

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2025/0115
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<b>Responsible Officer:</b>	Olivia Ramage
<b>Land to be developed (Address):</b>	Lot 371 DP 531048, 77 Bungan Head Road NEWPORT NSW 2106
<b>Proposed Development:</b>	Alterations and additions to a dwelling house
<b>Zoning:</b>	C4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Applicant:</b>	William Fleming

<b>Application Lodged:</b>	12/02/2025
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	20/02/2025 to 06/03/2025
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	2
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 1,514,700.00
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### PROPOSED DEVELOPMENT IN DETAIL

The proposed development consists of alterations and additions to a dwelling house comprising the following:

#### Ground Floor:

- Internal reconfigurations to create an open plan living/dining/kitchen space which will open out to a new covered outdoor entertaining area.
- New laundry, powder room and workshop.
- Minor widening of existing garage to accommodate 2 parking spaces.
- New pergola over the entry walkway.

#### First Floor:

- Extensions to the first floor level to provide for 4 bedrooms including the master with walk-in-robe and ensuite.
- Bathroom with separate W/C
- Study/sewing room.
- Storage space.
- Deck areas which can be accessed from the bedrooms.

#### **Application History**

Further information was requested in relation to view sharing. The applicant has provided amended plans and a visual impact assessment. As the amendments result in a lesser environmental impact than the plans originally notified, the application is not required to be re-notified in accordance with Council's Community Participation Plan (CPP).

#### **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 - 7.5 Coastal risk planning

Pittwater 21 Development Control Plan - C1.3 View Sharing

Pittwater 21 Development Control Plan - C1.4 Solar Access

Pittwater 21 Development Control Plan - C1.5 Visual Privacy

Pittwater 21 Development Control Plan - D10.4 Building colours and materials

Pittwater 21 Development Control Plan - D10.8 Side and rear building line (excluding Newport Commercial Centre)

Pittwater 21 Development Control Plan - D10.11 Building envelope (excluding Newport Commercial Centre)

#### **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 371 DP 531048 , 77 Bungan Head Road NEWPORT NSW 2106
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the north-eastern side of Bungan Head Road.</p> <p>The site is regular in shape and is accessed via a right of carriageway from Lovering Place. The site has a surveyed area of 1336m<sup>2</sup>.</p> <p>The site is located within the C4 Environmental Living zone under the PLEP 2014. The site is currently occupied by a single storey dwelling house.</p> <p>The site slopes down from the south-western corner towards the north-eastern corner.</p> <p>The site contains grassed lawn areas and canopy trees adjoining the southern boundary.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by residential dwellings of varying sizes and styles. Adjoining the eastern boundary of the site is a steep drop off down to the ocean.</p>

Map:



**SITE HISTORY**

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

- **N0390/13** - Development application for the Demolition of a number of existing retaining walls, the construction of a new retaining wall and the provision of associated drainage on the eastern portion of the site. Approved 5 June 2014.
- **BC2022/0283** - Building Information Certificate for Block retaining wall and concrete footings. Certificate issued 17 August 2023.

#### **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

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

<b>Section 4.15 Matters for Consideration</b>	<b>Comments</b>
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 Matters for Consideration	Comments
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to view sharing.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 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.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;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.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 20/02/2025 to 06/03/2025 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mr Paul Stephen Hain	73 Bungan Head Road NEWPORT NSW 2106
Ms Sharyn Lianne Goodwin Planning Progress Michael Goodwin	75 Bungan Head Road NEWPORT NSW 2106

The following issues were raised in the submissions:

### ***Non-Compliance with Planning Controls***

*The submissions raised concerns that the proposed extensive first floor additions challenge the scale of the development in this sensitive environment and extend beyond the established rear building line resulting in two storey built form that would appear incongruous in its setting and create impacts on neighbouring amenity, contrary to the objectives of the zone. The submission notes that the site is located within the Pittwater Coastal Risk Planning Map as Bluff/Cliff Instability. A Coastal Engineering Report and Geotechnical Report have been submitted with the subject application. It is requested that Council fully consider and assess the risks identified in the accompanying report to protect against risk to life or property, by virtue of the proposed demolition and construction works. The subject site is entirely located within Area H1 on the Landslip Risk Map. A Geotechnical Report has been submitted with the DA and risks to neighbouring property should be fully assessed as part of this application. As outlined above, this submission raises concerns with the risks identified and requests that Council undertake a thorough review of the accompanying reports. It is also requested, that should the subject DA be approved, that a condition be attached requiring a full independent dilapidation report of 75 Bungan Head Road.*

### Comment:

A detailed assessment against the objectives of the C4 Environmental Living zone has been undertaken within this report finding that the proposal achieves the objectives. The submitted Geotechnical Report has been reviewed by Council's Development Engineering Team and Coast and Catchments Team noting that the report assessed that there was no evidence of significant soil creep, tension cracks or

landslip instability across the site or on adjacent properties as viewed from the subject site at the time of inspection. Similarly, the submitted Coastal Engineering Report has been reviewed by Council's Coast and Catchments Team noting that coastal inundation is not a significant risk for the proposed development over a planning period of over 100 years. The application therefore satisfies the legislative requirements of the relevant clauses. A condition is recommended requiring pre- and post-construction dilapidation reports to be prepared for 75 Bungan Head Road in relation to excavation works for the new retaining walls.

### **Established Rear Building Line**

The submissions state that adjoining properties demonstrate a consistent building line where architectural designed homes include only single storey built form, pools or decks beyond an established line as shown in Figure 1 below. The submission states that maintaining this established line as single storey preserves amenity and enables view sharing. Concern is raised that the proposal provides a second storey contrary to this established building line which causes view loss impacts.

