic views.
- No. 232 Whale Beach Road: Ocean, sand, surf, horizon, Norfolk Island Pines, and Careel Head and its interface with the ocean. No iconic views.
- No. 234 Whale Beach Road: Ocean, sand, surf, horizon, Norfolk Island Pines, and partial views of Careel Head and its interface with the ocean (interrupted by Norfolk Island Pines). No iconic views.

- No. 255 Whale Beach Road: Ocean, sand, surf, horizon, Norfolk Island Pines, and Careel Head and its interface with the ocean. No iconic views.



Source: Statement of Support - Amended DA-2019/0309 257 Whale Beach Road, Whale Beach (SJB Planning)

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 affected views are available from the following locations:

- No. 226 Whale Beach Road: Upper east-facing deck accessed via the living room (though view

from living room does to include the subject site), lower east-facing deck, and two east-facing bedrooms. Views are available across the front boundary from standing and seated positions, though the subject site is not visible from a seated position.

- No. 228 Whale Beach Road: Views from this property and dwelling are expansive and extend from Little Head headland to Careel Head which consists of horizon, surf and sand at the land/water interface. The dwelling is a three (3) storey dwelling on the high side of Whale Beach Road. The dwelling consists of upper level living/dining/kitchen areas with a large deck located on the eastern end, on the middle level there are bedrooms including the master bedroom and on the lower level is a rumpus room with bedrooms and deck.
- No. 230 Whale Beach Road: Views are obtained from the outdoor terrace and living areas located on the eastern side of the dwelling. This a two storey dwelling located on the high side of Whale Beach Road. Views are currently obscured by vegetation of Little Head headland through to Careel Head of the ocean and horizon views.
- No. 232 Whale Beach Road: The property has a three (3) storey dwelling located on the high side of Whale Beach Road. Given the elevated position the east facing bedroom, and east facing deck accessed via the living room/kitchen has views of the ocean, horizon, interface of the beach and ocean from Little Head headland to Careel Head. Views are available across the front boundary from standing and seated positions.
- No. 234 Whale Beach Road: The property has a two (2) storey dwelling located on the high side of Whale Beach Road East-facing deck accessed via the living room (though view from living room does to include the subject site). Views are available across the front boundary from standing and seated positions of Little Head headland to Careel Head of the ocean, horizon, land/water interface.
- No. 255 Whale Beach Road: Views are obtained to the north east, east, and south east. The dwelling consists of three (3) levels comprising a ground level living and dining, upper level bedroom and lower level rooms. Views are obtained from a sitting and standing positions.

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 extent of the impact on the affected views is as follows:

No. 226 Whale Beach Road:

The proposed development will result in minor view loss considering the entire view available, as it will obscure some sand, but will not impact upon views to the ocean, surf, or horizon.



Above: The full view from a standing position at the upper deck at No. 226 Whale Beach Road.



Above: View from No. 226 Whale Beach Road (standing)

No. 228 Whale Beach Road.

The proposed development will result in minor view loss considering the entire view available, as it will obscure some sand, but will not impact upon views to the ocean, surf, or horizon.



Photo from the lower entertainment deck over garage (standing) at 228 Whale Beach Road
Photo from the swimming pool terrace level (standing) at 228 Whale Beach Road

No. 230 Whale Beach Road.

The proposed development will result in negligible to minor view loss considering the entire view available, as the view is obscured by existing vegetation. The proposal will obscure some sand, but will not impact upon views to the ocean, surf, or horizon.



Photo from the northeast corner of the balcony at 230 Whale Beach Road

No. 232 Whale Beach Road:

The proposed development will result in minor view loss considering the entire view available, as it will obscure some sand and some water/surf (depending on the tide), but will not impact upon views to the ocean, and Careel Head and its interface with the ocean. The proposal also does not obscure the views to the sand to the north of the subject site.



Above: The full view from a standing position at the deck at No. 232 Whale Beach Road.



Above view from standing position centre of the deck at No. 232 Whale Beach Road

No. 234 Whale Beach Road:

The proposed development will result in minor view loss considering the entire view available, as it will obscure some sand and some surf (depending on the tide), but will not impact upon views to the ocean, and the partial views to Careel Head and its interface with the ocean. The proposal also does not obscure the views to the sand to the north of the subject site.



Above: The full view from a standing position at the deck at No. 234 Whale Beach Road.

No. 255 Whale Beach Road:

The proposed development will result in minor view loss considering the entire view available, as it will obscure some sand and some surf (depending on the tide), but will not impact upon views to the ocean, and the views to Careel Head to Little Head headland and its interface with the ocean. The proposal also does not obscure the views to the sand to the north of the subject site.



Above view from the upper level bedroom balcony at No. 255 Whale Beach Road

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 proposed development is not compliant with the building envelope control, the northern side setback (lower deck only) and the front setback to the garage/dwelling. The non-compliance with the front and northern side setbacks do not result in view loss from the affected properties. The proposed building envelope non-compliance is as a result of the steep slope of the topography. The view loss resulting from the proposal is predominantly as a result of the building height, which is compliant with Clause 4.3(2D) of the Pittwater LEP 2014, and, as above, the resultant view loss is considered negligible to minor. Compliance with the building envelope would only result in a token reduction in view loss and would unreasonably restrict development on the site. It is considered that the proposed development is appropriately designed for the context of the site, and that the view loss is reasonable.

