

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2022/2152
<b>Responsible Officer:</b>	Adam Croft
<b>Land to be developed (Address):</b>	<p>Lot 295 DP 820302, 122 A Crescent Road NEWPORT NSW 2106</p> <p>Lot 111 DP 556902, 124 Crescent Road NEWPORT NSW 2106</p> <p>Lot 3 DP 210342, 128 Crescent Road NEWPORT NSW 2106</p> <p>Lot 21 DP 545339, 57 The Avenue NEWPORT NSW 2106</p> <p>Lot LIC 407538, 57 The Avenue NEWPORT NSW 2106</p> <p>Lot LIC 460612, 57 The Avenue NEWPORT NSW 2106</p> <p>Lot 1 DP 503390, 126 Crescent Road NEWPORT NSW 2106</p> <p>Lot 2 DP 210342, 55 The Avenue NEWPORT NSW 2106</p> <p>Lot 111 DP 556902, 122 Crescent Road NEWPORT NSW 2106</p> <p>Lot 112 DP 556902, 122 Crescent Road NEWPORT NSW 2106</p> <p>Lot LIC 188424, 122 Crescent Road NEWPORT NSW 2106</p> <p>Lot 295 DP 820302, 122 Crescent Road NEWPORT NSW 2106</p> <p>Lot 295 DP 820302, 122 Crescent Road NEWPORT NSW 2106</p>
<b>Proposed Development:</b>	Demolition works and subdivision of land into 8 lots including tree removal and infrastructure work
<b>Zoning:</b>	C4 Environmental Living W2 Recreational Waterways
<b>Development Permissible:</b>	Yes, under State Environmental Planning Policy (Transport and Infrastructure) 2021
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	NSW Government - Department of Industry - Lands 57 The Avenue Pty Ltd
<b>Applicant:</b>	57 The Avenue Pty Ltd
<b>Application Lodged:</b>	05/01/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Other

<b>Notified:</b>	16/01/2023 to 13/02/2023
<b>Advertised:</b>	16/01/2023
<b>Submissions Received:</b>	18
<b>Clause 4.6 Variation:</b>	7.8 Limited development on foreshore area
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 968,000.00

## EXECUTIVE SUMMARY

### Introduction

This application is reported to the Northern Beaches Local Planning Panel for the following reasons: greater than 10 submissions (17) were received, each raising objection; and the application involves a non-numerical variation to the *Limited Development on Foreshore Area* development standard under the Pittwater Local Environmental Plan 2014 (PLEP 2014).

The site comprises 4 residential properties and 3 commercial properties associated with the Sirsi commercial marina, one of which is located below the Mean High-Water Mark (MHWM) and is leased from the Department of Industry - Crown Lands. The proposal involves the Torrens title subdivision of the 6 privately owned lots into 8 residential lots (originally proposed to be 9 lots), in addition to associated works including demolition of existing structures, road construction, provision of services and tree removal. The lots to be created are zoned C4 Environmental Living under PLEP 2014 and the proposed residential land use is permitted with consent.

The ancillary stormwater works extend across the site and through the W2 Recreational Waterways zoned Crown Land to the west of the site, which is partly above mean high-water mark and partly within the Pittwater waterway. These works are prohibited within the W2 zone under PLEP 2014 but are permitted with consent pursuant to SEPP (Transport and Infrastructure) 2021. The application does not seek consent for the residential use of the existing or modified marina facilities or any other works within the waterway, so only stormwater infrastructure works. The renewal or upgrading of the existing marina facilities for use in conjunction with the 8 residential lots and the removal, restoration and rehabilitation of the concrete hardstand area below MHWM will be the subject of a separate development application.

### Public Consultation

The application was publicly exhibited in accordance with the Northern Beaches Community Participation Plan, whereby the proposal was notified to 47 surrounding properties and was advertised as Nominated Integrated Development as required under the EPA Regulation 2021. In response to Council's exhibition, a total of 17 submissions were received, all of which were in objection to the proposal. The issues raised in the submissions are addressed in this report and are broadly categorised as follows.

- Density, character and inconsistency with the C4 Environmental Living zone;
- Foreshore works;
- Future marina redevelopment;
- Tree removal and biodiversity impacts;
- Traffic, car parking and access implications;
- Stormwater, site contamination and geotechnical impacts;
- Provision of infrastructure; and

- Construction traffic and waste management.

During the assessment of the application, the proposal was amended to comply with the minimum subdivision lot size development standard under the PLEP 2014, through a reduction in the number of proposed lots from 9 to 8, such that it is now consistent with the surrounding subdivision pattern, and the residential and foreshore character. The proposed development primarily relates to the residential subdivision of the privately owned land and includes stormwater works in the foreshore and waterway areas. The existing concrete hardstand associated with the commercial marina development is partly on the subject site and partly on Crown Land below MHW. That portion on the subject site will be removed as part of the current application, and that portion below MHW will be removed as part of a separate application.

Importantly, a special condition is imposed requiring consent for the change of use and conversion from a commercial marina to a residential marina, and completion of the upgrade/renewal works to the marina facilities and foreshore restoration/rehabilitation works prior to obtaining a subdivision certificate. Additionally, the proposed building footprint on Lot 5 has been conditioned to be set back a further distance from the MHW and the subsequent realignment of the foreshore building line will be undertaken through housekeeping amendments to the PLEP 2014.

Council's Landscape and Biodiversity sections have assessed the application and raised no objection to the proposed removal of 5 prescribed trees within the subject site and 2 within the Council road reserve. Conditions have been imposed in relation to tree removal/retention and the provision of 8 replacement canopy trees. The remaining trees proposed for removal are exempt species and do not require approval. It is noted that additional tree and vegetation planting will be required through future development applications for dwelling-houses on the proposed lots in accordance with the relevant Pittwater 21 Development Control Plan (P21DCP) requirements.

The proposal, as revised, makes adequate provision of carparking, access, water management, services/infrastructure, and site remediation. Suitable conditions of consent are recommended in relation to these matters, and for traffic and waste management during the demolition works and construction stages for the subdivision related works.

Further discussion in relation to the matters raised in the objections is included in the *Notification and Submissions* section of this report and against the relevant controls. Each of the concerns raised have been satisfactorily addressed, either through the amendment of the proposal, or the imposition of conditions where appropriate. No matters raised in the submissions justify the refusal of the application or further amendment of the proposal to ensure the public interest is protected and maintained.

### **Special Conditions Recommended**

Special conditions are recommended in relation to the following matters (discussed further in this report):

- *Removal of the existing concrete hardstand and paved car parking areas within the site;*
- *Cessation of the existing commercial marina operation on the site prior to commencement of the works;*
- *Application to be lodged for and consent to be obtained for the residential use of the marina within the W2 zoned waterway and the carrying out of such works prior to the release of the subdivision certificate; and*
- *Section 88B restrictions on the title of each lot to limit the building footprints of future dwellings.*

## **Planning Comments**

The proposal achieves full compliance with the minimum subdivision lot size development standard under the PLEP 2014 and the minimum lot area and dimension controls under the P21DCP. The proposed subdivision layout is compatible with the surrounding context and the desired future character, and the application has adequately demonstrated that each of the proposed lots is capable of accommodating dwelling-houses, private open space areas and landscaping that will not cause unreasonable impacts upon the amenity of surrounding properties. Adequate services and infrastructure are provided, and suitable conditions of consent are recommended in relation to water management, vehicular access and waste servicing. The application has been assessed by Council's Natural Environment and Climate Change referral sections, with appropriate conditions of consent incorporated into the recommendation of this report. The proposed density maintains an appropriate balance between increased housing supply and compatibility with the surrounding character.

## **Strategic Planning Comments**

Initial concerns were raised by Council's Strategic Planning section with regard to the loss of the existing commercial marina facility. Following further review and discussions, it was concluded that the proposed residential land use is the primary anticipated land use within the context of the surrounding C4 zone, and that the retention of the commercial marina land use that is subject to Additional Permitted Use provisions, should not preclude the proposed residential subdivision and change of use and conversion of the water-based marina facilities to residential use. It was also concluded that the additional matters raised in the initial Strategic Planning referral response relating to the realignment of the foreshore building line and the re-zoning of the W2 zoned area immediately to the west of the site will be undertaken through future housekeeping amendments to the PLEP 2014. The irregular alignment of the foreshore building line across 122 Crescent Road (proposed Lot 5) is generally addressed through the amended subdivision layout and the imposition of the condition requiring amendment of the proposed Lot 5 building footprint.

## **Conclusion and Recommendation**

On balance, the proposal is considered to satisfy the relevant planning controls and has sufficient merit to be recommended for **approval** to the Northern Beaches Local Planning Panel, subject to the conditions included in the Recommendation of this report.

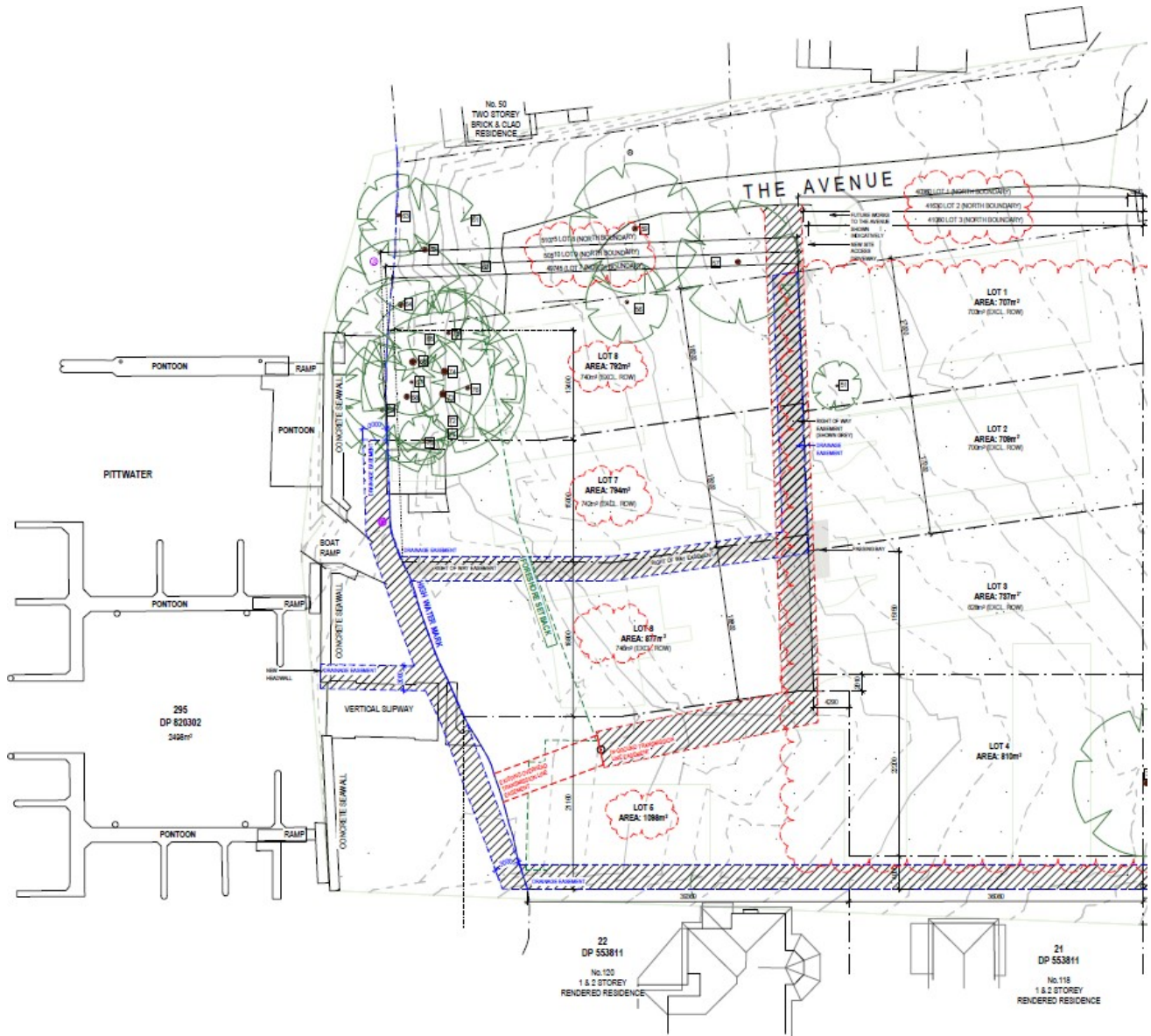
## **PROPOSED DEVELOPMENT IN DETAIL**

The proposal involves the consolidation of six (6) lots and the subdivision into eight (8) torrens title residential lots. The proposal also seeks consent for the following associated physical works:

- Demolition of all existing residential and commercial structures within the site;
- Construction of an internal access driveway;
- Road widening/upgrade works within The Avenue to facilitate adequate vehicular access;
- Provision of sewer, stormwater, gas and communications services;
- Undergrounding of existing power lines over the site; and
- Tree removal.

The proposed stormwater works necessitate the undertaking of physical works both within the foreshore area and seaward of the mean high-water mark (MHW), for which owners consent from

the NSW Department of Planning and Environment - Crown Lands has been obtained. The stormwater works also require the creation of drainage easements across the site from Crescent Road and The Avenue to the waterway.



### Amendments to the Application

At various stages throughout the assessment process, the proposal has been amended in the following ways:

- Inclusion and amendment of road widening works within The Avenue;
- Reduction from 9 proposed lots to 8 lots to achieve compliance with minimum lot size development standard;
- Relocation and revision of access driveway design;
- Revision of drainage design; and
- Provision of additional engineering, water management and landscape details in response to internal referral comments.

The proposed amendments result in a reduction in environmental impacts and therefore do not require formal re-notification, in accordance with the Northern Beaches Community Participation Plan. The primary round of amendments involving the deletion of an allotment and the inclusion of road widening works were informally re-notified to all previous objectors between 11 October 2023 and 20 October 2023.

## **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 - Zone W2 Recreational Waterways  
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards  
Pittwater Local Environmental Plan 2014 - 5.7 Development below mean high water mark  
Pittwater Local Environmental Plan 2014 - 5.10 Heritage conservation  
Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils  
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks  
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection  
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards  
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area  
Pittwater 21 Development Control Plan - A4.10 Newport Locality  
Pittwater 21 Development Control Plan - A4.15 Waterways Locality  
Pittwater 21 Development Control Plan - B2.2 Subdivision - Low Density Residential Areas  
Pittwater 21 Development Control Plan - B3.6 Contaminated Land and Potentially Contaminated Land  
Pittwater 21 Development Control Plan - B6.7 Transport and Traffic Management  
Pittwater 21 Development Control Plan - B8.6 Construction and Demolition - Traffic Management Plan  
Pittwater 21 Development Control Plan - C1.1 Landscaping  
Pittwater 21 Development Control Plan - C1.3 View Sharing  
Pittwater 21 Development Control Plan - C1.4 Solar Access  
Pittwater 21 Development Control Plan - C1.5 Visual Privacy

Pittwater 21 Development Control Plan - C1.7 Private Open Space  
 Pittwater 21 Development Control Plan - C4.3 Subdivision - Transport and Traffic Management  
 Pittwater 21 Development Control Plan - C4.4 Subdivision - Public Roads, Footpath and Streetscape  
 Pittwater 21 Development Control Plan - D15.1 Character as viewed from a public place  
 Pittwater 21 Development Control Plan - D15.12 Development seaward of mean high water mark  
 Pittwater 21 Development Control Plan - D15.13 Lateral limits to development seaward of mean high water mark  
 Pittwater 21 Development Control Plan - D15.15 Waterfront development

**SITE DESCRIPTION**

<b>Property Description:</b>	Lot 295 DP 820302, 122 A Crescent Road NEWPORT NSW 2106 Lot 111 DP 556902, 124 Crescent Road NEWPORT NSW 2106 Lot 3 DP 210342, 128 Crescent Road NEWPORT NSW 2106 Lot 21 DP 545339, 57 The Avenue NEWPORT NSW 2106 Lot LIC 407538, 57 The Avenue NEWPORT NSW 2106 Lot LIC 460612, 57 The Avenue NEWPORT NSW 2106 Lot 1 DP 503390, 126 Crescent Road NEWPORT NSW 2106 Lot 2 DP 210342, 55 The Avenue NEWPORT NSW 2106 Lot 111 DP 556902, 122 Crescent Road NEWPORT NSW 2106 Lot 112 DP 556902, 122 Crescent Road NEWPORT NSW 2106 Lot LIC 188424, 122 Crescent Road NEWPORT NSW 2106 Lot 295 DP 820302, 122 Crescent Road NEWPORT NSW 2106 Lot 295 DP 820302, 122 Crescent Road NEWPORT NSW 2106
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**Detailed Site Description:**

The subject site consists of six allotments located on the south-western side of Crescent Road and The Avenue. These allotments are commonly known as Nos. 122, 124, 126 and 128 Crescent Road and Nos. 55 and 57 The Avenue. An additional allotment within the waterway below the MHWL, known as 122A Crescent Road also forms part of the site for the purpose of stormwater works to convey water to the waterway.

The site is irregular in shape with a frontage of 74.84m along Crescent Road, a frontage of 91.56m to The Avenue and a waterfrontage length of approximately 71.5m. The site has a surveyed area of 6,523sqm.

The site is located within the C4 Environmental Living zone and accommodates four dwelling houses at 126 and 128 Crescent Road and 55 and 57 The Avenue; a commercial marina occupies 122 and 124 Crescent Road. The site also contains various ancillary structures associated with the residential and commercial uses. No. 122A Crescent Road is located within the W2 Recreational Waterways zone and accommodates various marina structures.

The site slopes a maximum of 17m from east to west and also includes a crossfall of up to 5.5m.

The site contains 50 significant trees and a variety of smaller bushes and shrubs.

**Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by low-density residential development. The Pittwater waterway adjoins the site immediately to the west. The waterway interface (known as 122A Crescent Road) comprises various seawall, slipway and pontoon structures and a paved hardstand associated with the existing commercial marina use.



Map:



## **SITE HISTORY**

A search of Council's records has revealed that there are no recent or relevant applications for this site.

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

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

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 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>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in the form of amended plans and additional information to address concerns relating to the minimum lot size development standard, engineering, water management, traffic, landscape and biodiversity issues.</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>

<b>Section 4.15 Matters for Consideration</b>	<b>Comments</b>
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 development application has been publicly exhibited from 16/01/2023 to 13/02/2023 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 18 submission/s from:

<b>Name:</b>	<b>Address:</b>
Mr Michael Albert Gray Mrs Marian Louise Gray	38 Rednal Street MONA VALE NSW 2103
Mr Michael Albert Gray Mrs Marian Louise Gray	38 Rednal Street MONA VALE NSW 2103
Mr Lee Cronly-Dillon	116 Crescent Road NEWPORT NSW 2106
Mr John Gordon Reeman	97 Crescent Road NEWPORT NSW 2106
Mrs Stephanie Joy Wainberg	160 Crescent Road NEWPORT NSW 2106

<b>Name:</b>	<b>Address:</b>
Sandy Duffield	2/2 The Avenue NEWPORT NSW 2106
Ms Jacqueline Ann Leonard	35 The Avenue NEWPORT NSW 2106
Ms Tina Graham	103 Crescent Road NEWPORT NSW 2106
Mr Graeme John Cocks	25 A The Avenue NEWPORT NSW 2106
Mr Laurence Maxwell Bibby	95 Crescent Road NEWPORT NSW 2106
Mrs Cassandra Anne Hunt	40 The Avenue NEWPORT NSW 2106
Wallace Lorimer	40 Rednal Street MONA VALE NSW 2103
Marsdens Law Group	PO Box 291 CAMPBELLTOWN NSW 2560
Mr Hugh Andrew Fraser	114 Crescent Road NEWPORT NSW 2106
Tobias James Hutton	46 The Avenue NEWPORT NSW 2106
Mrs Marianne Leah Cronly-Dillon	Po Box 825 MONA VALE NSW 2103
Mr Simon Mark Cole	120 Crescent Road NEWPORT NSW 2106
Doyle Consulting Group	3A Kendall Road CASTLE COVE NSW 2069
Newport Residents Association	PO Box 1180 NEWPORT BEACH NSW 2106

The issues raised in the submissions are addressed as follows:

- **Density, character, and inconsistency with C4 Environmental Living zone**

*The submissions raised concerns that the proposal includes a variation to the minimum lot size development standard and that the development would be inconsistent with the surrounding character and the C4 zone. Concern was also raised in relation to the form and compliance of future development with the applicable built form controls and the associated amenity impacts.*

Comment:

The proposal has been amended from 9 lots to 8 lots, resulting in full compliance with the 700m<sup>2</sup> minimum lot size standard. The subdivision layout is compatible with the surrounding subdivision pattern, with a maximum of two lots between Crescent Road and the foreshore at any alignment, and the proposed residential use is anticipated in the C4 zone. The C4 zoning of the site permits development for the purpose of dwelling houses and secondary dwellings with consent but does not permit medium density residential uses. It is noted that the Housing Code provisions of SEPP (Exempt and Complying Development Codes) 2008 do not apply to the site based on its C4 zoning (see s3.1(3)(a) of the SEPP), and therefore the future residential developments must be subject to DA assessment and approval by Council. Based on the proposed lot sizes and dimensions, each lot can accommodate a dwelling- house that can comply with the applicable built form controls and avoid unreasonable impacts upon surrounding land; these will be matters for consideration in the assessment of future development applications. A further assessment of each of these matters is undertaken in this report.