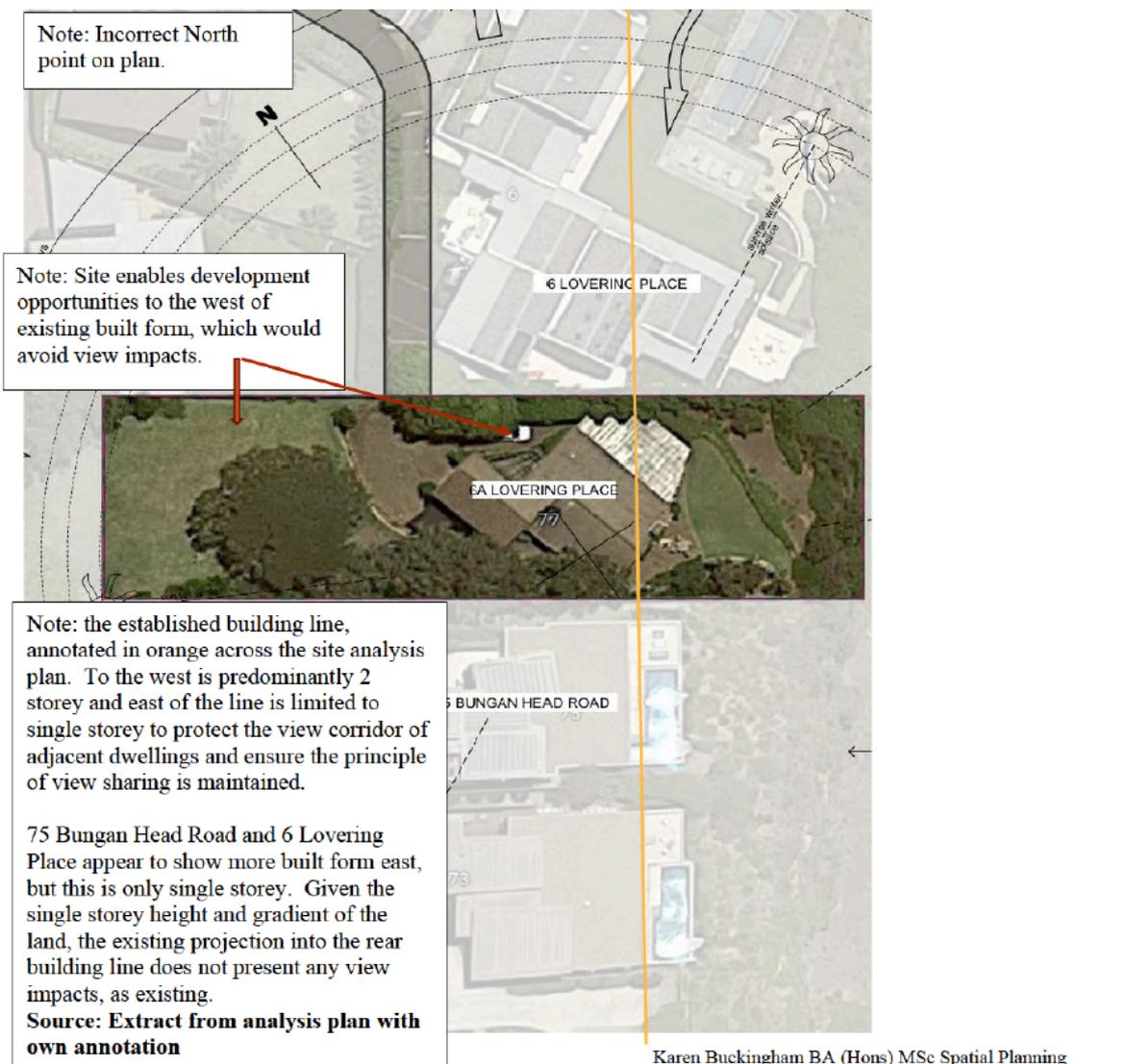


Figure 1 - Established building line plan provided by Karen Buckingham in submission

### Comment:

The site is subject to the Foreshore Building Line restrictions prescribed by Clause 7.8 of the PLEP 2014 which limits the extension of development towards the foreshore area and essentially provides a rear

building line. This control seeks to preserve the significance and amenity of the area. The proposed development is sited entirely above the Foreshore Building Line and complies with Clause 7.8 of the PLEP 2014. As such, the proposed development is appropriately sited and separated from the rear boundary of the site. Additionally, the maximum building height applying to the site is 8.5m as prescribed by Clause 4.3 of the PLEP 2014. The proposed development presents a maximum building height of 8.471m overall and 7.44m over the rear portion of the dwelling. As such, the proposal complies with the required building height prescribed by Clause 4.3 of the PLEP 2014. Furthermore, Clause A4.10 Newport Locality of the P21DCP describes the desired future character for the Newport Locality as "*primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place*". The proposed development provides a dwelling house with a maximum of two storeys therefore achieving the desired future character.

The established building line referred to above in the submissions is not enforced by a control or clause in any EPI applicable to the site, rather relates to mere characteristics of the environment. As such, it is not reasonable to restrict development that otherwise complies with all the relevant planning controls.

### **View Loss**

*The submissions raised concerns that the proposed development would severely obstruct iconic views of the ocean, Bilgola Beach and the Headland between Newport Beach and Bilgola Beach from 75 Bungan Head Road. The submission attributes the view impact to the extension of the proposal beyond the established rear building line. The submission suggests that a more skilful design is possible that will reduce the impact on views and provide the applicant with the same development potential as per Step 4 of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140. The submission suggests relocating the master bedroom suite further to the north/west of the site and incorporating a flat roof. The submission states that the proposed floor space is excessive and creates an unreasonable view impact.*

*The submission disputes the Visual Impact Assessment (VIA) submitted as it is limited to two viewpoint aspects and does not consider views from the kitchen, dining and living area. The submission disagrees with the findings of the VIA and requests that surveyed height poles are erected to accurately demonstrate the view impacts.*

### **Comment:**

A detailed assessment on view sharing is provided under C1.3 View Sharing of this report which applies the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140. In summary, the assessment finds that the affected views are obtained across a side boundary over the existing single storey portion of the dwelling. The proposal impacts beach and headland views currently obtained from the living area and kitchen which are currently obscured by vegetation. Beach and headland views from the balcony are predominantly retained depending on where occupants stand. Further to the southern and eastern edges of the balcony, views are retained, while views from the northern and western edges of the balcony are impacted. Whilst highly valued, a large extent of expansive ocean views to the east remain uninterrupted. Ultimately, the proposal provides a first floor addition providing a two storey dwelling house, being typical residential development within the context. It would be unreasonable to expect that the site remained single storey at the rear, and therefore it is unreasonable to expect that views enjoyed over the subject site be retained in perpetuity. Notwithstanding this, it is considered that the proposal, despite its impact results in an acceptable outcome in relation to view sharing.

### **Solar Access**

*The submissions raised concerns that the proposal results in unreasonable overshadowing impacts to 75*

*Bungan Head Road. The submission notes that the shadow diagrams provided do not include any of the windows or skylights serving 75 Bungan Head Road and requests hourly elevational shadow diagrams be provided. Concern is raised that 75 Bungan Head Road contains only one window facing north from the principal living area which will suffer reduced solar access.*

Comment:

Further shadow diagrams have been provided including hourly elevation diagrams that show the location of windows at 75 Bungan Head Road. The diagrams demonstrate that the window to the living area and balcony receive more than 3 hours of solar access between 9am to 3pm on June 21 in accordance with C1.4 Solar Access of the P21DCP. A detailed assessment is provided under C1.4 Solar Access of this report.

**Visual Privacy**

*The submissions raised concerns that the window on the southern elevation serving the proposed master bedroom will overlook the living space at 75 Bungan Head Road. The submission requests that all windows on the southern elevation be obscure glazed and fixed shut in perpetuity.*

Comment:

Due to the orientation of the dwelling, the proposed windows on the first floor are angled and offset from the side boundary so as not to directly face windows at 75 Bungan Head Road. Additionally, more than 9.0m of separation is provided to living areas and private open space areas. A detailed assessment is provided under C1.5 Visual Privacy of this report.

**Outlook and Loss of Tree Canopy**

*The submissions raised concerns regarding the loss of healthy trees on the southern boundary and requests consideration on whether these trees need to be removed.*

Comment:

The application proposes the removal of three paperbark trees to accommodate the proposed retaining walling. The submitted Arboricultural Impact Assessment states that there is no design alternative for retention. The new retaining walls are necessary to support the slope of the land and replace the existing retaining walls. Council's Landscape Officer has reviewed the proposal deeming it acceptable subject to the replacement planting of three trees as per the recommended conditions.