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. (S)

In determining the extent of potential view loss from the public domain, the planning principles outlined within the Land and Environment Court Case of Rose Bay Marina Pty Limited Vs Woollahra Municipal Council and anor (213) NSWLEC 1046 are applied to the proposal.

Nature and Scope of Views

The first step is to identify the nature and scope of the existing views from the public domain, including, but not limited to:

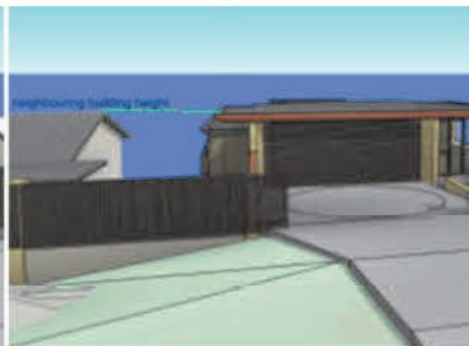
- *Any existing obstructions of the view;*
- *Composition of the view (e.g. is it static or dynamic and, if dynamic, the nature and frequency of changes to the view);*
- *Are existing obstructions permanent or temporary;*
- *The curtilages of important elements within the view.*

Comment to Principle 1:

The affected view contains the ocean and its horizon, with a corridor between Nos. 257 and 255 Whale Beach Road to the surf and sand. Existing obstructions to the view include dwellings and vegetation on private property and the road reserve. The built obstructions are permanent in nature. The vegetation obstructions are subject to change and is proposed to be altered as a result of the development application. This is anticipated to open up the currently obscured angles somewhat. The view is somewhat static in that the horizon does not change. The view is also somewhat dynamic in that the surf and sand are subject to tidal movements. See photographs below:



*Above Left: View from the eastern footpath. Above Right: View from the western footpath.
Note: The height poles pictured represent the original garage design. The structure is reduced in height and scale with the submitted amended plans.*



Above: Submitted perspectives, showing the difference in the bulk and therefore view impact between the originally submitted scheme via DA2018/0797 (left) and the amended scheme approved DA2018/0797 and this subject development application DA2019/0309 (right).

Note: The above perspectives do not detail any existing or proposed landscaping on site. See photos above.

Locations of View Interruptions

The second step is to identify the locations in the public domain from which the potentially interrupted view is enjoyed.

Comment to Principle 2:

The affected view is available from the eastern and western footpaths along Whale Beach Road, which forms part of the Northern Beaches Coastal Walk.

Extent of Obstructions

The third step is to identify the extent of the obstruction at each relevant location. The impact on appreciation of a public domain view should not be subject to any eye height constraint. A public domain view is one that is for the enjoyment from many positions by all people.

Comment to Principle 3:

Along the eastern footpath, the proposed development will obstruct views to the ocean, but the ocean horizon is expected to be retained. Given the reduction in the building bulk to the south, and the use of transparent building materials, the corridor to the sand and surf between Nos. 257 and 255 Whale Beach Road is expected to be retained. Along the western footpath, the proposed development will obstruct view to the ocean, but the ocean horizon is expected to be retained.

Intensity of the use of the Relevant Public Spaces

The fourth step is to identify the intensity of public use of those locations where enjoyment of the view will be obscured, in whole or in part, by the proposed development.

Comment to Principle 4: Whale Beach Road is a secondary road, used to gain access to the residential properties along the road, and to access Whale Beach. The street adjacent to the subject site forms part of the Northern Beaches Coastal Walk. Intensity of use for the purpose of the Coastal Walk is unknown.

Documentation of the View

The final step to be identified is whether there is any document that identifies the importance of the view to be assessed, such as international, national, state or local heritage recognition, or where the relevant planning controls promote or specifically requires the retention or protection of public domain views.

Comment to Principle 5:

Whale Beach Road is identified as part of Council's Scenic Streets Register, which states (of the whole road):

"Whale Beach Road starts in North Avalon and winds up and down the coast for some six kilometres to morph into Florida Road high above the rock pool at Palm Beach. It epitomises the streetscapes of Whale Beach where the common theme is recurrent splendid views of the beach and its surf, its headlands with the surf breaking on the rocks at their base and the escarpment to the west. After rounding Little Head the views switch to the north across to McMasters Beach and Killcare on the Central Coast with glimpses of waves pounding onto the rocks at the base of the cliff 40 metres below. Between the road and those rocks the cliff top shows the typical coastal heathland vegetation of the New South Wales coast."

Overall Comment:

The view from both the eastern and western sides of the street is currently intermittent in that as the viewer moves across the subject site, it is lost from sight due to vegetation. Vegetation is proposed to be altered as

a result of the development application, which is anticipated to open up the currently obscured angles somewhat.

