

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2021/0037
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Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot 3 DP 511677, 1 A The Serpentine BILGOLA BEACH NSW 2107
Proposed Development:	Review of Determination of Application DA2021/0148 for Alterations and additions to a dwelling house
Zoning:	C4 Environmental Living SP2 Infrastructure
Development Permissible:	Yes - Zone SP2 Infrastructure Yes - Zone C4 Environmental Living
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Jane Louise Reilly
Applicant:	Rdo Architect

Application Lodged:	17/09/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	27/09/2021 to 11/10/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 318,090.00
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EXECUTIVE SUMMARY

This application is a Review of Determination of a previous application DA2020/0148 that was approved under delegation on 24 June 2021. The proposal is for alterations and additions to a dwelling house.

The consent included a condition (Condition 9) requiring the deletion of all works to the garage which included the conversion and fit out to a home office, thereby reducing the car parking on the site from two spaces to one space. This application seeks to amend the plans, removing all internal works to the garage, retaining the existing car parking arrangements on the site and proposing new windows to the garage to allow for additional light and ventilation. All other elements approved under DA2021/0148

remain unaltered.

The application was notified for a period of 14 days no submission were received.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is suitable and appropriate development for the site. Therefore, the proposed development is recommended for approval to the Development Determination Panel subject to the conditions outlined within this assessment report.

PROPOSED DEVELOPMENT IN DETAIL

This application is a Review of Determination of the approved DA2020/0148. The consent included a condition (Condition 9) requiring the deletion of all works to the garage which included the conversion and fit out to a home office, thereby reducing the car parking on the site from two spaces to one space. This application seeks to amend the plans, removing all internal works to the garage, retaining the existing car parking arrangements on the site and proposing new windows to the garage to allow for additional light and ventilation. All other elements approved under DA2021/0148 remain unaltered.

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

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3

Pittwater Local Environmental Plan 2014 - Zone SP2 Infrastructure

Pittwater Local Environmental Plan 2014 - 5.1A Development on land intended to be acquired for public purpose

Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements

Pittwater 21 Development Control Plan - C1.5 Visual Privacy

SITE DESCRIPTION

Property Description:	Lot 3 DP 511677 , 1 A The Serpentine BILGOLA BEACH NSW 2107
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of The Serpentine. The site does not have a street frontage. Access is obtained via a right-of-carriageway across the lot known as No. 1 The Serpentine.</p> <p>The site is irregular in shape with a width of approx. 29.3m and a maximum depth of approx. 65m. The site has a surveyed area of 1,328m².</p> <p>The site is located within the E4 Environmental Living and SP2 Infrastructure zones and accommodates a two-storey residential dwelling with a detached carport and garage.</p> <p>The site falls approx. 11m from the west towards the east.</p> <p>The site contains and is surrounding by dense canopy vegetation and is within proximity to an area of littoral rainforest.</p> <p>Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by low density residential dwellings within a coastal bushland setting.</p> <p>Site Inspection A site inspection was conducted 13 January 2022.</p>

Map:



SITE HISTORY

A search of Council's records has revealed the following relevant history:

Application Town Planning Consent No. 79/79

Erection of dwelling
Approved 04/04/1979

Application N0362/02

Alterations and Additions
Approved 18/07/2002.

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Section 8.3(2) of the Act, the request for the review must be made and determined within 12 months after the date of determination of the development application. The application was determined on 24 June 2021 and the notice of determination was issued on 25 June 2021. The review was lodged on 17 September 2021 and is to be considered by Delegation on 24 June 2022, which is within 12 months of the date of determination.

Section 8.3(3) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal are outlined in the 'Detailed Description of Works' section of this report.