**Foreshore Building Line**

*The submissions note that back in 2011-2013, proposals for two new dwellings at 73 and 75 Bungan Head Road were lodged. An issue was the Foreshore Building Line and the plans were required to be amended to pull the second storey back well from the Foreshore Building Line to protect neighbouring views. The submission states that the proposal at the subject site should be setback further to maintain neighbouring views.*

Comment:

As mentioned above, the proposal is sited well above the Foreshore Building Line prescribed by Clause 7.8 of

the PLEP 2014. A detailed assessment on view impacts has been provided under C1.3 View Sharing of this report finding the proposal acceptable.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The proposed development is for alterations and additions to the existing dwelling including external retaining walling. The proposed retaining walling is in proximity to existing trees and an Arboricultural Impact Assessment (AIA) is submitted. The AIA report identifies that three existing Paperbark trees (trees 1, 2 and 3) are impacted by the proposed external retaining walling and should the application be approved, there is no design alternative for retention. Four existing Paperbark trees (trees 4, 5, 6 and 7) are recommended for retention.</p> <p>It is noted that the AIA report advises that the external walling near trees 6 and 7 is recommended for adjustment to be located a further 1 metre away from the trees from the proposed alignment to ensure that any excavation encroachment is manageable, and conditions shall be imposed should the application be approved.</p> <p>The existing landscape setting is proposed to be preserved with existing vegetation retained and with replacement of the 3 trees recommended for removal, and conditions shall be imposed.</p>
NECC (Bushland and Biodiversity)	<p>Council's Biodiversity Referrals team have assessed the Development Application for compliance against the following applicable provisions:</p> <ul style="list-style-type: none"> <li>• Pittwater 21 DCP cl. B4.18 Heathland/Woodland Vegetation</li> </ul> <p>The Arborist Report (Malcom Bruce, 2025) submitted with the application, assessed 7 trees within proximity to the proposed development, all of which were identified as <i>Melaleuca quinquenervia</i>. Trees 1, 2 and 3 will require removal in order to facilitate the proposed works. All other <i>Melaleuca quinquenervia</i> trees will be retained and protected. Trees proposed for removal must be replaced at a 1:1 ratio using either <i>Melaleuca quinquenervia</i> or a locally native species such as <i>Banksia integrifolia</i>. No objections to the proposal, subject to conditions.</p>

Internal Referral Body	Comments
NECC (Coast and Catchments)	<p>Officer comments</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>• Supplied plans and reports;</li> <li>• Coastal Management Act 2016;</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021 (section 2.11 &amp; 2.12);</li> <li>• Relevant LEP and DCP clauses.</li> </ul> <p>The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</p> <p>State Environmental Planning Policy (Resilience &amp; Hazards) 2021 The subject land has been included on the 'Coastal Use Area' map under the State Environmental Planning Policy (Resilience &amp; Hazards) 2021 (SEPP R &amp; H). Hence, Clauses 2.11 and 2.12 of the SEPP apply for this DA.</p> <p>Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BBF Town Planners dated November 2024 and the Coastal Engineering Advice prepared by Horton Coastal Engineering, the DA satisfies the requirements under clauses 2.11 and 2.12 of the SEPP R&amp;H.</p> <p>As such, it is considered that the application is generally consistent with the requirements of the State Environmental Planning Policy (Resilience &amp; Hazards) 2021.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>The subject site is also shown to be affected by Coastline Bluff/Cliff Instability Hazard on Council's Coastal Risk Planning Map in Pittwater LEP 2014. As such, the Geotechnical Risk Management Policy for Pittwater (Appendix 5, Pittwater 21 DCP) and the relevant B3.4 Coastline (Bluff) Hazard controls in P21 DCP will apply to new development of the site.</p> <p>Coastline Bluff Hazard Management</p> <p>A Geotechnical Report by AscentGeo dated 26 November 2024 assessing coastal cliff or slope instability has been submitted with the DA. An impact assessment of the long term coastal processes on the coastal cliff or slope instability, prepared by Horton Coastal Engineering dated 18 November 2024 has been appended with the Geotechnical Report. The report assessed that coastal inundation is not a significant risk for the proposed development over a planning period of over 100 years.</p> <p>As such, it is considered that the application is generally consistent with, subject to conditions, the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.</p>

Internal Referral Body	Comments
	<p>Landslide/ Landslip Hazard Management</p> <p>The subject site is also identified as “Geotechnical Hazard H1” on Council’s Geotechnical Hazard Map within the Pittwater LEP 2014. As such, Part B3.1 (Landslip Hazard) of the Pittwater 21 DCP will apply to proposed development on the site.</p> <p>A Geotechnical Report by AscentGeo dated 26 November 2024 assessing landslide/landslip hazard has been submitted with the DA. The report assessed that there was no evidence of significant soil creep, tension cracks or landslip instability across the site or on adjacent properties as viewed from the subject site at the time of inspection.</p> <p>As such, it is considered that the application does comply, subject to conditions, with the requirements of Part E3.1 (Landslip Hazard) of the Pittwater 21 DCP.</p>

Internal Referral Body	Comments
NECC (Development Engineering)	<p><b>14/04/2025</b></p> <p><b><u>Council's Development Engineer 2nd referral comments.</u></b></p> <ul style="list-style-type: none"> <li>The proposed retaining wall is unlikely to adversely impact Council's drainage infrastructures. Conditions have been applied to make sure no damage to Council's drainage system.</li> </ul> <p><b>21/02/2025</b></p> <p><b><u>Council's Development Engineer requests additional information regarding Structures Located Adjacent to Council's Drainage Infrastructures and Site Access &amp; Parking.</u></b></p> <p>This proposal is for alterations and additions to an existing dwelling.</p> <p><b>Structures Located Adjacent to Council's Drainage Infrastructures</b></p> <p><b><u>Council's Development Engineer requests additional information regarding Structures Located Adjacent to Council's Drainage Infrastructures as detailed below.</u></b></p> <ul style="list-style-type: none"> <li>Council's drainage infrastructures adjacent to the proposed works shall be investigated by a service locator/licensed plumber on site. The location and size of Council's drainage infrastructures shall be shown on the plans to ensure the proposed works are away from Council's drainage infrastructures.</li> </ul> <p><b>Stormwater</b></p> <p>This proposal seeks to discharge to the existing stormwater outlet to the cliff, which is generally satisfactory. An OSD system is not required as a decrease in the existing impervious area is proposed.</p> <p><b>Site Access and Parking</b></p> <p><b><u>Council's Development Engineer requests additional information regarding the Site Access &amp; Parking as detailed below.</u></b></p> <ul style="list-style-type: none"> <li>It shall be confirmed on the plans whether the existing garage parking slab level is to be retained in the same location but only extended for a slightly larger garage.</li> </ul> <p><b>Geotechnical Investigation</b></p> <p>A geotechnical report is provided with completed forms 1 and 1(a).</p>

Internal Referral Body	Comments
Parks, reserves, beaches, foreshore	<p>The development site adjoins Bungan Head Reserve that is located downslope of the property.</p> <p>All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and into the Reserve. No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries.</p> <p>The development is not detrimental to the prevailing landscape character when viewed from the adjoining reserve, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal.</p> <p>For information purposes it is noted that existing encroachments (ie. walling) occurs into the public reserve, as shown on the Survey Plan. Any approval of this development application does not regularise any unauthorised encroachments within the public reserve.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	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.
Aboriginal Heritage Office	<p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>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.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>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.</p>

#### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

All, Environmental Planning Instruments (SEPPs 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 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 (Sustainable Buildings) 2022**

A BASIX certificate has been submitted with the application (see Certificate No. A1773796 dated 19 November 2024).

The embodied emissions have been quantified in the above BASIX Certificate.