The view loss from the public domain is caused by the proposed garage structure. The height, width and bulk of the garage structure has been reduced from the original submitted plans via DA2018/0797. Additionally, where possible, transparent building materials have been used, in accordance with Clause C1.3 View Sharing of the P21 DCP. The garage structure is not compliant with the front building line, but is otherwise compliant with the built form controls within the P21 DCP and Pittwater LEP 2014, including in relation to building height. The front setback is acceptable on merit in relation to building bulk and scale. In relation to view loss, the portion of the garage that results in the greatest view loss (the south-west corner) is compliant with the front building line control. The inclusion of a garage on site is not unreasonable, and the proposed location of the garage is the most logical and practical, considering the site topography and constraints. To shift the garage further to the east in an attempt to reduce view loss would likely not result in a significant result, and would require an unreasonable redesign. It is therefore considered a reasonable development. The value of the view from the Northern Beaches Coastal Walk is reasonably retained in that views to ocean are still available to the site from the public domain.

Canopy trees take priority over views. (En, S)

The proposed development does not unreasonably impact upon trees. The valuable Norfolk Island Pine on the boundary between Nos. 257 and 259 Whale Beach Road is retained.

C1.4 Solar Access

The property to the south at No. 255 Whale Beach Road is most affected by the proposed development in relation to solar access. At No. 255 Whale Beach Road, the main private open space is located to the north of the dwelling, adjacent to a high privacy screen. The submitted shadow diagrams demonstrate that at No. 255 Whale Beach Road:

- The private open space area currently receives a small portion of sunlight between 9am and midday, and is entirely overshadowed by 3pm;
- The north and east facing windows and glass doors to the living room and kitchen are currently approximately 50% overshadowed at 9am, 30% at midday, and 75% at 3pm; and
- Approximately one third of the east facing master bedroom window is currently overshadowed at 9am, and the window is totally overshadowed by midday.

The subject site and adjacent sites are in self-shadow in the afternoon due to the steep topography of the land. Additionally, the orientation of lots (east/west) have also contributed to this situation.

The proposed development results in:

- A minor increase to overshadowing to the private open space area of No. 255 Whale Beach Road at 9am and midday (at 3pm, the private open space area is completely overshadowed due to the topography);
- A negligible increase to overshadowing of the living room glass doors of No. 255 Whale Beach Road at 9am, 50% overshadowing to the doors by midday, and full overshadowing by 3pm;
- Full overshadowing of the east-facing kitchen glass door by 9am;
- Increase in shadowing to the east-facing master bedroom window by an additional third at 9am.
- The living room window area receiving two (2) hours to 50% of the windows between 9:00am and 11:00am and a further one (1) hour at approximately 33% of the windows between 11:00am and 12:00pm.

The subject site has a slope of approximately 36.89%, which is considered a steep and adverse slope. Where there is adverse slope or topography, reasonable solar access to main private open space and to windows to principal living areas will be assessed on a merit basis. Subject to that merit assessment, consent may be granted where a proposal does not comply with the standard, provided the resulting development is consistent with the general principles of the development control, the desired future character of the locality and any relevant State Environmental Planning Policy. The proposal is consistent with the desired future character of the locality for the reasons detailed in the section of this report relating to A4.12 Palm Beach Locality of the Pittwater 21 DCP 2014. The State Environmental Planning Policies relevant to this application are addressed throughout this report. The proposed development is acceptable in relation to the relevant outcomes of this clause of the P21 DCP, as follows:

Residential development is sited and designed to maximise solar access during mid-winter. (En)

The proposed dwelling is closer to the south than the north, though this is due to the existing mature and healthy Norfolk Island Pine on the northern boundary of the development. However, the proposal is compliant with the required side building lines (subject to condition(s), with the exception of the lowest floor deck, though this does not contribute to overshadowing. Additionally, the proposal includes compliant landscaped open space on site. As such, the proposal is demonstrably of an acceptable footprint for the site. The proposed development is acceptable in relation to the relevant built form controls within the P21 DCP, for the reasons detailed throughout this report. In this way, the proposed development is reasonable in its context. The proposed development, being located on an east-west orientated lot, is designed in order to provide reasonable solar access in consideration of the topography of the site and surrounding areas.

A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development. (En)

The proposal provides a reasonable level of solar access to the subject site and surrounding sites, considering the site's slope and context. The level of overshadowing resulting from the proposed development is a product of the steep topography of the site and the surrounding land. In this way, overshadowing impacts on the property to the south are inherently exacerbated compared to flat land. The property to the south are particularly vulnerable to overshadowing. To require strict adherence to the solar access requirements in this case would unreasonably restrict development of the subject site. The proposed development demonstrates it is acceptable in relation to all built form controls, for the reasons detailed in this report. Further, the proposal also includes clear glazing to the proposed terraces, allowing some solar access through to the south. As such, given the reasonableness of the proposed dwelling, the overshadowing impact is considered reasonable.

Reduce usage and/dependence for artificial lighting. (En)

The subject site achieves adequate solar access in order to reduce its reliance upon artificial lighting. As above, the proposal provides a reasonable level of solar access to the subject site and surrounding sites, given the context of the area's topography and the vulnerability of the site's to the south.

C1.5 Visual Privacy

The proposed development includes windows and terraces/decks within 9m of the side boundaries. The proposed development is acceptable in relation to the relevant outcomes of this clause, as follows:

Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design. (S)

Windows to habitable rooms of the dwelling demonstrate good design in that they are offset from existing windows of adjacent dwellings. The windows are of appropriate dimensions for the room uses, in order to achieve adequate access to light and air for the subject site, without resulting in unreasonable privacy impacts. The largest portion of glazing is along the southern elevation above the living area. This does not pose an unreasonable privacy impact, as the glazing is to a void, and not a

room.