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same. Accordingly it is concluded that the amended scheme is substantially the same as the original proposal. Accordingly, it is considered that the proposal satisfies the requirement of Section 8.3(3) of the Act

EXISTING USE RIGHTS

- **Does the existing use satisfy the definition of "existing use" under the *Environmental Planning and Assessment Act 1979* (the 'Act')?**

Section 4.65 of the Act defines an existing use as:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

*(i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and
(ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered:

1. Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

Comment:

Council records indicate that the use of the land commenced as a lawful purpose for a dwelling house after the land was subdivided in 1965 and before the approval of the existing dwelling on 04/04/1979, prior to the coming into force of Pittwater Local Environmental Plan 2014 on 30/05/2014.

2. Was the use of the land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

The use of the land was lawfully approved by Council before 04/04/1979, prior to the coming into force of Pittwater Local Environmental Plan 2014 on 30/05/2014.

3. Has the use of the land been carried out within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

The land continues to be used for the purpose of a dwelling house, which is within one year from the date on which the provision having the effect of prohibiting the use commenced.

- **What is "the land on which the existing use was carried out" for the purposes of cl 42(2) (b) of the Environmental Planning and Assessment Regulation 2000 ("the Regulation")?**

Meagher JA in *Steedman v Baulkham Hills Shire Council [No. 1] (1991) 87 LGERA 26* stated (at 27) the rule to be applied as follows: *"if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose"*.

Comment:

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council (2005) NSWLEC 71*, sets out the planning principles that should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the NSW Land and Environment Court in this case will have general application in dealing with development applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment:

The proposed development does not alter the existing building height. Existing boundary setbacks are also maintained. The existing dwelling is generally consistent with the bulk and scale of nearby dwellings.

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Comment:

The existing dwelling is to be retained and is consistent with the bulk and scale of nearby dwellings.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment:

The proposed development is generally contained within the footprint and envelope of the existing dwelling. The proposal is not expected to cause any additional bulk or scale and is will have a negligible impact upon surrounding land.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and

other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment:

The proposed development mostly relates to internal layout changes and changes to window and door openings. It is considered the proposal will improve the internal amenity of the dwelling.

Conclusion

The use has been approved under a previous environmental planning instrument (Warringah Planning Scheme Ordinance 1963) and, therefore, is a lawful use. Subsequently, the use can be retained under the current environmental planning instrument (PLEP 2014).

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 27/09/2021 to 11/10/2021 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>The application proposes the review of development consent DA2021/0148 imposition of Condition 9 as related to the use of the existing garage as a studio space. The review application proposes the retention of the existing garage use with the proposal for two new windows.</p> <p>Landscape Referral did not provide an assessment of DA2021/0148 and no issues are raised with the review application in terms of landscape outcomes.</p>
NECC (Bushland and Biodiversity)	The Review of Determination seeks to amend Condition 9 of DA2021/0148. Condition 9 was not imposed by Council's Natural Environment Unit - Biodiversity and as such Biodiversity have no objections to amending the condition.
NECC (Development Engineering)	The Review seeks to amend Condition 9 of DA2021/0148. Condition 9 was not imposed by Development Engineers and as such Development Engineers have no objections to amending the condition.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed DA involves retaining the existing garage. This generally complies with the flood controls in the LEP and DCP.
Parks, reserves, beaches, foreshore	The application proposes the review of development consent DA2021/0148 imposition of Condition 9 as related to the use of the existing garage as a studio space. The review application proposes

