

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0711
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Responsible Officer:	Adam Mitchell
Land to be developed (Address):	Lot 27 DP 17177, 8 Edwin Avenue AVALON BEACH NSW 2107
Proposed Development:	Construction of a Swimming Pool and landscaping
Zoning:	R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Mark Anthony Herdman Rebecca Dawn Herdman
Applicant:	Mark Anthony Herdman

Application Lodged:	02/06/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	08/06/2021 to 22/06/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 81,000.00
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PROPOSED DEVELOPMENT IN DETAIL

Development Consent is sought excavation works and the construction of an in-ground swimming pool within the front garden of no. 8 Edwin Avenue.

The works necessitate the reconstruction of side retaining walls, fencing and decking atop of the existing patio and stairs. To sheds and paving areas are to be demolished within the rear garden.

The pool measures a maximum of 7450mm by 2800mm with a capacity of approximately 32 kilolitres.

During the course of the application revised plans were received which pushed the swimming pool 500mm away from the front property boundary. As this change did not create any environmental impact over and above the original proposal it was not re-notified to neighbours.

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 - D1.8 Front building line

Pittwater 21 Development Control Plan - D1.9 Side and rear building line

Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 27 DP 17177 , 8 Edwin Avenue AVALON BEACH NSW 2107
Detailed Site Description:	<p>The subject site is legally identified as Lot 27 DP 17177 and is known as 8 Edwin Avenue, Avalon Beach.</p> <p>The site falls within the R2 Low Density Residential zone pursuant to the Pittwater Local Environmental Plan 2014.</p> <p>The site is to the northwestern side of Edwin Avenue and is rectangular in shape with a width of 12.19m, depth of 38.095m and overall surveyed area of 464.4m².</p> <p>Presently the site accommodates a single storey dwelling house with a garage beneath. The front garden has been raised by an approximate 1.2m high retaining wall along the front boundary to level the lawn. A further lawn and shed exists to the rear of the site.</p> <p>Given the changes to the land, the site has no slopes but various levels rising by approximately 5m from the front to rear boundary.</p>

The site has vegetation throughout, none of which is thought to constitute as a threatened species.

Surrounding developments consist of other detached dwelling houses of varying age, size and construction.

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:

- **Pre-Lodgement Meeting no. 2021/0048** to discuss a proposal for the construction of a swimming pool in the front garden. The current development application is reflective of that meeting.

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

Section 4.15 Matters for Consideration'	Comments
	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 2014 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)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan 20214 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>

Section 4.15 Matters for Consideration'	Comments
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 08/06/2021 to 22/06/2021 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>This application is for the alterations and additions to an existing residential dwelling. Proposed works include the construction of new swimming pool within the front setback.</p> <p>Councils Landscape Referral section has considered the application against the Pittwater Local Environment Plan, and the following Pittwater 21 DCP controls:</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D1.14 Landscaped Area - Environmentally Sensitive Land <p>The Statement of Environmental Effects provided with the application notes that one tree is to be removed in order to accommodate the proposed works. This statement is supported by the Architectural Plans provided as only one tree is indicated for removal. It is worth noting this tree has been identified as an exempt species, and therefore may be removed without Councils approval.</p> <p>It is noted that although the proposed swimming pool is located within the front setback, it had been discussed in the Pre-Lodgement Meeting that there are circumstances with the subject site that lend</p>

Internal Referral Body	Comments
	<p>support to a pool in the front setback. Should the size, setback and location of the pool be supported by Councils Planning Officers, the following recommendations should be adhered to, ensuring a positive landscape outcome is achieved for the site and surrounding environment.</p> <p>It is recommended that one small tree be proposed within the front setback between the existing driveway and proposed swimming pool. In addition, at least one canopy tree is also to be planted within the rear of the property to reinforce the Pittwater Spotted Gum Forest Endangered Ecological Community that is present in the immediate vicinity. The planting of these two trees seeks to adhere to control C1.1 which states 2 canopy trees are to be located in the front yard, and 1 canopy tree in the rear yard. Due to existing site restraints as previously discussed in the Pre-Lodgement Meeting, this requirement of C1.1 has been assessed on merit, hence why one canopy tree in the rear, and only one small tree in the front of the property would be supported. The retention of existing screen planting, as well as additional screen planting as shown on plans is vital to ensure sufficient screening and privacy is achieved. This privacy is particularly important for the swimming pool to ensure no overlooking from adjoining properties, as well as from street view. The completion of landscape works as proposed on the Landscape Plans, as well as additional tree planting, is vital to satisfy control C1.1 and D1.14 as key outcomes of these controls seek to ensure "landscaping reflects the scale and form of development", "landscaping retains and enhances Pittwater's biodiversity by using locally native plant species", as well as "landscaping enhances habitat and amenity value".</p> <p>The landscape component of the proposal is therefore supported subject to the protection of existing screen vegetation, and the completion of landscape works as proposed on the Landscape Plan, inclusive of the additional canopy tree at the rear of the site and small tree within the front setback.</p>
NECC (Bushland and Biodiversity)	<p>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) 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"> B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community <p>The application seeks approval for alterations and additions to an</p>