In relation to outdoor living areas, the dwelling demonstrates good design in relation to visual privacy. At the master bedroom level, the terrace space has been amended with the deletion of southern round deck extension and the inclusion of a planter on southern end of terrace reducing the trafficable area on the south end of the terrace. This terrace has been slightly increased on the northern end by 0.75m, given the distance of 6.4m from the southern end of the master terrace from the southern boundary it is considered that adequate spatial separation afforded to the southern property (255 Whale Beach Road).

At the bedrooms level, the terrace has been reduced by 1m at the southern edge and the fixed splayed privacy screen has been extended along the terrace walkway by 2.475m to maintain reasonable amenity for both the subject site and the southern property (255 Whale Beach Road) as it set closer to the south than the north, the terrace's dimensions are restricted, and the terrace is set in front of the adjacent dwelling to the south, with an eastern orientation.

At the living room level, the proposed terrace is of greater dimensions, though is set well in front of the adjacent dwellings to the north and south, so will not result in unreasonable overlooking of adjacent dwellings. At the swimming pool level, the deck is appropriately screened and is set far enough to the east and low enough in order not to result in unreasonable overlooking.

A sense of territory and safety is provided for residents. (S)

Given the above, the proposed development provides and appropriate sense of territory and safety for the residents of the subject site and adjacent sites.

C1.12 Waste and Recycling Facilities

While the plans do not detail waste receptacles on the site, the site is of adequate dimensions to allow for appropriate waste storage within the property boundaries.

D12.5 Front building line

The proposed development includes a 6m front boundary setback to the garage (5.3m to the nib wall on the northern side), where a 6.5m setback is required. However, this clause also provides that where carparking is to be provided on steeply sloping sites, reduced or nil setbacks for carparking structures and spaces may be considered, so long as all other structures on the site satisfy or exceed the minimum building line applicable. As the remainder of the dwelling is set beyond the 6.5m front building line, the proposal is acceptable in accordance with the allowable variation.

D12.6 Side and rear building line

The proposed development includes a deck on the lower level to within 0.55m of the northern side boundary, where 2.5m is required. Additionally, it is noted the same deck is to be located 0.99m from the southern boundary, a condition will added for this setback to be 1m in accordance with the requirement. The proposal is otherwise compliant with the side and rear building line requirements. The proposed development is acceptable in relation to the relevant outcomes of this clause, as follows:

To achieve the desired future character of the Locality. (S)

The proposed development is consistent with the desired future character of the locality for the reasons detailed in the section of this report relating to Clause A4.12 Palm Beach Locality of the P21 DCP.

The bulk and scale of the built form is minimised. (En, S)

The proposed resultant dwelling is of comparable building bulk and scale to existing developments in

the locality. The proposed development provides generally compliant side setbacks, with the exception of the northern side setback to the lower level deck. However, this deck is open in construction form, so as not to result in any unreasonable bulk. The proposal is also non-compliant with the building envelope, as a result of the steep topography of the land. This non-compliance is acceptable for the reasons detailed in the section of this report relating to Clause D12.8 Building Envelope of the P21 DCP. The proposal is compliant with the required landscaped area, indicating that the proposed dwelling does not include too large a building footprint for the site. The proposed development steps with the topography of the land, and the proposed height is acceptable for the reasons detailed throughout this report. The proposal includes generous modulation and articulation to reduce the visual impact of the built form. Additionally, the bulk of the development steps away from the street, with the garage generally being the only visible structure from street level (the non-compliant deck is not visible). Finally, the proposal includes adequate vegetation in order to screen the built form of the proposed development. As such, the proposal demonstrates acceptable bulk and scale.

Equitable preservation of views and vistas to and/or from public/private places. (S)

The proposed development adequately preserves views and vistas to and from public and private places for the reasons detailed in the section of this report relating to Clause C1.3 View Sharing of the P21 DCP.

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

The proposed development is acceptable in relation to view sharing for the reasons detailed in the section of this report relating to Clause C1.3 View Sharing of the P21 DCP.

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)

The proposed development is appropriately designed so as to provide a reasonable level of privacy, amenity and solar access for the subject site and adjacent sites.

Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)

The proposed development provides compliant landscaped open space, and retains and proposes adequate vegetation on site, including the retention of the existing Norfolk Island Pine.

Flexibility in the siting of buildings and access. (En, S)

The proposed development is adequately sited so as to provide adequate amenity and access to the subject site and adjacent sites.

Vegetation is retained and enhanced to visually reduce the built form. (En)

The submitted plans demonstrate adequate retention and provision of vegetation in order to visually reduce the built form.

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

Not applicable. The subject site is not adjacent to commercially-zoned land.

D12.8 Building envelope

The proposed development is non-compliant with the building envelope control on both the northern and southern elevations. Where the building footprint is situated on a slope over 16.7 degrees (30%), variation to this control will be considered on a merits basis. The proposed development is situated on land with a slope of approximately 20.25 degrees (36.89%). As such, the non-compliance arises due to the steep topography of the land. The proposed development is acceptable in relation to the relevant outcomes of this clause, as follows:

To achieve the desired future character of the Locality. (S)

The proposed development is consistent with the desired future character of the locality for the reasons detailed in the section of this report relating to Clause A4.12 Palm Beach Locality of the P21 DCP.

