

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL

Notice is hereby given that the Northern Beaches Planning Panel will be held via Teleconference on

WEDNESDAY 31 AUGUST 2022

Beginning at 12.00pm for the purpose of considering and determining matters included in this agenda.



Peter Robinson
Executive Manager Development Assessment

Quorum

A quorum is three Panel members

Conflict of Interest

Any Panel Member who has a conflict of Interest must not be present at the site inspection and leave the Chamber during any discussion of the relevant Item and must not take part in any discussion or voting of this Item.

Agenda for an Extraordinary Meeting of the Northern Beaches Local Planning Panel to be held on Wednesday 31 August 2022

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
3.0	CATEGORY 3 APPLICATIONS	
4.0	PUBLIC MEETING ITEMS.....	4
4.1	DA2022/0448 - 7 Cooleena Road, Elanora Heights - Subdivision of one lot into two and partial demolition of existing dwelling.....	4
5.0	NON PUBLIC MEETING ITEMS.....	51
	A statutory Direction by the Minister of Planning and Public Spaces states the panel is only required to hold a public meeting where the development application has attracted 10 or more unique submissions by way of objection. There applications do not satisfy that criterion.	
5.1	DA2022/0581 - 3 Golf Avenue, Mona Vale - Alterations and additions to a Recreation Facility (Outdoor) - Mona Vale Golf Club.	51
5.2	DA2021/2447 - 989 Barrenjoey Road, Palm Beach - Demolition works and construction of a dwelling house including a swimming pool.	95

4.0 PUBLIC MEETING ITEMS

ITEM 4.1	DA2022/0448 - 7 COOLEENA ROAD, ELANORA HEIGHTS - SUBDIVISION OF ONE LOT INTO TWO AND PARTIAL DEMOLITION OF EXISTING DWELLING.
AUTHORISING MANAGER	Adam Richardson
TRIM FILE REF	2022/513641
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plans

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2022/0448 for the Subdivision of one lot into two and partial demolition of existing dwelling on land at Lot G DP 408223,7 Cooleena Road, ELANORA HEIGHTS, for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0448
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Responsible Officer:	Dean Pattalis
Land to be developed (Address):	Lot G DP 408223, 7 Cooleena Road ELANORA HEIGHTS NSW 2101
Proposed Development:	Subdivision of one lot into two and partial demolition of existing dwelling
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Ianni Family Pty Ltd
Applicant:	Ianni Family Pty Ltd

Application Lodged:	16/05/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	23/05/2022 to 06/06/2022
Advertised:	Not Advertised
Submissions Received:	11
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 20,000.00
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EXECUTIVE SUMMARY

This report is submitted to the Northern Beaches Local Planning Panel (NBLPP) for consideration of Development Application DA2022/0448 for the partial demolition of the existing dwelling (to remove the existing garage) and the subdivision of the existing lot to form two new Torrens title lots.

The merits assessment of the application has identified that the proposed subdivision fails to adequately respond to the aims of Pittwater Local Environmental Plan 2014 or the objectives of the C4 Environmental Living zone, as the resultant subdivision layout places a new lot on steeply sloping land which is not conducive to built development. Furthermore, the proposed development fails to align with the existing and desired character of the Elanora Heights Locality and the density controls for

subdivision in low density residential areas, resulting in unacceptable amenity and streetscape impacts in the Cooleena Road locality.

Despite the application only proposing subdivision and minor demolition works, substantial consideration has been given to the presentation and impact of future residential development on the proposed rear lot. Under the principles of *Parrott v Kiama [2004] NSWLEC 77*, a subdivision application should provide detailed information as to how the constraints of the site will be incorporated into future buildings when the proposed allotments are environmentally sensitive or where significant impacts on neighbour's is likely and a careful or skillful design to minimise them is required

The application has provided a basic design of the future house (at least the outline design) and fails to adequately demonstrate how the proposed lot at the rear could be developed to align with the LEP and DCP. The site is environmentally sensitive due to it's extreme steepness and topography which restricts the ability of any future development on the proposed rear battle-axe allotment to be constructed without significant built form and amenity impacts. No information has accompanied the application which demonstrates otherwise.

The internal referral bodies (i.e. Development Engineering, Landscape Assessment, Traffic Engineering and Water Management) have identified a number of fundamental concerns with the proposed subdivision which are not simply resolvable. These relate to stormwater management, off-street carparking, vehicular access and tree protection.

The application was notified for 14 days and attracted a total of 11 individual submissions objecting to the proposal. The key concerns raised within the submissions relate to geotechnical hazards, stormwater, compatibility with surrounding development, subdivision density, insufficient landscaping, amenity impacts, traffic impacts, construction management, insufficient off-street parking, and impacts on local vegetation. Several of the concerns raised within the submissions have merit and warrant the recommendation of refusal of the application.

The applicant was advised of the abovementioned issues with the application and that the site was not considered suitable for subdivision, however the applicant advised that they wanted Council to proceed to determination.

Based on the detailed assessment contained in this report, it is recommended that the application be refused.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks approval for the partial demolition of the existing dwelling (to remove the existing garage) and a one (1) into (2) lot Torrens title subdivision of the existing lot. Both lots are to be accessed by a right of way along the western boundary.

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

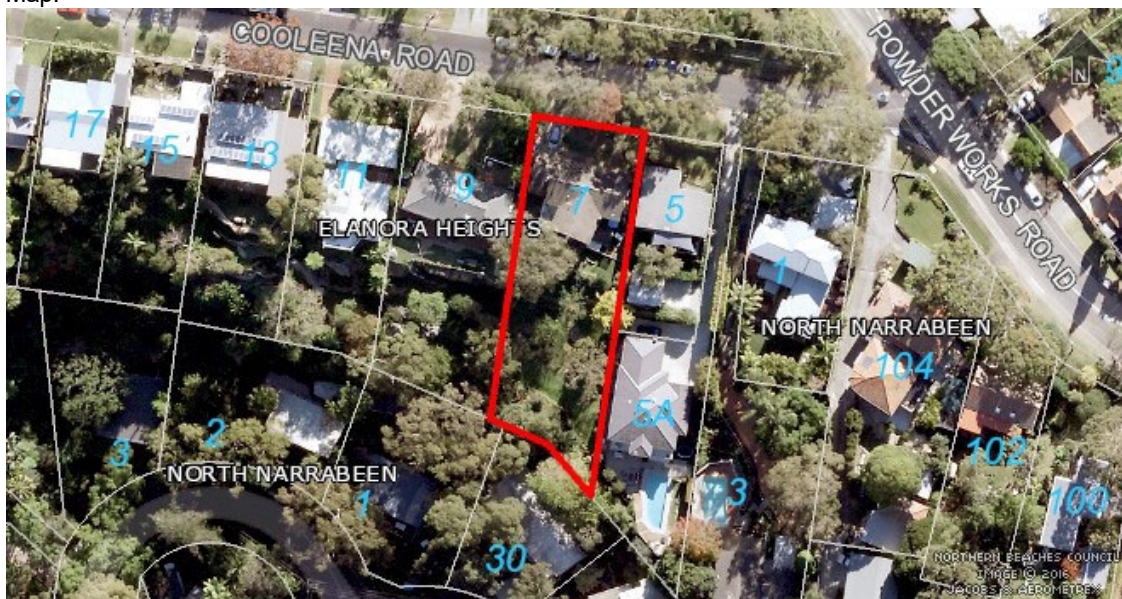
Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
 Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
 Pittwater Local Environmental Plan 2014 - 7.10 Essential services
 Pittwater 21 Development Control Plan - A1.7 Considerations before consent is granted
 Pittwater 21 Development Control Plan - A4.5 Elanora Heights Locality
 Pittwater 21 Development Control Plan - B2.2 Subdivision - Low Density Residential Areas
 Pittwater 21 Development Control Plan - B3.1 Landslip Hazard
 Pittwater 21 Development Control Plan - B6.2 Internal Driveways
 Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
 Pittwater 21 Development Control Plan - B6.6 On-Street Parking Facilities
 Pittwater 21 Development Control Plan - C1.1 Landscaping
 Pittwater 21 Development Control Plan - C1.4 Solar Access
 Pittwater 21 Development Control Plan - C1.5 Visual Privacy
 Pittwater 21 Development Control Plan - C1.6 Acoustic Privacy
 Pittwater 21 Development Control Plan - C1.7 Private Open Space
 Pittwater 21 Development Control Plan - C4.1 Subdivision - Protection from Hazards
 Pittwater 21 Development Control Plan - C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities
 Pittwater 21 Development Control Plan - C4.7 Subdivision - Amenity and Design
 Pittwater 21 Development Control Plan - C4.8 Subdivision - Landscaping on the Existing and proposed public road reserve frontage to subdivision lots
 Pittwater 21 Development Control Plan - D5.1 Character as viewed from a public place (Excluding Elanora Heights Village Centre)
 Pittwater 21 Development Control Plan - D5.6 Side and rear building line (Excluding Elanora Heights Village Centre)
 Pittwater 21 Development Control Plan - D5.9 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot G DP, 408223, 7 Cooleena Road ELANORA HEIGHTS NSW 2101
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Detailed Site Description:	The subject site consists of 1 allotment located on the southern side of Cooleena Road, Elanora Heights. The site is irregular in shape with a frontage of 20.88 metres along Cooleena Road and a maximum depth of 68.13 metres. The site has a surveyed area of 1268.1m². The site is located within the C4 Environmental Living zone pursuant to PLEP 2014 and accommodates an existing 1-2 storey brick dwelling with a single garage. The lower level at the rear contains an approved secondary dwelling. The site slopes steeply from the street frontage towards the rear and is densely vegetated with several significant trees in the front and rear portions. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by low-density residential development of varying architectural styles and within a landscaped setting.
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Map:



SITE HISTORY

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

Pre-lodgement Meeting **PLM2018/0175** for Subdivision of one lot into two
PLM held on 30/08/2018 specifically relating to stormwater drainage design for a future subdivision as well as vehicle access and utility services.

Application **N0533/17** for Subdivision of one (1) lot into two (2) lots, alterations and additions to existing dwelling and construction of new dwelling

Development application withdrawn by applicant on 06/02/2018 upon recommendation from Council, citing various inconsistencies with the objectives of PLEP 2014 and the outcomes of P21 DCP including:

PLEP 2014

cl. 4.1 Minimum subdivision lot size: The development did not demonstrate that the adequate and safe access and services will be provided for the newly created lot.

cl. 4.3 Height of buildings: The maximum height of the dwelling exceeds 8.5m and a variation to this control is not supported because the design of the dwelling house and associated site works do not satisfactorily respond sensitively to the natural topography of the newly created site.

cl. 7.7 Geotechnical hazards: The Geotechnical report relates only to the subdivision and does not include any physical works assessment.

cl. 7.10 Essential services: An Essential Services plan has not been submitted with the application to demonstrate that services which are essential for the development will be available for the newly created lot.

P21DCP

cl. C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities: The proposal did not demonstrate that safe and convenient access and parking will be provided for each lot.

cl. C4.5 Subdivision - Utility Service: The development did not demonstrate that services which are essential for the development will be available for the newly created lot.

cl. C4.7 Subdivision - Amenity and Design: The proposal did not demonstrate that safe and convenient access and parking will be provided for each lot.

cl. A4.5 Elanora Heights Locality: The proposed dwelling did not satisfactorily provide a landscape setting nor integrate with the landform.

cl. B2.2 Subdivision - Low Density Residential Areas: The newly created lot, being Lot 2, will have a slope in excess of 16.7 degrees (30%).

cl. D5.7 Building envelope (Excluding Elanora Heights Village Centre): The western elevation non-compliance is substantial and does not satisfactorily minimise bulk and scale of the built form.

cl. D5.13 Construction, Retaining walls, terracing and undercroft areas (Excluding Elanora Heights Village Centre): Site disturbance has not been minimised and the building design does not respond sensitively to the natural topography.

Referral Issues

Council's Development Engineer assessed the application and found it to be inconsistent and or non-complying with the following Pittwater 21 Development Control Plan (P21DCP) clauses:

cl. B5.7 Stormwater Management - On-Site Stormwater Detention; cl. B5.10 Stormwater Discharge into Public Drainage System; B6.1 Access driveways and Works on the Public Road Reserve; and B6.2 Internal Driveways

Council's Natural Environment Officer assessed the application and requires further documentation with respect to P21DCP cl. C1.1 Landscaping.

Application **N0584/16** for Secondary dwelling

Development application approved for the use of lower ground floor as a secondary dwelling on 09/03/2017.

BC0136/16 Single storey masonry secondary dwelling located at lower ground floor partly below main dwelling

Approved Building Information Certificate gained for the previously unauthorised secondary dwelling

ordered for removal under NOT0246/16.

Application **N0177/16** for Subdivision of one lot into two and the demolition of existing garage
Development application refused by Council on 02/11/2016, citing various inconsistencies with the objectives of PLEP 2014 and the outcomes of P21 DCP including:

Pittwater Local Environment Plan 2014:

- *Permissibility and E4 zone objectives*
- *Clause 4.1 Minimum subdivision lot size*
- *Clause 7.6 Biodiversity protection*
- *Clause 7.7 Geotechnical hazards*
- *Clause 7.10 Essential services*

Pittwater 21 Development Control Plan

- *Part A1.7 Considerations before consent is granted*
- *Part A4.5 Elanora Heights Locality*
- *Part B2.2 Subdivision - Low Density Residential Areas*
- *Part B3.1 Landslip Hazard*
- *Part B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor*
- *Part B5.1 Water Management Plan*
- *Part B5.10 Stormwater Discharge into Public Drainage System*
- *Part B5.12 Stormwater Drainage Systems and Natural Watercourses*
- *Part B5.14 Stormwater Drainage Easements (Public Stormwater Drainage System)*
- *Part B6.1 Access driveways and Works on the Public Road Reserve*
- *Part B6.2 Internal Driveways*
- *Part B6.3 Off-Street Vehicle Parking Requirements*
- *Part C4.1 Subdivision - Protection from Hazards*
- *Part C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities*
- *Part C4.7 Subdivision - Amenity and Design*
- *Part D5.1 Character as viewed from a public place (Excluding Elanora Heights Village Centre)*

Internal Referrals

Development Engineer - Not supported

Natural Environment Officer - not supported

NOT0246/16 - Unauthorised Works

An order under former Section 121B of the Act was imposed by Council's Development Compliance Officer in regards to the unauthorised use of the lower ground floor as a separate occupancy. It was ordered by Council to cease and remove the unauthorised use. A subsequent building certificate was lodged to gain lawful approval.

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	There are no current draft environmental planning instruments.
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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission
Section 4.15 Matters for Consideration	Comments
	of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Council wrote to the applicant and provided an extensive list of factors that prevent approval of the proposed development. It was also advised to the applicant that Council did not believe the site to be suitable for subdivision in any form, therefore no additional information was requested in this case. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter could be addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter could be addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter could be addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 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.

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	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater Local Environmental Plan 2014 and Pittwater 21 Development Control Plan sections within this report. They are considered to be unacceptable. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	For the reasons articulated in this report, insufficient information has been provided to demonstrate that the site is suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act of EPA Regs	See discussion on “Notification & Submissions Received” in this report
Section 4.15 (1) (e) – the public interest	The proposed development is not in the public interest as it departs significantly from the controls that dictate the desired future character of the area, is not consistent with a low density residential environment, and would diminish the character of the area.

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 from 23/05/2022 to 06/06/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 11 submission/s from:

Name:	Address:
Mrs Iris Joan Bell	9 Cooleena Road ELANORA HEIGHTS NSW 2101
Mr Adam Joseph Cummings	5 Cooleena Road ELANORA HEIGHTS NSW 2101
Ms Wendy Patricia Dzubieli	11 Cooleena Road ELANORA HEIGHTS NSW 2101
Mr Igor Molitor	1 Eungai Place NORTH NARRABEEN NSW 2101
Anthony Mark Sinderman	8 Cooleena Road ELANORA HEIGHTS NSW 2101

Ms Rosalyn Claire Pursey	6 Cooleena Road ELANORA HEIGHTS NSW 2101
Mr Daniel Arthur James Mylonas	2 Eungai Place NORTH NARRABEEN NSW 2101
Planning Progress	Po Box 213 AVALON NSW 2107
Withheld	ELANORA HEIGHTS NSW 2101
Mr Michael Scott Bradbery	10 Cooleena Road ELANORA HEIGHTS NSW 2101
Mr Lee Robert Bennett	114A Telopea Avenue CARINGBAH SOUTH NSW 2229

Following the public exhibition period Council received submissions from 11 households. Of those submissions, none were in support and 11 were objecting to the proposed development.

The following issues were raised in the submissions, and each are addressed below as follows:

- **Acoustic impacts of proposed right of carriageway**

Comment:

The submissions identified concern that the proposed driveway will result in an excessive amount of noise pollution upon adjoining private open space areas. In accordance with Part C1.6 Acoustic Privacy of P21 DCP, driveways are not identified as being sources of excessive noise. The discussion in this report under Part C1.6 does however refer to noise impacts of the proposed parking area due to its proximity to the shared boundary with proposed Lot 2.

- **Tree Removal, Biodiversity and Landscaped Area**

Comment:

The submissions raised concern regarding the loss of significant trees, biodiversity and landscaped area. Council's Landscape Officer has reviewed the application and does not support the proposal, on the basis that the proposed driveway is in an area that contains two significant trees which are identified as being retained in the submitted Arboricultural Impact Assessment. The retention is considered necessary.

The proposed subdivision also results in landscaped area variation on Lot 1 and is not supported, whilst the indicative landscaped area on proposed Lot 2 is not considered accurate due to likely future changes to the indicative building area, driveway and inter-allotment drainage easement which are required to satisfy other non-compliances that have been identified throughout this report.

- **Geotechnical Hazard and Topography**

Comment:

The submissions raised concerns relating to the site being a Geotechnical Hazard as well as containing a steeply sloping topography. Under Part B2.2 of P21 DCP, allotments containing a slope of over 30%, measured between the highest and lowest point, are not suitable for subdivision. On this basis, the proposal is not supported, as it has a slope more than 30%. Furthermore, the subject site is mapped as "Geotechnical Hazard H1" on the Pittwater Geotechnical Hazard Map. The provision states that development consent must not be granted unless the consent authority is satisfied that the development will appropriately manage wastewater, stormwater, and drainage across the land so as not to affect the rate, volume and quality of water leaving the land. In accordance with comments

provided by Council's Development Engineer, insufficient detail is provided as to the path of a proposed inter-allotment drainage easement, if the system is of sufficient capacity for the intended development site stormwater flows. No owners consent from the downstream owners to the inter-allotment drainage easement has been provided.

- **Parking and Traffic**

Comment:

The submissions have raised concern stating that this section of Cooleena Road does not have the capacity of on-street parking to offset the non-compliant off-street parking provided by the proposal. This issue has also been identified by Council's Traffic Engineer, who does not support the application on this basis. Under Part B6.6 P21 DCP, on-street parking generated by a development must not reduce similar opportunities for adjoining residents. The proposal is therefore not supported.

- **View Sharing**

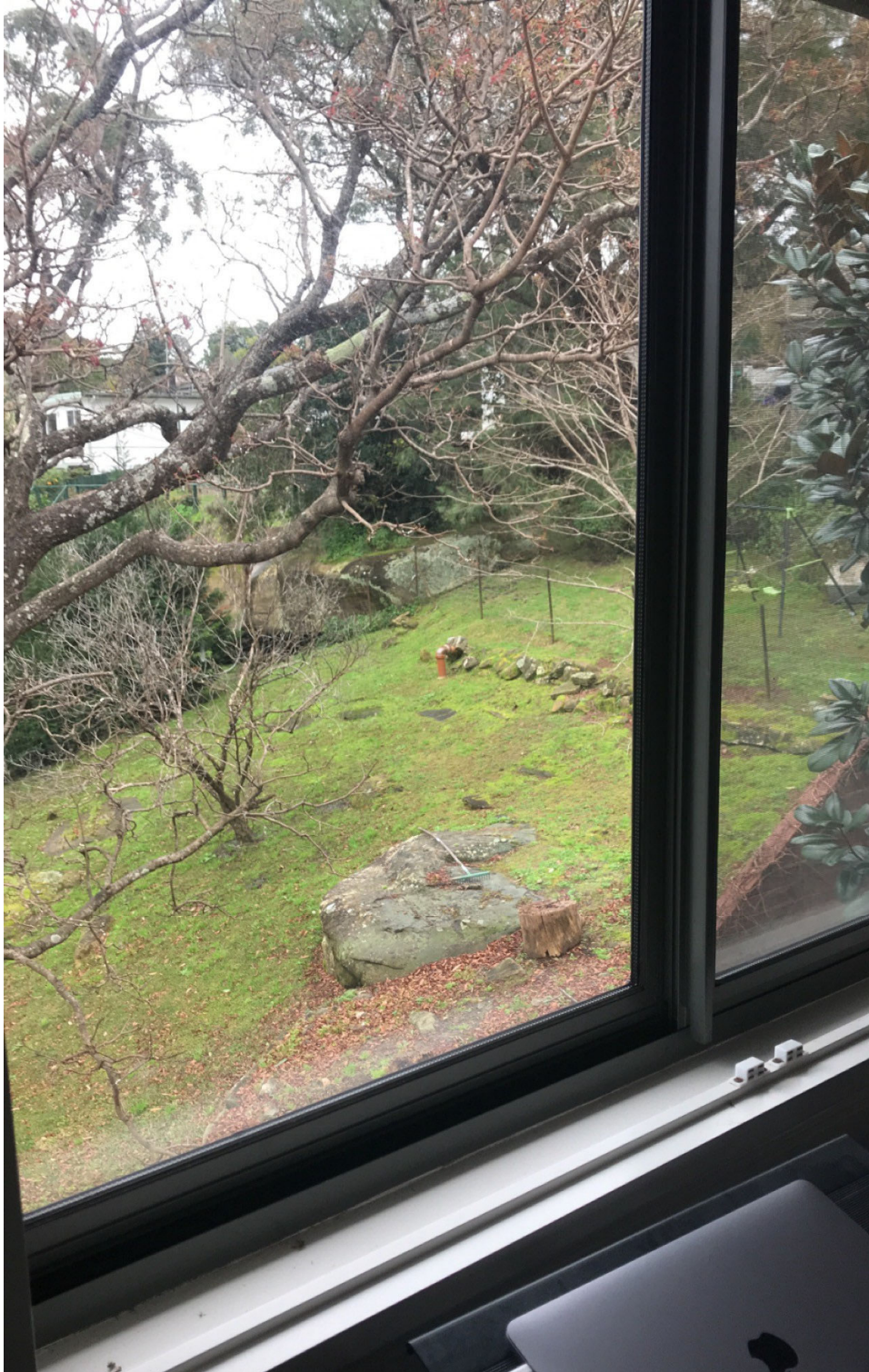
Comment:

View loss concerns were raised by the adjoining property owners to the east (No.5 and No.5A Cooleena Road) and as a result, a site inspection was undertaken. Following the inspection, the affected views related to areas of vegetation and open space only. It was considered that the perceived loss of views related more specifically to the loss of a feeling of openness resulting from the location of the indicative dwelling on Lot 2, rather than a loss of any valuable iconic or water views. A full view loss assessment under the principals of *Tenacity Consulting v Waringah* [2004] NSWLEC 140 is therefore not considered necessary.

Figure 1: Location of the proposed indicative dwelling on Lot 2 as viewed from a ground floor bedroom of No.5 Cooleena Road



Figure 2: View of location of indicative dwelling on Lot 2 as viewed from a first floor study from No.5A Cooleena Road



- **Stormwater and Easement**

Comment:

The submissions raised concern in regard to existing stormwater issues as a result of the sloping topography and geotechnical character of the locality, which shall be exacerbated by the proposed subdivision works. In accordance with comments provided by Council's Development Engineer, insufficient detail is provided as to the path of a proposed inter-allotment drainage easement, if the system can handle the development site stormwater flows, nor has owners consent been provided regarding any proposed downstream inter-allotment drainage easement.

- **Desired Future Character**

Comment:

The submissions raised concern in regard to the proposed development not being in keeping with the desired character of the locality. Under Part A4.5 Elanora Heights Locality (P21 DCP) in this report, it is considered unlikely that the proposed subdivision would be capable of accommodating residential development that is consistent with a density and scale that is sought within a landscaped setting, with most of the habitable areas of the site taken up by built form, not being secondary to landscaping.

- **Side and rear building line**

Comment:

The submissions raised concern in regard to setback non-compliances resulting from the proposed development. Under the discussion for Part D5.6 P21 DCP in this report, the western side setback is reduced as a direct result of the right of carriageway which runs adjacent to the western boundary, which provides a spatial buffer to the adjoining property to the west. As the built form of the existing dwelling on Lot 1 is not being increased or encroaching further towards the western adjoining neighbour, it is considered a variation could be afforded in this instance. The proposed parking area on Lot 1 contains a nil rear setback and is located within proximity of the indicative dwelling on proposed Lot 2 which impacts the acoustic privacy of the future occupants. The parking area is also proposed to replace existing landscaped area and vegetation that provides the landscaped setting for the existing dwelling. The outcomes of the control are therefore not considered to be achieved in this regard.

- **Construction Noise**

Comment:

The submissions raised concern in regard to construction noise, specifically related to drilling required for the proposed driveway. Suitable conditions of consent if approval is granted would be applied which restrict construction hours and noise levels.

- **Solar Access**

Comment:

The owners of the adjoining property to the South (30 Tatiara Crescent) and south-east (5A Cooleena Road) and have raised concern in regard to overshadowing impacts resulting from the proposal. Whilst proposed Lot 2 is considered vulnerable to overshadowing impacts from proposed Lot 1 as

mentioned in this report under Part C1.4 P21 DCP, it is unable to be determined whether a reasonable level of solar access will be maintained for future development on the subject property or adjoining properties during mid-winter as indicative shadow diagrams have not been provided with the application.

- Objectives of Zone C4 Environmental Living

Comment:

As discussed in detail under the land use section of this report (PLEP 2014), the proposal is considered to be inconsistent with the objectives of the C4 Environmental Living zone.

- Subdivision Density

Comment:

The submissions raise concern that the proposal does not meet the numerical subdivision requirements under Part B2.2 P21 DCP. As discussed in this report, the control requires that any lot (or lots) created by a subdivision of an existing lot (or lots) shall have a minimum depth of 27 metres and a minimum width of 16 metres on land identified as Area 1 on the Landscaped Area Map, as well as a slope of less than 30% between the highest and lowest point. The western side boundary of proposed Lot 2 provides a minimum depth of 24.44 metres and a slope of over 30%, therefore failing to comply with the control requirement. A variation cannot be afforded in this instance due to the inability of the proposal to comply with the outcomes of the control.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Not supported The development application is for subdivision of one lot into two and partial demolition of the existing dwelling, and associated works, as described and illustrated in the reports and plans. Council's Landscape Referral is assessed against the Pittwater Local Environment Plan, and the following Pittwater 21 DCP controls (but not limited to): • B4.22 Preservation of Trees and Bushland Vegetation • C4.4 Subdivision - Public Roads, Footpath and Streetscape • C4.7 Subdivision - Amenity and Design • C4.8 Subdivision - Landscaping on the existing and proposed public road road reserve frontage to subdivision lots An Arboricultural Impact Assessment is included in the application and has been assessed as part of the Landscape Referral. Tree 1, located within the road reserve, is a significant street tree which must be retained, thus the existing driveway alignment is recommended for retention. Any proposed driveway construction around tree 1 and tree 2 must be supported by the Arborist, as no impacts are permissible to these trees. The AIA identifies tree 1 for retention however the plans show the footprint of the proposed driveway over tree 1. No trees are supported for removal if impacted by the indicative building footprint for the new lot as any impact to these trees will be assessed in a future Development Application. Only subdivision works

Internal Referral Body	Comments
	are assessed as part of this Development Application. Updated plans clarifying trees to be removed and retained, and redesign of the driveway to ensure the retention of tree 1 and tree 2 is required to continue the Landscape Referral.
NECC (Bushland and Biodiversity)	Supported subject to conditions Council's Biodiversity referral team have reviewed the application for consistency against the relevant planning controls, including; - Pittwater LEP 2014 Part 7.6 Biodiversity Protection, - Pittwater DCP Part B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridors. The proposal is for a subdivision of one lot into two lots and demolition of the existing garage within existing Lot G DP 408223. The Arborist report provided shows four (4) tree removals proposed, two of which are located outside the building envelop of the proposal, being trees 9 and 11. This application seeks only to subdivide and allow access for both lots, as such trees 9 and 11 must be retained and can be assessed as part of any future DA that would seek to propose a new dwelling on the lot. Conditions have been applied to ensure consistency with the planning controls outlined above.
NECC (Development Engineering)	Not supported The proposed application is no supported for the following reasons: 1) The engineering plans detail site drainage to be connected to a proposed inter allotment drainage easement. In accordance with Councils water management plan for development the applicant is to provide further details as to the path of the easement including connection either to a Council drainage system or drainage easement. A downstream capacity check is to be undertaken by a hydraulic engineer to determine if the system is able to handle the development site stormwater flows. 2) Owner's consent is to be obtained and provided to Council in regard to any proposed downstream inter allotment drainage easement. 3) Engineering details are to be prepared for the proposed internal access way/right of way. The details are to include a driveway longsection and cross sections drawn at a suitable scale. Existing and proposed finished levels are to be detailed on the plan. Retaining wall details if required are to be provided on the plans.

NECC (Water Management)	Not supported The proposal was assessed under the current creek and water management legislation framework, the relevant parts of the LEP, DCP and Protection of Waterways and Riparian Lands Policy. The Creek Management Study 2004 principles and NRAR waterfront land principles were also considered in the assessment. The proposal is a subdivision and triggers specific Council Water Management Policy controls. The proposed subdivision is resulting in the creation of two (2) lots where the total post development impervious area of the new lots exceeds 40%. At that stage the proposal is not complying and will need amendments to either increase the total impervious area (permeable paving for the driveway for example) or introducing water quality devices to meet the water quality requirements (likely table 5, Council Water Management Policy for Development).
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Traffic Engineer	Not supported The proposal is for subdivision of the existing single lot into two lots. The front lot (lot1) will be partially demolished i.e removal of the existing garage with two new parking spaces to be created at rear of Lot 1 to provide parking for that lot. Under the Pittwater DCP a two or more bedroom dwelling is required to provide 2 parking spaces. The subdivision plans make appropriate provision to maintain the two parking spaces to support the existing dwelling on lot 1. It is noted that these two spaces are sized in accordance with AS2890.1 and will enable forwards entry and exit from each space space. It is however noted that development approval for a secondary dwelling in the subfloor area of lot1 has previously been granted. Under the Pittwater DCP the secondary dwelling would require an additional parking space to be provided (i.e 3 spaces in total) however during the assessment of the relevant DA it was deemed unnecessary at the time as parking for additional vehicles was available in a tandem arrangement on the driveway. This would no longer be the case if the subdivision were to proceed as the driveway would need to be kept clear to enable access to the rear lot. It is understood that the applicant still intends to proceed with construction of the secondary dwelling and provision will therefore be required for a third off-street parking space to support the secondary dwelling. At this stage no development application for construction of a dwelling on lot 2 has been received however parking in line with DCP requirements would be required on that lot. The turning path plots provided with the DA application show that vehicles manoeuvring into and out of the parking spaces are required to encroach into lot 2. It will therefore be necessary to ensure that there is a right of carriageway in place in favour of lot 1 over the portion of lot 2 that is required for turning.
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Internal Referral Body	Comments
	Amendment to the plans to show: 1. a third parking space on lot 1 and 2. additional information noting the intent to create a right of carriageway and 3. marking the extent of the right of carriageway on the plans is required prior to further assessment of the plans

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

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 acceptable when assessed 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 (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 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 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 who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is suitable for the residential land use.