Internal Referral Body	Comments
	<p>existing dwelling and the construction of an in ground swimming pool.</p> <p>Aside from the removal of the exempt Illawarra Flame Tree (<i>Brachychiton acerifolius</i>) within the front of the site, there are no other native trees or vegetation proposed for removal or likely to be indirectly impacted by the proposal.</p> <p>Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

The proposed swimming pool has a capacity of approximately 32 kilolitres and is therefore exempt from requiring a BASIX Certificate.

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	Deck - 0.735m Fence - 1.8m	-	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
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.6 Biodiversity protection	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	2.5m	61%	No
Rear building line	6.5m	21.8m	-	Yes
Side building line	(northeast) 2.5m	7.29m	-	Yes
	(southwest) 1m	Pool - 1m Deck - Nil	- 100%	Yes No
Building envelope	(northeast) 3.5m	Within envelope	-	Yes
	(southwest) 3.5m	Within envelope	-	Yes
Landscaped area	60% (277m ²)	34.16% (157.7m ²) + 6% (27.69m ²) Total: 40.16% (185.39m ²)	34%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
Community		
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	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
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.4 Scenic protection - General	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	No	Yes
D1.9 Side and rear building line	No	Yes
D1.11 Building envelope	Yes	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes
D1.15 Fences - General	Yes	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

D1.8 Front building line

Description of Non-Compliance

Part D1.8 of the Pittwater 21 Development Control Plan 2014 (P 21 DCP) requires that structures are to be setback 6.5m from the front property boundary. The proposed swimming pool fence and coping at setback 2.5m from this boundary, with the edge of the pool being setback 2.8m. The proposal results in a 61% variation to the Control requirements.

Merit Consideration

With regard to the request for a variation, the development is considered against the underlying

Outcomes of the Control as follows:

- *Achieve the desired future character of the Locality.*
Comment: The proposed swimming pool is located within an artificially elevated front garden which is already walled off from the street. An intention of the P 21 DCP and supplementary desired future character is to maintain a sense of openness. The presence of an in-ground swimming pool does not detract from this existing sense of openness. Further, from the street edge, the pool isn't visible, only the glass pool fence. Therefore the development is considered to achieve the desired future character of the Avalon locality.
- *Equitable preservation of views and vistas to and/or from public/private places.*
Comment: The construction of an in-ground swimming pool within the front setback area is not considered to result in any unreasonable view loss impacts from neighbouring properties or from the public domain.
- *The amenity of residential development adjoining a main road is maintained.*
Comment: N/A Edwin Avenue is not a main road.
- *Vegetation is retained and enhanced to visually reduce the built form.*
Comment: The development does not seek to remove any significant landscaping. An existing tree has already been removed from site and parts of an existing hedge will be impacted by excavation and would be required to be removed. Post construction, there is sufficient opportunity for the re-establishment of perimeter landscaping to reduce sight-lines of the pool and front garden. The plans submitted detail this new planting which is endorsed by the recommendations of this report.
- *Vehicle manoeuvring in a forward direction is facilitated.*
Comment: N/A no change to existing access.
- *To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*
Comment: The proposal is located at existing grade and is of an appropriate height.
- *To encourage attractive street frontages and improve pedestrian amenity.*
Comment: The proposal does not materially change the existing street frontage or impact on pedestrian amenity. The street frontage remains open, and the front garden remains behind the front wall and front hedge. In the event that the hedge were to be removed, the development would still appear attractive and, as stated earlier, the only element of the proposal which would be visible from the street would be the fence.
- *To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment*
Comment: The proposal for an in-ground swimming pool is considered to appropriately relate to the spatial characteristics of the urban environment.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent / consistent with the relevant objectives of P 21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1.9 Side and rear building line

Description of Non-Compliance

Clause D 1.9 Side and rear building lines of the Pittwater 21 Development Control Plan 2014 prescribe a minimum rear building line of 6.5m, and required side setbacks of 1m to one side and 2.5m to the other side.

