

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1900
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Responsible Officer:	Nick England
Land to be developed (Address):	Lot 20 DP 11978, 2 A Allen Avenue BILGOLA BEACH NSW 2107 Lot A DP 379490, 2 A Allen Avenue BILGOLA BEACH NSW 2107
Proposed Development:	Construction of a fence
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Wimbledon 1963 Pty Limited
Applicant:	Wallhouse Holdings Pty Ltd

Application Lodged:	18/10/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	01/11/2021 to 15/11/2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 5,000.00
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PROPOSED DEVELOPMENT IN DETAIL

The application seeks development consent for the erection of a fence associated with an existing tennis court, adjoining the northern boundary of the site. In detail, the proposed structure is:

- 3m in height;
- setback at a distance of 135mm from the northern side boundary;
- setback at a distance of 2.4m from the front boundary of Allen Avenue; and
- composed of a metal post and wire mesh construction (as a "match to the existing" fences that exist around the court).

Upon detailed assessment of the proposal, it is recommended that the following special conditions apply, which will form part of any approved development:

- No consent for the existing tennis court forms part of this approval;
- The existing timber fence, that is located 120mm from the northern boundary, be retained and not demolished;
- No part of the proposed fence that is closer than 6.5m to the front boundary on Allen Avenue be higher than 1.8m; and
- The fence be finished in materials and / or finishes that are non-reflective and dark in colour.

The purpose of these conditions are, in sequence: to ensure retrospective consent is not issued; protect visual privacy; and ensure the visual impact of the proposal is limited to an acceptable degree.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

- Pittwater 21 Development Control Plan - C1.5 Visual Privacy
- Pittwater 21 Development Control Plan - C1.6 Acoustic Privacy
- Pittwater 21 Development Control Plan - C1.16 Development ancillary to residential accommodation - Tennis Courts
- Pittwater 21 Development Control Plan - D3.6 Front building line
- Pittwater 21 Development Control Plan - D3.7 Side and rear building line
- Pittwater 21 Development Control Plan - D3.12 Fences - General

SITE DESCRIPTION

Property Description:	Lot 20 DP 11978 , 2 A Allen Avenue BILGOLA BEACH NSW 2107 Lot A DP 379490 , 2 A Allen Avenue BILGOLA BEACH NSW 2107
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Detailed Site Description:

The subject site consists of two (2) allotments located on the western side of Allen Avenue, Bilgola Beach.

The site is regular in shape with a frontage of 18.3m along Allen Avenue and a depth of 45/46m. The site has a surveyed area of 850m².