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?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	550m ²	Lot 1: 597.44m ²	-	Yes
		Lot 2: 557m ²	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.6 Subdivision - consent requirements	Yes
4.1 Minimum subdivision lot size	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	No
7.10 Essential services	No

Detailed Assessment

Zone C4 Environmental Living

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

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

Comment:

The discussion under Section A4.5 (P21 DCP) of this report explains the biodiversity values of the site in the context of the Elanora Heights Desired Character. The geotechnical hazards of the site are also discussed under Part 7.7 (PLEP 2014). It is not considered as is articulated by the respective assessments under the DCP and LEP that proposed development provides for a low-impact residential development in the context of these ecological values.

The proposal does **not** satisfy this objective.

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

Comment:

As stated above, it is not considered that the proposed development maintains a low-impact on the biodiversity values and geotechnical aspects of the site.

The proposal does **not** satisfy this objective.

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

Comment:

It is proposed to intensify the use of the site with an additional dwelling on Lot 2 (to be constructed under a future application), whilst the existing primary and secondary dwellings are to be retained on Lot 1. Due to the various amenity and ecological aspects discussed in this report, it is not considered that the proposed subdivision is consistent with low-density development that is typical within the C4 Environmental Living zone nor with the existing low-density character in the surrounding Cooleena Road locality. It is noted the adjacent subdivided lots to the east are similar sized lots, however, are not considered to contain the same environmental characteristics or topographical constraints that restrict the development of the rear battle-axe allotment, as is the case for the subject development.

The proposal does **not** satisfy this objective.

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

Comment:

The subject land is mapped as "Biodiversity" on the PLEP 2014 Biodiversity Map as well as mapped Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridors under P21 DCP. Council's Biodiversity Officer has reviewed the application and raised no objection to approval, subject to recommended conditions.

The proposal **satisfies** this objective.

Conclusion:

For the reasons detailed above, the proposal is inconsistent with the collective objectives of the C4 Environmental Living zone.

7.7 Geotechnical hazards

The objectives of this clause are to ensure that development on land susceptible to geotechnical hazards—

- (a) matches the underlying geotechnical conditions of the land, and
- (b) is restricted on unsuitable land, and
- (c) does not endanger life or property.

Comment:

The subject site is mapped as "Geotechnical Hazard H1" on the Pittwater Geotechnical Hazard Map. The provision states that development consent must not be granted unless the consent authority is satisfied that the development will appropriately manage wastewater, stormwater, and drainage across the land so as not to affect the rate, volume and quality of water leaving the land. In accordance with comments provided by Council's Development Engineer, insufficient detail accompany the application as to the path of a proposed inter-allotment drainage easement, if the designed stormwater system can handle the development site stormwater flows. The application has not been accompanied by owners' consent from any downstream owner for an inter allotment drainage easement. Therefore, the objectives of the clause are not met. Additionally, due to the total post-development impervious area of the new lots exceeding 40%, Council's Water Management Officer has identified other issues which require the system either requires a reduction in the total impervious area or introduce water quality devices to meet the water quality requirements of Council's Water Management Policy for Development.

Furthermore, the clause also states that the consent authority must consider the site layout and geotechnical constraints of the site to decide whether the development takes into account all geotechnical risks. As discussed elsewhere in this report, the site contains a considerable slope which burdens Lot 2 and renders much of its site area unusable or suitable for built development.

Conclusion:

For the reasons detailed above, the proposal is inconsistent with the provision.

7.10 Essential services

The provision states that development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required—

- (a) *the supply of water,*
- (b) *the supply of electricity,*
- (c) *the disposal and management of sewage,*
- (d) *stormwater drainage or on-site conservation,*
- (e) *suitable vehicular access.*

Comment:

In accordance with comments provided by Council's Development Engineer, there is inadequate information as to the path of the proposed inter-allotment drainage easement including connection either to a Council drainage system or a separate drainage easement, as well as conduct capacity checks to determine if the system can handle the development site stormwater flows. Therefore, Council cannot be satisfied that there is adequate availability of stormwater drainage.

Furthermore, Council's Traffic Engineer notes that the turning path for Lot 1 encroaches into Lot 2, which does not result in suitable vehicular access and further limits the available area for development on that Lot.

The proposal does not satisfy this provision.

Pittwater 21 Development Control Plan

Built Form Controls

Proposed Dwelling Lot 1:

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5 metres	7.47 metres	-	Yes
Rear building line	6.5 metres	12.75 metres (Dwelling) Nil (hardstand parking area)	- 100%	Yes No
Side building line	2.5 metres (east)	Existing	-	Yes
	1 metres (west)	0.36 metres (min.)	64%	No
Landscaped area	60%	42.08% (251.4m ²)	29.87%	No

Indicative Dwelling Lot 2:

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	N/A - battle-axe	-	-	-
Rear building line	6.5 metres	11.02 metres (min.)	-	Yes
Side building line	2.5 metres (east)	4.44 metres	-	Yes
	1 metre (west)	1.78 metres	-	Yes
	1 metre (north)	1.54 metres	-	Yes
Landscaped area	60%	63.48%	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	No	No
A4.5 Elanora Heights Locality	No	No
B2.2 Subdivision - Low Density Residential Areas	No	No
B3.1 Landslip Hazard	No	No
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	No	No
B6.3 Off-Street Vehicle Parking Requirements	No	No
B6.6 On-Street Parking Facilities	No	No
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
C1.1 Landscaping	No	No
C1.2 Safety and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	No	No
C1.5 Visual Privacy	No	No
C1.6 Acoustic Privacy	No	No
C1.7 Private Open Space	No	No
C4.1 Subdivision - Protection from Hazards	No	No
C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities	No	No
C4.7 Subdivision - Amenity and Design	No	No
C4.8 Subdivision - Landscaping on the Existing and proposed public road reserve frontage to subdivision lots	No	No
D5.1 Character as viewed from a public place (Excluding Elanora Heights Village Centre)	No	No
D5.2 Scenic protection - General	Yes	Yes
D5.5 Front building line (Excluding Elanora Heights Village Centre)	Yes	Yes
D5.6 Side and rear building line (Excluding Elanora Heights Village Centre)	No	No
D5.9 Landscaped Area - Environmentally Sensitive Land	No	No

Detailed Assessment

A1.7 Considerations before consent is granted

Before granting development consent, Council must be satisfied that the development is consistent with:

- *Pittwater Local Environment Plan 2014*; and
- the desired character of the Locality; and
- the development controls applicable to the development; and
- relevant matters of consideration under Section 4.15 Evaluation of the Environmental Planning and Assessment Act (EPA) 1979.

As detailed under the relevant sections of this report, the development is assessed as being inconsistent with the following planning controls:

- Pittwater Local Environmental Plan 2014 - 1.2 Aims of Plan
- Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
- Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
- Pittwater Local Environmental Plan 2014 - 7.10 Essential services
- Pittwater 21 Development Control Plan - A1.7 Considerations before consent is granted
- Pittwater 21 Development Control Plan - A4.5 Elanora Heights Locality
- Pittwater 21 Development Control Plan - B2.2 Subdivision - Low Density Residential Areas
- Pittwater 21 Development Control Plan - B3.1 Landslip Hazard
- Pittwater 21 Development Control Plan - B6.2 Internal Driveways

- Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
- Pittwater 21 Development Control Plan - B6.6 On-Street Parking Facilities
- Pittwater 21 Development Control Plan - C1.1 Landscaping
- Pittwater 21 Development Control Plan - C1.4 Solar Access
- Pittwater 21 Development Control Plan - C1.5 Visual Privacy
- Pittwater 21 Development Control Plan - C1.6 Acoustic Privacy
- Pittwater 21 Development Control Plan - C1.7 Private Open Space
- Pittwater 21 Development Control Plan - C4.1 Subdivision - Protection from Hazards
- Pittwater 21 Development Control Plan - C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities
- Pittwater 21 Development Control Plan - C4.7 Subdivision - Amenity and Design
- Pittwater 21 Development Control Plan - C4.8 Subdivision - Landscaping on the Existing and proposed public road reserve frontage to subdivision lots
- Pittwater 21 Development Control Plan - D5.1 Character as viewed from a public place (Excluding Elanora Heights Village Centre)
- Pittwater 21 Development Control Plan - D5.6 Side and rear building line (Excluding Elanora Heights Village Centre)
- Pittwater 21 Development Control Plan - D5.9 Landscaped Area - Environmentally Sensitive Land

Having regard to the above, the development is inconsistent with this clause and therefore does not satisfy the relevant matters of consideration of the EPA Act 1979 - Section 4.15 Evaluation and is recommended refusal on this basis.

A4.5 Elanora Heights Locality

The desired future character of the Elanora Heights locality requires low-density residential development, with dwellings being within a landscaped setting, integrated with the landform and landscape.

It is considered the rear of the current site (proposed Lot 2) currently provides the landscaped setting for the existing development. Due to the topographical features and steep slope, the indicative building footprint on proposed Lot 2 is restricted in location and size and is considered to significantly impact the natural and vegetative features that currently occupy this portion of the site. Lot 2 has limited opportunity to implement replacement vegetation within the rear of the site due to the topographical limitations.

It is therefore considered unlikely that the proposed subdivision would be capable of accommodating residential development that is consistent with a density and scale that is sought within a landscaped setting, with most of the habitable areas of the site taken up by built form, not being secondary to landscaping.

Based on the above, the proposed development is considered as inconsistent with the established and desired future character of the locality and is recommended for refusal on this basis.

B2.2 Subdivision - Low Density Residential Areas

Description of non-compliance

The control requires that any Lot (or Lots) created by a subdivision of an existing Lot (or Lots) are to have a minimum depth of 27 metres and a minimum width of 16 metres on land identified as Area 1 on the Landscaped Area Map. The subject site is within Area 1. The western side boundary of proposed

Lot 2 provides a minimum depth of 24.44 metres, therefore failing to comply with the control requirement.

The control also states a proposal for subdivision should not be sought if the allotment(s) intended to be created has a slope more than 16.7 degrees (30%), measured between the highest and lowest points on any such allotment(s). The slope between the highest and lowest point of proposed Lot 2 located on the western side of the allotment is 32.73%, thus exceeding this requirement.

Furthermore, the control states that the minimum area for buildings shall be 175m². The indicative building footprint on the proposed site plan shows gross floor area only, rather than the building area. The steeply sloping topography of the rear portion of Lot 2 limits the developable size of the allotment and restricts the ability of an indicative dwelling to be constructed without significant non-compliances related to the minimum building area, as well as the built form and amenity controls for the Elanora Heights Locality.

Additionally, as per the comments of Council's Development Engineer, further details are required as to the path of a proposed inter-allotment drainage easement, whilst Council's Traffic Engineer has determined that the proposed vehicular turning path on Lot 1 encroaches into Lot 2, creating other issues and limitations around future development. As a result, the path and location of the easement, as well as the required amendments to the vehicle turning path and hardstand area, also further restricts the developable area of Lot 2, which is already limited by the topographical features.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying outcomes of the clause as follows:

- ***Achieve the desired future character of the locality.***

Comment:

As discussed, the proposed subdivision is not considered to achieve the desired character of the Elanora Heights locality.
The proposal does not satisfy this outcome.

- ***Maintenance of the existing environment.***

Comment:

It is noted the indicative footprint on proposed Lot 2 is located within the area that currently provides the landscaped setting for the existing dwelling. Due to the above-mentioned limitations of the site related to the topography, irregular configuration and drainage easement it is considered that the existing environment cannot be maintained under this proposal.
The proposal does not satisfy this outcome.

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

Comment:

This application is for subdivision and demolition of existing structures only and it is therefore considered equitable preservation of views and vistas to and/or from public/private places will be maintained. Any future dwelling will be subject to a separate development application which will include a view impact analysis. It is however considered that the scope to minimise is

limited due to the small area available for a building footprint.
The proposal does not achieve this outcome.

- ***The built form does not dominate the natural setting.***

Comment:

As mentioned earlier in this report, any future dwelling on proposed lot 2 is heavily constrained in terms of its size, location, and configuration, whilst also requiring the removal of the existing landscaped setting. As a result, most of the habitable areas of the site shall be taken up by built form, not being secondary to landscaping and thus shall dominate the natural setting. The proposal does not satisfy the outcome.

- ***Population density does not exceed the capacity of local and regional infrastructure and community services.***

Comment:

The current singular allotment accommodates an existing primary and secondary dwelling to be maintained on proposed Lot 1, whilst a new additional dwelling will be situated on proposed Lot 2. In accordance with comments provided by Council's Traffic Engineer, insufficient additional off-street parking has been provided to accommodate the proposed increase in population density in the Cooleena Road locality, therefore exceeding the capacity of local infrastructure in the form of on-street parking. As mentioned earlier in this report, the resultant development is not considered to be consistent with the objectives of the low-density C4 Environmental Living zone. The proposal does not satisfy this outcome.

- ***Population density does not exceed the capacity of local and regional transport facilities.***

Comment:

It is not considered the development will contribute to a population density that exceeds the capacity of local and regional transport facilities.
The proposal satisfies this outcome.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

B3.1 Landslip Hazard

Description of non-compliance

In accordance with the DCP control, all development on land to which this control applies must comply with the requirements of the Geotechnical Risk Management Policy for Pittwater. The DCP requires that development must not adversely affect or be adversely affected by geotechnical processes, nor must it increase the level of risk for any people, assets and infrastructure in the vicinity due to geotechnical hazards.

As stated earlier in this report, the site is mapped Geotechnical Hazard H1 and does not meet the objectives of the clause under Part 7.7 Geotechnical Hazards PLEP 2014.

Merit Consideration

Comment:

The outcomes of the control require:

Protection of people.

Protection of the natural environment.

Protection of private and public infrastructure and assets.

As a result of the proposal's steep topography inability to comply with the objectives of Part 7.7 PLEP 2014 and the Geotechnical Risk Management Policy for Pittwater, it is considered the proposal does not demonstrate that it can maintain geotechnical processes that do not increase the level of risk for any people, assets and infrastructure in the vicinity due to geotechnical hazards.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

B6.2 Internal Driveways

Description of non-compliance

The control states that if the applicant proposes to retain the existing driveway, the applicant will need to demonstrate compliance with the outcomes and driveway standards of this control.

Merit Consideration

The outcomes of the control require:

Safe and convenient access.

Reduce visual impact of driveways.

Pedestrian safety.

An effective road drainage system.

Maximise the retention of trees and native vegetation.

Reduce contaminate run-off from driveways.

Council's Traffic Engineer has reviewed the application and identified concerns regarding the inadequate turning path and issue that vehicles manoeuvring into and out of the parking spaces on Lot 1 are required to encroach into Lot 2. A right of carriageway in favour of Lot 1 over this portion of Lot 2 would therefore be required which would ultimately alter and reduce the available area for future development.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

B6.3 Off-Street Vehicle Parking Requirements

Description of non-compliance

Clause B6.3 of the P21DCP requires dwellings with two or more bedrooms to provide at least two off-street parking spaces on the site, as well as a minimum of one additional space for secondary dwellings.

In accordance with comments provided by Council's Traffic Engineer, the proposal does not achieve the required number of off-street parking spaces on each Lot. Whilst the subdivision plans make appropriate provision for two parking spaces on both proposed Lots 1 and 2, an additional parking space is not provided for the existing approved secondary dwelling on Lot 1, as is required by the control, as the use is to remain. It is noted that the current site provides for a secondary dwelling without additional carparking, however this is an existing approved non-compliance, approved under DA N0584/16. That assessment found it that as parking for additional vehicle was available in a tandem arrangement on the driveway, no additional carparking was necessary. However, the subdivision proposes to alter this arrangement and convert the existing driveway into a right of carriageway which would no longer be suitable for parking. It is not considered that there is adequate on-street parking on this section of Cooleena Road, to offset this numerical compliance or satisfy the outcomes of the control.

Merit Assessment

With regard to the consideration for a variation, the proposed development is considered against the underlying objectives of this control as follows:

- *An adequate number of parking and service spaces that meets the demands generated by the development.*

Comment:

The proposal is intensifying the use of the site to an extent that it does not satisfy the numerical requirements of P21 DCP, whilst adequate on-street parking is not available on this section of Cooleena Road that would not reduce similar opportunities for adjacent development sites.

- *Functional parking that minimises rainwater runoff and adverse visual or environmental impacts while maximising pedestrian and vehicle safety.*

Comment:

The engineering plans illustrate that stormwater is to be connected to a proposed inter-allotment drainage easement. As per comment from Council's Development Engineer, there is insufficient detail provided with the plans to determine if the system is able to accommodate the additional stormwater flows.

- *Safe and convenient parking.*

Comment:

The proposed development will impact upon vehicular movement to and from the site and does not demonstrate an ability to meet the necessary parking demands. Therefore, it cannot be considered that

the development will allow for safe and convenient parking.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

B6.6 On-Street Parking Facilities

Description of non-compliance

The control states that on-street parking facilities must not reduce similar opportunities for adjacent development sites.

As stated under Section B6.3 P21 DCP, there is insufficient on-street parking facilities to offset the numerical non-compliance of off-street parking.

The image below depicts the on-street parking arrangement at the front of the subject site as per a photo taken by the assessing officer on a weekday morning. On-street parking opportunities are limited, despite this being a perceived 'low-demand' time of day. It is also noted that the image shows a construction site, which may also diminish from the availability of on-street parking at the time the photo was taken.

Figure 3: On-street parking arrangement



Merit Consideration

The outcomes of the control require:

Safe and convenient parking that meets the demands of all modes of transport. (S)

Functional car parking that minimises rainwater runoff and adverse visual or environmental impacts while maximising pedestrian and vehicle safety. (En, S)

Safe public access. (S)

Maximise retention of native vegetation and trees in road reserve.

Reduce contaminate run-off.

Parking on both sides of the street creates a narrow carriageway with a single-vehicle width along this section of Cooleena Road, therefore any additional pressure on the carriageway should be avoided.

Considering comments provided by Council's Traffic Engineer in relation to the shortfall of off-street parking, it is considered that additional vehicles resulting from the proposed development would reduce similar on-street opportunities for adjacent development sites and place additional pressure on the existing carriageway.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

C1.1 Landscaping

Description of non-compliance

Council's Landscape Officer has reviewed the application in conjunction with the Arboricultural Impact Assessment (AIA). The AIA identifies the retention of 'Tree 1', however, the proposed driveway is located over Tree 1 on the architectural plans. Further landscaping comment therefore could not be provided siting the need for updated plans clarifying trees to be removed and retained, and redesign of the driveway to ensure the retention of Tree 1 and Tree 2. It is not known how Tree 1 and 2 can be retained and an acceptable driveway configured. In addition, no trees are supported for removal if impacted by the indicative building footprint for the new Lot.

Merit Consideration

The outcomes of the control require:

A built form softened and complemented by landscaping. (En)

Landscaping reflects the scale and form of development. (En)

Retention of canopy trees by encouraging the use of pier and beam footings. (En)

Development results in retention of existing native vegetation. (En)

Landscaping results in the long-term retention of Pittwater's locally native tree canopy. (En)

Landscaping retains and enhances Pittwater's biodiversity by using locally native plant species (En)

Landscaping enhances habitat and amenity value. (En, S)

Landscaping results in reduced risk of landslip. (En, Ec)

Landscaping results in low watering requirement. (En)

As per the comments provided by Council's Landscape Officer, it is not considered the proposal in its current form satisfies the outcomes of the control. In addition, as mentioned earlier in this report, it is also considered that the location of the indicative dwelling on proposed Lot 2 encroaches into the landscaped setting for the existing dwelling. As a result, the proposed subdivision and resultant development will not be able to provide a built form softened and complemented by landscaping.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

C1.4 Solar Access

The outcomes of the control are:

Residential development is sited and designed to maximise solar access during mid-winter. (En)
A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development. (En)
Reduce usage and/dependence for artificial lighting. (En)

Comment:

The DCP control states that the main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st, whilst windows to the principal living area of the proposal, and windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows).

Due to the orientation of the proposed subdivided lots, Lot 2 is considered to be naturally vulnerable to overshadowing impacts resulting from the existing dwelling on Lot 1. As indicative shadow diagrams have not been provided with the application, it is unable to be determined whether a reasonable level of solar access will be maintained for future development during mid-winter. This issue is heightened due to the restricted area available for future development due to the steep topography of the site.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

C1.5 Visual Privacy

Description of non-compliance

The DCP control states that private open space areas of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation. As stated earlier in this report, the location of the indicative dwelling on proposed Lot 2 is heavily limited by the site conditions, therefore minimal spatial separation is provided between the private open space of the respective properties.

Merit Consideration

The outcomes of the DCP control require:

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

A minimum setback distance of 1.54 metres is provided between the indicative 'split level' dwelling on Lot 2 and the private open space of Lot 1. Due to the minimal spatial separation, unreasonable overlooking opportunities will likely to be available from Lot 2. A sense of territory and safety is therefore not provided for residents.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

C1.6 Acoustic Privacy

Description of non-compliance

The DCP control states that noise-sensitive rooms, such as bedrooms, should be located away from noise sources, including main roads, parking areas, living areas and communal and private open space areas and the like.

Merit Consideration

The outcomes of the control require:

Noise is substantially contained within each dwelling and noise from any communal or private open space areas are limited. (S)

Noise is not to be offensive as defined by the Protection of the Environment Operations Act 1997, including noise from plant, equipment and communal or private open space areas (S)

The proposed parking area on Lot 1 is located adjacent to the common boundary with proposed Lot 2. The proposed proximity of the indicative dwelling on Lot 2 to the common boundary would therefore render the dwelling vulnerable to noise impacts from the parking area. This arrangement is not considered consistent with the outcomes of the control.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

C1.7 Private Open Space

Description of non-compliance

In accordance with the DCP control, functional private open space per dwelling shall consist of a minimum of 80m² at ground level, with no dimension less than 3 metres. The overall private open space area should be designed with a minimum principal area of 16m² and grade no steeper than 5% whilst being directly accessible from living areas and have good solar orientation.

Merit Consideration

The outcomes of the control require:

Dwellings are provided with a private, usable and well-located area of private open space for the use and enjoyment of the occupants. (S)

Private open space is integrated with, and directly accessible from, the living areas of dwellings. (S)

Private open space receives sufficient solar access and privacy. (En, S)

As mentioned earlier in this report, the limitations of proposed Lot 2 restrict the construction of a building on the subject site without significant numerical and amenity non-compliances. Due to the topography of the land, the location of usable rear private open space to meet the recreational needs of

the occupants, will also be drastically limited, particularly on Lot 2.

Apart from the steeply sloping topography, further limitations include the location of the proposed inter-allotment drainage easement and encroachment of the turning path of vehicles on Lot 1 into Lot 2, both of which require further design refinements which are not readily achievable, due to the heavily constrained site.

Furthermore, the indicative dwelling on Lot 2 on the subdivision plan only illustrates gross floor area rather than the building footprint, meaning it is not clear whether Lot 2 can accommodate a compliant dwelling footprint, in conjunction with compliant private open space. As a result, it is not considered that functional private open space can be provided in accordance with the outcomes of the control on the respective proposed lots.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

C4.1 Subdivision - Protection from Hazards

Description of non-compliance

All subdivision is to be designed such that adequate building platforms/building areas are provided that have a low risk due to hazards including flood, landslip, bushfire, coastline, and estuarine hazards.

As stated earlier in this report, the site is mapped Geotechnical Hazard H1 and does not meet the objectives of the clause under Part 7.7 Geotechnical Hazards PLEP 2014 nor B3.1 P21 DCP.

Merit Consideration

The outcomes of the control require:

Protection of people. (S)

Protection of the natural environment. (En)

Protection of private and public infrastructure and assets. (S)

As a result of the proposal's inability to comply with the objectives of Part 7.7 PLEP 2014 and thus the Geotechnical Risk Management Policy for Pittwater, it is not considered that the proposal demonstrates it is capable of the protection of people, the natural environment, infrastructure, and assets in the context of landslip hazards.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities

Description of non-compliance

The DCP control states that the design of each individual lot created within the subdivision is to provide for off street parking facilities compatible with the proposed development uses for that Lot. In addition,

where an internal driveway is located within a 'right of way' or proposed 'right of way', the internal driveway is to be designed and constructed as part of the subdivision works.

Merit Consideration

The outcomes of the control require:

Safe and functional access for vehicles, cyclists and pedestrians. (S)
Safe and convenient access and parking is provided on each lot.

As discussed earlier in this report under B6.3 P21 DCP, a non-compliant amount of off-street parking is provided for the indicative residential development.

In addition, the vehicle turning path on Lot 1 encroaches into proposed Lot 2 as per comments from Council's Traffic Engineer, whilst the proposed driveway is located over Tree 1 and 2 which are marked for retention and their removal not supported. The control states that internal driveways located within a right of way are required to be constructed as part of subdivision works, therefore a functional access arrangement has not been provided.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

C4.7 Subdivision - Amenity and Design

Description of non-compliance

The DCP control requires a comprehensive site analysis considering the final development which will occur on the site as a result of the subdivision. The analysis and resultant subdivision design should address issues including the slope and topography, solar access to the subdivision site, the side, rear and front setbacks of future dwellings, the visual impact of built development which will occur, the provision of vehicular access to the future buildings and the provision of onsite car parking on each proposed lot.

The DCP control also requires a building envelope area to be nominated on each proposed lot within which any future building is to be contained. The application should clearly demonstrate that a building envelope can be built on site that has regard for the retention of trees and bushland, vehicular access, provision of services, provision of emergency services and safety from hazard, as well as a building which achieves the desired character of the area and is commensurate with the amenity standards of surrounding development, and does not overly impact on the environment, and can be erected within that envelope.

In this regard, an assessment of the buildings which will be erected because of the proposed subdivision is to be carried out demonstrating that the requirements and outcomes of the DCP controls which will apply to those buildings will be able to be complied with.

Furthermore, the planning principle under *Parrott v Kiama [2004] NSWLEC 77* states that 'the design of the future house (at least the outline design) is not a matter that is appropriately left until later'. A subdivision application should provide constraints on future buildings when the proposed allotments are smaller than usual, or environmentally sensitive or where significant impacts on neighbours is likely and needs careful design to minimise them. The site is considered environmentally sensitive as a result of its

slope and topography characteristics. It is therefore necessary that detailed plans of how future development may occur support the subject application.

Merit Consideration

The outcomes of the control require:

Desired character of the locality.
Protection of the natural environment. (En)
Ecologically sustainable development. (En)
Minimal design constraints. (S)
Adequate access and services. (En, S)
Access driveways to public roads are minimised.

The limitations of the development in relation to the desired character of the area have been discussed in this report under A4.5 P21 DCP. In addition, as also discussed at various stages in this report, it is considered the proposal does not adequately satisfy the relevant provisions related to vehicular access, retention of trees and bushland, solar access, side and rear setbacks, landscaping, or onsite car parking. The slope and topography of the land also represents a substantial limitation for future development on the subdivision site.

As a result, under the outcomes of this control and *Parrott v Kiama [2004] NSWLEC 77*, it is not considered that the completed development (including existing and proposed buildings to be constructed on the proposed lots) retains a level of amenity commensurate with the locality and the desired character of the area, nor achieves an acceptable impact on the surrounding environment.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

C4.8 Subdivision - Landscaping on the Existing and proposed public road reserve frontage to subdivision lots

Description of non-compliance

As addressed in this report under C1.1 P21 DCP, Council's Landscape Officer has reviewed the application in conjunction with the Arboricultural Impact Assessment (AIA). The AIA identifies the retention of Tree 1; however, the proposed driveway is located over Tree 1 on the architectural plans. Further landscaping comment therefore could not be provided siting the need for updated plans clarifying trees to be removed and retained, and redesign of the driveway to ensure the retention of Tree 1 and Tree 2. In addition, no trees are supported for removal if impacted by the indicative building footprint for the new lot.

Merit Consideration

The outcomes of the control require:

Achieve the desired character of the locality.
Consistency of landscape works in the road verge. (S)

As per the comments provided by Council's Landscape Officer above, it is not considered the proposal

in its current form satisfies the outcomes of the control.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

D5.1 Character as viewed from a public place (Excluding Elanora Heights Village Centre)

Description of non-compliance

The existing building which fronts Cooleena Road will remain predominantly unchanged, whilst retaining compatible design elements and street presence.

However, the DCP control also requires landscaping to be integrated with the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation.

Merit Consideration

The outcomes of the control require:

To achieve the desired future character of the Locality.

To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment. (En, S, Ec)

To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.

The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation. (En, S, Ec)

High quality buildings designed and built for the natural context and any natural hazards. (En, S)

Buildings do not dominate the streetscape and are at 'human scale'. Within residential areas, buildings give the appearance of being two-storey maximum. (S)

To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context.

To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, including parking structures, being a secondary component.

To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, compliments the landscape character, public use and enjoyment of that land. (En, S)

As provided by the balance of this assessment, the indicative dwelling on Lot 2 replaces the existing landscaped setting on the current allotment and as such, it is not considered to achieve the desired future character of the locality. As most of the habitable areas of Lot 2 shall be taken up by built form, rather than being secondary to landscaping, it is considered the objectives are not satisfied.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

D5.6 Side and rear building line (Excluding Elanora Heights Village Centre)

Description of non-compliance

The hardstand parking area on proposed Lot 1 has a nil setback to the rear common boundary.

In addition, the western side setback of the existing dwelling is proposed to be setback 0.36 metres, due to the inclusion of the right of carriageway.

Merit Consideration

The outcomes of the control require:

Safe and convenient access.

Reduce visual impact of driveways.

Pedestrian safety.

An effective road drainage system.

Maximise the retention of trees and native vegetation.

Reduce contaminate run-off from driveways.

The western side setback is reduced as a direct result of the right of carriageway which runs adjacent to the western boundary, which provides a spatial buffer to the adjoining property to the west. As the built form of the existing dwelling on Lot 1 is not being increased or encroaching further towards the western adjoining neighbour, it is considered a variation could be afforded in this instance. However it compromises the future amenity of that dwelling.

As stated earlier in this report under C1.6 P21 DCP, the proposed parking area on Lot 1 is located within close proximity of the indicative dwelling on proposed Lot 2 which impacts the acoustic privacy of the future occupants. The parking area is also proposed to replace existing landscaped area and vegetation that provides the landscaped setting for the existing dwelling. The outcomes of the control are therefore not considered to be achieved in this regard.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

D5.9 Landscaped Area - Environmentally Sensitive Land

Description of non-compliance

The proposed landscaped area on Lot 1 according to the subdivision plan is 42.08% or 251.4m², which represents a variation of 29.87% from the numerical control of 60%.