The concerns raised do not warrant further amendment or refusal of the application.

- **Foreshore works**

*The submissions raised concerns that the proposal does not comply with the provisions of PLEP Clause 7.8 due to the retention of the existing concrete hardstand and sea wall, and the lack of foreshore rehabilitation. Concern was also raised regarding the inconsistency in the alignment of the foreshore building line across the site in comparison to the adjoining properties.*

Comment:

The subject proposal primarily relates to the subdivision of the site, with works below the MHWL being limited to stormwater infrastructure to service the development. As such, it is not considered appropriate to require the removal/refurbishment of the marina structures and rehabilitation of the foreshore through this consent. It is noted however that a condition is recommended requiring consent for and completion of such works prior to completion of the residential subdivision (issue of a subdivision certificate). The removal of the concrete hardstand and paved car park within the C4 zone is required by condition as these works relate to the scope and foreshore amenity of the proposed development. The proposed building footprint on Lot 5 is conditioned to be set back a further distance from the MHWL to reflect the future realignment of the foreshore building line. A further assessment of each of these matters is undertaken in this report.

The concerns raised do not warrant further amendment or refusal of the application.

- **Future marina redevelopment**

*The submissions raised concerns that the proposal includes insufficient details of the future marina redevelopment and the extent of works within the W2 zone below the MHWL. Various other concerns were also raised in relation to the future marina redevelopment.*

Comment:

The proposal implies that there will be a future redevelopment of the existing water based marina facilities for residential purposes, but does not seek development consent for this use or any associated works through this application. The applicant has indicated their intention to gain such consent under a future development application. Council considers that the proposed residential subdivision must be undertaken concurrently with a change of use of the marina to ensure that the marina is subject to a valid and relevant development consent. Conditions of consent are recommended requiring the applicant to obtain development consent and complete the associated works prior to the release of the subdivision certificate associated with this application.

Council's assessment does not foresee any fundamental concern regarding the future redevelopment of the marina for residential purposes, subject to a future development application being submitted to Council satisfying the relevant matters for consideration, including but not limited to, traffic, access, parking, environmental impacts, site contamination, public access, rehabilitation of the foreshore and extent of marina facilities. The subject proposal is not anticipated to restrict public access to or along the foreshore. The recommended conditions of consent ensure that these matters will be dealt with at the appropriate time.

The concerns raised do not warrant further amendment or refusal of the application.

- **Tree removal and biodiversity impacts**

*The submissions raised concerns that the proposal includes excessive tree removal and will cause adverse impacts upon the biodiversity values of the surrounding area.*

Comment:

The removal of prescribed trees is limited to 5 trees within the site and 2 trees within the Council road reserve. The reasons behind Council's support for the approved tree removal are provided within the Landscape and Biodiversity referral comments. Replacement planting in the form of 6 native canopy trees within the site and 2 within the road reserve of The Avenue are required by condition. The remaining trees proposed for removal are exempt species that do not require Council approval. As discussed in this report, additional new tree and vegetation planting will be required as part of future development applications to meet the requirements of the P21DCP. No objection was raised to the proposal by Council's Landscape and NECC referral sections, subject to the conditions included in the recommendation of this report. Conditions are recommended requiring the maintenance of sediment and erosion control measures throughout the subdivision works.

The concerns raised do not warrant further amendment or refusal of the application.

- **Traffic, car parking and access implications**

*The submissions raised concerns that the proposed development includes insufficient provision for car parking and access and will give rise to adverse traffic and parking impacts within the surrounding road network.*

Comment:

The proposed lot sizes and dimensions are sufficient to allow 2 car parking spaces per dwelling as required by the P21DCP. Single residential development does not require the provision of visitor parking, however informal parking can be accommodated in the driveway setback of each lot. The amended application has been assessed by Council's Traffic section with no objections being raised, subject to the implementation of works required by the recommended conditions of consent. The amended subdivision design provides suitable access to the site and includes road widening and footpath construction works within The Avenue. These works will facilitate servicing by waste collection vehicles and allow access for emergency services. Currently, the limited pavement width of The Avenue does not permit any on-street parking and results in vehicles parked illegally on the adjacent nature strip; the required road widening will facilitate the provision of formalised legal on-street parking on the southern side of The Avenue. The proposal is not expected to generate any significant increase in traffic volumes and is supportable subject to conditions.

The concerns raised do not warrant further amendment or refusal of the application.

- **Stormwater, site contamination and geotechnical impacts**

*The submissions raised concerns that insufficient information is provided in relation to stormwater management, site contamination and remediation and geotechnical impacts.*

Comment:

The amended proposal has provided additional information that satisfies the requirements of

Council's Water Management for Development Policy, subject to the conditions recommended in the Development Engineering and Water Management referrals. Council's Environmental Health section advises that the proposal is supportable and has provided suitable conditions of consent in relation to site remediation. The submitted Geotechnical Report is sufficient for DA stage and concludes that the site is suitable, or can be made suitable for the proposed development; the included geotechnical recommendations are incorporated into the conditions of consent. The submitted documentation in relation to these matters is satisfactory.

The concerns raised do not warrant further amendment or refusal of the application.

- **Provision of infrastructure**

*The submissions raised concerns that inadequate provision has been made for infrastructure. Concern is also raised regarding the existing high voltage overhead cables on the site.*

Comment:

The recommended conditions of consent require the provision of necessary infrastructure to service the future dwelling-house developments on the site. The proposed relocation/undergrounding of the existing high voltage cables is subject to the assessment and requirements of Ausgrid. Conditions have been provided by Ausgrid and are incorporated into the recommended conditions of consent.

The concerns raised do not warrant refusal of the application.

- **Construction traffic and waste management**

*The submissions raised concerns that inadequate consideration has been given the traffic impacts and management of waste arising from the proposed works.*

Comment:

Conditions are recommended by Council's Traffic and Waste sections in relation to these concerns. The specific requirements include the preparation and implementation of demolition and construction traffic management plans and compliance with the submitted waste management plans. Subject to compliance with the recommended conditions of consent, these matters are resolved.

The concerns raised do not warrant refusal of the application.

## REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulfate)	<p><b>Supported without conditions.</b></p> <p><b>General Comments</b></p> <p>Based on the additional information and proposed amendments to the DA, there is no impact on the original referral for Acid Sulfate Soils and therefore the original conditions apply as per Trim doc 2023/016334</p>

Internal Referral Body	Comments
	<p><b>Recommendation</b></p> <p>APPROVAL - no conditions</p>
<p>Environmental Health (Contaminated Lands)</p>	<p><b>Supported with conditions.</b></p> <p><b>General Comments (Updated Referral Comments)</b></p> <p>Based on the additional information and proposed amendments to the DA, there is no impact on the original referral for Contaminated Lands and therefore the original conditions apply as per Trim doc 2023/016324.</p> <p><b>General Comments (Initial Referral Comments)</b></p> <p>Environmental Health has been requested to provide comment on the proposed development for contamination consideration. A review of the proposal has found that some minor excavation may be required. Given the historic uses in the area and urbanised location there is potential for contamination below the hardstand to be excavated.</p> <p>The Detailed Site Investigation by Aargus Pty Ltd dated 6th October 2022 (reference:ES8577). contaminated land report has been provided with the application.</p> <p>The report found that the site will need a RAP to become suitable for the proposed use.</p> <p><b>Recommendation</b></p> <p>APPROVAL - subject to conditions</p>
<p>Environmental Health (Industrial)</p>	<p><b>Supported without conditions.</b></p> <p><b>General Comments</b></p> <p>Based on the additional information and proposed amendments to the DA, there is no impact on the original referral for Industrial and therefore the original conditions apply as per Trim doc 2023/016329</p> <p><b>Recommendation</b></p> <p>APPROVAL - no conditions.</p>



Internal Referral Body	Comments
Landscape Officer	<p><b>Supported with conditions.</b></p> <p>The proposal is supported with regard to landscape issues.</p> <p><u>Additional Information Comment 31/10/23:</u> The amended reports and plans are noted. No further comments, see comments below. A slight update to the Project Arborist condition.</p> <p><u>Additional Information Comment 10/10/23:</u> The amended plans and reports are noted.</p> <p>The proposed infrastructure works for The Avenue will not further impact street trees.</p> <p>An arboricultural statement dated 09/05/23 has been provided regarding tree sensitive construction methods for the driveway crossover adjacent to tree 57. Driveway works will need to be constructed in accordance with the Arborist's recommendations. Further investigations will be required prior to issuing a Construction Certificate, subject to the imposed conditions. The driveway access for Lot 8 (formerly Lot 9) will be via the existing hardstand area which was supported by the Arborist.</p> <p>The Arboricultural Impact Assessment identified 76 trees within and around the site. Trees 3, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, and 76 will be retained, as shown on the plans, and must be protected in accordance with the Arborist's recommendations and the imposed conditions. Trees 16, 17, 37, 43, 45, and 48 shall be retained as their removal is not required for the subdivision works, and their removal will be determined in future Development Applications. A Project Arborist shall be engaged to supervise all work in the tree protection zone of trees to be retained.</p> <p>Trees 4, 5, 7, 8, 11-15, 18, 20-28, 31-36, 38-42, 44, 46, 47, 49, 50, 52-55 are exempt under Council's provisions and shown to be removed, therefore can be managed or removed at the discretion of the applicant without consent. The removal of trees 19 and 29 can be supported for removal as they are structurally defective. Trees 6, 9, 10, 30 and 51 can be supported for removal to allow for the installation of the stormwater infrastructure. Street trees 1 and 2 can be supported for removal, subject to tree replacement.</p> <p>Street trees shall be planted on the southern side of The Avenue, to the east of the new driveway crossing, subject to the imposed conditions.</p>

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p><b>Supported with conditions.</b></p> <p>AMENDED COMMENTS (12 OCTOBER 2023):  Amended plans have been provided showing the retention of the hardstand along The Avenue showing that no additional impacts would take place on tree 57 as long as tree sensitive methods are adhered to in accordance with the Arborist's recommendations.</p> <p>The arborist report has indicated that trees 3, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, and 76 can be retained. Trees 4, 5, 7, 8, 11-15, 18, 20-28, 31-36, 38-42, 44, 46, 47, 49, 50, 52-55 are exempt under Council's provisions and no objections are raised as to their removal.</p> <p>The removal of trees 6,9, 10, 30 and 51 can be supported as part of the stormwater infrastructure works, however, replacement planting will be conditioned for the removal of 4 native prescribed trees.</p> <p>The removal of trees 19 and 29 is supported as they are structurally defective and represent a hazard, however replacements will be conditioned as these are native prescribed trees.</p> <p>The removal of trees 1 and 2 is supported as per the Landscape Referral and will have to be replaced as conditioned.</p> <p>AMENDED COMMENTS (21 AUGUST 2023):  It is noted that additional information has been requested in relation to driveway design and to infrastructure works proposed for the Avenue, both of which are likely to have implications for the overall extent of tree impacts. Assessment of the proposal against applicable biodiversity provisions will therefore recommence upon receipt of this information.</p> <p>ORIGINAL COMMENTS (2 MARCH 2023):  The proposal seeks approval for demolition works and subdivision of land into 9 lots including tree removal and infrastructure work. The comments on this referral relate to the following controls and provisions:</p> <ul style="list-style-type: none"> <li>• SEPP (Resilience and Hazards) 22021 - Chapter 2: Development within the coastal environment</li> <li>• Pittwater LEP 2014 - Clause 7.6 Biodiversity Protection</li> <li>• Pittwater 21 DCP - Clause B4.6 Wildlife Corridors</li> </ul>

Internal Referral Body	Comments
	<p>The application has been submitted with an accompanying arborist report (AIA) that has assessed 76 trees. A total of 43 trees have been assessed as exempt due to either height and/or species, while three trees have been assessed as dead or subject to structural failure.</p> <p>The report recommends removal of 63 trees to allow for the footprint of the project in its current form. Tree 56 a mature Eucalyptus paniculata has also been proposed for removal regardless of it being in a fair condition. Additionally, the SEE has wrongly summarised the removal of trees establishing that only 46 trees will be removed with 17 of them being prescribed - these are two separate groups of trees that have been appropriately identified in the AIA.</p> <p>The proposal will result in the removal of approximately 60% of native canopy trees currently on the site. In accordance with PDCP B4.6 Wildlife Corridors, "development shall not result in a significant loss of canopy cover or a net loss in native canopy trees." In order to demonstrate that the subdivision can achieve compliance with PDCP B4.6, a Concept Landscape Plan is required to be submitted. The plan is to indicate the locations, species and sizes of replacement plantings proposed to achieve no net loss in native canopy trees. In addition, new plantings are to be selected from the Pittwater Ward section of the Native Planting Guide and/or the relevant section of the Pittwater Native Gardening Booklet (both available on Council's website).</p> <p>Required Information:</p> <ul style="list-style-type: none"> <li>• Non-destructive tree root investigation for Tree 57 and amended plans, in accordance with the Landscape referral</li> <li>• Concept Landscape Plan indicating the locations, species and sizes of required replacement plantings to compensate for trees removed for subdivision works</li> </ul>
NECC (Coast and Catchments)	<p><b>Supported with conditions.</b></p> <p>The application has been assessed in consideration of the:</p> <ul style="list-style-type: none"> <li>• Coastal Management Act 2016;</li> <li>• State Environmental Planning Policy (Resilience &amp; Hazards) 2021;</li> <li>• Pittwater LEP 2014 and Pittwater 21 DCP; and</li> <li>• plans and supporting documents lodged with this DA.</li> </ul> <p>Assessment of the application has also considered the following advice from state agencies:</p> <ul style="list-style-type: none"> <li>• Consent of landowner to lodge a DA from the Department of Planning, Industries &amp; Environment - Crown Lands, dated 8 December 2022.</li> </ul>

**Coastal Management Act 2016**

The subject site has been identified as being within the coastal zone and therefore the Coastal Management Act 2016 is applicable to this DA. The proposed development is considered to be consistent with the objects, as set out under Part 1 Section 3 of the Coastal Management Act 2016.

**State Environmental Planning Policy (Resilience & Hazards) 2021**

The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Chapter 2 of SEPP (R & H) applies to this DA. The provisions of the SEPP, however, would be more applicable to DAs dealing with the future development of allotments in the new subdivision, if approved. Given that the DA is for subdivision involving the creation of 9 allotments, demolition of existing buildings onsite, tree removal and installation of new infrastructure, the proposal generally satisfies requirements under clauses 2.10, 2.11, 2.12, 2.13 and 2.14 of SEPP R&H. Subject to conditions, it is considered that the application can comply with the provisions of the State Environmental Planning Policy (Resilience & Hazards) 2021.

**Pittwater LEP 2014**

Development on Foreshore Area

The subject property is affected by the foreshore building line and Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area. Proposed development works are located seaward of the foreshore building line. Planners will assess this aspect of the development proposal.

**Pittwater 21 DCP**

Estuarine Risk Management

The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.10 Estuarine Hazard Controls will apply to any proposed development of the site.

An Estuarine Risk Management Report, dated 17 October 2022, was prepared by Horton Coastal Engineering Pty Ltd and submitted in support of the current subdivision proposal.

On the basis of a design life already adopted by Council for development on the open coast, a design life of 60 years has been justified and accepted for proposed development on the subject site. The Coastal Engineer has independently derived an Estuarine Planning Level (EPL) of 2.7m AHD at the foreshore (seawall). Due to the elevation and setback of proposed allotments from the foreshore, wave runup would not be expected to reach the developable area of the proposed subdivision at any significant depth over a 60 year design life

Internal Referral Body	Comments
	<p>As the subdivision of land under the B3.10 Estuarine Hazard Control requires the area of land contained on the landward side of the Foreshore Building Line for each additional allotment created to be at or above the EPL, for convenience a reduced EPL of 2.5m AHD at the Foreshore Building Line has been adopted with all levels over the subdivision and landward of the Foreshore Building Line above this EPL.</p> <p>Accordingly, and as outlined in the approved Estuarine Risk Management Report, the relevant provisions of the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the B3.10 Estuarine Hazard Controls are considered to have been satisfied, by the proposed development, subject to conditions.</p> <p><b>Development Seaward of Mean High Water Mark</b>  Proposed development works are located on Crown land below the Mean High Water Mark, namely stormwater drainage works and a new headwall structure in the existing seawall. Hence, Section D15.12: Development seaward of mean high water mark in Pittwater 21 DCP applies to the proposed development. On internal assessment, the proposed development is unlikely to have significant adverse impacts on the visual amenity of the foreshore or water quality or estuarine habitat of the Pittwater waterway and the DA is considered to be able to satisfy the requirements of the Section D15.12 Controls subject to conditions.</p> <p>No other coastal planning or development controls relevant to the subject subdivision proposal were identified.</p> <p>Appropriate general conditions have also been applied to address the coastal management requirements of SEPP (R&amp;H) and Pittwater 21 DCP.</p> <p><b>Amended Plans dated 12/07/2023</b>  The modified plans submitted do not change the existing coastal assessment and no new or amended conditions of development consent are recommended.</p>

<p>NECC (Development Engineering)</p>	<p><b>Supported with conditions.</b></p> <p><u>Engineering Comments 15.11.23</u>  An overland flow path has been provided. Easement conditions will be provided.  The DRAINS modelling has not satisfactorily modelled the existing peak stormwater flows through the site. Conditions will be placed to ensure all flows up to the 5% AEP are conveyed through Council's piped stormwater system.</p> <p><u>Updated comments 2/11/23</u>  The overland flow path report prepared by BG and E engineering is not supported for the following reasons:  1) The design engineer has not complied with Councils previous request that the overland flow path that commences at the Council sag pit in Crescent road is to be aligned from the current sag point in the Crescent Road and follow the alignment of the proposed re diverted Council SW line to the discharge point. The width of the overland flow path is to be a minimum width of 3m to align with the required council pipe easement width. The overland flow path is to be in favor of Council .  A site inspection would confirm that this is achievable and the falls along Councils re diverted stormwater line can be achieved.  The driveway entry of the proposed Lot 4 will need to be moved to the northern side of Crescent road to avoid conflict with the overland flow path.</p> <p>If the designer is not willing to adopt Councils requirement that the current council stormwater running through the site is to be maintained and upgraded if required and the overland flow path is to be designed to follow the line . This may limit the site area available for building on proposed Lots 4 and 5.</p> <p>The current overland flow location is located a distance from the proposed rediverted Council line and is not acceptable.</p> <p>2) THE DRAINS model that supports the overland flow study and rediverted stormwater line is to be submitted to Council for review. A corresponding catchment plan is to be overlayed over the DRAINS pit and pipe layout.</p>
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Internal Referral Body	Comments
	<p>3) The submitted engineering plans for the internal road are acceptable.</p> <p>4) The design engineers submission that On site stormwater detention is not required given the sites location in the catchment is accepted.</p> <p>5) The proposed subdivision titling is to be provided to council given that there will be shared subdivision assets including the internal access road and stormwater quality treatment devices , Community title may be appropriate to ensure the long term maintenance and upgrade of these assets.</p> <p><u>Previous comments comments 30/10/23</u></p> <p>The proposed 9 Lot subdivision and marina development is not supported for the following reasons:</p> <p>1) The site is affected by overland stormwater flows in larger storm events predominately along the line the of the existing Council 375mm Concrete stormwater line which runs from the sag point in Crescent Road to the existing seawall .</p> <p>An overland stormwater flow study is to be prepared by a NER/RPENG qualified civil engineer to determine the extent of the overland flow path and impacts on the development including the proposed construction of dwellings. The study is to be prepared by a suitable computer hydrological/hydraulic model . Councils preferred model is DRAINS. The overland flow cross-sections are to be determined by the HEC Ras programme or similar.</p> <p>It is noted that the design engineers BG and E propose to re divert Councils existing 375mm RCP stormwater (SW) line which runs through the current site to the southern boundary with a 3m wide stormwater drainage easement over the re diverted drainage line. This proposal is supported by Councils stormwater assets team.</p> <p>The current proposed location of the overland flow swale is not acceptable as the overland flow path needs to be aligned with the sag pit Crescent road ie the lowest point . Any overland flow originating from this location cannot physical enter the proposed swale given its separation from the current sag point. Any over land flow path should be aligned from the current sag point in the Crescent Road and follow the alignment of the proposed re diverted Council SW line to the discharge point.</p> <p>The following needs be addressed by the study :</p>

- The existing overland flow regime is to be mapped. All proposed residential housing is to be kept clear of the overland flow path.
- The re-diverted Council stormwater line running through the site is to be upgraded to have a minimum hydraulic capacity of 5/100 AEP. Flows in excess of this event are to be controlled via an above-overland flow path to the 1/100 AEP.
- The overland flow path is to be contained with a widened 3m easement from the sag point in Crescent Road to the outlet.
- The study is to also review velocity/depth ratio in relation to pedestrian safety.
- The overland flow study/report is to be prepared in accordance with ARR 2019 - Section Flood estimation and use the Initial/ Continuing Hydraulic Loss model.
- The Council stormwater line upgrade works are to be designed in accordance with Council's Auspec One design guideline.