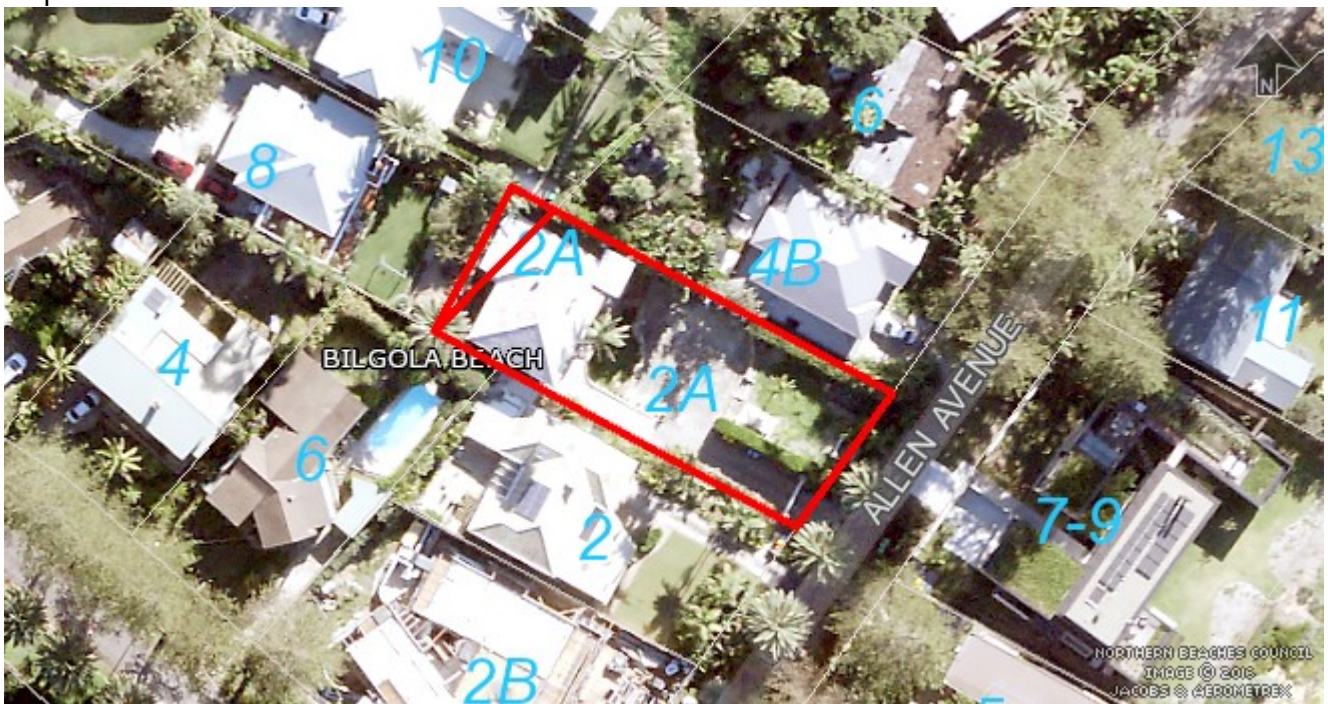
The site is located within the C4 Environmental Living zone and accommodates a dwelling house at the rear portion of the site and tennis court on the forward portion.

The site has an easterly aspect, with the dwelling house and attached garage located on the higher rear section of the site, approximately 2.5m above the lower front portion of the site.

The site contains no significant vegetation.

Adjoining and surrounding development is characterised by dwelling house.

Map:



SITE HISTORY

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

EPA2020/0084: A Notice of Intention to serve an order was issued on the owner of the subject land on the 8 May 2020, in relation to an alleged illegally constructed tennis court. A thorough search of Council's records was undertaken as part of this investigation, of which it was concluded that no consent was ever granted for the tennis court. Further action was discontinued upon the determination of an application for a Building Information Certificate (BIC), the details of which are discussed below, in BC2020/0091.

BC2020/0091: A BIC for a tennis court was issued by Council on 29 January 2021. Specifically, the BIC relates to:

"1. Single occupancy residential dwelling, and 2. Tennis Court (no lighting and no hit up walls)"

As part of the assessment of the BIC, Council's Building Compliance Team, sought the comments of Council's Development Assessments team, who provided the following advice:

"Planning does not support the location of the tennis court in this location given the non-compliances with the below clauses of the Pittwater 21 DCP:

- C1.1 Landscaping;
- C1.5 Visual Privacy;
- D3.6 Front Building Line
- D3.7 Side and Rear Building Line; and
- D3.11 Landscaped Area – Environmentally Sensitive Land

An assessment of the tennis court under the Pittwater 21 DCP has revealed a number of non-compliances. A Development Application could not be considered as the structure already exists, and in any case would not be supported on the basis of the abovementioned non-compliance. However given the long standing nature of the tennis court, albeit not in its current refurbished state, the circumstances of an existing structure could be considered in the decision to issue a BIC. Should a BIC be issued (sic), amenity of neighbours should be protected through requirements for no lighting, no hit-up walls, and consideration for time limited use."

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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.