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

### **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 (Resilience and Hazards) 2021**

#### **Chapter 2 – Coastal Management**

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

#### **Division 4 Coastal use area**

##### **2.11 Development on land within the coastal use area**

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
  - 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
    - ii) platform for members of the public, including persons with a disability,
    - iii) overshadowing, wind funnelling and the loss of views from public places to
    - iv) foreshores,
    - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
  - b) is satisfied that:
    - i) the development is designed, sited and will be managed to avoid an adverse
    - ii) impact referred to in paragraph (a), or
    - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or 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 consists of alterations and additions to the existing dwelling largely maintaining the existing building footprint. The proposal has been reviewed and supported by Council's Landscape Team, Development Engineering Team, Bushland and Biodiversity Team, Coast and Catchments Team, and Parks, reserves, beaches, foreshore Team. The proposal has also been reviewed and supported by the Aboriginal Heritage Office. As such, the proposal is designed, sited and will be managed to avoid adverse impacts on the above matters.

**Division 5 General**

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

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

Comment:

The proposal is not likely to cause increased risk of coastal hazards.

**2.13 Development in coastal zone generally—coastal management programs to be considered**

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

The proposal has been reviewed against all relevant legislation and policies.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State

Environmental Planning Policy (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 considered to be 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?	Yes
zone objectives of the LEP?	Yes

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.471m	-	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.5 Coastal risk planning	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

#### Detailed Assessment

#### **Zone C4 Environmental Living**

The underlying objectives of the C4 Environmental Living zone

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

Comment:

The proposed development consists of alterations and additions to a dwelling house including a first floor addition providing low-impact residential development.

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

Comment:

The proposal has been reviewed and supported by the following teams within Council: Landscaping, Development Engineering, Bushland and Biodiversity, Coast and Catchments, and Parks, Reserves, Beaches, Foreshore. As such, the proposed development does not have an adverse effect on the special ecological, scientific or aesthetic values of the area.

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

Comment:

The proposal comprises a first floor addition that is sited within the footprint of the existing dwelling and maintains the existing building lines. The proposed development complies with the required building height, sits predominantly within the required building envelope and provides landscaped area in excess of the requirements. Evidently, the proposed development is of a low density and scale integrated with the landform and landscape.

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

Comment:

The proposed development does not impact on riparian and foreshore vegetation and wildlife corridors.

## 7.5 Coastal risk planning

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

*(a) is not likely to cause detrimental increases in coastal risks to other development or properties, and*

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, it is considered that the development is not likely to cause detrimental increases in coastal risks to other development or properties.

*(b) is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment, and*

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, it is considered development is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment.

*(c) incorporates appropriate measures to manage risk to life from coastal risks, and*

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, it is considered that the development incorporates appropriate measures to manage risk to life from coastal risks.

*(d) is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards, particularly if the development is located seaward of the immediate hazard line, and*

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, it is considered that the development is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards.

*(e) provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards, and*

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, it is considered that the development provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards.

*(f) has regard to the impacts of sea level rise, and*

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, it is considered that the development has regard to the impacts of sea level rise.

*(g) will have an acceptable level of risk to both property and life, in relation to all identifiable coastline hazards.*

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, it is that the development will have an acceptable level of risk to both property and life, in relation to all identifiable coastline hazards.

## **Pittwater 21 Development Control Plan**

### Built Form Controls

<b>Built Form Control</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation*</b>	<b>Complies</b>
Front building line	West - 6.5m	Driveway: 17.8m	-	Yes
		Dwelling: 27.8m	-	Yes
Rear building line	FBL	Above	-	Yes
Side building line	North - 2.5m	Ground Floor: 2.1m	16%	<b>No</b>
		Patio: 1.1m	56%	<b>No</b>
		First Floor Deck: 1.3m	48%	<b>No</b>
		First Floor: 2.4m	4%	<b>No</b>
	South - 1m	Ground Floor: 2.1m	-	Yes
		First Floor: 2.4m	-	Yes

Building envelope	North - 3.5m	Outside Envelope	N/A	<b>No</b>
	South - 3.5m	Within Envelope	-	Yes
Landscaped area	60%	62.9% (832.7m <sup>2</sup> )	-	Yes

### Compliance Assessment

<b>Clause</b>	<b>Compliance with Requirements</b>	<b>Consistency Aims/Objectives</b>
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.4 Coastline (Bluff) Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.18 Heathland/Woodland Vegetation	Yes	Yes
B5.15 Stormwater	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
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.3 Scenic protection - General	Yes	Yes
D10.4 Building colours and materials	No	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	Yes	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	No	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D10.13 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D10.16 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

## Detailed Assessment

### **C1.3 View Sharing**

#### Merit consideration

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

- *A reasonable sharing of views amongst dwellings.*

#### Comment:

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

#### **1. Nature of the views affected**

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

#### Comment to Principle 1:

The affected views are obtained from the adjoining southern property, 75 Bungan Head Road. The view consists of Bilgola Beach (land and water interface), district views, South Bilgola Headland and North Bilgola Headland towards the north/north-east. Additional views towards the east and south-east include expansive, uninterrupted ocean views.

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

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

#### Comment to Principle 2:

The views are obtained from the ground floor living room, kitchen, balcony, pool, bedroom, rear yard, and the first floor balcony and office. The affected views to the north/north-east are obtained across the side boundary over the subject site. The views to the east and south-east of the ocean are obtained over the rear boundary. The views are obtained from sitting and

standing positions.



*Figure 2 - View from 75 Bungan Head Road - living room looking north*



*Figure 3 - View from 75 Bungan Head Road - living room looking north-east*



*Figure 4 - View from 75 Bungan Head Road - kitchen looking north-east*



*Figure 5 - View from 75 Bungan Head Road - living room looking east*



*Figure 6 - View from 75 Bungan Head Road - balcony looking north-east*



*Figure 7 - View from 75 Bungan Head Road - balcony looking east*



*Figure 8 - View from 75 Bungan Head Road - eastern side of balcony looking north-east*



*Figure 9 - View from 75 Bungan Head Road - southern side of balcony looking north*



*Figure 10 - View from 75 Bungan Head Road - bedroom looking north-east*



*Figure 11 - View from 75 Bungan Head Road - bedroom looking east*



*Figure 12 - View from 75 Bungan Head Road - balcony and pool looking east and south-east*



*Figure 13 - View from 75 Bungan Head Road - rear yard looking north*



*Figure 14 - View from 75 Bungan Head Road - first floor balcony looking north-east*



*Figure 15 - View from 75 Bungan Head Road - first floor balcony looking south-east*



Figure 16 - View from 75 Bungan Head Road - first floor office looking north-east

### 3. Extent of impact

*“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.*

#### Comment to Principle 3:

The views from the living room and kitchen looking north to Bilgola Beach (land and water interface) and North Bilgola Headland will be lost but the ocean views to the north-east and east will be retained. It is noted that the views to the north of Bilgola Beach and North Bilgola Headland are heavily obscured by an existing paperbark tree as shown in Figure 1. The views from the northern end of the balcony looking north to Bilgola Beach will be lost but the view of North Bilgola Headland and ocean views to the east and north-east will be retained. The views from further south on the balcony and the bedroom looking north to Bilgola Beach and North Bilgola headland will be retained along with the ocean views to the north-east and east. This is demonstrated in the Visual Impact Assessment (VIA) provided by the applicant, see figure 17 below.