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

The proposed development steps down the slope of the land, away from the street level. The proposal includes adequate vegetation in order to screen the built form of the proposed development. The proposed development is generally set below the height of the trees on site and in the locality.

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

The proposed development requires significant earthworks due to the steep topography of the land. To require the development to employ pier and beam construction is unreasonable, as it would result in additional unacceptable non-compliances, relating to building height, privacy, overshadowing and view loss. Additionally, the proposal is acceptable in relation to Clause 4.3 Height of Buildings of the Pittwater LEP 2014. Finally, the proposal includes comparable setbacks, and bulk and scale to existing developments in the locality. As such, the proposal provides an adequate response and relationship to the spatial characteristics of the existing natural environment.

The bulk and scale of the built form is minimised. (En, S)

The proposed resultant dwelling is of comparable building bulk and scale to existing developments in the locality. The proposed development provides generally compliant side setbacks, with the exception of the northern side setback to the lower level deck. This non-compliance is acceptable for the reasons detailed in the section of this report relating to Clause D12.6 Side and Rear Building Line of the P21 DCP. The proposal is compliant with the required landscaped area, indicating that the proposed dwelling does not include too large a building footprint for the site. The proposed development steps with the topography of the land, and the proposed height is acceptable for the reasons detailed throughout this report. The proposal includes generous modulation and articulation to reduce the visual impact of the built form. Additionally, the bulk of the development steps away from the street, with the garage generally being the only visible structure from street level (the non-compliant deck is not visible). Finally, the proposal includes adequate vegetation in order to screen the built form of the proposed development. As such, the proposal demonstrates acceptable bulk and scale.

Equitable preservation of views and vistas to and/or from public/private places. (S)

The proposed development adequately preserves views and vistas to and from public and private places for the reasons detailed in the section of this report relating to Clause C1.3 View Sharing of the P21 DCP.

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to neighbouring properties. (En, S)

The proposed development is appropriately designed so as to provide a reasonable level of privacy, amenity and solar access for the subject site and adjacent sites.

Vegetation is retained and enhanced to visually reduce the built form. (En)

The submitted plans demonstrate adequate retention and provision of vegetation in order to visually reduce the built form.

D12.12 Fences - Flora and Fauna Conservation Areas

The proposed development includes a front fence that varies in height between 700mm to 1.8m due to the topography of the land. The proposed fence is otherwise compliant with this control, as it is compatible with the streetscape character. does not unreasonably obstruct views from the road, is open

in construction, is of dark-colours and finishes, and is screened by landscaping. The proposed development is acceptable in relation to the relevant outcomes of this clause, as follows:

To achieve the desired future character of the Locality. (S)

The proposed development is consistent with the desired future character of the locality for the reasons detailed in the section of this report relating to Clause A4.12 Palm Beach Locality of the P21 DCP. The proposed fencing is consistent with and complementary to existing fencing in the locality.

An open streetscape that allows casual surveillance of the street. (S)

The proposed front fence is of a height and open form that will allow casual surveillance from the proposed dwelling to the street.

Fences, where provided, are suitably screened from view from a public place. (S)

The proposed fence is suitably obscured from the street with the inclusion of screening vegetation.

Safe and unhindered travel for native animals. (En)

To ensure any fencing provides for the safe and unhindered travel of native animals. (En)

The proposed fence is open in its construction form, allowing for the safe and unhindered travel of native animals.

To ensure fences compliment and conserve the visual character of the street and neighbourhood

The proposed fencing is consistent with and complementary to existing fencing in the street and neighbourhood.

To define the boundaries and edges between public and private land and between areas of different function.

The proposed fence adequately delineates the boundary of the subject site from the public domain.

To contribute positively to the public domain.

The proposed fence is of a contemporary design suitable in the streetscape and public domain.

To enhance safe sight distances and clear view of the street (including to and from driveways) for motorists and pedestrians. (S)

The proposed fence is set 6.5m back from the roadway, due to the wide road reserve, thereby providing adequate sight distances for the safety of motorists and pedestrians.

To ensure heritage significance is protected and enhanced. (S)

The site is not heritage listed, nor in a heritage conservation area, nor in the vicinity of a heritage-listed item or heritage conservation area.

To ensure an open view to and from the waterway is maintained. (S)

A suitable view to the waterway is maintained through the property, as detailed in the section of this report relating to Clause C1.3 View Sharing of the P21 DCP.

To ensure native vegetation is retained (En).

The proposed development provides adequate vegetation, including native species, and allows for the retention of the Norfolk Island Pine on site.

An area of private open space is provided for properties that front the Pittwater Waterway. (S)

Not applicable. The proposed development does not front the Pittwater Waterway.

D12.13 Construction, Retaining walls, terracing and undercroft areas

The proposed development involves significant earthworks, rather than using lightweight construction with pier and beam footings. The proposed development is acceptable in relation to the relevant outcomes of this clause, as follows:

To achieve the desired future character of the Locality.

The proposed development is consistent with the desired future character of the locality for the reasons detailed in the section of this report relating to Clause A4.12 Palm Beach Locality of the P21 DCP. The level of excavation included in this proposal is consistent with developments in the Whale Beach area, due to the land's steep topography and valuable views, where higher pier and beam construction may cause greater impact than earthworks.