Section 4.15 Matters for Consideration	Comments
	<p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to; survey information; and elevations.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>

Section 4.15 Matters for Consideration	Comments
with the EPA Act or EPA Regs	
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 01/11/2021 to 15/11/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mr John William Sexton Planning Progress	Po Box 213 AVALON NSW 2107
Mr John William Sexton Planning Progress	4 B Allen Avenue BILGOLA BEACH NSW 2107

One (1) submission was received during the notification period. The issues raised in the submission have been summarised and are addressed below:

- *The application seeks to legitimize the unlawful use of a tennis court on the site.*

Comment: A condition of consent is recommended to ensure that the consent relates only to the proposed fence and that no consent is granted to the existing tennis court on the site. Hence, any consent would not imply that the future use of the tennis court is lawful.

- *The proposal is not consistent with the provisions of the both the Coastal Management Act and the Coastal Management SEPP.*

Comment: A consideration of the provisions of the Coastal Management SEPP is provided elsewhere in this report. In summary, the proposed fence is consistent with the objectives and requirements of the SEPP (and also the Act) and refusal of the application based on this issue is not warranted.

- *The proposal is not consistent with the requirements of the Pittwater21 Development Control Plan in relation to: fences; tennis courts; visual / acoustic privacy; and the character of the surrounding area.*

Comment: A detailed assessment of the proposal against the provisions of the P21 DCP is provided elsewhere in this report. In summary, the proposal is mostly consistent with the DCP and conditions of consent are recommended to ensure compliance with the controls of the DCP, where relevant.

- *Impact on the amenity of No.4B Allen in regard to visual / acoustic privacy and visual impact.*

Comment: A detailed consideration of the amenity impacts on the adjoining property is considered elsewhere in this report. In summary, there is unlikely to be any significant adverse impact (subject to the recommended conditions) and refusal of the application on these grounds is not warranted.

- *Impact on the character of the local area*

Comment: In general terms, the proposed development is a relatively minor form of development with limited visual impact. A condition of consent is recommended that the part of the fence forward of the minimum front setback be reduced to 1.8m, to ensure consistency with the special character provisions for Allen Avenue contained within P21 DCP. Hence, the proposal will not have an adverse impact on the local character of the area.

- *The proposal will have an impact on the adjoining heritage items (Norfolk Island Pine street trees) and a Heritage Impact Statement (HIS) is required. The advice provided from Council's Principal Planner (Heritage) did not adequately consider the impact of the proposal on these items.*

Comment: The advice provided from Council's Principal Planner (Heritage), who has no objection to the proposal, is concurred with. The Principal Planner has also advised that based on the minor nature of the proposal, a HIS is not required. It should also be noted that a condition is recommended to reduce the height of the fence in close proximity to the front boundary of the site. Hence, this matter is not considered a valid reason to refuse the application.

- *The proposal will have an adverse impact on the biodiversity values of the area.*

Comment: The application was referred to Council's Biodiversity team for comment and it was advised that the proposal would have a negligible impact on the biodiversity value of the surrounding area.

- *The survey plan provided with the application is not adequate to make a proper assessment of the proposal.*

Comment: At the request of Council, an amended boundary identification / levels and detail survey was provided by the applicant. It is the opinion of this assessment that the amended survey has provided sufficient detail for an adequate assessment of the application to be undertaken.

- *Inadequate detail has been provided of the existing timber boundary fence between Nos.2A and 4B Allen Avenue and it appears that demolition is proposed.*

Comment: The amended survey plan demonstrates that the existing timber boundary fence is actually located completely on No.2A Allen Avenue, at an estimated distance of 120mm from its boundary with No.4B. The proposed fence will be located to the south of this existing fence, at a distance of 135mm from this boundary. Based on the information provided (which included an amended north elevation, which makes no claim to demolition), it is obvious that demolition of the existing fence is not proposed. Based on the recommended conditions, any consent would only relate to the proposed fence. The demolition of this existing fence, by special consent, would not be permitted as part of the consent.

- *Inadequate documentation has been provided to prove that the Notification Sign was erected on the site.*

Comment: The applicant has provided sufficient documentation ie. photographs, to prove that the sign was erected on the site during the notification period.