Internal Referral Body	Comments																																										
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Strategic and Place Planning (Heritage Officer)	<table border="1"> <thead> <tr> <th colspan="3" data-bbox="520 465 1430 506">HERITAGE COMMENTS</th> </tr> <tr> <th colspan="3" data-bbox="520 506 1430 546">Discussion of reason for referral</th> </tr> </thead> <tbody> <tr> <td colspan="3" data-bbox="520 546 1430 645">The proposal has been referred to Heritage as the subject property contains a heritage item</td> </tr> <tr> <th colspan="3" data-bbox="520 645 1430 685">Grove of Cabbage Tree Palms - Various lots within Bilgola Beach</th> </tr> <tr> <th colspan="3" data-bbox="520 685 1430 725">Details of heritage items affected</th> </tr> <tr> <td colspan="3" data-bbox="520 725 1430 824">Details of the item as contained within the Pittwater inventory is as follows:</td> </tr> <tr> <td colspan="3" data-bbox="520 824 1430 1191"> <p><u>Statement of Significance</u></p> <p>The Grove of Cabbage Tree Palms (<i>Livistona australis</i>) is a landscape heritage item of local significance with natural, aesthetic, scientific, historic and social significance for the Pittwater local government area. Strong and densely established, this grove is emblematic of Bilgola as a locality within the larger peninsula and municipality. The occurrence of cabbage tree palms, said to be the best remaining stand in the Sydney area, add to the natural beauty of the area. The area is an important recreational resource for the people of Sydney.</p> </td> </tr> <tr> <td colspan="3" data-bbox="520 1191 1430 1675"> <p><u>Physical Description</u></p> <p>The Grove of Cabbage Tree Palms in the Bilgola Valley covers several properties to the east and west of Barrenjoey Road in Bilgola. <i>Livistona australis</i> (Cabbage Palm) is a tall erect indigenous member of the palm family (<i>Arecaceae</i>) very widely distributed throughout lowland forest and swamps of eastern Australia, occurring in QLD, NSW and VIC. The stems are mostly about 10 metres tall but can grow up to 30 metres. The leaves, borne at the top of the stems, are palmately divided, fan shaped and plicate (folded longitudinally).</p> </td> </tr> <tr> <th colspan="3" data-bbox="520 1675 1430 1715">Other relevant heritage listings</th> </tr> <tr> <td data-bbox="520 1715 855 1854">Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td> <td data-bbox="855 1715 944 1854">No</td> <td data-bbox="944 1715 1430 1854"></td> </tr> <tr> <td data-bbox="520 1854 855 1926">Australian Heritage Register</td> <td data-bbox="855 1854 944 1926">No</td> <td data-bbox="944 1854 1430 1926"></td> </tr> <tr> <td data-bbox="520 1926 855 1998">NSW State Heritage Register</td> <td data-bbox="855 1926 944 1998">No</td> <td data-bbox="944 1926 1430 1998"></td> </tr> <tr> <td data-bbox="520 1998 855 2069">National Trust of Aust (NSW) Register</td> <td data-bbox="855 1998 944 2069">No</td> <td data-bbox="944 1998 1430 2069"></td> </tr> <tr> <td data-bbox="520 2069 855 2136">RAIA Register of 20th</td> <td data-bbox="855 2069 944 2136">No</td> <td data-bbox="944 2069 1430 2136"></td> </tr> </tbody> </table>	HERITAGE COMMENTS			Discussion of reason for referral			The proposal has been referred to Heritage as the subject property contains a heritage item			Grove of Cabbage Tree Palms - Various lots within Bilgola Beach			Details of heritage items affected			Details of the item as contained within the Pittwater inventory is as follows:			<p><u>Statement of Significance</u></p> <p>The Grove of Cabbage Tree Palms (<i>Livistona australis</i>) is a landscape heritage item of local significance with natural, aesthetic, scientific, historic and social significance for the Pittwater local government area. Strong and densely established, this grove is emblematic of Bilgola as a locality within the larger peninsula and municipality. The occurrence of cabbage tree palms, said to be the best remaining stand in the Sydney area, add to the natural beauty of the area. The area is an important recreational resource for the people of Sydney.</p>			<p><u>Physical Description</u></p> <p>The Grove of Cabbage Tree Palms in the Bilgola Valley covers several properties to the east and west of Barrenjoey Road in Bilgola. <i>Livistona australis</i> (Cabbage Palm) is a tall erect indigenous member of the palm family (<i>Arecaceae</i>) very widely distributed throughout lowland forest and swamps of eastern Australia, occurring in QLD, NSW and VIC. The stems are mostly about 10 metres tall but can grow up to 30 metres. The leaves, borne at the top of the stems, are palmately divided, fan shaped and plicate (folded longitudinally).</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	No		RAIA Register of 20th	No	
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Internal Referral Body	Comments		
	Century Buildings of Significance		
	Other	No	
	Consideration of Application		
	<p>The proposal seeks a review of Condition 9 imposed on the previous consent for this property being DA2021/0148. That condition related to the use of the existing garage as a studio space. As the review does not impact on a condition imposed by Heritage and now only seeks windows to the garage, the proposal is considered to not impact upon the heritage item or its significance.</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? Yes Has a Heritage Impact Statement been provided? A short statement has been included.</p>		
	Further Comments		
COMPLETED BY: Brendan Gavin, Principal Planner			
DATE: 23 September 2021			