2) Construction of the Headwall outlet and upgraded pipeline requires a controlled activity permit. Comments from Council's Coast and Catchment Team will be required on the new headwall/pipe construction.

3) A Stormwater management plan will need to detail the provision of On-site stormwater detention (OSD) in accordance with Council's water management policy for development. A DRAINS model is required to determine the required OSD storage volumes and post-developed discharge rates to the 1/100 AEP storm event. The pre-developed scenario for the model is to be state of nature. Additionally, water quality treatment devices are to be provided for the proposed subdivision in accordance with Council's water management policy for development. Council's Coast and Catchment Team can be contacted for more detailed comments.

4) Engineering plans for the internal access road are required to be prepared by a NER or RPENG qualified civil engineer in accordance with Council's Auspec One design guideline. Long sections and cross sections of the access road and pass bays are to be provided. Any proposed retaining walls are also to be detailed on the engineering plans. All Council's Transport Network comments are to be incorporated into the design of the engineering plans.

5) The proposed subdivision titling is to be provided to council given that there will be shared subdivision assets including the internal access road and stormwater quality treatment devices.

Previous referral comments

The proposed 9 Lot subdivision and marina development is not supported for the following reasons:

1) The site is affected by overland stormwater flows in larger storm events predominately along the line of the existing Council 375mm Concrete stormwater line which runs from the sag point in Crescent Road to the existing seawall.



Internal Referral Body	Comments
	<p>An overland stormwater flow study is to be prepared by a NER/RPENG qualified civil engineer to determine the extent of the overland flow path and impacts on the development including the proposed construction of dwellings. The study is to be prepared by a suitable computer hydrological/hydraulic model . councils preferred model is DRAINS. The overland flow cross-sections are to be determined by the HEC Ras programme or similar.</p> <p>The following needs be addressed by the study :</p> <ul style="list-style-type: none"> <li>- The existing overland flow regime is to be mapped. All proposed residential housing is to be keep clear of the overland flow path.</li> <li>- The Council stormwater line running through the site is to be upgraded to have a minimum hydraulic capacity of 5/100 AEP. Flows in excess of this event are to be controlled via an above overland flow path to the 1 /100 AEP.</li> <li>-The overland flow path is to be contained with a widened 3m easement from the sag point in Crescent Road to the outlet.</li> <li>- The study is to also review velocity depth ratio in relation to pedestrian safety.</li> <li>-The overland flow study/report is to be prepared in accordance with ARR 2019 - Section Flood estimation and use the Initial/ Continuing Hydraulic Loss model.</li> </ul> <p>2) Construction of the Headwall outlet and upgraded pipeline requires a controlled activity permit. Comments from Councils Coast and Catchment Team will be required on the new headwall/pipe construction.</p> <p>3) A Stormwater management plan will need to detail the provision of On site stormwater detention (OSD )in accordance with Councils water management policy for development. A DRAINS model is required to determine the required OSD storage volumes and post developed discharge rates to the 1/100AEP storm event. The pre developed scenario for the model is to be state of nature. Additionally water quality treatment devices are to be provided for the proposed subdivision in accordance Councils water management policy for development. Councils Coast and Catchment Team can be contacted for more detailed comments.</p> <p>4) Engineering plans for the internal access road are required to be prepared by a NER or RPENG qualified civil engineer in accordance with Councils Auspec One design guideline. Long sections and cross sections of the access road and pass bays are to be provide . Any proposed retaining walls are also to be detailed on the engineering plans. All Councils Transport Network comments are to be incorporated into the design of the engineering plans.</p> <p>5) The proposed subdivision titling is to be provided to council given that there will be shared subdivision assets including the internal access road and stormwater quality treatment devices and possibly the marina berths.</p>

Internal Referral Body	Comments
NECC (Flooding)	<p><b>Supported without conditions.</b></p> <p>There are no flood related objections for this site.</p>
NECC (Riparian Lands and Creeks)	<p><b>Supported without conditions.</b></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; and</li> <li>• Relevant LEP and DCP clauses.</li> </ul> <p>The proposal includes demolition of existing structures, subdivision into nine (8) lots, tree removal, servicing and stormwater drainage works.</p> <p>State Environmental Planning Policy (Resilience and Hazards) 2021 The site abuts Pittwater estuary and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of the estuary, or the quantity and quality of surface and ground water flows that it receives.</p> <p>Water Management Act 2000; Water Management (General) Regulation 2018; and Pittwater 21 DCP, B5.13 Development on Waterfront Land The proposal is within 40 metres of a watercourse mapped under the Water Management (General) Regulation 2018 Hydro Line spatial data, and so is on waterfront land. A referral has been made to the NSW Department of Planning and Environment – Water for appropriate consideration and Terms of Approval regarding a Controlled Activity Permit. The General Terms of Approval (GTA) for part of the proposed development requiring a Controlled Activity approval under the Water Management Act 2000 (WM Act), as detailed in the subject DA, must be adopted in full.</p> <p>Pittwater 21 DCP, B4.19 Estuarine Habitat The proposal must comply with Council’s Water Management for Development Policy.</p> <p>NECC Riparian has no objections to the development application</p>
NECC (Water Management)	<p><b>Supported with conditions.</b></p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>• Supplied plans and reports;</li> <li>• Relevant LEP and DCP clauses; and</li> </ul> <p>Northern Beaches Water Management for Development Policy</p> <p>After review of the proposal NECC water management has no</p>

	objection to the proposal.
Parks, reserves, beaches, foreshore	<p><b>Supported with conditions.</b></p> <p>The property adjoins Pittwater Waterway downslope. The existing marina is to be retained and majority of the works are above the high water mark. No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries.</p>
Strategic and Place Planning	<p><b>Supported without conditions.</b></p> <p><u>Assessing Planner Comments</u></p> <p>The initial Strategic Planning referral comments below raised concerns in relation to the loss of the existing commercial marina facility, the alignment of the foreshore building line across 122 Crescent Road (proposed Lot 5) and the re-zoning of the W2 zoned land immediately to the west of the site, in the event that the proposed residential subdivision is approved.</p> <p>Concern was raised that the loss of land that suitable for commercial waterway services and facilities may be inconsistent with the Pittwater Waterways Strategy and aspects of the Northern Beaches Strategic Planning Statement. However, it is noted that the site comprising the commercial marina facility landward of the mean high water mark is zoned C4 Environmental Living and this commercial use is subject to additional permitted use rights applying to the land. This zoning is anomalous to other such facilities in the Pittwater in that the landward component of other such facilities are generally zoned either W4 Working Waterfront or RE2 Private Recreation. In those cases, the land zoning anticipates marina/commercial facilities as the primary land use, whereas in the case of the subject site, the C4 zoning (and surrounding context) is primarily suited for residential development. Given the anomalous zoning of the subject site, it would appear that the retention of this specific commercial facility was not a high priority.</p> <p>In addition to the zoning matters discussed above, the specific location of the site brings in to question the appropriateness of the existing commercial marina use. In this regard, the site's location at the extreme southern extent of the Pittwater waterway in a relatively enclosed bay, surrounded by low-density residential development, is likely to contribute to a greater level of amenity and natural environmental impacts than a future residential marina that is more typical of nearby waterway uses.</p> <p>On balance, it is considered that the proposed residential land use is most appropriate for the site and the additional housing supply facilitated by the proposed outweighs the benefits of retaining the</p>

existing commercial marina facility.

It is agreed that the necessary re-alignment of the foreshore building line and re-zoning of the W2 zone should occur through housekeeping amendments to the PLEP, separate to the DA process. It is noted that the amended subdivision layout and building footprints generally address the foreshore building line matter and conditions of consent are recommended in this regard.

Updated Referral Comments - 31 October 2023

No objections or conditions. In this regard, the outcome of further discussions including Managers Review on 23 & 24 October 2023 agreed that maintenance of, and access to commercial opportunities (Marina etc) as a consequence of the subdivision should not be an impediment to the subdivision. Furthermore, that the application should not be required to seek the various required LEP amendments by way of Conditions of Development Consent and that SPP Team may undertake such amendments as required in the future. It is further understood that consideration is being given to conditions relinquishing of commercial lease for marine etc, at which time SPP may further consider such LEP amendments.

Referral Comments - 14 February 2023

In conclusion - Proposal is unacceptable, however subject to design amendments of proposal it may become acceptable.

A consequence of the proposed subdivision is that the subject land would appear to be no longer be suitable for marinas, boat building and repair facilities and charter and tourism boating facilities. In particular the subdivision of the former marina site into residential lots restricts access to foreshore and land zoned W2 providing for marina services and facilities. It may be concluded that the opportunity for commercial waterway uses, under site specific provisions of the LEP would become unsuitable due to access and amenity issues created by the subdivision.

The site specific provisions of the LEP for the development site and adjoining foreshore are as follows:

- W2 zone directly adjoining the land is limited to the former Marina and permits in particular Marina, boat building and repair facilities and charter and tourism boating facilities. The DA would appear, based on the SoEE, to provide limited private residential access to the jetty and associated structures. The remainder of the foreshore is zone W1 with an APU for jetties , boatshed and water recreation structures which would appear to be consistent with the future residential purposes of the land

- APU 15 applies to the land being subdivided for the purpose of

housing. The land uses additionally permitted in LEP Schedule 1 would likely no longer be suitable on the land (Marina, boat building and repair facilities and charter and tourism boating facilities.)

- FSBL realigned more contiguous with vicinity (deleting the drafting of line around the former commercial Marina building to be demolished and replaced with dwelling. Provisions exist under the LEP clause that provide for exceptions to the limited development clause.

The loss of land that is suitable for the above commercial waterway services and facilities is considered to be inconsistent with relevant strategic policy which is considered relevant in terms of the evaluation of the DA under s.4.15(1)(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality, and s.4.15(1)(c) the suitability of the site for the development.

Pittwater Waterways Strategy

Theme 1. Economics of the Waterway. 9. Maintain and ensure access to commercial opportunities around the Pittwater waterway.

Theme 6. Waterway regulation Direction 3. Undertake a strategic sites assessment and planning proposal to amend the LEP to expand the W2 zone in appropriate locations to permit, with development consent, sustainable marina expansion

Northern Beaches Strategic Planning Statement

Priority 1. Healthy and valued coast and waterways (including support for a thriving marine industry Pittwater)

Action 1.8. Expand the W2 zone, subject to a strategic sites assessment, to permit, with consent, sustainable marina expansion. Marina expansion would only be considered subject to appropriate regard being given to all impacts including, but not limited to, environmental, social, economic, transport, traffic, visual and waterway navigation

While the proposal is considered to be unacceptable in terms of strategic directions and actions for sustainable marina expansion, consideration may be given to further submissions and/or amendments which may demonstrate that the proposal retains appropriate opportunity and suitability for marina purposes in the future as provided in the LEP.

In circumstances where the proposed subdivision may be supported in a manner in which use of the site and access to the foreshore for and access for marina purposes are no longer suitable and result in likely impacts of the development under the evaluation of the DA, the following DA condition is recommended.

Internal Referral Body	Comments
	<p>THAT the applicant lodge a Planning Proposal with Council prior to the registration of the subdivision to amend Pittwater LEP 2013 in a manner which rezones the W2 zone directly adjoining the land to W1 with additional permitted uses (area 23) for jetties , boatshed and water recreation structures; omit APU 15 removing additional permitted Marina, boat building and repair facilities and charter and tourism boating facilities and to amend the FSBL, realigned more contiguous with adjoining dwelling houses.</p> <p>Further note: In relation to the consideration of future development of the site for the erection of a dwelling houses adjoining the foreshore, the siting of such development, particularly in the vicinity of the former Marina building and notwithstanding the FSBL, may more appropriately align with adjoining residential development – noting the existing FSBL is drafted to particularly reflect the location of the Commercial Marina building on the land.</p>
Traffic Engineer	<p><b>Supported with conditions.</b></p> <p><b>Referral comments 14/11/23</b></p> <p>The latest amended Engineering Plans has considered some but not all of Councils comments regarding the required roadworks in The Avenue. Additional swept path analysis have also been provided for the Waste Vehicle and Fire Truck manoeuvres.</p> <p>The alignment of the southern kerbline is irregular and appears to mirror the existing irregular northern pavement edge where there is no kerb and gutter. The design of the road and new kerb alignment on the southern side of The Avenue should be based on the property boundary of the development site with clean transitions between sections where the road width is reduced. The swept path analysis needs to be undertaken on the approved kerb alignment. The design requirements will be included as part of the Conditions of Consent with the final kerb alignment and road layout to be approved by Council's Traffic Engineer under Section 138 and 139 of the Roads Act 1993, prior to the issue of the Construction Certificate. The required works within Council's Public Road Reserve are to be read in conjunction with comments and any additional works required by the Development Engineering section.</p> <p>The proposal can therefore be supported subject to the recommended Conditions.</p> <p><b>Referral comments 17/10/23</b></p>

Internal Referral Body	Comments
	<p>The Architectural Envelope Plan has been modified to provide six lots instead of seven. The areas for Lots 1 and 2 remain the same, while Lots 3, 4, 5, 6, 7 and 8 have increased in size. The vehicle entry to Lot 3 has moved from the northern end to the southern end of the internal road frontage, which reduces the effective length of the passing bay. The previous Plan situates the passing bay between the internal driveways to Lots 2 and 3, which allows a vehicle to use the additional width of the driveways to draw-in and draw-out so that an oncoming vehicle can pass. The previous passing bay layout and internal driveway locations should therefore be retained. The passing bay should be signposted 'No Parking' to prevent vehicles using the space for on-street parking.</p> <p>The Applicant proposes 'No Stopping' restrictions on both sides of The Avenue. The Avenue is currently unrestricted which allows parking on either side of the road. Any changes to the existing parking restrictions would require consultation with affected residents prior to reporting to the Traffic Committee. The installation of 'No Stopping' restrictions is not supported; however Transport Network could recommend a proposal for 'No Parking' restrictions on the northern side of The Avenue. Each Lot is likely to provide a double garage for off-street parking and the proposed shared access driveway is 3.25m wide, which does not enable additional parking needs. It is therefore important to provide some on-street parking on the southern side for visitors and overflow of parking. The access driveway for Lot 1 should be directly off The Avenue and located at the eastern end of the Lot. This would maximise the available on-street parking east of the shared access driveway, providing up to five parallel parking spaces. The installation of parking restrictions on the southern side of The Avenue would only be considered west of the shared access driveway.</p> <p>The Applicant has provided a General Roadworks Plan for The Avenue, and additional swept paths for a Waste Vehicle (10.5m length) reversing into the new shared access driveway to turn around in The Avenue. The General Roadworks Plan Drawing No.CI-0330 Rev.B, shows the proposed roadworks (approximate 8m wide road) from the intersection with Crescent Road to the new access driveway.</p> <p>The Pittwater21 DCP requires the design and half-width road construction along the entire frontage of The Avenue. Upon further review of the amended plan, it appears that the southern kerbline is based on the road width and existing location of the northern edge of pavement and proposed swept path of the Waste Vehicle. However, the Plan seems to overlook that there is a power pole on the corner of The Avenue and Crescent Road and the verge is too narrow to provide a footpath connection at the eastern end. The new kerb will need to be realigned and radius adjusted to tie-in with the existing infrastructure in Crescent Road. At Chainage 26.3, the verge on the</p>

Internal Referral Body	Comments
	<p>southern side measures approximately 3.5m wide, and it is recommended that this is the minimum verge width to be extended up to the corner property boundary of Lot 1. There is also a power pole with streetlight near this location and it should be checked that the new kerbline allows for sufficient offset of the power pole. The minimum verge width would also enable the construction of a 1.5m wide footpath along the frontage of The Avenue, as required under the DCP. The proposed overall road width of 8m should also extend to at least the western splay of the driveway near Tree T57 (approximate Chainage 53), before tapering to the existing road width in front of Tree T59. Kerb and gutter are required up to the driveway of Lot 8.</p> <p>The amended plans do not incorporate the critical swept paths for a Fire Truck to access and exit the site. The Applicant previously provided a swept path analysis for a Waste Vehicle and Fire Truck in response to the Traffic Engineer referral comments dated 15/8/23. It has been noted that the changes to the Architectural Envelope Plan include the removal of one of the Lots at the southern end of the site, which may provide additional area for the construction of a turning area at the southern end of the site. Council's preference is that a formal turning area be provided for larger vehicles. Our previous comments noted that the use of the driveway for trucks to turn around is not ideal, however could be accepted with the wider vehicle crossing design. The amended plans do not include any changes to improve truck access.</p> <p>The swept path analysis demonstrates that the required manoeuvres for both Waste Vehicles and Fire Truck access are extremely difficult if not impossible, especially the Fire Truck movements which appears to mount the kerb of the shared access driveway when entering in the forward direction. The access driveway to the site is only 3.25m wide with a vertical faced kerb. On a straight section of road, a 2.5m wide 3 axle Heavy Rigid Vehicle will have minimal clearance between the kerbs, even before considering the additional turn and reversing movements. If a turning area is not provided for trucks in The Avenue or within the site, then the access driveway within Council's Public Road Reserve must be widened to 5.5m and incorporate 2m splays at the interface with The Avenue. The width at the property boundary is to transition to the shared driveway width of 3.25m over a length of 4m into the site. The modification will require an adjustment to the Right Of Way and area of Lot 1. The total area of Lot 1 would be slightly reduced however would still exceed 700m<sup>2</sup>. The overall area of Lot 2 is 700m<sup>2</sup> and has not changed.</p> <p>Waste Services have also raised concerns regarding the constrained driveway required for the reversing manoeuvres and have indicated that they would support a wider driveway design. The design should enable trucks to complete the manoeuvres in a 3-point turn and it</p>