In this instance the southwestern edge of the decking has an almost nil setback to the boundary with only a retaining wall dividing the two, and thus varies the Control by 100%.

Merit Consideration

With regard to the request for a variation, the development is considered against the underlying Outcomes of the Control as follows:

- *To achieve the desired future character of the Locality.*
Comment: The proposal seeks to construct decking atop of an existing paved area which also has an almost nil setback to the southwestern boundary. A retaining wall separates the paving from the boundary. The existing paving sits at RL 27.94 and the proposed decking at RL 28.13 thus being 19cm higher than the paving. This height difference results in a negligible impact to the desired future character. The works overall will enhance the dwelling and the quality of accommodation afforded to occupants.
- *The bulk and scale of the built form is minimised.*
Comment: The subject property sits to the lower side of the aforementioned retaining wall and thus, the deck being constructed close to the boundary does not change the presence of bulk and scale when viewed from neighbours commensurate to the existing situation. The highest element of this proposal is the 1.2m glass pool fence which is not considered to be of unreasonable bulk or scale.
- *Equitable preservation of views and vistas to and/or from public/private places.*
Comment: It is not considered that any views will be impacted.
- *To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*
Comment: It is not considered that any views will be impacted.
- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.*
Comment: The development does not result in any material change to the amenities provided to neighbours. The proposal results in a reasonable level of privacy, amenity and solar access being provided to all parties.
- *Substantial landscaping, a mature tree canopy and an attractive streetscape.*
Comment: The works include new plantings within the front setback area which shall enhance the streetscape.
- *Flexibility in the siting of buildings and access.*
Comment: The location of the proposed swimming pool is the most logical position on the site.
- *Vegetation is retained and enhanced to visually reduce the built form.*
Comment: This matter is discussed earlier in this report.
- *To ensure a landscaped buffer between commercial and residential zones is established.*
Comment: N/A no adjacent commercial zones.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent / consistent with the relevant objectives of P 21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1.14 Landscaped Area - Environmentally Sensitive Land

Description of Non-Compliance

Clause D1.14 of the P21 DCP requires that 60% of the site area be landscaping (277m²). The clause permits 6% of that 60% to be hard-surfaced recreational areas like decks, patios and the like. Inclusive of that 6%, the site achieves a landscaped ratio of 40.16% or 185.39m².

Merit Consideration

With regard to the request for a variation, the development is considered against the underlying Outcomes of the Control as follows:

- *Achieve the desired future character of the Locality.*
Comment: Whilst the degree of non-compliance sought may appear significant, it is worth noting that the proposal only results in 3.7m² hard surface area over and above the existing site layout. The proposal necessitates the removal of two sheds from the rear garden. The shortfall in landscaping is not readily discernible from the public domain and is deemed to achieve the DFC.
- *The bulk and scale of the built form is minimised.*
Comment: The shortfall in landscaping does not contribute to any increased bulk and scale of the building when viewed from the public domain or neighbouring properties. The removal of two sheds from the back garden will reduce the scale of built form on the site.
- *A reasonable level of amenity and solar access is provided and maintained.*
Comment: No impacts to solar access are proposed.
- *Vegetation is retained and enhanced to visually reduce the built form.*
Comment: This matter is addressed earlier in this report.
- *Conservation of natural vegetation and biodiversity.*
Comment: The proposal results in the removal of a boundary hedge which is to be replaced. The existing hedge is thinning and its replacement is supported.
- *Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.*
Comment: Stormwater run-off is addressed by way of condition of consent.
- *To preserve and enhance the rural and bushland character of the area.*
Comment: The development is not considered to materially change the existing character of the site.
- *Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.*
Comment: Stormwater and infiltration is addressed by way of condition.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent / consistent with the relevant objectives of P 21 DCP and the objectives specified in s1.3 of the

Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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 DA2021/0711 for Construction of

a Swimming Pool and landscaping on land at Lot 27 DP 17177, 8 Edwin Avenue, AVALON 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
DA 010 Issue 02	15 July 2021	Hot House Architects
DA 100 Issue 02	15 July 2021	Hot House Architects
DA 200 Issue 02	15 July 2021	Hot House Architects
DA 210 Issue 02	15 July 2021	Hot House Architects
DA 300 Issue 02	15 July 2021	Hot House Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Letter (ref: QP 00223A)	26 May 2021	Hodgson Consulting Engineers

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
DA 600 Issue 02	15 July 2021	Hot House Architects

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	21 May 2021	Hot House Architects

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

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

2. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the

Building Code of Australia (BCA).

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

3. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

- (k) Prior to the commencement of any development onsite for:
- i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished
- The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

4. Security Bond

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

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

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

5. Stormwater Drainage Disposal

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifying Authority prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifying Authority prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

6. 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.

7. Sydney Water "Tap In"

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

8. Dead or Injured Wildlife

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

Reason: To protect native wildlife.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

9. Tree and Vegetation Protection

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

- i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture

including advice on root protection measures,
vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

10. **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.

11. **Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

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

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

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

12. **Landscape Completion**

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

- i) at least 1x locally native canopy tree is to be planted at the rear of the site. Suggested species include: *Angophora floribunda*, *Corymbia maculata* or *Eucalyptus botryoides*,
- ii) at least 1x small tree is to be planted in the front setback between the existing driveway and proposed swimming pool. Suggested species include: *Angophora hispida*, *Ceratopetalum gummiferum* or *Melaleuca linarifolia*.

Tree planting shall be a minimum 75L pot size, and located within a 9m² deep soil area wholly within the site and be located a minimum of 3 metres from existing and proposed buildings, and other trees.

Tree planting shall be located to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree location may impact upon significant views.

Canopy tree planting species shall be selected from the Pittwater Spotted Gum Forest Endangered Ecological Community. The required small tree planting species shall be selected from Council's list, specifically the *Native Plant Species Guide - Pittwater Ward*:

www.northernbeaches.nsw.gov.au/environment/native-plants/native-plant-species-guide.

The proposed screen planting is to comprise of species capable of attaining a height of 2 metres at maturity.

Plants are to be installed at minimum 1 metre intervals and be of a minimum container size of 200mm at planting in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch.

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

Reason: Environmental amenity.

13. **New Vegetation Planting**

Landscaping is to incorporate a minimum 80% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the final determination for Pittwater Spotted Gum Forest in accordance with PDGP B4.7.

<https://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/nsw-threatened-species-scientific-committee/determinations/final-determinations/1996-1999/pittwater-spotted-gum-forest-endangered-ecological-community-listing>

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

Reason: To ensure compliance with the requirement to retain and protect native planting on the site.

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

No Priority or environmental weeds 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.

15. Stormwater Drainage Disposal Certification

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Certifying Authority prior to the issue of an Occupation Certificate, and;

If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. 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 for the on-site stormwater detention system is to be submitted.

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

Reason: To ensure satisfactory management of stormwater.

16. Waste Management Confirmation

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

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

17. Swimming Pool Requirements

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

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety

- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

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

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

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

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life.

18. Removal of All Temporary Structures, Material and Construction Rubbish

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management.

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

19. Landscape Maintenance

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

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

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

Reason: To maintain local environmental amenity.

20. **Undesirable Trees**

Leighton Green Cypress *Cupressocyparis leylandii* or any of its cultivars, or any other Undesirable Trees identified by Council, must not be planted on the site for the life of the development.

In the event of any inconsistency between this condition and the development application documents, this condition will prevail to the extent of the inconsistency.

Reason: To reduce the potential for adverse amenity effects such as overshadowing, loss of views and loss of plant diversity.

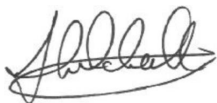
21. **Swimming Pool / Spa Motor Noise**

The swimming pool / spa motor shall not provide noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that development does not impact on the acoustic privacy of surrounding residential properties.

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

Signed



Adam Mitchell, Principal Planner

The application is determined on 21/07/2021, under the delegated authority of:



Rodney Piggott, Manager Development Assessments