Figure 17 - Extract of Urbaine Report - Photomontage of Proposal provided by applicant

The views from the eastern side of the balcony looking north to Bilgola Beach and North Bilgola headland will be retained along with the ocean views to the north-east and east. Similarly, the views from the rear yard looking north to Bilgola Beach and North Bilgola headland will be retained along with the ocean views to the north-east and east. The views from the first floor balcony and office towards the north and north-east will in fact be improved through the removal of three paperbark trees. All views to the east and south-east of the ocean will be retained from all areas. Given the extent of views retained, the view loss is categorised as moderate.

#### 4. Reasonableness of the proposal that is causing the impact

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

#### Comment to Principle 4:

The portion of the proposed development causing the view impact relates to the first floor

addition sited directly above the existing ground floor. The proposed development is compliant with the 8.5m building height standard prescribed by Clause 4.3 the PLEP 2014, and rear setback/Foreshore Building Line requirements. In fact, the proposed development is well-separated from the foreshore area and could extend further east towards the foreshore building line as permitted by Clause 7.8 of the PLEP 2014. Instead, the proposal utilises the existing (relatively compact) building footprint within which the first floor addition is sited, thereby already providing a skilful design that has minimised the impact on views from other potential proposals.

The non-compliance in relation to the northern side setbacks at the ground floor and first floor do not have an affect on the available view corridor. Similarly, the minor envelope encroachments on the northern elevation do not have an affect on the views obtained from the adjoining southern property. Therefore, the view impact does not arise as a result of a non-compliance with any planning controls, and if these non-conforming elements were brought into compliance, no change to the view loss outcome would likely occur. In this regard the proposal is found to be acceptable on merit and is considered reasonable.

The question of a more 'skillful design' in relation to the initial proposal which provides the residents with a similar development potential and amenity whilst reducing the extent of impact on the views obtained from the affected property, in this case 75 Bungan Head Road was requested to be explored within a 'Request for Further Information Letter'. This resulted in an amendment slightly reducing the height and pitch of the roof over the eastern rear portion of the proposed first floor. Whilst this presents only a minor change to the proposed development, the VIA demonstrates a reasonable retention of significant views from several areas. Additionally, the angled skillion roof presents a sensitive approach helping to minimise the view impact. This is demonstrated through the reduced roof height over the rear portion which is 7.44m high whereas the maximum height at the centre of the building is 8.471m.

Furthermore, relocating the eastern portion of the first floor addition further to the west of the subject site, as suggested by the submissions, while reducing the impact on views, would not provide the same development potential and amenity. Relocating the addition to the west would not afford the site the same extent of floor space and the resultant amenity. As mentioned above, the site has the potential to extend further east towards the foreshore building line as permitted by the controls (which in itself creates other impacts). Evidently, the proposal presents a modest approach siting development within the existing building footprint.

Ultimately, the proposal provides a first floor addition providing a two storey dwelling house, being typical residential development within the context. It would be unreasonable to expect that the site remained single storey at the rear, and therefore it is unreasonable to expect that views enjoyed over the subject site be retained in perpetuity.

- *Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.*

Comment:

The proposal maintains views and vistas from roads and public places to water, headland, beach and bush views.

- *Canopy trees take priority over views.*

Comment:

The proposal requires the removal of three paperbark trees to accommodate the proposed retaining wall. As such, the trees are not proposed for removal for the purpose of views.

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 particular circumstance.

#### **C1.4 Solar Access**

This control requires the following:

- *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.*
- *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).*

#### Comment:

Submissions have been received from the adjoining southern property 75 Bungan Head Road raising concerns regarding that the development will have an impact upon and cause a loss of solar access to the living room and private open space of that property. The main private open space at this property is taken to be the rear balcony.

The applicant has submitted further and more detailed shadow diagrams including hourly elevational diagrams. The shadow diagrams demonstrated that the rear balcony at 75 Bungan Head Road is not in shadow at any time between 9am to 3pm on June 21 therefore, receiving more than 3 hours of solar access to the private open space area. Additionally, the north-facing window to the living room at 75 Bungan Head Road is not in shadow at any time between 9am to 3pm on June 21 therefore, receiving more than 3 hours of solar access. The shadow diagrams demonstrate that the shadows fall on the lower ground floor level providing a basement with art studio and plant room.

Therefore, the proposal complies with the requirements of this control.

#### **C1.5 Visual Privacy**

This control stipulates the following:

- *Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level).*
- *Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.*

#### Comment:

A submission has been received raising concern that the proposed master bedroom suite directly overlooks the living space at 75 Bungan Head Road. The submission also requests that all windows on

the southern elevation be obscure glazed and fixed shut in perpetuity.

The proposed first floor contains windows W14 and W15 to the ensuite and W16 to the walk-in-robe which are all louvred windows. Given the nature of these rooms, the louvres are likely to be shut when occupied and therefore will not give rise to unreasonable privacy impacts. Additionally, the existing dwelling on the subject site is slightly angled and orientated to the north-west. As a result, the windows are offset from the side boundaries and do not directly face the adjoining dwelling at 75 Bungan Head Road. Similarly, windows W11, W12, W13a and W13b are orientated to the eastern rear of the site towards the ocean views. Additionally, the larger picture windows are further to the north providing more than 9.0m of spatial separation to the living room and private open space at 75 Bungan Head Road as shown below. Similarly, the windows on the southern side are to the sewing/study room and two bedrooms which are also offset from the side boundaries. As shown below, more than 9.0m of spatial separation is provided to the terrace courtyard, thereby protecting private open space areas. Lastly, the first floor level sits at RL 32.79 and RL 33.24 and 75 Bungan Head Road sits at RL 35.25 at the living room and RL 35.15 at the balcony and courtyard. As such, there is a level difference between the floor levels of the properties which further mitigates overlooking.