Internal Referral Body	Comments
	<p>unlikely that the current proposal can achieve this when in reality multiple attempts would have been required to draft the desired swept paths on the plans provided. The proposal therefore cannot be supported by Transport Network or Waste Services without the required changes to Lot 1, shared access driveway and works in Council's Public Road Reserve.</p> <p><b>Referral comments 15/8/23</b></p> <p>The amended plans have been reviewed along with the Response to Request for Information. The proposal does not address the access issues previously raised or infrastructure requirements in accordance with Council's Pittwater21 DCP.</p> <p>C4.4 Subdivision - Public Roads, Footpath and Streetscape, requires the subdivision include the design and construction of the perimeter road for half width construction including road pavement, vertical kerb and gutter, footpaths or cycleways (minimum 1.5m width or minimum 2.1m width where a cycleway is required), street lighting and landscaping, for full width of the development site frontage to all public road reserves and shall include any intersection to provide access the subdivision all at the full cost to the applicant.</p> <p>The Avenue is a no through road and access road which connects to Crescent Road. The sealed pavement width varies between 4-6m in width and there is no kerb and gutter or constructed footpath. The design road for The Avenue should be 7m wide, and include the road pavement, vertical kerb and gutter, and a 1.5m wide footpath behind the kerb. Crescent Road has existing kerb and gutter and Council recently constructed a 1.5m wide footpath along the western side of the road fronting the development. No additional infrastructure is therefore required along Crescent Road.</p> <p>C4.6 Service and delivery vehicle access in subdivisions, requires that roads and accessways within the subdivision are to be designed and constructed to accommodate access for waste, recycling, service, emergency and delivery vehicles. It is noted that Waste Services supports the proposal for kerbside collection and therefore waste vehicles are not required to access the subdivision. The shared access driveway must still be able to provide adequate access for emergency and delivery vehicles. Delivery vehicles for removalists can be considered to be Medium Rigid Vehicles (8.8m length and 2.5 width), however the shared access driveway should be designed for the largest vehicle type being a fire truck (10m length and 2.5 width). The shared access driveway should be designed to</p>

Internal Referral Body	Comments
	<p>cater for emergency vehicle access with swept paths undertaken to demonstrate turning movements entering and exiting the site.</p> <p><b>Access and Parking</b></p> <p>The shared access driveway off The Avenue is 3.25m wide and approximately 60m in length. A passing bay 2.5m wide and 6.5m in length is situated immediately south of the driveway to Lot 2, shown on the Subdivision Plan - Dwg No. AD-DA905. The internal driveway to Lot 2 must be 3.5m wide to provide an effective length of 10m for the required passing bay. The passing bay should be signposted 'No Parking' to prevent vehicles using the space for on-street parking.</p> <p>Architectural Envelope Plan - Dwg No. AD-DA903, shows potential alternative driveway entries for Lot 1, 2 and 3 off Crescent Road. The driveway access for Lot 2 and 3 should be off the shared access driveway, and Lot 1 should be directly off The Avenue. These access arrangements are also supported in the Transport Statement prepared by JMT Consulting. The Transport Statement also indicates that the proposal makes provisions for pedestrian connections through the site. Shared Zone signage should be considered if there are no proposals for a footpath within the subdivision and pedestrians are required to walk on the road.</p> <p>Waste Services has indicated that there are no provisions for waste collection vehicles to turn around at the end of the street. It is preferable that a turning facility for Heavy Rigid Vehicles be constructed at the western end of The Avenue as part of the required infrastructure works in the Public Road Reserve, however if this not possible due to site constraints then the provision of a wider vehicle crossing with splay to allow for easier turning could be used for larger vehicles to reverse into the shared access driveway to turn around. The alternative turning option would be subject to acceptance by Waste Services.</p> <p><b>Referral comments 8/3/23</b></p> <p>The Statement of Environmental Effects specifies that the proposal is for a subdivision which includes the demolition of the existing commercial and residential structure. The subdivision plan proposes nine separate residential lots, however no residential dwelling designs are currently proposed at this stage. These will be subject to a future detailed Development Application, along with an appropriate Development Application to Council (with Office of Crown Lands consent) to convert the existing commercial marina to a residential marina of 9 berths.</p>

Internal Referral Body	Comments
	<p><b>Access and Parking</b></p> <ul style="list-style-type: none"> <li>- A shared access driveway off The Avenue provides access to six of the lots within the proposed subdivision. There are two lots which have individual driveways off The Avenue, and one lot has a driveway off Crescent Road.</li> <li>- The Applicant's Transport Statement indicates that car parking arrangements will be provided as part of the separate Development Applications for the individual lots, however the subdivision plan allows for two standard car parking spaces to be provided for each lot as required by the Pittwater DCP. The proposed shared access driveway is 3.25m wide, and approximately 60m in length with a passing bay provided mid-way between two individual driveways.</li> <li>- A combined entry/exit width of 5.5m should be provided which extends for a minimum 6m length beyond the property boundary, to enable the provision of a waiting bay at the entry, so waiting vehicles are not encroaching on the Council Public Road Reserve. A passing bay should also be located approximately midway along the length of the shared access driveway. The location of the passing bay or individual driveways may need to be adjusted to ensure that the passing bay allows the entering and exiting vehicles to pass. Additional swept paths are required to demonstrate that the passing bay is designed to cater for the vehicle movements.</li> <li>- The Applicant has completed a Waste Management Plan for the demolition works, however there is no information on how the subdivision will be serviced in the future with respect to weekly waste collection. Unless kerbside collection of waste bins is proposed, the internal road or access driveway will need to be designed to cater for a waste vehicle.</li> </ul> <p><b>Infrastructure Works in the Public Road Reserve</b></p> <p>The proposed subdivision should include the design and half-width road construction of The Avenue.</p> <p>The design road for The Avenue should be 7m wide, and include the road pavement, vertical kerb and gutter, and a 1.5m wide footpath. The western end of The Avenue should incorporate a hammer head type design to allow a 10.5m waste vehicle to turn around at the end of the road. A 1.5m wide footpath is also required along the frontage of the site in Crescent Road. The Transport Statement indicates that the proposal provides for pedestrian connections through the site to the boat ramp. Shared Zone signage should be considered if there are no proposals for a footpath within the subdivision and pedestrians are required to walk on the road. Additional details and works may</p>

Internal Referral Body	Comments
	<p>be specified by Council's Development Engineering section as part of their assessment.</p> <p><b>Traffic Generation</b></p> <p>The future traffic generation has been assessed in accordance with Roads and Maritime Services (RMS) 'Guide to Traffic Generating Developments 2013'. The transport statement estimates that development generates 9 trips during both the AM and PM peak hour periods. It also notes that the Sirsi Marina which previously occupied part of the development site (along with four separate dwellings), could accommodate over 20 car park spaces and would generate greater volumes of traffic when compared to the proposed development. Although it is acknowledged that the new development would generate less overall traffic to the area than the previous combined sites, there would still be an additional increase of 5 vehicle trips in The Avenue, during both the AM and PM peak hour periods, as 5 additional dwellings have driveway accesses off The Avenue.</p> <p><b>Additional considerations</b></p> <p>It is noted that Council's Landscape section has raised concerns regarding the location of the proposed driveway to Lot 9 and impact on trees No.56 and 59. It was suggested that the driveway be relocated to the west or internally off the shared access driveway. It may not be possible for the driveway to be relocated to the western end of Lot 9, if provisions are made to enable a waste vehicle to turn around at the end of The Avenue.</p> <p>The Applicant should consider the above comments regarding access and required infrastructure. Updated plans and details should be provided so that the proposal can be reviewed for further consideration. It is also recommended that the proposal be referred to Council's Waste Services section for comment. Unless kerbside collection of waste bins is proposed in The Avenue, additional changes may be required to the shared access driveway/internal road to facilitate waste collection within the subdivision.</p>

Internal Referral Body	Comments
Waste Officer	<p><b>Supported with conditions.</b></p> <p><u>Waste Services Assessment - Amended engineering plans 2023/724272</u>  <i>Supported subject to conditions</i></p> <p>The access for waste collection , also assessed by Councils traffic officers appears to be suitable for waste collection vehicles to collect waste from adjacent to the new accessway to the properties. As previously advised, waste collection procedure will be as follows and conditioned.</p> <p>Council will support the proposal for kerbside collection from each property via the use of individual bin sets according to the following:</p> <ul style="list-style-type: none"> <li>• Lot 1 - bins collected from either Crescent Road or The Avenue.</li> <li>• Lots 2, 3, &amp; 4 - bins collected from Crescent Road</li> <li>• Lots 5, 6, 7, &amp; 8 - bins collected from The Avenue adjacent to the site access road entry.</li> <li>• Lot 9 - bins collected from The Avenue</li> </ul> <p>Lots 1, 2, 3, 4 &amp; 9 will not be permitted to place their bins adjacent to the site access road entry for collection. There are too many bins for the available kerbside space.  A suitably sized and located area must be nominated within each lot for the storage of the 4 bins provided by Council. For lots 2, 3 &amp; 4 this area must be adjacent to Crescent Road.</p> <p><u>Prior Waste Services advice</u>  Waste Services Assessment - plans Swept Path &amp; Proposed Sign Posting (submitted 12/10/2023)  <i>Not Supported</i></p> <p>The swept path diagrams do not show the driveway crossing. Please provide diagrams showing full dimensions of the driveway crossing overlaid by the swept path diagrams.</p> <p>The sign posting plan shows "no stopping" zones on the northern side of The Avenue and the southern side of The Avenue east of the private road way access into the property. Both of these are acceptable to Waste Services.  There is no "no stopping" zone for the the southern side of The Avenue west of the private road way access into the property. This may be required to allow the truck to reverse into the the driveway crossing.</p>

Internal Referral Body	Comments
	<p data-bbox="528 315 1434 344"><u>Waste Services Assessment - amended plans (submitted 9/10/2023)</u></p> <p data-bbox="528 349 719 378"><i>Not Supported</i></p> <p data-bbox="528 421 1370 517">The issue regarding bin collection locations has been addressed. The amended plans show alternative access to the proposed properties from The Crescent (lots 1,2,3 &amp;4).</p> <p data-bbox="528 560 1430 622">The issue regarding waste truck manoeuvring in The Avenue has not been addressed.</p> <p data-bbox="528 629 1390 757">Discussions were had that resulted in an proposal that the waste trucks would use the new driveway crossing from The Avenue and the first several metres of the private property to complete a three point turning manoeuvre - reverse in, forward out.</p> <p data-bbox="528 763 1406 826">The amended plans show the driveway crossing and private road to have a carriageway width of only 3.25 metres.</p> <p data-bbox="528 833 1374 896">This is not wide enough to allow for a 10.5 metre long, three axle, heavy rigid truck to perform the three point turn.</p> <p data-bbox="528 902 1382 999">The applicant is to provide swept path analysis demonstrating the waste truck movements in and out of the proposed new driveway crossing.</p> <p data-bbox="528 1005 1342 1068">The width and length of the driveway crossing are to be clearly marked on the plans.</p> <p data-bbox="528 1075 1382 1247">Also, parking restrictions will be required on The Avenue on either side of, and directly opposite, the driveway crossing to allow the waste trucks to complete the turning manoeuvre. The parking restrictions are to form part of the proposal and be shown on the plans.</p> <p data-bbox="528 1290 898 1319"><u>Waste Services Assessment</u></p> <p data-bbox="528 1323 719 1352"><i>Not Supported</i></p> <p data-bbox="528 1395 679 1424">Specifically:</p> <p data-bbox="528 1431 1422 1527">Clarification is required regarding roadworks to be undertaken in The Avenue to allow for the waste collection vehicles to turn around in front of lot 9.</p> <p data-bbox="528 1534 1414 1563">There are no details provided in the plans that have been submitted.</p> <p data-bbox="528 1606 890 1635"><u>Waste Collection Procedure</u></p> <p data-bbox="528 1641 1406 1704">Council will support the proposal for kerbside collection from each property via the use of individual bin sets according to the following:</p> <p data-bbox="528 1747 1355 1776">Lot 1 - bins collected from either Crescent Road or The Avenue.</p> <p data-bbox="528 1783 1179 1812">Lots 2, 3, &amp; 4 - bins collected from Crescent Road</p> <p data-bbox="528 1818 1422 1881">Lots 5, 6, 7, &amp; 8 - bins collected from The Avenue adjacent to the site access road entry.</p> <p data-bbox="528 1888 1027 1917">Lot 9 - bins collected from The Avenue</p> <p data-bbox="528 1960 1422 2056">Lots 1, 2, 3, 4 &amp; 9 will not be permitted to place their bins adjacent to the site access road entry for collection. There are too many bins for the available kerbside space.</p> <p data-bbox="528 2063 1418 2092">A suitably sized and located area must be nominated within each lot</p>

Internal Referral Body	Comments
	<p>for the storage of the 4 bins provided by Council. For lots 2, 3 &amp; 4 this area must be adjacent to Crescent Road.</p> <p><u>Waste Services Assessment</u> <i>Not Supported</i></p> <p>Access for waste collection vehicles:</p> <p>The private road needs to meet the requirements of a roadway in the DCP, which is a minimum width of 6m with no on street parking permitted. This allows 10.5m waste collection truck to turn the corners and use the arm on the left to service each dwelling.</p> <p>The collection vehicle is a 3 axle heavy rigid vehicle. The vehicle specifications are in Appendix B of Waste Management Guidelines.</p> <p>A private road is required to meet the waste management requirements in the Waste DCP - chapter 7 of the Waste Management Guidelines</p> <p>Specifically:</p> <ul style="list-style-type: none"> <li>• The road must be wide enough to allow a minimum 6m wide carriageway that is clear at all times of on-street parking or any other obstructions. If there is on street parking, the carriageway needs to be a minimum of 7.5m kerb to kerb.</li> <li>• A swept path analysis is required to demonstrate that the collection vehicles can negotiate any corners as well as the entry/exit points in both directions.</li> <li>• The plans need to demonstrate that the collection vehicles can enter and leave the property in a forward direction. The waste vehicle should only be expected to make a 3 point turn to complete a u turn.</li> <li>• The road's longitudinal gradient must not exceed 16%.</li> <li>• The desired maximum turning head gradient is 10%.</li> <li>• The shape of the cul-de-sac head is to be either a bowl, 'T' or 'Y' shaped arrangement to allow collection vehicles (Heavy Rigid Vehicle) to turn.</li> <li>• A turning bowl must have a minimum 19m diameter.</li> <li>• The nature strip (including the footpath, if there is one) must be a minimum of 1.5m wide and higher than the road level to allow space for residents to present their bins and bulky goods for collection.</li> <li>• Roadways must be free from obstructions such as street furniture, vegetation and poles</li> <li>• If there is an OSD tank under the road, the road must be able to support a 23 tonne waste collection vehicle.</li> <li>• A minimum working clearance of 4.5m above the road pavement must be provided for aerial cabling, street lightning, trees etc.</li> </ul>

Internal Referral Body	Comments
	<p><b>Indemnity Requirements</b></p> <p>The applicant will need to indemnify Council and its contractor/s from and against all claims, actions, costs, expenses, loss or damage while providing the waste service. See appendix E for Indemnity templates (Positive Covenant). The template/s that must be completed will be included as a condition of consent in the approved DA.</p> <p>Please include Council Waste Collection clauses in the Community Management Statements. These clauses are contained in Appendix D of the Waste Management Guidelines.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>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.</p>
Aboriginal Heritage Office	<p><b>Supported with conditions.</b></p> <p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>A Due Diligence Aboriginal Archaeological Assessment was completed by AMAC – Archaeological Management &amp; Consulting Group in July 2023. The Aboriginal Heritage Office agrees with the recommendations outlined in the report.</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>



External Referral Body	Comments
<p>Nominated Integrated Development - Department of Planning and Environment - Water - Water Management Act 2000, s91 - Controlled Activity Approval for works within 40m of watercourse</p>	<p><b>Supported with conditions.</b></p> <p><u>DPE Water Comments</u>  If the proposed development is approved by Council, the department requests these GTA be included (in their entirety) in Council's development consent. Please also note the department requests notification:</p> <ul style="list-style-type: none"> <li>• if any plans or documents are amended and these amendments significantly change the proposed development or result in additional works or activities (i) in the bed of any river, lake or estuary; (ii) on the banks of any river lake or estuary, (iii) on land within 40 metres of the highest bank of a river lake or estuary; or (iv) any excavation which interferes with an aquifer.</li> </ul> <p>The Department of Planning and Environment—Water will ascertain from the notification if the amended plans require review of or variation/s to the GTA. This requirement applies even if the amendment is part of Council's proposed consent conditions and do not appear in the original documentation.</p> <ul style="list-style-type: none"> <li>• if Council receives an application under s4.46 of the EPA Act to modify the development consent and the modifications change the proposed work or activities described in the original DA.</li> <li>• of any legal challenge to the consent.</li> </ul> <p><u>Planner Comments</u>  The development application has been amended since the provision of the GTA by DPE Water. However, the amendments made do not significantly change the physical aspects of the proposal or result in additional works as specified in (i), (ii), (iii) or (iv). As such, it is not necessary to re-refer the applicant to DPE Water as a result of the amendments.</p>
<p>Concurrence - Relevant Crown Department or Authority - Crown Development</p>	<p><b>Supported without conditions.</b></p> <p>The department has reviewed Councils request for comment and advise that upon reviewing the plans as part of the Landowner's Consent and plans provided to Council for the DA the proposed works on Crown Lands have not changed. Please note the existing and proposed easement will benefit Council. Council will be responsible for the maintenance of the stormwater infrastructure within the easement, as is required under s59A of the Local Government Act 1993. The department has no further comments in relation to this development application.</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 (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 3 Coastal environment area**

##### **2.10 Development on land within the coastal environment area**

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

- a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
- b) coastal environmental values and natural coastal processes,
- c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
- d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
- e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- f) Aboriginal cultural heritage, practices and places,
- g) the use of the surf zone.

Comment:

The applicant was referred to DPE Water in addition to the following Natural Environment and Climate Change sections of Council for assessment:

- Bushland and Biodiversity;
- Riparian Lands and Creeks;
- Development Engineering;
- Flooding;
- Coast and Catchments; and
- Water Management.

No objections were raised to the amended proposal by the above referral bodies in relation to impacts upon the natural environment, coastal values and processes, water quality or marine vegetation. Appropriate conditions of consent have been provided by the above referral sections to avoid or minimise impacts in relation to the above matters; these conditions are included in the recommendation of this report. The proposed works within the foreshore are limited to the necessary stormwater infrastructure and the development will not impact upon foreshore access. The application was referred to the Aboriginal Heritage Office, who raised no objection to the works subject to the recommended conditions.

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

Comment:

Council is satisfied that the proposal will have no adverse impacts in relation to the matters referred to in subsection (1).

**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 platform for members of the public, including persons with a disability,
    - ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
    - 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
    - ii) adverse 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 subdivision and associated works included in the application will have no adverse impacts in relation to foreshore access, overshadowing, views, visual amenity or Aboriginal or built heritage values.

## 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 unlikely to cause increased risk of coastal hazards on the site or surrounding land.

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.

In response to the above requirements of Chapter 4, the applicant has submitted a Detailed Environmental Site Investigation dated 6 October 2022 and prepared by Aargus Pty Ltd. In its

conclusion, the investigation states:

*"Based on the results of this investigation it is considered that the risks to human health and the environment associated with soil contamination at the site are low within the context of the proposed use of the site for a residential development.*

*Based on the CSM, the following data gaps were identified with respect to the pollution linkages identified:*

- *The vertical and/or lateral extent of the impacted soils at locations BH2, BH6, BH7, BH12 & BH16.*
- *No investigation was conducted within the existing building footprints across the site.*
- 

*The site is therefore considered to be rendered suitable for the proposed use, subject to the following:*

- *An appropriate remedial / management strategy is developed, culminating in preparation of a Remedial Action Plan (RAP) in accordance with EPA guidelines, in regard to addressing for the data gaps across the site, in particular the contaminated topsoil materials in the proposed development area.*
- *Any soils requiring removal from the site, as part of future site works, should be classified in accordance with the "Waste Classification Guidelines, Part 1: Classifying Waste" NSW EPA (2014).*

*If during the remaining site works, significant odours and / or evidence of gross contamination not previously detected are encountered, or any other significant unexpected occurrence, site works should cease in that area, at least temporarily, and the environmental consultant should be notified immediately to set up a response to this unexpected occurrence."*

Council's Environmental Health section has reviewed the application and raise no objection to the proposal subject to compliance with the recommendations made within the report, including completion of a Remediation Action Plan and Data Gap Analysis.