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

A BASIX certificate has been submitted with the application (see Certificate No. A400358_03 dated 17 September 2021).

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

SEPP (Infrastructure) 2007

Transport for NSW (TfNSW)

Clause 100 - Development on proposed classified road states:

Consent for development for any of the following purposes on land reserved for the purposes of a classified road (but before the land is declared to be a classified road) may be granted only with the concurrence of TfNSW—

- (a) subdivision that results in the creation of an additional lot with dwelling entitlements,
- (b) development with a capital investment value greater than \$185,000,
- (c) development for the purpose of dwellings that are, or any other building that is, to be held under strata title.

Comment:

The original development application DA2021/0148 was referred to TfNSW for concurrence. Council received advice from TfNSW stating that their concurrence was not required.

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:

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:

The proposed development consists mostly of internal alterations and additions. No impact to nearby the littoral rainforest is expected.

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

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone SP2: Yes Zone C4 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone SP2: No Zone C4 : Yes

Principal Development Standards

Standard	Requirement	Proposed	Complies
Height of Buildings:	8m	Unaltered	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.1 Relevant acquisition authority	Yes
5.1A Development on land intended to be acquired for public purpose	No
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

Zone SP2 Infrastructure

The majority of the site including the proposed works to the dwelling are located within the SP2 Infrastructure Zone. Dwelling houses are prohibited development within in this zone.

The existing dwelling and ancillary structures were approved on the site in 1979. The majority of the works are located within the existing building footprint, with only a small addition of a deck located to the south of the dwelling outside of the building footprint. The original development application DA2021/0148 was referred to Transport for NSW for concurrence, who have advised that no response is required in relation to the proposed development.

It is considered that the proposal is acceptable and meets the requirements for Existing Use Rights, which has already been addressed in this report.

5.1A Development on land intended to be acquired for public purpose

The majority of the works are located within the existing building footprint, with only a small addition of a deck located to the south of the dwelling outside of the building footprint. The original development application DA2021/0148 was referred to Transport for NSW for concurrence who has advised that no response is required in relation to the proposed development.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	Complies
Front building line	10m	0.9m - unaltered	Yes
Rear building line	6.5m	14.8m - unaltered	Yes
Side building line	N - 2.5m	4.4m - unaltered	Yes
	S - 1m	0.6m - unaltered	Yes - no change
Building envelope	N - 3.5m	Within envelope - unaltered	Yes
	S - 3.5m	Outside envelope - unaltered	Yes - no change
Landscaped area	60%	69.57% (924m ²)	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.3 Bilgola Locality	Yes	Yes
B1.1 Heritage Conservation - Heritage items, heritage conservation areas and archaeological sites listed in Pittwater Local Environmental Plan 2014	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
B4.17 Littoral Rainforest - Endangered Ecological Community	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
D3.1 Character as viewed from a public place	Yes	Yes
D3.2 Scenic protection - General	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

Detailed Assessment

B6.3 Off-Street Vehicle Parking Requirements

The original development application included the conversion of a existing garage into a home office. This reduced the off street parking from two (2) spaces to one (1) space. This is inconsistent with the minimum control requirement. A condition was included in the consent deleting this element of the proposal from the plans.

The proposal for the review of the determination removes the home office form the plans, retaining two car parking spaces on the site. The proposal complies with the requirements of the control.