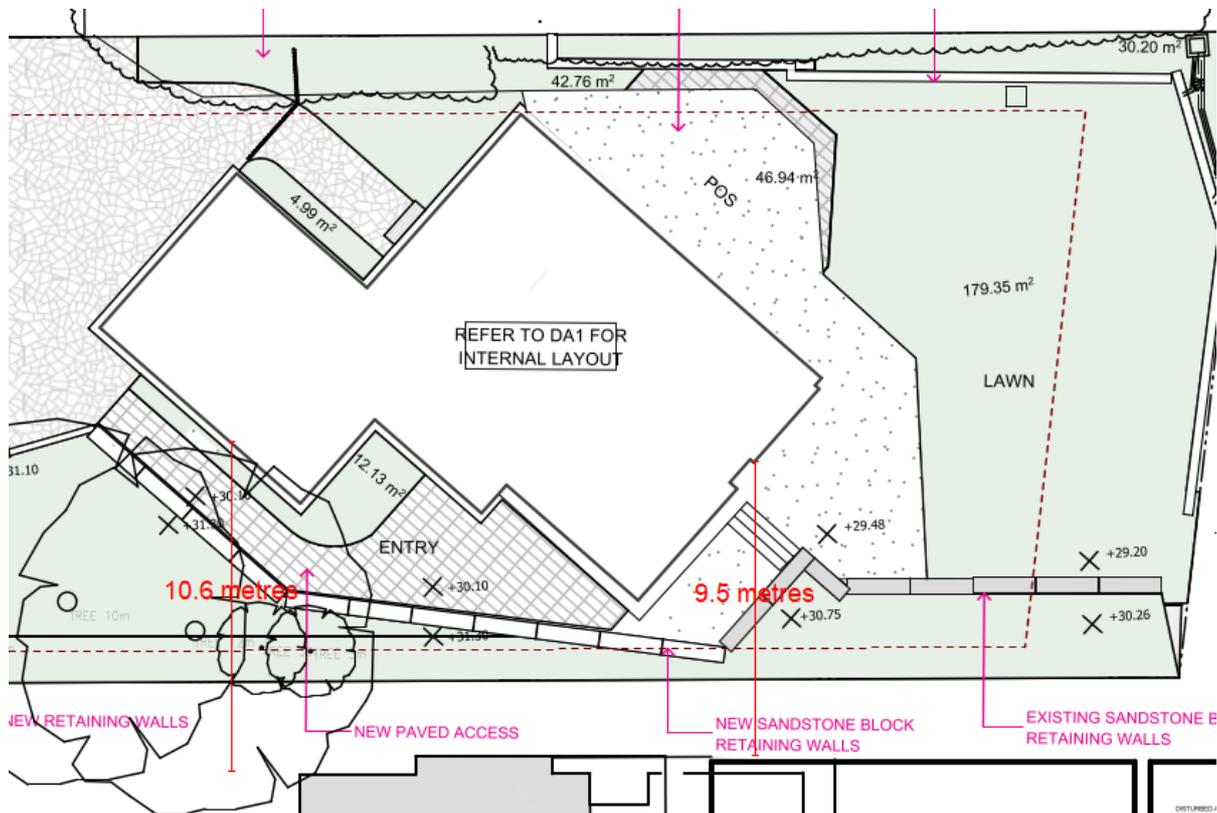


Figure 18 - Site plan showing extent of spatial separation

#### D10.4 Building colours and materials

##### Merit Consideration

This control requires external colours and materials to be dark and earthy tones. White, light coloured, red or orange roofs and walls are not permitted.

The proposed colours and finishes include sandstone walls and white weatherboard walls.

It is noted that several dwelling houses within the immediate vicinity have utilised light colour schemes including white, light grey and beige which is typical of the coastal character of the area. As such, the proposed white weatherboard walls are consistent with the surrounding character and will not have an adverse visual impact.

A condition is recommended to ensure that the external finish to the roof will have a Solar Absorptance (SA) greater than 0.43 in accordance with the requirements of the BASIX Certificate, to minimise solar reflections to neighbouring properties. Any roof with a reflective finish is not permitted.

#### **D10.8 Side and rear building line (excluding Newport Commercial Centre)**

##### Description of Non-Compliance

This control requires development to be setback 2.5m from one side boundary and 1.0m from the other side boundary. For this assessment, the 2.5m requirement is applied to the northern side boundary and the 1.0m requirement applied to the southern side boundary.

The proposed development is non-compliant with the northern side setbacks as per the following:

- Ground Floor: 2.1m
- Patio: 1.1m
- First Floor Deck: 1.3m
- First Floor: 2.4m

The new retaining wall on the southern side is setback a minimum 0.5m from the boundary, however this control only applies to built structures including pools and carparks, other than driveways, fences and retaining walls.

The non-compliances only occur for a portion of the built form due to the angled orientation of the dwelling. The below floor plans indicate the extent of the development that encroaches the side setbacks.



Figure 20 - First floor plan showing required side building lines dotted red

#### Merit Consideration

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

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

#### Comment:

The proposal comprises alterations and additions to a dwelling house resulting in a two storey development. The proposal maintains the low density residential form of the area and achieves the desired future character of the Locality.

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

#### Comment:

The non-compliant elements consist of a small corner of the dwelling, a portion of the ground floor patio and a corner of the first floor deck. These building elements are very minor with the patio and deck presenting open lightweight structures. The proposed balcony provides articulation along with the varied roof forms which break up the bulk of the dwelling. Furthermore, the proposal complies with the required building height, sits predominantly within the required building envelope and provides landscaped area in excess of the requirements. Therefore, the bulk and scale of the built form has been minimised.

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

#### Comment:

The proposed development is well separated from the foreshore building line and is sited outside the foreshore area. The setback non-compliances do not impact on views and vistas to and/or from public/private places.

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

#### Comment:

The proposed development comprises a first floor addition sited above the existing ground floor within the existing building footprint. A skillion roof form is provided that angles down with the slope to assist with the preservation of views. A detailed assessment is provided under C1.3 View Sharing of this report. Ultimately, the proposal maintains a reasonable sharing of views.

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

#### Comment:

The proposal orientates private open space areas to the north-east towards the ocean and headland views. Adjoining properties are orientated in a similar manner including 5-6 Lovering Place with private open space areas orientated towards the north-east and located centrally on the site. This ensures the proposed development does not cause unreasonable levels of privacy or overlooking into 5-6 Lovering Place. On the southern side, the proposed dwelling provides compliant setbacks and sufficient spatial separation to living and private open space areas at 75 Bungan Head Road. As such, the proposal is found to maintain a reasonable level

of privacy amenity and a detailed assessment is provided under C1.5 Visual Privacy of this report. Furthermore, the submitted shadow diagrams demonstrate a compliant level of solar access is maintained and a detailed assessment is provided under C1.4 Solar Access of this report.

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

Comment:

The proposal requires the removal of 3 Paperbark trees to accommodate the retaining walling, however 3 replacement trees are required to be planted subject to the recommended conditions. Landscaped area is provided in excess of the control which supports an attractive streetscape.

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

Comment:

The site is of an irregular orientation with the existing dwelling angled to the north-east. The proposed additions are appropriately sited above the existing ground floor and within the existing building footprint. The existing access from Lovering Place remains unaltered.

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

Comment:

The proposal provides landscaped area in excess of the requirements helping to visually reduce the built form.

- *To ensure a landscaped buffer between commercial and residential zones is established. (En, S)*

Comment:

N/A, the site does not adjoin a residential zone.

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 particular circumstance.

### **D10.11 Building envelope (excluding Newport Commercial Centre)**

#### Description of Non-compliance

This control requires development to be sited within an envelope determined by projecting planes at 45 degrees from a height of 3.5m above ground level at the side boundaries.

The proposed development encroaches the northern side building envelope to a minor extent at 2 areas as shown below:



Figure 21 - North elevation showing envelope encroachments in red

#### Merit Consideration

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

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

#### Comment:

The proposal comprises alterations and additions to a dwelling house resulting in a two storey development. The proposal maintains the low density residential form of the area and achieves the desired future character of the Locality.

- *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 above, the proposal provides a two storey residential dwelling set within a context of two to three storey dwellings. The proposed development complies with the required building height and sits below the height of the trees of the natural environment.

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

#### Comment:

The proposed additions are sited within the existing building footprint and retain the existing side building lines. The envelope encroachments are extremely minor and result due to the angled orientation of the existing dwelling. Evidently, the proposed development reinforces the spatial characteristics of the existing natural environment.

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

#### Comment:

The proposed development involves a first floor addition resulting in a two storey dwelling house. The proposal includes a balcony providing articulation along with the varied roof forms which break up the bulk of the dwelling. Furthermore, the proposal complies with the required

building height and provides landscaped area in excess of the requirements. Therefore, the bulk and scale of the built form has been minimised.

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

Comment:

The proposed development is well separated from the foreshore building line and is sited outside the foreshore area. The minor building envelope breaches do not impact on views and vistas to and/or from public/private places.