To protect and minimise disturbance to natural landforms.

The subject site currently includes moderate earthworks. The proposed development increases the amount of excavation on site. However, the proposal does not unreasonably impact on natural landforms, as the earthworks are set away from the existing rock outcrops and the sand dune to the east. Further, the proposal has restricted earthworks at the lower levels in order to retain the existing Norfolk Island Pine.

To encourage building design to respond sensitively to natural topography.

The proposed development, while including significant earthworks, steps down with the topography of the land, thereby minimising the impacts the proposal has in relation to bulk and scale, view loss, overshadowing and privacy. Further, the proposal has restricted earthworks at the lower levels in order to retain the existing Norfolk Island Pine.

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

Northern Beaches Section 7.12 Contributions Plan 2019

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$33,946 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,394,643.

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

In summary, a detailed assessment has been required for the following specific issues:

- Development in coastal zone development not to Increase risk of coastal hazards within State Environmental Planning Policy Coastal Management (2018) and consideration of the management objectives for Coastal Use Area in Coastal Management Act 2016;
- Section 1.3 View Sharing including view sharing principles;
- Notification and re-notification of development application and amendments to the proposal;
- Section A4.12 Palm Beach Locality of P21 DCP;
- Overshadowing - Section C1.4 Solar Access of the P21 DCP;
- Privacy impacts - Section C1.5 Visual Privacy of the P21 DCP;
- Building Envelope and setback controls - Section D12.6 Side and rear building line and Section D12.8 Building Envelope;
- The objectives of the E4 Environmental Living zone (PLEP 2014); and
- Landscaping within the front setback and the road reserve

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 DA2019/0309 for Demolition works and construction of a dwelling house including swimming pool on land at Lot 171 DP 15376, 257 Whale Beach Road, WHALE 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
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Drawing No.	Dated	Prepared By
A1101 Site Plan (Issue B)	20 September 2019	Walter Barda Design
A2001 Floor Plans Lower (issue B)	20 September 2019	Walter Barda Design
A2002 Floor Plans Upper & LOS Area Plan (Issue B)	20 September 2019	Walter Barda Design
A3001 Elevations West, South & East (Issue B)	20 September 2019	Walter Barda Design
A3002 Nth Elevation & Sections 01, 02, 03 & 04 (Issue B)	20 September 2019	Walter Barda Design
A3101 Long Sections 01 (Issue B)	20 September 2019	Walter Barda Design
Schedule of Finishes Page 1 of 2	22 March 2018	Walter Barda Design
Schedule of Finishes Page 2 of 2	22 March 2018	Walter Barda Design

Engineering Plans		
Drawing No.	Dated	Prepared By
SW200 Stormwater Concept Design - Lower Level Plan (Rev B)	21 March 2019	SGC Consulting Engineers
SW201 Stormwater Concept Design - Bedroom Level Plan (Rev B)	21 March 2019	SGC Consulting Engineers
SW202 Stormwater Concept Design - Roof Plan (Rev B)	21 March 2019	SGC Consulting Engineers
SW300 Stormwater Concept Design - Details Sheet (Rev B)	21 March 2019	SGC Consulting Engineers
SW400 Erosion and Sediment Control - Plan and Details (Rev B)	21 March 2019	SGC Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
ABSA Assessor Certificate No. 2668408	20 April 2018	Taylor Smith Consulting
Arboricultural Impact Assessment	21 March 2019	Plateau Trees
BASIX Certificate No. 1003412S	20 March 2019	Taylor Smith Consulting
Bushfire Hazard Assessment Report	22 March 2019	Building Code & Bushfire Hazard Solutions
Bushfire Risk Assessment Certificate	22 March 2019	Building Code & Bushfire Hazard Solutions
Coastal Engineering Advice on 257 Whale Beach Road Whale Beach	31 March 2019	Horton Coastal Engineering
Geotechnical Investigation	21 March 2018	White Geotechnical Group
NatHERS Certificate No. 2668408	20 March 2019	Taylor Smith Consulting

Root Mapping Assessment	11 April 2018	Plateau Trees
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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
A1190 Landscape Plan (Issue B)	20 September 2019	Walter Barda Design

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. **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.

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 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

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$33,946.43 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$3,394,643.00.

The monetary 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. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

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. Stormwater Disposal

Stormwater shall be disposed of generally in accordance with stormwater concept plans prepared by SGC Engineering Value dated 21.03.19 and the recommendations of the Geotechnical Engineers report.

A certificate is to be provided to the Accredited Certifier with the Construction Certificate application 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 that the existing approved system can accommodate the additional flows or provide drainage plans demonstrating compliance with Council's requirements.

Details demonstrating compliance are to be submitted to the Accredited Certifier for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and stormwater management arising from development.

7. 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 15th March, 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.

8. Amendments to the approved plans

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

- The lower deck is to be setback 1m from the southern boundary.

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 and demonstrate compliance with Section D12.6 Side and rear building line of the Pittwater 21 Development Control Plan.