On Lot 2, a compliant level of landscaped area is provided at this stage, however as further details are required in regard to the indicative building area, inter-allotment drainage easement and vehicle turning area, this level is subject to change.

Merit Consideration

The outcomes of the control require:

Achieve the desired future character of the Locality. (S)

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

A reasonable level of amenity and solar access is provided and maintained. (En, S)

Vegetation is retained and enhanced to visually reduce the built form. (En)
Conservation of natural vegetation and biodiversity. (En)
Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels. (En)
To preserve and enhance the rural and bushland character of the area. (En, S)
Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management. (En, S)

The creation of the proposed Lot 2 creates a shortfall in landscaped area on proposed Lot 1 which is not considered to achieve the desired future character of the locality or the outcomes of the control.

As already mentioned, the limitations of proposed Lot 2 restrict the construction of a building on the subject site without significant numerical and amenity non-compliances. The indicative dwelling on Lot 2 only illustrates gross floor area rather than the building area. Therefore, it cannot be determined if Lot 2 can accommodate a compliant dwelling footprint as well as landscaped area, whilst also considering the hard surface areas required for the vehicle turning bay.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, 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:

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

The Development Application seeks consent for the partial demolition of the existing dwelling (to remove the existing garage) and a one into two Torrens title subdivision. Both Lots are to be accessed by a right of way along the western boundary.

It is considered that the proposed development fails to adequately respond to the aims of the Pittwater Local Environmental Plan 2014 or the objectives of the C4 Environmental Living zone. Furthermore, the proposed development fails to align with the Desired Future Character of the Elanora Heights Locality and the density controls for subdivision in low density residential areas.

Overall, the proposal subdivision represents as an overdevelopment of the site creating an undesirable amenity and streetscape outcome when compared with the surrounding low density residential development along Cooleena Road. Furthermore, issues have been identified with the proposed stormwater management system, water quality requirements, right of carriageway arrangement, vehicle turning path, car parking and tree retention which due to the constraints of the site, are not easily resolvable, if at all.

The application was notified for community consultation and attracted a total of 11 individual submissions objecting to the proposal. The key issue raised within the submissions pertain to geotechnical hazards and impacts, inadequate stormwater, compatibility with surrounding development, subdivision density, insufficient landscaping, amenity impacts, traffic impacts, construction management, insufficient off-street parking and impacts on local vegetation. Several the concerns raised within the submissions have merit and warrant refusal of the application.

It is recommended that the NBLPP refuse the development application for the reasons set out within the assessment report.

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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2022/0448 for the Subdivision of one lot into two and partial demolition of existing dwelling on land at Lot G DP 408223,7 Cooleena Road, ELANORA HEIGHTS, for the reasons outlined as follows:

The proposal fails the considerations of the Pittwater Local Environmental Plan 2014

The proposal fails the follows considerations and controls of the Pittwater Local Environmental Plan 2014:

Particulars:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.
 - i. Does not promote development in Pittwater that is economically, environmentally, and socially sustainable, nor ensure development is consistent with the desired character of Pittwater's localities and provides for the needs of the community both now and in the future.
2. The proposal is inconsistent with the objectives of the C4 Environmental Living zone:
 - i. The proposed development does not provide for a low-impact residential development in the context of the ecological values of the site including its geotechnical and landscape character
 - ii. The subdivision development proposes to further intensify the use of the site which already consists of an existing residential dwelling and secondary dwelling. This is considered an overdevelopment and does not provide for residential development of a low density and scale integrated with the landform and landscape.
3. The proposal is inconsistent with the objectives of Part 7.7 Geotechnical Hazards PLEP 2014:
 - i. The site is mapped 'Geotechnical Hazard H1' on the Pittwater Geotechnical Hazard Map. The site layout and geotechnical constraints which burden Lot 2 renders much of its site area unusable, thus heavily restricting the siting of any future development on that lot as well as its ability to comply with residential built form controls.
 - ii. In accordance with the comments provided by Council's Development Engineer and Water Management Officer, it is not considered that the development will appropriately manage wastewater, stormwater, and drainage across the land so as not to affect the rate, volume and quality of water leaving the land.
 - iii. As a result of the proposal failing to meet the objectives of this clause, the development also fails to comply with Part 3.1 Landslip Hazard P21 DCP as well as the Geotechnical Risk Management Policy for Pittwater.

4. Inconsistent with Part 7.10 Essential Services PLEP 2014:

- i. In accordance with comments provided by Council's Development Engineer, Council cannot be satisfied that there is adequate availability of stormwater drainage.
- ii. Council's Traffic Engineer notes that the turning path for Lot 1 encroaches into Lot 2, which does not result in suitable vehicular access.

The proposal is inconsistent with the Controls of the Pittwater P21 DCP

The proposed development is unacceptable as it is inconsistent with the controls of the DCP required by the considerations of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979.

Particulars:

5. Inconsistent with the desired future character of the Elanora Heights Locality:

- i. The indicative dwelling on Lot 2 is located over the portion of the existing allotment which currently provides the landscaped setting for the existing dwelling. Opportunities for replacement of the existing landscape setting is limited due to the topographical limitations of the rear of the site.

6. The proposal is inconsistent with the outcomes under B2.2 Subdivision - Low Density Areas P21 DCP:

- i. The western side boundary of proposed Lot 2 provides a minimum depth of 24.44m, therefore failing to comply with the control requirement of 27m.
- ii. The slope between the highest and lowest point of proposed Lot 2 located on the western side of the allotment is 32.73%, thus exceeding the control requirement of 30%.
- iii. The control requires a minimum area of building of 175m². A gross floor area of 185.72m² is illustrated on the plans rather than a minimum building area or dwelling footprint, as is the intent of the control.
- iv. It is also considered the currently proposed numerical characteristics are subject to change due to the amendments required for an inter-allotment drainage easement, right of carriageway, vehicle turning path and tree protection measures.
- v. As a result of the above non-compliances, the proposal results in a built form which dominates the habitable areas of the existing and proposed allotments and exceeds the capacity of local infrastructure which is not considered to be consistent with the outcomes of the control.

7. The proposal is inconsistent with the outcomes of Section B6.2 Internal Driveways P21 DCP:

- i. In accordance with comments from Council's Traffic Engineer, the vehicle turning path on Lot 1 necessitates an encroachment into Lot 2. A right of carriageway in favour of Lot 1 over this portion of Lot 2 would therefore be required which would ultimately alter the proposed lot size and indicative dwelling plans.

- ii. Council's Development Engineer also could not make comment as further details are required for the proposed right of carriageway including driveway long-sections and cross-sections as well as existing and proposed finished levels. As a result, it is not considered that safe and convenient access is maintained for the proposed development.
8. The proposal is inconsistent with the outcomes of Sections B6.3 Off-Street Vehicle Parking Requirements and B6.6 On-Street Parking Facilities
- i. In accordance with comments provided by Council's Traffic Engineer, the proposal does not achieve the required number of off-street parking spaces. An existing parking space non-compliance was approved under a prior application due to hardstand parking being available along the driveway. However, as the driveway is now being converted into a right of way, this parking shall no longer be available.
- ii. There is limited availability of on-street parking to offset the above non-compliance and it is considered that additional vehicles resulting from the proposed development will reduce similar on-street opportunities for adjacent development sites, which does not comply with the controls of section B6.6.
9. The future indicative development is inconsistent the residential amenity controls under P21 DCP:
- i. Council's Landscape Officer is not able to provide further comment due to portions of the development being located over the significant trees which are proposed for retention under the submitted Arboricultural Impact Assessment, therefore demonstrating non-compliance with section C1.1 Landscaping P21 DCP.
- ii. No indicative shadow diagrams have been provided with the application and it is therefore unable to be determined whether a reasonable level of solar access shall be maintained to the naturally vulnerable allotments to the south.
- iii. Due to the limited siting of the indicative dwelling on Lot 2, private open space areas of proposed and any existing adjoining dwellings are not protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation, as is required under C1.5 Visual Privacy P21 DCP. Due to the minimal spatial separation, a sense of territory and safety is therefore not provided for residents.
- iv. The proximity of the proposed parking area on Lot 1 to the indicative dwelling on Lot 2 is not considered consistent with the provisions of C1.6 P21 DCP which requires noise-sensitive rooms, such as bedrooms, to be located away from noise sources, including main roads, parking areas, living areas and communal and private open space areas and the like.
- v. As the currently proposed numerical characteristics are subject to change due to required amendments to the proposed drainage easement, building area, tree protection, vehicle turning path and right of carriageway, it is unable to be determined whether a functional level of private open space can be provided to Lot 2, particularly as the topography renders the majority of the rear portion unusable.
10. The proposal is inconsistent with the Design Criteria for Subdivision under P21 DCP:
- i. As a result of the proposal's inability to comply with the objectives of Part 7.7 PLEP 2014 and thus the Geotechnical Risk Management Policy for Pittwater, it is not considered that the

proposal demonstrates it is capable of the protection of people, the natural environment, infrastructure, and assets in the context of landslip hazards as is required under section C4.1 Subdivision - Protection from Hazards.

ii. A functional access and parking arrangement has not been provided under Section C4.2, as a non-compliant amount of off-street parking is provided for the indicative residential development, the vehicle turning path on Lot 1 encroaches into proposed Lot 2, and the proposed driveway is located over Tree 1 which is marked for retention.

iii. The limitations of the development in relation to the desired character of the area as well as vehicular, ecological, and residential amenity requirements, result in an inability to demonstrate compliance with C4.7 Subdivision - Amenity and Design nor the planning principle under Parrott v Kiama [2004] NSWLEC 77 revised - 16/03/2004

11. Indicative development is inconsistent with the Locality Specific Development Controls of the Elanora Heights Locality:

i. It is not considered that landscaping is adequately integrated with the building design of the existing or proposed allotments to screen the visual impact of the built form and does not result in a built form appearance that is secondary to landscaping and vegetation, as required under section 5.1.

ii. The hardstand parking area on proposed Lot 1 has a nil setback to the rear common boundary. The parking area replaces an existing landscaped setting and results in acoustic privacy impacts which therefore does not satisfy the outcomes of the control D5.6 side and rear building line.

iii. The proposed landscaped area on Lot 1 according to the subdivision plan is 42.08% or 251.4m², which represents a variation of 29.87% from the numerical control of 60%. This shortfall is a direct result of the creation of Lot 2 and is not considered to achieve the desired future character of the locality or the outcomes of the control under D5.9 Landscaped Area - Environmentally Sensitive Land. On Lot 2, a compliant level of landscaped area is provided at this stage, however as further details are required in regard to the indicative building area, inter-allotment drainage easement and vehicle turning area, this level is subject to change. Therefore, it cannot be determined if Lot 2 can accommodate a compliant dwelling footprint as well as landscaped area, whilst also considering the hard surface areas required for the vehicle turning bay.

The site is not suitable for the proposed development

The site is not suitable for subdivision and inconsistent with the considerations of Section 4.14 (1)(b) of the Environmental Planning and Assessment Act, 1979.

Particulars:

12. For the reasons articulated in this report, insufficient information has been provided to demonstrate that the site is suitable for the proposed development.

The development is not within the public interest

The proposed development is not within the public's interest as required by the consideration of Section 4.14(1)(e) of the Environmental Planning and Assessment Act, 197

Particulars:

13. The proposed development due to its impacts is not considered to be within the public's interest.
14. The application has not been supported by adequate or sufficient information including:
 - ❖ Subdivision Plans do not correctly illustrate the minimum building area
 - ❖ Inconsistency between the subdivision plans and the Arboricultural Impact Assessment which reflects the proposed driveway being located over significant trees which are marked for retention
 - ❖ Indicative turning path on Lot 1 encroaches into Lot 2
 - ❖ No owners consent provided for a proposed inter-allotment drainage easement as well as the path or connection of the easement
 - ❖ Driveway section plans for the proposed right of carriageway

7 Coolena Rd Elanora Heights NSW 2101

DA for Subdivision



F	POS	M	07/03/22
E	Updated Plans	M	15/02/22
Rev	Description	Drft	Issues

Revision
F Current Issue Date
Tuesday, 8 March 2022

Client: Sondro Ianni		Town Planner: JQ Drawn By: MM Checked By: GC	Revision: F Scale: 1:200 @ A2	1300 008 138 info@councilapproval.com.au www.councilapproval.com.au
Project: DA for Subdivision		Drawing Name: SITE PLAN + SUBDIVISION PLAN		Approvals: Pty Ltd as Trustee for The Council Approval Group Trust ABN 2351241969
7 Coolena Rd Elenora Heights NSW 2101		Drawing Number: A.1 Nominated Architect: Giusseppe Calabrese 8079		

Figured dimensions take precedence over scale dimensions. Contractors must verify all dimensions on site before commencing any work or making shop drawings.

5.0 NON PUBLIC MEETING ITEMS

ITEM 5.1	DA2022/0581 - 3 GOLF AVENUE, MONA VALE - ALTERATIONS AND ADDITIONS TO A RECREATION FACILITY (OUTDOOR) - MONA VALE GOLF CLUB.
AUTHORISING MANAGER	Steve Findlay
TRIM FILE REF	2022/518919
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plans & Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the land owner is the council.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2022/0581 for Alterations and additions to a Recreation Facility (Outdoor) - Mona Vale Golf Club on land at Lot 2 DP 1275526, 1 Golf Avenue, MONA VALE, Lot 249 DP 752046 (SPL 76319) Lot 323 DP 824000 (Crown Lease 200108), 3 Golf Avenue, MONA VALE, Lot 249 DP 752046 (SPL 76319) Lot 323 DP 824000 (Crown Lease 200108), 3 Golf Avenue, MONA VALE, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0581
Responsible Officer:	Adam Susko
Land to be developed (Address):	Lot 2 DP 1275526, 1 Golf Avenue MONA VALE NSW 2103 Lot 249 DP 752046 (SPL 76319) Lot 323 DP 824000 (Crown Lease 200108), 3 Golf Avenue MONA VALE NSW 2103 Lot 249 DP 752046 (SPL 76319) Lot 323 DP 824000 (Crown Lease 200108), 3 Golf Avenue MONA VALE NSW 2103
Proposed Development:	Alterations and additions to a Recreation Facility (Outdoor) - Mona Vale Golf Club
Zoning:	RE1 Public Recreation SP2 Infrastructure
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	NSW Government - Department of Industry - Lands
Applicant:	The Mona Vale Golf Club Ltd
Application Lodged:	29/04/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	05/05/2022 to 19/05/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 3,525,795.00

EXECUTIVE SUMMARY

The application is for alterations and additions to the Mona Vale Golf Course clubhouse.

The proposal relates to internal alterations, the construction of a deck, instillation of a water tank, and some minor operational changes to the clubhouse.

The proposal is referred to the Northern Beaches Local Planning Panel as the clubhouse is located on Crown land under the care and control of Council and so the determination must be made by the Panel.

There were no submissions made in response to the public exhibition of the application.

The proposal provides enhanced dining and entertainment opportunities for members and their guests, without compromising the landscape and scenic qualities of the course, or the amenity of nearby residential properties.

This report concludes with a recommendation that the Panel **APPROVE** the DA, subject to the conditions proposed..

PROPOSED DEVELOPMENT IN DETAIL

Development Consent is sought for alterations and additions to the Mona Vale Golf Club (MVGC) clubhouse.

The works proposed include the refurbishment and expansion of the existing clubhouse, installation of a water tank and pump-room, and the installation of two pieces of signage.

The built form changes result in operational changes to the MVGC.

Alterations and Additions

- Internal demolition works, necessitating some minor external modifications
- Construction of two decks to the south of the existing club house, accessible from the lower-ground level
- Installation of an above-ground water tank and associated pumproom to the northwest of the existing "Pro-Shop"
- Installation of two pieces of business identification signage
- Planting of 8 *Banksia Integrifolia* trees along Golf Avenue

Fundamentally, the clubhouse works do not change the footprint or height of the building, but rather seek to upgrade the existing lower-ground floor to provide an enhanced dining/entertaining facility for club members and their guests. The works generally do not impact on the existing ground floor level, except for some window, door and balustrade changes to meet current building standards.

Operational Changes

The applicant has submitted an Operational Management Plan (OMP), which will form a management document should approval to the application be granted. The OMP provides extensive details, but in general the operational changes proposed include:

- No changes in overall maximum capacity of the clubhouse
- Increase in overall staff (at any one time) from 4 to 6 persons
- Addition of a conference room/space
- Operational hours of bar/cafe/decks/restaurant of 8:00am to 9:00pm

Generally, the OMP indicates that the proposal results in no material changes to the existing operations of the club.

Amended Plans

During this assessment of this application, Council requested further details including an OMP, additional landscaping along the street, and a revised traffic and parking report. The applicant provided these requested details to Council and the assessment in this report includes that new information. The changes did not necessitate the re-notification of the application which satisfies the requirements of the Northern Beaches Community Participation Plan.

Note: A portion of the area to be developed falls within a Crown Reserve whereby Council is the Land Manager. The applicant for this DA is the Mona Vale Golf Club and their respective planning consultants. Neither of these persons / entities constitute 'the Crown' under s 294 of the *Environmental Planning and Assessment Regulation 2021*, and therefore, pursuant to s 4.33 of the *Environmental Planning and Assessment Act 1979*, the development is not a Crown DA and a standard assessment and determination process applies.

Permissibility

The clubhouse is situated on the same land as the golf course, despite being contained within a separate lot to the golf course. As the application is made in relation to the lots comprising the Mona Vale Golf Course (the subject site), and the Mona Vale Golf Club has a lease over the subject site, the clubhouse which sits on the same site, is ancillary to the Mona Vale Golf Course.

Therefore, the use is appropriately defined as a *Recreation Facility (Outdoor)*, which is a permissible use within the RE1 - Public Recreation zone under PLEP 2014. This is how the application has been made and addressed in the Statement of Environmental Effects prepared by DFP Planning Pty Limited and how the application has been assessed in this report.

The alternative is that the clubhouse is defined as a Registered Club, which is a prohibited use in the RE1 zone, however for the reasons provided, this land use categorisation is not preferred and not warranted.

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 21 Development Control Plan - B4.6 Wildlife Corridors

Pittwater 21 Development Control Plan - C2.5 View Sharing

Pittwater 21 Development Control Plan - C2.12 Protection of Residential Amenity

Pittwater 21 Development Control Plan - D9.1 Character as viewed from a public place

SITE DESCRIPTION

Property Description:	Lot 2 DP, 1275526 , 1 Golf Avenue MONA VALE NSW 2103 Lot 249 DP 752046 (SPL 76319) Lot 323 DP 824000 (Crown Lease 200108), 3 Golf Avenue MONA VALE NSW 2103 Lot 249 DP 752046 (SPL 76319) Lot 323 DP 824000 (Crown Lease 200108), 3 Golf Avenue MONA VALE NSW 2103
Detailed Site Description:	The subject site is colloquially known as the Mona Vale Golf Club / Course and sits on land zoned for RE1 Public Recreation pursuant to the Pittwater Local Environmental Plan 2014. The site presently accommodates a two storey club house with associated parking (the portion of the site relevant to this application), greens, storage sheds and other infrastructure interspersed across the large site. The site is bound to the east by Mona Vale Beach; west by Barrenjoey Road/Pittwater Road; north by apartment buildings; and south by Mona Vale hospital.

Map:



SITE HISTORY

The subject property has been operated as a golf course with associated facilities for an extended period of time. There is no recent development history on the land.

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	There are no current draft environmental planning instruments.
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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<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. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Council requested additional information as laid out in the 'Detailed Description of Proposal' component of this report. Those changes did not necessitate the re-notification of the application in accordance with the Northern Beaches Council Community Participation Plan. <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. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. <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.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21

Section 4.15 Matters for Consideration	Comments
on the natural and built environment and social and economic impacts in the locality	Development Control Plan section in this report. (ii) Social Impact The proposal represents the upgrade of commercial facilities at the existing golf club which in turn, enhances the opportunities for social interaction between members of the club, and general residents in the community who may wish to attend the facility for a meal or leisure. The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The development represents the upgrade of an existing golf club, generally within the same footprint as the existing building. 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	The development is expected to be a positive addition to the Mona Vale and wider Northern Beaches community. The proposal represents a reasonable upgrade and modernisation of an existing outdated facility that is not meeting the needs of the Club and its patrons and guests. No written submissions have been received in response to the exhibition of this application and therefore 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 from 05/05/2022 to 19/05/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.
Environmental Health (Industrial)	Supported, with conditions Environmental Health have reviewed the proposed acoustics of the proposed alterations and additions to Mona Vale golf course. The acoustic report has been assessed and has been developed in accordance with the noise policy for industry. Recommendations from the acoustic report will guide proposed conditions onto the consent. Mechanical plant details have been provided as part of the submission but not included in acoustic report. Details of exact mechanical ventilation plans will require further assessment by an acoustic consultant. Environmental Health recommend imposing a condition relating to further assessment prior to the issue of the occupation certificate. The acoustic report also recommends a number of administrative controls to limit patron numbers in different areas of the club during different activities and times. To facilitate an assessment with all available information Environmental health, require an operational plan of management at the determination stage to demonstrate how the administrative aspects of the acoustic report will practically be achieved. The operational plan of management must detail requirements from the acoustic report including but not limited to, maximum patronage in specific areas, times windows, door and partitions need to be closed, operational hours, total capacity of the clubhouse and numbers in each area at any one time, how complaints will be recorded and actioned, how noise will be minimised for patrons leaving the club, sound system use and any dB limiters for audio equipment that may be required to achieve compliance with the recommendations of the acoustic report by koikas accoustics. Amended comments 11/08/2022 The applicant has provided a plan of management as part of their application which has been reviewed as part of this assessment. The plan of management has advised proposed hours of operation but not mentioned hours of operation for the function room which is also silent in the SEE. Generally Environmental Health are satisfied with the submitted information but will recommend imposing a condition for all operations to cease between 1am to 5am based on the administrative

Internal Referral Body	Comments
	controls in place to close outdoor areas and begin wrapping up of the function. Compliance with the plan of management will also be incorporated into the consent. As the original above comments explain conditions are to be imposed requiring further assessment of proposed plant prior to CC and compliance testing of controls and noise limiters prior to OC. Environmental health is satisfied with the proposal subject to conditions being imposed.
Environmental Health (Food Premises, Skin Pen.)	Supported, with conditions Environmental Health have reviewed the Development Application which proposes refurbishment works to the existing club house, pro-shop and car park at Mona Vale Golf Club. The refurbishment works include but are not limited to a new café, a new kitchen and associated storage areas, the removal of an existing 100 litre above-ground grease arrestor and the installation of a new below-ground 3000 litre grease arrestor outside the zone of influence of the building's footprint. Environmental Health considers that the proposal should be supported as the kitchen is to be constructed according to Australian Standard 4674-2004 and comply with Standard 3.2.3.
Landscape Officer	Supported, with conditions The development application is for alterations and additions to the commercial development (Mona Vale Golf Club), and associated works, as described and illustrated in the reports and plans. Council's Landscape Referral section have assessed the application against the Pittwater Local Environment Plan, and the following Pittwater 21 DCP controls (but not limited to): • B4.22 Preservation of Trees and Bushland Vegetation • C5.1 Landscaping • D9 Mona Vale Locality It is noted some shrub and groundcover planting will be impacted by the proposal however no trees are proposed for removal or will be impacted by the works, therefore no Arboricultural Impact Assessment is required. A Landscape Plan is included in the application and will be assessed as part of the Landscape Referral. The landscape proposal will make good any disturbance created by the works and provide new planting, which is generally supported, subject to the imposed conditions. Tree locations have not been identified on the Landscape Plan however the installation of 3x <i>Livistona australis</i> and 1x <i>Banksia integrifolia</i> is supported. All trees and vegetation to be retained shall be protected subject to the conditions of consent.
NECC (Coast and	Supported, no conditions

Internal Referral Body	Comments
Catchments)	The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Resilience and Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP. Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>. State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021. Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by DfP Planning Consultants dated March 2022, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. Pittwater LEP 2014 and Pittwater 21 DCP No other coastal related issues identified. As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.
NECC (Development Engineering)	Supported, with conditions No objections to approval subject to conditions as recommended.
NECC (Riparian Lands and Creeks)	Supported, with conditions The development application is for alterations and additions to commercial development (Mona Vale Golf Club), and associated

Internal Referral Body	Comments
	works. This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. The development must not significantly impact on the biophysical, hydrological or ecological integrity of the receiving waters, or the quantity and quality of surface and ground water flows that it receives. Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established. The proposal is therefore supported.
NECC (Stormwater and Floodplain Engineering – Flood risk)	Supported, no conditions The proposed DA generally complies with the flood controls in the LEP and DCP. The works involve the refurbishment of the existing club house, pro-shop and carpark at 3 Golf Avenue, Mona Vale. The site is located outside the 1% AEP and PMF flood extent and as such is approved without conditions.
NECC (Water Management)	Supported, with conditions This application has been assessed against relevant legislation and policy relating to water quality, waterways, riparian areas, and groundwater.
Parks, reserves, beaches, foreshore	Supported, no conditions The development application is for alterations and additions to commercial development (Mona Vale Golf Club), and associated works. Parks Referral raise no concerns.
Strategic and Place Planning (Urban Design)	Supported, no conditions The application (DA2022/0581) seeks Development Consent for alterations and additions to the existing Mona Vale Golf Club clubhouse. The DA seeks approval for the following: • Internal demolition and some minor external demolition works; • Construction works associated with the refurbishment of the lower ground level to provide new change rooms, amenities, multi-purpose space, reception, office, café, bar, kitchen, storage and external dining areas; • Alteration & additions including external signage and upgrades

Internal Referral Body	Comments
	to the external of the building. • Construction of a pumproom and associated water tank adjoining the pro-shop building to upgrade the site's fire protection system; • Modifications to car park line markings to alter three (3) existing parking spaces into two (2) adaptable spaces and removal of seven (7) spaces to accommodate the pumproom and water tank; • Creation of a formal golf trolley storage area under an awning cover; and • Associated landscaping to 'make good' and improve aesthetic amenity. Urban Design raise no objection to the proposed alterations & additions.
Traffic Engineer	<i>Supported, with conditions</i> The proposed development is for alterations and additions to the Mona Vale Golf Club with upgraded facilities for golf club members and casual visitors. The main works include refurbishments to the existing bar and restaurant, on-site fire protection system with the provision of a new pump room and water tank adjoining the pro-shop building. The application has been reviewed with respect to impacts to parking and fire truck access to the new facilities. The Traffic & Parking assessment undertaken by The Transport Planning Partnership (TPPP) also provides advice on the provision of parking for people with a disability in an area adjacent to the club building. The assessment notes that Council's DCP requires the provision of accessible parking spaces for people with disabilities at the rate of 3% of the required car parking spaces. The Mona Vale Golf Club has an at-grade car park with approximately 118 car spaces and an overflow hardstand area with a capacity of 50 additional parking spaces. The additional parking area is available when the lower ground floor members area is used during the late afternoon/ early evening period following a round of golf. The required accessible parking spaces, based on the total car parking is therefore five spaces. The Applicant proposes two new spaces for people with disabilities to be provided at the south-eastern corner of the main car park adjacent to the club building, and notes that there are two existing accessible spaces in Golf Avenue near the pro-shop. The on-street parking spaces provide suitable access to the pro-shop only and not the club building due to the distance and level difference between the street

Internal Referral Body	Comments
	and building entry points. Council therefore requires that two additional accessible parking spaces be provided in the car park area directly in front of the club building. The two accessible spaces with shared area will displace three existing staff parking spaces which can be relocated to the parking adjacent to the pro-shop. The Notification Plan Drawing No. NP-001, actually shows the location of the recommended accessible parking in the front parking area. This location provides convenient access to the main entrance, using the existing ramp near the porte cochere. The proposal and location of the new facilities for firefighting will result in the displacement and removal of six parking spaces on the western side of the pro-shop. Fire truck access off Golf Avenue to the pump room will also impact vehicles parked in the central parking modules opposite the facilities. It is therefore appropriate that suitable measures be undertaken to reduce these impacts. The Applicant has adopted some but not all of Council's recommendations regarding parking layout and circulation within the car park. The updated plan Drawing No. 22012CAD006 Figure 1 Revision A, shows three 60 degree angled spaces (2.5m wide with 5.7m aisle width). The existing central parking modules are poorly marked and not aligned with the other parking modules. The circulation roadway narrows from the access driveway, with the swept path for the fire truck encroaching slightly on the central parking module. As a result, the Applicant proposes that the two adjacent spaces be removed. The central parking spaces (and the overall car park in general) have irregular sized spaces varying between 2.35-2.5m wide and 5.1-5.3m long. Rather than the removal of two parking spaces, the central parking modules can be remarked (12 spaces, 2.4m wide and 5.4m long) and shifted westwards, with the horizontal line separating the parking modules retained to facilitate installation. The provision of a minimum 4.6m aisle width would widen the circulation roadway to enable fire truck access. The existing car park layout is restrictive and lacks any pavement markings to direct visitors. Circulation within the main car park can be significantly improved by installing directional arrows and introducing one-way flow in a clockwise direction. The eastern driveway access should be made entry only. The western driveway can be combined entry and exit to allow direct access to the overflow car park area. Furthermore, the first parking aisle (closest to Golf Avenue) can be two-way to allow vehicles to circulate within the car park without exiting and re-entering from Golf Avenue. The additional changes specified by Council provides an additional two accessible parking spaces (total four within the car park) at convenient locations near entrances to the club building, minimises loss of parking, reduces traffic conflict and improves overall circulation without redesigning the entire car park. The proposal can therefore be supported subject to the above

Internal Referral Body	Comments
	changes and required Council Conditions. Engineering plans generally in accordance with the Australian Standards and/or otherwise specified by Council are to be submitted for approval prior to the issue of the Construction Certificate.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<i>Supported, with conditions</i> The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

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 as a golf course for a period 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 suitable for the continued use of the site as a golf course.

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 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 who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Industry and Employment) 2021

Section 3.6 and 3.11 of Chapter 3 require Council to determine consistency with the objectives stipulated under Subsection 3.1 (1)(a) of the SEPP and to assess the proposal against the assessment criteria of Schedule 5.

The objectives of this chapter aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.

In accordance with the provisions stipulated under Schedule 5 of Chapter 3, the following assessment is provided:

Matters for Consideration	Comment	Complies
1. Character of the area Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The proposal includes the installation of two pieces of signage to the clubhouse. Sign 01 is located approximately 45m inwards of the site and is hung to the flank facade of the existing club building and measures 1.35m x 1.35m. Sign 02 is not readily visible from the street, and one would need to be inside the golf course to see it. The two pieces of signage proposed are minimal in the overall context of the building, and do not detract from the desired future character.	YES
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The signage is constructed from bronze and timber which is found to be appropriate for the locality.	YES
2. Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The signage does not detract from the scenic qualities of the golf course.	YES
3. Views and vistas Does the proposal obscure or compromise important views?	The signage does not obscure any existing views enjoyed from public or private properties.	YES
Does the proposal dominate the skyline and	No.	YES

reduce the quality of vistas?		
Does the proposal respect the viewing rights of other advertisers?	The site is a large golf course, and the signage is not proximate to any other business signage.	YES
4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	Yes. The signage is positioned at least 45m from the street edge and is reasonably scaled proportioned to the overall building.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	Yes. The signage is made of an interesting material palette.	YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	N/A	N/A
Does the proposal screen unsightliness?	The proposal contributes to the overall aesthetic of the club house.	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	No.	YES
5. Site and building Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	Yes.	YES
Does the proposal respect important features of the site or building, or both?	Yes.	YES
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	Yes.	YES
6. Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	No.	YES
7. Illumination Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	No. The signage is not proximate to the road, pedestrians or residential properties. It is considered unlikely that the signage would be of an illumination that would impact aircraft.	YES
Can the intensity of the illumination be adjusted, if necessary?	No. The application does not indicate that the illumination can be adjusted, however the spatial separation of signage to neighbours largely negates the ability for such to be enforced.	YES
Is the illumination subject to a curfew?	No. As above.	YES
8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	No.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No.	YES

Accordingly, the proposed signage is of a scale and design suitable for the locality. The proposal is therefore deemed to be consistent with the provisions of this chapter and its underlying objectives.