In this regard, Council is satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation are included as conditions in the Recommendation of this report.

#### **Pittwater Local Environmental Plan 2014**

Is the development permissible?	Zone C4 : Yes Zone W2 : No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone C4 : Yes Zone W2 : Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size	700m <sup>2</sup> (excl. vehicular access ROW)	Lot 1: 707m <sup>2</sup>	N/A	Yes
		Lot 2: 709m <sup>2</sup>	N/A	Yes
		Lot 3: 737m <sup>2</sup>	N/A	Yes
		Lot 4: 810m <sup>2</sup>	N/A	Yes
		Lot 5: 1,098m <sup>2</sup>	N/A	Yes
		Lot 6: 746m <sup>2</sup>	N/A	Yes
		Lot 7: 742m <sup>2</sup>	N/A	Yes
		Lot 8: 740m <sup>2</sup>	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.6 Subdivision - consent requirements	Yes
2.7 Demolition requires development consent	Yes
4.1 Minimum subdivision lot size	Yes
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	No
7.10 Essential services	Yes

Detailed Assessment

**Zone C4 Environmental Living**

The proposed development is considered and assessed against the objectives of the C4 Environmental Living zone of the PLEP 2014, as follows:

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

Comment:

The siting and design of the development, as amended, is considered to respond appropriately to the ecological, scientific, cultural, and aesthetic values present on the site and surrounding land. Council's NECC referral sections have undertaken a comprehensive assessment of the environmental impacts of the development. Council's support for the removal of prescribed trees is generally limited to that necessary to allow the necessary civil works to be carried out,

with the remaining prescribed trees are required to be retained. The retained trees will be subject to further assessment as part of future development applications for new dwellings on each lot and the requirement for replacement/new planting may be imposed through those future applications. Suitable conditions of consent are also recommended to manage the impacts of the development in relation to water management, erosion control, foreshore processes and construction management. The submitted Aboriginal Heritage Report has been reviewed by the AHO who raised no objection subject to the recommendations included in the report and there are no listed built heritage items in the vicinity. The proposed civil works will not cause any adverse aesthetic impacts and a detailed assessment of the visual impacts of individual dwellings on each lot will be undertaken through the relevant future development applications.

The proposed subdivision is found to be consistent with this objective, subject to the recommended conditions.

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

Comment:

The proposed residential subdivision is permitted with consent on the site and will be compatible with the surrounding residential land uses. For the reasons stated in relation to the above objective, the proposal is not considered to have an adverse impact upon the ecological, scientific, cultural or aesthetic values of the land.

The proposed subdivision is found to be consistent with this objective, subject to the recommended conditions.

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

Comment:

The proposal, as amended, achieves an appropriate density and complies with the minimum lot size standard applicable to the site. The submitted indicative envelope, section and site layout plans demonstrate that each lot is capable of supporting dwellings and landscaping that can comply with the applicable building height, built form and landscaping controls contained within the PLEP 2014 and P21DCP. Accordingly, it is considered that the proposal can facilitate future residential development of a density and scale commensurate with surrounding development that is integrated with the landform and landscape.

The proposed subdivision is found to be consistent with this objective, subject to the recommended conditions.

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

Comment:

The proposed works within the immediate foreshore area are limited to the required stormwater infrastructure; the balance of the works are within the development site and the adjacent road reserves. It is noted that the existing foreshore interface predominantly comprises a concrete hardstand with no landscaped area or vegetation. The removal of the existing concrete hardstand and replacement native tree planting is required by condition and the regeneration

and enhancement of foreshore vegetation and wildlife corridors within the waterway area will occur through the future marina development.

The proposed subdivision is found to be consistent with this objective, subject to the recommended conditions.

Based on the above assessment, the proposal is consistent with the objectives of the C4 Environmental Living zone.

### **Zone W2 Recreational Waterways**

Ancillary stormwater works associated with the residential subdivision are proposed within the W2 zone. Residential landuse is not permitted within the W2 zone.

#### **Permissibility**

Section 2.138 of SEPP (Transport and Infrastructure) 2021 provides that *Development for the purpose of a stormwater management system may be carried out by any person with consent on any land.*

Section 2.136 defines a *stormwater management system* as:

***stormwater management system* means—**

- (a) works for the collection, detention, harvesting, distribution or discharge of stormwater (such as channels, aqueducts, pipes, drainage works, embankments, detention basins and pumping stations), and*
- (b) stormwater quality control systems (such as waste entrapment facilities, artificial wetlands, sediment ponds and riparian management), and*
- (c) stormwater reuse schemes.*

#### **Comment:**

The proposed works within the W2 zone are for the installation/alteration of stormwater infrastructure to facilitate the disposal of stormwater to the waterway and are appropriately defined as a stormwater management system. Evidence of consent from NSW Crown Lands as the landowner of the W2 zoned land has been supplied with the application.

As such, the proposed works within the W2 zone are permitted with consent pursuant to Section 2.138 of the SEPP.

#### **Consistency with W2 Zone Objectives**

The proposed development is considered and assessed against the objectives of the W2 Recreational Waterways zone of the PLEP 2014, as follows:

- *To protect the ecological, scenic and recreation values of recreational waterways.*
- *To allow for water-based recreation and related uses.*
- *To provide for sustainable fishing industries and recreational fishing.*
- *To provide for amateur and professional recreational yachting or boating clubs and the like that serve Pittwater and the wider region.*
- *To ensure development does not adversely impact on the enjoyment and use of the waterway or adjoining land.*



- *To provide for a variety of passive and active recreational pursuits and water-based transport while preserving the environmental setting of the waterway.*
- *To ensure that public access to the waterway and foreshore areas suitable for public recreational and transport purposes is maintained.*

Comment:

The proposed works located within the W2 zone are limited to the provision of stormwater infrastructure necessary to service the primary residential land use within the adjacent C4 zone. The proposed structures are located below the existing ground level, with the exception of the existing reused headwall outlet. The proposal has been assessed by DPE Water and Council's NECC referral sections with no objections raised in relation to impacts to the natural environment, including the waterway. Given the nature and location of the works within the W2 zone, the proposal will not adversely impact the recreational enjoyment and use of the waterway and adjoining land. Public access to the waterway and foreshore areas will be unaffected.

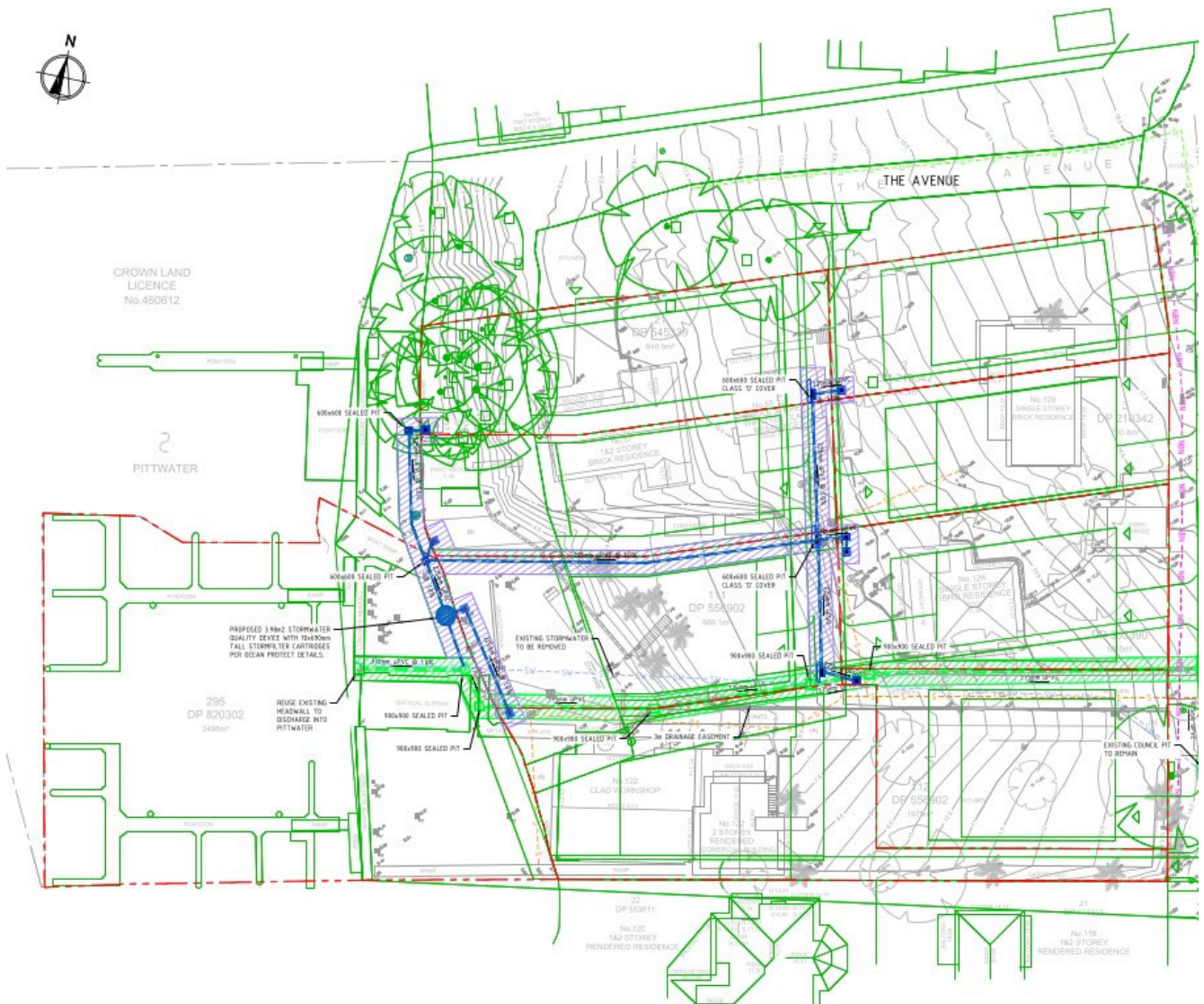
Based on the above assessment, the proposal is consistent with the objectives of the W2 Recreational Waterways zone.

**4.6 Exceptions to development standards**

**Description of Non-compliance**

Development Standard	Limited Development on Foreshore Area
Requirement	No extension of footprint within the foreshore area
Proposed	15.7m
Percentage Variation to Requirement	N/A

The proposed variation relates to the installation of various stormwater structures to facilitate the disposal of water into the waterway. Specifically, the works include the relocation of an existing Council stormwater pipe and the provision of private stormwater structures connecting to the Council pipe. The extent of the variation is illustrated on the below plan extract.



**Figure 1. Siteworks and Drainage Plan (CI-0200) extract illustrating the location of the proposed works within the foreshore area**

### **Assessment of Request to Vary a Development Standard**

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

### **Clause 4.6 Exceptions to Development Standards**

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

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

(2) *Development consent may, subject to this clause, be granted for development even though the*

*development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

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

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

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

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

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

*(a) the consent authority is satisfied that:*

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

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

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

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

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

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

Comment:

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

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

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

Comment:

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's

written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

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

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

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

**Applicants Written Request**

The applicants written request argues, in part:

- *The proposal for subdivision of the land and necessary servicing in order to meet the needs and standards for infrastructure for future dwellings is appropriate. The lack of impact from the proposed works, and the design criteria applied and complied with (as set out in the information provided by BG&E to accompany this Clause 4.6) are considered justification that there are sufficient environmental planning grounds to allow the variation in the circumstances of this site.*

Comment:

It is agreed that the proposed stormwater infrastructure works are necessary to service the proposed residential subdivision. Council's Development Engineering and Water Management sections have assessed the proposal and concluded that the proposed works satisfy the requirements of Council's Water Management Policy. For these reasons the environmental planning ground relied upon by the applicant is found to be sufficient to justify the variation sought.

In this regard, the applicant's written request has demonstrated that the proposed development represents the orderly and economic use and development of the land and the proper construction and

maintenance of buildings, therefore satisfying cls 1.3 (c) and (h) of the EPA Act.

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

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

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

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

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

#### Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Limited Development on Foreshore Area development standard and the objectives of the C4 Environmental Living zone. An assessment against these objectives is provided below.

#### **Objectives of Development Standard**

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

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

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

#### Comment:

The proposal will not adversely impact on natural foreshore processes or the significance and amenity of the area. The application was referred to the relevant Council NECC and Landscape sections, none of which raised concerns in relation to natural environment or foreshore processes.

*b) to ensure continuous public access along the foreshore area and to the waterway.*

#### Comment:

The proposed works will not impact public access along the foreshore area or to the waterway.

#### **Zone Objectives**

The underlying objectives of the C4 Environmental Living zone are:

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

*aesthetic values.*

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

Notwithstanding the proposed foreshore building line variation, the proposal is found to be consistent with the underlying objectives of the zone as assessed earlier in this report.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. Given the variation to the non-numerical Foreshore Area Development Standard, the concurrence of the Secretary is assumed by the Northern Beaches Local Planning Panel.

**5.7 Development below mean high water mark**

An assessment of the proposal, including the stormwater works below the mean high water mark, has been carried out by Council's NECC referral sections. No objections were raised in relation to these works, subject to the conditions included in the Recommendation of this report.

**5.10 Heritage conservation**

There are no listed heritage items or known Aboriginal sites in the vicinity of the site. The Aboriginal Heritage Office has reviewed the submitted Due Diligence Aboriginal Archaeological Assessment and raised no objection to the proposal, subject to the recommended conditions of consent.

**7.1 Acid sulfate soils**

The site is mapped as Class 5 Acid Sulfate Soils. The recommendations of the submitted Acid Sulfate Soil Assessment and Management Plan are incorporated into the conditions of consent.

**7.2 Earthworks**

The proposed earthworks are generally limited to those necessary to facilitate the site preparation and civil works included in this application. No bulk earthworks are proposed and the proposal is not considered to result in any adverse impacts upon the environmental processes or the amenity of adjoining properties.

**7.6 Biodiversity protection**

The proposal was referred to Council's Bushland and Biodiversity section, who raised no objection subject to the recommended conditions of consent.

**7.7 Geotechnical hazards**

The site is mapped as Geotechnical Hazard H1. The submitted geotechnical report advises that the development is suitable, or can be made suitable, for the development subject to the recommendations of the report, which are incorporated into the conditions of consent.

## **7.8 Limited development on foreshore area**

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

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

*(b) to ensure continuous public access along the foreshore area and to the waterway.*

#### Comment:

Development consent for the works within the foreshore area are sought under PLEP 2014 - Clause 4.6, rather than this clause. An assessment of the proposed works against the objectives of this clause is undertaken in the Clause 4.6 section of this report. Further, the below assessment against the provisions of this clause demonstrate that the proposal will not impact upon natural foreshore processes, the amenity of the area or continuous public access to and along the foreshore and waterway.

Accordingly, the proposal is found to achieve the objectives of the control.

### **(2) Development consent must not be granted for development on land in the foreshore area except for the following purposes:**

*(a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*

*(b) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors)."*

#### Comment:

The proposal includes the undertaking of stormwater infrastructure works within the foreshore area. These works are not permitted under exceptions (a) or (b) above and constitute a non-numerical variation to the Limited development on foreshore area development standard.

A further assessment of these elements of the proposal is completed in this report under Clause 4.6.

### **(3) Development consent must not be granted under this clause unless the consent authority is satisfied that:**

*Development consent must not be granted under this clause unless the consent authority is satisfied that:*

- *the development will contribute to achieving the objectives for the zone in which the land is located, and*
- *the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*

- *the development will not cause environmental harm such as: pollution or siltation of the waterway, or an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or an adverse effect on drainage patterns, or the removal or disturbance of remnant riparian vegetation, and*
- *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
- *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
- *any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*
- *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
- *sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.*

Comment:

Development consent for the works within the foreshore area are sought under PLEP Clause 4.6, rather than this clause. Regardless, an assessment against the provisions of subclause (3) is completed below.

The proposed subdivision and associated works are found to be consistent with the objectives of the C4 Environmental Living zone and are compatible with the surrounding developments. The proposal will not cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats, drainage patterns or remnant riparian vegetation. The proposal will not conflict with the use of the adjacent open space or waterway or impact public access along the foreshore. The proposed development will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural, or aesthetic significance of the land. The proposed subdivision is well-designed and will not have an adverse impact on the amenity or aesthetic appearance of the foreshore. The proposed development will not impact upon sea level rise, coastal erosion, or recession, or change flooding patterns.

Based on the above assessment, Council is satisfied that the proposal will have no undue impacts in relation to the matters to be considered under subclause (3).

**(4) In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following:**

- *continuous public access to and along the foreshore through or adjacent to the proposed development,*
- *public access to link with existing or proposed open space,*
- *public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,*
- *public access to be located above mean high water mark,*
- *the reinforcing of the foreshore character and respect for existing environmental conditions.*



Comment:

The proposed development will maintain continuous public access to and along the foreshore or surrounding areas. The proposed development is acceptable in relation to the foreshore character and the existing environmental conditions and will reduce the risk of potential damage from uncontrolled stormwater runoff at the foreshore.

### **Conclusion**

The proposed stormwater works are found to be consistent with the objectives of the control and satisfy the relevant matters for consideration.

### **Pittwater 21 Development Control Plan**

#### **Built Form Controls**

<b>Built Form Control (P21DCP B2.2)</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation*</b>	<b>Complies</b>
Minimum Lot Depth	27m	Minimum 36m (Lot 4) - All lots comply	N/A	Yes
Minimum Lot Width at Building Line	16m	Minimum 16m (Lot 8) - All lots comply	N/A	Yes
Minimum Lot Width at Waterfrontage	9m	Minimum 13m (Lot 8) - All lots comply	N/A	Yes
Maximum Slope	16.7% / 30%	Lot 8: 11.63° / 20.58% (Lot 8) - All lots comply	N/A	Yes
Minimum Building Footprint	175m <sup>2</sup>	280m <sup>2</sup> (Lot 1) - All lots comply	N/A	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
A4.15 Waterways Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes

<b>Clause</b>	<b>Compliance with Requirements</b>	<b>Consistency Aims/Objectives</b>
B1.4 Aboriginal Heritage Significance	Yes	Yes
B2.2 Subdivision - Low Density Residential Areas	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.10 Estuarine Hazard - Subdivision	Yes	Yes
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
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
C1.13 Pollution Control	Yes	Yes
C4.1 Subdivision - Protection from Hazards	Yes	Yes
C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities	Yes	Yes
C4.3 Subdivision - Transport and Traffic Management	Yes	Yes
C4.4 Subdivision - Public Roads, Footpath and Streetscape	Yes	Yes
C4.5 Subdivision - Utility Services	Yes	Yes
C4.6 Service and delivery vehicle access in subdivisions	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C4.7 Subdivision - Amenity and Design	Yes	Yes
C4.8 Subdivision - Landscaping on the Existing and proposed public road reserve frontage to subdivision lots	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D15.1 Character as viewed from a public place	Yes	Yes
D15.2 Scenic protection - General	Yes	Yes
D15.12 Development seaward of mean high water mark	No	Yes
D15.13 Lateral limits to development seaward of mean high water mark	Yes	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	Yes	Yes

#### Detailed Assessment

#### **A4.10 Newport Locality**

The Desired Future Character (DFC) of the Newport locality is detailed within Clause A4.10 Newport Locality extract below (**Bold** emphasis is added to the most relevant sections).

#### Desired Character

***The Newport locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a natural landscaped setting, integrated with the landform and landscape. Secondary Dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancy dwellings will be located on the valley floor and lower slopes that have less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Any medium density housing will be located within and around commercial centres, public transport, and community facilities. Retail, community, and recreational facilities will serve the community.***

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

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

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

***and to enhance wildlife corridors.***

***Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved.***

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

Comment:

The proposed subdivision layout will maintain the low-density character of the surrounding area. Each of the proposed lots exceed the prescribed minimum lot size and dimensions and are capable of accommodating dwellings that comply with the applicable built form controls, are appropriately landscaped and integrated with the landform and landscape. Dual occupancy and other forms of medium density development are not permitted within the C4 zone. The proposal responds appropriately to the natural features and hazards present on the site and surrounding land.