9. **Vehicle Driveway Gradients**

Driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. 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 Principal Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure suitable vehicular access to private property

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**

An Application for 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. 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

14. Amendment of Stormwater Concept Design

The Stormwater Concept Design (SGC 21/03/2019) is to be amended to avoid impacts to rock outcrops proposed to be retained and minimise impacts to the proposed native vegetation planting.

The amended Stormwater plans are to be reviewed and certified in writing by a qualified landscape architect, arborist or ecologist, and evidence provided to the Principal Certifying Authority prior to issue of the Construction Certificate.

Reason: To maintain native vegetation and protect rock outcrops in accordance with relevant Natural Environment LEP/DCP controls.

15. Stormwater drainage

Stormwater drainage must be installed as shown on the Stormwater Concept Plan Revision B provided by SGC Engineering.

Reason: Protection of the receiving environment (DACNECPCC1)

16. Preparation of Erosion and Sedimentation Control

An Erosion and Sediment Control Plan is to be prepared in accordance with Landcom's Managing Urban Stormwater: Soil and Construction Manual (2004) by a suitably qualified engineer and submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Sediment fencing must be located west of the existing rock outcrops to ensure protection of sand dunes and native vegetation east of the proposed dwelling.

Reason: To protect natural features and habitats in accordance with relevant Natural Environment LEP/DCP controls

17. Amendment of Landscape Plans

The submitted Landscape Plan is to be amended in accordance with the following:

- Deletion of *Cupaniopsis anacardioides*
- Replacement with another local native tree species already proposed

The amended Landscape Plan is to be certified by a qualified landscape architect, arborist or ecologist prior to issue of the Construction Certificate.

Reason: To ensure landscaping is consistent with relevant Natural Environment LEP/DCP

controls.

18. **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.

19. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

20. **Surrender of Consent**

The applicant shall surrender to Council Development Consent No: DA2018/0797 in accordance with the requirements of the Environmental Planning and Assessment Act 1979.

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

Reason: To prevent inconsistencies between consent applying the site (ref s80A (5) EPAA & cl97 EPA Reg).

21. **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

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

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)

23. **Pre-Commencement Dilapidation Report**

A Pre-Commencement Dilapidation Report of adjacent buildings (Nos. 255 and 259 Whale Beach Road, Whale Beach) must be conducted prior to any site work.

The Pre-Commencement Dilapidation Report must clearly detail the condition of all the adjoining properties, infrastructure, natural and manmade features within the likely “zone of influence” of any excavation or construction induced vibration.

A copy of the Pre-Commencement Dilapidation Report must be provided to Council, any other owners of public infrastructure, the owners of adjoining and affected private properties and the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure security against possible damage to Council and private property.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

24. **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.

25. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act
- Work Health and Safety Regulation
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)] and
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)]
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005.
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

26. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

27. **Vehicle Crossings**

The provision of a vehicle crossing 4.5 metres wide at the kerb to 5.5 metres at the boundary in accordance with Northern Beaches Council Drawing No A4-3330/5 Extra Low and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. The redundant lay back is to remain and the existing crossing adjusted to suit the new driveway crossing levels in order to maintain the access to the adjoining property at 259. Whale Beach Road. 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.

28. **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 identified on the site plans and as listed in the Arboricultural Impact Assessment prepared by Plateau Trees dated 21 March 2019, excluding exempt trees under the relevant planning instruments or legislation,
- ii) all trees and vegetation located on adjoining properties,
- iv) 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, to provide for root protection measures,
- 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) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works, is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009,
- x) 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.

29. **Project Arborist**

A Project Arborist with minimum qualification in arboriculture/horticulture, equivalent to AQF Level 5 is to be appointed prior to the commencement of works to supervise all works within 5 metres of the existing Norfolk Island Pine located along the northern boundary between 257 and 259 Whale Beach Road, Whale Beach, inclusive of the following requirements:

- i) all work carried out inside of the TPZ must be supervised by the Project Arborist, as outlined in the Root Mapping Assessment report prepared by Plateau Trees dated 11 April 2018, and in accordance with section 5.0 Conclusions and Recommendations,
- ii) all existing ground levels within a 5 metre zone around the existing Norfolk Island Pine shall be retained without alteration, unless advised by the Project Arborist,
- iii) no structures are permitted within a 5 metre zone around the existing Norfolk Island Pine, as documented on Plan A2001 (section 1: 00 Lower Level), issue A, dated 22/3/2019, excluding the structural piers,
- iv) the structural piers shall be located outside of the SRZ (at least 3500mm from the trunk), as directed on-site by the Project Arborist,
- v) the Project Arborist shall provide on-site recommendations to protect the existing Norfolk Island Pine if required, inclusive of recommended design changes,
- vi) the Project Arborist shall provide documentary details including photographic evidence of works undertaken, and any on-site recommendations and advice, and this shall be submitted by the Arborist to the Certifying Authority prior to Occupation Certificate,
- vii) scheduled monthly inspections, for a period of 12 months, shall be carried out by the Project Arborist during and after completion of development works,
- viii) the existing Norfolk Island Pine shall be protected and maintained for the life of the development in a healthy and sustainable condition.

Reason: to ensure protection of vegetation proposed for retention on the site.

30. **Protection of rock and sites of significance**

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: preservation of significant environmental features.