C1.5 Visual Privacy

The proposed works do not result in any unreasonable privacy impacts to adjoining properties or the site. The proposed windows and doors are appropriately located, designed and screened by existing vegetation, boundary fence and site layout to limit any potential overlooking or adjoining properties.

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

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2021.

A monetary contribution of \$3,181 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$318,090.

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

This Section 8.2 Review application has been assessed having regard for the recommend conditions amending the approved plans and the previous assessment in relation to Section 4.15 of the Environmental Planning and Assessment Act 1979, the PLEP 2014, PDCP and the relevant codes and policies of Council.

This assessment has taken into consideration the revised plans, revised Statement of Environmental Effects, and other documentation supporting the application.

The proposed amendments made under this review application are considered sufficient to satisfactorily address the issues identified in the original assessment report. The amended design, which removes the home office and maintains compliant car parking on the site, reduces the environmental impact of the proposal on the Bilgola Locality. In this respect, and based upon the amended plans, it is recommended that Condition 9 be deleted and the proposal is accordingly recommended for approval.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to REV2021/0037 for Review of Determination of Application DA2021/0148 for Alterations and additions to a dwelling house on land at Lot 3 DP 511677, 1 A The Serpentine, 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
DA10 - Rev A - Site Plan & Site Analysis	16.02.21	RDO
DA11 - Rev B - Site Management & Erosion Control	10.09.21	RDO
DA12 - Rev B - Car Parking & Vehicle Access	10.09.21	RDO
DA20 - Rev B - Plan - Main Level	10.09.21	RDO
DA21 - Plan - Upper Level	10.09.21	RDO
DA30 - Rev B - Elevations	10.09.21	RDO
DA31 - Rev B - Elevations	10.09.21	RDO

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A400358_03	17 September 2021	RDOO Architect
Bushfire Hazard Assessment & Certificate (Ref: BR-305921-A)	01/03/2021	Bushfire Planning & Design

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

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

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

2. Prescribed Conditions

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

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

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

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

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

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

Reason: Legislative requirement.

3. **General Requirements**

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

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

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

4. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$3,180.90 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$318,090.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

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

5. **Security Bond**

A bond (determined from cost of works) of \$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

6. **Flooding**

In order to protect property and occupants from flood risk the following is required:

Flood Effects Caused by Development – A2

There is to be no filling of the land or any other reduction of the available flood storage which results in a net loss of storage below the 1% AEP flood level of 0.43m.

Building Components and Structural Soundness – B1

All new development below the Flood Planning Level of shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

Building Components and Structural Soundness – B2

All new development must be designed to ensure structural integrity up to the Flood Planning Level (depth of 0.93m), taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion.

Building Components and Structural Soundness – B3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed to cut electricity supply during flood events.

Floor Levels – C1

New floor levels within the development shall be set at or above the Flood Planning Level (minimum height above ground of 0.93m).

Balcony

The underfloor area of new balconies below the 1% AEP flood depth (0.43m) is to be designed to allow clear passage of floodwaters. At least 50% of the perimeter must be of an open design from the natural ground level up to the 1% AEP floor level.

Storage of Goods – G1

Storage areas for hazardous or potentially polluting materials shall not be located below the Flood Planning Level unless adequately protected from floodwaters in accordance with industry standards.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

7. **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.

8. **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.

9. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

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

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

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

10. **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.

11. **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.

12. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

13. **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.

14. **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.

15. **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

16. 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 relevant section of the Native Gardening Booklet available on Council's website.

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.

17. Clearing for Asset Protection Zones

Clearing of vegetation for APZ establishment must only occur within the surveyed and marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries.

Written certification of compliance is to be submitted to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To protect native vegetation and wildlife.

18. 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.

19. 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.

20. **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.

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

21. **Maintenance of Asset Protection Zones**

Vegetation clearing for ongoing APZ maintenance must only occur within the surveyed and marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries.

Reason: To protect native vegetation and wildlife.