The proposal makes adequate provision for infrastructure to service the proposed lots and includes road widening within The Avenue to facilitate improved access for residents and adjoining properties, as well as waste and emergency service vehicles.

The submitted documentation illustrates that future dwellings that comply with the building height limit and remain below the tree canopy can be accommodated. It is anticipated that these future developments can be stepped down the slope of the site to integrate with the landform and landscape and minimise further disturbance of the site. These matters, along with the suitability of the massing, articulation and finishes of individual dwellings will be subject to assessment as part of future development applications.

The proposal demonstrates an appropriate balance between the natural environment and the development of the land. Council's Landscape and Biodiversity sections are satisfied that the proposal appropriately maintains existing vegetation. Additional tree and vegetation planting will be required as part of this application and future development applications to ensure that the development of the site is compatible with the surrounding character and natural environment and enhances wildlife corridors. There are no known Aboriginal sites in the vicinity and the AHO has provided a referral response raising no concerns in relation to the proposal, subject to the inclusion of recommended conditions.

Conclusion

The proposal is considered to represent a site-responsive design that will facilitate the provision of low-density residential development capable of complying with the building height standard and DCP built form and landscaped area controls. Future development of the land is capable of avoiding or minimising unreasonable visual, amenity and natural environment impacts.

Accordingly, the proposal is assessed as being **consistent** with the DFC of the Newport locality.

**A4.15 Waterways Locality**

The Desired Future Character (DFC) of the Waterways locality is detailed within Clause A4.15 Waterways Locality extract below.

Desired Character

*The Waterway locality will remain primarily a recreational boating area. Waterfront businesses, yacht clubs and the like will meet the waterway recreational and boating needs of the community.*

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

*Future development should ensure that access is available at all times to public boating facilities, such as launching ramps. Future development will not restrict public access adjoining the foreshore, or pedestrian access along the foreshore.*

*Future development will maintain a building height limit below the tree canopy and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development will be designed to be safe from hazards. Development will co-exist with adjoining residential areas. Development will not restrict public access adjoining the foreshore, and will not obstruct navigation within the waterway.*

*A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, and to enhance wildlife corridors. Future development will include measures to ensure protection of the water quality and estuarine habitats of the locality, including mangroves, sea grasses, intertidal sand/mud flats, rocky shorelines, and beaches.*

*Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved.*

#### Comment:

The proposed works within the W2 zone are limited to stormwater infrastructure below the existing ground level. The proposed works are located within the footprint of the existing concrete hardstand and do not necessitate the removal of any existing vegetation. Given the nature and location of the works, no adverse impacts are anticipated in relation to Aboriginal sites or the natural environment.

#### Conclusion

Based on the above discussion, the proposal is assessed as being **consistent** with the DFC of the Waterways locality.

## **B2.2 Subdivision - Low Density Residential Areas**

### **Controls**

- *Any lot (or lots) to be created by a subdivision of an existing lot (or lots) shall have a minimum lot depth of 27 metres.*
- *Any lot (or lots) to be created by a subdivision of an existing lot (or lots) on land identified as Area 1 on the Landscaped Area Map shall have a minimum lot width at the building line of 16 metres.*
- *Any lot (or lots) to be created by a subdivision of an existing lot (or lots) on land identified as Area 2 or 3 on the Landscaped Area Map shall have a minimum lot width at the building line of 15 metres.*

- *Any lot (or lots) to be created by a subdivision of an existing lot (or lots) shall have a minimum lot width at the building line of 9 metres at the waterfrontage.*
- *Any lot (or lots) are to be capable of providing for the construction of a building which is safe from hazards, does not unreasonably impact on the natural environment, does not adversely affect heritage, and can be provided with adequate and safe access and services.*
- *A person shall not subdivide land if the allotment(s) intended to be created have a slope in excess of 16.7 degrees (30%), measured between the highest and lowest points on any such allotment(s).*
- The minimum area for building shall be 175m<sup>2</sup>.

Comment:

Each of the proposed lots comply with the above requirements and an appropriate density is maintained that will be compatible with the surrounding context and the desired future character.

### **B3.6 Contaminated Land and Potentially Contaminated Land**

The submitted Detailed Site Investigation Report has been reviewed by Council's Environmental Health section. No concerns are raised in relation to site contamination subject to the recommended conditions of consent.

### **B6.7 Transport and Traffic Management**

#### **Compliance with Control**

#### Transport and Traffic Planning

- *Where development generates pedestrian, cyclist, traffic and transport requirements in excess of the capacity of the existing road and transport network, the capacity of the surrounding public infrastructure and transport network is required to be upgraded to at least match the additional demands generated by the development.*
- *Any improvement works external to the development site, required to ensure the development complies with this control, must be provided as part of the development at the full cost to the applicant.*

Comment:

Council's Traffic section has required road widening works to The Avenue owing to the increase in vehicle trips along this road. A minimum 8m carriageway width in addition to kerb, gutter and footpath are required to be constructed at the applicant's expense.

- *All traffic assessments are to be undertaken in accordance with the Roads and Maritime Services Guidelines for Traffic Generating Developments or similar guidelines.*
- *All proposed traffic facilities must comply with the Roads and Maritime Services and/or relevant Australian Standards.*
- *An assessment of the impact of traffic generated by the proposed development on the local street system must be undertaken.*

Comment:

Council's Traffic section has undertaken an assessment of the proposal in accordance with the

RMS guidelines. Details of the proposed traffic/road works demonstrating compliance with RMS and Australian Standards are required to be provided through a further Roads Act application to Council.

- *Adequate vehicular entrances to and exits from the site are to be provided so that vehicles using those entrances and exits will not endanger persons using adjoining roads.*
- *Adequate space is to be provided within the site of the building or development for the loading, unloading or fueling of vehicles, and for the picking up and setting down of passengers.*

Comment:

Council's Traffic section referral includes an assessment of the proposed vehicular entrances to the site and the provision of access/manoeuvring facilities for waste and emergency services. Suitable conditions of consent are recommended to resolve these matters.

The full Traffic referral comments are included in the Referrals section of this report.

Based on the assessment completed by Council's Traffic section, the proposal complies with or is capable of complying with the above controls, subject to the recommended conditions of consent.

## **B8.6 Construction and Demolition - Traffic Management Plan**

Conditions are recommended requiring the preparation and implementation of demolition and construction traffic management plans, as required by this control.

### **C1.1 Landscaping**

The submitted architectural envelope and concept landscape layout plans (plan nos. DA-DA903 & AD-DA912) demonstrate that each of the proposed lots is capable of supporting landscaping to satisfy the requirements of this control.

To ensure that future development of the land achieves the intent of this control and to promote the orderly development of land in accordance with the objects of the EP&A Act, a condition is recommended requiring the demolition of the existing concrete hardstand within the site to occur alongside the works proposed in this application.

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

The subdivision works do not include any structures (retaining walls, fencing or the like) that will cause unreasonable view impacts on adjacent land pursuant to view sharing considerations outlined within *Tenacity Consulting v Warringah Council NSW LEC 140*.

The general layout of the subdivision, including building envelope areas, setbacks, landscaping and spatial separation between buildings has been considered and does not raise any fundamental concerns in relation to view sharing. A detailed analysis of view sharing impacts would be undertaken with regard to future development applications lodged on each allotment.

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

The proposed subdivision works will not result in any adverse overshadowing impacts. The submitted architectural envelope and section plans (AD-DA303 & AD-DA904) demonstrate that each of the proposed lot is capable of accommodating a dwelling house that complies with the applicable built

form controls and does not raise any fundamental concerns in relation to solar access.

A detailed analysis of overshadowing impacts would be undertaken with regard to future development applications lodged on each allotment.

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

The proposed subdivision works will not result in any adverse privacy impacts. The submitted architectural envelope and section plans (AD-DA303 & AD-DA904) demonstrate that each of the proposed lot is capable of accommodating a dwelling house that complies with the applicable built form controls.

The ability of the proposed lots to provide adequate physical separation does not raise any fundamental concerns in relation to privacy and the privacy impacts of specific developments will be considered in the assessment of future development applications.

### **C1.7 Private Open Space**

The submitted architectural envelope and concept landscape layout plans (plan nos. DA-DA903 & AD-DA912) include sufficient detail to show the intended building footprint for each dwelling on the proposed residential lots. In this regard, each dwelling design and lot area has sufficient private open space to achieve compliance with this requirement.

### **C4.3 Subdivision - Transport and Traffic Management**

See comment to Control B6.7 Transport and Traffic Management.

### **C4.4 Subdivision - Public Roads, Footpath and Streetscape**

See comment to Control B6.7 Transport and Traffic Management.

### **D15.1 Character as viewed from a public place**

The proposal does not include any visible works within the waterways locality.

### **D15.12 Development seaward of mean high water mark**

#### **Description of Non-compliance**

##### **Control**

*Only structures associated either with the accommodation, servicing or provision of access to boats shall be permitted seaward of mean high water mark.*

##### **Comment:**

The proposal includes works seaward of the mean high water mark for the purpose of stormwater disposal, resulting in a technical non-compliance with the above requirement of the control.

##### **Merit consideration**

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



- *To ensure minimal adverse impact on the water quality hydrodynamics and estuarine habitat of Pittwater.*
- *To ensure new buildings are not susceptible to flooding.*
- *To ensure public access is maintained and provided for along the foreshore.*

Comment:

The proposed works seaward of the mean high water mark are permitted pursuant to Section 2.138 of SEPP (Transport and Infrastructure) 2021 and will not cause any adverse impacts in relation to the adjacent waterway, flooding or foreshore access for the reasons discussed in this report.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

**D15.13 Lateral limits to development seaward of mean high water mark**

The proposed development does not involve any alteration of the existing waterfront development, with the exception of stormwater infrastructure located below existing ground level. Future works are intended to the existing marina structures through a subsequent development application.

**D15.15 Waterfront development**

The proposed development does not involve any alteration of the existing waterfront development, with the exception of stormwater infrastructure located below existing ground level. Future works are intended to the existing marina structures through a subsequent development application.

**THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

**CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

**POLICY CONTROLS**

**Northern Beaches Section 7.12 Contributions Plan 2022**

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

A monetary contribution of \$9,680 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$968,000.

**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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 7.8 Limited Development on Foreshore Area has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

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

## **PLANNING CONCLUSION**

The proposal, as amended, complies with the minimum subdivision lot size development standard under PLEP 2014 and the minimum lot area and dimension controls comply with the provisions of the P21DCP. The proposed lot sizes and layout provide suitable building footprint areas that will enable future development of new dwellings that are capable of complying with the the PLEP and PDCP built form controls and maintaining the desired future character of the locality.

The proposal has made provision for infrastructure to service the proposed subdivision and has adequately demonstrated that the natural environmental qualities of the site will not be adversely impacted.

Suitable conditions of consent are recommended by Council's internal referral sections in relation to natural environment impacts, water management, vehicular access and waste servicing.

In response to Council's public exhibition of the application, a total of 17 submissions were received in objection to the proposal. The amendments made to the proposal following the lodgement of the

application, generally resolve the concerns raised in relation to compliance with the minimum lot size control and access to the site via The Avenue. Conditions of consent are recommended to address the concerns in relation the existing marina use and structures, the foreshore area, and foreshore building line; tree removal and biodiversity impacts; water management, site remediation and geotechnical impacts; infrastructure provision (including relocation of the existing high voltage cables); and construction and waste management.

Importantly, a special condition has been imposed requiring consent for the residential use of the marina, and completion of waterway and foreshore restoration/rehabilitation works prior to obtaining a subdivision certificate. This should form a reason for determination to ensure the removal of the commercial marina operations occur and is not removed from the consent .

The proposed building footprint on Lot 5 has been conditioned to be set back a further distance from the MHWL and the subsequent realignment of the foreshore building line will be undertaken through housekeeping amendments to the PLEP 2014.

The issues raised in the submissions are addressed in detail in this report and are not considered to warrant further amendment or refusal of the application in the public interest.

On balance, the assessment concludes that the closure of the existing commercial marina and change of use to a low density residential development in the form of this 8 lot subdivision (with associated residential marina facilities) represents a better environmental planning outcome, it will enhance and improve the foreshore character and the visual and scenic qualities of this important waterfront land. The return of the site and adjacent waterfront structures to wholly residential is consistent with the desired future character as envisaged by the planning controls applying to this locality.

Accordingly, the application is recommended for approval, subject to the special and standard conditions included in the recommendation.

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

## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2022/2152 for Demolition works and subdivision of land into 8 lots including tree removal and infrastructure work on land at Lot 295 DP 820302, 122 A Crescent Road, NEWPORT, Lot 111 DP 556902, 124 Crescent Road, NEWPORT, Lot 3 DP 210342, 128 Crescent Road, NEWPORT, Lot 21 DP 545339, 57 The Avenue, NEWPORT, Lot LIC 407538, 57 The Avenue, NEWPORT, Lot LIC 460612, 57 The Avenue, NEWPORT, Lot 1 DP 503390, 126 Crescent Road, NEWPORT, Lot 2 DP 210342, 55 The Avenue, NEWPORT, Lot 111 DP 556902, 122 Crescent Road, NEWPORT, Lot 112 DP 556902, 122 Crescent Road, NEWPORT, Lot LIC 188424, 122 Crescent Road, NEWPORT, Lot 295 DP 820302, 122 Crescent Road, NEWPORT, Lot 295 DP 820302, 122 Crescent 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.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
AD-DA903	5	Architectural Envelope Plan	Scott Carver	24 October 2023
AD-DA905	4	Subdivision Plan	Scott Carver	24 October 2023
AD-DA910	2	Demolition Waste Management Plan	Scott Carver	24 October 2023
Sheet 1	B	Plan of Subdivision	Jarrod Hocking	31 October 2023
CI-0200	G	Siteworks and Drainage Plan	BG&E	3 November 2023
CI-0310	D	Overland Flow Plan	BG&E	3 November 2023
CI-0320	E	Proposed Internal Road Plan	BG&E	3 November 2023
CI-0330	C	General Roadworks Plan	BG&E	27 October 2023
CI-0340	B	Drainage Details	BG&E	12 July 2023

CI-0341	B	Council Pipe Diversion Drainage Longitudinal Section	BG&E	3 November 2023
CI-0350	D	Internal Driveway Longitudinal Sections-CL01	BG&E	27 October 2023
CI-0360	C	Internal Driveway Cross Sections	BG&E	27 October 2023
CI-0370	C	The Avenue Longitudinal Sections-CL02	BG&E	29 September 2023
CI-0371	C	The Avenue Cross Sections	BG&E	27 October 2023
CI-0700	D	Erosion and Sediment Control Plan	BG&E	27 October 2023
CI-0710	B	Erosion and Sediment Control Details	BG&E	12 July 2023

<b>Approved Reports and Documentation</b>			
<b>Document Title</b>	<b>Version Number</b>	<b>Prepared By</b>	<b>Date of Document</b>
Arboricultural Assessment Report	-	Raintree Consulting	25 May 2022
Acid Sulfate Soil Assessment and Management Plan	0	EI Australia	2 April 2022
Geotechnical Investigation Report and Landslide Risk Assessment	2B	Aargus	23 December 2022
Detailed Site Investigation	0	Aargus	6 October 2022
Estuarine Risk Management Report	-	Horton Coastal Engineering	17 October 2022
Due Diligence Aboriginal Archaeological Assessment	-	AMAC Archaeological	13 October 2023
Waste Management Plan	-	The Planning Studio	18 August 2022

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	8 November 2023
DPE Water	DPE Referral Response	8 May 2023

(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) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1

per 20 persons.

- (f) Prior to the release of the Construction Certificate, payment of the 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.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), 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.
- (k) Prior to the commencement of any development onsite for:
- i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished
- The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.



- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
- Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
- (i) Swimming Pools Act 1992
  - (ii) Swimming Pools Amendment Act 2009
  - (iii) Swimming Pools Regulation 2018
  - (iv) Australian Standard AS1926 Swimming Pool Safety
  - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
  - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewerred areas or managed on-site in unsewerred 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 2022

A monetary contribution of \$9,680.00 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 \$968,000.00.

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 \$5,000 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 (Road works)**

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

### **Drainage Works**

As security against any damage or failure to complete the construction of stormwater drainage works required as part of this consent a bond of \$400,000.00 (four hundred thousand).

### **Crossing / Kerb & Gutter / Footpath Works**

As security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways required as part of this consent a bond of \$100,000.00 (one hundred thousand)

### **Road Works**

As security against any damage or failure to complete the construction of road pavement/shoulder reconstruction works required as part of this consent a bond of \$100,000.00 (one hundred thousand)

### **Security Bond**

As security against damage to Council's roads fronting the site caused by the transport and disposal of materials and equipment to and from the site a bond of \$50,000.00 (fifty thousand)

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. Driveway Design Near Trees to be Retained**

a) driveway structural layout plans shall be developed in co-ordination with an Arborist with AQF minimum Level 5 qualifications in arboriculture, and a qualified Structural Engineer, following a non-destructive tree root investigation, complying with clause 3.3.4 of AS 4970-2009 Protection of trees on development sites, near existing tree 57, to locate critical tree roots and recommend driveway footing design and locations for the construction works.

b) the Arborist shall review, comment, recommend design revision as required and approve the driveway footing layout, to ensure the locations of footings will be manageable in terms of tree protection measures.

c) the Arborist shall submit certification to the Certifier, that the locations of the footings are accepted.

d) the agreed footing structural layout plans shall be submitted to the Certifier for approval prior to the issue of a Construction Certificate.

Reason: Tree protection.

### **9. Tree Protection Plan**

a) a Tree Protection Plan shall be submitted to the Certifier for approval prior to the issue of a Construction Certificate, demonstrating tree protection measures in accordance with AS 4970-2009 Protection of trees on development sites, to protect all trees not approved for removal under this development consent.

b) the Tree Protection Plan shall be prepared by an Arborist with minimum AQF Level 5 in arboriculture, incorporating the following:

- i) location of all trees identified for retention, including extent of canopy,
- ii) access routes throughout the site for construction activity,
- iii) location of tree protection fencing / barriers,
- iv) root protection in the form of mulching or boards proposed within the tree protection zone,
- v) trunk and branch protection within the tree protection zone,
- vi) location of stockpile areas and materials storage,
- vii) other general tree protection measures.

Reason: Tree protection.

### **10. Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil or Hydraulic Engineer who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG), indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to Council's drainage easement.

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 Aargus dated 23.12.2022 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

**12. Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: Protection of the receiving environment.

**13. Detailed Design of Stormwater Treatment Measures - Major**

A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance with the Stormwater plan rev C 9.10.23 from BG&E, results from the MUSIC model S2204 Marina MUSIC-REV 3\_Revised and Council's Water Management for Development Policy.

The certificate shall be submitted to the Certifier prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment.

**14. Construction Traffic Management Plan**

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

Management Plan (CTMP) and report shall be prepared by a TfNSW accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

Truck movements must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Due to the proximity of the site near Newport Public School , no heavy vehicle movements or construction activities affecting vehicle and pedestrian traffic are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays)
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for

the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council

- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

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

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

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

15. **Kerb Splay**

A plan showing the modified kerb splay to enable Council’s 11m waste vehicle to enter and exit the site without encroaching on to the proposed kerb shall be submitted to and approved by Council prior to the issue of the Construction Certificate.

Reason: To ensure vehicles do not impact the kerb and gutter and cause ongoing maintenance concerns.

16. **Pedestrian sight distance at property boundary**

A pedestrian sight triangle of 2.0 metres by 2.5m metres, in accordance with AS2890.1:2004 is to be provided at the vehicular access to the property and where internal circulation roadways intersect with footpaths or other pedestrian access areas.

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

Reason: To maintain pedestrian safety.

17. **Amendments to the approved plans**

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

- The building footprint on the proposed Lot 5 shall provide a minimum setback of 15 metres to the mean high water mark.
- No driveway access shall be permitted from Crescent Road for Lots 2 or 3.

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

18. **Remedial Action Plan**

A site-specific Remedial Action Plan (RAP) is to be prepared as per the results of the Detailed Site Investigation

The RAP must be prepared in accordance with the relevant guidelines and legislation including Managing Land Contamination Planning Guidelines, State Environmental Planning Policy (Resilience and Hazards) 2021 and NSW EPA Guidelines including Guidelines for Consultants reporting on contaminated Land.