- *The application should not be determined until the owners of the adjoining property has had the opportunity to investigate the circumstances of a Building Information Certificate (BIC) previously issued on the land.*

Comment: Whilst the BIC is part of the relevant history of the site, it is not considered a singularly determinative matter in the assessment of the subject application. This is not considered a valid circumstance to delay the assessment and determination of the this application.

- *In the event of the application being approved, the consent should be conditioned to ensure that the tennis court does not form part of the approval.*

Comment: This recommendation made in the submission is considered valid and has been incorporated into the recommended conditions of consent.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application is for a new tennis court fence along the northern boundary, to an existing tennis court, and this is replacing the tennis court fence that was previously located in the alignment of the new fence.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause E4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to):</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D3 Bilgola Locality

Internal Referral Body	Comments								
	<p>The site is located in the E4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the E4 Environmental Living zone.</p> <p>No Landscape Referral concerns are raised.</p>								
NECC (Bushland and Biodiversity)	<p>The application seeks approval for the installation of a fence along the northern side of an existing tennis court. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <p>Biodiversity Conservation Act 2016 (BC Act) State Environmental Planning Policy (Coastal Management) 2018</p> <ul style="list-style-type: none"> • Proximity to Coastal Wetlands <p>Pittwater Local Environmental Plan (PLEP)</p> <ul style="list-style-type: none"> • 7.6 Biodiversity Protection <p>Pittwater Development Control Plan (PDCP)</p> <ul style="list-style-type: none"> • B4.6 Wildlife Corridors <p>The application does not require the removal of prescribed trees or vegetation, nor is it likely to impact on nearby biodiversity values. Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.</p>								
Strategic and Place Planning (Heritage Officer)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="background-color: #cccccc;">HERITAGE COMMENTS</th> </tr> <tr> <td style="background-color: #cccccc;">Discussion of reason for referral</td> </tr> <tr> <td>The proposal has been referred to Heritage as the subject property adjoins a heritage item</td> </tr> <tr> <td>Street Trees - Norfolk Island Pines and Canary Island Date Palms - Allen Avenue and Bilgola Avenue</td> </tr> <tr> <th style="background-color: #cccccc;">Details of heritage items affected</th> </tr> <tr> <td>Details of the item as contained within the Pittwater inventory is as follows:</td> </tr> <tr> <td><u>Statement of Significance</u></td> </tr> <tr> <td>The Street Trees - Norfolk Island Pines (<i>Araucaria heterophylla</i>) and Canary Island Date Palms (<i>Phoenix canariensis</i>) are a defining landscape element for Bilgola Beach, but also for many ocean</td> </tr> </table>	HERITAGE COMMENTS	Discussion of reason for referral	The proposal has been referred to Heritage as the subject property adjoins a heritage item	Street Trees - Norfolk Island Pines and Canary Island Date Palms - Allen Avenue and Bilgola Avenue	Details of heritage items affected	Details of the item as contained within the Pittwater inventory is as follows:	<u>Statement of Significance</u>	The Street Trees - Norfolk Island Pines (<i>Araucaria heterophylla</i>) and Canary Island Date Palms (<i>Phoenix canariensis</i>) are a defining landscape element for Bilgola Beach, but also for many ocean
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Internal Referral Body	Comments	
	<p>beaches in Pittwater and along the coast of NSW and southern QLD. These pines are significant for their historic association with early settlement and as local cultural plantings, in some instances dating from the 1930's period. The Norfolk Island Pine plantings also have a high level of visual, environmental and aesthetic value.</p> <p><u>Physical Description</u> Many trees have achieved dramatic proportions and scale although many are threatened by recreational and erosional pressures. In this location they have been planted in association with the exotic Canary Island Date Palm.</p>	
	Other relevant heritage listings	
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No
	Australian Heritage Register	No
	NSW State Heritage Register	No
	National Trust of Aust (NSW) Register	
	RAIA Register of 20th Century Buildings of Significance	No
	Other	N/A
	Consideration of Application	
	<p>The proposal seeks consent for a new 3m high tennis court fence along the northern side of the tennis court, close to the boundary with 4 Allen Avenue. There is existing black wire fencing to the eastern and southern sides of the tennis court. There is two heritage listed Canary Island Palms located in the road reserve outside the property, on either side of the driveway. A objection on heritage grounds is noted.</p> <p>The proposed northern fence is considered to have a neutral heritage impact on the items as when viewed from the street, it will be the least visually noticeable elevation. Views of this side are either obscured or interrupted by other dwellings, vegetation or existing tennis court fencing. The existing southern fencing is considered the most visually exposed component, followed by the existing eastern portion. Heritage considers that per Clause 5.10 of the Pittwater LEP, and Clause B1.2 of the Pittwater 21 DCP, the proposed northern fence will have a neutral impact upon the heritage street trees and therefore raises no objections and requires no conditions.</p> <p>It is noted that an objection has made a request for a heritage management document be prepared to assess the impact of the</p>	