31. **Implementation of Landscape Plan**

Landscaping is to be implemented in accordance with the approved Landscape Plans (Walter Barda Design 19/03/2019) and as amended by these conditions of consent. The new landscaping is to be certified in accordance with approved Landscape

Plans and these conditions of consent by a qualified landscape architect, arborist or ecologist prior to issue of the Occupation Certificate.

Reason: To ensure landscaping is consistent with relevant Natural Environment LEP/DCP controls.

32. **No Material or Waste Storage east of the proposed building works**

No storage of building materials or building waste, excavated fill or topsoil storage is to occur east of the proposed building works or within 5m trees shown on the approved proposal plans as being retained or within protective fenced areas. Drainage is to be arranged such that fill, building materials or contaminants are not washed into protective fenced areas.

Reason: To protect and retain trees proposed for retention.

33. **Implementation of Erosion and Sediment Control Plan**

The Erosion and Sediment Control Plan is to be fully implemented and measures are to remain in effective operation until all development activities have been completed and the site fully stabilised. Evidence of compliance is to be certified by a suitably qualified engineer and submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To protect natural features and habitats in accordance with relevant Natural Environment LEP/DCP controls

34. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

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

35. **Landscape works**

Landscaping is to be implemented in accordance with the Landscape Plan A1190, prepared by Walter Barda Design, issue A dated 22/3/2019, inclusive of the following requirement:

- i) all nominated tree planting shall be planted at 75 litre pot size, and shall have a minimum area of 3 metres x 3 metres. Canopy trees are to be located a minimum of 5 metres from existing and proposed built structures, or minimum of 3 metres where pier and beam footings are used,
- ii) the nominated *Cupaniopsis anacardioides* shall be replaced with a non-invasive native tree species,

- iii) it is advised that the nominated *Acmena smithii* should be changed to *Acmena smithii* 'cultivars' as used for screen planting to achieve the design intent of the design,
- iv) the proposed tree planting shall be located within the site to achieve a reasonable sharing of views available to adjoining properties.

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 plan and inclusive of any conditions of consent.

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

36. **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, and in particular the existing Norfolk Island Pine, as a result of the proposed development, including the following information::

- i) compliance to Arborist recommendations for tree protection and excavation works.
- ii) extent of damage sustained by vegetation as a result of the construction works.
- ii) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: to ensure compliance with the requirement to retain and protect significant planting on development sites.

37. **Certification Elevated Parking Facility Work**

An appropriately qualified and practicing Structural Engineer shall certify to the Council / Principal Certifying Authority that the elevated parking facility was constructed in accordance with this consent and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical controls. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of an Occupation (or Subdivision)

Reason: Compliance with this consent

38. **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.

39. **Certification of Erosion and Sediment Control Plan**

The Erosion and Sediment Control Plan is to be fully implemented and measures are to remain in effective operation until all development activities have been completed and the site fully stabilised. Evidence of compliance is to be certified by a suitably qualified engineer and submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To protect natural features and habitats in accordance with relevant Natural Environment LEP/DCP controls

40. **Priority Weed Removal and Management**

All Priority weeds (as specified in Appendix 1 of the Greater Sydney Regional Strategic Weed

Management Plan 2017 – 2022) on the site are to be removed and managed. Details demonstrating the removal and management of weeds are to be prepared by a qualified ecologist/bush regenerator in writing and submitted to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To reduce the risk of site works contributing to spread of Priority weeds, in accordance with relevant Natural Environment LEP/DCP controls.

41. **House / Building Number**

House/building number is to be affixed to the building 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.

42. **Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the 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

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite 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. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

(g) Swimming pools and spas must be registered with the *Division of Local Government*.

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

Reason: To protect human life (DACPLF09)

43. **Post-Construction Dilapidation Report**

A Post-Construction Dilapidation Report of adjacent buildings (Nos. 255 and 259 Whale Beach Road, Whale Beach) must be conducted prior to the issue of the Occupation Certificate.

The Post-Construction Dilapidation Report must clearly detail the final condition of all the adjoining properties, infrastructure, natural and manmade features that were originally recorded in the Pre-Commencement Dilapidation Report.

A copy of the Post-Construction Dilapidation Report must be provided to Council, any other owners of public infrastructure, the owners of adjoining and affected private properties and the Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To ensure security against possible damage to Council and private property.

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

44. **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 site.

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

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

45. **Environmental and priority weed control**

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

Reason: preservation of environmental amenity.

46. **Control of Weeds**

Prior to the completion of works, all priority weeds (as listed under the Biosecurity Act 2015) are to be removed/controlled within the subject site using an appropriately registered control method. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>). All environmental weeds are to be removed and controlled. Refer to Council website http://www.pittwater.nsw.gov.au/environment/noxious_weeds

Reason: Weed management.

47. **No Planting Environmental Weeds**

No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

Reason: Weed management.

48. **Works to cease if item found**

If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.

Reason: To protect Aboriginal Heritage.

49. **Dead or Injured Wildlife**

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

50. **Swimming Pool Equipment**

The swimming pool equipment that is capable of generation noise such as the swimming pool pump, is to be located within an acoustic box and shall not produce noise levels that exceed 5dB(A) above the background noise when measured from the nearest property boundary.

Reason: To ensure the proposal complies with the Protection of the Environment Operations Act 1997.