SEPP (Resilience and Hazards) 2021

Portions of the wider golf club site are subject to coastal attributes under the SEPP (Resilience and Hazards) 2021, however those attributes do not extend near to the development site which is, for the most part, contained on a lot separate to the greens of the golf course. An assessment against the SEPP is therefore not required, however it is generally found that the proposal would have no detrimental impacts on the accessibility, usability, enjoyment or coastal processes of the coastal use area or coastal environment area.

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	No change to existing (approx. 8.1m)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	Complies
Front building line	Merit Assessment	Existing shop - 3.4m Water tank - 5m Pump room - 9m	Yes (existing) Yes (on merit) Yes (on merit)

		Club works - 44m	Yes (on merit)
Rear building line	N/A	Nil to Lot 323 DP 824000 350m+ to Lot 2 DP 1275526	N/A N/A
Side building line	(northwest) N/A	Approx. 43m	N/A
	(southeast) N/A	8.7 - 17.2m	N/A
Building envelope	(northwest) 3.5m	No change to existing	Yes
	(southeast) 3.5m	No change to existing	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.9 Mona Vale Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
B5.5 Rainwater Tanks - Business, Light Industrial and Other Development	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	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
C2.1 Landscaping	Yes	Yes
C2.2 Safety and Security	Yes	Yes
C2.5 View Sharing	Yes	Yes
C2.7 Building Facades	Yes	Yes
C2.8 Energy and Water Conservation	Yes	Yes
C2.9 Waste and Recycling Facilities	Yes	Yes
C2.10 Pollution Control	Yes	Yes
C2.11 Signage	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C2.12 Protection of Residential Amenity	Yes	Yes
C2.20 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C2.21 Food Premises Design Standards	Yes	Yes
C2.22 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D9.1 Character as viewed from a public place	Yes	Yes
D9.2 Scenic protection - General	Yes	Yes
D9.3 Building colours and materials	Yes	Yes
D9.6 Front building line	Yes	Yes
D9.7 Side and rear building line	Yes	Yes
D9.13 Fences - Flora and Fauna Conservation Areas	Yes	Yes

Detailed Assessment

B4.6 Wildlife Corridors

Whilst the proposal seeks to modify some existing shrubs and groundcovers, no trees are proposed for removal. Those portions of the site subject to development is not considered to be of a high biodiversity value nor contribute to a significant wildlife corridor given the presence of built structures and the presence of people in the vicinity of the building.

The development should enhance the existing wildlife corridors through the planting of four endemic prescribed trees in the form of 3 x *Livistona australis* and 1 x *Banksia integrifolia* as required by Council's landscape officer.

On balance of factors, the proposal is considered to have a net benefit to the local wildlife corridors and habitats.

C2.5 View Sharing

The development is not anticipated to cause any unreasonable nor detrimental view loss to surrounding properties or the public domain, largely because the footprint and height of the building is not changing. In reaching this conclusion the principles of *Tenacity Consulting v Warringah Council [2004]* NSWLEC140 and *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor [2013]* NSWLEC1046 have been considered.

C2.12 Protection of Residential Amenity

In accordance with the assessment provisions of Clause C2.12 *Protection of Residential Amenity* the proposed club upgrades are not expected to cause any loss of solar access or loss of visual privacy to neighbouring residential properties.

D9.1 Character as viewed from a public place

The works proposed to the club house are largely limited to the existing lower ground of the building and are not expected to be readily visible from the public domain.

The proposal does seek to expand the building mass of the existing "Pro-Shop" towards the street-edge

of the site by way of adding a new water tank and pump room. These structures are to be clad in "timber-look" cladding and Cliplock cladding.

During the assessment Council requested revised plans, including the additional of some landscaped screening between these structures and the property boundary. A revised landscaped plan was provided which indicates that 8 *Banksia Integrifolia* trees and shrubbery will be planted between the street and the "Pro-Shop" to minimise the bulk of the building when viewed from Golf Avenue.

Therefore, based on the amended landscape plan, the proposal achieves a satisfactory character when viewed from the public domain.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$35,258 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,525,795.

Assessment of Application on Crown Land

- **Is the land a Crown Reserve?**

Yes - Reserve Number 425608.

- **Is Council the Crown land manager under the Crown Lands Management Act 2016?**

Yes - since 1924.

- **Can it be taken that the Minister has given consent on behalf of the Crown for its Crown land manager to sign as land owner? (What section of the Act applies?)**

Minister consent has been issued.

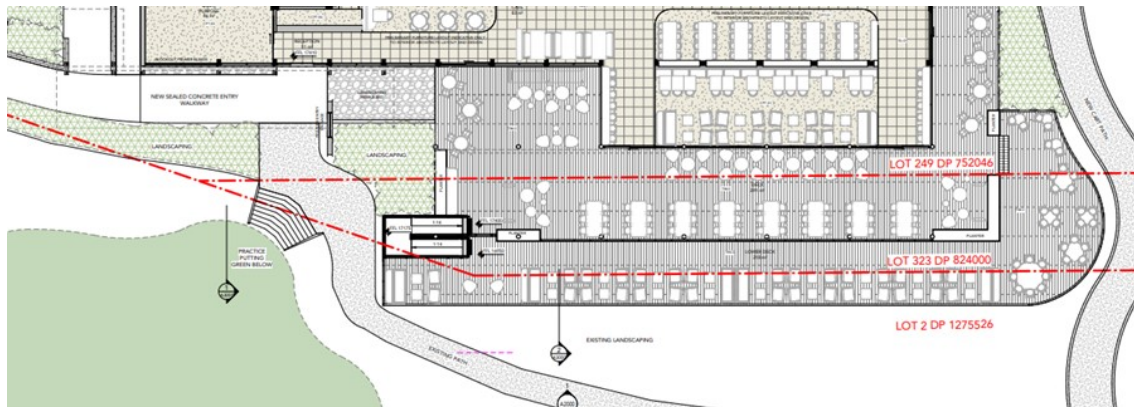
- **Is the land classified as community land under the Local Government Act 1993?**

Yes.

- **Is there a Plan of Management and if so, are the proposed works consistent with that Plan?**

Yes. The land on which the Golf Club building is located, Lot 249 DP 752046 and Lot 323 DP 824000

is not within the area under the control of the Mona Vale Golf Course PoM, whilst the golf course (greens, fairways and maintenance sheds) are under the control of the POM on Lot 2 DP 1275526 (adjoining the club building) and multiple other lots not affected by this application. The proposed works involving part of the timber deck extending approximately 1200mm into Lot 2 and for a length of approximately 35 metres.



Whilst the PoM does not specifically reference or anticipate any enlargement of the club or deck, the proposed deck extension for outdoor dining is not antipathetic with the intent plan which is *to encourage development and maintenance of a parklike environment, while at the same time, recognize the existing and future recreational needs of the local and wider community by the provision of a high quality golf facility* [sic].

The Directional Statement contained with the PoM states:

Directional Statements:

- ❖ That Council assist and encourage the development and maintenance of a parklike environment within the Mona Vale Golf Course
- ❖ That the land covered by this Plan of Management be recognised as providing a quality sporting facility within the Pittwater Council area.
- ❖ To encourage the promotion of this sporting facility as having regional significance.
- ❖ To provide an appropriate balance between recreational needs, environment, landscape and conservation values in the future management of the Mona Vale Golf course land.

Management Issues raised in the PoM involve, drainage, public access/recreation, boundary definition,

carparking, tenure, risk management and the lease.

The proposed works on lot 2 do not conflict with these issues or directional statements on each issue contained with the attached PoM dated March 1996.

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:

- 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

PLANNING CONCLUSIONS

The assessment of this DA has found that the proposal is satisfactory in relation to the changes to the intensification and scale of upgrades to the existing clubhouse facilities and that those upgrades will not detrimentally affect the acoustic or visual amenity of neighbouring properties or the natural environment.

The proposal complies with the relevant building controls and will result in a superior looking and functioning clubhouse upon completion.

The improvements to the parking area and traffic management are supported.

The notification of the application resulted in no submissions being received.

The application is referred to the NBLPP as Council has care and control of the Crown Land that the clubhouse sits upon.

This report concludes with the recommendation that the NBLPP as the consent

authority **APPROVE** the application.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2022/0581 for Alterations and additions to a Recreation Facility (Outdoor) - Mona Vale Golf Club on land at Lot 2 DP 1275526, 1 Golf Avenue, MONA VALE, Lot 249 DP 752046 (SPL 76319) Lot 323 DP 824000 (Crown Lease 200108), 3 Golf Avenue, MONA VALE, Lot 249 DP 752046 (SPL 76319) Lot 323 DP 824000 (Crown Lease 200108), 3 Golf Avenue, MONA VALE, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A0010 - Site Plan - Rev. 8	29 July 2022	Team 2 Architects
A0102 - Lower Ground Floor Plan - Demolition - Rev. 6	25 February 2022	Team 2 Architects
A0103 - Ground Floor Plan - Demolition - Rev. 4	04 March 2022	Team 2 Architects
A1000 - Lower Ground Floor Plan - Proposed - Rev. 10	24 March 2022	Team 2 Architects
A1010 Ground Floor - Proposed Rev. 4	04 March 2022	Team 2 Architects
A1020 - Pumproom and Tank - Rev. 2	31 March 2022	Team 2 Architects
A2000 - Proposed Elevations - Rev. 3	25 February 2022	Team 2 Architects
A3000 - Proposed Sections Rev. 4	25 February 2022	Team 2 Architects
A7001 - Signage Details Rev. 1	25 February 2022	Team 2 Architects
A9000 - Proposed Colours and Materials - Rev. 3	25 February 2022	Team 2 Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Accessibility Review Report (ref: 22006_ADR_DA_v1.2)	31 March 2022	ABE Consulting Pty Ltd
Acoustical Report	03 February 2022	Koikas Acoustics Pty Ltd
BCA Assessment Report (ref: 115505-BCA-r4)	01 April 2022	BCA Logic
Operational Management Plan, and Noise and Complaint Policy	2022	Mona Vale Golf Club

Traffic and Parking Statement (ref: 22012)	29 July 2022	TTPP Transport Planning
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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
HGW01-DA-100 Rev. A	30 March 2022	sym studio
HGW01-DA-101 Rev. P2	25 February 2022	sym studio
HGW01-DA-200 Rev. P1	25 February 2022	sym studio
HGW01-DA-102 Rev. A	28 July 2022	sym studio

Waste Management Plan		
Report Title	Dated	Prepared By
Waste Management Plan	28 February 2022	Mona Vale Golf Club

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) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) 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.
- (k) 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.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

- (n) 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 2018
 - (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 Section 7.12 Contributions Plan 2022

A monetary contribution of \$35,257.95 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 2022. The monetary contribution is based on a development cost of \$3,525,795.00.

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 2022 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 are required 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, and 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**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

7. **Car Parking Standards**

The driveway/access ramp grades, access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. The dimensions of car parking bays and aisle widths in the car park are to comply with Australian/New Zealand Standard for Off-Street Parking AS/NZS 2890.1-2004, or otherwise specified by Council.

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

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

8. **Construction Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

Due to heavy traffic congestion throughout the town centre, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movements must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and

- submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

9. Submission of Engineering Plans - Parking

The submission is to include four (4) copies of Civil Engineering plans for the car park design.

The proposal shown in Drawing No.22012CAD006 Figure 1 Revision A is to be updated to include the additional requirements specified in Council’s Traffic Referral response. The plans shall be prepared by a qualified Civil Engineer and the design must include the following information:

- Provision of two accessible parking spaces in the car park area directly in front of the club building. The location of the spaces is shown on Notification Plan Drawing No. NP-001. The existing three staff parking spaces displaced can be relocated to the parking adjacent to the pro-shop.
- Provision of a 4.6m circulation roadway between the central parking module and the three new 60 degree angled parking spaces provided on the western side of the pro-shop.
- Remark car spaces in the central parking modules of the main car park. Two rows containing twelve 90 degree angled parking spaces (2.4m wide and 5.4m long).
- Designate the eastern driveway access as entry only. The western driveway is to be combined entry and exit to enable direct access to the overflow car park area.
- The first parking aisle (closest to Golf Avenue) is to be two-way to allow vehicles to circulate within the car park without exiting and re-entering from Golf Avenue.
- Introduce one-way flow in a clockwise direction for the remainder of the main car park with installation of directional arrows.

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

Reason: To ensure compliance with Council’s requirements to provide accessible parking spaces at convenient locations near entrances to the club building, minimise loss of parking, reduce traffic conflict and improve overall circulation within the car park.

10. Building Code of Australia Fire Safety Requirements

The Building Code of Australia fire safety measures for the building as detailed and recommended in the BCA Assessment Report prepared by BCA Logic, dated 1/4/2022, Ref 115505-BCA-r4 and including any proposed Performance Solutions are to be considered as part of the assessment of the Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.
Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

11. Building Code of Australia Access

Access and facilities to and within the building are to be provided for Persons with a Disability and are to comply with the Building Code of Australia and AS 1428.1. In this regard the Accessibility Review Report prepared by ABE Consulting dated 31/3/2022 is to be taken into consideration as part of the assessment of the Construction Certificate. Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

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

12. Plans of Kitchen Design, construction and fit out

Prior to any Construction Certificate (CC) being issued, detailed plans that demonstrate compliance with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, the Food Act 2003 and Australian Standard AS 4674 'Design, construction and fit out of food premises', must be submitted to and approved by the Certifying Authority. These plans are to be prepared by a suitably qualified person.

The plans must detail adequate provision for storage including separate storage of food, equipment, chemicals and personal belongings.

Reason: To ensure that the Food premise complies with the design construction and fit-out requirements.

13. Plans of Mechanical ventilation

Where Mechanical ventilation is required to be installed in the food premises detailed plans must be submitted to and approved by the Certifying Authority that demonstrate compliance with the following:

- Australian Standard (AS) 1668.2 "The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings"; and
- Any external exhaust discharge must be above the roofline and discharged in a manner that is not likely to cause an amenity impact.

These plans are to be prepared by a suitably qualified person.

Reason: To ensure that the installed mechanical ventilation complies with the requirements of the Australian Standard 1668.2 and to prevent amenity impacts.

14. Noise - Design of Mechanical Plant

Prior to the issue of a Construction Certificate, the design and location of the mechanical ventilation is to be provided to the Principal Certifying Authority. An acoustic assessment is to be undertaken by a suitably qualified professional such as an acoustic engineer to determine acoustic treatments to control noise emissions from all mechanical plant noise in accordance with recommendations in Acoustic Report prepared acoustic report by Koikas acoustics dated 3 February 2022 and referenced as 5255R20220128asMonaValeGC_DA.

Any design recommendations made by the consultant must be implemented into the plans prior to issuing the Construction Certificate in order to achieve compliance with noted conditions of this consent.

Details demonstrating compliance are to be submitted to the satisfaction of the certifier.

Reason: To protect surrounding premises from any noise generated by the operation of the development.

15. 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.

16. 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**17. Demolition Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic

Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to commencing any demolition work.

Due to heavy traffic congestion throughout the area, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Include a Traffic Control Plan prepared by an RMS accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

The DTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – "Manual of Uniform Traffic Control Devices", RMS' Manual – "Traffic Control at Work Sites".

All fees and charges associated with the review of this plan is to be in accordance with Council's Schedule of Fees and Charges and are to be paid at the time that the Demolition Traffic Management Plan is submitted.

Reason: This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

18. Traffic Management

Traffic management procedures and systems must be in place and practised during the course of the project to ensure safety and minimise the effect on adjoining pedestrian and vehicular traffic systems. These procedures and systems must be in accordance with AS 1742.3 2009 Manual of Uniform Traffic Control Devices and Council's Development Control Plans.

Note: A plan of traffic management is to be submitted to and approved by the Consent Authority.

Reason: To ensure pedestrian safety and continued efficient network operation.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

19. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) 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) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) 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 Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees, and should additional pruning be required an application to Council's Tree Services shall be submitted for approval or otherwise.

The Certifying Authority must ensure that:

- c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree (s) is prohibited.

Reason: Tree and vegetation protection.

20. **Road Reserve**

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

Reason: Public safety.

21. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) prior to commencement of any other works on site.

Erosion and sediment controls 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 vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

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

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan as required prior to commencement of any other works on site.

Erosion and sediment controls 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 vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

23. **Implementation of Demolition Traffic Management Plan**

All works and demolition activities are to be undertaken in accordance with the approved Demolition Traffic Management Plan (DTMP). All controls in the DTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the DTMP be impacted by surrounding major development not encompassed in the approved DTMP, the DTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved DTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Reason: To ensure compliance and Council's ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project.

24. **Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the approved

Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

25. **Ongoing Management**

The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

26. **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:

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- o Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- o 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.

27. **Geotechnical Requirements**

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

28. **Staff and Contractor Parking**

The applicant is to make provision for parking for all construction staff and contractors for the duration of the project. All Staff and Contractors are to use the existing car park where possible.

Reason: To ensure minimum impact of construction activity on local parking amenity.

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

29. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan, and inclusive of the following conditions:

- i) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,

- ii) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres from buildings, 2.0 metres from structures, and at least 1.5 metres from common boundaries, and located either within garden bed or within a prepared bed within lawn,
- iii) mass planting shall be installed at suitable intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for grasses/groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
- iv) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

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

Reason: Environmental amenity.

30. **Stormwater Disposal**

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

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

31. **Accessible Parking Spaces**

Where Accessible parking spaces are provided they must be in accordance with AS2890.6:2009.

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

Reason: To ensure compliance with Australian Standards.

32. **Shared Zone Bollard**

A bollard is to be provided at the shared zone between Accessible parking spaces in accordance to Australian Standards AS2890.6:2009.

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

Reason: To ensure compliance with Australian Standards.

33. **Registration of Food Business**

The food business must be registered with the Appropriate Regulatory Authority, prior to Occupation Certificate being issued.

Reason: Food premises are required to be registered with the Appropriate Regulatory Authority.

34. **Kitchen Design, construction and fit out of food premises certification**

Prior to the issuing of any occupation certificate, certification is to be provided to the Principal Certifying Authority by a suitably qualified person demonstrating that the design, construction and fit out of food premises kitchen is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.

Reason: To ensure that the kitchen complies with Australian Standard design requirements

35. **Mechanical ventilation**

Where Mechanical ventilation is required to be installed in the food premises it must comply with the following:

- Australian Standard (AS) 1668.2 "The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings"; and
- Any external exhaust discharge must be above the roofline and discharged in a manner that is not likely to cause an amenity impact.

Certification is to be provided to the Principal Certifying Authority by a suitably qualified person that the mechanical ventilation complies with the above requirements.

Reason: To ensure that the installed mechanical ventilation complies with the requirements of the Australian Standard 1668.2 and to prevent amenity impacts.

36. **Compliance with Acoustic Report**

Prior to any occupation certificate being issued, a further acoustic assessment is to be undertaken by a qualified and experienced person(s) to confirm compliance with the recommendations of the acoustic report by Koikas acoustics dated 3 February 2022 and referenced as 5255R20220128asMonaValeGC_DA.

Any recommendations made by the consultant must be implemented prior to issuing the Occupation Certificate in order to achieve compliance with noted conditions of this consent.

37. **Fire Safety Matters**

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

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

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

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

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

38. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

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

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

Reason: To maintain local environmental amenity.

39. **Compliance with Operational Plan of Management and Acoustic Report**

The details of the document Mona Vale golf club operational plan of management, all recommendations in the acoustic report by Koikas acoustics dated 3 February 2022 and referenced as 5255R20220128asMonaValeGC_DA and the acoustic report required prior to CC for the mechanical plant are to be complied with in perpetuity for the life of the development.

Reason: To protect acoustic amenity.

40. **Hours of Operation**

The hours of operation are to be restricted to:

- Monday to Friday – 8:00am - 9:00pm
- Saturday – 8:00am - 9:00pm
- Sunday and Public Holidays – 8:00am - 9:00pm

In the event of a function, hours of operation may be extended to 12:00am. No more than 1 function may be held per week.

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

41. **Commercial Waste Collection (DACPLG18)**

Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 6am on any day.

Reason: To protect the acoustic amenity of surrounding properties.

42. **Deliveries**

No deliveries, loading or unloading associated with the premises are to take place between the hours of 10pm and 6am on any day.

Reason: To protect ensure the acoustic amenity of surrounding properties.



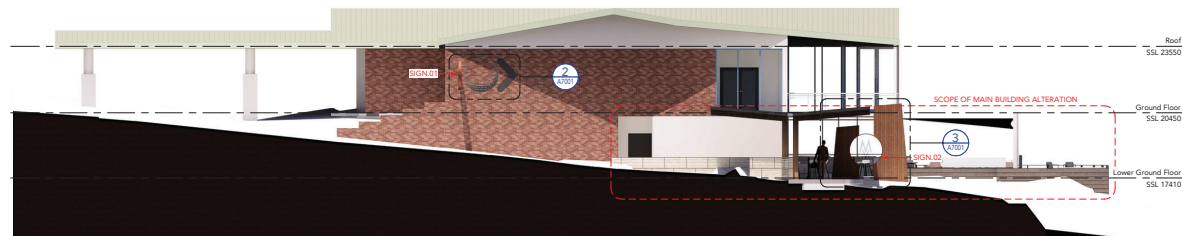




1 SOUTH ELEVATION
Scale: 1 : 100



2 EAST ELEVATION
Scale: 1 : 100



3 WEST ELEVATION
Scale: 1 : 100

DRAWING STATUS:		
DEVELOPMENT APPLICATION		
Rev	Revision Description	Date
1	Submission for Planning Controls	202208
2	Revisory DA	202209
3	FOR DEVELOPMENT APPLICATION	202209

DISCLAIMER:
The drawings are intended for the use of the client and are not to be used for any other purpose without the written consent of the architect. The architect is not responsible for the accuracy or completeness of the information provided by the client. The architect is not responsible for the accuracy or completeness of the information provided by the client. The architect is not responsible for the accuracy or completeness of the information provided by the client.

DRAWING LEGEND:
1. Architectural drawings shall be made in accordance with the Australian Standards and specifications. Any dimensions shall be referred to as 2nd floor level unless otherwise specified.
2. All dimensions and levels are in metres unless stated otherwise. No dimension shall be rounded off to the nearest millimetre.
3. All dimensions shall be rounded off to the nearest millimetre.
4. All dimensions shall be rounded off to the nearest millimetre.
5. All dimensions shall be rounded off to the nearest millimetre.

Client:
Mona Vale Golf Club
3 Golf Ave, Mona Vale NSW 2103

0 1 2 3 4 5
SCALE 1:100
TEAM
ARCHITECTS
10/11 Chavasse Street,
Sydney NSW 2000
T: +61 2 9337 3344
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Web: www.teamarchitects.com.au
Reg No: 19168

Mona Vale Golf Club
3 Golf Ave, Mona Vale NSW 2103

Proposed Elevations

Sheet	Scale	Author	Checker
T053	1 : 100		
A2000			3

ITEM 5.2

**DA2021/2447 - 989 BARRENJOEY ROAD, PALM BEACH -
DEMOLITION WORKS AND CONSTRUCTION OF A
DWELLING HOUSE INCLUDING A SWIMMING POOL.**

AUTHORISING MANAGER

Steve Findlay

TRIM FILE REF

2022/518982

ATTACHMENTS

- 1** [↓ Assessment Report](#)
- 2** [↓ Site Plans & Elevations](#)
- 3** [↓ Clause 4.6 - Height](#)
- 4** [↓ Clause 4.6 - Foreshore Area Development Standard](#)

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 and Clause 7.8 Limited Development on Foreshore Area Development Standard pursuant to clause 4.6 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/2447 for Demolition works and construction of a dwelling house including a swimming pool on land at Lot 58 DP 13620, 989 Barrenjoey Road, PALM BEACH, Lot LIC 320226, 989 Barrenjoey Road, PALM BEACH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2447
Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot 58 DP 13620, 989 Barrenjoey Road PALM BEACH NSW 2108 Lot LIC 320226, 989 Barrenjoey Road PALM BEACH NSW 2108
Proposed Development:	Demolition works and construction of a dwelling house including a swimming pool
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Peter Michael Lubrano
Applicant:	Reform Projects Pty Ltd
Application Lodged:	15/12/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	22/12/2021 to 25/01/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 22.3% 7.8 Limited development on foreshore area
Recommendation:	Approval
Estimated Cost of Works:	\$ 7,644,640.00

EXECUTIVE SUMMARY

This development application seeks consent for demolition of the existing dwelling and construction of a three-level contemporary dwelling with garage, pool and associated landscaping and earthworks.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP), as the proposal seeks to vary a non-numerical development standard, that being Clause 7.8 –Limited Development on Foreshore Area of the Pittwater LEP 2014.

Specifically, the proposal seeks consent for decking on top of an existing concrete foreshore terrace and an associated pergola. Both structures breach the foreshore building line and a Clause 4.6 Variation has been submitted which argues that the structures will not impact on natural foreshore processes or affect the significance and amenity of the area in relation to unacceptable visual, privacy, solar access and public/private views. The proposed timber decking is located generally over the alignment of the existing concrete terrace located immediately adjacent to the foreshore with the proposed works enhancing the visual amenity of the site as it relates to development within the foreshore area. The Clause 4.6 is supported under this assessment for the reasons detailed later in the report. The elements encroaching into the foreshore area do not result in the loss of protected or significant vegetation, nor will they impact on foreshore processes or result in unreasonable amenity impacts. The design will allow for a functional dwelling, like the siting and design of that existing on site, with minimal environmental impacts.

The application is also being referred to the NBLPP as the proposal seeks to vary Clause 4.3 – Height of Building Development Standard which specifies a height limit of 8.5m. The Clause 4.6 variation is required because of the interpretation of ground level (existing) as established in the recent judgement of *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*, where existing ground level is taken from already excavated ground levels, as opposed to the “*Betta*” court judgement (from natural ground levels as extrapolated). It is noted that the proposal complies with the 10m concessional height standard at clause 4.3(2D) of the PLEP using the *Betta* judgement.

Using the *Merman* height measurement, the proposal results in three elements breaching the height limit by up to 1.9m (22.3%), namely the eaves at the southern end of the level 2 gym. The application is supported by a Clause 4.6 Variation which argues that the breaching elements will not result in impacts on the desired future character of the Palm Beach Locality and the bulk and scale of the dwelling is consistent with other existing developments in the area with the breaching elements not been visible from the street or Pittwater Waterway. The proposed dwelling steps down the steep site (30% slope) and is integrated into the topography siting below the canopy height with no unreasonable amenity impacts. The Clause 4.6 is supported under this assessment for the reasons detailed later in the report. The bulk of the dwelling sits below the 8.5m height limit and is generally located on the footprint of the existing dwelling to minimise environmental impacts. The elements that breach the 8.5m height limit will not result in unreasonable visual, environmental or amenity impacts and sufficient environmental planning grounds exist to justify the height of building variation including the steep and artificially modified topography which makes strict compliance difficult to achieve while providing safe vehicular access on site.

Except for the building envelope, front setback and landscaped area provisions, the proposal complies with all other P21 DCP built form controls. Given that the site adjoins a reserve to the immediate south there will be no unreasonable visual or amenity impacts (overshadowing, view loss, privacy) because of the breach of the envelope to the southern elevation.

The proposal removed the encroaching garage and other structures from the road reserves and results in a lightweight garage/gym structure which has an improved setback to the frontage. A condition requires that no structures, landscaping, retaining walls and steps are permitted within 3.0m of the kerb.

The proposal allows for 61sqm increased landscape open space compared to the existing site. In addition, 44sqm of contributory landscape area is provided in the form of a large planter bed at level 2 which helps address the breach of the 60% landscaped area control. On merit, the landscaping is assessed as acceptable as the majority of high value canopy trees will be retained and sufficient additional landscaping is proposed to ensure that the built form is softened, and impacts ameliorated.

The proposal presents as a contemporary dwelling which is stepped, articulated, and incorporates a

palette of natural materials to respect the desired future character of the Palm Beach area.

The application has been amended to address traffic issues with the turntable now being fully located on the subject site and concurrence from Transport for NSW has been received. Subject to conditions, the application is supported by all internal and external referrals and no submissions have been received in the exhibition of the application.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance the proposal (as amended) is a suitable and appropriate development for the subject site, for the reasons outlined in this report.

Accordingly, it is recommended that the application be **approved** subject to the attached conditions

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the demolition of the existing dwelling and associated structures and the construction of a new contemporary three level dwelling-house with integrated garage, swimming pool and associated landscape works.

In detail, the proposal involves the following:

Level 2 - RL17.065

- Formal dwelling entrance and foyer
- Gymnasium opening onto a terrace (terrace RL17.065)
- Carport (with turntable) parking accommodation for 2 vehicles accessed via a driveway from Barrenjoey Road (carport RL17.755)
- Bin storage and services room
- Internal stair and lift access to the levels below

Level 1 - RL13.415

- 4 bedrooms each with ensuite, WIR and west facing balconies
- Laundry and services/ plant room
- Internal stair and lift access to the levels above and below

Ground Level - RL9.995

- An open plan kitchen and dining room opening onto a west facing terrace
- Living room opening onto a west facing balcony and street facing courtyard
- Library and cellar
- Powder room
- Internal stair and lift access to the levels above and below.

Waterfront Level

- Access tunnel to connect the house, from the internal lift to the waterfront terrace. The finished floor level of the access tunnel varies from RL2.0m to RL2.5m and will require excavation to a maximum depth of approximately 10.5m
- Lightweight timber decking over existing concrete terrace, pergola, and swimming pool

Other / External

Removal of eight (8) trees (5 prescribed trees)
Solar panels on the roof above the gym (roof level RL+20.855)

External Materials

Sandstone, concrete, steel, and timber.

Road Reserve Works: The proposal includes works within the road reserve, including; access driveway, pedestrian steps, retaining walls and landscaping.

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 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality
Pittwater 21 Development Control Plan - B6.1 Access driveways and Works on the Public Road Reserve
Pittwater 21 Development Control Plan - D12.5 Front building line
Pittwater 21 Development Control Plan - D12.8 Building envelope
Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 58 DP,13620 , 989 Barrenjoey Road PALM BEACH NSW 2108 Lot LIC,320226 , 989 Barrenjoey Road PALM BEACH NSW 2108
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Barrenjoey Road, Palm Beach. The site is irregular in shape with a frontage of 26.54m along Barrenjoey Road and a variable depth of between 25.91m and 24.6m. The site has an irregular frontage to Pittwater Waterway as established by the Mean High Water Mark

(MHWM). The site has a surveyed area of 682m².