Internal Referral Body	Comments
	<p>new fence on the heritage street trees. However, given the small scale of the proposed works, its neutral impact and that the proposed works are not located directly on an item, Heritage in this case does not consider there to be a need for such a document.</p> <p>Therefore Heritage raises no objections and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of PLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p> <p>Further Comments</p> <p>COMPLETED BY: Brendan Gavin, Principal Planner</p> <p>DATE: 14 December 2021</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response in 12 November 2021, stating that the proposal was acceptable with no recommended conditions of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

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

SEPP (Coastal Management) 2018

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

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

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

Comment: The rear portion of the land is identified as being within the littoral rainforest area. However, the area subject to the proposed fence is within this mapped area. Based on the location of the mapped area and the minor nature of the proposed development, no adverse impact on the littoral rainforest area is likely.

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

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*

- (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
- (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment: Part of the site is mapped and also in close proximity to the littoral rainforest that exists in parts of Bilgola Beach, further to the west of the site. No impact is likely to this significant area of habitat as the site is already substantially developed and the works will result in no loss of habitat area or effect water quality of the local environment.

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

Comment: As stated above, no adverse impact is likely, based on the very minor nature of the proposed development.

14 Development on land within the coastal use area

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

Comment: No adverse impact is likely on those values described in subclauses (a), (b) and (c) above.

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

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

coastal hazards on that land or other land.

Comment: The proposed development will not result in any increased risk in coastal hazards.

In summary, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	3m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line**	6.5m	N/A	N/A	N/A
Rear building line**	6.5m	N/A	N/A	N/A
Side building line**	2.5m (north)	N/A	N/A	N/A
	1m (south)	N/A	N/A	N/A
Building envelope	3.5m (north)	Within envelope	N/A	Yes
	3.5m (south)	Within envelope	N/A	Yes
Landscaped area	50%	No change	N/A	N/A

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for Landscaped area - Divide the proposed area by the numerical requirement then multiply the proposed area by 100

to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

** the front, rear and side building line does not apply to fences

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.3 Bilgola Locality	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
B5.15 Stormwater	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
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
C1.16 Development ancillary to residential accommodation - Tennis Courts	Yes	Yes
D3.1 Character as viewed from a public place	Yes	Yes
D3.3 Building colours and materials	Yes	Yes
D3.6 Front building line	Yes	Yes
D3.7 Side and rear building line	Yes	Yes
D3.9 Building envelope	Yes	Yes
D3.11 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D3.12 Fences - General	No	Yes
D3.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D3.15 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.5 Visual Privacy

A submission made on this application has raised the potential for an adverse privacy impact on the adjoining property at No.4B Allen Avenue. These concerns relate to the use of an existing tennis court that adjoins the proposed fence. As discussed in the Site History section of this report, no consent exists for this tennis court. A recommendation of this assessment is that whilst a fence may be permitted, no part of the recommended approval will relate to the tennis court.

The likely visual privacy impact of the fence, as a standalone structure, will not be adverse on adjoining properties. And in broader terms for the area adjacent the fence, the likely impacts on privacy are similarly not considered adverse: if this area is used as a tennis court, or as private open space, this is considered within the normal range of private recreational facilities that typically occur within residential-type zones and any impacts emanating from this use are not considered unreasonable.