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

Comment:

The proposal orientates private open space areas to the north-east towards the ocean and headland views. Adjoining properties are orientated in a similar manner including 5-6 Lovering Place with private open space areas orientated towards the north-east and located centrally on the site. This ensures the proposed development does not cause unreasonable levels of privacy or overlooking into 5-6 Lovering Place. On the southern side, the proposed dwelling provides compliant setbacks and ample spatial separation to living and private open space areas at 75 Bungan Head Road. As such, the proposal is found to maintain a reasonable level of privacy amenity and a detailed assessment is provided under C1.5 Visual Privacy of this report. Furthermore, the submitted shadow diagrams demonstrate a compliant level of solar access is maintained and a detailed assessment is provided under C1.4 Solar Access of this report.

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

Comment:

The proposal provides landscaped area in excess of the requirements helping to visually reduce the built form.

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 particular 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 2024**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2024.

A monetary contribution of \$15,147 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,514,700.

## 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 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

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

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

## RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2025/0115 for Alterations and additions to a dwelling house on land at Lot 371 DP 531048, 77 Bungan Head Road, NEWPORT, subject to the conditions printed below:

### Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

## GENERAL CONDITIONS

### 1. **Approved Plans and Supporting Documentation**

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

<b>Approved Plans</b>				
<b>Plan Number</b>	<b>Revision Number</b>	<b>Plan Title</b>	<b>Drawn By</b>	<b>Date of Plan</b>
DA 002	15	Site Plan	Space Design Architecture	14 April 2025
DA 003	14	Demolition Plans	Space Design Architecture	13 March 2025
DA 100	19	Ground Floor Plan	Space Design Architecture	12 June 2025
DA 101	17	First Floor Plan	Space Design Architecture	12 June 2025
DA 102	14	Roof Plan	Space Design Architecture	12 June 2025
DA 200	16	Elevations 01	Space Design Architecture	12 June 2025
DA 201	16	Elevations 02	Space Design Architecture	12 June 2025
DA 300	16	Sections	Space Design Architecture	12 June 2025
DA 402	07	Material Palette	Space Design Architecture	13 March 2025

<b>Approved Reports and Documentation</b>			
<b>Document Title</b>	<b>Version Number</b>	<b>Prepared By</b>	<b>Date of Document</b>
BASIX Certificate	A1773796	Concept Designs Australia	19 November 2024
Waste Minimisation and Management Plan	-	Space Design Architecture	31 October 2024
Geotechnical Assessment	1	AscentGeo Geotechnical Consulting	26 November 2024
Arboricultural Impact Assessment	V2	Malcolm Bruce	23 January 2025

Coastal Engineering Advice on 77 Bungan Head Road Newport	-	Horton Coastal Engineering	18 November 2024
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In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

## 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
Ausgrid	Ausgrid Referral Response	Undated

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://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. 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 Certifier 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 Certifier 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 Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

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

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

Reason: Legislative requirement.

#### 4. **General Requirements**

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:
  - 7.00 am to 5.00 pm inclusive Monday to Friday,
  - 8.00 am to 1.00 pm inclusive on Saturday,
  - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) 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.
- (d) At all times after the submission of 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 an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (e) 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.
- (f) 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.
- (g) Prior to the release of the Construction Certificate, payment of the following is required:
  - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% 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.
  - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
  - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (i) 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.
- (j) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

- (l) 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.

- (m) 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.
- (n) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (o) Should any construction cranes be utilised on site, they are to be fitted with bird deterrents along the counterweight to discourage raptor (bird) nesting activity. Deterrents are to remain in place until cranes are dismantled. Selection of deterrent methods is to be undertaken in accordance with the recommendations of a suitably qualified ecologist.
- (p) 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**

### **5. Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$15,147.00 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 (as amended).

The monetary contribution is based on a development cost of \$1,514,700.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

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

### **6. 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 Certifier 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](http://www.northernbeaches.nsw.gov.au)).

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

7. **Construction, Excavation and Associated Works Security Bond(s)**

The applicant is to lodge a bond with Council for the following:

**Drainage Works**

As security against any damage to Council's drainage infrastructures as part of this consent a bond of \$5,000.

Details confirming payment of the bond(s) are to be submitted to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

**BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**

8. **Amended Plans**

The external retaining walling in proximity to existing trees identified as trees 6 and 7 in the Arboricultural Impact Assessment shall be relocated to align in an increase of 1 metre towards to the dwelling to provide additional distance from trees 6 and 7.

Certification shall be submitted to the Certifier that these amendments have been documented.

Reason: Tree protection.

9. **No Clearing of Vegetation**

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

10. **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 or Hydraulic Engineer demonstrating that the existing approved stormwater system can accommodate the post-development flows, or compliance with Council's policy are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

Reason: To ensure appropriate provision for disposal of 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 AscentGeo, dated 26/11/2024 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 Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

## 12. **Structures Located Adjacent to Council Pipeline or Council Easement**

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Water Management Policy; (in particular Section 6 - Building Over or Adjacent to Constructed Council Drainage Systems and Easements Technical Specification). Structural details prepared by a suitably qualified Civil Engineer, who has National Engineers Register (NER) or Professionals Australia (RPENG) demonstrating compliance are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

## 13. **Boundary Identification Survey**

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on a boundary identification survey, prepared by a Registered Surveyor, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

## 14. **Pre-Construction Stormwater Assets Dilapidation Report**

The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at: <https://www.northernbeaches.nsw.gov.au/media/60355?1730767288>

The pre-construction / demolition Dilapidation Report must be submitted to Council for approval and the Principal Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

## 15. **Coastal Bluff Engineering Assessment Implementation**

The advice and recommendations contained in the approved Coastal Engineering Assessment

report prepared by Horton Coastal Engineering, dated 18 November 2024, must be addressed as necessary through the Geotechnical Risk Management Report prepared in support of the development application and must be incorporated as required into construction plans and structural specifications for the development.

Reason: To ensure potential hazards associated with development on a Coastal Bluff are minimised

16. **Coastal Bluff Engineering Assessment Implementation**

All development or activities must be designed and constructed such that they will not increase the level of risk from coastal processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect coastal processes; they will not be adversely affected by coastal processes.

Reason: To ensure potential hazards associated with development on a Coastal Bluff are minimised

17. **Engineers Certification of Plans**

The structural design and specification 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 Certifier prior to the release of the Construction Certificate.

Reason: To ensure structural engineering design is prepared and certified by an appropriately qualified professional.

18. **Compliance with Standards**

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

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

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

19. **External Finishes to Roof**

The external finish to the roof shall have a Solar Absorptance (SA) greater than 0.43 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties. Any roof with a reflective finish is not permitted.

Green roofs and areas where solar panels (PV) are installed are excluded from conforming to the SA range.

Details demonstrating compliance are to be submitted to the Certifier 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.

20. **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 Certifier

demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

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

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

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

## **CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

### **21. Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

The Project Arborist shall be in attendance and supervise all excavation works in proximity to existing trees to be retained, and in particular excavation for the external retaining walling.

All tree protection measures specified must: be in place before work commences on the site; be maintained in good condition during the construction period; and remain in place for the duration of the construction works. The Project Arborist shall provide certification to the Certifier that all tree protection measures under AS4970-2009 have been satisfied, and the recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note: Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

### **22. Tree Removal within the Property**

This consent approves the removal of existing prescribed trees on the subject site as identified in the Arboricultural Impact Assessment, approved Plans, or as listed below:

- a) Paperbark trees (tree ID 1, 2 and 3)
- b) 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.