The RAP is to be prepared by, or reviewed and approved, by a certified consultant as defined under NSW EPA Contaminated Land Consultant Certification Policy and submitted to the satisfaction of the Principal Certifying Authority.

Reason: Environmental Protections and State Environmental Planning Policy (Resilience and Hazards) 2021 compliance.

#### 19. **Contaminated Land Data gap Analysis Investigation**

Prior to the issue of any Construction Certificate and post demolition a data gap analysis investigation is

to be undertaken with a report prepared detailing findings and recommendations.

Further investigation is to be carried out in accordance with the Detailed Site Investigation (Contamination) Project 86973.04 August 2022 to determine if there is any further contamination under

building footprints an list what further actions are to be taken regarding any contamination discoveries.

The investigation is to be in accordance with relevant industry guidelines including Resilience and

Hazards SEPP and NSW EPA guidelines.

The report is to be prepared by, or reviewed and approved, by a certified consultant as defined under

NSW EPA Contaminated Land Consultant Certification Policy and supplied to the Principle Certifier

together with any recommendations around Contamination Management to be include in an amended

Disposal/ Remediation Action Plan before work proceeds.

Reason: Protection of the environment, Resilience and Hazards SEPP Compliance

#### 20. **Estuarine Hazard Design Requirements**

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

Reason: To minimise risk associated with coastal hazards for new development in an estuarine environment.

#### 21. **Estuarine Planning Level Requirements**

Estuarine Planning Levels (EPL) of 2.50m AHD at the Foreshore Building Line and 2.70m AHD at the seawall face have been adopted by Council for the subject site and shall be applied to all development proposed below this level as follows:

- All structural elements below 2.70m AHD shall be of flood compatible materials;
- All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 2.70m AHD or waterproofed to this level;
- The storage of toxic or potentially polluting goods, chemicals or materials, which may

- be hazardous or pollute the waterway, is not permitted below 2.70m AHD.
- All power supplies (including electrical fittings, outlets and temporary power supply connections) must be located landward of the Foreshore Building Line and at or above 2.50m AHD.

Reason: To ensure that components of the development vulnerable to inundation are built at an appropriate level.

**22. Compliance with Estuarine Risk Management Report**

The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty Ltd, dated 17 October 2022 and these recommendations are to be incorporated into construction plans and specifications.

Reason: To minimise risk associated with coastal hazards for development in an estuarine environment.

**23. Stormwater Management**

Stormwater shall be disposed of in accordance with Council's Policy. The stormwater management plan is to be implemented to ensure that there is no increase in stormwater pollutant loads arising from the approved development. Details demonstrating compliance are to be submitted to the Certifier for approval prior to issue of the Construction Certificate.

Reason: To make appropriate provision for stormwater management and disposal arising from development ensuring that the proposed works do not negatively impact receiving waters.

**24. 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.

**25. Concrete Hardstand**

The existing concrete hardstand structure and paved car parking areas within the site must be demolished and the area returned to deep soil landscaping.

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

Reason: Orderly development of land.

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

The Applicant is to submit an application for Infrastructure Works on Council Roadway for approval under Section 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the new development works within the road reserve. The design of the kerb and gutter, footpath, ramps, driveway crossings and road pavement; are to be in accordance with Council standard drawings and Council's specification for engineering works - AUS-SPEC #1. The plans shall be prepared by



a qualified Civil Engineer. The design must include the following information:

- a) Construct a new 5.5m wide driveway crossing with additional 2m splays at The Avenue. The driveway width at the property boundary tapers to the 3.25m wide internal driveway 4m into the site.
- b) Construct a 1.5m wide concrete footpath east of the new driveway crossing, connecting the development with the existing footpath and kerb ramp at the intersection with Crescent Road.
- c) Half-width road construction is required in The Avenue, including road pavement and vertical kerb and gutter, from the intersection with Crescent Road to tree T59. A minimum 8m wide carriageway width is to be provided from Crescent Road to the western side of the new driveway crossing. The road width reduces and tapers west of the driveway crossing to tree T59. Kerb and gutter are to be provided on the southern side along the full length of The Avenue. The kerb alignment is to be a smooth transition, offset from the property boundary of the development.
- d) A swept path analysis is required to demonstrate that the proposed road layout can accommodate the critical turning manoeuvres for the largest vehicle types. The final kerb alignment and road layout must be approved by Council's Traffic Engineer.
- e) Install 'Shared Zone' signage at the entrance and mid-way along the internal shared access driveway.
- f) Install 'No Parking' signage for the passing bay located adjacent to the internal shared access driveway.
- g) Install 'No Parking' signage for the full length of the northern side of The Avenue. 'No Parking' signs are also required on the southern side, for the section of road west of the driveway crossing to the end of The Avenue.
- h) The provision of 'No Parking' restrictions in The Avenue requires the approval of Council and the Northern Beaches Local Traffic Committee prior to commencement of installation. A plan providing details of the proposed signage must be lodged for consideration at least twelve (12) weeks prior to work commencing.

Details demonstrating compliance are to be submitted to Council for approval prior to the issue of the Construction Certificate. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

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

## BEFORE ISSUE OF A SUBDIVISION WORKS CERTIFICATE

### 27. **Subdivision Works Certificate**

A Subdivision Works Certificate is to be approved by Certifier for the provision of engineering works.

Engineering plans for the subdivision works within this development consent are to be submitted to the Certifier for approval under Section 6.13 of the Environmental Planning and Assessment Act 1979.

Civil Engineering plans for the subdivision works are to be designed in accordance with the Council's specification for engineering works – AUS-SPEC #1. The plans shall be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering. The design must include the following information:

1. Detailed drawings of the internal subdivision stormwater drainage system.

2. Detailed design of water quality treatment devices.
3. Detailed design of road pavement and kerb & gutter works.
4. Detailed design of all utility service works (gas, electricity, water, sewer, telecommunications).
5. Undergrounding of electricity supply on the The Avenue frontage of site

The Subdivision Works Certificate must be supported by engineering plans, calculations, specification or any certification relied upon.

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

**28. Stormwater Drainage Application (Easement Drainage Works)**

The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the diversion of Council's stormwater drainage infrastructure which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au) > Council Forms > Stormwater Drainage Application Form.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Subdivision Works Certificate.

The following amendments are required:

1. The horizontal alignment of the pipe diversion is to be in accordance with civil engineering plans by BG&E project no. S22042, drawing no. CI-0200 rev G dated 03.11.23 or as determined by Council.
2. The minimum pipe size for the proposed diversion works is to be a Class 3 525 mm diameter RCP. The pipe amplification works shall begin at existing Council Pit SPP55510 and continue to the outlet into the waterbody.
3. Provide detail for all internal road stormwater connections to Council's drainage easement.
4. No private or subdivision infrastructure such as stormwater pits or any services (gas, electricity, water, sewer, telecom) other than crossing services are permitted within Council's 3 metre drainage easement.
5. Provide a detailed design, including longitudinal section of bund designed to channel flows from road low point into overland flow channel.
6. The overland flow channel within the 3 metre drainage easement benefitting Council is to be amended to a trapezoidal channel, 500mm deep with a 1 metre wide base and 1:2 sides. Provide detailed design of overland flow channel. Provide a vegetation plan for the channel, showing native grasses, tufts, sedges with a maximum 1 metre height at maturity. Trees, shrubs etc, are not permitted within the drainage easement/ overland flow swale.
- 7.. The following amendments are required to drainage longitudinal section on project no. S22042, drawing no. CI-0341 rev B dated 03.11.23:
  - (i) Show all existing crossing services on road reserve and proposed services within subdivision.
  - (ii) All pipe sizes from the existing Pit SPP55510 to proposed Pit 4 are to be increased to Class 3 525 mm RCP.
  - (iii) All pipe sizes from proposed Pit 4 to outlet are to be increased to Class 3 600 mm RCP.
  - (iv) The invert of the KIP pit at Ch 12.0 is to be lowered by 1.5m to an invert level of 11.69.
  - (v) The invert of the inlet pipe at Pit 1 is to be lowered by 500mm.

(vi) Show all pit connections from the internal road stormwater system.

The required amendments to drawings showing the proposed diversion of Council's stormwater assets are to be shown on amended plans. The plans should clearly indicate the works proposed to be undertaken as part of the Stormwater Drainage Application (Section 68).

Reason: To ensure appropriate provision for disposal and maintenance stormwater management and compliance with the BASIX requirements, arising from the development.

**29. Submission of Roads Act Application for Civil Works in the Public Road (Council Stormwater Drainage Asset Works)**

The Applicant is to submit an application for approval for Infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of diversion of Council's stormwater drainage infrastructure which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

The following amendments are required:

1. The horizontal alignment of the pipe diversion is to be in accordance with civil engineering plans by BG&E project no. S22042, drawing no. CI-0200 rev G dated 03.11.23 or as determined by Council.
2. The minimum pipe size for the proposed diversion works is to be a Class 3 525 mm diameter RCP. The pipe amplification works shall begin at existing Council Pit SPP55510 and continue to the outlet into the waterbody.
3. The following amendments are required to drainage longitudinal section on project no. S22042, drawing no. CI-0341 rev B dated 03.11.23:
  - (i) Show all crossing services.
  - (ii) All pipe sizes from the existing Pit SPP55510 to proposed Pit 4 are to be increased to Class 3 525 mm RCP.
  - (iii) All pipe sizes from proposed Pit 4 to outlet are to be increased to Class 3 600 mm RCP.
  - (iv) The invert of the KIP pit at Ch 12.0 is to be lowered by 1.5m to an invert level of 11.69.
  - (v) The invert of the inlet pipe at Pit 1 is to be lowered by 500mm

The required amendments to drawings showing the proposed diversion of Council's stormwater assets are to be shown on amended plans. The plans should clearly indicate the works proposed to be undertaken as part of the Roads Act Application (Section 138).

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifier prior to the issue of the Subdivision Works Certificate

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

**30. Pre-Construction Stormwater Assets Dilapidation Report**

The Applicant is to submit a pre-construction / demolition 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, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at:Engineering Specifications.

The pre-construction / demolition dilapidation report must be submitted to Council for approval and the Certifier prior to the issue of the Subdivision Works Certificate.

Reason: Protection of Council's Infrastructure.

**31. Pre-Commencement Dilapidation Report**

The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public property and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

The pre-construction / demolition dilapidation report must be submitted to Council for written approval and the written approval is then to be submitted to the Certifier prior to the issue of the any Subdivision Works Certificate and the commencement of any works including demolition.

Reason: Protection of Council's Infrastructure during construction.

**32. Pre-Construction Road Reserve Dilapidation Report**

Pursuant to Section 97 of the Local Government Act, 1993, Council requires prior to the issue of Subdivision Works Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit as per the current rates in Council's Fees and Charges. The Deposit is required as security against damage to Council property during works on the site. The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

Note: Should Council property adjoining the site be defective e.g. cracked footpath, broken kerb etc., this should be reported in writing, or by photographic record, submitted to Council at least seven (7) days prior to the commencement of any work on site. This documentation will be used to resolve any dispute over damage to infrastructure. It is in the applicant's interest for it to be as full and detailed as a possible.

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

**33. 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 Subdivision Works Certificate.

Reason: Protection of Council's infrastructure.

**34. Geotechnical Report Recommendations have been correctly incorporated into designs**

**and structural plans**

The Applicant is to submit Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) and is to be completed and submitted to the Accredited Certifier, prior to issue of the Subdivision Works Certificate.

Reason: To ensure geotechnical risk is managed appropriately.

**35. Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Subdivision Works Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

**36. Structural Adequacy and Excavation Work**

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

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

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

Reason: To provide public and private safety.

**37. Utilities Services**

Prior to the issue of the Subdivision Works Certificate, the Applicant is to obtain the following:

- (a) A letter from the utility provider confirming that satisfactory arrangements have been made for the approved development have been made; and
- (b) Evidence that notification has been received from a utility authority that, requirements for the development can be provided.

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

Reason: To ensure that services have been provided as required by this Consent.

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

**38. Project Arborist**

a) 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 AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

b) the Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, including but not limited to:

- i) tree protection measures and works under section 1.3.2, 1.3.3, 1.3.4, and 1.4.1,
- ii) tree sensitive construction techniques outlined in the arboricultural statement dated 09/05/23 by rainTree Consulting,
- iii) location, excavation and installation of the proposed services infrastructure (HV, LV, NBN etc.),
- iv) road widening works in the tree protection zones of existing street trees.

c) All tree protection measures specified 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.

d) the Project Arborist shall provide certification to the Certifier that all tree protection measures under AS 4970-2009 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.

**39. Tree Removal Within the Property**

a) this consent approves the removal of existing trees on the subject site as listed below:

- i) prescribed trees 6 - *Tristaniopsis laurina*, 9 - *Callistemon viminalis*, 10 - *Melaleuca quinquenervia*, 19 - *Leptospermum petersonii*, 29 - *Leptospermum petersonii*, 30 - *Ceratopetalum gummiferum*, and 51 - *Murraya paniculata*,
- ii) exempt trees 4 and 5 - *Syagrus romanzoffiana*, 7 - *Tristaniopsis laurina*, 8 - *Syagrus romanzoffiana*, 11 - *Brachychiton acerifolius*, 12 - *Syagrus romanzoffiana*, 13 - *Dypsis lutescens*, 14 - *Callistemon viminalis*, 15 - *Syagrus romanzoffiana*, 18 - *Cupressus* sp., 20 to 24 - *Syagrus romanzoffiana*, 25 - *Prunus* sp., 26 - *Camellia japonica*, 27 - *Camellia sasanqua*, 28 - *Prunus* sp., 31 - *Cinnamomum camphora*, 32 - *Lagerstroemia indica*, 33 and 34 - *Camellia japonica*, 35 - *Grevillea robusta*, 36 - *Cinnamomum camphora*, 38 - *Camellia japonica*, 39 - *Jacaranda mimosifolia*, 40 - *Schefflera actinophylla*, 41 - *Archontophoenix cunninghamiana*, 42 - *Cupressus sempervirens*, 44 - *Jacaranda mimosifolia*, 46 - *Camellia sasanqua*, 47 - *Syagrus romanzoffiana*, 49 - *Persea americana*, 50 - *Syagrus romanzoffiana*, 52 - *Strelitzia reginae*, 53 - *Archontophoenix cunninghamiana*, 54 - *Ligustrum sinense*, and 55 - *Cinnamomum camphora*.

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.

**40. Tree Removal Within the Road Reserve**

a) this consent approves the removal of existing trees within the road reserve as identified in the Arboricultural Impact Assessment, or as listed below:

i) trees 1 and 2 - *Syagrus romanzoffiana*.

b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

c) removal of the approved tree/s by the applicant in the road reserve shall only be undertaken by a Council approved tree contractor. Details of currently approved tree contractors can be obtained from Northern Beaches Council's Trees Services business unit prior to removal.

Reason: Public liability.

**41. No Access Through Adjoining Park/Reserves**

Access to the site through an adjoining park/reserve is prohibited without the written approval of the Council.

Reason: To ensure protection of council parks/reserves.

**42. Utilities Services**

Prior to the commencement of demolition works, written evidence of the following service provider requirements must be provided to the Principal Certifier:

- a) a letter from Ausgrid demonstrating that satisfactory arrangements can be made for the installation and supply of electricity,
- b) a response from Sydney Water as to whether the proposed works subject to this consent would affect any Sydney Water infrastructure, and whether further requirements need to be met, and
- c) other relevant utilities or services - that the development as proposed to be carried out is satisfactory to those other service providers, or if it is not, the changes that are required to make the development satisfactory to them.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of demolition works.

Reason: To ensure relevant utility and service providers' requirements are provided to the Principal Certifier.

**43. Work Zones and Permits**

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site. A Work Zone will only be considered in The Avenue. No Work Zone is permitted in Crescent Road.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane.

Reason: To ensure Work zones are monitored and installed correctly.

**44. Demolition Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to commencing any demolition work.

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Due to the proximity of the site near Newport Public School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays).
- Include a Traffic Control Plan prepared by an TfNSW accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

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

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

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

#### 45. **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.

Properties:



1. 118 Crescent Road, Newport
2. 120 Crescent Road, Newport

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.

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

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

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

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

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect receiving waters from the effects of sedimentation and erosion from the site.

**48. Lawful Authority to Use and Occupy Crown Land or Waterway**

An executed licence agreement from the relevant NSW government agency governing the use and occupation of Crown land is required to be obtained prior to the commencement of works.

Reason: To ensure that lawful authority under the Crown Land Management Act 2016 to use and occupy Crown land or waterway is obtained before construction commences.

**49. Commercial Use**

Prior to the commencement of any works associated with this development consent, all

operations associated with the commercial marina use shall cease.

Reason: To ensure the orderly development of land.

## DURING BUILDING WORK

### 50. **Acid sulfate soils**

All excavation, construction and associated works must be conducted in accordance with the approved Acid Sulfate Soil Management Plan titled Acid Sulphate Assessment and Management Plan prepared by EI Australia Ref E25561.E14\_Rev0

Reason: To ensure management of potential acid sulfate soils.

### 51. **Site Contamination – Acid Sulfate Soils**

All stockpiles of potentially contaminated soil must be stored in a secure area in a way that is not likely to cause pollution or be a public health risk.

All contaminated soil removed from the site must be disposed of at a waste facility that can lawfully receive that waste and must be done in accordance with all relevant Acts, Regulations and Guidelines.

Copies of all test results and disposal dockets must be retained by whom? for at least 3 years and be made available to authorised Council officers on request.

Note: The following Acts and Guidelines applied at the time of determination:

- i) Protection of the Environment Operations Act 1997;
- ii) Environment Protection Authority, Waste Classification Guidelines (2014);
- iii) Water Quality Australia, National Acid Sulfate Soils Guidance (2018); and
- iv) Acid Sulfate Soil Advisory Committee, Acid Sulfate Soil Manual (1998).

Reason: To protect environment and public health.

### 52. **Protection of Existing Street Trees**

a) all existing street trees in the vicinity of the works shall be retained during all construction stages, and the street tree(s) fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of AS 4970-2009 Protection of trees on development sites. As a minimum the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides and in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

b) all street trees within the road verge are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree(s) is prohibited. No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

Reason: Street tree protection.

### 53. **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 not approved for removal.
- b) tree protection shall be undertaken as follows:
- i) tree protection shall be in accordance with AS 4970-2009 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 AS 4970-2009 Protection of trees on development sites,
  - ix) the activities listed in section 4.2 of AS 4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
  - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS 4373-2007 Pruning of amenity trees,
  - xi) the tree protection measures specified in this clause 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.
- c) the Principal Certifier must ensure that:
- i) If activated, the arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as complaint to AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

#### 54. **Condition of Trees**

- a) during the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:
  - i) a general decline in health and vigour,
  - ii) damaged, crushed or dying roots due to poor pruning techniques,

- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

b) any mitigating measures and recommendations required by the Arborist/Project Arborist are to be implemented.

c) the owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of trees.

**55. Wildlife Protection**

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

Reason: To protect native wildlife.

**56. Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

**57. 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.

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

Council proactively regulates construction sites for sediment management.

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

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

59. **Protection of Council's Public Assets**

Any damage to Council's public assets shall be made good by the applicant, and/or the contractor, to the satisfaction of Council.

Council's public assets include, but is not limited to, the following: road, kerb and gutters, crossovers, crossings, paths, grass verge, open space and associated elements such as furniture, recreational facilities and the like, within the meaning of the Local Government Act 1993.

Existing trees shall be protected in accordance with AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4, with no ground intrusion into the tree protection zone and no trunk, branch nor canopy disturbance.

Should any problems arise with regard to the existing trees on public land during the construction period, the applicant is to immediately contact Council's Tree Services section and resolve the matter to Council's satisfaction.

Reason: To protect and/or restore any damaged public asset.

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

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

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

61. **Traffic Management**

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

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

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

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

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

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic

Management procedures agreed and are held liable to the conditions of consent.

**63. Ongoing Management**

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

Reason: To ensure public safety.