The site is located within the C4 Environmental Living zone and accommodates a one / two storey clad dwelling house with pitched and tiled roof located adjacent to the Barrenjoey Road frontage. A brick garage with a pitched and tile roof is located partly on the site and partly within the adjacent road reserve with a series of retaining walls providing for informal landscaping within the road reserve, down the southern boundary of the property and within the foreshore setback area. A concrete terrace and timber jetty is located adjacent to the foreshore frontage and extends below MHWM.

The site is relatively steep falling approximately 19m (16.7 degrees/ 30% slope), across its surface in a westerly direction and contains a number of mature trees. The site is mapped as Geotechnical Hazard H1 and Bush Fire Prone Land (Vegetation Buffer).

Detailed Description of Adjoining/Surrounding Development

The site is bound by residential development to the north-west, Pittwater to the south-west, a reserve for drainage and access to the south-east and retaining walls supporting Barrenjoey Road to the north-east.

To the north-west, the adjoining property is occupied by a brick garage extending to the boundary and a single storey rendered house that has been partly demolished. The survey drawing denoted the house as a 'dilapidated building'. Both structures appeared to be in poor condition. At the southwestern end is a clad boat house that is set-back about 6m. The property has a similar landform to that of the site and slopes down to Pittwater at between about 50° and 60°. There is also a high bedrock cliff-line above the boat house which appears to be sandstone bedrock.

To the south-west is Pittwater. At the northern end of the seawall, sandstone bedrock is outcropping below sea level. Sand is exposed beyond the seawall over the remainder of the length of the seawall. To the south-east, ground levels in the public reserve are like the subject site. Between the site and Barrenjoey Road ground levels step up about 2.5m. This change in elevation is supported by batter slopes that have been formed at between 30o to 50o and have irregular sandstone facing protecting an inferred soil batter. The crest of the upper of these batter slopes is set-in about 1.5m to 2m from the kerb and gutter of Barrenjoey Road.

Map:



SITE HISTORY

21 December 1999 - N1172/99 was granted consent for six metre floating ramp extension of existing private jetty with two treated timber restraining piles.

2 September 2021 - PLM2021/0216 was held to discuss the demolition of existing structures and construction of new dwelling, boatshed, and swimming pool at 989 Barrenjoey Road, Palm Beach. The PLM notes concluded that:

In its current form, Council does not support the proposal. The following matters will need to be addressed in order for the development to be consistent with the requirements and objectives of Council's controls:

- Adequate areas of landscaped space around all boundaries of the site that provide future potential for mature vegetation, ideally to comply with the 60% requirement;
- Greater level of compliance compared to the 8.5m building height standard (noting that 10.0m control does not apply);
- Ensuring no significant breaches of the side boundary envelope control;
- Reduction of the ancillary structures within the foreshore building line to retain and enhance natural features adjoining the foreshore; and
- minimising all structures on the road reserve to functional purposes only and reducing the perception of privatisation of the public domain.

The current DA, as amended, generally addresses the issues raised in the PLM as discussed throughout this report.

7 December 2021 - Subject DA was lodged.

12 April 2022 - Amended plans were received, which included the following:

- The deletion of the turning bay and a rationalisation of retaining works within the road reserve.
- Amendment to the driveway profile to comply with Council's extra low profile drawing A4/3330/5

EL.

- The reconfiguration of the Level 2 floor plate to accommodate the amended driveway profiles and a turntable to enable vehicles to enter and exit the site in a forward direction. This floor plate has been split in level and reduced in size to ensure that the building remains below the 10 metre concessional height standard for steeply sloping sites.
- The provision of a double-sided lift to accommodate the level 2 split floor plate.
- Amendments to the landscaping within the road reserve to reduce the height and extent of the east-west running wall element.
- Level 2 reflection pond amended to a planter box to soften the building and supplement the at-grade landscape proposed.
- The reconfiguration of the level 1 and ground level floor plates to accommodate the required stair and lift core modifications at level 2

In accordance with the Northern Beaches Community Participation Plan (NBCCP), the application did not require re-notification as they involved a lesser environmental impact.

16 August 2022 - Applicant submitted a Clause 4.6 variation statement to address the measurement of building height as per the Merman court judgement, which resulted in the proposal exceeding the 8.5m height development standard under PLEP 2014.

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	There are no current draft environmental planning instruments.
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)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider “Prescribed conditions” of development consent. These matters have been addressed via a condition of consent. <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. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to vehicular access issues, work within the road reserve, envelope, and landscape non-compliances.

Section 4.15 Matters for Consideration	Comments
	Clause 92 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. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 98 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. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. Clause 143A 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.
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	(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. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report. No submissions have been received.
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.

Section 4.15 Matters for Consideration	Comments

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is mapped as classified as containing the 100m buffer zone from Category 1 Vegetation therefore the provisions of Planning for Bush Fire Protection apply (PBP).

The subject development relates to the construction of a new sole occupancy dwelling within an existing residential allotment. The development is classified as infill development and assessed as a s4.14 application under the *Environmental Planning and Assessment Act 1979* and section 7 'Residential Infill Development' of PBP applied.

The application is supported with a Bush Fire Assessment Report that confirms that subject to recommendations the proposed development conforms with the provisions of PBF. The application was referred to the NSW Rural Fire Service who offered no objections subject to conditions, including conditions requiring an Asset Protection Zone (APZ), landscaping to comply with PBFP, compliance with construction standards and water and utility service.

The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS as part of the bush fire safety authority, have been included as part of the recommended conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 22/12/2021 to 25/01/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Supported, with conditions The development application is for the demolition of the existing dwelling and the construction of a new dwelling with integrated car parking, swimming pool, and associated external works. Landscape Plans and a Arboricultural Impact Assessment accompany the development application. Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause C4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to): • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D12 Palm Beach Locality

Internal Referral Body	Comments
	The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone. The Landscape Plans submitted provide hard and soft landscape treatments that enhance the existing natural landscape setting amongst native trees within the lower foreshore slopes. However, the proposed landscape works within the road reserve verge are not approved under this development application and shall be submitted as part of the proposed works within the road reserve application under section 138 and 139 of the Roads Act, for approval or otherwise. Landscape Referral raise no objections to the landscape works within the property boundaries, subject to conditions of consent. The Arboricultural Impact Assessment submitted assesses the impact to existing trees of the proposed development, and should this application be approved, the following recommendations are provided: nine existing prescribed (ie protected) native trees are able to be preserved within the property; eight trees are required for removal, of which five are prescribed trees requiring Council consent, and three are exempt species that do not require consent for removal; and one prescribed native street tree is required to be removed to accommodate the proposed driveway. All trees and vegetation within neighbouring properties and Council's drainage reserve shall be preserved and protected. Subject to conditions of consent, Landscape Referral raise no concerns.
NECC (Bushland and Biodiversity)	Supported, with conditions The application seeks approval for the demolition of the existing dwelling and the construction of a new dwelling including car parking accommodation, swimming pool and associated landscaping. The application also seeks to establish an Asset Protection Zone (APZ) over the entirety of the site in perpetuity. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including: Biodiversity Conservation Act 2016 (BC Act) State Environmental Planning Policy (Coastal Management) 2018 - Coastal Environment Area The application seeks to remove seven (7) exempt trees (T1, 3, 4, 5, 6, 8 & 13) and seven (7) prescribed trees: - T7 (Glochidion ferdinandi) - T10 (Eucalyptus resinifera)

Internal Referral Body	Comments
	• T11 (Syzygium spp.) • T22 (Eucalyptus spp.) • T23, 24, 25 (Casuarina glauca) No objection is raised to the removal of these prescribed trees, based on the assessment provided within the Arboricultural Impact Assessment Report (Jackson Nature Works 2021) which has determined these trees to be either located within the proposed footprint, or to have health/vitality issues. Each prescribed tree removed, is to be replaced with a suitable locally indigenous tree species. Broadly, no objection is raised to the submitted Landscape Plan (Fifth Season Landscapes 2021) which seeks to plant native trees and understorey species within the site, however the following amendments are required: • Both 'Raphiolepis indica' and 'Raphiolepis indica 'Snow Maiden' are to be removed from the Plant List due to their former status as Noxious Weeds, • In addition to the proposed 1 Angophora costata, and 3 Livistona australis plantings, the Landscape Plan must provide for an additional three (3) locally-indigenous plantings, including at least one (1) Eucalyptus robusta to ensure 1:1 replacement of prescribed canopy species. These amendments are required to ensure the DA does not result in a loss of native canopy, nor the spread of environmental weeds. Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.
NECC (Coast and Catchments)	Supported, subject to conditions The revised driveway design has been assessed and is acceptable subject to conditions. The stormwater management plan has also been amended and is satisfactory. The submitted Geotechnical report includes Forms 1 and 1A and as such addresses the relevant DCP controls. Development Engineering support the proposal, subject to conditions as recommended. The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP. Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.

Internal Referral Body	Comments
	Further, the applicant has proposed construction/modification of a seawall. Hence the proposed development has been assessed also against the requirements of the Section 27 of the <i>Coastal Management Act 2016</i>. As required, the impact & risk associated with the construction/modification of the seawall has been assessed in an Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 2 December 2021. Based on the impact and risk identified, Council applies maintenance condition as per Section 27(b)(ii), as part of the usual maintenance in approving this DA State Environmental Planning Policy (Coastal Management) 2018 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Boston Blyth Fleming Pty. Ltd. dated December 2021 and Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 2 December 2021, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018. Pittwater LEP 2014 and Pittwater 21 DCP Estuarine Risk Management The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site. In accordance with the Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 2 December 2021, considering design life of

Internal Referral Body	Comments
	60 years, an estuarine planning level (EPL) of RL 3.0m AHD would apply at the subject site. As assessed in the submitted Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 2 December 2021, the lowest floor level of the dwelling is to be at 10.0m AHD, which is well above the Estuarine Planning Level. However, seawall, deck and tunnel end are located below the EPL for the site. Some of the recommendations of the Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 2 December 2021 have already been accommodated in the design of the plan. The proposed development is therefore subject to conditions to satisfy the relevant estuarine risk management requirements of P21 DCP. Development on Foreshore Area A section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area. The DA proposes works such as swimming pool, foreshore timber decking and associated pergola structures are located partially within the foreshore building line. Construction of swimming pool is consistent with Clause 7.8(2)(b). The applicant has submitted Clause 4.6 variation request for other structures and provided justifications As assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Boston Blyth Fleming Pty. Ltd. dated December 2021 and Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 2 December 2021 and considering Clause 4.6 variation request, the DA satisfies the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.
NECC	Supported, with conditions

Internal Referral Body	Comments
(Development Engineering)	<u>Updated comments 11 August 2022</u> The revised driveway design has been assessed and is acceptable subject to conditions. The stormwater management plan has also been amended and is satisfactory. The submitted Geotechnical report includes Forms 1 and 1A and as such addresses the relevant DCP controls. Development Engineering support the proposal, subject to conditions as recommended. <u>Original comments</u> The proposal includes the provision of a turning area within the road reserve for vehicles to exit the site in a forward direction. Also the plans indicate the provision of new retaining walls within the road reserve. As Barrenjoey Road is a State Road, the application must be referred to TfNSW for their assessment and concurrence. It may be necessary to refer the application to Council's Road Asset Team for their comments. In terms of the driveway levels, it is considered that the driveway profile be amended to suit Council's extra low profile drawing A4/3330/5 EL to ensure stormwater flows from the road reserve are captured and directed to the existing gutter and the existing levels adjacent to the driveway to 991 Barrenjoey Rd can be maintained. This will require the carport level to be raised to suit. The profile is available at the following link. https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/specification-documents/extralowstandardcrossingprofile.pdf In terms of the stormwater management, the site adjoins a Council drainage reserve and it is considered that the majority of the flows from the impervious areas be collected and connected to a single outlet into the concrete drainage channel within the reserve. Amended plans are to be provided to demonstrate compliance. In terms of the Geotechnical report, the submitted report does not comply with Council's Geotechnical Risk Management Policy for Pittwater 2009. In this regard a revised report including Forms 1 and 1A must be provided for the proposal. Development Engineering cannot support the proposal due to insufficient information to address clauses B3, B5 and B6 of Pittwater DCP.
NECC (Riparian Lands and Creeks)	Supported, with conditions <u>Updated comments 09/08/2022</u> The proposed project amendments are satisfactory. <u>Original comments</u> This application has been assessed against relevant legislation and policy relating

Internal Referral Body	Comments
	to waterways, riparian areas, and groundwater. The stormwater system is to be consolidated to a single outlet into the concrete drainage channel within the adjacent reserve. The proposed stormwater quality system is satisfactory (grated stormwater pit with stormsack filter and stormfilter), and to be sized to collect and treat the majority of the flows from the impervious areas. Amended plans are to be provided to demonstrate compliance. Note that a controlled activity approval from DPIE Natural Resources Access Regulator (NRAR) will be required if the proposal includes a new stormwater outlet to the Pittwater shoreline. https://www.dpie.nsw.gov.au/nrar/how-to-apply/controlled-activities
Road Reserve	Supported, subject to conditions <u>Updated comments</u> As per Roads Assets referral dated 21/3/2022 any new works (entry pathways, retaining walls, landscaping, and driveway) on the public road reserve must comply with Council's standards and will require a Roads Act Application for Civil Works to be lodged with appropriate engineering details (to be conditioned by Development Engineering). The applicant must maintain a 3 m clear distance from the kerb meaning the design of the steps, the retaining walls and the landscaping must be amended to provide a 3 m clearance from the kerb. We reject the amended landscaping plan dated 12/05/2022 on the public road reserve including the screen planting providing "privacy" from Barrenjoey Road. Consistent with the above requirement, a 3 m clear zone is to be maintained from the kerb. Any landscaping between the 3 m clearance zone and the property boundary is only acceptable subject to approval from Council's TCI Assets, Tree Services and Parks Operations teams. Furthermore, as per Roads Assets comments dated 21/03/2022, should the applicant wish to place screening planting, they should locate the screening planting on the property boundary. We recognize that the height of the wall has been reduced and the wall now stops at roughly 2 m from the back of the kerb. Whilst the height of the wall is acceptable, the wall still extends beyond the 3 m clearance zone. The proposal is supported subject to the following conditions. Roads and Assets Conditions The applicant must maintain a 3 m clear distance from the kerb meaning the design of the steps, the retaining walls and the landscaping must be amended to provide a 3 m clearance from the kerb.

Internal Referral Body	Comments
	<u>Original comments</u> The proposed driveway turning area, landscaping and retaining walls on the public road reserve are not supported and potentially exclude future pedestrian access and negatively impacts traffic and sight distance. Barrenjoey Road, Palm Beach is also listed on Council's Scenic Streets register to protect coastal views from the roadway and prevent planting of hedging that blocks views (Section 34.3 of Streetscape Management Guidelines). Any new works (entry pathways, retaining walls, landscaping, and driveway) on the public road reserve must comply with Council's standards and will require a Road Act application for Civil Works to be lodged with appropriate engineering details (to be conditioned by Development Engineering). Landscaping on verge to maintain 3m clear distance from kerb. Council's Transport Team to assess merit of vehicle turning facility and the future potential impact on pedestrian safety as well as the future provision of pedestrian access along Barrenjoey Road. The demolition plans (DA19) indicate the demolition of various private retaining structures on southern boundary that appear to encroach on Council's Drainage Reserve (Lot 90 in DP 13620) however the plans do not appear to address or identify works that ensure the future ongoing stability of the land following the removal of the walls. Similarly, the removal of all retaining structures along the frontage to Barrenjoey Road as shown on the demolition plans (DA19). Both Council's Stormwater Team and Property Team need to review and comment. The following comments will need to be addressed in any future Road Act Application for Civil Works: The proposed landscaping (amended landscaping concept plan dated 30/11/21) on the public road reserve is not supported. including screening planting adjacent to the kerb providing "privacy". A 3m clear zone is to be maintained from the kerb. All screening planting to be located on the property boundary. The 4.6m wide pedestrian walkway in various materials in the public road reserve is excessive in width and is not supported. The 2.5m high blade wall perpendicular to the property boundary across the public road reserve limits future use of the verge and is not supported. The road carriageway has crossfall to the western side the the road, the driveway profile does not appear to comply with Council's standard profiles or comply with drainage requirements. State Survey Mark (SSM 60967) located in the existing driveway/concrete paved area is to be preserved or otherwise located and reinstated by a Registered Survey in accordance with the Surveyor-General's Surveyor-General's Direction No. 11 – Preservation of Survey Infrastructure. The approval and compliance with any conditions from the Surveyor General is to be obtained prior to the issue of the Construction Certificate. Council's Development Engineering Team to provide appropriate conditions. The proposal is therefore unsupported.

Internal Referral Body	Comments
	<u>Planners Comments:</u> Further discussion with Roads Reserve has confirmed that subject to conditions the application can be supported. Appropriate conditions are included in the recommendation.
Traffic Engineer	Supported, subject to conditions <u>Updated comment 10/8/22</u> The Applicant has considered Council's concerns with respect to access and parking and has modified the proposal to include a turntable design on the private property, which enables a vehicle to enter and exit Barrenjoey Road in a forward direction. Council's Pittwater21 DCP allows ancillary structures within the Road Reserve for the purposes of structurally supporting the access driveway only. Encroachments into the road reserve are to be minimised, and therefore no planting is permitted within 3m of the edge of road. The proposal can be supported subject to the specified Council Conditions. The proposed civil works also affects traffic flow on Barrenjoey Road, which is a State Road under the authority of Transport for NSW (TfNSW). TfNSW provides concurrence subject to their specified Conditions which are to be included as part of the development consent. <u>Original comments</u> This application is for demolition works and construction of a 4 bedroom dwelling house including a swimming pool. The Transport Network section has reviewed the proposal with respect to parking, access, and impact to the road network. The proposed driveway is 5.47m wide and provides access to a carport for 2 vehicles, adjacent to the existing driveway location off Barrenjoey Road. The number of parking spaces provided meets the DCP requirements for a dwelling with 2 bedrooms or more. The traffic generation from the proposal is considered to be of low impact, however there are some concerns regarding the driveway access and proposed turning area. Barrenjoey Road is a Main Road (State Road), with a 60km/h speed limit and carries higher traffic volumes compared to local roads. The Pittwater DCP requires that all access driveways with access to a main road shall be designed to ensure vehicles enter and leave in a forward direction.

Internal Referral Body	Comments
	Council's Pittwater 21 DCP allows ancillary structures such as retaining walls, columns etc within the Road Reserve for the purposes of structurally supporting the access driveway only and advises that encroachments into the road reserve are to be minimised. The DCP also advises that design variations may be permitted where it can be demonstrated to Council's satisfaction that the DCP controls are not applicable in the case of steeply sloping sites and steeply sloping public road reserve verges. In such circumstances the DCP advises that the Access Driveway would need to be in designed accordance with the current edition of the AS/NZS 2890.1, based on turning paths for a B85 vehicle. The plans reveal that the proposed turning area is located entirely within Council's Public Road Reserve and would not facilitate construction of a footpath other than across the turning area. The Traffic Engineering assessment undertaken by TEF Consulting, provides swept paths which show that the 85th percentile vehicle manoeuvres across the portion of Road Reserve which is required for provision of a future footpath. It does not appear possible to provide a safe turning area in the Road Reserve with the proposed location of the carport and the existing garage at No.991 Barrenjoey Road, which is also partially located in the Road Reserve. Transport for NSW (TfNSW) has also reviewed this submission and does not provide concurrence for this proposal. Council previously provided comments for a turntable design at this site at the Pre-Lodgement Meeting held on 2nd September 2021. Although it would be preferable for all required infrastructure to be provided on the private property, Council could accept a turntable design if located 2m from the edge of the road. The proposal should also provide kerb and gutter and a 1.5m footpath along the full frontage of the property. This amended proposal would address the issues of the constrained site and enable a vehicle to enter and exit the road in a forward direction without affecting pedestrian safety. Any proposal within the Road Reserve would also require concurrence from TfNSW. The current DA plans are unacceptable <u>Planners comments</u> Council's Transport Officer has confirmed that a 1.5m footpath along the frontage is not required for a single dwelling although it is noted that the P21 DCP requires: <i>"The location of new landscaping (street trees) is not to hinder the future construction of a 1.5m wide footpath in location to be nominated by Council and is subject to a Section 139 approval from Council."</i> A condition is included in the recommendation which prohibits planting within 3m of the edge of the road. The amended plans, subject to conditions, address the original Transport issues and concurrence from TfNSW has been received.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	Supported, with condition The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
NSW Rural Fire Service – local branch (s4.14 EPAA)	Supported, with conditions The site is mapped as Category 1 Vegetation. In accordance with section 4.14 of the Environmental Planning and Assessment Act 1979 the application was referred to the New South Wales Rural Fire Service (NSW RFS) who offer no objections to the proposal subject to conditions.
Aboriginal Heritage Office	Supported, with conditions No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.
NSW Department of Planning (SEPP 71 - Coastal)	No approval required (SEPP Repealed) The application was referred to the Department of Planning Industry and Environment (DPIE) who advises that no decision was required as the SEPP has been repealed.
Concurrence – NSW Roads and Maritime Services - SEPP Infrastructure (cl 100 Development on proposed classified road)	Supported subject to conditions <u>Updated comments 24 June 2022</u> The amended application was referred to Transport for NSW (TfNSW) for concurrence under section 138 of the Roads Act 1993. TfNSW has reviewed the submission and notes the amended plans incorporate a turntable. As such, TfNSW provides concurrence to the civil works on Barrenjoey Road under section 138 of the Roads Act 1993, subject to Council's approval and the following requirements being included in the development consent:

External Referral Body	Comments
	1. The design and construction of the kerb and gutter crossing on Barrenjoey Road shall be in accordance with TfNSW requirements. Details of these requirements should be obtained by email to DeveloperWorks.Sydney@transport.nsw.gov.au Detailed design plans of the proposed gutter are to be submitted to TfNSW for approval prior to the issue of a Construction Certificate and commencement of any road works. A plan checking fee and lodgement of a performance bond is required from the applicant prior to the release of the approved road design plans by TfNSW. 2. Vehicles are to enter and exit the site in a forward direction. 3. Vehicles are to be wholly contained on site before being required to stop. 4. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system on Barrenjoey Road are to be submitted to TfNSW for approval, prior to the commencement of any works. Please send all documentation to development.sydney@transport.nsw.gov.au A plan checking fee will be payable and a performance bond may be required before TfNSW approval is issued. 5. A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on Barrenjoey Road during construction activities. A ROL can be obtained through https://myrta.com/oplinc2/pages/security/oplincLogin.jsf <u>Original comments 21 March 2022</u> TfNSW has reviewed the submission and does not provide concurrence under section 138 of the Roads Act 1993, at this stage, due to the following reasons: 1. Vehicles are to enter and exit the site in a forward direction. As such, turn around facilities should be provided to enable this manoeuvre demonstrated by swept paths. 2. The driveway should be a minimum of 5.5 metres wide for the first 6 metres into the property. Upon receipt of amended plans addressing the abovementioned concerns, TfNSW will review and provide a response accordingly.

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 suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1247794S).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	56

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 who raised no objections, subject to conditions which have been included in the recommendation of this report.

Roads and Maritime Service (RMS)

Clause 101 - Development with frontage to classified road states:

The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—

- (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
 - (i) the design of the vehicular access to the land, or*
 - (ii) the emission of smoke or dust from the development, or*
 - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Comment:

The application has been amended to address concerns from TfNSW including the re-location of the turning bay from within the road reserve to the carport within the subject site. The amended application was referred to TfNSW and concurrence under Section 138 of the Roads Act has been provided subject to conditions, refer to the Referrals Section of this report.

Clause 102 - Impact of road noise or vibration on non-road development states:

- (2) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.*
- (3) If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—*
 - (a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,*
 - (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

Comment:

The Level 2 (street level) plan contains a carport and gym. The bedrooms are located on Level 1 which sits approximately 5.6m lower than Barrenjoey Road, with all operable windows facing Pittwater to the west. The kitchen and living accommodation are located at ground floor level which sits approximately 9.0m lower than Barrenjoey Road, again with all opening facing Pittwater to the west. Given the location of the noise sensitive habitable rooms, it is unlikely that the recommended noise levels will be exceeded.

SEPP (Coastal Management) 2018

The site is classified as land within the Coastal Environment Area/land within the Coastal Use Area under the State Environmental Planning Policy (Coastal Management) 2018. Accordingly, an assessment under the SEPP has been carried out as follows:

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 not likely to cause an adverse impact upon the matters identified in this clause.

The proposal has been reviewed by Council's Coastal Officer, Riparian Lands Officer, Development Engineer, and Bushland & Biodiversity Officers who have reviewed the proposal and raised no objection to the works and associated impacts to the surrounding natural environment.

The proposed development is also unlikely to cause an adverse impact to existing public open space and safe access to and along the foreshore.

The development site has not been identified as containing any Aboriginal cultural heritage, practices or places, however, a condition has been included to ensure that if any Aboriginal engravings or relics are unearthed as part of the development, works will cease immediately, and the relevant authorities will be notified. Furthermore, the proposed development is unlikely to cause an adverse impact on the use of the surf zone.

- (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:

As detailed above, the proposed development has been designed, sited, and will be managed to avoid an adverse impact on the cultural and environmental aspects referred to in Subclause 1.

The proposed development does not impact on the foreshore processes, access or the amenity of the foreshore area.

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 proposed development is also unlikely to cause an adverse impact to existing public open space and safe access to and along the foreshore for members of the public, including persons with a disability.

The proposal will not cause any overshadowing, wind funneling or loss of views from public places to foreshores. The visual amenity and scenic qualities of Pittwater, including will be preserved. As mentioned above, the development site has not been identified to contain any Aboriginal cultural heritage, practices or places, however, a condition has been included to ensure that if any Aboriginal engravings or relics are unearthed as part of the development, works will cease immediately, and the relevant authorities will be notified.

The proposed development is of an acceptable bulk, scale and size that is generally compatible with the existing site and surrounding waterfront and built environment.

The proposed dwelling is appropriate modulated and articulated. A condition requires the use of recessive colours and materials to minimise the visual impact of the built form. Proposed landscaping, in conjunction with existing and required landscaping (by recommended conditions contained within this report), will assist to visually screen the bulk and scale of the built form, and integrate the built form, into the landscape

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 consent authority can be satisfied that the proposed works will not risk coastal hazards on the site or in the local area. The application is accompanied by a geotechnical report which states the risk associated with the development is acceptable. Further, the application is accompanied by Coastal Risk Management Report, prepared by Horton Coastal Engineering, which confirms that the flood mitigation measures incorporated into the dwelling design will ensure that the dwelling house will be safe from flooding hazard. As noted above, the application has been reviewed by Council's Coastal Management Team, Riparian Officer, and Development Engineer, who all confirm that the proposal is acceptable subject to conditions.

As such, it is considered that the application complies with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

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 (measured as per the <i>Merman</i> caselaw)	8.5m	Max 10.4m	22.3%	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.2 Zoning of land to which Plan applies	Yes
2.3 Zone objectives and Land Use Table	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	No

Clause	Compliance with Requirements
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

FIRST CLAUSE 4.6 VARIATION

Limited Development on Foreshore Area

Description of Non-compliance

Development Standard	Clause 7.8 - Limited development on foreshore area
Requirement	The following are exempt development in the foreshore: (a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area, (b) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).
Proposed	Extension of existing terrace with decking, part of a pergola and swimming pool
Percentage variation to requirement	Non-numerical development standard

Assessment of Request to Vary a Development Standard

The following assessment of the variation to Clause 7.8 - Limited development on foreshore area development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to Development Standards

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

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

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

Comment:

Clause 7.8 Limited development on foreshore area development standard is not expressly excluded from the operation of this clause.

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

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

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

(a) the consent authority is satisfied that:

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

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

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

Clause 4.6 (4)(a)(i) (Justification) Assessment

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

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

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

As discussed below, the Applicant argues that the ground level timber decking and pergola will not

impact on natural foreshore processes or affect the significance and amenity of the area in relation to unacceptable visual, privacy, solar access, and public/private view affectation.

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

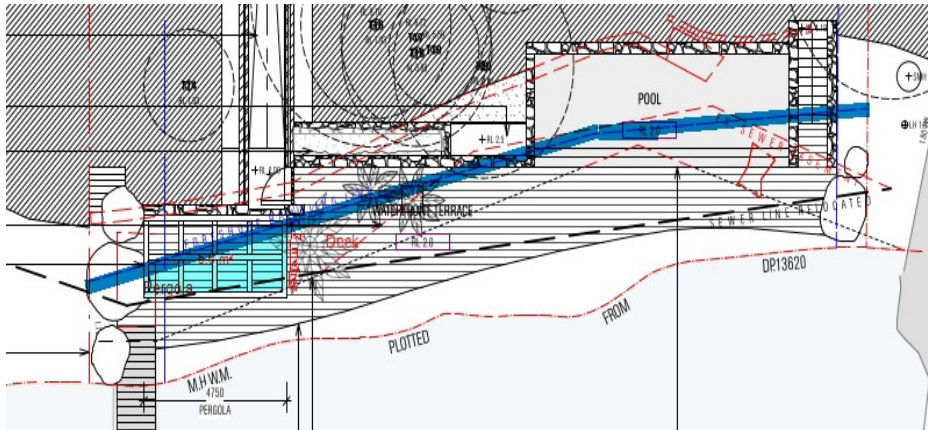
- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social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

Applicants Written Request

The applicants written request argues, in part:

- *The ground level timber decking, pergola and breaching swimming pool elements will not impact on natural foreshore processes or affect the significance and amenity of the area in relation to unacceptable visual, privacy, solar access, and public/private view affectation.*
- *The proposed timber decking is located generally over the alignment of the existing concrete terrace located immediately adjacent to the foreshore with the proposed works enhancing the visual amenity of the site as it relates to development within the foreshore area.*

The applicant's justifications are supported. The elements that breach the foreshore building line are lightweight ancillary structures, namely a portion of the roof of a pergola and timber decking generally on top of the alignment of the existing concrete terrace, refer to images below.



Waterfront plan showing elements that breach the foreshore building line (marked dark blue) (source Mathieson)



Subject site as viewed from the foreshore (source BBF Planners SEE)

The decking and associated pergola enhance the foreshore setting without any negative visual impact on the scenic qualities of the Waterfront or natural foreshore processes. The structures that breach the foreshore building line, in part, do not facilitate the loss of protected or significant vegetation, nor will they impact on biodiversity protection. There is limited current public access along this section of the foreshore and while there is also no reasonable ability to enhance public access due to the location of the site the new timber decking, over the existing concrete terrace, allows for enhance safe access as gained from Pittwater Waterway. The design would allow for a functional dwelling, like the siting of that existing on site with minimal environmental impacts.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore

satisfying cls 1.3 (c) and (g) of the EPA Act.