Concern was raised in the submission regarding the potential loss of the existing timber fence that adjoins the northern boundary, and the impact this would have on the privacy of this adjoining property. It is clear from the information provided in the application that it is not intended to demolish this fence. A further condition of consent is recommended to ensure that this fence is retained.

C1.6 Acoustic Privacy

The submission made on this application has also raised the potential for an adverse acoustic privacy impact on the adjoining property at No.4B Allen Avenue. As stated previously, these concerns relate to the use of an existing tennis court that adjoins the proposed fence. It is recommended that the approval relate only to the fence, and not imply any approval to the tennis court.

The likely impact of the fence on acoustic privacy, is considered negligible. The fence adjoins private open space (whether or not it is being used as a tennis court) which is there for the purpose of providing recreational facilities that typically occur within residential-type zones. Any impacts emanating from this use are not considered unreasonable and in the event that any impact occurs this is a matter initially of civil dispute. Enforcement action could be undertaken if there are repeated instances of offensive noise, of which it is not considered within the gambit of this application to consider or enforce in the future.

C1.16 Development ancillary to residential accommodation - Tennis Courts

As stated previously, the existing tennis court on the site has no record of a development consent and a condition of consent is recommended to ensure that this structure does not form part of this approval. Therefore, the part of the DCP is not relevant to the proposed development.

D3.6 Front building line

It should be noted that fences are a permitted structure within the front setback.

D3.7 Side and rear building line

Fences are a permitted structure within the side setback.

D3.12 Fences - General

Part D13.2 requires that in Allen Avenue that all fences within the front setback area not exceed 1.8m in height.

The proposed fence is located 2.4m from the front setback and has a total height of 3m.

Whilst the fence is set behind existing landscaped area and mature vegetation, and is composed of a transparent design, the part of the fence that is forward of the front setback should not exceed 1.8m.

Therefore, a condition of consent is recommended that the fence be modified to not exceed 1.8m in height at any point that is closer than 6.5m to the front boundary.

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 2021

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

CONCLUSION

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

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

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

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

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

It is considered that the proposed development satisfies the appropriate controls and that all processes

and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2021/1900 for Construction of a fence on land at Lot 20 DP 11978, 2 A Allen Avenue, BILGOLA BEACH, Lot A DP 379490, 2 A Allen Avenue, BILGOLA BEACH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA1-01 Revision A	22 September 2021	Design King
DA1-02 Revision A	22 September 2021	Design King
DA2-01 Revision B	30 November 2021	Design King
DA3-01 Revision A	22 September 2021	Design King

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
-	30 September 2021	-

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

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

2. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures and other works for the following:

- a) the purposes of a tennis court; and
- b) the demolition of the existing timber fence adjoining the northern boundary, as illustrated on stamped plan No.DA2-01 dated 30 November 2021.

Reason: To ensure compliance with the terms of this consent and restrict retrospective consent of any illegal structures.

3. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

(k) Prior to the commencement of any development onsite for:

- i) Building/s that are to be erected
- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

(l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

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

5. **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 Certifying Authority prior to issue of Construction Certificate.

Reason: To protect native vegetation.

6. **Amendments to the approved plans**

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

- No part of the fence that is any closer than 6.5m to the front boundary of Allen Avenue is to be higher than 1.8m from the existing ground level directly beneath; and
- The fence is to be constructed of non-reflective materials and finishes in a dark range of colours, in either black or dark green.

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land and the adjoining streetscape of Allen Avenue.

7. **Compliance with Standards**

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

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

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

8. **External Finishes to Fence**

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

9. **Survey Certificate**

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

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

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

10. **Installation and Maintenance of Sediment Control**

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

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site.

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

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

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

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

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

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

Signed



Nick England, Planner

The application is determined on 15/12/2021, under the delegated authority of:



Rodney Piggott, Manager Development Assessments