**64. 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.

**65. 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.

**66. Footpath Construction**

The applicant shall provide a 1.5 metre wide footpath for the entire frontage of the site on The Avenue. The works shall be in accordance with the following:

- (a) All footpath works are to be constructed in accordance with Section 138 Road Act approval
- (b) Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with Section 138 Road Act approval for footpath. Details demonstrating compliance are to be submitted to the Principal Certifier.

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

**67. Traffic Control During Road Works**

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

Reason: Public Safety.

68. **Kerb and Gutter Construction**

The Applicant is to construct kerb and gutter and associated works along the entire The Avenue frontage of the site in accordance with Northern Beaches Council Drawing No. A4 2276/A. Prior to the pouring of concrete, the works are to be inspected by Council and an approval issued.

The approval is to be submitted to the Principal Certifier.

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

69. **Requirement to Notify about New Contamination Evidence**

Any new information revealed during demolition works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifier.

Reason: To protect human health and the environment.

70. **Compliance with the Contamination Management Plan**

Any Recommendations within the Contaminated Land Reports including the Detailed Site Investigation Report and the Remedial Action Plan (if required) must be followed during works.

Reason: Protection of the environment, State Environmental Planning Policy (Resilience and Hazards) 2021 compliance.

71. **Pollution Control**

All stockpiles, materials, waste and slurry associated with works (including excavated material) are to be contained at source within the construction area and enclosed in waterproof covering and/or sediment and erosion control while not in use. All waste and debris is to be removed off site and disposed of as frequently as required in accordance with the Waste Management Plan and applicable regulations.

Reason: To protect receiving waters, and ensure that pollutants and building associated waste do not leave the construction site.

72. **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 and Environment.

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 and Environment.

Reason: Aboriginal Heritage Protection.

73. **Off-site Disposal of Contaminated Soil - Chain of Custody**

'Chain of Custody' documentation shall be kept and submitted for the transport of the validated fill material from the site to any other premises.

Details demonstrating compliance are to be submitted to the Principal Certifier and Council within seven (7) days of transport.

Reason: For protection of environment.

**74. Staff and Contractor Parking**

The applicant is to make provision for parking for all construction staff and contractors for the duration of the project. All Staff and Contractors are to use on-site parking once available.

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

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

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan titled dated 18/8/2022.

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

**76. Waste/Recycling Requirements (Materials)**

During demolition and/or construction the following materials are to be separated for recycling: timber, bricks, tiles, plasterboard, metal, concrete, and evidence of disposal for recycling is to be retained on site.

Reason: To ensure waste is minimised and recovered for recycling where possible.

## BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

**77. Acid Sulfate Soil Management Confirmation**

Details demonstrating compliance with the approved Acid Sulfate Soil Management Plan titled Acid Sulphate Assessment and Management Plan prepared by EI Australia Ref E25561.E14\_Rev0 is to be submitted to the satisfaction of the principle certifier prior to the issue of the occupation certificate.

Reason: To ensure management of potential acid sulfate soils.

**78. Street Tree Planting**

a) Street tree planting shall be installed in accordance with the following:

i) 2 x *Eucalyptus paniculata* installed on the southern side of The Avenue to the east of the new driveway crossover.

b) All street trees shall be a minimum pre-ordered planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees. All street trees shall be 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, including a four post and top and mid rail timber tree guard, and watered until established, and shall be generally located at least 2.0 metres from driveways, and shall generally be centralised within the road verge.

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

Reason: to maintain environmental and streetscape amenity.

**79. Condition of Retained Vegetation - Project Arborist**

a) 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:

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

Reason: Tree and vegetation protection.

**80. Replacement of Canopy Trees**

At least 6 locally native canopy trees are to be planted on site to replace protected trees approved for removal. Species are to have a minimum mature height of 8.5m and be consistent with Council's Native Gardening Guide.

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.

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

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) are to be imported on to the site prior to or during construction works.

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

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

**82. Priority Weed Removal and Management**

All Priority weeds as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) within the development footprint are to be removed.

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 weeds.

**83. Certification for the Installation of Stormwater Treatment Measures**

A certificate from a Civil Engineer, who has membership to Engineers Australia and the National Engineers Register must be provided, stating that the stormwater treatment measures have been installed in accordance with the construction certificate approved plans. The certificate must confirm that stormwater treatment measures are completed, online, in good condition and are not impacted by sediment. Vegetated measures must exhibit an 80 percent survival rate of plantings.

The certificate shall be submitted to the Principal Certifier prior to the release of an Occupation

Certificate.

Reason: Protection of the receiving environment.

84. **Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Treatment Measures**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater treatment measures in accordance with the standard requirements of Council, the manufacturer and as required by the Stormwater Treatment Measures Operation and Maintenance Plan.

A restriction as to user shall be created on the title over the stormwater treatment measures, restricting any alteration to the measures.

The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements (available from Council) at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands.

Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To identify encumbrances on land, ensure ongoing maintenance, and ensure modification to the stormwater treatment measures is not carried out without Council's approval.

85. **Stormwater Treatment Measures Operation and Maintenance Plan**

An Operation and Maintenance Plan is to be prepared to ensure the proposed stormwater treatment measures remain effective.

The Plan must be attached to the Positive Covenant (and the community or strata management statement if applicable) and contain the following:

1. Detail on the stormwater treatment measures:

- a) Work as executed drawings
- b) Intent of the stormwater treatment measures including modelled pollutant removal rates
- c) Site detail showing catchment for each device
- d) Vegetation species list associated with each type of vegetated stormwater treatment measure
- e) Impervious area restrictions to maintain the water balance for the site
- f) Funding arrangements for the maintenance of all stormwater treatment measures
- g) Identification of maintenance and management responsibilities
- h) Maintenance and emergency contact information

2. Maintenance schedule and procedure - establishment period of one year following commissioning of the stormwater treatment measure:

- a) Activity description, and duration and frequency of visits

Additionally for vegetated devices:

- b) Monitoring and assessment to achieve an 80 percent survival rate for plantings

c) Management of weeds, pests and erosion, with weed and sediment cover limited to a maximum of 5 percent of the total area of the stormwater treatment measure

3. Maintenance schedule and procedure - ongoing

a) Activity description, and duration and frequency of visits

b) Routine maintenance requirements

c) Work Health and Safety requirements

d) Waste management and disposal

e) Traffic control (if required)

f) Renewal, decommissioning and replacement timelines and activities of all stormwater treatment measures (please note that a DA may be required if an alternative stormwater treatment measure is proposed)

g) Requirements for inspection and maintenance records, noting that these records are required to be maintained and made available to Council upon request.

Details demonstrating compliance shall be submitted to the Principal Certifier prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

**86. Works as Executed Drawings - Stormwater Treatment Measures**

Works as Executed Drawings for the stormwater treatment measures must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifier prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

**87. 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.

**88. Waste Management Confirmation**

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

**89. Onsite Encapsulation of Contaminated Material**

No onsite encapsulation of contaminated material is to occur without approval under a separate DA or modification submitted to Council.

Reason: To allow for a proper evaluation of any proposed encapsulation works and to ensure that any contaminated material is effectively capped and managed long term.

**90. Compliance with Contamination Management Plan**

Prior to the issue of an Occupation Certificate, certification from an appropriately qualified environmental consultant is to be provided stipulating that the requirements of the Contamination Management Plan have been compliance with throughout excavation, demolition and development work stages. The certification shall also include:

- a) A validation and site monitoring report prepared in accordance with relevant guidelines issued under the Contaminated Land Management Act 1997 must be submitted to the Council within one month from completion of the remediation work.
- b) A detailed survey of all sites used for landfill disposal must be prepared within one month from completion of the remediation work, and submitted to Council.
- c) Identification of the extent and depth of all fill material in relation to existing roadways and buildings. The survey must also include a detailed survey of all sites used as landfill disposal pits, identifying boundaries and depth of disposal pits in relation to existing roadways and buildings.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: Protection of the environment, SEPP (Resilience and Hazards) 2021 compliance.

**91. Waste/Recycling Compliance Documentation**

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure waste is minimised and recycled.

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

**92. Landscape Maintenance**

a) if any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components.

b) trees required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

c) if any tree required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with any conditions of consent.

Reason: To maintain local environmental amenity.

**93. Maintenance of Stormwater Treatment Measures - Major**

Stormwater treatment measures must be maintained at all times in accordance with the Stormwater Treatment Measure Operation and Maintenance Plan, manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Vegetated stormwater treatment measures must maintain an 80 percent survival rate of plantings and limit weed cover to no more than 10 percent of the total area of the stormwater treatment measure.

Where replacement cartridges or other necessary components for the system become unavailable, an alternative system is required to be retrofitted into the development to achieve an equivalent pollutant reduction outcome. Evidence supporting the replacement must be retained on site and made available to Council as required.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

94. **Landscaping adjoining vehicular access**

The applicant must ensure that the planting chosen for any land immediately adjacent to the driveway and adjacent to any driveway intersections must not exceed a height of 1,140mm

Reason: To maintain unobstructed sight distance for motorists.

95. **Positive Covenant for Council and Contractor Indemnity**

A positive covenant shall be created on the title of the land prior to the issue of a Subdivision Certificate requiring the proprietor of the land to provide access to the waste storage facilities. The terms of the positive covenant are to be prepared to Council's requirements, (Appendix E of the Waste Management Guidelines), at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities.

96. **Ausgrid**

The development shall in perpetuity comply with the following conditions imposed by Ausgrid:

1. The current proposal will be subjected to the below conditions based on the existing Transmission Overhead and Easement. It is anticipated the Transmission Overhead will be relocated Underground.
2. All construction works on or near the easement and/or powerlines must adhere to the Safework NSW – Work Near Overhead Powerlines: Code of Practice, 2006
3. Ausgrid is not responsible for the reinstatement of any finished surface within the easement site.
4. Ausgrid requires 24 hour access along the easement for plant and personnel. For the purpose of exercising its rights under the easement, Ausgrid may cut fences and/or walls and install gates in them. Where the easements on a site do not provide practical access to all of Ausgrid's infrastructure, a suitable right of access at least 5m wide must be provided to each asset.
5. Access driveways shall withstand the weight of a heavy rigid truck when fully laden weighing 30 tonne.

6. Access gates, minimum 4.5 metres wide, may be required in all fences crossing the transmission line easement.
7. No vehicles, plant or equipment having a height exceeding 4.6 metres are to be brought into the easement site without written approval from Ausgrid.
8. Vehicles brought into the easement, with a height less than 4.6m but having an extension capable of extending greater than 4.6m above ground, must not have that extension operated at all whilst within the easement.
9. Adequate removable protection must be installed to prevent vehicles inadvertently colliding with the transmission tower. This proposed form of protection must be forwarded to Ausgrid for review and consent.
10. All metal work within the easement site including metallic fencing, are to be locally earthed by a qualified electrician via a 50 sq. mm stranded copper, insulated earthwire bonded to a copper-clad earth-stake driven at least 1.6 metres into the ground.
11. Metallic fencing is generally not permitted to extend away from the easement site unless an insulating section is installed, at least 3 metres wide. This requirement maybe relaxed upon assessment of a supplied fencing design.
12. No buildings/structures or parts thereof constructed may encroach the easement.
13. No obstruction of any type shall be placed within 10 metres of any part of a transmission line structure except where installed to protect transmission structure from vehicle impacts when Ausgrid has approved such structures.
14. Care must be taken to prevent any damage to underground metalwork which can extend up to 15 metres away from the transmission line structure.
15. The storage of non-flammable materials is allowable provided access is maintained along the easement and subject to height limitations of 2.5 metres if climbable or 4.6 metres if not climbable. Lifting of materials within the easement area must consider the clearance requirements given in Safework NSW Code of Practice.
16. The erection of minor structures such as clothes hoists, barbecues, and the like are permitted within the easement site provided they do not exceed a height of 2.5 metres if climbable or 4.6m if not climbable, and the metallic components are earthed. The positioning of such structures should allow a 5m wide vehicular access along the full length of the subject easement area. Ausgrid reserves the right to remove such structures where required for safety, access and maintenance.
17. The flying of kites, model aircraft etc. is not permitted within the easement site.
18. Any change to ground levels must be submitted to Ausgrid for approval.
19. Trees, shrubs, or plants which have a mature height of greater than 3.0m, or climbable portions greater than 2.5m above ground, are not permitted within the easement. The planting of other vegetation is to ensure Ausgrid's access and maintenance requirements are maintained.
20. Electric power should not be connected to the easement site without permission from Ausgrid.
21. Ausgrid is to be indemnified from all actions, suits, claims and demands of whatsoever nature, which Ausgrid may incur as a result of the encroachment/s.
22. Ausgrid reserves the right, by written notice, to require the owner of the property, at the owner's expense, to implement further safety measures, removal or modification of any encroachments not specifically approved by Ausgrid should this be necessary in the future for the safe and continued operation or upgrade of the network asset.

Reason: To protect the transmission assets, to provide adequate working space along the route of the lines for construction and maintenance work and ensure public safety.

97. **Waste Services - Waste removal management**

Council provided waste bins must be presented on the public roadways for collection as

detailed below, and in accordance with Council's ongoing waste collection services schedule

- Lot 1 - bins collected from either Crescent Road or The Avenue.
- Lots 2, 3, & 4 - bins collected from Crescent Road
- Lots 5, 6, 7, & 8 - bins collected from The Avenue adjacent to the site access road entry. Lot 9 - bins collected from The Avenue

A suitably sized and located area must be nominated within each lot for the storage of the 4 bins provided by Council for each lot.

For lots 2, 3 & 4 this area must be adjacent to Crescent Road.

Bins must not remain in the public road reserve after they have been emptied each week.

Reason: To ensure the efficient removal of waste and the ongoing amenity of the area

**98. Stormwater Pollution Control Pits**

The Registered Proprietors of the property must maintain on a regular basis (every six months or after heavy rain events) stormwater pollution control pits including the clearing of silt, debris and rubbish, in perpetuity. The Registered Proprietors must ensure the effective operation of pollution control pits to prevent pollution of Pittwater by stormwater generated onsite.

Reason: To ensure appropriate provision is made for the treatment and management of stormwater generated by the development for the protection and preservation of the aquatic habitats and biota within receiving waters.

**99. Compliance with Estuarine Risk Management Report**

The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty Ltd, dated 17 October 2022 and these recommendations are to be maintained over the life of the development.

Reason: To ensure appropriate development and preservation of the estuarine environment.

## **BEFORE ISSUE OF A SUBDIVISION CERTIFICATE**

**100. 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.

**101. Certification of Council Drainage Works and Works as Executed Data within Private Land**

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed works have been constructed in accordance with this consent and the approved Section 68 approved plans. Works as Executed data (details overdrawn on a copy of the approved drainage plan) certified by a registered surveyor in relation to boundaries and/or relevant easements prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Stormwater Assets' within the subject site, shall be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate.

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

102. **Certification of Civil Works and Works as Executed Data on Council Land**

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed works have been constructed in accordance with this consent and the approved Section 138 and/or Construction Certificate plans. Works as Executed data certified by a registered surveyor in relation to boundaries and/or relevant easements, prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Assets' in an approved format shall be submitted to the Principal Certifier for approval prior to the issue of the Subdivision Certificate.

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

103. **Easement Creation**

The Applicant shall create an easement for drainage (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all drainage infrastructure is located within the appropriate easement(s).

The Applicant shall create an easement for services (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all utility services are located within the appropriate easement(s).

The Applicant shall create an easement to drain water in favour of Council over the overland flow channel to encompass the 1 in 100 year recurrence frequency predicted water surface level, including a 500mm freeboard and a 500mm minimum margin in plan. The easements are to be detailed on the final plan of subdivision.

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

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

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

The original completed request form (NSW Land Registry Services standard form 13PC) must be submitted to Council for authorisation prior to the issue of the Subdivision Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. A Compliance Certificate, issued by the Certifying Authority, shall also be provided in the submission to Council.

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

Reason: To create encumbrances on the land.

105. **Provision of Services for Subdivision**

The applicant is to ensure all services including water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan of subdivision.

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



Reason: To ensure that utility services have been provided to the newly created lots.

106. **Sydney Water Compliance Certification**

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

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

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

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

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

107. **Release of Subdivision Certificate**

The final plan of subdivision will not be issued by Council until the development has been completed in accordance with terms and conditions of the development consent.

Reason: Council’s subdivision standards and the statutory requirements of the Conveyancing Act 1919.

108. **Positive Covenant for Drainage Structures**

The Applicant shall submit a positive covenant (under the provisions of Section 88B of the Conveyancing Act) to be created on the final plan of subdivision and accompanying 88B instrument. The covenant will require the proprietor of the land to maintain the **overland flow swale** in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council’s standard requirements, which are available from Northern Beaches Council. Northern Beaches Council shall be nominated as the sole authority empowered to release, vary or modify such covenant.

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

Reason: To ensure ongoing maintenance of the on-site stormwater detention system

109. **Provision of Services for Subdivision**

The applicant is to ensure all services including water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan of subdivision.

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

Reason: To ensure that utility services have been provided to the newly created lots.

110. **Right of Carriageway**

The Applicant shall create a right of carriageway (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision and accompanying 88B instrument, to include all vehicular access and manoeuvring areas.

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

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

111. **Restriction as to User (Drainage Structures)**

The Applicant shall create a restriction as to user (under the provisions of Section 88B of the Conveyancing Act) on the title over the overland flow swale and drainage structures within stormwater easement benefitting Council, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared by a registered surveyor with terms acceptable to Council at the applicant's expense. Council shall be nominated as a party to release, vary or modify such restriction.

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

Reason: To ensure no modification of the overland flow swale and Council's stormwater infrastructure without Council's approval.

112. **Restriction as to User (Vehicular Access)**

The Applicant shall submit a restriction as to user (under the provisions of Section 88B of the Conveyancing Act) to be incorporated on the title of Lot 2 and Lot 3. The restriction shall preclude that lot from utilising its frontage for vehicular traffic except for the section created as a Right of Carriageway. The wording of the restriction of use is to be prepared by a surveyor, with terms acceptable to Council.

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

Reason: To ensure compliance with Council policy for vehicular access.

113. **Services**

The Applicant shall ensure all utilities/services and street lighting is installed. The Applicant is to submit a Certification stating the above requirement has been complied with by the relevant authority(s) and/or authorised contractor.

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

Reason: To ensure services have been provided in accordance with the relevant authorities requirements.

114. **Sydney Water Compliance Certification**

The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by Sydney Water Corporation. Application must be made through an authorised

Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) <<http://www.sydneywater.com.au>> then refer to “Water Servicing Coordinator” under “Developing Your Land” or telephone 13 20 92 for assistance.

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

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

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

**115. Easement for Drainage**

The Applicant shall create an easement for drainage (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all drainage infrastructure is located within the appropriate easement(s).

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

Reason: Council’s Subdivision standards and statutory requirements of the Conveyancing Act 1919.

**116. Release of Subdivision Certificate**

The final plan of subdivision will not be issued by Council until the development has been completed in accordance with terms and conditions of the development consent.

Reason: Council’s subdivision standards and the statutory requirements of the Conveyancing Act 1919.

**117. Subdivision Certificate Application**

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, four copies of the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council’s fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.

**118. Title Encumbrances**

The Applicant shall ensure all easements, rights of carriageway, positive covenants and restrictions as to user as detailed on the plans and required by the development consent are to be created on the title naming Council as the sole authority empowered to release or modify.

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

Reason: To ensure proper management of land.

119. **Restriction on Building Footprints**

A Restriction is to be placed on the title of each lot limiting the future building footprint to that illustrated on approved plan No. AD-DA903, Rev 5 dated 24/10/2023, as amended by the conditions of this consent.

The above restrictions are to be registered on the title of each lot under S88B of the Conveyancing Act prior to release of the Subdivision Certificate. Council as the consent authority has the power to vary the terms of the restriction.

Reason: To ensure that future development is consistent with the intent of this approval.

120. **Marina Use and Works**

Prior to the release of the Subdivision Certificate, development consent for the use of the existing marina structures located within the waterway for residential purposes shall be obtained and any associated physical works carried out.

Evidence confirming satisfaction of the above matters shall be provided to the Certifying Authority.

Reason: To ensure that the existing waterway structures are subject to a valid development consent and to facilitate the orderly development of land.