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

Conclusions on Clause 4.6(3)

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

Clause 4.6 (4)(a)(ii) (Public Interest) Assessment

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

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

Comment:

In considering whether the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Limited Development on Foreshore Area development standard and the objectives of the C4 Environmental Living zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 7.8 – 'Limited development on foreshore area' of the PLEP 2014 are:

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

a) to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,

Comment:

As discussed above, the ground level timber decking generally sits on top of the existing concrete terrace and will generally enhance the visual amenity of the foreshore. Part of the lightweight pergola structure projects into the foreshore building line. This structure sits 2.4m above ground level and offers weather protect to enhance the amenity of people enjoying the foreshore area. Neither the timber deck or pergola will impact on natural foreshore processes or affect the significance and amenity of the area.

Council's Coast and Catchment Officer has confirmed that the Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 2 December 2021 and the Clause 4.6 variation request, the DA satisfies the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.

There will be no unacceptable visual, privacy, solar access, and public/private views as a result of the work within the foreshore area. The proposed works will enhance the visual amenity of the site as it relates to development within the foreshore area

b) to ensure continuous public access along the foreshore area and to the waterwayComment:

As discussed above, due to the location of the site there is limited public access along this section of the foreshore. The proposed encroachments into the foreshore building line do not impact on the available public access to the foreshore and waterways. The existing concrete terrace will be upgraded with the addition of timber decking which will enhance the limited public access to the foreshore and the waterway.

Zone Objectives

The underlying objectives of the C4 Environmental Living Zone are:

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

Comment:

The proposed dwelling remains to be a low-density development that generally sits within the footprint of the existing dwelling. The ancillary structures, that breach part of the foreshore building line, are sited, and designed to minimise environmental impacts including ecology and the natural foreshore processes. The work within the foreshore will enhance the visual amenity and scenic quality of the waterway.

The proposal has been reviewed by Council's Coastal Officer, Riparian Lands Officer, Development Engineer, and Bushland & Biodiversity Officer who have reviewed the application and raised no objection to the works and associated impacts to the surrounding natural environment, subject to conditions.

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

Comment:

For the reasons discussed above, the proposed development will have no adverse effect on the ecological, scientific, or aesthetic values of the site.

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

Comment:

The proposed dwelling steps down the site to integrate into the landform with the dwelling sitting below the canopy of the existing mature trees which will be retained. The bulk and scale of the dwelling is comparable to other similar developments in the locality and will be softened by existing and proposed landscaping when viewed from Pittwater Waterway. Given the topography of the steeply sloping site (30% slope) the dwelling generally sits below the road level and therefore there are minimal visual impacts from the street. The ancillary elements that, in part, breach the foreshore building line will not prevent the development meeting this objective.

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

and wildlife corridors.

Comment:

The proposed works located within the foreshore building line do not require the removal of any trees or vegetation. The proposal will not impact on wildlife corridors and Council's Biodiversity Unit offer no objections to the proposal subject to condition.

Conclusion

For the reasons detailed above, the proposal is consistent with the objectives of the C4 Environmental Living zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Limited Development on the Foreshore area Development Standard is assumed by the Local Planning Panel.

SECOND CLAUSE 4.6 VARIATION

4.6 Exceptions to Development Standards (Height of Building)

Description of non-compliance:

Development Standard	Clause 4.3 - Height of Buildings
Requirement	8.5m
Proposed	Maximum height 10.4m
Percentage variation to requirement	22.3%

Assessment of Request to Vary a Development Standard

Note: Clause 4.3 2D allows a concessional height where the buildings footprint is situated on a slope that is in excess of 16.7 degrees (30%) and subject to compliance with the objectives of the clause.

Assessment of Request to Vary a Development Standard

The following assessment of the variation to Clause 4.3 - Height of Buildings development standard, has taken into consideration the interpretation of ground level (existing) as that established in the recent judgement contained within the matter of *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582* where at paragraphs 73 and 74 O'Neill C found:

73. The existing level of the site at a point beneath the existing building is the level of the land at that point. I agree with Mr McIntyre that the ground level (existing) within the footprint of the existing building is the extant excavated ground level on the site and the proposal exceeds the height of buildings

development standard in those locations where the vertical distance, measured from the excavated ground level within the footprint of the existing building, to the highest point of the proposal directly above, is greater than 10.5m. The maximum exceedance is 2.01m at the north-eastern corner of the Level 3 balcony awning.

74. The prior excavation of the site within the footprint of the existing building, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the hill, can properly be described as an environmental planning ground within the meaning of cl 4.6(3) (b) of LEP 2014.

It has been determined that the south-western corner of the Level 2 entry staircase and roof over breach the height standard by a maximum of **1.190m (14%)** with the deep eave at the southern end of the gymnasium at this level breaching the height standard by a maximum of **1.9m or 22.3%**. Further, the roof form at the western edge of the level 1 Bedrooms 3 and 4 breach the height standard by a maximum of **1.65m or 19%**.

Clause 4.6 Exceptions to Development Standards

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

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

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

Comment:

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

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

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

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

(a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

Clause 4.6 (4)(a)(i) (Justification) Assessment

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

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

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

As detailed below, the Applicant argues that sufficient environmental planning grounds exist to justify the height of buildings variation including the steep and artificially modified topography of the land which makes strict compliance difficult to achieve whilst providing safe vehicular access on site. The breaching elements will not be readily discernible as viewed from Barrenjoey Road or Pittwater Waterway, they will not contribute to issues relating to perceived excessive visual bulk and scale and the development responds to the desired character of the Palm Beach Locality. The proposed dwelling steps down the site and is integrated with the topography siting below the canopy of high values mature trees. Furthermore, the breaching elements will not contribute to unreasonable amenity impacts in terms of overshadowing, privacy, or view loss.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*

- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

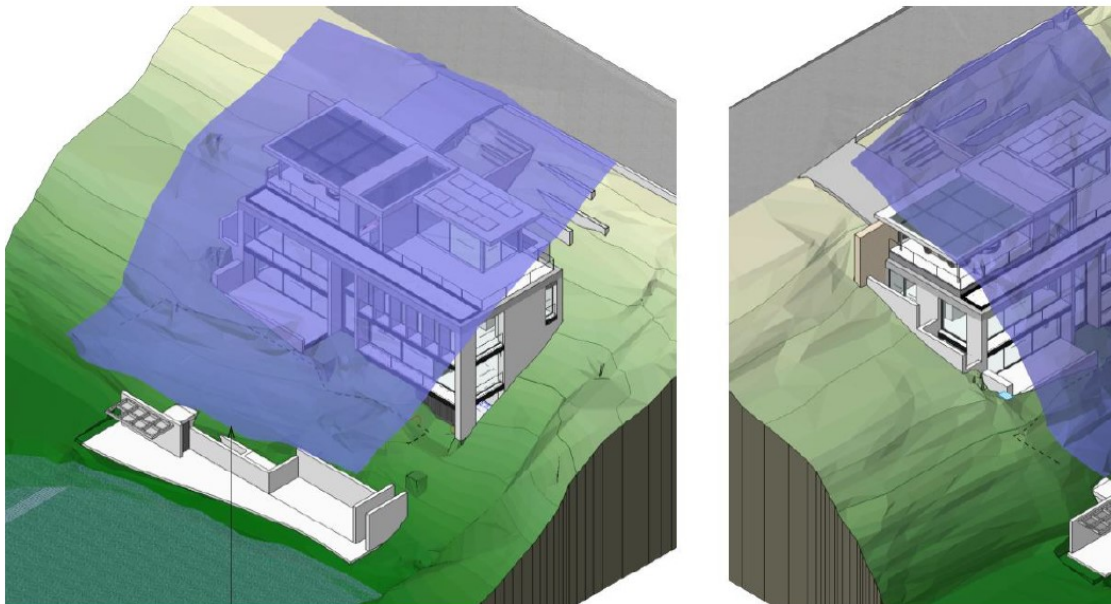
Applicants Written Request

The applicants written request argues, in part:

- *Notwithstanding the building height breaching elements, the Palm Beach Locality will remain primarily a low-density residential area with the dwelling housing, the subject of this document, having a single storey presentation to Barrenjoey Road before stepping down the site in response to topography.*
- *The building height breaching elements will not be readily discernible as viewed from Barrenjoey Road and in any event will not contribute to any significant manner to the perceived height bulk and scale of the building.*
- *The building height breaching elements do not themselves require excavation or modification of the landform with the building sitting within a landscaped setting and free from hazards.*
- *The non-compliant building elements will not prevent the building as whole from blending into the escarpment which forms a backdrop to the site.*
- *The building height breaching elements will not require the removal of any vegetation and will not impact on any public or private views.*

In response to the *Merman* LEC judgement in relation to the measurement of Building Height (see above), the applicant presents the following additional arguments in relation to the environmental planning grounds:

- *Sufficient environmental planning grounds exist to justify the height of buildings variation including the steep and artificially modified topography of the land which makes strict compliance difficult to achieve whilst providing safe and convenient vehicular access to integrated car parking accommodation and distributing height and floor space in a contextually appropriate manner on this particular site.*
- *The prior excavation of the site within the footprint of the existing building distorts the height of buildings development standard plane overlaid above the site when compared to the natural undisturbed topography of the land. When the original undisturbed levels of the site are interpolated across the building footprint the proposed development would comply with the 10m concessional height standard at clause 4.3(2D) of PLEP 2014, refer to image below.*



Height blanket diagram showing compliance with the 10m concessional building height depicting the interpolated undisturbed levels (source BBP Planners)

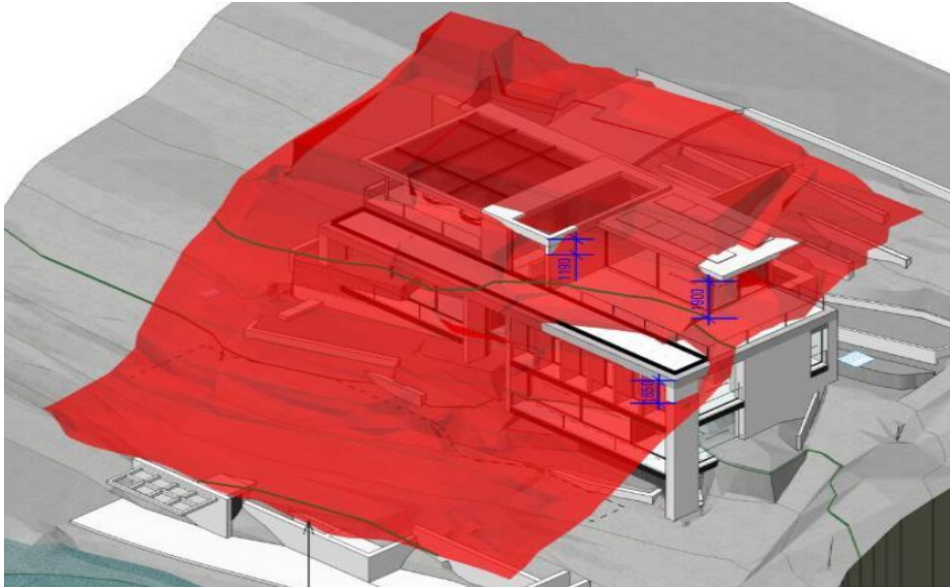
- Whilst strict compliance could be achieved by reducing ceiling heights and reducing building height, such outcome would not represent good design and would result in an inferior amenity outcome for occupants. Such outcome would thwart compliance with objective 1.3(g) of the EPA Act.
- Such outcome would also not represent the orderly development of the land given the reduced design quality and amenity afforded should strict compliance be enforced and to that extent would also thwart compliance with objective 1.3(c) of the Act.
- The non-compliance does not result in any unacceptable environmental consequences in terms streetscape, residential amenity or foreshore scenic outcomes.
- The proposal to be of a skilful design which responds appropriately to the topography and environmental constraints on the site. Such outcome is achieved whilst realising the reasonable development potential of the land.

Comment:

In accordance with the *Merman* calculation of height, the proposal breaches the 8.5m height limit in the following three areas:

- Level 2 - The south-west corner of the level 2 staircase and roof (max 1.19m or 14% breach)
- Level 2 - The eave of the southern end of the level 2 gym (max 1.9m or 22.3% breach)
- Level 1 - The roof form at the western edge of bedroom 3 (max 1.65m or 19% breach)

Refer to height blanket diagram below:



Height blanket diagram showing minor building height breaching elements above the 8.5m height standard (source BBP Planners)

As can be seen in the above height blanket diagram, most of the dwelling sits below the 8.5m height limit. It is agreed that the three minor elements that breach the standard do not result in unreasonable visual impact in terms of excessive bulk and scale as presented to Barrenjoey Road or as viewed from Pittwater. The non-compliance does not contribute to any unreasonable streetscape impacts as the proposed development presents a lightweight single storey building to Barrenjoey Road, refer to montage below, allowing views to be maintained from the existing dwellings located on the high side of Barrenjoey Road.

The dwelling steps down the site and the existing significant canopy trees that will be retained and supplemented with new planting ensure that the proposed dwelling is integrated into the existing landform with any perceived bulk and scale softened with existing and proposed landscaping as viewed from Pittwater Waterway, refer to montage below. As such, the non-compliance does not contribute to any unreasonable environmental impact or impacts on the foreshore of the scenic quality of the area.



Photomontage of the proposed development as viewed from Barrenjoey Road (source Mathieson)



Photomontage of the proposed development as viewed from Pittwater Waterway (source Mathieson)

The non-compliance with height does not result in any unreasonable amenity impacts. Due to the spatial separation of the proposed dwelling to neighbouring residential properties, and the fact the location of the site on the lower side of Barrenjoey Road, there will be no unreasonable impacts on residential amenity by virtue of view loss, overshadowing or privacy.

It is agreed that the proposal represents a skillful design which responds appropriately to the topography and environmental constraints of the site including the need to provide safety an convenient vehicular access fully within the site.

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

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

Conclusions on Clause 4.6(3)

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

Clause 4.6 (4)(a)(ii) (Public Interest) Assessment

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

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

Comment:

In considering whether the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Limited Development on Foreshore Area development standard and the objectives of the C4 Environmental Living zone. An assessment against these objectives is provided below.

Objectives of Development Standard

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

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

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

Comment:

The subject property is located within the Palm Beach Locality. The Desired Future Character (DFC) statement within Pittwater 21 Development Control (P21DCP) plan is as follows:

The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape.

Despite the building height breach, the proposed development remains to be consistent with the Palm Beach Locality and the three-level dwelling is consistent with the height, bulk and scale of other neighbouring multi-level developments. The proposal presents a lightweight single storey frontage to Barrenjoey Road and the elements that breach the height limit will not be readily discernible as viewed from the street or Pittwater Waterway. The dwelling steps down the steep slope and is integrated with the landform and existing landscape to ensure that the scenic quality as viewed from Pittwater

Waterway is maintained.

Notwithstanding the three minor areas of building height breach, the proposal is consistent with this objective.

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

Comment:

The surrounding area is characterised with dwellings which vary in height and scale between two, three and four storey in height. Most of the proposed dwelling sits below the 8.5m height limit. The three minor elements that breach the standard do not unreasonably contribute to visual bulk as viewed from the street or the Waterway.

Notwithstanding the building height breaching elements, the proposal is consistent with this objective.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The shadow diagrams prepared by Matheson Architecture demonstrate that the building height breaching elements will not contribute to non-compliant shadow impact on neighbouring properties. Notwithstanding the building height breaching elements, the proposal is consistent with this objective.

b) to allow for the reasonable sharing of views,

Comment:

The site is situated on the low side of Barrenjoey Road, as such, there the existing properties located on the higher side of the road will maintain views of Pittwater Waterway over the subject site. The street facade replaces an intrusive and encroaching garage with a lightweight garage / gym louvred facade which allows views from the public street to Pittwater. The breaching elements cannot be observed from the street and will not result in impacts on view sharing in accordance with the planning principles established in the matter of *Tenacity vs Warringah Council (2004) NSWLEC 140*, the proposal is consistent with this objective.

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

Comment:

While it is acknowledged that the proposal includes significant excavation the application is supported with a geotechnical report that concludes that subject to compliance with the recommendation there will be no unreasonable risk to life or property. The dwelling sits into the landform and is designed to step down slope to respond sensitively to the topography. The building height breaching elements do not themselves require excavation or modification of the landform and the proposal is consistent with this objective.

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

Comment:

The site is not listed as a heritage item or within a heritage conservation area and the Aboriginal Heritage Officer has confirmed that there are no sites recorded in the development area. The proposed minor areas of non-compliance with not adversely impact on the natural environment with site disturbance directly attributed to the building height breaching elements, the proposal is consistent with this objective.

Zone Objectives

The underlying objectives of the C4 Environmental Living Zone are:

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

Comment:

The proposed dwelling house remains to be a low-density development that generally sits within the footprint of the existing dwelling. The proposal does not require the removal of any high value significant trees or natural features that have ecological and / or aesthetic values. The dwelling sits within a landscaped setting below the tree canopy. The three minor areas of height breach will not in isolation compromise the ability of the site to meet this objective as they do not contribute to an adverse impact on the ecology, scientific, or aesthetic values of the site.

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

Comment:

For the reasons discussed above, despite the three areas of height breach the proposed development will have no adverse effect on the environmental or aesthetic values of the site.

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

Comment:

The proposed dwelling represents a low-density development that steps down the site to integrate into the landform.

As discussed above, the bulk and scale of the dwelling is comparable to other similar developments in the locality and will be softened with the retention of existing mature canopy trees and additional landscaping when viewed from Pittwater Waterway. Given the topography of the steeply sloping site (30% slope), the dwelling generally sits below the 8.5m max height limit and presents a low-scale single storey garage/ gym pavilion to the street. The ancillary elements that in breach the height limit will not prevent the development meeting this objective.

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

Comment:

The proposed elements that breach the height limit do not in isolation require the removal of any trees or vegetation. The proposal will not impact on wildlife corridors and Council's Biodiversity Unit offer no objections to the proposal subject to condition.

Conclusion

For the reasons detailed above, the proposal is consistent with the objectives of the C4 Environmental Living zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of Buildings Development Standard is assumed by the Local Planning Panel.

7.2 Earthworks

The proposal involves a significant amount of excavation, including the construction of a tunnel.

The objective of Clause 6.2 - *'Earthworks' requires development involving earthworks, for which development consent is required, will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.*

In this regard, before granting development consent for earthworks, sub-clause 7.2(3) requires Council to consider the following matters:

(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development

Comment

The application is accompanied by a geotechnical report prepared by Geotechnical Investigation, Stability Assessment and certification prepared by JKGeotechnics which confirms that subject to compliance with the recommendations contained within the report, the level of excavation proposed will not give rise to any adverse environmental impacts, including drainage patterns and soil stability. These reports have been reviewed by Council's Development Engineer who has indicated that they have no objections to the proposed earthworks, subject to conditions requiring compliance with the recommendations contained within the geotechnical report in addition to other conditions such as those relating to drainage. Subject to these conditions, the proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

(b) the effect of the proposed development on the likely future use or redevelopment of the land.

Comment:

The proposal will not unreasonably limit the likely future use or redevelopment of the land.

(c) the quality of the fill or the soil to be excavated, or both.

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties.

Comment:

The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

(e) the source of any fill material and the destination of any excavated material.

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics.

Comment:

The development was referred to the Aboriginal Heritage Office who provided comments and conditions that have been included in the consent.

(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area.

Comment:

The site is not located in the vicinity of any watercourse, drinking water catchment, however, it is mapped as an environmentally sensitive foreshore area.

Council has taken into consideration the environmental constraints of the site and the application has been reviewed by Council's Coast and Catchment Officer, Bushland and Biodiversity Officer, Riparian Lands and Creeks Officer, Landscape Officer and Development Engineer who offer no objections to the proposal subject to conditions. Conditions including compliance with the geotechnical report and estuarine risk management report, tree and vegetation and habitat protection measures, erosion and sediment control measures and water quality management measures. Subject to compliance with the recommended conditions it is not anticipated that the proposal will have unreasonable impacts on the environmental values of the site.

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment:

Conditions are included in the recommendation of this report that will minimise the impacts of the development. Specifically, the measures and recommendations contained within the geotechnical report are considered sufficient to avoid, minimise or mitigate the impacts of the proposed earthworks.

(i) the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.

Comment:

The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site. Despite this a condition is recommended to ensure that works should cease if Aboriginal items are uncovered during earthworks.

In summary, the applicant provided substantive geotechnical assessment which determined that the risk is acceptable and can be carried out in a manner that does not unduly impact on the natural environment or residential amenity, subject to conditions for impact mitigation and management.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this circumstance.

7.7 Geotechnical hazards

Under Clause 7.7 (3) Geotechnical Hazards, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

- (a) site layout, including access,*
- (b) the development's design and construction methods,*
- (c) the amount of cut and fill that will be required for the development,*
- (d) waste water management, stormwater and drainage across the land,*
- (e) the geotechnical constraints of the site,*
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The proposed development is supported by a geotechnical risk assessment, architectural plans, an excavation plan, and stormwater management plans that demonstrate all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

Development consent must not be granted to development on land to which this clause applies unless:

- (4)(a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and*

Comment:

The proposed development is supported by a geotechnical risk assessment and stormwater management plans that demonstrate wastewater, stormwater and drainage are suitably managed on

site. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

(b) the consent authority is satisfied that:

- (i) the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or*
- (ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or*
- (iii) if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.*

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

7.8 Limited development on foreshore area

Under Clause 7.8 "Limited Development on Foreshore Area", development consent must not be granted for development on land in the foreshore area except for the following purposes:

- *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
- *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

Comment:

The proposed development includes a swimming pool, waterway access stairs, foreshore timber decking and associated pergola structures which are located partially within the foreshore building line. It is noted that the proposed terrace area is located generally over the alignment of the existing hard paved area adjacent to the waterway.

The swimming pool and waterway access stair are permitted within the foreshore area and a request to vary this development standard for has been made under Clause 4.6 of the Pittwater LEP 2014 in respect to the other elements, namely the timber decking and pergola.

As discussed further within this report, the departure from the standard is supported in this instance, given that the timber decking sits generally above an existing concrete terrace and the pergola is a lightweight ancillary structure. The deck and pergola enhance the visual amenity of the waterfront and provide for enhanced the access without compromising the natural foreshore processes. Additionally, the elements encroaching into the foreshore area do not facilitate the loss of protected or significant vegetation.

The design would allow for a functional dwelling, like the siting and design of that existing on site with minimal environmental impacts. This is discussed further in Clause 4.6 of the Pittwater LEP of this report.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front Building Line	10.0m	The eastern external wall of the dwelling is set back between 1.0m - 4.29m Retaining walls, stepped pedestrian access and the driveway are partially located within the road reserve	N/A	No
Side Building Line	2.5m	North - 2.5 m	N/A	Yes
	1.0m	South - 1.0m	N/A	Yes
Building Envelope	3.5m	North Outside envelope	N/A	No
	3.5m	South - Outside envelope	Refer to detailed assessment	No
Landscaped Area	60%	49% (336sqm, inclusive of 6% variation)	11%	No

***Note:** The percentage variation is calculated on the *overall* numerical variation (i.e.: 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	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	No	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	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
C1.1 Landscaping	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	No	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
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	Yes	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.12 Development seaward of mean high-water mark	Yes	Yes
D15.13 Lateral limits to development seaward of mean high-water mark	Yes	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.18 Seawalls	Yes	Yes

Detailed Assessment

A4.12 Palm Beach Locality

The desired future character of the Palm Beach Locality is addressed as follows:

The relevant extracts from the Locality Statement are provided below:

Context

The locality has developed into a predominantly low-density residential area, with dwellings built along the ridges, slopes and lowlands. The locality is characterised mainly by two-storey dwelling houses on 750-1,400 square metre allotments, with allotments of 550-650 square metres (some smaller blocks may exist) adjoining the waterfront to the west. The residential areas are of a diverse style and architecture, a common thread being the landscaped, treed frontages and subdued external finishes.

Desired Character

The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape.

Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.

Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.

Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities.

Comment:

The proposed three level dwelling is consistent with the density (height, bulk and scale) of other multi-storey dwellings within the surrounding area. The proposed development sites almost entirely on the existing footprint and the built form steps down the steeply sloping site to sit comfortably with adjoining and surrounding two, three and four storey residential development consistent with the character of the area.

The top floor comprises a lightweight garage/gym pavilion which presents as a single storey structure to Barrenjoey Road. It is further noted that the top level of the site sits approximately 2.0m lower than Barrenjoey Road, therefore the street presentation of this lightweight single storey pavilion is further reduced. The development is consistent with adjoining development, the built form is located downslope in steep topography, and therefore in conjunction with existing and required landscaping, will assist to visually screen the bulk and scale of the built form, and integrate the built form into the landscape.

On balance, the proposal is considered consistent with the desired future character of the Palm Beach locality

B6.1 Access driveways and Works on the Public Road Reserve

The proposal has been amended to relocate the turning circle out of the road reserve so that it sits fully on the subject site. The turning circle will allow cars to exit the site in a forward direction, to allow safe and convenience vehicular access to and from the site onto Barrenjoey Road which is a Classified Road. Transport for NSW have provided support to the amended design, as evidenced in them issuing conditional concurrence.

The gradient of the driveway has also been amended to comply with the control and Council's Development Engineer and Transport Officer offer no objections to the amended plan subject to conditions.

The control also requires the following measures in respect of structures in the road reserve:

Ancillary Structures within the Road Reserve

Ancillary structures within the Road Reserve will be supported for the purposes of structurally supporting the access driveway only. Ancillary structures include retaining walls.

Encroachment into the road reserve is to be minimised.

Where retaining walls and structures are visible from a public place, preference is given to the use of textured finishes of dark earthy tones or sandstone-like finishes.

All structural elements within the Road Reserve must be certified by a Structural Engineer.

In addition, where the land is identified on the Landslip Hazard Map, the design of all structural elements must satisfy the Landslip Hazard Controls.

Comment:

The existing garage, retaining walls and other structures are currently located within the road reserve, and while it is acknowledged that the proposal will remove these structure to produce a better outcome, a condition requiring a 3.0m clear distance from the kerb has been imposed. This will require a redesign of the steps providing pedestrian access, one retaining walls and the landscaping. In addition, a Section 139 Consent for Works on the Public Road Reserve will be required for works within the road reserve. Subject to these conditions, the amended proposal meets the outcomes of the control. Also, please refer to comments from Council's Road Reserve Unit within the referral section of this report.

D12.5 Front building line

The proposed development does not comply with the 10.0m minimum front building line prescribed by this clause. Where the outcomes of this control are achieved, Council may accept a variation to these building lines in the following circumstances:

- *considering established building lines;*
- *degree of cut and fill;*
- *retention of trees and vegetation;*
- *where it is difficult to achieve acceptable levels for building;*
- *for narrow or irregular shaped blocks;*

The established building line along the low side of Barrenjoey Road is irregular and varied, with garages to the subject site and neighbouring sites encroaching on the road reserve and other building structures encroaching on the 10.0m front setback, see contextual plan below.



Site Analysis Plan (source Mathieson)

The clause also allows for the following exception:

Where carparking is to be provided on steeply sloping sites, reduced or nil setbacks for carparking structures and spaces may be considered, however all other structures on the site must satisfy or exceed the minimum building line applicable.

Due to the steepness of the slope, it is also difficult to achieve acceptable levels for the building and in particular vehicular access. The location of the garage therefore meets this requirement and is also consistent with the pattern of development along this section of Barrenjoey Road.

The nature of the non-compliance with the front setback is as follows:

The existing dwelling has a 2.4m setback with the garage located partially in the road reserve. The eastern external wall of proposed dwelling has a varied setback to the splayed front boundary is between 1.0m - 4.29m.

As discussed above, the proposed setback is a vast improvement to the existing site and other properties along the lower western side of Barrenjoey Road which have structures, garage, carports, and walls of dwelling that breach the 10.0m setback, in some cases encroaching onto the road reserve (examples include No. 971, 975, 995 and 997 Barrenjoey Road).

The siting of the dwelling house as a whole is acceptable on merit, particularly as the proposal otherwise achieves consistency with the outcomes of the front building line development control, as follows:

Achieve the desired future character of the Locality.

Comment:

The built form will sit comfortably with adjoining and surrounding two, three and four storey residential development along Barrenjoey Road. The built form is located downslope in steep topography, with the third storey element generally siting below street level, and consequently presenting a light weight louvred pavilion to house parking and a gym to Barrenjoey Road. The siting of the upper-level pavilion will not detract from consistency with the desired character prescribed for the Palm Beach Locality.

The proposal satisfies this requirement.

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

Comment:

The carport and adjoining gym will be partially visible from the street. The street facade presents a lightweight louvres facade which allows for the preservation of views to Pittwater.

The proposal satisfies this requirement.

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

Comment

The habitable floor areas of the development are located predominantly below street level and to that extent will be appropriately protected from traffic noise. The design response allows for high levels of amenity to future occupants notwithstanding the front building line variation proposed.

The proposal satisfies this requirement.

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

Comment

The proposed dwelling is generally sited within the footprint of the existing dwelling, as such, the removal of significant vegetation is minimised and enhanced with new planting. To address the concerns from Council's Roads Reserve Unit a condition requires that no landscape planting is provided within 3.0m from the kerb in order to ensure road safety is maintained which is a priority.

The proposal satisfies this requirement.

Vehicle manoeuvring in a forward direction is facilitated.

Comment

The application has been amended to re-locate the turntable fully within the site to allow cars to enter and exit in a forward direction.

The proposal satisfies this requirement.

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

Comment:

The bushland character of the site is preserved, and Council's Landscape and Bushland and Biodiversity Officers have no objections, subject to conditions. In terms of the treatment of the front setback, an amended landscape plan is required to remove the proposed landscaping from the road reserve in the interest of road safety.

The proposal satisfies this requirement.

To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.

Comment

The proposal will enhance the existing streetscape with the removal of the existing encroaching garage

structure. The replacement contemporary dwelling sits entirely within the site and due to the levels will primarily be sited below street level and tree canopy level with only the light weight garage/ gym pavilion visible from the streetscape.

The proposal satisfies this requirement.

To encourage attractive street frontages and improve pedestrian amenity.

Comment

The street frontage is enhanced with the removal of the encroaching garage and other structures. Subject to a condition the 3.0m frontage from the kerb will be free of landscaping and ancillary structures which will allow space for a future footpath if required. In general, the development enhances pedestrian amenity.

The proposal satisfies this requirement.

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

Comment:

As discussed above, the encroaching garage structure is removed from within the road reserve with the spatial separation maintained to surrounding development reflecting the established spatial characteristics of the existing urban environment.

The proposal satisfies this requirement.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this circumstance.