### **23. Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier 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.

Property: 75 Bungan Head Road

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier 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 Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

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 rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

#### 24. **Sediment and Erosion Controls**

For developments that include more than 2500sqm of disturbance:

A Soil and Water Management plan (SWMP), in accordance with section 2.3 of the Blue Book, must be prepared and certified by a suitably qualified professional.

For sites larger than 250sqm and less than 2500sqm of disturbance:

An Erosion and Sediment Control Plan (ESCP) must be prepared by a suitably qualified person in accordance with the following considerations and documents:

- Sites that have slopes exceeding 20% (measured in any direction across the site), and/or where works are within the high-water mark or adjacent to a waterway or watercourses are considered environmentally sensitive areas. These sites require a site-specific ESCP which must be prepared and certified by a suitably qualified professional,
- The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate – Volume 1, 4th Edition (2004)' (the Blue Book), and
- The 'Guidelines for Erosion and Sediment Control on Building Sites' (Department of Planning, Housing and Infrastructure).

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 area 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,
- Type of erosion control measures to divert and slow run-off around and within the site.

Environmentally sensitive areas (i.e. Sites that have slopes exceeding 20% and/or where works are within the high-water mark or adjacent to a waterway or watercourses) must also consider:

- Identify and mark any environmentally sensitive areas on and immediately next to the site and how you will protect these, including any appropriate buffer zones (for example, marking them out as 'no-go' areas),
- Details on vegetation you will clear, as well as areas of vegetation you will keep (mark no go areas),
- Detail on soil information and location(s) of problem soil types, especially dispersive soils and potential or actual acid sulfate soils,
- Location of any natural waterways that could receive run-off and how these will be protected these from run-off.

For sites smaller than 250sqm or where the disturbance is less than 50sqm:

Run-off and erosion controls must be implemented to prevent soil erosion, water pollution or the discharge of loose sediment on the surrounding land by:

- Diverting uncontaminated run-off around cleared or disturbed areas, and
- Erecting a silt fence and providing any other necessary sediment control measures that will prevent debris escaping into drainage systems, waterways or adjoining properties, and
- Preventing the tracking of sediment by vehicles onto roads, and
- Stockpiling top soil, excavated materials, construction and landscaping supplies and debris within the lot.
- Identifying any environmentally sensitive areas on and immediately next to the site, and demonstrating how these will be protected (for example, by designation as no-go areas).

Details demonstrating compliance with the relevant requirements above are to be submitted to the Certifier, and the measures implemented, prior to the commencement of works.

Reason: To ensure no substance other than rainwater enters the stormwater system and waterways.

## DURING BUILDING WORK

### 25. **Tree and Vegetation Protection**

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

- i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
- ii) all trees and vegetation located on adjoining properties,
- iii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be

retained, unless authorised by an Arborist/Project 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/Project 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/Project 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/Project 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/Project 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/Project Arborist to the Principal Certifier,
- 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 AS4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS4970-2009 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 AS4373-2007 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.

The Principal Certifier must ensure that:

c) The arboricultural works listed in a) and b) are undertaken as complaint to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment and/or Project Arborist as applicable.

Reason: Tree and vegetation protection.

## 26. **Wildlife Protection**

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

Reason: To protect native wildlife.

## 27. **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.

## 28. **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.

29. **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.

30. **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 Certifier, 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.

31. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

Reason: To demonstrate the proposal complies with the approved plans.

32. **Maintenance of Sediment and Erosion Controls**

Erosion and sediment controls must be adequately maintained and monitored at all times,

particularly surrounding periods of rain, and shall remain in proper operation until all development activities have been completed and the site is in a state where no substance other than rainwater can enter the stormwater system and waterways.

All sediment control measures must be maintained at, or above, their design capacity.

Where more than 2500 square metres of land are disturbed or if the site has a slope of more than 20%, a self-auditing program must be developed for the site. A site inspection using a log book or inspection test plan (ITP) must be undertaken by the site supervisor:

- at least each week
- immediately before site closure
- immediately following rainfall events that cause runoff.

Details demonstrating compliance must be provided to the Certifier during demolition and building works.

Reason: Protection of the receiving environment and to ensure no substance other than rainwater enters the stormwater system and waterways.

**33. 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 Certifier.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

**34. Stockpiling materials**

During construction, all material associated with works is to be contained at source, covered and must be within the construction area. All material is to be removed off site and disposed of according to local regulations. The property is to be kept clean and any building debris removed as frequently as required to ensure no debris enters receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period.

**35. 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 Planning, Housing and Infrastructure.

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 Department of Planning, Housing and Infrastructure.

Reason: Aboriginal Heritage Protection.

**BEFORE ISSUE OF THE OCCUPATION CERTIFICATE**

**36. Required Tree Planting**

a) three (3) locally native trees shall be planted within the property to achieve at least 6.0 metres height at maturity, and in accordance with the following:

- i) tree planting shall be a minimum pre-ordered planting size of 45-75 litres; generally selected from Northern Beaches Council's Native Plant Species Guide - Pittwater Ward, or Council's Tree Guide; meet the requirements of Australian Standard AS2303 - Tree Stock for Landscape Use; planted into a prepared planting hole 1m x 1m x 600mm depth generally, 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 or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- ii) 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,
- b) Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: To maintain environmental amenity.

**37. Condition of Retained Vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:

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

Reason: Tree and vegetation protection.

**38. Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Details demonstrating compliance are to be provided to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To protect wildlife habitat.

**39. Replacement of Canopy Trees**

At least 3 locally native canopy trees are to be planted on the site to replace protected trees approved for removal. Species are to have a minimum mature height of 8.5m and be consistent with the Native Planting Guide available on Council's website.

Tree plantings 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.

Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To establish appropriate native landscaping.

**40. No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

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

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

**41. Post- Construction Stormwater Assets Dilapidation Report (Council stormwater assets)**

The Applicant shall submit a post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's Guidelines are available at: <https://www.northernbeaches.nsw.gov.au/media/60355?1730767288>

The post-construction / demolition dilapidation report must be submitted to Council for review and approval. Any damage to Council's stormwater infrastructure is to be rectified prior to the release of any Drainage security bonds. Council's acceptance of the Dilapidation Survey is to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure.

**42. Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified civil/hydraulic engineer. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

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

**43. 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:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- 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 Certifier prior to the issue of an Occupation Certificate.

Reason: To maintain proper records in relation to the proposed development.

**44. Waste Disposal Verification Statement**

On completion of demolition work:

- a signed statement must be submitted to the Certifier verifying that demolition work, and any recycling of materials, was undertaken in accordance with the waste management plan approved under this consent, and
- if the demolition work involved the removal of asbestos, an asbestos clearance certificate issued by a suitably qualified person, must be submitted to the Certifier within 14 days of completion of the demolition work.

Reason: To provide for the submission of a statement verifying that demolition waste management and recycling has been undertaken in accordance with the approved waste management plan.

**45. Certification of Structures Located Adjacent to Council Pipeline or Council Easement**

The Applicant shall submit a suitably qualified Structural Engineer's certification that the completed footing works have been constructed in accordance with this consent, Northern Beaches Council's Water Management for Development Policy and the approved Construction Certificate plans. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure

**46. 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 Certifier prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

**47. 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.

In signing this report, I declare that I do not have a Conflict of Interest.

**Signed**



**Olivia Ramage, Planner**

The application is determined on 21/07/2025, under the delegated authority of:



**Adam Richardson, Manager Development Assessments**