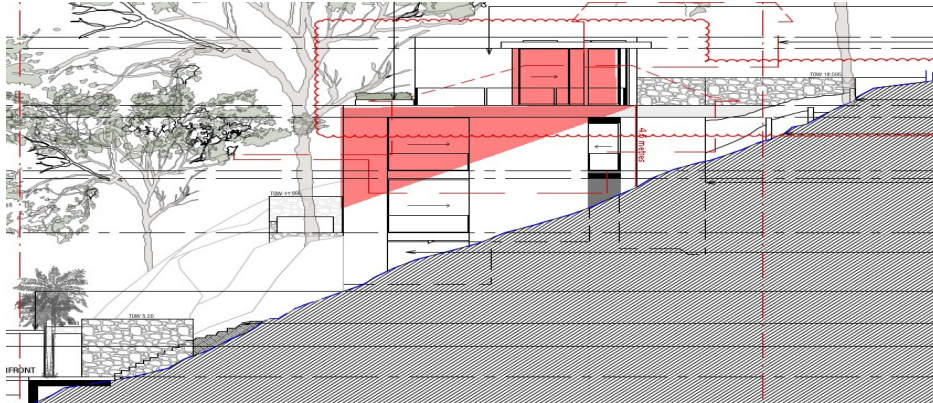
D12.8 Building envelope

Description of non-compliance

The control requires development to be maintained within an envelope measured 3.5m in height from the site boundary and 45 degrees. The proposed development involves the following breach of the required building envelope as follows:

South-East Elevation:

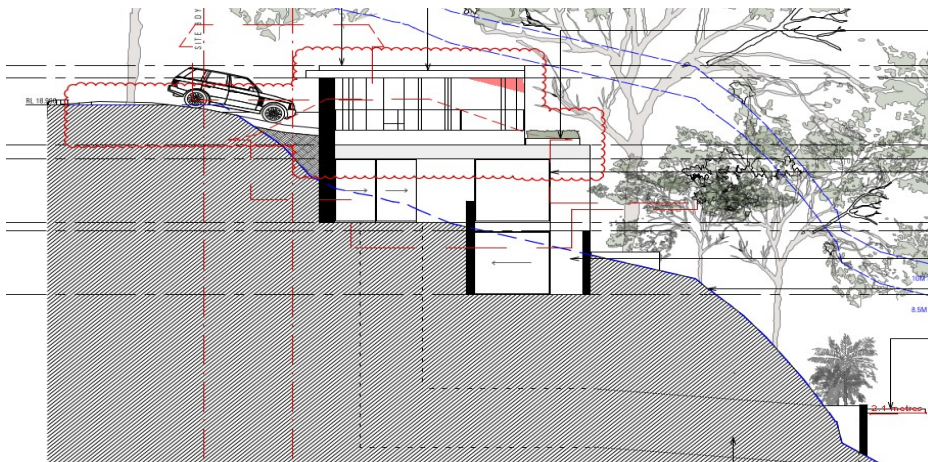
Level 1 - 5.6m (height) and 10.0m (width) and
level 2 - 3.1m (height) and 3.8m (width), refer to image below.



Building envelope breach south-east elevation (source Mathieson)

North-west elevation

A small triangular corner of the Level 2 carport measuring 0.8m (height) and 2.0m (length).



Building envelope breach north-west elevation (source Mathieson)

As stated within the control "where the building footprint is situated on a slope over 16.7 degrees (i.e.; 30%), variation to this control will be considered on a merits basis".

The proposed dwelling is situated on a slope of 30%, consequently, consideration of the proposed breach against the relevant outcomes of the control is provided below:

To achieve the desired future character of the Locality.

Comment:

The non-compliance is significantly influenced by the sloping topography of the site. While the breach is significant to the south-east elevation it will not have adverse impacts on character of the locality given that it will not be visible from the streetscape due to the significant mature canopy trees in the reserve to the immediate south-east which and the fact that Level 1 is sited below street level. The breach at Level 1 is related to the lightweight gym structure which is setback 4.7m from the side boundary.

The area of encroachment demonstrates consistency with the desired future character of the locality

with the siting of the dwelling maintaining the landforms, landscape, and other features of the natural environment.

The proposal satisfies this requirement.

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

Comment:

As discussed above, the proposal removes the encroaching garage and other structures from the front setback and enhances the streetscape. The breaching elements will not result in unreasonable impacts on the streetscape quality given the topography of the site and the existing mature planting in the adjoining reserve. The breaching elements are generally located at a lower level and are not immediately visible in the streetscape. The resultant-built form presents a contemporary pavilion style design that responds to the natural land form of the site, below the height of the existing canopy trees of the natural environment.

The proposal satisfies this requirement.

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

Comment:

As discussed above, the development responds to the spatial characteristics of the locality. The facade of the dwelling on the south-east elevation is sufficiently modulated with a significant setback of the top floor to respond aspect of the site and its steep slope. The resultant development is a sensitive design response in consideration of the natural characteristics of the site, with the retention of existing canopy trees and the enhancement of landscaping.

The proposal satisfies this requirement.

The bulk and scale of the built form is minimised.

Comment:

As discussed throughout this report, the bulk and scale are generally consistent with other developments in the surrounding area. The proposed dwelling is of comparable building bulk and scale to existing and approved developments in the locality. The non-compliant envelope to the south-east elevation will not result in unreasonable visual or residential amenity impacts given that it adjoins a reserve and not a residential site. In light of the steep topography, the articulation and material differentiation attempt to ensures the bulk and scale of this portion of the development has been minimised.

The area of the dwelling outside of the envelope is not immediately visible from the public domain and will not add excessively to the bulk and scale of the development. The proposal includes adequate vegetation to screen the built form of the proposed development from the neighbouring sites and from the Pittwater Waterway.

The proposal satisfies this requirement.

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

Comment:

Refer to discussion under Clause D12.5 (Front Setback). The lightweight louvred Level 2 pavilion allows for the retention of views to Pittwater from the street and given the location of the site on the low side of Barrenjoey Road, the proposal will not result in any unreasonable view loss from private residential properties.

The proposal satisfies this requirement.

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

Comment:

Refer to discussion under Clause D12.5 (Front Setback). The spatial separation of the dwelling will ensure that a reasonable level of amenity is protected to neighbouring properties in terms of privacy and the shadow diagrams confirm that the proposal will not result in unreasonable overshadowing.

The proposal satisfies this requirement.

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

Comment:

Refer to discussion under Clause D12.5 (Front Setback) and D12.10 (Landscaped Area). The high values canopy trees will be retained and enhanced with additional landscape planting to reduce the visual impact of the built form.

The proposal satisfies this requirement.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this circumstance

D12.10 Landscaped Area - Environmentally Sensitive Land

The control requires 60% of the site to be retained as landscape open space. The existing site provides a 235sqm area of landscape open space or 34.2% of the site area. The proposal will increase the landscaped area to 336.9sqm or 49%, inclusive of the 6% variation, in addition a further 44sqm of contributory landscaping is provide in the form of a large planter bed at level 2. Despite the 11% breach of the control the variation is warranted, as the proposal will increase the amount of landscaping on the site and the outcomes of the control are achieved as follows:

Achieve the desired future character of the Locality.

Comment:

The proposed development is consistent with the desired future character of the Palm Beach Locality, as the proposal provides adequate opportunities to ensure that the visual impact of the development is secondary to landscaping. The quality of landscaping is improved with some new soft landscaping provided within the site boundary to the frontage which together with the adjoining reserve to the south

helps soften any perceived visual impact of the development. In addition, the proposal has been effectively integrated within the landform, through retaining existing canopy trees of high significance in addition to replacement new planting. The quality of the landscaping, as viewed from Pittwater Waterway, is also improved. Again, as the site adjoins the public reserve, so the site has "complementary landscape amenity from the reserve", which is not distinguishable as a reserve when viewed from the waterway.

The proposal satisfies this requirement.

The bulk and scale of the built form is minimised.

A lightweight garage/gym single storey pavilion is presented to Barrenjoey Road. The bulk and scale presented to the streetscape is assessed as acceptable. The dwelling steps down the site and is integrated with existing significant canopy trees that will be retained in addition to proposed planting to reduce the visual bulk as seen from Pittwater Waterway. The dwelling is sufficiently modulating to reduce the bulk and scale and the Level 2 reflection pond has been amended to a 44sqm planter box to soften the building and supplement the at-grade landscape proposed. Overall, it is considered that the proposal's design reasonably mitigates the visual impact of the built form.

The proposal satisfies this requirement.

A reasonable level of amenity and solar access is provided and maintained.

Comment

The proposal will provide a high level of amenity for the future residents and will not result in any unreasonable impact on light, solar access, or privacy to neighbouring properties. This is because of the sufficient orientation and separation of the proposed dwelling.

The proposal satisfies this requirement.

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

The proposal will provide adequate areas for the retention of high significant canopy tree and establishment of more considerable planting, particularly around the built form and within the rear setback between the water's edge. The proposal retains a building height that sits below the existing canopy trees leading to a visual integration of the built form to the landscaped locality. As a result, the proposal provides adequate areas for substantial planting, to visually reduce the built form.

The proposal satisfies this requirement.

Conservation of natural vegetation and biodiversity.

Comment:

The proposed development is located within the general footprint of the existing dwelling. The proposal is a sensitive solution for the constrained site that preserves the natural features and biodiversity. Native trees and vegetation are retained as part of the proposal. In addition, the development has been reviewed and is supported by Council's Natural Environment Biodiversity and Landscaping Team.

The proposal satisfies this requirement.

Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage

channels.Comment:

The development will provide sufficient areas that are of soil depth for the infiltration of stormwater. It is considered that stormwater runoff will not be reasonably reduced as a result of this proposal. Subject to conditions recommended by Council's Development Engineers, stormwater will be appropriately managed on the site.

The proposal satisfies this requirement.

To preserve and enhance the rural and bushland character of the area.Comment:

The site has multiple areas capable for the establishment of deep soil planting, particularly to the rear. It is noted that a waterfront character of the site will be enhanced with the addition of timber decking on top of the existing concrete Waterfront terrace. Overall, the proposal provides reasonable opportunities within the site for the establishment of additional trees and landscape features, resulting in the proposal integrating with the landscaping and bushland/waterfront character of the escarpment and the locality.

The proposal satisfies this requirement.

Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.Comment:

Council's Development Engineer has no objections to the proposed stormwater management, as amended, subject to conditions of consent.

The proposal satisfies this requirement.

Based on the above, the proposed landscape area in this instance is supported on merit and considered to satisfy the outcomes of the control.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS**Northern Beaches Section 7.12 Contributions Plan 2022**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$76,446 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$7,644,640.

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:

- 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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 4.3 Height of Buildings and Clause 7.8 Limited Development on Foreshore Area has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

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

PLANNING CONCLUSION

The proposed dwelling-house, with associated garage, pool, landscaping, and earthworks, is a significant redevelopment on a highly constrained and environmentally sensitive site between Barrenjoey Road and the Pittwater Waterway. The project was the subject of a pre-lodgement meeting

and many of the issues were resolved through that process.

However, the application still relies upon two Clause 4.6 Variations, one being to Clause 4.3 Height of Buildings Development Standard and the other being to Clause 7.8 Limited Development on the foreshore Development Standard and based on the fact that the latter is non-numerical, the application is required to be determined by the Northern Beaches Local Planning Panel.

The assessment of the development against the planning controls under the PLEP 2014 and P21DCP reveal that the proposed development, as amended, reveals that, notwithstanding the variations to certain controls, it will result in a development that displays reasonable size, scale and density which is compatible with the surrounding development and Palm Beach Locality and will not result in unreasonable amenity impacts to surrounding properties. The contemporary dwelling steps down to favorably relate the steeply sloping landform. The dwelling sits below the height of the retained existing mature canopy trees which are supplemented with additional planting.

The non-compliances with building height, front setback, building envelope, foreshore area and landscape area controls will not result in unreasonable visual, streetscape and scenic impacts, nor adverse impacts by virtue of privacy, overshadowing and view loss. The proposal will result in an improved quality and quantity of landscape open space and significant trees will be retained.

The Clause 4.6 variations for Foreshore Area and Building Height are well-founded and are supported for the reasons discussed in detail in the relevant sections of this report.

The proposal does involve a significant amount of excavation, including the construction of a tunnel, however the applicant provided substantive geotechnical assessment which determined that the risk is acceptable and can be carried out in a manner that does not unduly impact on the natural environment or residential amenity, subject to conditions for impact mitigation and management.

The traffic and road safety issues have been addressed with the relocation of the turntable entirely within the subject site, concurrence has been provided by Transport for NSW, and conditions are recommended requiring no planting or structures with the 3.0m setback to the kerb in Barrenjoey Road.

Overall, the proposal is considered a reasonable response to the site constraints and relevant planning controls.

Significantly, it is noted that there were no submissions received in response to the public exhibition of the proposal.

Accordingly, the application is recommended for approval.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building and Clause 7.8 Limited Development on Foreshore Area development standard pursuant to clause 4.6 of the PLEP 204 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly, the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/2447 for Demolition works and construction of a dwelling house including a swimming pool on land at Lot 58 DP 13620, 989 Barrenjoey Road, PALM BEACH, Lot LIC 320226, 989 Barrenjoey Road, PALM BEACH, subject to the conditions printed below:

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA.00 Rev E Cover Page	26.11.2021	Mathieson Architects
DA.02 Rev H Site Plan / Site Roof	29.04.2022	Mathieson Architects
DA.03 Rev H Level 2 Plan	29.04.2022	Mathieson Architects
DA.04 Rev K Level 1 Plan	29.04.2022	Mathieson Architects
DA.05 Rev I Ground Plan	29.04.2022	Mathieson Architects
DA.06 Rev H Waterfront Plan	29.04.2022	Mathieson Architects
DA.07 Rev J Street and Waterfront Elevations	29.04.2022	Mathieson Architects
DA.08 Rev L North West and South East Elevations	29.04.2022	Mathieson Architects
DA.09 Rev K Section AA and BB	29.04.2022	Mathieson Architects
DA.10 Rev I Tree Strategy Plan	29.04.2022	Mathieson Architects
DA.12 Rev C External Finishes	26.11.2021	Mathieson Architects
DA.19 Rev A Demolition Plan	26.11.2021	Mathieson Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
CC001 Rev 02 General Notes and Legend	04.03.2022	Intrax Consultants
CC1001 Rev 03 Erosion and Sediment Control Plan	04.03.2022	Intrax Consultants

CC1011 Rev 02 Erosion and Sediment Control Notes	04.03.2022	Intrax Consultants
C4001 Rev 04 Stormwater Management Plan	08.03.2022	Intrax Consultants
C4101 Rev 03 Stormwater Catchment Plan	04.03.2022	Intrax Consultants
C4301 Rev 02 Stormwater Management Detail Sheet 1 of 2	04.03.2022	Intrax Consultants
C4302 Rev 02 Stormwater Management Detail Sheet 2 of 2	04.03.2022	Intrax Consultants

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report Ref 34271YJrpt2	12.04.2022	JK Geotechnics
Arborist Report	01.12.2021	Jackson Nature Works
Traffic Report	04.05.2022	TEE Consulting
Estuarine Risk Management Report	02.12.2021	Horton Coastal Engineering
Bush Fire Assessment Report Ref 220201	28.10.2021	Building Code and Bushfire Hazard Solutions Pty Ltd

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
Landscape Concept Plan Rev E	12.05.2022	Fifth Season Landscaping
Planting Plan Rev C	12.05.2022	Fifth Season Landscaping

***Note:** No landscape works are approved within the road reserve.

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	-	Reform

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. **Compliance with Other Department, Authority or Service Requirements**
The development must be carried out in compliance with all recommendations and

requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Transport for NSW	Referral Response SYD22/00278/02	24.06.2022
NSW Rural Fire Service	Referral Response: DA20211220005583-Original-1	23.02.2022

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house.

A dwelling house is defined as:

"dwelling house means a building containing only one dwelling."

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

4. **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.

5. 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) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) 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.
- (k) 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.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

- (n) 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 2018
 - (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

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$76,446.40 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 2022. The monetary contribution is based on a development cost of \$7,644,640.00.

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 2022 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.

7. **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 are required 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, and 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

8. **Amended Landscape Plan**

An Amended Landscape Plan, based on the submitted Landscape Plans, shall be issued to the Certifying Authority prior to the issue of a Construction Certificate to include the following details:

- i) landscape works are confined to the properties boundaries. A 3 m clear distance from the kerb meaning the design of the steps, the retaining walls and the landscaping must be amended to provide a 3 m clearance from the kerb.
- ii) existing trees to be retained and protected, including within adjoining properties,
- iii) all tree planting shall be a minimum planting size of 75 litres or larger if otherwise nominated in the plant schedule, and shall meet the requirements of Natspec - Specifying Trees,
- iv) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres from buildings, and at least 1.5 metres from common boundaries,
- v) all *Rhaphiolepis* species nominated in the plant schedule shall be removed and shall not be planted and shall be substituted with a non self-seeding species of similar form and size,
- vi) planting selection ratios for native species are subject to any condition as imposed by Council's Biodiversity Referral team,
- vii) all proposed tree planting shall be positioned in locations to minimise significant impacts on

neighbours in terms of blocking winter sunlight to living rooms, private open space, and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

Should the existing landscape features within the road reserve verge are to be altered, the proposed landscape works shall be part of a Works within the Road Reserve application under section 138 and 139 of the Roads Act, for approval or otherwise.

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

Reason: Environmental amenity.

Note: Please consider registering your new tree through the link below to be counted as part of the NSW State Governments 5 Million trees initiative.
<https://5milliontrees.nsw.gov.au/>

9. **Tree Protection Plan**

a) A Tree Protection Plan shall be submitted to the Certifying Authority for approval prior to the issue of a Construction Certificate, demonstrating tree protection measures to protect the retained trees listed in the Arboricultural Impact Assessment report and as referred to in the report as a Tree Management Plan under section 4 Recommendations.

b) The Tree Protection Plan shall be prepared by an Arborist with minimum AQF Level 5 in arboriculture, incorporating the following:

- i) layout of the development, including existing and proposed underground services,
- ii) location of all trees identified for retention, including extent of canopy,
- iii) access routes throughout the site for construction activity,
- iv) location of tree protection fencing / barriers,
- v) root protection in the form of mulching or boards proposed within the tree protection zone,
- vi) trunk and branch protection within the tree protection zone,
- vii) location of stockpile areas and materials storage,
- viii) inspection hold points,
- ix) other general tree protection measures.

c) Tree protection methods are to be in accordance with AS4970-2009 Protection of Trees on Development Sites.

Reason: Tree protection.

10. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to a headwall within the property with rock rip rap to ensure scour protection to the foreshore.

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

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

the development.

11. **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 JK Geotechnics, Ref: 34271YJrpt2, dated 12 April 2022 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 Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

12. **Amendment of Landscape Plans - species selection and replacement planting**

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

- Deletion of 'Raphiolepis indica' and 'Raphiolepis indica 'Snow Maiden' from the Plant List due to their former status as Noxious Weeds
- In addition to the proposed 1 Angophora costata, and 3 Livistona australis plantings, the Landscape Plan must provide for an additional three (3) locally-indigenous plantings, including at least one (1) Eucalyptus robusta to ensure 1:1 replacement of prescribed canopy species

The amended Landscape Plan is to be certified by a qualified landscape architect and provided to the Certifying Authority prior to issue of the Construction Certificate.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site.

13. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: Protection of the receiving environment.

14. **Water Quality Management / Detailed Design of Stormwater Treatment Measures**

A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance with the stormwater plans INTRAX rev 2 04/03/2022 and Council's Water Management for Development Policy.

The certificate shall be submitted to the Certifying Authority prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment

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

Reason: Protection of the receiving environment.

15. **Car Parking Standards**

The driveway/access ramp grades, access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.

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

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

16. **Construction Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

Truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movements must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and

- noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

17. Vehicle Mechanical Turntable

The applicant is to provide information on the proposed vehicular turntable, operation details, and instructions to visitors on using the device, maintenance plan, and contingency plan during a malfunction.

Details are to be provided to Council for approval and this requirement is to be reflected on the

Construction Certificate plans Details demonstrating compliance are to be reflected on the Construction Certificate plans and any supporting documentation for the endorsement of the Certifying Authority prior to the release of the Construction Certificate.

Reason: To ensure no vehicle or pedestrian conflicts when entering and exiting the road.

18. **Pedestrian sight distance at property boundary**

A pedestrian sight triangle of 2.0 metres by 2.5m metres, in accordance with AS2890.1:2004 is to be provided at the vehicular access to the property and where internal circulation roadways intersect with footpaths or other pedestrian access areas. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To maintain pedestrian safety.

19. **Amendments to the approved plans**

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

- No approval is granted for any structures or landscaping within the road reserve. A 3.0m clear distance from the kerb meaning the design of the steps, the retaining walls and the landscaping must be amended to provide a 3.0m clearance from the kerb.

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.

20. **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 referenced in Condition 1 of this consent 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.

21. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

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

The Applicant is to submit an application for approval for infrastructure works on Council's

roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include Civil Engineering plans for the design of the driveway crossing, layback, pedestrian access and associated retaining walls in the road reserve which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plans shall be prepared by a qualified Civil Engineer. The design must include the following information

- (a) An approval for the proposed gutter from Transport for NSW in accordance with condition 1 of their letter dated 24 June 2022.
- (b) A 5.5 metre wide driveway crossing in accordance with Council's Driveway Profile - Extra Low (EL).
- (c) A safety barrier along the northern edge of the driveway in accordance with the requirements of Section 2.4.5 of AS/NZS 2890.1:2004.
- (d) A grass verge 1.5 metres wide with a 2% fall to the existing kerb for the entire frontage of the site.
- (e) Services plan and concurrence from the relevant service authority if any services are to be adjusted as part of the works.
- (f) Retaining wall details
- (g) Access stair details

Note: The applicant must maintain a 3 m clear distance from the kerb meaning the design of the steps, the retaining walls and the landscaping must be amended to provide a 3 m clearance from the kerb.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate

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

23. **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.

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.

24. **Shoring of Council's Road Reserve (Temporary road anchors)**

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

Written approval from Council under Section 138 of the Roads Act 1993 is required if temporary ground anchors are to be used within Council's road reserve. The Owner's approval is to be submitted to the 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.

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

The Applicant is to submit an application for Infrastructure Works in the Public Road Reserve, for Council approval. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

The applicant must maintain a 3 m clear distance from the kerb meaning the design of the steps, the retaining walls and the landscaping must be amended to provide a 3 m clearance from the kerb.

Details demonstrating compliance are to be submitted to Council for approval prior to the issue of the Construction Certificate. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

Reason: To provide an area on the road shoulder outside this property for emergency use and as a refuge for stopped vehicles and to ensure the proposed landscaping works do not hinder the future construction of a footpath.

26. **Estuarine Hazard Design Requirements**

The following applies to all development:

All development or activities must be designed and constructed such that they will not increase the level of risk from estuarine processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect estuarine processes; they will not be adversely affected by estuarine processes.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

27. **Estuarine Planning Level Requirements**

An Estuarine Planning Level (EPL) of 3.0m AHD has been adopted, based on recommendation of the Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 2 December 2021 for the subject site and shall be applied to all development proposed below this level as follows:

- All structural elements below 3.0m AHD shall be of flood compatible materials;
- All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 3.0m AHD or waterproofed to this level; and
- The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 3.0m AHD.
- All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 3.0m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 3.0m AHD to avoid the likelihood of

contact with splashing waves and spray.

Reason: To ensure aspect of the development are built at the appropriate level

28. **Compliance with Estuarine Risk Management Report**

The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd dated 2 December 2021 and these recommendations are to be incorporated into construction plans.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

29. **Structural Engineering for Estuarine Risk**

Structural engineering design for the development shall be prepared, with input as necessary from a chartered professional engineer with coastal engineering as a core competency, to ensure that for its design life (taken to be 60 years as justified and accepted by Council) the development is able to withstand the wave impact forces and loadings identified in the approved Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 2 December 2021.

Note: The potential for component fatigue (wear and tear) should be recognised for the less severe, but more frequent, wave impact loadings.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

30. **Engineers Certification of Plans**

The structural design shall be prepared by and each plan/sheet signed by, a registered professional civil or structural engineer with chartered professional status (CP Eng) who has an appropriate level of professional indemnity insurance and shall be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

31. **External Finishes to Roof**

The external finish to the walls and roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof or walls 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)

32. **Traffic Management**

Traffic management procedures and systems must be in place and practised during the course of the project to ensure safety and minimise the effect on adjoining pedestrian and vehicular traffic systems. These procedures and systems must be in accordance with AS 1742.3 2009 Manual of Uniform Traffic Control Devices and Council's Development Control Plans.

Note: A plan of traffic management is to be submitted to and approved by the Consent Authority.

Reason: To ensure pedestrian safety and continued efficient network operation.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

33. **Tree Removal Within the Property**

This consent approves the removal of the following tree(s) within the property (as recommended in the Arboricultural Impact Assessment):

- i) tree numbers: 10 - Eucalyptus resinifera; 22 - Eucalyptus sp; 23, 24 and 25 - Casuarina glauca.
- ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Note: Exempt Species as listed in the Development Control Plan or the Arboricultural Impact Assessment do not require Council consent for removal with the property. The existing Exempt Species include tree numbers: 3 - Strelitzia nicholi, 8 - Kentia Palm, and 13 - Cocus Palm. A qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

34. **Tree Removal Within the Road Reserve**

This consent approves the removal of the following tree(s) within the road reserve (as recommended in the Arboricultural Impact Assessment):

- i) tree number 1 - Callistemon viminalis.
- ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Removal of the approved tree/s in the road reserve shall only be undertaken by a Council approved tree contractor. Details of currently approved tree contractors can be obtained from Northern Beaches Council's Trees Services business unit prior to removal.

Reason: Public liability.

35. **Clearing for Asset Protection Zones**

Clearing of vegetation during works for APZ establishment must only occur within the surveyed and marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries.

Written certification of compliance is to be submitted to the Principal Certifying Authority.

Reason: To protect native vegetation and wildlife.

36. **Road Occupancy Licence**

Prior to commencement of the associated works, the applicant shall obtain a Road Occupancy License from Transport Management Centre for any works that may impact on traffic flows.

Reason: Requirement of TMC for any works that impact on traffic flow.

37. **Demolition Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to commencing any demolition work.

Truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The DTMP must:-

- o Make provision for all construction materials to be stored on site, at all times.

- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Include a Traffic Control Plan prepared by an RMS accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

The DTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS' Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council's Schedule of Fees and Charges and are to be paid at the time that the Demolition Traffic Management Plan is submitted.

Reason: This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

38. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

991 Barrenjoey Road, Palm Beach

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain

access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage arising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

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

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

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

40. **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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

41. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees and vegetation within the site not approved for removal (ie. tree numbers 9, 12, 16, 20 and 21 - *Angophora costata*, 15 - *Eucalyptus* sp., 17, 18, and 19 - *Casuarina glauca*), excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation not approved for removal.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) 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) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) 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 Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment and the Tree Protection Plan.

The Certifying Authority must ensure that:

- d) The arboricultural works listed in c) are undertaken and certified by an Arborist as compliant to the recommendations of the Arboricultural Impact Assessment and the Tree Protection Plan.
- e) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree (s) is prohibited.

Reason: Tree and vegetation protection.

42. **Road Reserve**

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

Reason: Public safety.

43. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

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

prior to commencement of any other works on site.

Erosion and sediment controls 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 vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

44. **Implementation of Demolition Traffic Management Plan**

All works and demolition activities are to be undertaken in accordance with the approved Demolition Traffic Management Plan (DTMP). All controls in the DTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the DTMP be impacted by surrounding major development not encompassed in the approved DTMP, the DTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved DTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Reason: To ensure compliance and Council's ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project.

45. **Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

46. **Ongoing Management**

The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

47. **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)];
- 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; and
- 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.

48. **Geotechnical Requirements**

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

49. **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.

50. **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.

51. **Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

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

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

52. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 5.5 metres wide in accordance with Northern Beaches Council Drawing Extra Low and the Roads Act application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to kerb and grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

53. **Aboriginal Heritage**

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection.

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

54. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved Amended Landscape Plans.

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

Reason: Environmental amenity.

Note: Please consider registering your new tree through the link below to be counted as part of the NSW State Governments 5 Million trees initiative.
<https://5milliontrees.nsw.gov.au/>

55. **Condition of Retained Vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

i) compliance to any Arborist recommendations for tree protection generally and during excavation works,

- ii) extent of damage sustained by vegetation as a result of the construction works,
- iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

56. **Stormwater Disposal**

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

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

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

57. **Certification of Landscape Plan**

Landscaping is to be implemented in accordance with the approved Landscape Plans (Fifth Season Landscapes 2021) and these conditions of consent.

Details demonstrating compliance are to be prepared by the landscape architect and provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site.

58. **No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) are to be imported on to the site prior to or during construction works.

Details demonstrating compliance are to be 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 and environmental weeds.

59. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- o Compare the post-construction report with the pre-construction report,
- o Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- o Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

Reason: To maintain proper records in relation to the proposed development.

60. **Waste Management Confirmation**

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

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

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

62. **Environmental Reports Certification**

Written certification from a suitably qualified person(s) shall submit to the Principal Certifying Authority and Northern Beaches Council, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the following reports have been completed:

- (a) Geotechnical Report Ref 34271YJrpt2, dated 12.04.2022, prepared by JK Geotechnics
- (b) Arborist Report, dated 01.12.2021, prepared by Jackson Nature Works
- (c) Traffic Report, dated 04.05.2022, prepared by TEE Consulting
- (d) Estuarine Risk Management Report, dated 02.12.2021, prepared by Horton Coastal Engineering
- (e) Bush Fire Assessment Report Ref 220201, dated 28.10.2021, prepared by Building Code and Bushfire Hazard Solutions Pty Ltd

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

Reason: To ensure compliance with standards.

63. **Sydney Water**

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

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

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

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

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

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**64. Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

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

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

Reason: To maintain local environmental amenity.

65. Protection of Habitat Features

All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

66. Replacement of Canopy Trees

Tree replacement plantings required under this consent are to be retained for the life of the development and/or for their safe natural life.

Trees that die or are removed must be replaced with another locally native canopy tree.

Reason: To replace locally native trees.

67. Maintenance of Asset Protection Zones

Vegetation clearing for ongoing APZ maintenance must only occur within the surveyed and marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries.

Reason: To protect native vegetation and wildlife.

68. Landscaping adjoining vehicular access and in Road Reserve

The applicant must ensure that the planting chosen for any land immediately adjacent to the driveway and adjacent to any driveway intersections must not exceed a height of 1,140mm. In addition no planting is permitted within 3m of the edge of the road.

Reason: To maintain unobstructed sight distance for motorists.

69. Geotechnical Recommendations

Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

70. Swimming Pool/Spa Motor Noise

The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the

background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

71. **No structures within 3m of road kerb**

The applicant must maintain a 3m clear distance from the kerb meaning the design of the steps, the retaining walls and the landscaping must be amended to provide a 3 m clearance from the kerb.

Reason: To provide an area on the road shoulder outside this property for emergency use and as a refuge for stopped vehicles and to ensure the proposed landscaping works do not hinder the future construction of a footpath.

72. **Compliance with Estuarine Risk Management Report**

The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 2 December 2021 and these recommendations are to be maintained over the life of the development.

Reason: To ensure preservation of the development and the estuarine environment and to comply with the requirement of the Section 27 of the *Coastal Management Act 2016*

73. **Lighting to the Waterfront**

Lighting is to be shielded or located to promote safe navigation and minimise any likely adverse visual impact when viewed from the Pittwater Waterway, any adjoining public land, and adjoining residences. Reflection off the water should be eliminated where possible.

Reason: To ensure that waterfront lighting does not become a navigational hazard or adversely impact upon adjoining public land or residences





NOTE: PLEASE REFER TO TREE STRATEGY DRAWING DA.10 FOR TREES THAT ARE TO BE REMOVED.

LEGEND

-  Site Boundary
 Demolition

NOTES

REV NO.	DATE	REVISION	BY	CHK
A	03/27/01	Issued for Consultant Coordination	MS	MS
B	11/23/01	Issued for The City	MS	MS
C	12/23/01	Issued for The City	MS	MS
D	04/08/04	Issued to Client	MS	MS
E	11/05/01	Issued for Consultant Coordination	MS	MS
F	12/13/01	Issued for Your Consultant Coordination	MS	MS
G	12/13/01	City Issue	MS	MS
H	08/11/03	City Issue	MS	MS
I	12/04/03	City Amendments to drawing, including and revised scope	MS	MS
J	2/05/05	Amendment to RL	MS	MS

PROJECT	BARRENJOEY RESIDENCE
ADDRESS	989 BARRENJOEY ROAD
	PALM BEACH 2108
DOCUMENT	DEVELOPMENT APPLICATION

CRUISING ELEVATIONS

STREET & WATERFRONT	
DATE	03.05.22
SCALE	1:100@A1
DRAWN	AS
PROJECT NO.	21005
DRAWING NO.	DA 07
REV NO.	J

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MATHIESON





NOTE: PLEASE REFER TO TREE STRATEGY DRAWING DA.10 FOR TREES THAT ARE TO BE REMOVED.

LEGEND

-  Site Boundary
 Demolition

NOTES

REV ID	DATE	REVISION	BY	CHK
C	22.07.21	Issued for Pre-GR	MS	MS
D	24.08.24	Issued to Client	MS	MS
E	26.08.21	Issued for Consultant's Coordination	MS	MS
F	1.02.22	Issued for Consultant's Coordination	MS	MS
G	22.12.21	Issued for Final Consultant Coordination	MS	MS
H	27.12.21	GR Issue	MS	MS
I	3.12.23	GR Issue	MS	MS
J	26.11.23	GR Issue	MS	MS
K	24.04.23	GR Amendments to drawings, landscaping and council verge	MS	MS
L	2.05.23	Amendment to RL	MS	MS

PROJECT	BARRENJOEY RESIDENCE
ADDRESS	989 BARRENJOEY ROAD
	PALM BEACH 2108
DOCUMENT	DEVELOPMENT APPLICATION

DETERMINATIONS

DATE		03.05.22	SCALE	1:100@A1
DRAWN		AS	PROJECT NO.	21005
DRAWING NO.		DA.08	REV NO.	L

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CLAUSE 4.6 REQUEST TO VARY HEIGHT OF BUILDINGS DEVELOPMENT STANDARD

989 Barrenjoey Road,
Palm Beach

Suite 1, 9 Narabang Way Belrose NSW 2085

Phone: (02) 9986 2535 | Fax: (02) 9986 3050 |

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4.6 Request to Vary Development Standard

Proposed New Dwelling

989 Barrenjoey Road, Palm Beach

Greg Boston

B Urb & Reg Plan (UNE) MPIA

Suite 1/9 Narabang Way
Belrose NSW 2085

Tel: (02) 99862535

August 2022

1.0 Introduction

This clause 4.6 variation request has been prepared in support of a building height breach associated with a development application proposing the construction of a new dwelling house on the subject allotment. In the preparation of this variation request consideration has been given to architectural plans DA02(H), DA03(K), DA04(I), DA05(I), DA06(H), DA07(J), DA08(N), DA09(L), DA13(F), DA14(F), DA15(D), DA20(B) and DA21(B) and DA25(A) prepared by Mathieson Architects.

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

2.0 Pittwater Local Environmental Plan 2014 (PLEP)

2.1 Clause 4.3 - Height of buildings

Pursuant to Clause 4.3 of PLEP the height of a buildings permissible on the site is a maximum of 8.5 metres. The objectives of this control are as follows:

(1) *The objectives of this clause are as follows—*

- (a) *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) *to minimise any overshadowing of neighbouring properties,*
- (d) *to allow for the reasonable sharing of views,*
- (e) *to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) *to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

Building height is defined as follows:

building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like

Ground level existing is defined as follows:

ground level (existing) means the existing level of a site at any point.

We note that Council has adopted the interpretation of ground level (existing) as that established in the matter of *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 where at paragraphs 73 and 74 O'Neill C found:

73. The existing level of the site at a point beneath the existing building is the level of the land at that point. I agree with Mr McIntyre that the ground level (existing) within the footprint of the existing building is the extant excavated ground level on the site and the proposal exceeds the height of buildings development standard in those locations where the vertical distance, measured from the excavated ground level within the footprint of the existing building, to the highest point of the proposal directly above, is greater than 10.5m. The maximum exceedance is 2.01m at the north-eastern corner of the Level 3 balcony awning.

74. The prior excavation of the site within the footprint of the existing building, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the hill, can properly be described as an environmental planning ground within the meaning of cl 4.6(3)(b) of LEP 2014.

It has been determined that the south-western corner of the Level 2 entry staircase and roof over breach the height standard by a maximum of 1.190 metres (14%) with the deep eave at the southern end of the gymnasium at this level breaching the height standard by a maximum of 1.9 metres or 22.3%. Further, the roof form at the western edge of the level 1 Bedrooms 3 and 4 breach the height standard by a maximum of 1.65 metres or 19% with all building height breaching elements depicted in the building height blanket diagram at Figure 1 over page.

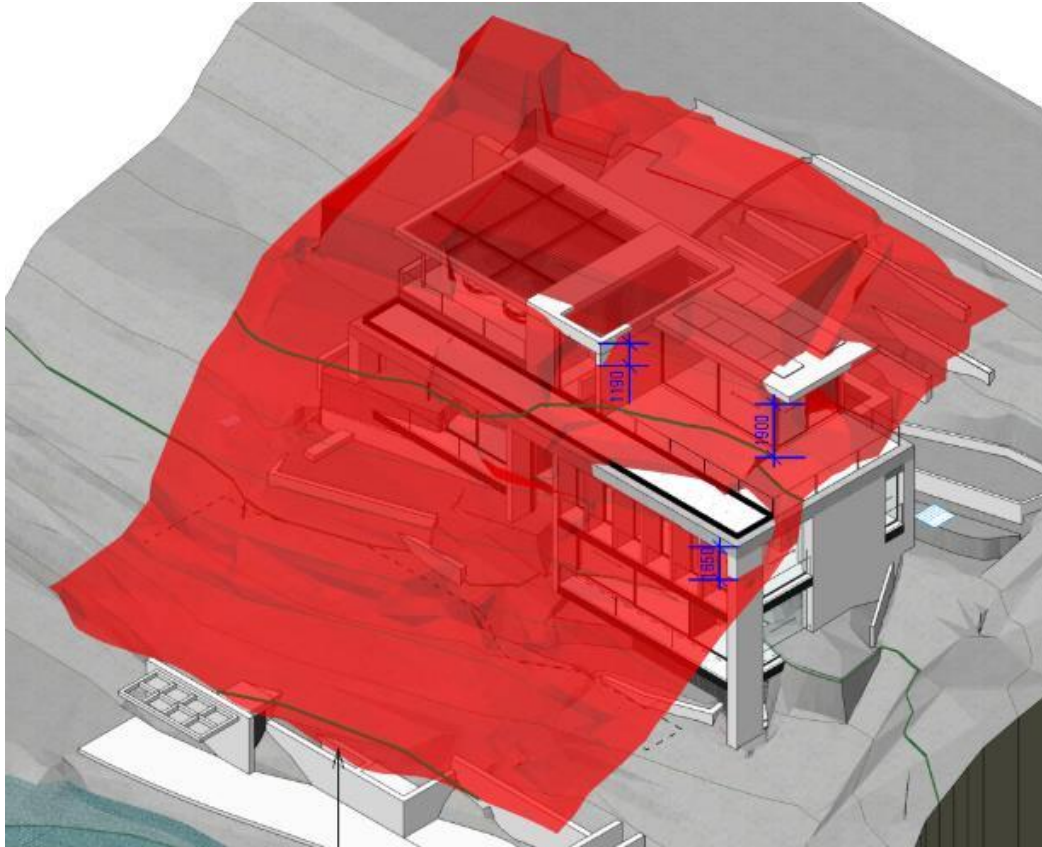


Figure 1 - Height blanket diagram showing minor building height breaching elements above the 8.5 metre height standard (show by red mesh)

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of PLEP provides:

(1) *The objectives of this clause are:*

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ("Initial Action") provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of PLEP provides:

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

This clause applies to the clause 4.3 Height of Buildings Development Standard. Clause 4.6(3) of PLEP provides:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The proposed development does not comply with the height of buildings provision at 4.3 of PLEP which specifies a maximum building height however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of PLEP provides:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Director-General has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest **because** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation* 2000, the Secretary has given written notice dated 5th May 2020, attached to the Planning Circular PS 18-003 issued on 5th May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of PLEP provides:

- (5) *In deciding whether to grant concurrence, the Director-General must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of PLEP from the operation of clause 4.6.

3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*

21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: *Wehbe v Pittwater Council* at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in *Wehbe v Pittwater Council* at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.3 of PLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of PLEP?

4.0 Request for variation

4.1 Is clause 4.3 of PLEP a development standard?

The definition of “development standard” at clause 1.4 of the EP&A Act includes a provision of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

Clause 4.3 PLEP Prescribes a fixed building height provision that seeks to control the height of certain development. Accordingly, clause 4.3 PLEP is a development standard.

4.2A Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the height of buildings standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

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

Response: The subject property is located within the Palm Beach Locality. The Desired Future Character (DFC) statement within Pittwater 21 Development Control (P21DCP) plan is as follows:

The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape.

Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancy dwellings will be located on the lowlands and lower slopes that have less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, community and recreational facilities will serve the community.

Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.

Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

The design, scale and treatment of future development within the commercial centres will reflect a 'seaside-village' character through building design, signage and landscaping, and will reflect principles of good urban design. Landscaping will be incorporated into building design. Outdoor cafe seating will be encouraged.

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.

Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved.

Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities.

Palm Beach will remain an important link to the offshore communities.

Having regard to the DFC statement, I am satisfied that that the building, by virtue of its height and scale, is consistent with the desired character of the locality notwithstanding the building height breaching elements proposed. In forming this opinion, I note:

- Notwithstanding the building height breaching elements, the Palm Beach Locality will remain primarily a low-density residential area with the dwelling housing, the subject of this document, having a single storey presentation to Barrenjoey Road before stepping down the site in response to topography.
- The building height breaching elements will not be readily discernible as viewed from Barrenjoey Road and in any event will not contribute to any significant manner to the perceived height bulk and scale of the building.
- The building height breaching elements do not themselves require excavation or modification of the landform with the building sitting within a landscaped setting and free from hazards.
- The non-compliant building elements will not prevent the building as whole from blending into the escarpment which forms a backdrop to the site.
- The building height breaching elements will not require the removal of any vegetation and will not impact on any public or private views.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191, I have formed the considered opinion that most observers would not find the proposed development by virtue of its height and scale, in particular the building height breaching elements, offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment. In forming this opinion, I rely on the photo montages at Figures 2 and 3 over page.

Notwithstanding the building height breaching elements, the proposal is consistent with this objective.



Figure 2 - Photomontage depicting the proposed development as viewed from Barrenjoey Road. Notwithstanding the non-compliant building height elements, the proposed building height retain public views from Barrenjoey Road across the site towards Pittwater Waterway



Figure 3 - Photomontage depicting the proposed development as viewed from Pittwater Waterway (refer to red arrow)

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

Response: The dwelling has a stepped building form that responds to the topography of the area. Development along Barrenjoey Road is characterised by multi-level dwellings that respond to the sloping topography. The majority of the proposed dwelling will sit well below the 8.5 metre height development standard. In this regard, it is considered that the building height breaching elements do not unreasonable contribute to visual bulk to the extent that the building would be considered incompatible with nearby development.

As mentioned previously, the area of non-compliance will not be readily discernible from the public domain as the dwelling slopes down from street level. Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191, I have formed the considered opinion that most observers would not find the proposed development by virtue of its height and scale, in particular the building height breaching elements, offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment. Again, we rely on the photomontages at Figures 2 and 3.

Notwithstanding the building height breaching elements, the proposal is consistent with this objective.

- (c) *to minimise any overshadowing of neighbouring properties,*

Response: The shadow diagrams prepared by Matheson Architecture demonstrate that the building height breaching elements will not contribute to non-compliant shadow impact on neighbouring properties. Notwithstanding the building height breaching elements, the proposal is consistent with this objective.

- (d) *to allow for the reasonable sharing of views,*

Response: Having inspected the site and identified available public and private view lines over and across the site, I am satisfied that the building height breaching elements will not give rise to any unacceptable view loss with a view sharing outcome maintained in accordance with the planning principle established in the matter of *Tenacity vs Warringah Council (2004) NSWLEC 140*.

Notwithstanding the building height breaching elements, the proposal is consistent with this objective.

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

Response: As previously indicated, the building height breaching elements do not themselves require excavation or modification of the landform.

Notwithstanding the building height breaching elements, the proposal is consistent with this objective.

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

Response: The proposed minor areas of non-compliance with not adversely impact on the natural environment with site disturbance directly attributed to the building height breaching elements proposed. The site is not listed as a heritage item or within a heritage conservation area.

Notwithstanding the building height breaching elements, the proposal is consistent with this objective.

Consistency with zone objectives

The subject site is zoned E4 Environmental Living pursuant to PLEP 2014 with secondary dwellings permissible in the zone with consent. The stated objectives of the zone are as follows:

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

Response: The works relate to the construction of a new dwelling house. The proposal will not require the removal of any significant trees or any natural features having ecological and/or aesthetic values. Development will continue to be subservient to the natural environment and sited below the tree canopy notwithstanding the building height breaching elements proposed.

This objective is achieved.

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

Response: The proposal will not adversely impact on the environmental values of the area. The proposal will maintain the environmental and aesthetic value when viewed from neighbouring properties and the public domain notwithstanding the building height breaching elements proposed.

This objective is achieved.

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

Response: The relatively minor breaches to the 8.5 metre standard do not give rise to any unreasonable bulk and scale concerns, nor are they inconsistent with the scale of development both existing and reasonably anticipated on steeply sloping sites along the foreshore. Significant landscape features on the site will be largely preserved and the dwelling will integrate with that landscape character.

This objective is achieved.

The proposed works are permissible and consistent with the stated objectives of the zone.

The non-compliant component of the development, as it relates to building height, demonstrates consistency with objectives of the E4 Environmental Living zone and the height of building standard objectives. Adopting the first option in *Wehbe* strict compliance with the height of buildings standard has been demonstrated to be is unreasonable and unnecessary.

4.2B Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

Sufficient environmental planning grounds

Sufficient environmental planning grounds exist to justify the height of buildings variation including the steep and artificially modified topography of the land which makes strict compliance difficult to achieve whilst providing safe and convenient vehicular access to integrated car parking accommodation and distributing height and floor space in a contextually appropriate manner on this particular site.

In this regard, I note that the prior excavation of the site within the footprint of the existing building distorts the height of buildings development standard plane overlaid above the site when compared to the natural undisturbed topography of the land. When the original undisturbed levels of the site are interpolated across the building footprint the proposed development would comply with the 10 metre concessional height standard at clause 4.3(2D) of PLEP 2014 is depicted in Figure 4 below.

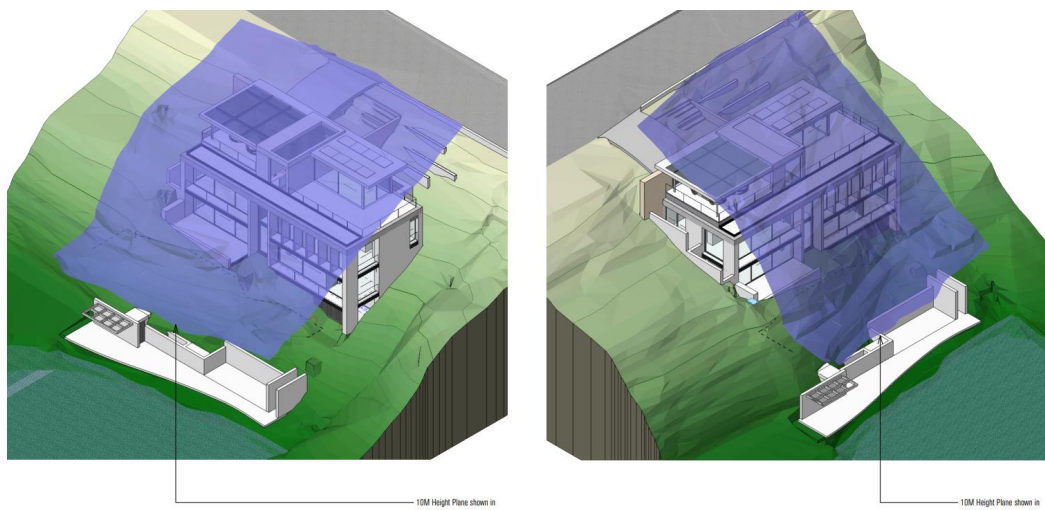


Figure 4 – Plan extract depicting the developments compliance with the 10 metre concessional building height blanket (in purple) with the building height blanket depicting the interpolated undisturbed levels of the land.

Consistent with the finding of O'Neill C at paragraph 73 of *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 such circumstance can properly be described as an environmental planning ground within the meaning of cl 4.6(3)(b) of LEP 2014.

Whilst strict compliance could be achieved by reducing ceiling heights and reducing building height, such outcome would not represent good design and would result in an inferior amenity outcome for occupants. Such outcome would thwart compliance with objective 1.3(g) of the Act. Such outcome would also not represent the orderly development of the land given the reduced design quality and amenity afforded should strict compliance be enforced and to that extent would also thwart compliance with objective 1.3(c) of the Act.

The non-compliance does not result in any unacceptable environmental consequences in terms streetscape, residential amenity or foreshore scenic outcomes. In this regard, I consider the proposal to be of a skilful design which responds appropriately to the topography and environmental constraints on the site. Such outcome is achieved whilst realising the reasonable development potential of the land.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The development represents good design (1.3(g)).

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

There are sufficient environmental planning grounds to justify contravening the development standard.

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the E4 Environmental Living Zone

The consent authority needs to be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Preston CJ in *Initial Action* (Para 27) described the relevant test for this as follows:

“The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development’s consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).”

As demonstrated in this request, the proposed development it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

4.4 Secretary’s concurrence

By Planning Circular dated 5th May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determination s are subject to, compared with decisions made under delegation by Council staff. Concurrence of the Secretary can therefore be assumed in this case.

5.0 Conclusion

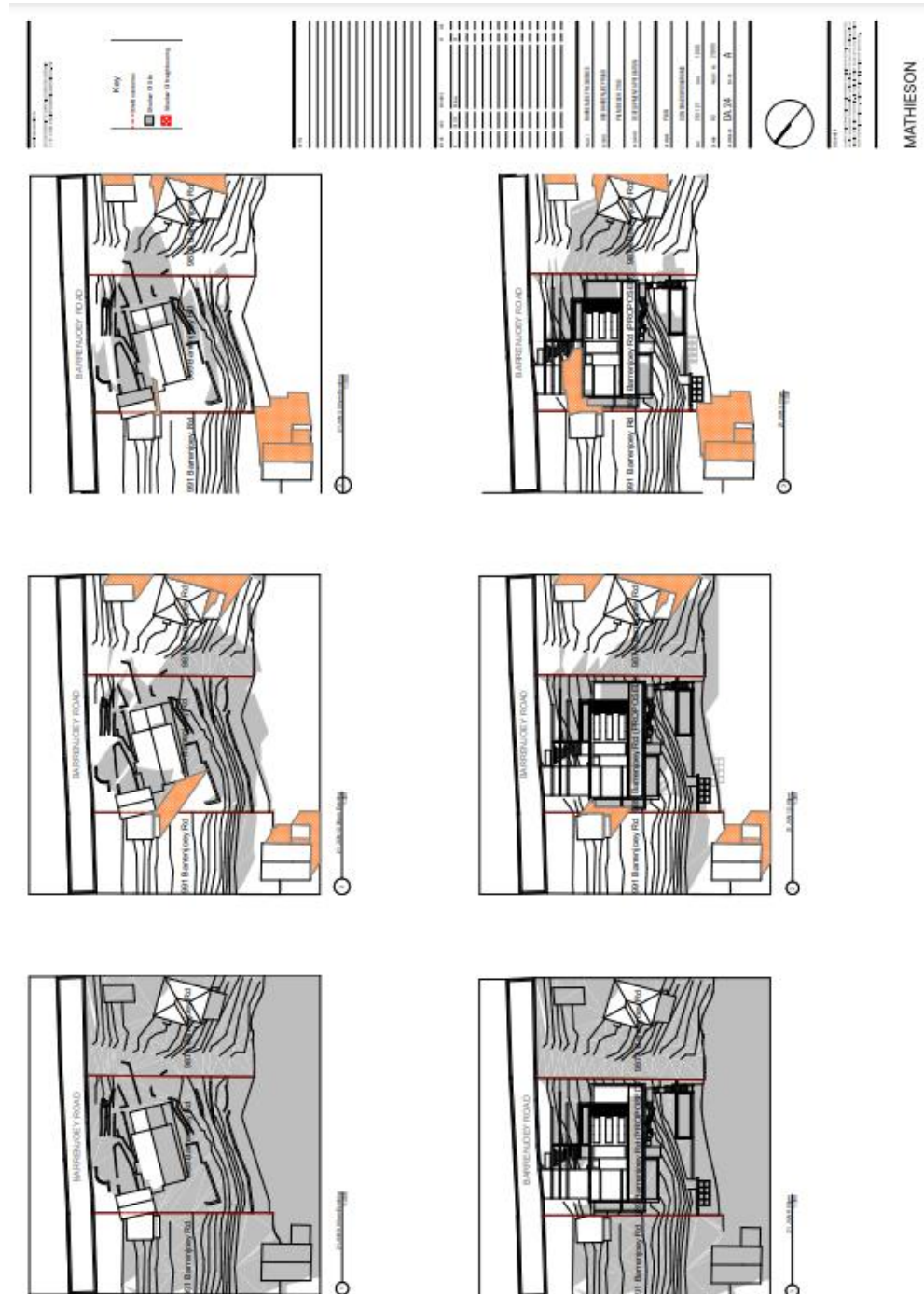
Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

As such, I have formed the considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

Attachment 1

Shadow diagrams



Attachment 1 - Clause 4.6 variation request - Limited development on foreshore area**Foreshore building line****1.0 Introduction**

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

2.0 Pittwater Local Environmental Plan 2014 (“PLEP”)**2.1 Clause 7.8 – Foreshore building line**

Pursuant to clause 7.8(2) of PLEP development consent must not be granted for development on land in the foreshore area except for the following purposes -

- (2) *Development consent must not be granted for development on land in the foreshore area except for the following purposes—*
 - (a) *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
 - (b) *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

The objectives of the foreshore building line control are as follows:

- (a) *to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,*
- (b) *to ensure continuous public access along the foreshore area and to the waterway.*

It has been determined that the proposed swimming pool, lightweight timber decking and associated pergola structures are located partially within the foreshore building line as depicted in Figure 1 below. I note that the proposed terrace area is located generally over the alignment of the existing hard paved area adjacent to the waterway as depicted in Figure 2.

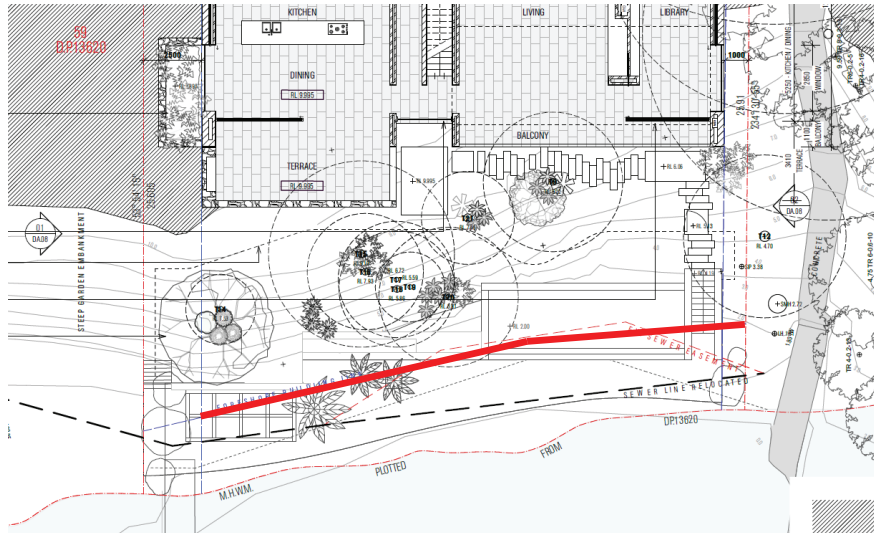


Figure 1 - Plan extract showing the proposed building outline relative to the foreshore building line shown in red

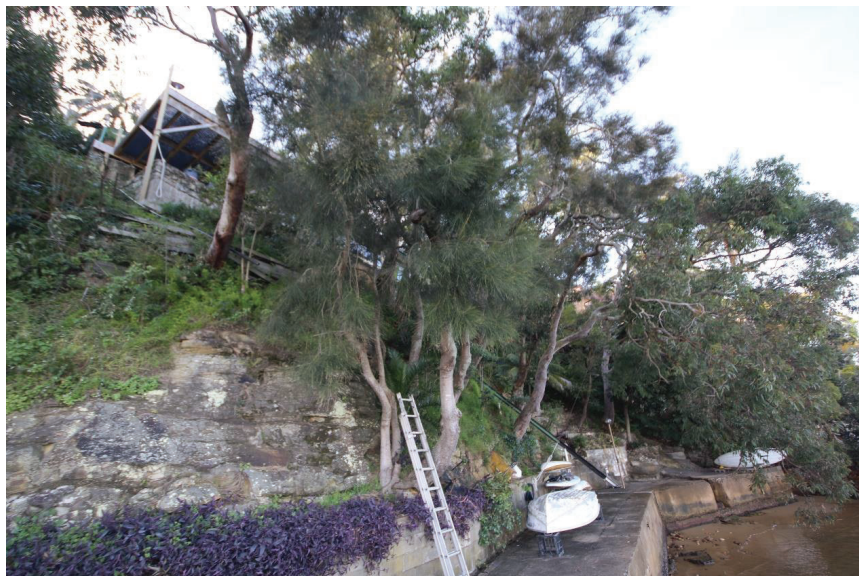


Figure 2 - View towards existing concrete terrace located within the foreshore building line

I note that swimming pools are allowable encroachments within the foreshore building line.

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of PLEP provides:

(1) *The objectives of this clause are:*

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of PLEP provides:

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

This clause applies to the clause 7.8 Foreshore building line standard.

Clause 4.6(3) of PLEP provides:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The proposed development does not comply with the foreshore building line provisions at clause 7.8 of PLEP however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of PLEP provides:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Director-General has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]).

The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation* 2000, the Secretary has given written notice dated 5th May 2020, attached to the Planning Circular PS 18-003 issued on 5th May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of PLEP provides:

- (5) *In deciding whether to grant concurrence, the Director-General must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

As these proceedings are the subject of an appeal to the Land & Environment Court, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act.

Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 7.8 of PLEP from the operation of clause 4.6.

3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*

21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 7.8 of PLEP development standards?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 7.8 standard and the objectives for development for in the zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?

5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 7.8 of PLEP?

4.0 Request for variation

4.1 Is clause 7.8 of PLEP development standards?

Clause 7.8 prescribes a provision that seeks to limit the extent of development with the foreshore area and accordingly is considered to be a development standard to which clause 4.6 PLEP applies.

4.2 Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the foreshore building line standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

- (a) *to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,*

Comment: The ground level timber decking, pergola and breaching swimming pool elements will not impact on natural foreshore processes or affect the significance and amenity of the area in relation to unacceptable visual, privacy, solar access and public/private view affectation. I also note that the proposed timber decking is located generally over the alignment of the existing concrete terrace located immediately adjacent to the foreshore with the proposed works enhancing the visual amenity of the site as it relates to development within the foreshore area.

I am satisfied that the non-compliant portion of the building will not impact on natural foreshore processes or affect the significance and amenity of the area. This objective is achieved notwithstanding the foreshore building line breaching elements.

- (b) *to ensure continuous public access along the foreshore area and to the waterway.*

Comment: The proposed encroachments into the foreshore building line do not impact on any public access to the foreshore and waterways. With no reasonable ability to enhance public access along this section of the foreshore. This objective is achieved notwithstanding the foreshore building line breaching elements.

Consistency with zone objectives

The subject site is zoned E4 Environmental Living Zone pursuant to the provisions of PLEP. Dwelling houses are permissible in the zone with the consent of council. The stated objectives of the E4 zone are as follows:

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

Response: The proposed works located within the prescribed foreshore building line have been designed to limit the impact to the environment with minimal site disturbance required to accommodate such works. This objective is satisfied notwithstanding the foreshore building line non-compliance.

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

Response: As above.

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

Response: The development provides for a residential dwelling that is consistent with the bulk and scale of development along this foreshore area. Landscaping treatments, couple with existing landscaping features, will soften and screen the built form and reduce its visual impact with the foreshore building line breaching elements not preventing consistency with this objective.

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

Response: The proposed works located within the prescribed foreshore building line do not require the removal of any trees or vegetation with this objective satisfied notwithstanding the foreshore building line breaching elements.

- *To ensure the continued viability of ecological communities and threatened species.*

Response: the proposed works located within the prescribed foreshore building line will not compromise the continued viability of ecological communities and threatened species on this site and within the locality generally. This objective is achieved notwithstanding the foreshore building line breaching elements.

The proposed works are permissible and consistent with the stated objectives of the zone.

The non-compliant component of the development, as it relates to foreshore building line, demonstrates consistency with objectives of the E4 Environmental Living zone and the limited development on foreshore area standard objectives. Adopting the first option in *Wehbe* strict compliance with the standard has been demonstrated to be unreasonable and unnecessary.

4.3 Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

*The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].*

Sufficient environment planning grounds

I have formed the opinion that sufficient environmental planning grounds exist to justify the variation including the visual amenity benefits associated with the provision of lightweight timber decking over the existing concrete apron located immediately adjacent to mean high water mark with the provision of a pergola at this level providing appropriate protection from the harsh western sun. These structures will enhance the visual amenity of the foreshore area.

I note that swimming pools are allowable encroachments within the foreshore building line.

Should strict compliance be enforced it would result in the visual retention of the existing concrete apron adjacent to MHWL which would represent a poor visual amenity outcome in circumstances where the foreshore building line breaching elements will enhance the visual amenity of the foreshore area without adverse amenity impacts in relation to views, privacy or overshadowing.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The variation facilitates good design and enhanced amenity (1.3(g)).

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

There are sufficient environmental planning grounds to justify contravening the development standard.

4.4 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 7.8 and the objectives of the E4 Environmental Living Zone

The consent authority needs to be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

"The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii)."

As demonstrated in this request, the proposed development it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

4.5 Secretary's concurrence

By Planning Circular dated 5th May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determination s are subject to, compared with decisions made under delegation by Council staff.

Concurrence of the Secretary can therefore be assumed in this case.

5.0 Conclusion

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a foreshore building line variation in this instance.

Boston Blyth Fleming Pty Limited



Greg Boston
Director

Statement of Environmental Effects – Dwelling House Development